

IN THE COURT OF APPEALS OF MARYLAND

R U L E S O R D E R

This Court's Standing Committee on Rules of Practice and Procedure having submitted its One Hundred Seventy-Fifth Report to the Court recommending adoption of proposed new Rules 14-208.1 and 16-407 and proposed amendments to Rules 6-122, 12-704, 14-102, 14-202, 14-207, 14-209, 14-209.1, 14-211, 14-214, 14-215, 14-502, and 14-504, all as set forth in that Report published in the *Maryland Register*, Vol. 39, Issue 26, pages 1647-1661 (December 28, 2012); and

This Court having considered at an open meeting, notice of which was posted as prescribed by law, all those proposed rules changes, together with the comments received, and making certain amendments to the proposed rules changes on its own motion, it is this 11th day of March, 2013,

ORDERED, by the Court of Appeals of Maryland, that new Rule 14-208.1 be, and it is hereby, adopted in the form previously published; and it is further

ORDERED that new Rule 16-407 be, and it is hereby, adopted in the form attached to this Order; and it is further

ORDERED that amendments to Rules 12-704, 14-102, 14-202, 14-207, 14-209, 14-209.1, 14-211, 14-214, 14-215, 14-502, and 14-504 be, and they are hereby, adopted in the form previously published; and it is further

ORDERED that amendments to Rule 6-122 be, and they are hereby, adopted in the form attached to this Order; and it is further

ORDERED that the rules changes hereby adopted by this Court shall govern the courts of this State and all parties and their attorneys in all actions and proceedings, and shall take effect and apply to all actions commenced on or after May 1, 2013 and, insofar as practicable, to all actions then pending; and it is further

ORDERED that a copy of this Order be published in the next issue of the *Maryland Register*.

/s/ Robert M. Bell

Robert M. Bell

/s/ Glenn T. Harrell, Jr.

Glenn T. Harrell, Jr.

/s/ Lynne A. Battaglia

Lynne A. Battaglia

/s/ Clayton Greene, Jr.

Clayton Greene, Jr.

* /s/ Sally D. Adkins

Sally D. Adkins

/s/ Mary Ellen Barbera

Mary Ellen Barbera

** /s/ Robert N. McDonald

Robert N. McDonald

- * Judge Adkins voted against adoption of Rule 16-407.
- ** Judge McDonald voted against adoption of Rule 16-407 (f). Dissent attached.

Filed: March 11, 2013

/s/ Bessie M. Decker

Clerk
Court of Appeals of Maryland

McDONALD, R.

Among the many admirable principles set forth on the Professionalism Center's website is promotion of the "rule of law." Ideals of Professionalism (8). The new admittees who complete the program offered by the Center will take an oath to support the Maryland Constitution. Maryland Code, Business & Occupations Article, §10-212. I voted against the rule establishing the Center, not because of any policy difference with my colleagues, but because, in my view, part of the rule falls short of those ideals under the well-established precedents of this Court.

Rule 16-407(f)

As explained at the rules hearing, the rule was proposed as a result of a request to recast a very recent administrative order in the form of a rule. The portion of the rule that is of concern is the section that funds the Center. It reads as follows:

(f) Funding

The Court of Appeals shall provide funding for the Center:

(1) from the fees paid by the new Bar Admittees for the required Professionalism Course;

(2) commencing July 1, 2013, from the assessment collected from each attorney by the Client Protection Fund on behalf of the Disciplinary Fund maintained pursuant to Rule 16-714, not to exceed five dollars; and

(3) from such other sources as may be provided for in the judicial budget.

Maryland Rule 16-407(f).

In my view, this provision raises constitutional questions for three reasons.

(1) *Constitutional process for appropriating funds*

Under the State Constitution, money may only be expended pursuant to an appropriation. Maryland Constitution, Article III, §32. All appropriations must be made through the annual State budget bill or supplementary appropriation bills. Maryland Constitution, Article III, §52. Under §52, the budget bill is to

include the "complete plan of proposed expenditures" for the fiscal year. The Judiciary budget is certified to the Governor, who must include it without alteration in the budget the Governor submits to the General Assembly. §52(4). The General Assembly may increase or reduce appropriations for the Judiciary, though it may not reduce judicial compensation. §52(6).

This constitutional budget process trumps other provisions of the State Constitution. §52(14). The precedence given to the budget provision of the State Constitution is quite deliberate, as it was an amendment of the Constitution adopted about a century ago to resolve fiscal difficulties caused by appropriations made outside a unified budget process.¹ See generally *Judy v. Schaefer*, 331 Md. 239, 627 A.2d 1039 (1993) (describing history and operation of Article III, §52); *Kelly v. Marylanders for Sports Sanity*, 310 Md. 437, 452-54, 530 A.2d 245 (1987); *Maryland Action for Foster Children, Inc. v. State*, 279 Md. 133, 140-53, 367 A.2d 491 (1977). There is no provision in the State Constitution for the Judiciary to appropriate funds outside of this process.

It is not self-evident why funding for the Center need not comply with this constitutional process.

(2) *Constitutional prohibition against assessing fees without legislative assent*

While the rule itself does not appear to directly assess fees, it alludes to an assessment on new admittees. Under Article 14 of the Maryland Declaration of Rights, "no ... charge ... or fees ought to be rated or levied, under any pretense, without the consent of the Legislature." This Court has interpreted that provision to apply broadly to "encompass virtually all payments imposed by the government." *Benson v. State*, 389 Md. 615, 635, 887 A.2d 525 (2005). There appears to be no question that the Center is a judicial agency assisting in the Court's regulation of the legal profession and therefore part of the government subject to this constitutional provision.

It may be that legislative assent may be found in a variety of ways short of being directly expressed in statute,² but it is

¹An interesting monograph on the history of the budget provision of the Maryland Constitution may be found on website of the Archives of Maryland. See Richard E. Israel, *A History of the Adoption of the Maryland Executive Budget Amendment* (2004), found at <http://www.aomol.net/megafile/msa/speccol/sc2900/sc2908/html/israel.pdf>

²*E.g.*, *Benson, supra*, (finding legislative assent to commission charged to agency vendors implicit in statute creating special fund for revenues generated from that commission); 76 *Opinions of the Attorney General* 95 (1991) (finding non-statutory legislative assent for fee for Medevac transport in legislative budget materials and joint resolutions).

not clear to me on what basis we infer legislative assent for this fee.

(3) Constitutional requirement that revenues be deposited in State Treasury

Finally, although the rule is not explicit on this point, it appears that the fees would be expended without being deposited in the State Treasury. The State Constitution requires that moneys of the State be held, pending their appropriation and disbursement, in the Treasury and administered by the State Treasurer and the Comptroller. Maryland Constitution, Article VI; see also Maryland Code, State Finance & Procurement Article, §6-213; *Panitz v. Comptroller*, 267 Md. 296, 300, 297 A.2d 289 (1972). Again, it is not clear to me how this constitutional mandate is avoided.

It may be that the Court is simply taking an "aggressive" position on its prerogatives for the benevolent purpose of improving the legal profession and, ultimately, our system of justice. If so, that would be a mistake, in my view, for an institution that is the final word on whether others have faithfully adhered to the State Constitution. A high court often best asserts its constitutional powers in recognizing the limitations of those powers under the constitution it construes. *E.g.*, *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803) (in the course of deciding that it was the final arbiter of the meaning of the U.S. Constitution, Supreme Court held that it lacked constitutional power to issue original writs of mandamus).

