

July 14, 2008

ONE HUNDRED FIFTY-NINTH REPORT  
OF THE  
STANDING COMMITTEE ON RULES  
OF PRACTICE AND PROCEDURE

The Honorable Robert M. Bell,  
  Chief Judge  
The Honorable Glenn T. Harrell, Jr.  
The Honorable Lynne A. Battaglia  
The Honorable Clayton Greene, Jr.  
The Honorable Joseph F. Murphy, Jr.,  
The Honorable Sally D. Adkins,  
  Judges  
The Court of Appeals of Maryland  
Robert C. Murphy Courts of Appeal Building  
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this, its One Hundred Fifty-Ninth Report, and recommends that the Court adopt, on an emergency basis, the proposed amendments to Rules 2-122, 14-201, 14-203, 14-204, and 14-205 transmitted with this Report.

The proposed amendments are designed primarily to conform the Rules relating to the foreclosure of mortgages and deeds of trust against residential real property to legislation enacted in the 2008 Session of the General Assembly, principally 2008 Md. Laws, Ch. 2 (HB 365), which took effect as an emergency bill on April 4, 2008. A copy of that Act is attached as an Appendix to this Report. For convenience, this Report uses the term "mortgage" and "mortgagor" as including deeds of trust and grantors of deeds of trust.

Because foreclosure proceedings are specialized, somewhat technical in nature, and foreign to many lawyers and judges, it may be helpful to provide some context to both the legislation, the proposed Rules changes, and impending further study by the Rules Committee.

Foreclosure proceedings have been regarded as *in rem* proceedings; the action is against the property, not the mortgagor or the property owner (who are usually, but not always, the same). In mortgages containing a power of sale, which most do, the proceeding is commenced and proceeds on an "Order to Docket." If the mortgage does not contain a power of sale but contains an assent to a foreclosure decree, the proceeding is commenced with a complaint to foreclose, but, because of the assent, no process issues against the mortgagor/owner. Only where there is neither a power of sale nor an assent to a foreclosure decree does process issue and the case proceed as a normal civil action.

Although due process requires that a reasonable attempt be made to notify the property owner of the proceeding, in the vast majority of cases, where there is either a power of sale or an assent to a foreclosure decree, no process issues against the mortgagor or owner, and they are ordinarily not parties to the foreclosure proceeding. The proceeding - particularly the sale of the property - usually proceeds with much greater expedition than normal civil actions involving a like amount of money, and, given the speed at which the action proceeds and some ambiguity regarding the amount of any bond that may need to be posted, the practical ability of the mortgagor/owner, in the foreclosure proceeding, to raise defenses to the validity of the mortgage or the right of the lender to foreclose is limited. The Court recently dealt with some of these issues in *Griffin v. Bierman*, 403 Md. 186 (2008) and *Wells Fargo v. Neal*, 398 Md. 705 (2007).

Chapter 2 - one of several bills enacted to deal with the dramatic increase in foreclosures against residential property, unprecedented since the Great Depression and estimated to reach 50,000 in Maryland - imposes several new requirements on plaintiffs seeking to foreclose on residential property, including:

(1) A requirement that, at least 45 days before filing a foreclosure action, written notice of an intent to foreclose is sent to the mortgagor/owner by first class and certified mail. The notice must contain certain information, including the amount required to cure the default and the name and telephone number of an agent of the secured party who is authorized to modify the terms of the loan.

(2) A waiting period on the filing of a foreclosure action. Such an action may not be filed until the later of 90 days after a default allowing for a foreclosure or 45 days after the notice of intent to foreclose is sent to the mortgagor/owner, unless the court, on petition, which may be ruled upon without a hearing, concludes that (i) the loan was procured by fraud or

deception, (ii) no payments have ever been made on the loan, (iii) the property has been destroyed, or (iv) the default occurred after a bankruptcy stay was lifted. It is not clear from the statute whether this petition, which seeks to excuse both the requirement of the 45-day notice of intent and the 90-day waiting period, is an *ex parte* one, whether it must be served on the mortgagor/owner, if required to be served, how service is to be effected, or how or within what period the mortgagor/owner may contest the petition.

(3) An order to docket or a compliant to foreclose must include an affidavit stating the date of default and the date on which the notice of intent was sent and must be accompanied by certain other documents and affidavits, including a notice advising that the owner may stop the sale by paying all amounts due on the loan plus all accumulated fees and costs.

(4) The order to docket or complaint, along with all other papers filed with it, must be served on the mortgagor by personally delivering them to the mortgagor or by leaving them with a resident of suitable age at the mortgagor's home. If a good faith attempt to effect such service on two different days proves unsuccessful, service may be effected on the mortgagor by posting the property and by first class and certified mail.

(5) A sale may not occur until at least 45 days after service is made. The sale must be advertised at least once a week for three consecutive weeks.

(6) Finally, the mortgagor has the right to cure a default and reinstate the loan by paying all past due payments, penalties, and fees any time up to one business day before the sale.

The Rules Committee proposes that the Rules governing foreclosures against residential property be conformed to these, and other, statutory provisions in the following manner:

(1) Amend Rule 14-201, which defines terms used in the Title 14 Rules, to add a definition of "residential property." The definition is identical to that contained in Chapter 2 (Code, Real Property Article, §7-105.1 (a)).

(2) Amend Rule 14-203, which provides certain conditions precedent to the filing of foreclosure actions, to add a new subsection (a)(3). The new subsection repeats the conditions set forth in Chapter 2 (Code, Real Property Article, §7-105.1 (c)) - the requirement of the notice of intent to foreclose (subsection (a)(3)(B)) and the 90 day/45 day waiting period before an order to docket or complaint may be filed (subsection (a)(3)(A)).

(3) Amend Rule 14-204, dealing with the commencement of a foreclosure action, as follows:

(i) Amend subsection (a)(4) to cross-reference the Federal Servicemembers Civil Relief Act, which supplanted the former Soldiers' and Sailors' Civil Relief Act;

(ii) Add a new subsection (a)(5) to require that an order to docket or complaint to foreclose against residential property contain the information and papers required by Chapter 2 (Code, Real Property Article, §7-105.1 (d));

(iii) Repeal existing section (b), which tracks the requirements of a statute repealed by Chapter 2, and add a new subsection (b)(1) and (b)(2) to provide for the method of service required by Chapter 2 - personal delivery (subsection (b)(1)) or, failing two good faith attempts at personal delivery, posting the property and notice by first class and certified mail (subsection (b)(2)). The Rules Committee agreed with the recommendation of representatives of creditors that the process would be made more efficient by providing that the alternative service is complete when the property is posted and the mailings have been made as required - that the creditor need not wait for the return of a "green card" with respect to certified mail. In that regard, the Rules Committee notes that it is possible for the foreclosing party to determine, on line, whether the certified mail was delivered and, if so, to whom.

(iv) Add a new subsection (b)(3) to provide a method of proof of service, which must be filed promptly and, in any event, prior to the date of sale. Chapter 2 (Code, Real Property Article, §7-105.1 (e)(3)) provides that proof of service shall be in accordance with the Maryland Rules. New subsection (b)(3) implements that provision.

(4) Amend Rule 14-205, which deals with actions to foreclose a lien instrument or statutory lien that contains neither a power of sale nor an assent to a foreclosure decree. The Rules Committee is advised that there are very few lien instruments of that kind, but where that circumstance exists, the action proceeds like any other civil action. Section (b), dealing with notice in foreclosures of residential property, references a statute repealed by Chapter 2, and is therefore repealed as obsolete. Section (a) is amended to add the requirement that service in foreclosures of residential property must be in accordance with Rule 14-204 (and thus with Chapter 2).

