

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-Second Report to the Court recommending adoption on an emergency basis of proposed amendments to Rules 14-207, 14-209, 14-209.1, and 14-211; and

This Court having considered at an open meeting, notice of which was posted as prescribed by law, all those proposed amendments and finding that an emergency does in fact exist with reference to the proposed rules changes, it is this 11th day of October, 2011,

ORDERED, by the Court of Appeals of Maryland, that the amendments to Rules 14-207, 14-209, 14-209.1, and 14-211 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 November 1, 2011, 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

Filed: October 11, 2011

/s/ Bessie M. Decker
Clerk
Bessie M. Decker

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-207 to add a cross reference following subsection (b)(1) regarding a lost note affidavit in an action to foreclose a lien on residential property; to amend subsection (b)(5) to conform to the amendment to Code, Real Property Article, §7-105.1 (d)(2)(v); and to add a cross reference following subsection (b)(8) regarding the form and sequence of documents accompanying an order to docket or complaint to foreclose; 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

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) 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) ~~an affidavit with respect to any defendant who is an individual, that an affidavit in compliance with §521 of the the individual is not in the military service of the United States as defined in the Servicemembers Civil Relief Act, 50 U.S.C. app. §501 et seq.; or that the action is authorized by the Act;~~

(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, 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), 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) and COMAR 09.03.12.01 et seq.

(9) 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) 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

AMEND Rule 14-209 to conform to the amendment to Code, Real Property, §7-105.1 (f) by adding to sections (a) and (b) the requirement that certain additional papers be served on the borrower and record owner and by adding cross references following sections (a) and (b), 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 by the documents required by Code, Real Property Article, §7-105.1 (f). 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.

Cross reference: For the required form and sequence of documents, see Code, Real Property Article, §7-105.1 (f)(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 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), 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) 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, §14-126 (c), has enacted a local law 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, 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 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.

(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 earliest time for advertising a sale from 20 to 30 days after a final loss mitigation affidavit is filed; to add the word "and" to subsection (c)(2); to amend subsection (d)(1) to require the Office of Administrative Hearings, if it has granted an extension, to notify the court of the new date by which foreclosure mediation shall be completed; to extend the number of days that the Office of Administrative Hearings is given to notify the court of such extension; and to require that the court be notified regarding any subsequent extension; 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 ~~the 20~~ 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) Request; Transmittal

(A) Filing of Request

The borrower may file a request for foreclosure mediation within the time allowed by Code, Real Property Article, §7-105.1 (h)(1). The request shall contain the caption of the case and the names and addresses of the parties and be accompanied by the foreclosure mediation filing fee required by Code, Real Property Article, §7-105.1 (h)(1)(ii) or 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 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 Foreclosure Mediation form prescribed by regulation adopted by the Commissioner of Financial Regulation, see COMAR 09.03.12.05.

(B) 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) of this Rule, regardless of the status of a request for waiver or reduction of the foreclosure mediation filing fee.

(C) Ruling on Request for Fee Waiver or Reduction

The court promptly shall rule upon a request for an order waiving or reducing the foreclosure mediation filing fee. The court may make its ruling ex parte and without a hearing. 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 shall be paid. The order shall direct the clerk to strike the request for foreclosure mediation if the sum is not paid 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) Motion to Strike Request for Foreclosure Mediation

No later than 15 days after service of a request for foreclosure 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 mediation and why foreclosure mediation is not appropriate.

(3) 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) 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 mediation pursuant to Code, Real Property Article, §7-105.1 (i)(2)(ii), it shall notify the court no later than ~~65~~ 67 days after the court transmitted the request for foreclosure mediation and specify the date by which mediation shall be completed. If the Office of Administrative Hearings extends the time for completing foreclosure 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 Mediation

Within the time allowed by Code, Real Property Article, §7-105.1 (j)(3), the Office of Administrative Hearings shall file with the court a report that states (A) whether the foreclosure 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 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 Mediation

(1) If Agreement Results from Foreclosure Mediation

If the foreclosure 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 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 Mediation Fails Due to the Fault of a Party

(A) If the foreclosure 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 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 to add to subsection (a)(2)(A)(iii)(c) language which is consistent with the amendment to Code, Real Property Article, §7-105.1 (i), and to delete language which is inconsistent with the amendment to Code, Real Property Article, §7-105.1 (i), 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 mediation is granted; or

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

(a) the date the foreclosure mediation was held;

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

(c) the expiration of 60 days after transmittal of the borrower's request for foreclosure mediation or, if the Office of Administrative Hearings extended the time to complete the foreclosure mediation, ~~90 days after the date of the transmittal~~, 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.