MARYLAND RULES OF PROCEDURE
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-122 to add the word "substantially" to section (a), to change certain amounts in the initial petition form, to add a Note following the caption of the form, to add to the initial petition form a section regarding mental competency and a section regarding conviction for a serious crime and to delete section 7., to delete the affirmation clause after Schedule A, to add language to section 4. of Schedule B, to delete the notes after section 4. of Schedule B, to add lines to the form for an attorney's facsimile number and e-mail address, and to make stylistic changes, as follows:

Rule 6-122. PETITIONS

(a) Initial Petition

The Initial Petition shall be substantially in the following form:

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ ESTATE NO: _____

FOR:

<input type="checkbox"/> REGULAR ESTATE PETITION FOR ADMINISTRATION Estate value in excess of \$30,000 <u>\$50,000</u> . (If spouse is sole heir or legatee, \$50,000 <u>\$100,000</u> .) Complete and attach Schedule A.	<input type="checkbox"/> SMALL ESTATE PETITION FOR ADMINISTRATION Estate value of \$30,000 <u>\$50,000</u> or less. (If spouse is sole heir or legatee, \$50,000 <u>\$100,000</u> .) Complete and attach Schedule B.	<input type="checkbox"/> WILL OF NO ESTATE Complete items 2 and 5 <input type="checkbox"/> LIMITED ORDERS Complete item 2 and attach Schedule C
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NOTE: For the purpose of computing whether an estate qualifies as a small estate, value is determined by the fair market value of property less debts of record secured by the property as of the date of death, to the extent that insurance benefits are not payable to the lien holder or secured party for the secured debt. See Code, Estates and Trusts Article, §5-601 (d).

The petition of:

Name	Address
Name	Address
Name	Address

Each of us states:

1. I am (a) at least 18 years of age and either a citizen of the United States or a permanent resident of the United State who is the spouse of the decedent, an ancestor of the decedent, a descendant of the decedent, or a sibling of the decedent or (b) a trust company or any other corporation authorized by law to act

as a personal representative.

2. The Decedent, _____,
was domiciled in _____,
(County)
State of _____ and died on the
_____ day of _____, _____, at
_____.
(place of death)

3. If the decedent was not domiciled in this county at the
time of death, this is the proper office in which to file this
petition because: _____
_____.

4. I am entitled to priority of appointment as personal
representative of the decedent's estate pursuant to §5-104 of the
Estates and Trusts Article, Annotated Code of Maryland because:

_____.

5. I am mentally competent.

6. I have not been convicted of a serious crime.

~~and~~ 7. I am not excluded by other provisions of §5-105 (b) of
the Estates and Trusts Article, Annotated Code of Maryland from
serving as personal representative.

~~5.~~ 8. I have made a diligent search for the decedent's will
and to the best of my knowledge:

[] none exists; or

[] the will dated _____ (including codicils, if
any, dated _____) accompanying

this petition is the last will and it came into my hands in
the following manner: _____

and the names and last known addresses of the witnesses are:

~~6.~~ 9. Other proceedings, ~~if any known to petitioner,~~
regarding the decedent or the estate are as follows: _____

~~7.~~ If any information required by paragraphs 2 through 6
has not been furnished, the reason is:

~~8.~~ 10. If appointed, I accept the duties of the office of
personal representative and consent to personal jurisdiction in
any action brought in this State against me as personal
representative or arising out of the duties of the office of
personal representative.

WHEREFORE, I request appointment as personal representative
of the decedent's estate and the following relief as indicated:

[] that the will and codicils, if any, be admitted to
administrative probate;

[] that the will and codicils, if any, be admitted to

(FOR REGISTER'S USE)

Safekeeping Wills _____ Custody Wills _____

Bond Set \$ _____ Deputy _____

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ ESTATE NO. _____

SCHEDULE - B

Small Estate - Assets and Debts of the Decedent

1. I have made a diligent search to discover all property and debts of the decedent and set forth below are:

(a) A listing of all real and personal property owned by the decedent, individually or as tenant in common, and of any other property to which the decedent or estate would be entitled, including descriptions, values, and how the values were determined:

(b) A listing of all creditors and claimants and the amounts claimed, including secured*, contingent and disputed claims:

2. Allowable funeral expenses are \$ _____; statutory family allowances are \$ _____; and expenses of administration claimed are \$ _____.

3. Attached is a List of Interested Persons.

4. After the time for filing claims has expired, subject to the statutory order of priorities, and subject to the resolution of disputed claims by the parties or the court, I shall ~~(1)~~ (a) pay all proper claims** made pursuant to Code, Estates and Trusts Article, §8-104 in the order of priority set forth in Code, Estates and Trusts Article, §8-105, expenses, and allowances not previously paid; ~~(2)~~ (b) if necessary, sell property of the estate in order to do so; and ~~(3)~~ (c) distribute the remaining assets of the estate in accordance with the will or, if none, with the intestacy laws of this State.

Date

Personal Representative

~~*NOTE: §5-601 (d) of the Estates and Trusts Article, Annotated Code of Maryland "For the purpose of this subtitle value is determined by the fair market value of property less debts of record secured by the property as of the date of death, to the extent that insurance benefits are not payable to the lien holder or secured party for the secured debt."~~

~~**NOTE: Proper claims shall be paid pursuant to the provisions of Code, Estates and Trusts Article, §§8-104 and 8-105.~~

I solemnly affirm under the penalties of perjury that the contents of the foregoing ~~schedule~~ document are true to the best

of my knowledge, information, and belief.

_____ Attorney	_____ Petitioner	_____ Date
_____ Address	_____ Petitioner	_____ Date
_____	_____ Petitioner	_____ Date
_____ Telephone Number	_____ Telephone Number (optional)	
_____ <u>Facsimile Number</u>		
_____ <u>E-mail Address</u>		

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ ESTATE NO. _____

SCHEDULE - C

Request for Limited Order

To Locate Assets

To Locate Will

1. I am entitled to the issuance of a limited order because I am:

a nominated personal representative or

[] a person interested in the proceedings by reason of

2. The reasons(s) a limited order should be granted are:

I solemnly affirm under the penalties of perjury that the contents of the foregoing ~~schedule~~ document are true to the best of my knowledge, information, and belief. I further acknowledge that this order may not be used to transfer assets.

Attorney

Petitioner Date

Attorney

Petitioner Date

Address

Petitioner Date

Telephone Number

Telephone Number (optional)

Facsimile Number

E-mail Address

(b) Other Petitions

. . .

(c) Limited Order to Locate Assets

. . .

(d) Limited Order to Locate Will

. . .

MARYLAND RULES OF PROCEDURE
TITLE 12 - PROPERTY ACTIONS
CHAPTER 700 - SEVERED MINERAL INTERESTS

AMEND Rule 12-704 (e) to add language describing the contents of a certain court order, to add language to the cross reference at the end of the Rule, and to make stylistic changes, as follows:

Rule 12-704. TERMINATION OF DORMANT MINERAL INTEREST

(a) Petition for Termination

(1) ~~Generally~~ By Whom and Where Filed

At any time after October 1, 2011, a surface owner of real property that is subject to a severed mineral interest may initiate an action to terminate a dormant mineral interest by filing a petition in the circuit court of any county in which the surface estate is located, but if a trust created under Rule 12-703 is in existence, then in the county where the trust was created.

(2) Contents

The petition shall be captioned "In the Matter of . . .," stating the location of each surface estate subject to the mineral interest. It shall be signed and verified by the petitioner and shall contain at least the following information:

(A) the petitioner's name, address, and telephone number;

(B) the nature of the interest of the petitioner;

~~(B)~~ (C) the name and address of all other surface owners;

~~(C)~~ (D) the reason for seeking the assumption of jurisdiction by the court and a statement of the relief sought;

~~(D)~~ (E) a legal description of the severed mineral interest;

~~(E)~~ (F) the name, address, telephone number, and nature of the interest of all interested persons, including each person who has previously recorded a notice of intent to preserve the mineral interest or a part of a mineral interest pursuant to Code, Environment Article, §15-1204;

~~(F) the nature of the interest of the petitioner;~~

(G) the nature and location of the surface estate or estates subject to a severed mineral interest; and

(H) an affidavit signed by each surface owner affirming fee simple ownership of the surface estate, including a reference to each recorded document establishing such ownership. If any person whose name is required information under this subsection is unknown, that fact shall be stated. If any person is the unknown heir of a decedent, that person shall be described as the unknown heir of _____, deceased.

Cross reference: See Code, Environment Article, §§15-1203 through 15-1205.

(b) Service

The proceeding shall be deemed in rem or quasi in rem. A copy of the petition and attached documents shall be served on all persons with a legal interest in the severed mineral interest

named in the petition and all surface owners who have not joined in the petition. Service on a person alleged to be unknown or missing shall be pursuant to Rule 2-122. Otherwise, service shall be pursuant to Rule 2-121.

