

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 512 (Senator Ellis, *et al.*)
Finance and Judicial Proceedings

Government Shutdowns - Employees - Protections

This emergency bill provides specified protections for employees of the federal or State government or a local government in the State furloughed from work because of a government shutdown.

Fiscal Summary

State Effect: The bill is not anticipated to materially impact State finances or operations. The Judiciary can likely update its website and any required forms with existing resources.

Local Effect: The bill is not anticipated to materially impact local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Public Utilities

“Eligible residential customer” means a residential electric or gas customer who is (1) employed by the federal or State government or a local government in the State and (2) furloughed from work because of a government shutdown, regardless of whether the employee is required to report to work during the furlough. A public service company may not terminate electric or gas service to an eligible residential customer for nonpayment on

a day that the furlough is in effect or for seven days after the furlough has ended. The Public Service Commission may adopt regulations to implement the bill.

Real Property

In an action for the foreclosure of a mortgage or deed of trust on an owner-occupied residential property, or an action for the repossession of residential property, notwithstanding *any other law*, the court must stay the proceedings if the defendant in the foreclosure action, or the tenant or an occupant of the property in an action for the repossession of residential property, presents satisfactory evidence that the individual is (1) an employee of the federal or State government or an employee of a local government in the State and (2) currently furloughed from work because of a government shutdown, regardless of whether the employee is required to report to work during the furlough. Additionally, in an action for the repossession of residential property, the tenant or an occupant of the property must present evidence that the individual uses the property as the individual's primary residence.

A stay under the bill must be granted for a time that the court considers reasonable, but a stay may not be granted for a period that ends more than 30 days after the end of the government shutdown without a showing of sufficient cause by a party to the action.

Current Law:

Public Utilities

Statute does not restrict the termination of service based on a resident's employer. Generally, "termination of service" means the termination, reduction, or refusal to reinstate gas or electric service, or any other action that has the effect of reducing or denying gas or electric service because of nonpayment. Statute contains multiple provisions related to the termination of electric or gas service to a residential customer. Generally, restrictions or procedures are outlined for the termination of electric or gas service related to (1) extreme temperatures (particularly with respect to low-income residential customers); (2) a multifamily dwelling; and (3) situations where the billing address and service address are different.

Real Property

Statute does not specifically authorize a stay in an action for the foreclosure of a mortgage or deed of trust on an owner-occupied residential property, or an action for the repossession of residential property, based on an individual's employer. Generally, "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.

Failure to Pay Rent: Whenever the tenant fails to pay the rent when due, the landlord may file a complaint for repossession for failure to pay rent. Generally, the landlord must file the written complaint in the District Court of the county where the property is located. Among other specified items, that complaint must include (1) the amount of rent and any late fees due and unpaid, *less the amount* of any utility bills, fees, or security deposits paid by a tenant under specified provisions of the Public Utilities Article and (2) a request to repossess the premises and, if desired, a judgment for the amount of rent due, costs, and any late fees, *less the amount* of any utility bills, fees, or security deposits paid by a tenant under specified provisions of the Public Utilities Article.

Foreclosure: For more information on the foreclosure process, including notice, procedural, and mediation requirements, see the **Appendix – Foreclosure Process**.

Background: From December 22, 2018, until January 25, 2019, portions of the federal government were closed due to a lapse in funding. Many federal employees did not receive pay checks during that time, and many were required to continue to work without pay.

The Judiciary (Administrative Office of the Courts) advises that, in fiscal 2018, there were approximately 16,469 foreclosure cases filed in the circuit courts and 653,739 landlord/tenant failure to pay rent cases filed in the District Court.

Small Business Effect: The bill may prohibit (1) a mortgage company that qualifies as small businesses from proceeding with an action for the foreclosure of a mortgage or deed of trust on an owner-occupied residential property or (2) a landlord that qualifies as small businesses from proceeding with an action to repossess residential property for failure to pay rent, resulting in lost income. The bill's authorization to stay a proceeding may delay the final disposition of a case, resulting in lost revenue.

Additional Information

Prior Introductions: None.

Cross File: HB 1318 (Delegate Glenn) - Rules and Executive Nominations.

Information Source(s): Baltimore City; Montgomery and Prince George's counties; Maryland Municipal League; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; Department of Labor, Licensing, and Regulation; Office of

People's Counsel; Public Service Commission; *New York Times*; RealtyTrac; Department of Legislative Services

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Appendix – Foreclosure Process

Beginning with the financial downturn in 2007, Maryland saw a significant increase in the number of foreclosure actions. Foreclosure activity likely peaked in 2010, when the number of foreclosure events exceeded 50,000. Due to a multitude of factors, including legislation addressing the State’s foreclosure mediation process, consumer outreach efforts, and enhanced mortgage industry regulation and enforcement surrounding many banks’ and mortgage companies’ foreclosure practices, the number of foreclosure events decreased significantly to 16,049 in 2011. However, these changes also resulted in the general lengthening of the foreclosure process, leaving many housing units in limbo for years at a time.