(5) Amend Rule 2-122, the general Rule dealing with service of process in *in rem* actions, to permit the posting of property to be done by any person authorized to serve process in accordance with Rule 2-123 (a) (the sheriff or any competent

private person, 18 years of age or older, including an attorney of record but not a party to the action), and not just by the sheriff. The Rules Committee saw no need to limit the posting of property to the sheriff.

For the further guidance of the Court and the public, following the proposed amendments to each Rule is a Reporter's Note describing in further detail the reasons for the proposal and any changes that would be effected in current law or practice. We caution that the Reporter's Notes were prepared initially for the benefit of the Rules Committee. They are not part of the Rules, have not been debated or approved by the Committee, and are not to be regarded as any kind of official comment or interpretation. They are included solely to assist the Court in understanding some of the reasons for the proposed changes.

Although these Rules are submitted for adoption as emergency Rules, notice of this Report has been placed on the Judiciary's web site, copies have been sent to every person who consulted with the Rules Committee's Property Subcommittee or who attended the full Rules Committee meeting on this subject on June 27, 2008, and an effort will be made to place notice in the *Daily Record*.

Finally, it appears to several members of the Rules Committee, in light of information supplied to the General Assembly or reported in the responsible media and government documents, that the Rules governing foreclosure, at least with respect to residential property, need to be more widely examined. They have not been comprehensively reviewed for decades. To that end, a special subcommittee has been appointed; it will have its first meeting on July 21, 2008. The subcommittee will attempt to work with all interested persons and groups in determining whether the structure of and procedures in foreclosure actions should be changed beyond what is required by Chapter 2.

Respectfully submitted,

Alan M. Wilner  
Chair

Linda M. Schuett  
Vice Chair

AMW/LMS : cdc

MARYLAND RULES OF PROCEDURE  
TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-201 to add a definition of "residential property," as follows:

Rule 14-201. SCOPE AND DEFINITIONS

(a) Scope

The rules in this Chapter apply to foreclosure of liens upon property that are created or authorized to be created by a lien instrument or are created by a statute providing for foreclosure in the manner specified for foreclosure of mortgages. The procedure set forth in these Rules shall provide the sole remedy for the vendor for repossession of property sold under a land installment contract executed pursuant to Code, Real Property Article, Title 10, Subtitle 1 or its statutory predecessor. Otherwise, the foreclosure procedure provided in these Rules does not preclude other remedies, including but not limited to self-help, that may be available under Code, Commercial Law Article; Code, Real Property Article; or other law.

(b) Definitions

The following definitions apply in the rules in this Chapter:

(1) Assent to a Decree

"Assent to a decree" means a provision in a lien instrument declaring an assent to the entry of an order for the sale of the property subject to the lien upon a specified default.

(2) Debt

"Debt" means a monetary obligation secured by a lien.

(3) Debtor

"Debtor" means the record owner of the property at the time the lien was created and the purchaser under a land installment contract.

(4) Lien

"Lien" means a statutory lien or a lien upon property created or authorized to be created by a lien instrument.

(5) Lien Instrument

"Lien instrument" means a mortgage, a deed of trust, a land installment contract, including those defined in Code, Real Property Article §10-101 (b), a contract creating a lien pursuant to Code, Real Property Article, §§14-201 through 14-205, a deed or other instrument reserving a vendor's lien, an instrument creating or authorizing the creation of a lien in favor of a homeowners' association, a condominium council of unit owners, a property owners' association or a community association, a security agreement, and any other instrument creating or authorizing the creation of a lien upon the property.

(6) Power of Sale

"Power of sale" means a provision in a lien instrument



authorizing a person to sell the property upon a specified default.

(7) Property

"Property" means real and personal property of any kind situated within this State.

(8) Record Owner of Property

"Record owner of property" includes the record holder of the rights of a purchaser under a land installment contract.

(9) Residential Property

"Residential property" means real property improved by four or fewer single family dwelling units.

Cross reference: See Code, Real Property Article, §7-105.1 (a)

~~(9)~~ (10) Sale

"Sale" means foreclosure sale.

~~(10)~~ (11) Secured Party

"Secured party" means a mortgagee, the holder of a note secured by a deed of trust, a vendor holding a vendor's lien, a condominium council of unit owners, a homeowners' association, a property owners' or community association, and any other party secured by a lien. "Secured party" includes any assignee or successor in interest of a secured party.

~~(11)~~ (12) Statutory Lien

"Statutory lien" means a lien on property created by a statute providing for foreclosure in the manner specified for the foreclosure of mortgages.

Source: This Rule is derived as follows:

Section (a) is derived from former Rules W70 b and W79 c.

Section (b) is in part derived from former Rule W70 a and in part new.

REPORTER'S NOTE

The 2008 legislature enacted a series of bills designed to address the foreclosure crisis in Maryland by changing the procedures for foreclosing on residential property. The Rules Committee recommends adding to Rule 14-201 the definition of "residential property" that is in section (a) of Code, Real Property Article, §7-105.1, the new law added by the legislature in House Bill 365 (Chapter 2), Acts of 2008.

MARYLAND RULES OF PROCEDURE  
TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-203 to add a new subsection (a)(3) pertaining to the requirement to send a notice of intent to foreclose a mortgage or deed of trust on residential property and to add a cross reference after subsection (a)(3), as follows:

Rule 14-203. CONDITIONS PRECEDENT; VENUE

(a) Conditions Precedent

(1) Generally

An action to foreclose a lien may be filed after (A) the instrument creating or giving notice of the existence of the lien has been filed for record, and (B) there has been a default in a condition upon which the lien instrument provides that a sale may be made or there is a default in the payment of the debt secured by a statutory lien.

Cross reference: Code, Real Property Article, §§14-201 through 14-206.

(2) Land Installment Contract

An action to foreclose a land installment contract as defined in Code, Real Property Article, §10-101 (b) shall be instituted only after the secured party: (A) serves on the debtor and the current record owner of the property, either by delivery to the person to be served or by certified mail to the last known address of the person to be served, a written notice stating the

amount of payment in default and the nature of any claimed default in any other condition or requirement of the contract, and advising the person served that foreclosure proceedings will be instituted on or after a designated day, not less than 30 days after service of the notice, unless the debtor or the current record owner before that time cures the default, and (B) files proof by affidavit that the required notice has been given.

(3) Foreclosure on Residential Property

(A) An action to foreclose on residential property may not be filed until the later of 90 days after the default or 45 days after the sending of the notice of intent to foreclose required by subsection (a)(3)(B) of this Rule.

(B) At least 45 days before the filing of an action to foreclose a mortgage or a deed of trust on residential property, the secured party shall send a written notice of intent to foreclose to the mortgagor or grantor and to the record owner of the property in conformance with Code, Real Property Article, §7-105.1 (c), except that the action may be filed without sending the notice if:

(i) the loan secured by the mortgage or deed of trust was obtained by fraud or deception,

(ii) no payments have ever been made on the loan secured by the mortgage or deed of trust,

(iii) the property subject to the mortgage or deed of trust has been destroyed, or

(iv) the default occurred after a stay has been lifted in

a bankruptcy hearing.

Cross reference: For the form of the notice and any other information that the Commissioner of Financial Regulation requires, see COMAR 09.03.11.01 et seq.

(b) Venue

An action to foreclose a lien shall be filed in the county in which all or any part of the property subject to the lien is located.

(c) Jurisdiction - Attaches Upon Commencement of Action

The jurisdiction of the court over property subject to a lien shall attach upon the commencement of an action filed pursuant to Rule 14-204, with or without the bond described in Rule 14-206 (a).