(c) Late Notice of Intent to Preserve Interest

Unless the mineral interest has been unused for a period of 40 years or more preceding the commencement of the action, the court shall permit the owner of the mineral interest to record a late notice of intent to preserve the mineral interest and dismiss the action, provided that the owner of the mineral interest pays the litigation expenses incurred by the surface owner of the real property that is subject to the mineral interest.

Cross reference: See Code, Environment Article, §15-1203 (c) for actions constituting use of an entire mineral interest.

(d) Hearing

The court, in its discretion, may hold a hearing on the petition.

(e) Order

The court shall enter an order granting or denying the petition. An order terminating a mineral interest shall ~~describe each tract of the surface estate overlying the terminated mineral interest into which the mineral interest is merged, and shall~~ identify: (1) the mineral interest, (2) each surface estate into which the mineral interest is merged, including the tax map and parcel number, (3) the name of each surface owner, (4) if known,

the name of each person that owned the mineral interest prior to the termination date and any information the court determines appropriate to describe the effect of the termination and merger of the mineral interest. The order also shall describe the proportional shares, if any, of each surface owner in each tract. The clerk shall record a copy of the order of termination in the land records of each county in which the mineral interest is located.

Cross reference: See Code, Environment Article, §15-1203 (d) (2) for the effects of an order terminating a mineral interest. See also Code, Environment Article, §15-1203 (d) (3).

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 14-102 to correct an internal reference, as follows:

Rule 14-102. JUDGMENT AWARDING POSSESSION

. . .

(e) Residential Property; Notice and Affidavit

After entry of a judgment awarding possession of residential property as defined in Rule 14-202 ~~(i)~~ (g), but before executing on the judgment, the purchaser shall:

(1) send by first-class mail the notice required by Code, Real Property Article, §7-105.9 (d) addressed to "All Occupants" at the address of the property; and

(2) file an affidavit that the notice was sent.

Cross reference: Rule 2-647 (Enforcement of Judgment Awarding Possession).

Source: This Rule is derived in part from the 2008 version of former Rule 14-102 and is in part new.

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY
CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-202 to add certain definitions, to correct internal references, and to make stylistic changes, as follows:

Rule 14-202. DEFINITIONS

In the Rules in this Chapter, the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(a) Assent to a Decree

"Assent to a decree" means a provision in a lien instrument assenting, in the event of a specified default, to the entry of an order for the sale of the property subject to the lien.

(b) Borrower

"Borrower" means:

- (1) a mortgagor;
- (2) a grantor of a deed of trust;
- (3) any person liable for the debt secured by the lien;
- (4) a maker of a note secured by an indemnity deed of trust;
- (5) a purchaser under a land installment contract;
- (6) a person whose property is subject to a lien under Code, Real Property Article, Title 14, Subtitle 2 (Maryland Contract Lien Act); and
- (7) a leasehold tenant under a ground lease, as defined in

Code, Real Property Article, §8-402.3 (a) (6).

(c) Certificate of Property Unfit for Human Habitation

"Certificate of property unfit for human habitation" means
(1) in Baltimore City, a certificate of substantial repair, or
(2) a certificate for residential property issued by a unit of a
county or municipal corporation indicating that the county or
municipal corporation has determined that the residential
property is unfit for human habitation.

(d) Certificate of Vacancy

"Certificate of vacancy" means a certificate issued by a
unit of a county or municipal corporation for residential
property indicating that the residential property is vacant.

~~(c)~~ (e) Debt

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

~~(d)~~ (f) Final Loss Mitigation Affidavit

"Final loss mitigation affidavit" means an affidavit substantially in the form prescribed by regulation adopted by the Commissioner of Financial Regulation that:

(1) is made by a person authorized to act on behalf of a secured party to a mortgage or deed of trust on residential property that is the subject of a foreclosure action;

(2) certifies the completion of the final determination of loss mitigation analysis in connection with the mortgage or deed of trust or states why no loss mitigation analysis is required; and

(3) if a loan modification or other loss mitigation was

denied, provides an explanation for the denial.

Committee note: The Committee believes that a final loss mitigation affidavit should be filed in every action seeking foreclosure of a lien on residential property, whether or not the property is owner-occupied. If the affiant has determined that the property is not owner-occupied residential property and, therefore, no loss mitigation analysis is required, the affiant should so state. See Rule 14-207 (b) (7). The definition set forth in Code, Real Property Article, §7-105.1 is supplemented to include this requirement, and it is clarified to include the requirement that the form of affidavit be substantially in the form prescribed by regulation adopted by the Commissioner of Financial Regulation. Other modifications to the definition are stylistic only.

If the property is owner-occupied residential property but the secured party, such as an individual purchase-money mortgagee, is not required to provide or participate in a loss mitigation program, the affiant should so state as an explanation for the denial of a loan modification or other loss mitigation.

Cross reference: See Chapter 485, Laws of 2010 (HB 472), Section 4 (3) (i) for the form of Final Loss Mitigation Affidavit required prior to the adoption of regulations by the Commissioner of Financial Regulation.

~~(e)~~ (g) Foreclosure Mediation

(1) Generally

"Foreclosure mediation" means a conference at which the parties in a foreclosure action, their attorneys, additional representatives of the parties, or a combination of those persons appear before an impartial individual to discuss the positions of the parties in an attempt to reach agreement on a loss mitigation program for the mortgagor or grantor.

Committee note: This is the definition stated in Code, Real Property Article, §7-105.1 (a) (3). Code, Real Property Article, §§7-105.1 ~~(i), (j), (k), and (l)~~ (d), (k), (l), (m), and (n) require that the foreclosure mediation be conducted by the Office of Administrative Hearings.

(2) Prefile Mediation

"Prefile mediation" means foreclosure mediation that occurs in accordance with Code, Real Property Article, §7-105.1 (d) before the date on which the order to docket or complaint to foreclose is filed.

(3) Postfile Mediation

"Postfile mediation" means foreclosure mediation that occurs in accordance with Code, Real Property Article, §7-105.1 (j) after the date on which the order to docket or complaint to foreclose is filed.

~~(f)~~ (h) Lien

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

~~(g)~~ (i) Lien Instrument

"Lien instrument" means any instrument creating or authorizing the creation of a lien on property, including:

- (1) a mortgage;
- (2) a deed of trust;
- (3) a land installment contract, as defined in Code, Real Property Article, §10-101(b);
- (4) a contract creating a lien pursuant to Code, Real Property Article, Title 14, Subtitle 2;
- (5) a deed or other instrument reserving a vendor's lien; or
- (6) 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.

~~(h)~~ (j) Loss Mitigation Analysis

"Loss mitigation analysis" means an evaluation of the facts and circumstances of a loan secured by owner-occupied residential property to determine:

(1) whether a mortgagor or grantor qualifies for a loan modification; and

(2) if there will be no loan modification, whether any other loss mitigation program may be made available to the mortgagor or grantor.

~~(i)~~ (k) Loss Mitigation Program

"Loss mitigation program" means an option in connection with a loan secured by owner-occupied residential property that:

(1) avoids foreclosure through a loan modification or other changes to existing loan terms that are intended to allow the mortgagor or grantor to stay in the property;

(2) avoids foreclosure through a short sale, deed in lieu of foreclosure, or other alternative that is intended to simplify the relinquishment of ownership of the property by the mortgagor or grantor; or

(3) lessens the harmful impact of foreclosure on the mortgagor or grantor.

~~(j)~~ (l) Owner-Occupied Residential Property

"Owner-occupied residential property" means residential property in which at least one unit is occupied by an individual who has an ownership interest in the property and uses the property as the individual's primary residence.

~~(k)~~ (m) Power of Sale

"Power of sale" means a provision in a lien instrument authorizing, in the event of a specified default, a sale of the property subject to the lien.