Despite improvements, the number of foreclosure events in Maryland has remained stubbornly high, even with national trends downward. According to the real estate information company RealtyTrac, as of November 2018, Maryland ranked first in overall foreclosure rate among states and the District of Columbia, with 1 in every 989 housing units facing some form of foreclosure action, compared to the national average of 1 in every 2,486 housing units. Other states with high foreclosure rates include New Jersey (1 in every 996 housing units) and Delaware (1 in every 1,324 housing units).

Foreclosure Process in Maryland

Generally, to foreclose on residential property in Maryland, the secured party must first send a notice of intent to foreclose (NOI) to the mortgagor or grantor and the record owner, then file and serve an order to docket (OTD) or a complaint to foreclose. A copy of the NOI must be sent to the Commissioner of Financial Regulation, and if the property is owner-occupied, the NOI must be accompanied by a loss mitigation application. Whether the filing of an OTD, or a complaint to foreclose, is appropriate depends on the lien instrument held by the secured party. An action to foreclose a mortgage or deed of trust may not be filed until the later of (1) 90 days (or 120 days if the loan is “federally related”) after a default in a condition on which the mortgage or deed of trust specifies that a sale may be made or (2) 45 days after an NOI is sent. An OTD or complaint to foreclose must be filed with the circuit court, and a copy must be served on the mortgagor or grantor. An OTD or a complaint to foreclose must include, if applicable, the license number of both the mortgage originator and the mortgage lender. The OTD or complaint to foreclose must also contain an affidavit stating the date and nature of the default and, if applicable, that the NOI was sent and that the contents of the NOI were accurate at the time it was sent.

A secured party may petition the circuit court for leave to immediately commence an action to foreclose the mortgage or deed of trust if:

- the loan secured by the mortgage or deed of trust was obtained by fraud or deception;
- no payments have ever been made on the loan secured by the mortgage or deed of trust;
- the property subject to the mortgage or deed of trust has been destroyed;
- the default occurred after the stay has been lifted in a bankruptcy proceeding; or
- the property is found by a court to be vacant and abandoned.

The court may rule on the petition with or without a hearing. If the petition is granted, the action may be filed at any time after a default in a condition on which the mortgage or deed of trust provides that a sale may be made, and the secured party is not required to send a written NOI.

Prerequisites for Foreclosure Sales

Generally, if the residential property is *not* owner-occupied, a foreclosure sale may not occur until at least 45 days after specified notice is given. If the residential property is owner-occupied, and foreclosure mediation is not held, a foreclosure sale may not occur until the later of (1) at least 45 days after providing specified notice that includes a final loss mitigation affidavit or (2) at least 30 days after a final loss mitigation affidavit is mailed. Finally, if the residential property is owner-occupied residential property and postfile mediation is requested, a foreclosure sale may not occur until at least 15 days after the date the postfile mediation is held or, if no postfile mediation is held, the date the Office of Administrative Hearings (OAH) files its report with the court.

A foreclosure mediation may be extended for good cause by OAH for up to 30 days, unless all parties agree to a longer extension. Additionally, both parties have an obligation to provide instructions regarding documents and information to each other and the mediator. Any motion to stay a foreclosure sale must come within 15 days of the date the postfile mediation is held. Notice of the sale of a foreclosed property must be sent 10 days before the date of sale.

Generally, notice of the time, place, and terms of a foreclosure sale must be published in a newspaper of general circulation in the county where the action is pending at least once a week for three successive weeks. The first publication of the notice must be more than 15 days before the sale, and the last publication must be within one week of the sale.

Curing Defaults

The mortgagor or grantor of residential property has the right to cure a default and reinstate the loan at any time up to one business day before a foreclosure sale by paying all past-due

payments, penalties, and fees. Upon request, and within a reasonable time, the secured party or the secured party's authorized agent must notify the mortgagor or grantor or his or her attorney of the amount necessary to cure the default and reinstate the loan as well as provide instructions for delivering the payment.

Expedited Foreclosure Process for Vacant and Abandoned Property

In an effort to reduce the number of vacant and abandoned residential properties lingering in foreclosure, Maryland passed legislation during the 2017 session designed to expedite the foreclosure process. Chapter 617 of 2017 authorized a secured party to petition the circuit court for leave to immediately begin an action to foreclose a mortgage or deed of trust on a vacant and abandoned residential property, and required the court to promptly rule on the petition. A residential property is vacant and abandoned if (1) the court finds that the mortgage or deed of trust on the property has been in default for 120 days or more; (2) no mortgagor or grantor has filed with the court an answer or objection that would prevent the court from entering a final judgment and a decree of foreclosure; (3) no mortgagor or grantor has filed with the court a written statement that the property is not vacant and abandoned; and (4) at least three of several criteria listed in statute, such as the accumulation of debris or the lack of connected utilities, are present.

Generally, if the residential property is found to be vacant and abandoned and the court grants the petition for leave to immediately begin an action to foreclose a mortgage or deed of trust, specified mediation and other preliminary foreclosure process requirements do not apply.