



FORECLOSURE LAW UPDATE: 2010 MARYLAND GENERAL ASSEMBLY

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The Maryland General Assembly passed a number of bills during the 2010 legislative session that will significantly impact how Maryland foreclosures are conducted. As to residential foreclosures in particular, new requirements that become effective on July 1 will increase both the time and cost to complete such foreclosures.

House Bill 472 (Real Property – Residential Property Foreclosure Procedures – Foreclosure Mediation)

This bill changes the timing, method and cost for conducting residential foreclosures in Maryland. Before initiating foreclosure proceedings, the secured party must send the borrower a prescribed notice of intent to foreclose: recommending the borrower seek housing counseling services; containing specified contact information about foreclosure assistance programs; and explaining the foreclosure timeline. The secured party must also send a "loss mitigation application" describing the workout or loan modification options offered by the secured party.

If these preliminary mitigation efforts are unsuccessful and the statutory time elapses, the secured party must pay \$300 *plus* the local jurisdictional filing fee to docket a foreclosure. The secured party's initial filing must include a statutory "loss mitigation affidavit" as well as a form by which the borrower can request "foreclosure mediation." This is a brand new requirement which, if elected, forces the secured party (not just counsel) to attend a mediation session to be scheduled and conducted by the Office of Administrative Hearings. Furthermore, if the borrower wishes to mediate, no sale can even be scheduled until after the mediation is conducted and deemed unsuccessful. The Fiscal Notes and bill summary for this new law describes how the extra \$300 filing fee will help finance the mediation process.

There are additional procedural and service requirements within the law designed to protect residential borrowers. This new law follows on the heels of recent changes in 2008 and 2009 also designed to protect borrowers and "draws upon other state models to design a Maryland-specific program." Secured parties must follow these new rules of the road, starting July 1, 2010, even though these rules will significantly increase the time and cost of conducting residential foreclosures.

House Bill 633 / Senate Bill 562 (Real Property –Mortgages and Deeds of Trust – Authority to Exercise a Power of Sale)

This bill establishes that if a mortgage or deed of trust allows, a trustee or individual authorized to exercise a power of sale it may be appointed or substituted. It also explains that if a deed of trust does not name a trustee, it may still be used to foreclosure on property so long as a trustee has been appointed. This law is designed to end certain local courts' practice of treating deeds of trust that omit the name of the trustee, or that have an entity, rather than a natural person, as being void. This bill will take effect June 1, 2010.

House Bill 711 / Senate Bill 654 (Real Property - Tenants in Foreclosure - Conforming to Federal Law)

This bill conforms Maryland law governing the rights of residential tenants of foreclosed properties to the federal Protecting Tenants at Foreclosure Act of 2009. It explains that in the case of a foreclosure on any residential property, an immediate successor in interest who has acquired legal title to the property assumes the interest subject to (i) notifying any bona fide tenant in writing to vacate at least 90 days before the notice's effective date; and (ii) the rights of any bona fide tenant as of the date of transfer of legal title. A bona fide tenant who entered into a lease before the transfer of legal title has the right to occupy the premises until the end of the remaining lease term or 90 days after the notice to vacate is sent, whichever is longer. A bona fide tenant without a lease or with a lease terminable at will has the right to stay for at least 90 days after the notice to vacate is sent. However, a successor in interest may terminate a lease effective on the date of the sale of the residential property to a purchaser who will occupy the property as his or her primary residence. A lease or tenancy is "bona fide" if the mortgagor or grantor or the child, spouse, or parent

of the mortgagor or grantor is not the tenant; the lease or tenancy was an arms-length transaction; and the lease or tenancy requires rent payments that are not substantially less than fair market rental rates, unless the rent is reduced or subsidized due to a federal, State, or local subsidy. This bill will take effect June 1, 2010.

Senate Bill 372 (Property Tax – Tax Sales – Notice to Foreclose Right of Redemption)

This bill alters specified notice provisions by requiring a holder of a certificate of sale to send specified notices by certified mail before the holder of a certificate of sale may file a complaint to foreclose the right of redemption. This bill will take effect July 1, 2010.

Senate Bill 373 (Property Tax - Tax Sales - Complaint to Foreclose Right of Redemption)

This bill authorizes the holder of a certificate of sale in Baltimore City for which there is no private purchaser to file a complaint at any time after the date of sale to foreclose all rights of redemption in abandoned property that is vacant or improved property cited as vacant and unfit for habitation on a housing or building violation notice. The bill conforms a specified notice requirement to provisions of law establishing the types of expenses for which a holder of a certificate of sale may be reimbursed and makes the Act an emergency measure. This bill will take effect July 1, 2010.

These are the most significant changes to Maryland's foreclosure law. Please contact [Diane Festino Schmitt](#), who heads Ober|Kaler's Foreclosure Task Force, at 410.347.7371 or dfschmitt@ober.com, or other members of our experienced [Creditors Rights, Workouts and Bankruptcy](#) Group, if you have additional questions.

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