~~(l)~~ (n) Preliminary Loss Mitigation Affidavit

"Preliminary loss mitigation affidavit" means an affidavit substantially in the form prescribed by regulation adopted by the Commissioner of Financial Regulation that:

(1) is made by a person authorized to act on behalf of a secured party to a mortgage or deed of trust on owner-occupied residential property that is the subject of a foreclosure action;

(2) certifies the status of an incomplete loss mitigation analysis in connection with the mortgage or deed of trust; and

(3) includes reasons why the loss mitigation analysis is incomplete.

Cross reference: See Chapter 485, Laws of 2010 (HB 472), Section 4 (3)(ii) for the form of Preliminary Loss Mitigation Affidavit required prior to the adoption of regulations by the Commissioner of Financial Regulation.

~~(m)~~ (o) Property

"Property" means real and personal property of any kind located in this State, including a condominium unit and a time share unit.

~~(n)~~ (p) Record Owner

"Record owner" of property means a person who as of 30 days before the date of providing a required notice holds record title to the property or is the record holder of the rights of a

purchaser under a land installment contract.

~~(o)~~ (q) Residential Property

"Residential property" means real property with four or fewer single family dwelling units that are designed principally and are intended for human habitation. It includes an individual residential condominium unit within a larger structure or complex, regardless of the total number of individual units in that structure or complex. "Residential property" does not include a time share unit.

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

~~(p)~~ (r) Sale

"Sale" means a foreclosure sale.

~~(q)~~ (s) Secured Party

"Secured party" means any person who has an interest in property secured by a lien or any assignee or successor in interest to that person. The term includes:

- (1) a mortgagee;
- (2) the holder of a note secured by a deed of trust or indemnity deed of trust;
- (3) a vendor under a land installment contract or holding a vendor's lien;
- (4) a person holding a lien under Code, Real Property Article, Title 14, Subtitle 2;
- (5) a condominium council of unit owners;
- (6) a homeowners' association;
- (7) a property owners' or community association; and

(8) a ground lease holder, as defined in Code, Real Property Article, §8-402.3 (a) (3).

The term does not include a secured party under Code, Commercial Law Article, §9-102 (a) (3).

~~(r)~~ (t) 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, including a lien created pursuant to Code, Real Property Article, §8-402.3 (d).

Committee note: Liens created pursuant to Code, Real Property Article, Title 14, Subtitle 2 (Maryland Contract Lien Act) are to be foreclosed "in the same manner, and subject to the same requirements, as the foreclosure of mortgages or deeds of trust." See Code, Real Property Article, §14-204 (a). A lien for ground rent in arrears created pursuant to Code, Real Property Article, §8-402.3 (d) is to be foreclosed "in the same manner and subject to the same requirements, as the foreclosure of a mortgage or deed of trust containing neither a power of sale nor an assent to decree." See Code, Real Property Article, §8-402.3 (n).

Source: This Rule is derived in part from the 2008 version of former Rule 14-201 (b) and is in part new.

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-207 to add certain exhibits to section (b), to add language to section (b) referring to a certain exception, to add language to subsection (b)(7) referring to certain lien instruments, to add a new section (c) limiting the application of section (b), to correct internal references, and to make stylistic changes, as follows:

Rule 14-207. PLEADINGS; SERVICE OF CERTAIN AFFIDAVITS,
PLEADINGS, AND PAPERS

(a) Pleadings Allowed

(1) Power of Sale

An action to foreclose a lien pursuant to a power of sale shall be commenced by filing an order to docket. No process shall issue.

(2) Assent to a Decree or Lien Instrument With No Power of Sale or Assent to a Decree

An action to foreclose a lien pursuant to an assent to a decree or pursuant to a lien instrument that contains neither a power of sale nor an assent to a decree shall be commenced by filing a complaint to foreclose. If the lien instrument contains an assent to a decree, no process shall issue.

(3) Lien Instrument with Both a Power of Sale and Assent to a

Decree

If a lien instrument contains both a power of sale and an assent to a decree, the lien may be foreclosed pursuant to either.

(b) Exhibits

Except as provided in section (c) of this Rule, A a complaint or order to docket shall include or be accompanied by:

(1) a copy of the lien instrument supported by an affidavit that it is a true and accurate copy, or, in an action to foreclose a statutory lien, a copy of a notice of the existence of the lien supported by an affidavit that it is a true and accurate copy;

Cross reference: See Code, Real Property Article, §7-105.1 ~~(d-1)~~ (f) concerning the contents of a lost note affidavit in an action to foreclose a lien on residential property.

(2) an affidavit by the secured party, the plaintiff, or the agent or attorney of either that the plaintiff has the right to foreclose and a statement of the debt remaining due and payable;

(3) a copy of any separate note or other debt instrument supported by an affidavit that it is a true and accurate copy and certifying ownership of the debt instrument;

(4) a copy of any assignment of the lien instrument for purposes of foreclosure or deed of appointment of a substitute trustee supported by an affidavit that it is a true and accurate copy of the assignment or deed of appointment;

(5) with respect to any defendant who is an individual, an affidavit in compliance with §521 of the Servicemembers Civil

Relief Act, 50 U.S.C. app. §501 et seq.;

(6) a statement as to whether the property is residential property and, if so, statements in boldface type as to whether (A) the property is owner-occupied residential property, if known, and (B) a final loss mitigation affidavit is attached;

(7) if the property is residential property that is not owner-occupied residential property, and the lien instrument being foreclosed is a mortgage or deed of trust, a final loss mitigation affidavit to that effect;

(8) in an action to foreclose a lien instrument on residential property, to the extent not produced in response to subsections (b) (1) through (b) (7) of this Rule, the information and items required by Code, Real Property Article, §7-105.1 ~~(d)~~ (e), except that (A) 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; and (B) if the mortgage loan is owned, securitized, insured, or guaranteed by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or Federal Housing Administration, or if the servicing agent is participating in the federal Making Home Affordable Modification Program (also known as "HAMP"), providing documentation as required by those programs satisfies the requirement to provide a description of the eligibility requirement for the applicable loss mitigation program; ~~and~~

Committee note: Subsection (b) (8) of this Rule does not require the filing of any information or items that are substantially similar to information or items provided in accordance with subsections (b) (1) through (b) (7). For example, if a copy of a deed of appointment of substitute trustee, supported by an affidavit that it is a true and accurate copy, is filed, it is not necessary to file the original or a clerk-certified copy of the deed of appointment.

Cross reference: For the required form and sequence of documents, see Code, Real Property Article, §7-105.1 ~~(f)~~~~(1)~~ (h) (1) and COMAR 09.03.12.01 et seq.

(9) if the property is residential property and the secured party and borrower elected to participate in prefile mediation, the report of the prefile mediation issued by the Office of Administrative Hearings;

(10) if the property is residential property and the secured party and borrower did not elect to participate in prefile mediation, a statement that the parties did not elect to participate in prefile mediation; and

~~(9)~~ (11) in an action to foreclose a land installment contract on property other than residential property, an affidavit that the notice required by Rule 14-205 (c) has been given.

Cross reference: For statutory "notices" relating to liens, see, e.g., Code, Real Property Article, §14-203 (b).

Committee note: Pursuant to subsections (b) (7) and (8) of this Rule, a preliminary or final loss mitigation affidavit must be filed in all actions to foreclose a lien on residential property, even if a loss mitigation analysis is not required.

(c) When a Certificate of Vacancy or a Certificate of Property Unfit for Human Habitation Has Been Filed

If the property is residential property and the order to

docket or complaint to foreclose is based on a certificate of vacancy or a certificate of property unfit for human habitation, the order to docket or complaint to foreclose shall be accompanied by a copy of the certificate and by the exhibits required by subsections (b) (1) through (b) (5) of this Rule.

Cross reference: See Code, Real Property Article, §7-105.11.

~~(c)~~ (d) Service of Certain Affidavits, Pleadings, and Papers

Any affidavit, pleading, or other paper that amends, supplements, or confirms a previously filed affidavit, pleading, or other paper shall be served on each party, attorney of record, borrower, and record owner in accordance with the methods provided by Rule 1-321, regardless of whether service of the original affidavit, pleading, or paper was required.

Committee note: This Rule prevails over the provision in Rule 1-321 (a) or any other Rule that purports, where a party is represented by an attorney, to permit service on only the attorney. This Rule requires service on both.

