

The new law applies in most, but not all, respects only to "owner-occupied residential property," a term that is defined on page 5, lines 23 through 28 of the enrolled bill. The broad intent of the bill, which is consistent with the Federal HAMP (Home Affordable Modification Program), is to require the secured party to provide a "loss mitigation analysis" (a term defined on page 5, lines 3 through 10 of the bill) to a homeowner before filing a foreclosure action and, in any event, before any sale can occur. To that end, the bill requires:

(1) With the 45-day notice of intent to foreclose, the lender must include a loss mitigation application, instructions for completing the application, a description of the eligibility requirements for any loss mitigation program operated by the secured party, and a pre-addressed envelope for mailing the application. If the mortgage is a Fannie Mae, Freddie Mac, or FHA mortgage or if the servicer has enrolled in the Federal program, as many, but not all, have apparently done, it must have such a program.

(2) If a loss mitigation analysis has been completed, the order to docket or complaint must be accompanied by a "final loss mitigation affidavit" (a term defined on page 4, lines 14 through 24 of the bill) in the form prescribed by regulation of the Commissioner of Financial Regulation (CFR). If a loss mitigation analysis has not been completed, the order to docket or complaint must contain a "preliminary loss mitigation affidavit" (a term defined on pages 5-6 of the bill), also in the form prescribed by regulation of the CFR.

(3) Nothing of consequence can happen with the case until a final loss mitigation affidavit is filed, unless, for one of the four reasons stated in Code, Real Property Article, §7-105.1 (b)(1) (page 6 of the bill), the court permits to action to proceed.

(4) Once a final loss mitigation affidavit is filed (either with the initial order to docket or complaint or later), the homeowner has 15 days to file a request for foreclosure mediation before the Office of Administrative Hearings (OAH). Such a request must be accompanied by a \$50 fee unless the fee is reduced or waived in conformance with "Maryland Legal Service Guidelines." The secured party has 15 days to file a motion to strike the request, but, notwithstanding that right, the court must transmit the request to OAH within five days after it is received, subject to instructing OAH to cancel any mediation if the motion to strike is granted.

(5) OAH has 60 days to conduct a mediation. It can extend that period for one additional period of 30 days. Within five days after any mediation is held or at the end of the 60 or 90-day period, OAH must file a report with the court of what occurred. The report may advise that:

(a) No mediation occurred because the secured party failed to appear or provide documents required by CFR regulation and the OAH notice;

(b) No mediation occurred because the homeowner failed to appear or provide documents required by CFR regulation and the OAH notice;

(c) Mediation occurred but no loss mitigation resulted (loss mitigation can include loan modification, short sale, deed in lieu of foreclosure, or other accommodation that avoids foreclosure); or

(d) Mediation occurred and resulted in a loss mitigation agreement.

(6) In the event of (b) or (c), the lender may proceed to schedule a sale. If (a) occurred the court, after opportunity for a hearing, may dismiss the action. The statute is silent with respect to what occurs if the parties reach an agreement. Proposed Rule 14-209.1 (f) fills that gap.

(7) If the lender schedules a sale, the homeowner can then move to stay it for any of the reasons already in the Rules, plus the new one that the lender failed to provide loss mitigation in accordance with the statute.

With that background and the supplementary explanations provided in the Reporter's Notes to the various Rules, the proposed Rules changes are as follows.

Rule 14-102: Judgment Awarding Possession

Both Federal and Maryland law provide some protection for bona fide tenants in possession of property that has been sold at a foreclosure sale, but the purchaser may not know the status of persons in actual possession of the property. Language is proposed in subsection (a)(3) and section (b) to require the purchaser to conduct a reasonable inquiry into the matter. The other changes are to conform statutory references to Chapter 584, Laws of 2010 (SB 654). See Appendix 2.

Rule 14-202: Definitions

Six new definitions have been added, all taken from HB 472: "final loss mitigation affidavit," "foreclosure mediation," "loss mitigation analysis," "loss mitigation program," "owner-occupied residential property," and "preliminary loss mitigation affidavit." The Committee recommends the incorporation of these definitions in the Rules because the terms appear throughout the Rules and it would be useful and efficient for judicial personnel and practitioners to have them immediately available when attempting to navigate through the processing of these cases.

