

"Maryland Foreclosures: The 2009 Changes"

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In Spring 2008, Maryland's foreclosure laws were dramatically amended. (For a summary of the amendments, please see Martin Goldberg, Esquire's article, "Maryland Foreclosures: Reformed," in the June 2008 issue of *Commitment*.) The amendments were enacted as emergency legislation in reaction to a spike in foreclosure filings. With respect to foreclosures of mortgages or deeds of trust on "residential property," the amendments added months onto Maryland's previously streamlined quasi-judicial foreclosure process, required new written notice to mortgagors and record owners, and mandated personal service or certain substituted service of the order to docket upon mortgagors or grantors, among other things. See Md. Code Ann., Real Property § 7-105.1.

In 2009, there have been a number of further changes to Maryland's foreclosure laws. Lenders' counsel, borrowers' counsel, and title agents insuring transactions with a recent foreclosure in the chain of title must be aware of the 2009 changes.

The definition of "residential property" in § 7-105.1(a) has been tightened. "Residential property" was originally defined as "real property improved by four or fewer single family dwelling units." Effective June 1, 2009, "residential property" is now defined as "real property improved by four or fewer single family dwelling units that are designed principally and are intended for human habitation." The legislative history is unclear, but the additional language may have been intended to remove mixed-use real property from the original definition.

When § 7-105.1(h)(1) was enacted in 2008, it created a right to cure a default under a mortgage or deed of trust and to reinstate the related debt instrument (*i.e.*, decelerate the debt) "at any time up to 1 business day before the foreclosure sale occurs." As originally enacted, that subsection applied to mortgagors and grantors generally; it was not limited to mortgagors and grantors of "residential property," as defined in § 7-105.1(a). Effective June 1, 2009, the statutorily-created right to cure has been limited to mortgagors and grantors of "residential property" only.

Entirely new for 2009 is § 7-105.9 (enacted May 19, 2009). This Code section requires "the person authorized to make a sale in an action to foreclose a mortgage or deed of trust on residential property" (usually, the substitute trustee under a deed of

trust being foreclosed) to send written notice to “all occupants’ at the address of the residential property” of (1) the filing of an order to docket when the order to docket is served on the mortgagor or grantor, and (2) an impending foreclosure sale not earlier than 30 days and not later than 10 days before the sale. It also requires “the person who purchases residential property in a foreclosure sale” to send written notice to “all occupants’ at the address of the residential property” of an impending eviction after entry of a judgment awarding possession and before any attempt to execute a writ of possession. The Code section prescribes the exact form and substance of the written notices, as well as the form and substance of written warnings that must be printed on the “address side” of the envelopes in which the written notices are mailed. (A telephone number and web address for the Maryland Department of Housing and Community Development are required to be in the written notices, but are not supplied in the Code section itself. The telephone number and web address are 877-775-0357 and www.mdhope.org.)

Foreclosing lenders and foreclosure sale purchasers also should be mindful of the new 90-day written notice requirement, and other statutorily-created rights for certain tenants following certain foreclosure sales, under federal law. See Protecting Tenants at Foreclosure Act of 2009, Public Law 111-22, effective May 20, 2009.

Effective May 1, 2009, the Maryland Rules governing foreclosures of lien instruments and statutory liens were replaced. The replacement Rules harmonized the Rules with the 2008 emergency legislation, among other things. The replacement Rules were amended on June 16, 2009 to harmonize them with the 2009 amendments to the Maryland Code governing foreclosure sales.

Of particular note to title agents insuring transactions with a recent foreclosure in the chain of title is Maryland Rule 14-209(d), which requires the plaintiff in a foreclosure action to send written notice of the filing of the order to docket to the county or municipal corporation where the “residential property” at issue is located, but only if the county or municipal corporation has enacted a local law requiring such notice. The written notice requirement of Maryland Rule 14-209(d) is different from and in addition to the “written notice requirement of Maryland Rule 14-210(c), which requires the plaintiff in a foreclosure action to send written notice, not less than fifteen (15) days prior to the foreclosure sale, of the time, place, and terms of the foreclosure sale to the county or municipal corporation where the property to be sold is located.

With respect to the various references to “residential property” in the Maryland Rules governing foreclosure sales, including Maryland Rule 14-209(d), the definition of “residential property” in the Maryland Rules almost exactly tracks the definition in § 7-105.1(a), with some additional clarifying language. Pursuant to Maryland Rule 14-202(i), “residential property” is defined as “real property with four or fewer single family dwelling units that are designed principally and are intended for human habitation.” Maryland Rule 14-202(i) further provides: “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."

At least one local jurisdiction has seized upon the opportunity to require further written notice of a foreclosure filing. Effective August 21, 2009, the Vacant Residential Property Registration and Maintenance Bill, CB-11-2009, became law in Prince George's County, Maryland. Pursuant to that local law, within five (5) calendar days of filing an order to docket in the Prince George's County Circuit Court, the plaintiff in a foreclosure action affecting "residential property" must send written notice of the filing and certain other information to the Director of the Department of Environmental Resources. (Forms and information are available on the Department of Environmental Resources' website, <<http://www.co.pg.md.us/Government/AgencyIndex/DER/>>.) Failure to comply results in a civil penalty of \$50.00 per day for each calendar day the written notice is not filed with the Director of the Department of Environmental Resources.

Incredibly, the Vacant Residential Property Registration and Maintenance Bill includes a definition of "residential property" different from the definitions in § 7-105.1(a) and Maryland Rule 14-202(i) (although, the three (3) definitions appear to target the same type of property). The Vacant Residential Property Registration and Maintenance Bill defines "residential property" as "real property improved by four or fewer single family dwelling units," i.e., the definition of "residential property" in the 2008 emergency legislation.

Lenders' counsel, borrowers' counsel, and title agents should be mindful of these changes and, perhaps, future changes, to Maryland's increasingly complex foreclosure laws. If the recent past is any indication, there is more to come.

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