Source: This Rule is derived in part from the 2008 version of former Rule 14-204 (a) and (c) and is in part new.

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY
CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

ADD new Rule 14-208.1, as follows:

Rule 14-208.1. CHALLENGE OF CERTIFICATE OF VACANCY OR
CERTIFICATE OF PROPERTY UNFIT FOR HUMAN HABITATION

(a) Right to Challenge

If the record owner or occupant has been served with an order to docket or complaint to foreclose that does not comply with the requirements of Code, Real Property Article, §7-105.1, and a certificate of vacancy or certificate of property unfit for human habitation issued to a secured party pursuant to Code, Real Property Article, §7-105.11 is relied upon by the secured party to excuse compliance with those requirements, the record owner or occupant of a property may challenge the certificate in accordance with this Rule.

(b) Where Filed

A challenge shall be initiated by filing a motion in the foreclosure action filed in the circuit court pursuant to Rule 14-203.

(c) Contents of Motion to Challenge

A motion to challenge shall (1) be in writing, (2) identify the property, (3) identify the record owner, if the motion is filed by the occupant, and (4) state the facts upon which the

motion is based.

(d) Service

The movant shall serve a copy of the motion on the secured party pursuant to Rule 1-321.

(e) Stay of Action

Upon the filing and service of a motion to challenge that meets the requirements of this Rule, all proceedings in the action shall be automatically stayed until further order of court.

(f) Response

Within 15 days after being served with a motion to challenge, the secured party may file a written response to the motion. The secured party shall serve a copy of the response and any supporting documents on the movant by first-class mail and shall file proof of such service with the response.

(g) Timely Response Filed

If a timely response is filed, the court shall promptly rule on the motion to challenge.

(h) Dismissal of Action

If a timely response is not filed, or if the court sustains the challenge, the action shall be dismissed without prejudice to refile in compliance with Code, Real Property Article, §7-105.1.

(i) Rejection of Challenge

If the court rejects the challenge, the stay shall be lifted, and the case shall proceed on the order to docket or

complaint to foreclose.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-209 to add language to section (a) pertaining to certain certificates, to add language to section (d) limiting the local laws requiring notice, to correct internal references in sections (a) and (b), and to make stylistic changes, as follows:

Rule 14-209. SERVICE IN ACTIONS TO FORECLOSE ON RESIDENTIAL PROPERTY; NOTICE

(a) Service on Borrower and Record Owner by Personal Delivery

When an action to foreclose a lien on residential property is filed, the plaintiff shall serve on the borrower and the record owner a copy of all papers filed to commence the action, accompanied (1) by the documents required by Code, Real Property Article, §7-105.1 ~~(f)~~ (h) and (2) if the action to foreclose is based on a certificate of vacancy or a certificate of property unfit for human habitation issued pursuant to Code, Real Property Article, §7-105.11, by a copy of the certificate and a description of the procedure to challenge the certificate.

Except as otherwise provided by section (b) of this Rule, service ~~service~~ shall be ~~accomplished~~ by personal delivery of the papers or by leaving the papers with a resident of suitable age and discretion at the ~~borrower's or record owner's~~ dwelling house or

usual place of abode of each person served.

Cross reference: For the required form and sequence of documents, see Code, Real Property Article, §7-105.1 ~~(f)(1)~~ (h)(1) and COMAR 09.03.12.01 et seq.

(b) Service on Borrower and Record Owner by Mailing and Posting

If on at least two different days a good faith effort ~~was made~~ to serve a borrower or record owner ~~under~~ pursuant to section (a) of this Rule ~~and service~~ was not successful, the plaintiff shall effect service by (1) mailing, by certified and first-class mail, a copy of all papers filed to commence the action, accompanied by the documents required by Code, Real Property Article, §7-105.1 ~~(f)~~ (h), to the last known address of each borrower and record owner and, if the person's last known address is not the address of the residential property, also to that person at the address of the property; and (2) posting a copy of the papers in a conspicuous place on the residential property. Service is complete when the property has been posted and the mailings have been made in accordance with this section.

Cross reference: For the required form and sequence of documents, see Code, Real Property Article, §7-105.1 ~~(f)(1)~~ (h)(1) and COMAR 09.03.12.01 et seq.

(c) Notice to all Occupants by First-class Mail

When an action to foreclose on residential property is filed, the plaintiff shall send by first-class mail addressed to "All Occupants" at the address of the property the notice required by Code, Real Property Article, §7-105.9 (b).

(d) If Notice Required by Local Law

When an action to foreclose on residential property is filed with respect to a property located within a county or a municipal corporation that, under the authority of Code, Real Property Article, former §14-126 (c), has enacted a local law that was in effect as of October 1, 2012 requiring notice of the commencement of a foreclosure action, the plaintiff shall give the notice in the form and manner required by the local law. If the local law does not provide for the manner of giving notice, the notice shall be sent by first-class mail.

(e) Affidavit of Service, Mailing, and Notice

(1) Time for Filing

An affidavit of service under section (a) or (b) of this Rule~~7~~ and mailing under section (c) of this Rule, and notice under section (d) of this Rule shall be filed promptly and in any event before the date of the sale.

(2) Service by an Individual Other than a Sheriff

~~In addition to other requirements contained in this section, if~~ If service is made by an individual other than a sheriff, the affidavit shall include, in addition to other requirements contained in this section, the name, address, and telephone number of the affiant and a statement that the affiant is 18 years of age or older.

(3) Contents of Affidavit of Service by Personal Delivery

An affidavit of service by personal delivery shall set forth the name of the person served and the date and particular place of service. If service was effected on a person other than

the borrower or record owner, the affidavit also shall include a description of the individual served (including the individual's name and address, if known) and the facts upon which the individual making service concluded that the individual served is of suitable age and discretion.

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

An affidavit of service by mailing and posting shall (A) describe with particularity the good faith efforts to serve the borrower or record owner by personal delivery; (B) state the date on which the required papers were mailed by certified and first-class mail and the name and address of the addressee; and (C) include the date of the posting and a description of the location of the posting on the property.

(5) Contents of Affidavit of Notice Required by Local Law

An affidavit of the sending of a notice required by local law shall (A) state (i) the date the notice was given, (ii) the name and business address of the person to whom the notice was given, (iii) the manner of delivery of the notice, and (iv) a reference to the specific local law of the county or municipal corporation, or both, requiring the notice and (B) be accompanied by a copy of the notice that was given.

Cross reference: See the Servicemembers Civil Relief Act, 50 U.S.C. app. §§501 et seq.

Source: This Rule is derived in part from the 2008 version of former Rule 14-204 (b) and is in part new.

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-209.1 to change the term "foreclosure mediation" to the term "postfile mediation," to correct internal references, to add a new subsection (c)(1) pertaining to prefile mediation, to modify new subsection (c)(2), and to make stylistic changes, as follows:

Rule 14-209.1. OWNER-OCCUPIED RESIDENTIAL PROPERTY

(a) Applicability

This rule applies to an action to foreclose a lien on residential property that is owner-occupied residential property, or where it is unknown whether the property is owner-occupied residential property at the time the action is filed.

(b) Advertising of Sale

A sale may not be advertised until 30 days after a final loss mitigation affidavit is filed, but if a request for foreclosure mediation is filed within that time and not stricken, a sale may not be advertised until the report from the Office of Administrative Hearings is filed with the court.

(c) Foreclosure Mediation

(1) Prefile Mediation

A secured party may offer to participate in prefile mediation with a borrower to whom the secured party has delivered

a notice of intent to foreclose on owner-occupied residential property. The borrower may elect to participate in the prefile mediation offered.

Cross reference: See Code, Real Property Article, §7-105.1 (d) for prefile mediation procedures.