Source: This Rule is derived from former Rule W72 and W79.

REPORTER'S NOTE

House Bill 365, (Chapter 2), Acts of 2008, one of the bills enacted to address the foreclosure crisis in Maryland, requires that the secured party send to the mortgagor or grantor and to the record owner a written notice of intent to foreclose a mortgage or deed of trust on residential property. This is set out in Code, Real Property Article, §7-105.1 (c). Four exceptions to this requirement are set out in Code, Real Property Article, §7-105.1 (b)(2). The Rules Committee recommends adding to the list of conditions precedent in Rule 14-203 a reference to the requirement of filing a notice of intent to foreclose qualified by a reference to the exceptions to the requirement.

MARYLAND RULES OF PROCEDURE  
TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-204 to add a provision to section (a) stating that certain items be included and that certain items need not be included in the complaint to foreclose or order to docket, to delete section (b), to add a new section (b) setting out procedures for service in foreclosures on residential property, to add language to section (c) that refers to residential property foreclosures, and to correct two references to federal law, as follows:

Rule 14-204. COMMENCEMENT OF ACTION AND PROCESS

(a) Methods of Commencing Action

An action to foreclose a lien pursuant to a power of sale shall be commenced by filing an order to docket. An action to foreclose a lien pursuant to an assent to a decree or where the lien instrument contains neither a power of sale nor an assent to a decree shall be commenced by filing a complaint to foreclose. When a lien instrument contains both a power of sale and an assent to a decree, the lien may be foreclosed pursuant to either the power of sale or the assent to a decree. The complaint or order to docket shall be accompanied by:

(1) the original or a certified copy of the lien instrument or, in an action to foreclose a statutory lien, an original or a

certified copy of a notice of the existence of the lien,

(2) a statement of the debt remaining due and payable supported by an affidavit of the plaintiff or the secured party or the agent or attorney of the plaintiff or the secured party,

(3) in the case of a deed of trust, a copy of the debt instrument certified by the attorney or the trustee conducting the sale, and

(4) if any defendant is a natural person, an affidavit that either the person is not in the military service of the United States as defined in ~~Section 511 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended,~~  Servicemembers Civil Relief Act, 50 U.S.C. Appendix, 520, app. §§501 et seq., or that the action is authorized by the Act, and

(5) in an action to foreclose a mortgage or deed of trust on residential property, the information and papers required by Code, Real Property Article, §7-105.1 (d), except that if the name and license number of the mortgage originator and mortgage lender is not required in the notice of intent to foreclose, the information is not required in the order to docket or complaint to foreclose.

~~(b) Notice to Record Owner of Residential Real Property~~

~~The person authorized to make a sale shall comply with the notice requirement contained in Code, Real Property Article, §7-105 (a-1) and, at any time before the sale is ratified, shall file an affidavit in the proceedings that the notice requirement~~

~~has been satisfied.~~

(b) Service in Residential Property Foreclosures

(1) Service by Personal Delivery

When an order to docket or a complaint to foreclose a lien instrument or statutory lien on residential property is filed, a copy of the order to docket or complaint to foreclose and the accompanying papers shall be served by personal delivery to the mortgagor or grantor or by leaving them with a resident of suitable age and discretion at the dwelling house or usual place of abode of the mortgagor or grantor.

(2) Service by Mailing and Posting

If on at least two different days a good faith effort was made to serve the mortgagor or grantor under subsection (b)(1) of this Rule and service was not successful, the plaintiff may effect service by (A) mailing a copy of the order to docket or complaint to foreclose and accompanying papers by certified mail, return receipt requested, and first-class mail to the last known address of the mortgagor or grantor and, if different, to the address of the residential property subject to the mortgage or deed of trust; and (B) posting a copy of the order to docket or complaint to foreclose and accompanying papers in a conspicuous place on the residential property subject to the mortgage or deed of trust. Service is complete when the property has been posted and the mailings have been made in accordance with this subsection.

(3) Affidavit of Service



(A) Time for Filing

An affidavit of service shall be filed promptly and in any event before the date of the sale.

(B) If Service by an Individual Other than a Sheriff

In addition to the requirements of subsection (b)(3)(C) or (D) of this Rule, if service is made by an individual other than a sheriff, the affidavit shall include the name, address, and telephone number of the affiant and a statement that the affiant is 18 years of age or older.

(C) Contents of Affidavit of Personal Delivery

If service is effected pursuant to subsection (b)(1) of this Rule, the affidavit shall set forth the name of the person served and the date and particular place of service. If delivery is to a person other than the mortgagor or grantor, the affidavit also shall include a description of the individual served and the facts upon which the individual making service concluded that the individual served is of suitable age and discretion.

(D) Contents of Affidavit of Service by Mailing and Posting

If service is effected pursuant to subsection (b)(2) of this Rule, the affidavit shall (i) describe with particularity the good faith efforts to serve the mortgagor or grantor by personal delivery; (ii) state the date on which the required papers were mailed by first-class and certified mail, return receipt requested, and the name and address of the addressee; and

(iii) include the date of the posting and a description of the location of the posting on the property. If available, the original certified mail return receipt shall be attached to the affidavit.

(c) Process and Hearing Not Required

In an action to foreclose a lien pursuant to a power of sale or pursuant to an order for sale under an assent to a decree, including a foreclosure on residential property, it is not necessary that process issue or that a hearing be held prior to sale.

Cross reference: See the Sections 511 and 532 of the Soldiers' and Sailors' Civil Relief Act of 1940 Servicemembers Civil Relief Act, 50 U.S.C. Appendix app. §§501 et seq.

Source: This Rule is derived in part from former Rule W72 c, d, and e and is in part new.

REPORTER'S NOTE

House Bill 365 (Chapter 2), Acts of 2008, sets out in Code, Real Property Article, §7-105.1 (d) the procedure for filing an order to docket or a complaint to foreclose a mortgage or deed of trust on residential property. The Rules Committee recommends repeating much of the statutory procedure in Rule 14-204.

The Committee recommends the addition of subsection (a)(5) because section (d) of Code, Real Property Article, §7-105.1 requires certain information and papers to be filed with an order to docket or a complaint to foreclose a mortgage or deed of trust on residential property. Subsection (c)(4) of the statute provides that the notice of intent to foreclose required by subsection (c)(1) of the statute to be sent to the mortgagor or grantor and the record owner shall be in the form that the Commissioner of Financial Regulation prescribes. Under certain circumstances, the name and license number of the mortgage originator are not required on the notice of intent to foreclose. The Committee believes that if this information is not required on the notice, it should not be required on the order to docket or complaint to foreclose. The Committee has added language to

this effect in subsection (a)(5).

The Committee suggests deleting existing section (b) because the statute referenced there has been superseded by Code, Real Property Article, §7-105.1.

Code, Real Property Article, §7-105.1 (e) sets out procedures for serving a copy of the order to docket or complaint to foreclose on residential property. Section (b) of the Rule is added to reflect these procedures.

Subsection (b)(1) providing for service in personam is taken directly from subsection (e)(1) of the statute.

Subsection (b)(2) providing for service in rem is taken directly from Code, Real Property Article, §7-105.1 (e)(2), except that the last sentence was added to indicate that completion of service is not dependent upon the return of the return receipt, which shows that certified mail service was effected, to the person who requested the certified mail service. The affidavit requirement of §7-105.1 (e)(2)(i) of the statute has been incorporated into subsection (b)(3)(D) of the Rule.

