

Foreclosure Process Reform Bill – SB 216/HB 365*(amending Real Property Article § 7-105.1)*

**Signed into Law by Governor Martin O'Malley on April 3, 2008
Effective as to all Foreclosure Filings for Residential Real Property
from April 4, 2008**

The Foreclosure Process Reform Bill provides important protections for homeowners in the foreclosure process. It affords homeowners more time and notice before and after a foreclosure action is filed right up until the time of sale. It also gives homeowners rights in the process that they did not have before and more time to assert those rights should the plaintiff fail to comply with the law. Because of the emergency nature of this legislation, no foreclosure actions will be ripe for filing for at least 45 days from the law's effective date since lenders will not have had the opportunity nor the requirement to send the requisite 45-day notice prior to the effective date of this law.

Before a lender may file for foreclosure, the lender must:

- 1. Wait 90 days from homeowner's default before filing the foreclosure action.**
 - Default is defined by the mortgage instrument and, in most cases, it is the day after the payment was due.
 - For example, if a payment due by the 1st of the month, the homeowner is technically in default on the 2nd, as opposed to after any grace period allowed for late fees.

- 2. Send a uniform Notice of Intent to Foreclose to the homeowner by certified and first class mail 45 days before filing a foreclosure action.**
 - The Commissioner of Financial Regulation prescribes the uniform Notice of Intent to Foreclose that all lenders must use by regulation. The emergency regulation containing the Uniform Notice has been submitted for approval.
 - Until the regulation is approved, lenders may comply with the law by sending a 45-day Notice of Intent to Foreclose that contains information required by the statute, including:
 - i. The name and phone number of the secured party, the servicer, and an agent who has authority to modify the terms of the loan;
 - ii. The amount required to cure the default and reinstate the loan.
 - The lenders must also send a copy of the Notice to the Commissioner.

An order to docket or complaint to foreclose must now include:

- 1. Affidavit stating the date of the default and the nature of the default and the date and fact that the Notice of Intent to Foreclose was sent;**

- 2. Original or certified copy of the mortgage or deed of trust;**

3. **Statement of the debt remaining supported by affidavit;**
4. **Copy of the debt instrument and an affidavit of ownership;**
5. **Original or certified copy of the assignment of the mortgage if applicable;**
6. **The mortgage lender and originator's license number if applicable;**
7. **Affidavit that defendant is not in the military;**
8. **Copy of the uniform Notice of Intent to Foreclose; and**
9. **Uniform Notice to defendant that complies with statute**

After the foreclosure action has been filed, the lender must:

1. **Personally serve the owner of the property.**
2. **Alternate service allowed in the case of failed attempts at personal service:**
 - After at least two good faith attempts at personal service on separate days, the plaintiff may file an affidavit with the Court describing the attempts and effect service by mailing, both certified mail and 1st class mail AND posting on the property.

Before a foreclosure sale can occur, the lender must:

1. **Wait 45 days from the time the defendant was served.**
2. **Publish a Notice of Sale for three successive weeks in a newspaper of general circulation in the county where the action is pending.**
3. **Send the homeowner the notice previously required under § 7-105.2.**
4. **Accept from the homeowner payment of the funds due to cure the default up to one business day before the sale.**
 - The secured party or the agent must provide, upon request, the amount necessary to cure the default and reinstate the loan and instructions for delivering the payment

For more information or questions, please contact Vicki Schultz in the Office of the Secretary, Department of Labor, Licensing and Regulation at vschultz@dllr.state.md.us

THE MARYLAND COMMISSIONER OF FINANCIAL REGULATION

ADVISORY

**NEW FORECLOSURE RULES PURSUANT TO EMERGENCY LEGISLATION
SENATE BILL 216**

After the close of business on April 3, 2008, Governor Martin O'Malley signed into law emergency Senate Bill 216. This new law modifies the foreclosure process in Maryland, effective April 4, 2008. You should refer to the text of the law directly to determine the precise changes to the foreclosure process.

This Advisory addresses three features of SB 216:

- (i) The recordation provisions relating to the placement of Maryland mortgage lender and originator license numbers, or an affidavit in lieu thereof, on mortgages, deeds of trust, or other instruments securing residential real property;
- (ii) The requirements relating to the Notice of Intent to Foreclose; and
- (iii) The requirements relating to the inclusion of Maryland mortgage lender and originator license numbers on the order to docket or complaint commencing the foreclosure action.

**MARYLAND MORTGAGE LENDER AND ORIGINATOR LICENSE NUMBERS, OR AN
AFFIDAVIT IN LIEU THEREOF, ON INSTRUMENTS SECURING RESIDENTIAL PROPERTY**

SB 216 contains the following provision relating to the recordation of security instruments on residential property:

- "(a) In this section, "residential property" means real property improved by four or fewer single family dwelling units.
- (b) When recorded, a mortgage, deed of trust, or any other instrument securing a mortgage loan on residential real property shall contain:
 - (1)(i) The name and Maryland mortgage originator license number of the mortgage originator that originated the loan secured by the instrument; or
 - (ii) An affidavit by the person that originated the loan secured by the instrument that the individual who originated the loan is exempt from the licensing requirement under Title 11, Subtitle 6 of the Financial Institutions Article; and
 - (2)(i) The name and Maryland mortgage lender license number of the mortgage lender that made the loan secured by the instrument; or
 - (ii) An affidavit by the lender that made the mortgage loan secured by the instrument that the lender is exempt from the licensing requirement under Title 11, Subtitle 5 of the Financial Institutions Article.