(2) Postfile Mediation

~~(1)~~ (A) Request; Transmittal

~~(A)~~ (i) Filing of Request

If the borrower has not participated in prefile mediation or the prefile mediation agreement gives the borrower the right to participate in postfile mediation, the borrower may file a request for ~~foreclosure~~ postfile mediation ~~filing fee required~~ within the time allowed by Code, Real Property Article, §7-105.1 ~~(h)(1)~~ (j)(1)(ii). The request shall contain the caption of the case and the names and addresses of the parties and shall be accompanied by the ~~foreclosure~~ postfile mediation filing fee required by Code, Real Property Article, §7-105.1 ~~(h)(1)(iii)~~ (j)(1)(iii) or by a written request in accordance with Rule 1-325 for an order waiving or reducing the fee. The borrower shall serve a copy of the request on the other parties. The clerk shall not accept for filing a request for ~~foreclosure~~ postfile mediation that does not contain a certificate of service or is not accompanied by the required fee or request for an order waiving or reducing the fee.

Cross reference: See Rules 1-321 and 1-323. For the Request for Postfile Foreclosure Mediation form prescribed by regulation adopted by the Commissioner of Financial Regulation, see COMAR 09.03.12.05.

~~(B)~~ (ii) Transmittal of Request

Subject to section (e) of this Rule, the clerk shall transmit notice of the request to the Office of Administrative Hearings no later than five days after the request is filed.

Committee note: The transmittal to the Office of Administrative Hearings shall be made within the time required by subsection ~~(c)(1)(B)~~ (c)(2)(A)(ii) of this Rule, regardless of the status of a request for waiver or reduction of the ~~foreclosure~~ postfile mediation filing fee.

~~(C)~~ (iii) Ruling on Request for Fee Waiver or Reduction

The court ~~promptly~~ shall rule promptly ~~upon a request for an order waiving or reducing the foreclosure mediation filing fee. The court may make its ruling~~ and may rule ex parte and without a hearing upon a request for an order waiving or reducing the postfile mediation filing fee. If the court does not waive the fee in its entirety, the court shall specify in its order the dollar amount to be paid and the ~~amount of~~ time, not to exceed ten days, within which ~~the sum~~ payment shall be ~~paid~~ made. The order shall direct the clerk to strike the request for ~~foreclosure~~ postfile mediation if ~~the sum~~ payment is not ~~paid~~ made within the time allowed and, if the request is stricken, to promptly notify the Office of Administrative Hearings that the request for foreclosure mediation has been stricken.

~~(2)~~ (B) Motion to Strike Request for ~~Foreclosure~~ Postfile Mediation

No later than 15 days after service of a request for ~~foreclosure~~ postfile mediation, the secured party may file a motion to strike the request. The motion shall be accompanied by

an affidavit that sets forth with particularity reasons sufficient to overcome the presumption that the borrower is entitled to ~~foreclosure~~ postfile mediation and ~~why foreclosure~~ the reasons postfile mediation is not appropriate.

~~(3)~~ (C) Response to Motion to Strike

No later than 15 days after service of the motion to strike, the borrower may file a response to the motion.

~~(4)~~ (D) Ruling on Motion

After expiration of the time for filing a response, the court shall rule on the motion, with or without a hearing. If the court grants the motion, the clerk shall notify the Office of Administrative Hearings that the motion has been granted.

(d) Notification from Office of Administrative Hearings

(1) If Extension Granted

If the Office of Administrative Hearings extends the time for completing ~~foreclosure~~ postfile mediation pursuant to Code, Real Property Article, §7-105.1 ~~(i)(2)(ii)~~ (k)(2)(ii), it shall notify the court no later than 67 days after the court transmitted the request for ~~foreclosure~~ postfile mediation and specify the date by which mediation shall be completed. If the Office of Administrative Hearings extends the time for completing ~~foreclosure~~ postfile mediation more than once, it shall notify the court of each extension and specify the new date by which mediation shall be completed.

(2) Outcome of ~~Foreclosure~~ Postfile Mediation

Within the time allowed by Code, Real Property Article,

§7-105.1 ~~(j)(3)~~ (1)(4), the Office of Administrative Hearings shall file with the court a report that states (A) whether the ~~foreclosure~~ postfile mediation was held and, if not, the reasons why it was not held, or (B) the outcome of the foreclosure mediation. The Office of Administrative Hearings promptly shall provide a copy of the report to each party to the ~~foreclosure~~ postfile mediation.

(e) Electronic Transmittals

By agreement between the Administrative Office of the Courts and the Office of Administrative Hearings, notifications required by this Rule may be transmitted by electronic means rather than by mail and by a department of the Administrative Office of the Courts rather than by the clerk, provided that an appropriate docket entry is made of the transmittal or the receipt of the notification.

(f) Procedure Following ~~Foreclosure~~ Postfile Mediation

(1) If Agreement Results from Foreclosure Mediation

If the ~~foreclosure~~ postfile mediation results in an agreement, the court shall take any reasonable action reasonably necessary to implement the agreement.

(2) If No Agreement

If the ~~foreclosure~~ postfile mediation does not result in an agreement, the secured party may advertise the sale, subject to the right of the borrower to file a motion pursuant to Rule 14-211 to stay the sale and dismiss the action.

(3) If ~~Foreclosure~~ Postfile Mediation Fails Due to the Fault

of a Party

(A) If the ~~foreclosure~~ postfile mediation is not held or is terminated because the secured party failed to attend or failed to provide the documents required by regulation of the Commissioner of Financial Regulation, the court, after an opportunity for a hearing, may dismiss the action.

(B) If the ~~foreclosure~~ postfile mediation is not held or is terminated because the borrower failed to attend or failed to provide the documents required by regulation of the Commissioner of Financial Regulation, the secured party may advertise the sale.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-211 (a) (2) to change the term "foreclosure mediation" to the term "postfile mediation," as follows:

Rule 14-211. STAY OF THE SALE; DISMISSAL OF ACTION

(a) Motion to Stay and Dismiss

(1) Who May File

The borrower, a record owner, a party to the lien instrument, a person who claims under the borrower a right to or interest in the property that is subordinate to the lien being foreclosed, or a person who claims an equitable interest in the property may file in the action a motion to stay the sale of the property and dismiss the foreclosure action.

Cross reference: See Code, Real Property Article, §§7-101 (a) and 7-301 (f) (1).

(2) Time for Filing

(A) Owner-occupied Residential Property

In an action to foreclose a lien on owner-occupied residential property, a motion by a borrower to stay the sale and dismiss the action shall be filed no later than 15 days after the last to occur of:

(i) the date the final loss mitigation affidavit is filed;

(ii) the date a motion to strike ~~foreclosure~~ postfile

mediation is granted; or

(iii) if ~~foreclosure~~ postfile mediation was requested and the request was not stricken, the first to occur of:

(a) the date the ~~foreclosure~~ postfile mediation was held;

(b) the date the Office of Administrative Hearings files with the court a report stating that no ~~foreclosure~~ postfile mediation was held; or

(c) the expiration of 60 days after transmittal of the borrower's request for ~~foreclosure~~ postfile mediation or, if the Office of Administrative Hearings extended the time to complete the ~~foreclosure~~ postfile mediation, the expiration of the period of the extension.

(B) Other Property

In an action to foreclose a lien on property, other than owner-occupied residential property, a motion by a borrower or record owner to stay the sale and dismiss the action shall be filed within 15 days after service pursuant to Rule 14-209 of an order to docket or complaint to foreclose. A motion to stay and dismiss by a person not entitled to service under Rule 14-209 shall be filed within 15 days after the moving party first became aware of the action.

(C) Non-compliance; Extension of Time

For good cause, the court may extend the time for filing the motion or excuse non-compliance.

Cross reference: See Rules 2-311 (b), 1-203, and 1-204,

concerning the time allowed for filing a response to the motion.

(3) Contents

A motion to stay and dismiss shall:

(A) be under oath or supported by affidavit;

(B) state with particularity the factual and legal basis of each defense that the moving party has to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action;

Committee note: The failure to grant loss mitigation that should have been granted in an action to foreclose a lien on owner-occupied residential property may be a defense to the right of the plaintiff to foreclose in the pending action. If that defense is raised, the motion must state specific reasons why loss mitigation pursuant to a loss mitigation program should have been granted.