Code, Real Property Article, §7-105.1 (e)(3) provides that the individual making service shall file proof of service with the court in accordance with the Maryland Rules. The Committee recommends the addition of subsection (b)(3) to the Rule to provide a procedure for proof of service. Subsection (b)(3)(A) is derived from Rule 2-126 (a) providing a time for filing the affidavit of service. Subsection (b)(3)(B) is derived from Rule 2-126 (a)(2). Subsection (b)(3)(C) is derived from Rule 2-126 (a)(1). Subsection (b)(3)(D) is in part derived from Code, Real Property Article, §7-105.1 (e)(2)(i) and is in part new. It provides a procedure for proving that the requirements of subsection (b)(2) of the Rule have been met.

Section (c) contains language added by the Committee to make clear that it is not necessary that process issue or that a hearing be held prior to the sale when residential property is being foreclosed pursuant to a power of sale or an order for sale under an assent to a decree.

References to the former Soldiers' and Sailors' Civil Relief Act of 1940 in subsection (a)(4) of the Rule and a cross reference at the end of the Rule are corrected to refer to the current Servicemembers Civil Relief Act.

MARYLAND RULES OF PROCEDURE  
TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-205 to require that service in residential property foreclosures be in accordance with Rule 14-204 (b) and to delete section (b), as follows:

Rule 14-205. LIEN INSTRUMENTS OR STATUTORY LIENS - CONTAINING NEITHER POWER OF SALE NOR ASSENT TO DECREE

(a) Commencement of Action and Process

When a complaint to foreclose a lien instrument or statutory lien containing neither a power of sale nor an assent to a decree is filed, process shall issue and be served, and the action shall proceed as in any other civil action, except that service in residential property foreclosures shall be in accordance with Rule 14-204 (b).

~~(b) Notice to Record Owner of Residential Real Property~~

~~The plaintiff shall comply with the notice requirement contained in Code, Real Property Article, §7-105 (a-1) and, at any time before the sale is ratified, shall file an affidavit in the proceedings that the notice requirement has been satisfied.~~

~~(c)~~ (b) Order of Court Directing Sale - Conditions

(1) Generally

In an action to foreclose a lien instrument or statutory lien containing neither a power of sale nor an assent to a

decree, the court shall first determine whether a default has occurred. If the court finds that a default has occurred it shall (A) fix the amount of the debt, interest, and costs then due and (B) provide a reasonable time within which payment may be made. The court may order that if payment is not made within the time fixed in the order, so much of the property as may be necessary to satisfy the amount due shall be sold.

(2) Order Directing Sale Before Judgment in Exceptional Case

If after a hearing the court is satisfied that the interests of justice require an immediate sale of the property that is subject to the lien, and that a sale would be ordered as a result of the final hearing of the action, the court may order a sale of the property before judgment and shall appoint a person to make the sale pursuant to Rule 14-207. The court shall order the proceeds of any sale before judgment to be deposited or invested pending distribution pursuant to judgment.

Source: This Rule is derived from former Rule W73.

REPORTER'S NOTE

Because Code, Real Property Article, §7-105.1 (e) provides service procedures that are different for foreclosures of residential property than for other types of property and new section (b) of Rule 14-204 sets forth those procedures in detail, the Rules Committee recommends adding to Rule 14-205 (a) the requirement that service in residential property foreclosures be in accordance with Rule 14-204 (b).

The Committee suggests deleting section (b) of the Rule because the statute to which it refers has been superseded by Code, Real Property Article, §7-105.1.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-122 by deleting language referring to posting by "the sheriff" from and adding language referring to "a person authorized to serve process" to subsection (a)(3), as follows:

Rule 2-122. PROCESS - SERVICE - IN REM OR QUASI IN REM

(a) Service by Posting or Publication

In an in rem or quasi in rem action when the plaintiff has shown by affidavit that the whereabouts of the defendant are unknown and that reasonable efforts have been made in good faith to locate the defendant, the court may order service by the mailing of a notice to the defendant's last known address and:

(1) by the posting of the notice by the sheriff at the courthouse door or on a bulletin board within its immediate vicinity, or

(2) by publishing the notice at least once a week in each of three successive weeks in one or more newspapers of general circulation published in the county in which the action is pending, or

(3) in an action in which the rights relating to land including leasehold interests are involved, by the posting of the notice by ~~the sheriff~~ a person authorized to serve process in accordance with Rule 2-123 (a) in a conspicuous place on the

land.

Additionally, the court may order any other means of notice that it deems appropriate in the circumstances.

(b) Time

The mailing and the posting or publication shall be accomplished at least 30 days before the date by which a response to the complaint is to be filed.

(c) Content of Notice

The notice shall be signed by the clerk and shall include the caption of the case; describe the substance of the complaint and the relief sought; inform the defendant of the latest date by which the response is to be filed; warn the defendant that failure to file the response within the time allowed may result in a judgment by default or the granting of the relief sought; and contain any other information required by the court.

Source: This Rule is derived as follows:

Section (a) is derived from former Rules 105 b and 111 a.

Section (b) is derived from former Rule 105 b 2.

Section (c) is new and replaces former Rule 105 b 1 (a).

REPORTER'S NOTE

The Rules Committee recommends adding to subsection (a)(3) a reference to "a person authorized to serve process in accordance with Rule 2-123 (a)," which would permit a competent private person, 18 years of age or older, including an attorney of record, but not a party to the action, to post the required notice. This would make posting procedures more efficient. The Committee recommends deleting the language referring to posting by the sheriff in subsection (a)(3), because the sheriff is included in Rule 2-123 (a) as a "person authorized to serve process."

## CHAPTER 2

(House Bill 365)

AN ACT concerning

### **Real Property – Recordation of Instruments Securing Mortgage Loans and Foreclosure of Mortgages and Deeds of Trust on Residential Property**

FOR the purpose of ~~prohibiting~~ requiring a mortgage, deed of trust, or other instrument securing a mortgage loan ~~from being recorded unless it contains on certain residential property to contain~~ certain information relating to the mortgage loan originator and the mortgage lender when recorded in the land records; requiring the Commissioner of Financial Regulation to adopt certain regulations to ~~enforce~~ implement certain provisions of this Act; prohibiting an action to foreclose a mortgage or deed of trust on certain residential property from being filed until after certain periods of time; authorizing a secured party to petition a circuit court for leave to immediately commence a foreclosure action under certain circumstances; requiring a certain notice of intent to foreclose to be sent to ~~a certain person~~ certain persons in a certain manner a certain period of time before the filing of an action to foreclose a mortgage or deed of trust on certain residential property; requiring the notice to be in a certain form and contain certain information; establishing certain requirements for an order to docket or a complaint to foreclose a mortgage or deed of trust on certain residential property; providing for service of an order to docket or a complaint to foreclose a mortgage or deed of trust on certain residential property; prohibiting a foreclosure sale of certain residential property from occurring until after a certain period of time; providing for publication of notice of a foreclosure sale; establishing that a mortgagor or grantor has the right to cure a default and reinstate the loan until a certain time; requiring the secured party or an authorized agent for the secured party to provide certain information to the mortgagor or grantor or the mortgagor's or grantor's attorney within a certain time; requiring that a certain action be brought within a certain period of time; making certain technical and stylistic changes; defining a certain term; providing for the application of certain provisions of this Act; providing that the failure to include certain information when recording a mortgage, deed of trust, or any other instrument securing a mortgage loan may not be the basis for a clerk of the court to fail to record the instrument under certain circumstances; providing that a notice of intent to foreclose shall be construed to be sufficient under certain circumstances; making this Act an emergency measure; and generally relating to foreclosure actions and ~~prerequisites to~~ recording instruments in the land records.