- (c) The Commissioner of Financial Regulation shall adopt regulations to implement the provisions of this section, including:
- (1) Minimum requirements for the inclusion of licensing information when a mortgage, deed of trust, or other instrument securing a mortgage loan on residential real property is recorded; and
 - (2) Consequences, including penalties, for failure to include licensing information when a mortgage, deed of trust, or other instrument securing a mortgage loan on residential real property is recorded."

Md. Code Ann., Real Prop. ("RP") § 3-104.1.

The following important uncodified provisions of SB 216 relate to the foregoing:

Section 2 of SB 216 provides that RP § 3-104.1 "shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any mortgage, deed of trust, or other instrument recorded before the effective date" of the new law.

Section 4 of SB 216 provides that until the Commissioner adopts regulations under RP § 3-104.1(c) the failure to include the information required under RP § 3-104.1(b), when recording a mortgage, deed of trust, or any other instrument securing a mortgage loan, "may not be the basis for a clerk of the court to fail to record the instrument."

Based upon the foregoing, please be advised that the Commissioner is in the process of preparing the regulation required by RP § 3-104.1. Until the date that this new regulation becomes effective: (i) clerks of the courts may continue to record security instruments for residential property that do not contain the information required under § 3-104.1(b), and (ii) no penalties will be imposed on lenders for recording security instruments that do not contain this information.

NOTICE OF INTENT TO FORECLOSE

Pursuant to SB 216, an action to foreclose a mortgage or deed of trust on residential real property may not be filed until the later of: (i) 90 days after a default in a condition on which the mortgage or deed of trust provides that a sale may be made; or (ii) 45 days after the Notice of Intent to Foreclose required under the new law is sent out in conformity with the law to the mortgagor or grantor and the record owner, with a copy to the Commissioner.

A copy of each Notice of Intent to Foreclose must be sent to the Commissioner at the following address:

*The Commissioner of Financial Regulation
Foreclosure Unit
500 N. Calvert Street, 4th Floor
Baltimore, MD 21202*

The new law provides that the Notice of Intent to Foreclose shall:

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

RP § 7-105.1(c)(4)(i) and (ii).

The following important uncodified provision of SB 216 relates to the preceding:

Section 5 provides that until the Commissioner adopts regulations under RP § 7-105.1(c)(4)(i) and (ii)4 , "a notice of intent to foreclose shall be construed to be sufficient if the notice contains the information required under RP § 7-105.1(c)(4)(ii)1 through 3."

Based on the foregoing, please be advised that the Commissioner has submitted an emergency regulation setting forth the required form of Notice of Intent to Foreclose. Until the date that this emergency regulation becomes effective, secured parties wishing to send a Notice of Intent to Foreclose may use their own form that includes the information described in Section 5 of SB 216.

Because Maryland mortgage lender and originator license numbers do not currently appear on security instruments on residential property, secured parties wishing to prepare a Notice of Intent to Foreclose in connection with these security instruments should:

- (i) *For Mortgage Lender License Numbers, obtain the name of the lender from the mortgage or deed of trust and compare it against the data base of the Commissioner to determine whether the lender is licensed and, if so, obtain the license number. Maryland mortgage lender license numbers may be searched online at the Commissioner's website located at <http://dllr.state.md.us/finance>. You may also call the Office of the Commissioner at 888-784-0136 or 410-230-6097. If a lender is not on the Commissioner's database the requirement relating to the inclusion of the license number is not applicable to the completion of the Notice of Intent to Foreclose.*
- (ii) *For Mortgage Originator License Numbers, if the name of the individual mortgage originator is on the security instrument you must call the Office of the Commissioner at 888-784-0136 or 410-230-6097 to determine whether the originator is licensed and, if so, obtain the mortgage originator license number. If the name of the mortgage originator does not appear on the security instrument, or is not on the Commissioner's database, the requirement relating to the inclusion of the license number is not applicable to the completion of the Notice of Intent to Foreclose.*

**ORDER TO DOCKET OR COMPLAINT COMMENCING FORECLOSURE ACTION:
MARYLAND MORTGAGE LENDER AND ORIGINATOR LICENSE NUMBERS**

Pursuant to SB 216, an Order to Docket or a Complaint to Foreclose shall include, if applicable, the license number of the mortgage originator and the mortgage lender." RP § 7-105.1(d)(1)(i).

Because Maryland mortgage lender and originator license numbers do not currently appear on security instruments on residential property, secured parties wishing to file an Order to Docket or a Complaint to Foreclose in connection with a security instrument on residential property should:

- (i) *For Mortgage Lender License Numbers, obtain the name of the lender from the mortgage or deed of trust and compare it against the data base of the Commissioner to determine whether the lender is licensed and, if so, obtain the license number. Maryland mortgage lender license numbers may be searched online at the Commissioner's website located at <http://dllr.state.md.us/finance>. You may also call the Office of the Commissioner at 888-784-0136 or 410-230-6097. If a lender is not on the Commissioner's database the requirement relating to the inclusion of the license number is not applicable to the completion of the Order to Docket or a Complaint to Foreclose.*
- (ii) *For Mortgage Originator License Numbers, if the name of the individual mortgage originator is on the security instrument you must call the Office of the Commissioner at 888-784-0136 or 410-230-6097 to determine*

whether the originator is licensed and, if so, obtain the mortgage originator license number. If the name of the mortgage originator does not appear on the security instrument, or is not on the Commissioner's database, the requirement relating to the inclusion of the license number is not applicable to the completion of the Order to Docket or a Complaint to Foreclose.

(4/4/08)