(C) be accompanied by any supporting documents or other material in the possession or control of the moving party and any request for the discovery of any specific supporting documents in the possession or control of the plaintiff or the secured party;

(D) state whether there are any collateral actions involving the property and, to the extent known, the nature of each action, the name of the court in which it is pending, and the caption and docket number of the case;

(E) state the date the moving party was served or, if not served, when and how the moving party first became aware of the action; and

(F) if the motion was not filed within the time set forth in subsection (a)(2) of this Rule, state with particularity the reasons why the motion was not filed timely.

To the extent permitted in Rule 14-212, the motion may include a request for referral to alternative dispute resolution pursuant to Rule 14-212.

(b) Initial Determination by Court

(1) Denial of Motion

The court shall deny the motion, with or without a hearing, if the court concludes from the record before it that the motion:

(A) was not timely filed and does not show good cause for excusing non-compliance with subsection (a)(2) of this Rule;

(B) does not substantially comply with the requirements of this Rule; or

(C) does not on its face state a valid defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action.

Committee note: A motion based on the failure to grant loss mitigation in an action to foreclose a lien on owner-occupied residential property must be denied unless the motion sets forth good cause why loss mitigation pursuant to a loss mitigation program should have been granted is stated in the motion.

(2) Hearing on the Merits

If the court concludes from the record before it that the motion:

(A) was timely filed or there is good cause for excusing non-compliance with subsection (a)(2) of this Rule,

(B) substantially complies with the requirements of this Rule, and

(C) states on its face a defense to the validity of the

lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action, the court shall set the matter for a hearing on the merits of the alleged defense. The hearing shall be scheduled for a time prior to the date of sale, if practicable, otherwise within 60 days after the originally scheduled date of sale.

(c) Temporary Stay

(1) Entry of Stay; Conditions

If the hearing on the merits cannot be held prior to the date of sale, the court shall enter an order that temporarily stays the sale on terms and conditions that the court finds reasonable and necessary to protect the property and the interest of the plaintiff. Conditions may include assurance that (1) the property will remain covered by adequate insurance, (2) the property will be adequately maintained, (3) property taxes, ground rent, and other charges relating to the property that become due prior to the hearing will be paid, and (4) periodic payments of principal and interest that the parties agree or that the court preliminarily finds will become due prior to the hearing are timely paid in a manner prescribed by the court. The court may require the moving party to provide reasonable security for compliance with the conditions it sets and may revoke the stay upon a finding of non-compliance.

(2) Hearing on Conditions

The court may, on its own initiative, and shall, on request of a party, hold a hearing with respect to the setting of

appropriate conditions. The hearing may be conducted by telephonic or electronic means.

(d) Scheduling Order

In order to facilitate an expeditious hearing on the merits, the court may enter a scheduling order with respect to any of the matters specified in Rule 2-504 that are relevant to the action.

(e) Final Determination

After the hearing on the merits, if the court finds that the moving party has established that the lien or the lien instrument is invalid or that the plaintiff has no right to foreclose in the pending action, it shall grant the motion and, unless it finds good cause to the contrary, dismiss the foreclosure action. If the court finds otherwise, it shall deny the motion.

Committee note: If the court finds that the plaintiff has no right to foreclose in the pending action because loss mitigation should have been granted, the court may stay entry of its order of dismissal, pending further order of court, so that loss mitigation may be implemented.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALE OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-214 to correct an internal reference in the cross reference after section (d), as follows:

Rule 14-214. SALE

(a) Only by Individual

Only an individual may sell property pursuant to the Rules in this Chapter.

(b) Under Power of Sale

(1) Individual Authorized to Conduct a Sale Other than Under a Deed of Trust

Except as provided in subsection (b)(2) of this Rule, a secured party authorized by the lien instrument to make the sale or any other individual designated by name in the lien instrument to exercise the power of sale shall conduct the sale.

(2) Individual Authorized to Conduct a Sale Under a Deed of Trust

An individual appointed as trustee in a deed of trust or as a substitute trustee shall conduct the sale of property subject to a deed of trust.

(3) Payment Terms

A sale of property under a power of sale shall be made upon the payment terms specified in the lien instrument. If no

payment terms are specified in the lien instrument, the sale shall be made upon payment terms that are reasonable under the circumstances.

(c) Under Assent to a Decree

(1) Individual Authorized to Sell

An individual appointed as a trustee in a lien instrument or as a substitute trustee shall conduct the sale of property pursuant to an assent to a decree.

(2) Payment Terms

A sale of property under an order of court entered pursuant to an assent to a decree shall be made upon the payment terms provided in the order.

(d) No Power of Sale or Assent to Decree

(1) Individual Authorized to Sell

If there is no power or sale or assent to a decree in the lien instrument, or if the lien is a statutory lien, the sale shall be made by an individual trustee appointed by the court.

(2) Payment Terms

The sale shall be made upon payment terms that are reasonable under the circumstances.

Cross reference: For requirements concerning the timing of the sale of residential property, see Code, Real Property Article, §7-105.1 ~~(1)~~ (n).

Source: This Rule is derived in part from the 2008 version of former Rule 14-207 (b) and (c) and is in part new.

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY
CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-215 to add a cross reference at the end of the Rule, as follows:

Rule 14-215. POST-SALE PROCEDURES

(a) Procedure Following Sale

The procedure following a sale made pursuant to this Chapter shall be as provided in Rules 14-305 and 14-306, except that an audit is mandatory.

(b) Resale

If the court sets a sale aside, the court may order that the property be resold by the individual who made the previous sale or by a special trustee appointed by the court.

(c) Conveyance to Purchaser

(1) When Made

After the court has finally ratified a sale and the purchase money has been paid, the individual making the sale shall convey the property to the purchaser or the purchaser's assignee. If the conveyance is to the purchaser's assignee, the purchaser shall join in the deed.

(2) Under Power of Sale - When Vendor and Purchaser are the Same

If the individual making a sale and the purchaser at a

sale made pursuant to a power of sale are the same person, the court shall appoint in the order of ratification a trustee to convey the property to the purchaser after payment of the purchase money. The trustee need not furnish a bond unless the court so provides in its order.

(3) To Substituted Purchaser

At any time after the sale and before a conveyance, the court, upon ex parte application and consent of the purchaser, substituted purchaser, and individual making the sale, may authorize the conveyance to be made to a substituted purchaser.

Cross reference: For a purchaser's obligation to notify the supervisor of assessments for the county in which the residential property is located of the ratification of the foreclosure sale, see Code, Real Property Article, §7-105.12. For requirements relating to registration by foreclosure purchasers with the Foreclosed Property Registry of the Department of Labor, Licensing, and Regulation, see Code, Real Property Article, §14-126.1.

Source: This Rule is derived from the 2008 version of former Rule 14-207(d), (e), and (f).

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY
CHAPTER 500 - TAX SALES

AMEND Rule 14-502 to add a new section (a) pertaining to certain notices to be sent, to add a new subsection (c) (4) pertaining to the addition of a certain affidavit, and to make stylistic changes, as follows:

Rule 14-502. FORECLOSURE OF RIGHT OF REDEMPTION - COMPLAINT

(a) Notices to be Sent

The holder of a certificate of sale may not file a complaint to foreclose the right of redemption until at least two months after sending the first notice and at least 30 days after sending the second notice required by Code, Tax-Property Article, §14-833 (a-1) (1).

~~(a)~~ (b) Contents

In an action to foreclose the right of redemption in property sold at a tax sale, the complaint, in addition to complying with Rules 2-303 through 2-305, shall set forth:

- (1) the fact of the issuance of the certificate of sale;
- (2) a description of the property in substantially the same form as the description appearing on the certificate of tax sale;
- (3) the fact that the property has not been redeemed by any party in interest; and
- (4) a statement of the amount necessary for redemption.

~~(b)~~ (c) Documents

The complaint shall be accompanied by:

(1) the original certificate of sale, or a photocopy of the certificate;

(2) a copy of a title report supported by an affidavit by the person making the search that a complete search of the records has been performed in accordance with generally accepted standards of title examination for the period of at least 40 years immediately before the filing of the complaint; and

(3) a notice setting forth (A) the substance of the complaint and the relief sought, (B) a description of the property in substantially the same form as the description appearing on the collector's tax records, (C) the time within which a defendant must file an answer to the complaint or redeem the property, and (D) a statement that failure to answer or redeem the property within the time allowed may result in a judgment foreclosing the right of redemption.