BY adding to

Article – Real Property



Section ~~3-104(h)~~ 3-104.1 and 7-105.1  
Annotated Code of Maryland  
(2003 Replacement Volume and 2007 Supplement)

BY repealing and reenacting, with amendments,  
Article – Real Property  
Section 7-105  
Annotated Code of Maryland  
(2003 Replacement Volume and 2007 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

**Article – Real Property**

~~3-104.~~ **3-104.1.**

**(A) IN THIS SECTION, “RESIDENTIAL PROPERTY” MEANS REAL PROPERTY IMPROVED BY FOUR OR FEWER SINGLE FAMILY DWELLING UNITS.**

~~(H)~~ **(B) A WHEN RECORDED, A MORTGAGE, DEED OF TRUST, OR ANY OTHER INSTRUMENT SECURING A MORTGAGE LOAN MAY NOT BE RECORDED UNLESS IT CONTAINS ON RESIDENTIAL PROPERTY SHALL CONTAIN:**

**(1) (I) THE NAME AND MARYLAND MORTGAGE ORIGINATOR LICENSE NUMBER OF THE MORTGAGE ORIGINATOR THAT ORIGINATED THE LOAN SECURED BY THE INSTRUMENT; OR**

**(II) AN AFFIDAVIT BY THE ~~INDIVIDUAL~~ PERSON THAT ORIGINATED THE MORTGAGE LOAN SECURED BY THE INSTRUMENT THAT THE INDIVIDUAL WHO ORIGINATED THE LOAN IS EXEMPT FROM THE LICENSING REQUIREMENT UNDER TITLE 11, SUBTITLE 6 OF THE FINANCIAL INSTITUTIONS ARTICLE; AND**

**(2) (I) THE NAME AND MARYLAND MORTGAGE LENDER LICENSE NUMBER OF THE MORTGAGE LENDER THAT MADE THE LOAN SECURED BY THE INSTRUMENT; OR**

**(II) AN AFFIDAVIT BY THE LENDER THAT MADE THE MORTGAGE LOAN SECURED BY THE INSTRUMENT THAT THE LENDER IS EXEMPT FROM THE LICENSING REQUIREMENT UNDER TITLE 11, SUBTITLE 5 OF THE FINANCIAL INSTITUTIONS ARTICLE.**

**(C) THE COMMISSIONER OF FINANCIAL REGULATION SHALL ADOPT REGULATIONS TO ~~ENFORCE~~ IMPLEMENT THE PROVISIONS OF THIS SECTION, INCLUDING:**

**(1) MINIMUM REQUIREMENTS FOR THE INCLUSION OF LICENSING INFORMATION WHEN A MORTGAGE, DEED OF TRUST, OR OTHER INSTRUMENT SECURING A MORTGAGE LOAN ON RESIDENTIAL PROPERTY IS RECORDED; AND**

**(2) ~~PENALTIES~~ CONSEQUENCES, INCLUDING PENALTIES, FOR THE FAILURE TO INCLUDE LICENSING INFORMATION WHEN A MORTGAGE, DEED OF TRUST, OR OTHER INSTRUMENT SECURING A MORTGAGE LOAN ON RESIDENTIAL PROPERTY IS RECORDED.**

7-105.

(a) A provision may be inserted in a mortgage or deed of trust authorizing any natural person named in the instrument, including the secured party, to sell the property or declaring the borrower's assent to the passing of a decree for the sale of the property, on default in a condition on which the mortgage or deed of trust provides that a sale may be made.

(B) A sale made pursuant to this section, §§ 7-105.1 THROUGH 7-105.8 OF THIS SUBTITLE, or [to] the Maryland Rules, after final ratification by the court and grant of the property to the purchaser on payment of the purchase money, has the same effect as if the sale and grant were made under decree between the proper parties in relation to the mortgage or deed of trust and in the usual course of the court, and operates to pass all the title which the borrower had in the property at the time of the recording of the mortgage or deed of trust.

[(a-1)(1) In this subsection, "record owner" means the person holding record title to residential real property as of the date on which an action to foreclose the mortgage or deed of trust is filed.

(2) In addition to any notice required to be given by provisions of the Annotated Code of Maryland or the Maryland Rules, the person authorized to make a sale in an action to foreclose a mortgage or deed of trust shall give written notice of the action to the record owner of the property to be sold.

(3) (i) The written notice shall be sent no later than 2 days after the action to foreclose is docketed:

1. By certified mail, postage prepaid, return receipt requested, bearing a postmark from the United States Postal Service, to the record owner; and

2. By first-class mail.

(ii) The notice shall state that an action to foreclose the mortgage or deed of trust may be or has been docketed and that a foreclosure sale of the property will be held.

(iii) The notice shall contain the following statement printed in at least 14 point boldface type:

**“NOTICE REQUIRED BY MARYLAND LAW**

Mortgage foreclosure is a complex process. Some people may approach you about “saving” your home. You should be careful about any such promises.

The State encourages you to become informed about your options in foreclosure before entering into any agreements with anyone in connection with the foreclosure of your home. There are government agencies and nonprofit organizations that you may contact for helpful information about the foreclosure process. For the name and telephone number of an organization near you, please call the Consumer Protection Division of the Office of the Attorney General of Maryland at 1-888-743-0023. The State does not guarantee the advice of these organizations.

Do not delay dealing with the foreclosure because your options may become more limited as time passes.”.]

**7-105.1.**

**(A) IN THIS SECTION, “RESIDENTIAL PROPERTY” MEANS REAL PROPERTY IMPROVED BY FOUR OR FEWER SINGLE FAMILY DWELLING UNITS.**

**(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN ACTION TO FORECLOSE A MORTGAGE OR DEED OF TRUST ON RESIDENTIAL PROPERTY MAY NOT BE FILED UNTIL ~~AT LEAST~~ THE LATER OF:**

**(I) 90 DAYS AFTER A DEFAULT IN A CONDITION ON WHICH THE MORTGAGE OR DEED OF TRUST PROVIDES THAT A SALE MAY BE MADE; ~~AND~~ OR**

**(II) 45 DAYS AFTER THE NOTICE OF INTENT TO FORECLOSE REQUIRED UNDER SUBSECTION (C) OF THIS SECTION IS SENT.**

**(2) (I) THE SECURED PARTY MAY PETITION THE CIRCUIT COURT FOR LEAVE TO IMMEDIATELY COMMENCE AN ACTION TO FORECLOSE THE MORTGAGE OR DEED OF TRUST IF:**

1. THE LOAN SECURED BY THE MORTGAGE OR DEED OF TRUST WAS OBTAINED BY FRAUD OR DECEPTION;

2. NO PAYMENTS HAVE EVER BEEN MADE ON THE LOAN SECURED BY THE MORTGAGE OR DEED OF TRUST;

3. THE PROPERTY SUBJECT TO THE MORTGAGE OR DEED OF TRUST HAS BEEN DESTROYED; OR

4. THE DEFAULT OCCURRED AFTER THE STAY HAS BEEN LIFTED IN A BANKRUPTCY PROCEEDING.

(II) THE COURT MAY RULE ON THE PETITION WITH OR WITHOUT A HEARING.

(III) IF THE PETITION IS GRANTED, THE ACTION MAY BE FILED AT ANY TIME AFTER A DEFAULT IN A CONDITION ON WHICH THE MORTGAGE OR DEED OF TRUST PROVIDES THAT A SALE MAY BE MADE AND THE SECURED PARTY NEED NOT SEND THE WRITTEN NOTICE OF INTENT TO FORECLOSE REQUIRED UNDER SUBSECTION (C) OF THIS SECTION.

