

BEFORE THE GAVEL FALLS, LENDERS BEWARE:
Changes to the Maryland Foreclosure Laws

By: Sedica Sawez, Esquire

The seismic shift in the economy which began last year has brought with it many changes in the ways creditors may seek to recover the money owed to them from defaulting debtors, including changes to the Foreclosure Laws in Maryland. These changes, in the form of the Foreclosure Process Reform Bill, were made effective as of April 4, 2008, and have significantly modified the residential foreclosure process in the State of Maryland.

The Foreclosure Process Reform Bill provides protections for homeowners they did not have before. It requires that homeowners be given additional notice of proceedings (both before and after the filing of a foreclosure) and it lengthens the time required to elapse between filing of a foreclosure action and the actual foreclosure sale in order to give homeowners additional opportunity to cure their default. This article provides an outline of the new protections afforded to homeowners under the Foreclosure Process Reform Bill.

I. Before the Filing

A lender must comply with the following notice requirements before it may file a foreclosure action. An action to foreclose a mortgage or deed of trust on residential property may not be filed until the later of:

1. Ninety (90) days after a default (default is usually defined by the mortgage instrument, and is usually the day after the payment was due); or
2. Forty-five (45) days after the notice of intent to foreclose is sent to the homeowner. A copy of the notice of intent to foreclose must also be sent to the Commissioner of Financial Regulation.

The Notice of Intent to Foreclose must:

“(i) be in the form that the Commissioner of Financial Regulation prescribes by regulation¹; and

(ii) contain:

1. The name and telephone number of:
 - a. The secured party;
 - b. The mortgage servicer, if applicable; and
 - c. An agent of the secured party who is authorized to modify the terms of the loan;
2. The name and license number of the Maryland mortgage lender and mortgage originator, if applicable;
3. The amount required to cure the default and reinstate the loan, including all past due payments, penalties, and fees; and
4. Any other information that the Commissioner of Financial Regulation requires by regulation.”

¹ The form of Notice of Intent to Foreclose can be found at COMAR 09.03.12.02.

Real Property § 7-105.1(c)(4)(i) and (ii).

II. The Filing

As a result of the changes to the foreclosure law in Maryland, after May 1, 2009, the following additional information is required in order to docket a foreclosure action:

1. An affidavit stating the date of the default, the nature of the default, and the date and fact that the Notice of Intent to Foreclose was sent;
2. Recorded copy of Deed of Trust, supported by affidavit of authenticity
3. Recorded copy of Deed of Appointment, supported by affidavit of authenticity;
4. Debt instrument, supported by affidavit of Noteholder regarding authenticity and of ownership;
5. Statement of Indebtedness supported by affidavit;
6. Statement that trustee has right to foreclose, supported by affidavit;
7. An affidavit that defendant is not in the military;
8. Statement of Residential or Non-Residential Character of Real Property;
9. Affidavit of Default.

III. After the Filing

After the foreclosure action has been filed, the foreclosing party must now personally serve the owner of the property with a copy of the Order to Docket. If, however, the owner of the property remains unserved after at least two good faith but failed attempts at personal service on separate days, the foreclosing party may file an affidavit with the Court describing the attempts at service and the foreclosing party may effect service on the owner by mailing, both by certified mail and first class mail and by posting a copy of the order to docket foreclosure on the property.

In addition, after service has been effected, the lender must now wait forty-five (45) days following the date of service of the aforementioned notice before it may commence to publish a Notice of Sale. Such Notice of Sale must be published for three (3) successive weeks in a newspaper of general circulation in the county where the action is pending. In addition to the publication of the Notice of Sale, the foreclosing party must send the homeowner notice of the foreclosure sale by certified mail, postage prepaid, return receipt requested, stating the time, place and terms of the sale. The foreclosing party will be required to file an affidavit that the provisions relating to the notice have been complied with. The homeowner has up until one (1) business day before the sale date to cure its default.

This new law significantly lengthens the foreclosure process by requiring additional notice and opportunity to cure to the defaulting homeowner. This will allow the homeowner to stay in his or her home longer and provide the homeowner with additional time to cure its default, and will result in a more costly procedure for the lender.

If you have any questions about these changes in the foreclosure laws, please contact Sedica Sawez at (410) 727-8664 or ssawez@rosenbergmartin.com or the attorneys in our workout group:

Louis J. Ebert	lebert@rosenbergmartin.com
William L. Hallam	whallam@rosenbergmartin.com
Robert Galoubandi	bgaloubandi@rosenbergmartin.com

If you need any assistance with any of your other real estate needs, please contact an attorney in our real estate group:

Barry C. Greenberg	bgreenberg@rosenbergmartin.com
Stanley S. Fine	sfine@rosenbergmartin.com
Cynthia L. Spell	cspell@rosenbergmartin.com
Shawn J. Sefret	ssefret@rosenbergmartin.com
Sherry Heyman	sheyman@rosenbergmartin.com
Hilary J. O'Connor	hoconnor@rosenbergmartin.com
Patrick M. Martyn	pmartyn@rosenbergmartin.com
Matthew S. Wineman	mwineman@rosenbergmartin.com
Jordan Frame	jframe@rosenbergmartin.com
Sheelagh Allston	sallston@rosenbergmartin.com
Kari M. Kelly	kkelly@rosenbergmartin.com
Caroline L. Hecker	checker@rosenbergmartin.com

ND: 4840-4598-1699, v. 1

ND: 4845-9345-7267