(4) an affidavit (A) stating the date that the notices required by Code, Tax-Property Article, §14-833 (a-1)(1) were given, the name and address of the persons to whom the notices were given, and the manner of the delivery of the notice and (B) verifying that the amount that shall be paid to redeem the property complies with the requirements of Code, Tax Property Article, 14-833 (a-1)(3).

Cross reference: See Code, Tax-Property Article, §14-833 for provisions governing limitations on the time for bringing an action to foreclose the right of redemption and Code,

Tax-Property Article, §14-841 for the limitation on the number of certificates that may be joined in one action. See also Code, Tax-Property Article, §§14-836 and 14-837 governing parties to the action. For purchaser's obligations once a complaint has been filed, see *Scheve v. Shudder, Inc.*, 328 Md. 363 (1992).

Source: This Rule is new but is consistent with Code, Tax-Property Article, §§14-835 and 14-838 and is derived in part from Code, Tax-Property Article, §§14-840 and 14-836.

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY
CHAPTER 500 - TAX SALES

AMEND Rule 14-504 to correct an internal reference, as follows:

Rule 14-504. NOTICE TO PERSONS NOT NAMED AS DEFENDANTS

The plaintiff shall send the notice prescribed by Rule 14-502 ~~(b) (3)~~ (c) (3) to each person having a recorded interest, claim or judgment, or other lien who has not been made a defendant in the proceeding. If all or part of the property is a common area owned by or legally dedicated to a homeowners' association, the plaintiff shall also send the notice to the homeowners' association governing the property. The notice shall be sent to the person's last reasonably ascertainable address by certified mail, postage prepaid, return receipt requested, bearing a postmark from the United States Postal Service, and shall be accompanied by a copy of the complaint. The plaintiff shall file the return receipt from the notice or an affidavit that the provisions of this section have been complied with or that the address of the holder of the subordinate interest is not reasonably ascertainable. If the filing is made before final ratification of the sale, failure of a holder of a subordinate interest to receive the notice does not invalidate the sale. The plaintiff shall send notice to each tenant of the property, as

required by Code, Tax-Property Article, §14-836 (b) (4).

Source: This Rule is new but is derived from Code, Tax-Property Article, §14-836.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 400 - ATTORNEYS, OFFICERS OF COURT AND OTHER PERSONS

ADD new Rule 16-407, as follows:

Rule 16-407. MARYLAND PROFESSIONALISM CENTER

(a) Existence

There is a Maryland Professionalism Center, which exists as a unit of the Maryland Judiciary.

(b) General Purposes and Mission

The general purposes and mission of the Maryland Professionalism Center are:

(1) to implement the professionalism policies adopted by the Court of Appeals;

(2) to examine ways of promoting professionalism among Maryland judges, judicial appointees and personnel, and attorneys and to encourage them to exercise the highest level of professional integrity in their relationship with each other, the courts, and the public and fulfill their obligations to improve the law and the legal system; and

(3) to help ensure that the practice of law remains a high calling focused on serving clients, promoting the proper administration of justice, and furthering the public good.

(c) Duties

To carry out its purposes, the Maryland Professionalism

Center shall:

(1) develop and refine mechanisms to advance professionalism as an important core value of the legal profession and the legal process;

(2) design a professionalism website and gather and maintain on it information that will serve as a resource on professionalism for judges, judicial appointees and personnel, attorneys, and the public;

(3) monitor professionalism efforts and developments in other States;

(4) monitor and attempt to coordinate professionalism efforts by the various segments of the Maryland legal and judicial community -- the Bar, the courts, the law schools, and attorneys and law firms -- with particular emphasis on professionalism training in the law schools;

(5) monitor the efforts of the Maryland State Bar Association and other bar associations in the State in carrying out the mandate of the Court of Appeals with respect to the advancement of professionalism;

(6) publicly acknowledge judges, judicial appointees and personnel, and attorneys for particularly commendable acts of professionalism;

(7) administer the New Bar Admittees' Professionalism Course and mentoring program; and

(8) recognize the efforts of attorneys engaged in the Professionalism Course and Mentoring Program.

(d) Board of Directors

(1) Membership

The Maryland Professionalism Center shall be governed by a Board of Directors, to consist of (A) a judge of the Court of Appeals, who shall serve as Chair; (b) a judge of the Court of Special Appeals; (C) a judge of a circuit court; (D) a judge of the District Court; (E) the Dean of the University of Maryland School of Law, or the Dean's designee; (F) the Dean of the University of Baltimore School of Law, or the Dean's designee; and (G) seven practicing members of the Maryland Bar, one from each judicial circuit, giving due regard to ethnic, gender, and experiential diversity.

(2) Appointment

The members of the Board shall be appointed by the Chief Judge of the Court of Appeals.

(3) Terms

(A) The judge of the Court of Appeals serves at the pleasure of the Chief Judge;

(B) The term of the other judges shall be three years or during the incumbency of the individual as a judge of the court upon which the individual was serving at the time of appointment, whichever is shorter.

(C) The term of the Deans' designees shall be three years or during the incumbency of the individual in the capacity in which the individual serves at the law school, whichever is shorter.

(D) The term of the other members shall be three years.

(E) Of the initial appointees, four shall be appointed for an initial term of three years, four shall be appointed for an initial term of two years, and four shall be appointed for an initial term of one year, in order that the terms shall remain staggered. At the end of a term, a member may continue to serve until a successor is appointed.

(F) With the approval of the Chief Judge, the Chair may remove a member prior to the expiration of the member's term and appoint from the same category of membership a successor for the remainder of the unexpired term.

(G) (i) Subject to subsection (d) (3) (G) (ii) of this Rule, a member may be reappointed.

(ii) The period of consecutive service by a member other than the Chair shall be not more than two consecutive terms, except that if the member was appointed to fill the unexpired term of a former member, the period of consecutive service also may include the remainder of the term of the former member.

(4) Secretary

The Chair shall appoint one of the members of the Board to serve as Secretary, at the pleasure of the Chair. The Secretary shall take minutes of the meetings of the Board and perform other duties related to the work of the Board as may be directed by the Chair.

(5) Compensation

The members of the Board shall serve without compensation

but shall be reimbursed for expenses in connection with travel related to the work of the Center in accordance with the approved budget of the Center.

(6) Vice Chair; Committees

The Chair may appoint a Vice Chair and committees of the Board.

(7) Meetings

The Board shall meet at least twice each year, at the call of the Chair.

(8) Quorum

Seven members of the Board shall constitute a quorum for the transaction of business.

(9) Duties

The Chair in collaboration with the Board shall (A) provide managerial oversight of the policies, programs, operations, and personnel of the Maryland Professionalism Center, (B) prepare a proposed annual budget for the Professionalism Center and transmit the proposed budget to the Chief Judge of the Court of Appeals, (C) establish clear standards for the procurement of goods and services needed by the Center and the establishment and maintenance of a bank account for the Center, and (D) retain a certified public accountant to perform an annual audit of the books and records of the Center.

(e) Personnel

(1) Appointment

The Chair of the Board of Directors shall appoint an

Executive Director, a bookkeeper, and such other personnel as are authorized by the approved budget of the Center. The Executive Director and the other personnel serve at the pleasure of the Chair.

(2) Executive Director

Subject to oversight by the Chair and the Board, the Executive Director is responsible for the day-to-day administration of the Center, implementation of the Board's policies and directions, and performance of the other duties specified in this Rule.

(3) Advisors

The Chair may invite other persons to provide advice to and participate in the work of the Center. Unless funds are available in the approved budget of the Center for that purpose, service by those persons shall be without compensation.

(f) Funding

The Court of Appeals shall provide funding for the Center:

(1) from the fees paid by new Bar Admittees for the required Professionalism Course;

(2) commencing July 1, 2013, from the assessment collected from each attorney by the Client Protection Fund on behalf of the Disciplinary Fund, an annual amount from the Disciplinary Fund maintained pursuant to Rule 16-714, not to exceed five dollars; and

(3) from such other sources as may be provided for in the

judicial budget.

Source: This Rule is new.