(c) (1) EXCEPT AS PROVIDED IN SUBSECTION (B)(2)(III) OF THIS SECTION, AT LEAST 45 DAYS BEFORE THE FILING OF AN ACTION TO FORECLOSE A MORTGAGE OR DEED OF TRUST ON RESIDENTIAL PROPERTY, THE SECURED PARTY SHALL SEND A WRITTEN NOTICE OF INTENT TO FORECLOSE TO THE MORTGAGOR OR GRANTOR AND THE RECORD OWNER.

(2) THE NOTICE OF INTENT TO FORECLOSE SHALL BE SENT:

(I) BY CERTIFIED MAIL, POSTAGE PREPAID, RETURN RECEIPT REQUESTED, BEARING A POSTMARK FROM THE UNITED STATES POSTAL SERVICE; AND

(II) BY FIRST-CLASS MAIL.

(3) A COPY OF THE NOTICE OF INTENT TO FORECLOSE SHALL BE SENT TO THE COMMISSIONER OF FINANCIAL REGULATION.

(4) THE NOTICE OF INTENT TO FORECLOSE SHALL:

(I) BE IN THE FORM THAT THE COMMISSIONER OF FINANCIAL REGULATION PRESCRIBES BY REGULATION; AND

(II) CONTAIN:

- 1. THE NAME AND TELEPHONE NUMBER OF:
  - A. THE SECURED PARTY;
  - B. THE MORTGAGE SERVICER, IF APPLICABLE; AND
  - C. ~~THE MORTGAGE BROKER OR ORIGINATOR, IF APPLICABLE; AND~~
  - ~~D.~~ AN AGENT OF THE SECURED PARTY WHO IS AUTHORIZED TO MODIFY THE TERMS OF THE MORTGAGE LOAN;
- 2. THE ~~MARYLAND~~ 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.

(D) AN ORDER TO DOCKET OR A COMPLAINT TO FORECLOSE A MORTGAGE OR DEED OF TRUST ON RESIDENTIAL PROPERTY SHALL:

(1) INCLUDE:

- (I) ~~THE~~ IF APPLICABLE, THE LICENSE NUMBER OF:
  - 1. ~~IF APPLICABLE, THE~~ THE MORTGAGE ORIGINATOR; AND
  - 2. THE MORTGAGE LENDER; AND

(II) AN AFFIDAVIT STATING:

- 1. THE DATE ON WHICH THE DEFAULT OCCURRED AND THE NATURE OF THE DEFAULT; AND
- 2. IF APPLICABLE, THAT A NOTICE OF INTENT TO FORECLOSE WAS SENT TO THE MORTGAGOR OR GRANTOR IN ACCORDANCE

WITH SUBSECTION (C) OF THIS SECTION AND THE DATE ON WHICH THE NOTICE WAS SENT; AND

(2) BE ACCOMPANIED BY:

(I) THE ORIGINAL OR A CERTIFIED COPY OF THE MORTGAGE OR DEED OF TRUST;

(II) A STATEMENT OF THE DEBT REMAINING DUE AND PAYABLE SUPPORTED BY AN AFFIDAVIT OF THE PLAINTIFF OR THE SECURED PARTY OR THE AGENT OR ATTORNEY OF THE PLAINTIFF OR SECURED PARTY;

(III) A COPY OF THE DEBT INSTRUMENT ACCOMPANIED BY AN AFFIDAVIT CERTIFYING OWNERSHIP OF THE DEBT INSTRUMENT;

(IV) IF APPLICABLE, THE ORIGINAL OR A CERTIFIED COPY OF THE ASSIGNMENT OF THE MORTGAGE FOR PURPOSES OF FORECLOSURE OR THE DEED OF APPOINTMENT OF A SUBSTITUTE TRUSTEE;

(V) IF ANY DEFENDANT IS AN INDIVIDUAL, AN AFFIDAVIT THAT:

1. THE INDIVIDUAL IS NOT A SERVICEMEMBER, AS DEFINED IN THE SERVICEMEMBERS CIVIL RELIEF ACT, 50 U.S.C. APPENDIX § 511; OR

2. THE ACTION IS AUTHORIZED BY THE ACT;

(VI) IF APPLICABLE, A COPY OF THE NOTICE OF INTENT TO FORECLOSE; AND

(VII) A NOTICE TO THE MORTGAGOR IN SUBSTANTIALLY THE FOLLOWING FORM, AS PRESCRIBED BY REGULATION BY THE COMMISSIONER OF FINANCIAL REGULATION:

**“NOTICE**

**AN ACTION TO FORECLOSE THE MORTGAGE/DEED OF TRUST ON THE PROPERTY LOCATED AT (INSERT ADDRESS) HAS BEEN FILED IN THE CIRCUIT COURT FOR (COUNTY).**

**A FORECLOSURE SALE OF THE PROPERTY MAY OCCUR AT ANY TIME AFTER 45 DAYS FROM THE DATE THAT THIS NOTICE IS SERVED ON YOU.**

**YOU MAY STOP THE SALE AND REINSTATE YOUR MORTGAGE LOAN BY PAYING ALL AMOUNTS DUE ON YOUR LOAN, PLUS FEES AND COSTS OF THE FORECLOSURE ACTION, AT ANY TIME UP TO ONE BUSINESS DAY BEFORE THE SALE. PLEASE CONTACT (INSERT NAME OF AUTHORIZED AGENT OF SECURED PARTY) AT (INSERT TELEPHONE NUMBER) TO OBTAIN THE AMOUNT DUE TO CURE THE DEFAULT ON YOUR MORTGAGE LOAN AND INSTRUCTIONS FOR DELIVERING THE PAYMENT.**

**YOU ARE URGED TO OBTAIN LEGAL ADVICE TO DISCUSS OTHER OPTIONS TO STOP THE FORECLOSURE SALE, WHICH MAY INCLUDE FILING A MOTION FOR INJUNCTION WITH THE CIRCUIT COURT OR A PETITION FOR BANKRUPTCY IN FEDERAL BANKRUPTCY COURT. A MOTION FOR INJUNCTION OR A BANKRUPTCY PETITION MUST BE FILED BEFORE THE FORECLOSURE SALE OCCURS.**

**IF YOU ARE INTERESTED IN SELLING YOUR HOME TO AVOID A FORECLOSURE SALE, YOU MAY WISH TO CONTACT A LICENSED REAL ESTATE BROKER OR SALESPERSON AS SOON AS POSSIBLE.**

**HOUSING COUNSELING AND FINANCIAL ASSISTANCE PROGRAMS ARE AVAILABLE THROUGH THE MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT. PLEASE CALL ~~1-877-462-7555~~ (INSERT TELEPHONE NUMBER) FOR INFORMATION ON AVAILABLE RESOURCES.**

**SOME PEOPLE MAY APPROACH YOU ABOUT "SAVING" YOUR HOME. YOU SHOULD BE CAREFUL ABOUT ANY SUCH PROMISES.**

**THE STATE ENCOURAGES YOU TO BECOME INFORMED ABOUT YOUR OPTIONS IN FORECLOSURE BEFORE ENTERING INTO ANY AGREEMENTS WITH ANYONE IN CONNECTION WITH THE FORECLOSURE OF YOUR HOME. THERE ARE GOVERNMENT AGENCIES AND NONPROFIT ORGANIZATIONS THAT YOU MAY CONTACT FOR HELPFUL INFORMATION ABOUT THE FORECLOSURE PROCESS. FOR THE NAME AND TELEPHONE NUMBER OF AN ORGANIZATION NEAR YOU, PLEASE CALL THE CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL OF MARYLAND AT ~~1-888-743-0023~~ (INSERT TELEPHONE NUMBER). THE STATE DOES NOT GUARANTEE THE ADVICE OF THESE ORGANIZATIONS.**

**DO NOT DELAY DEALING WITH THE FORECLOSURE BECAUSE YOUR OPTIONS WILL BECOME MORE LIMITED AS TIME PASSES."**

**(E) (1) A COPY OF THE ORDER TO DOCKET OR COMPLAINT TO FORECLOSE ON RESIDENTIAL PROPERTY AND ALL OTHER PAPERS FILED WITH IT SHALL BE SERVED BY:**

(I) PERSONAL DELIVERY OF THE PAPERS TO THE MORTGAGOR OR GRANTOR; OR

(II) LEAVING THE PAPERS WITH A RESIDENT OF SUITABLE AGE AND DISCRETION AT THE MORTGAGOR'S OR GRANTOR'S DWELLING HOUSE OR USUAL PLACE OF ABODE.

(2) IF AT LEAST TWO GOOD FAITH EFFORTS TO SERVE THE MORTGAGOR OR GRANTOR UNDER SUBSECTION (E)(1) OF THIS SECTION ON DIFFERENT DAYS HAVE NOT SUCCEEDED, THE PLAINTIFF MAY *EFFECT SERVICE BY*:

(I) ~~FILE~~ *FILING* AN AFFIDAVIT WITH THE COURT DESCRIBING THE GOOD FAITH EFFORTS TO SERVE THE MORTGAGOR OR GRANTOR; AND

(II) 1. ~~MAIL~~ *MAILING* A COPY OF THE ORDER TO DOCKET OR COMPLAINT TO FORECLOSE AND ALL OTHER PAPERS FILED WITH IT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND FIRST-CLASS MAIL TO THE MORTGAGOR'S OR GRANTOR'S LAST KNOWN ADDRESS AND, IF DIFFERENT, TO THE ADDRESS OF THE RESIDENTIAL PROPERTY SUBJECT TO THE MORTGAGE OR DEED OF TRUST; AND

2. ~~POST~~ *POSTING* A COPY OF THE ORDER TO DOCKET OR COMPLAINT TO FORECLOSE AND ALL OTHER PAPERS FILED WITH IT IN A CONSPICUOUS PLACE ON THE RESIDENTIAL PROPERTY SUBJECT TO THE MORTGAGE OR DEED OF TRUST.

(3) THE INDIVIDUAL MAKING SERVICE OF PROCESS UNDER THIS SUBSECTION SHALL FILE PROOF OF SERVICE WITH THE COURT IN ACCORDANCE WITH THE MARYLAND RULES.

(F) A FORECLOSURE SALE OF RESIDENTIAL PROPERTY MAY NOT OCCUR UNTIL AT LEAST 45 DAYS AFTER SERVICE OF PROCESS IS MADE UNDER SUBSECTION (E) OF THIS SECTION.

(G) NOTICE OF THE TIME, PLACE, AND TERMS OF A FORECLOSURE SALE SHALL BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY WHERE THE ACTION IS PENDING AT LEAST ONCE, ~~NOT LESS THAN 10 DAYS BEFORE THE SALE~~ A WEEK FOR 3 SUCCESSIVE WEEKS, THE FIRST PUBLICATION TO BE NOT LESS THAN 15 DAYS BEFORE THE SALE AND THE LAST PUBLICATION TO BE NOT MORE THAN 1 WEEK BEFORE THE SALE.



**(H) (1) THE MORTGAGOR OR GRANTOR HAS THE RIGHT TO CURE THE DEFAULT BY PAYING ALL PAST DUE PAYMENTS, PENALTIES, AND FEES AND REINSTATE THE LOAN AT ANY TIME UP TO 1 BUSINESS DAY BEFORE THE FORECLOSURE SALE OCCURS.**

**(2) THE SECURED PARTY OR AN AUTHORIZED AGENT OF THE SECURED PARTY SHALL, ON REQUEST, PROVIDE TO THE MORTGAGOR OR GRANTOR OR THE MORTGAGOR'S OR GRANTOR'S ATTORNEY WITHIN A REASONABLE TIME THE AMOUNT NECESSARY TO CURE THE DEFAULT AND REINSTATE THE LOAN AND INSTRUCTIONS FOR DELIVERING THE PAYMENT.**

**(I) AN ACTION FOR FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SECTION SHALL BE BROUGHT WITHIN 3 YEARS AFTER THE DATE OF THE ORDER RATIFYING THE SALE.**

**7-105.2.**

**[(b) (1) (i) (A)]** In this [subsection] **SECTION**, "record owner" means the person holding record title to property as of the later of:

**[1.] (1)** 30 days before the day on which a foreclosure sale of the property is actually held; and

**[2.] (2)** The date on which an action to foreclose the mortgage or deed of trust is filed.

**[(ii) (B)]** In addition to any notice required to be given by provisions of the Annotated Code of Maryland or the Maryland Rules, the person authorized to make a sale in an action to foreclose a mortgage or deed of trust shall give written notice of the proposed sale to the record owner of the property to be sold.

**[(2) (i) (C) (1)]** The written notice shall be sent:

**[1.] (I)** By certified mail, postage prepaid, return receipt requested, bearing a postmark from the United States Postal Service, to the record owner; and

**[2.] (II)** By first-class mail.

**[(ii) (2)]** The notice shall state the time, place, and terms of the sale and shall be sent not earlier than 30 days and not later than 10 days before the date of sale.

[(iii)] (3) The person giving the notice shall file in the proceedings:

[1.] (I) A return receipt; or

[2.] (II) An affidavit that:

[A.] 1. The provisions of this [paragraph] **SUBSECTION** have been complied with; or

[B.] 2. The address of the record owner is not reasonably ascertainable.

[(iv)] (4) The person authorized to make a sale in an action to foreclose a mortgage or deed of trust is not required to give notice to a record owner whose address is not reasonably ascertainable.

[(3)] (D) In the event of postponement of sale, which may be done in the discretion of the trustee, no new or additional notice need be given pursuant to this section.

[(4)] (E) The right of a record owner to file an action for the failure of the person authorized to make a sale in an action to foreclose a mortgage or deed of trust to comply with the provisions of this [subsection] **SECTION** shall expire 3 years after the date of the order ratifying the foreclosure sale.

### **7-105.3.**

[(c)] (1) (A) In this [subsection] **SECTION**, “holder of a subordinate interest” includes any condominium council of unit owners or homeowners association that has filed a request for notice of sale under [paragraph (3) of this] subsection (C) **OF THIS SECTION**.

[(2)] (B) The person authorized to make a sale in an action to foreclose a mortgage or deed of trust shall give written notice of any proposed foreclosure sale to the holder of any subordinate mortgage, deed of trust, or other subordinate interest, including a judgment, in accordance with [subsection (b) of this section] § **7-105.2 OF THIS SUBTITLE** and the requirements of Maryland Rule 14-206.

[(3)] (i) (C) (1) The land records office of each county shall maintain a current listing of recorded requests for notice of sale by holders of subordinate mortgages, deeds of trust, or other subordinate interests.

(2) The holder of a subordinate mortgage, deed of trust, or other subordinate interest may file a request for notice under this [paragraph] **SUBSECTION**.

[(ii)] (3) Each request for notice of sale shall:

[1.] (I) Be recorded in a separate docket or book which shall be indexed under the name of the holder of the superior mortgage or deed of trust and under the book and page numbers where the superior mortgage or deed of trust is recorded;

[2.] (II) Identify the property in which the subordinate interest is held;

[3.] (III) State the name and address of the holder of the subordinate interest; and

[4.] (IV) Identify the superior mortgage or deed of trust by stating:

[A.] 1. The names of the original parties to the superior mortgage or deed of trust;

[B.] 2. The date the superior mortgage or deed of trust was recorded; and

[C.] 3. The office, docket or book, and page where the superior mortgage or deed of trust is recorded.

[(iii) 1.] (4) (I) Except as provided in [sub-subparagraph 2 of this] subparagraph (II) **OF THIS PARAGRAPH**, failure of a holder of a subordinate mortgage, deed of trust, or other subordinate interest to record a request for notice under this [paragraph] **SUBSECTION** does not affect the duty of a holder of a superior interest to provide notice as required under this [subsection] **SECTION**.

[2.] (II) A holder of a superior interest does not have a duty to provide notice to a condominium council of unit owners or homeowners association that has not filed a request for notice under this [paragraph] **SUBSECTION**.

[(4)] (D) The person giving notice under this [subsection] **SECTION** shall file in the action:

[(i)] (1) The return receipt from the notice; or

[(ii)] (2) An affidavit that:

[1.] (I) The notice provisions of this [subsection] SECTION have been complied with; or

[2.] (II) The address of the holder of the subordinate interest is not reasonably ascertainable.

[(5)] (E) The person authorized to make a sale in an action to foreclose a mortgage or deed of trust is not required to give notice to the holder of a subordinate mortgage, deed of trust, or other subordinate interest if:

[(i)] (1) The existence of the mortgage, deed of trust, or other subordinate interest is not reasonably ascertainable;

[(ii)] (2) The identity or address of the holder of the mortgage, deed of trust, or other subordinate interest is not reasonably ascertainable;

[(iii)] (3) With respect to a recorded or filed subordinate mortgage, deed of trust, or other recorded or filed subordinate interest, the recordation or filing occurred after the later of:

[1.] (I) 30 days before the day on which the foreclosure sale was actually held; and

[2.] (II) The date the action to foreclose the mortgage or deed of trust was filed;

[(iv)] (4) With respect to an unrecorded or unfiled subordinate mortgage, deed of trust, or other unrecorded or unfiled subordinate interest, the subordinate interest was created after the later of:

[1.] (I) 30 days before the day on which the foreclosure sale was actually held; and

[2.] (II) The date the action to foreclose the mortgage or deed of trust was filed; or

[(v)] (5) With respect to a condominium council of unit owners or homeowners association, the condominium council of unit owners or homeowners association has not filed a request for notice under [paragraph (3) of this] subsection (C) OF THIS SECTION.

**[(6)] (F)** The right of a holder of a subordinate mortgage, deed of trust, or other subordinate interest to file an action for the failure of the person authorized to make a sale in an action to foreclose a mortgage or deed of trust to comply with the provisions of this [subsection] **SECTION** shall expire 3 years after the date of the order ratifying the foreclosure sale.

#### **7-105.4.**

**[(d)] (1) (A)** Absent a provision to the contrary in a mortgage or note secured by a deed of trust, in the enumerated counties, the interest provided in a mortgage or note secured by a deed of trust is payable for the time period provided in [paragraph (2) of this] subsection **(B) OF THIS SECTION** or until the audit of the sale is ratified, whichever occurs first.

**[(2)] (B)** Under [paragraph (1) of this] subsection **(A) OF THIS SECTION**, the time period following sale is:

**[(i)] (1)** 60 days in Calvert, Cecil, Frederick, Kent, Queen Anne's, Talbot, Caroline, Charles, and St. Mary's counties; and

**[(ii)] (2)** 180 days in Worcester County.

#### **7-105.5.**

**[(e)]** No title to property acquired at sale of property subject to a mortgage or deed of trust is invalid by reason of the fact that the property was purchased by the secured party, his assignee, or representative, or for his account.

#### **7-105.6.**

**[(f)] (1) (A)** Any purchaser at a foreclosure sale of a mortgage or deed of trust has the same rights and remedies against the tenants of the mortgagor or grantor as the mortgagor or grantor had, and the tenants have the same rights and remedies against the purchaser as they would have had against the mortgagor or grantor on the date the mortgage or deed of trust was recorded.

**[(2)] (B) (1)** If the required advertisement of sale so discloses, a foreclosure sale shall be made subject to one or more of the tenancies entered into subsequent to the recording of the mortgage or deed of trust or otherwise subordinated thereto.

**(2)** Any lease so continuing is unaffected by the sale, except the purchaser shall become the landlord, as of the date of the sale, on ratification of the sale.

**7-105.7.**

[(g) (1)] (A) Except as provided in this [subsection] **SECTION**, unless the mortgage or deed of trust provides otherwise, if any property is encumbered by a mortgage or deed of trust, annual crops planted or cultivated by any debtor or those claiming under him do not pass with the property at any sale under or by virtue of the mortgage or deed of trust, but the crops remain the property of the debtor or those claiming under him.

[(2)] (B) (1) Notwithstanding the provisions of [paragraph (1) of this] subsection (A) **OF THIS SECTION**, after the sale, the debtor or those claiming under him and the purchaser or those claiming under him may agree on a reasonable rental of the part of the property occupied by the crops.

(2) This rental is a lien on the crops and continues until paid in favor of the purchaser or those claiming under him, and neither the crops nor any part of them may be removed until after payment.

(3) If the parties are unable to agree on the rental, any party in interest may apply to the court having jurisdiction over the sale or the confirmation of it for the appointment of disinterested appraisers to determine the rental, whose award shall be final.

[(3)] (C) (1) In addition to any other remedy, the purchaser or those claiming under him, on ascertainment of the rent, may distrain for the rent or any part of it remaining due, as in the case of landlord and tenant.

(2) No provision of this section is intended to interfere with the right of the purchaser or those claiming under him to have possession of the property, except as to the part occupied by the crop, with necessary ingress or egress.

**7-105.8.**

[(h)] The entry of an order for resale on default by a purchaser at a sale under [this section] §§ **7-105 THROUGH 7-105.7 OF THIS SUBTITLE** and Title 14 of the Maryland Rules:

(1) Does not affect the prior ratification of the sale and does not restore to the mortgagor or former record owner any right or remedy that was extinguished by the prior sale and its ratification; and

(2) Extinguishes all interest of the defaulting purchaser in the real property being foreclosed and in the proceeds of the resale.

SECTION 2. AND BE IT FURTHER ENACTED, That § 3-104.1 of the Real Property Article, as enacted by Section 1 of this Act, shall be construed to apply only

prospectively and may not be applied or interpreted to have any effect on or application to any mortgage, deed of trust, or other instrument recorded before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That § 7-105.1 of the Real Property Article, as enacted by Section 1 of this Act, shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any foreclosure action filed before the effective date of this Act.

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2008.~~

SECTION 4. AND BE IT FURTHER ENACTED, That, until the Commissioner of Financial Regulation adopts regulations under § 3-104.1(c) of the Real Property Article, as enacted by Section 1 of this Act, the failure to include the information required in § 3-104.1(b) of the Real Property Article, as enacted by Section 1 of this Act, when recording a mortgage, deed of trust, or any other instrument securing a mortgage loan may not be the basis for a clerk of the court to fail to record the instrument.

SECTION 5. AND BE IT FURTHER ENACTED, That, until the Commissioner of Financial Regulation adopts regulations under § 7-105.1(c)(4)(i) and (ii)4 of the Real Property Article, as enacted by Section 1 of this Act, a notice of intent to foreclose shall be construed to be sufficient if the notice contains the information required under § 7-105.1(c)(4)(ii)1 through 3 of the Real Property Article, as enacted by Section 1 of this Act.

SECTION 4- 6. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

**Approved by the Governor, April 3, 2008.**