Two changes are particularly noted. Although not specified in the statutory definitions, other provisions of the statute make clear that both the final and preliminary loss mitigation affidavits must be in the form prescribed by regulation of the CFR, and, for clarity, the Committee recommends adding that requirement to the definition. No substantive change from the statute is intended. A second issue arises with respect to the final loss mitigation affidavit. Although a *loss mitigation analysis* is required only with respect to owner-occupied residential property, the Committee has determined that an efficient implementation of the statutory scheme requires a *final loss mitigation affidavit* to be filed in all foreclosures against residential property, whether or not the property is owner-occupied. The proposed Committee Note following subsection (d) (3) explains that modification to the statutory definition.

Rule 14-205: Conditions Precedent to the Filing of an Action

The language added to section (b) is to clarify that an action to foreclose a lien on residential property may not be filed unless not only the notice of intent required under Code, Real Property Article, §7-105.1 (c) was given but all items required to accompany that notice have also been sent.

Rule 14-206: Petition for Immediate Foreclosure Against Residential Property

A Committee Note is proposed to make clear the Committee's view that, if any of the four circumstances set forth in Code, Real Property Article, §7-105.1 (b) (2) and Rule 14-206 (a) of the Rule exist, the loss mitigation analysis and affidavit requirements and the right to demand foreclosure mediation before OAH do not apply.

Rule 14-207: Pleadings; Court Screening

A style addition is proposed in the stem of section (b). Language is added to subsection (b) (6) to require the order to docket or complaint to state, in boldface type whether the

property is owner-occupied and a final loss mitigation affidavit is attached. That is intended to help with the screening process. The proposed Committee Note conforms with the Committee Note added to Rule 14-202. See above.

Rule 14-208: Subsequent Proceedings if No Power of Sale or Assent to Decree

This Rule deals with foreclosures where there is no power of sale or assent to decree. The proposed amendments are stylistic ones.

Rule 14-209.1: Owner-Occupied Residential Property

This Rule is new and is intended to collect in one Rule most of the new statutory requirements that are applicable only to foreclosures against owner-occupied residential property - the requirement of a final loss mitigation affidavit, the ability of the homeowner to request foreclosure mediation, and the mediation process. The major thrust of the Rule is in section (b), which precludes a sale from being advertised until all statutory prerequisites have been satisfied. Absent such a provision, sales could be advertised, only to be stayed because of a dispute over a final loss mitigation affidavit, or because of a request for mediation. The Committee's intent is to avoid the unnecessary running of costs.

Three other provisions are worthy of special mention. The statute requires the clerk to transmit a request for mediation to OAH within five days after receipt. The Committee was advised that, given the expected number of such requests and the existing burden on some of the clerk's offices, it would be more efficient if the clerks did not have to handle any more paper than necessary. The Administrative Office of the Courts, through the Judicial Information Service, has worked out an agreement with OAH whereby (1) when the clerk docket the receipt of the request, the relevant information will automatically be transmitted electronically to a restricted web site maintained by JIS to which only OAH will have access, and (2) OAH can then obtain electronic notice of all requests filed the previous day. So long as the clerks make the appropriate docket entry and simply place the paper request in the file, they will not need to transmit anything directly to OAH. Section (e) permits that procedure.

The second major provision deals with what occurs following receipt of the OAH report. If a mediation is held but does not result in an agreement, the secured party may advertise

the sale, subject to a motion to stay under Rule 14-211. If the parties do reach an agreement in mediation, the court must take such reasonable action as it finds reasonably necessary to implement the agreement, provided that, (1) if the agreement calls for a trial period which would, in effect, stay further proceedings, the court, in defense of its time standards, may deny or limit such a stay, and (2) if the agreement results in a dismissal of the action, the court must reserve jurisdiction to re-open the action for good cause. That latter provision is to avoid requiring the secured party to file a new action (with a new \$450 fee) and go through all the notices again if the agreement does not ultimately resolve the default.

Finally, subsection (f) (2) takes account of the circumstance where no mediation is held because either the secured party or the homeowner fails to appear or fails to produce the documents required by CFR regulation and the OAH notice. If the fault is that of the secured party, the court may dismiss the action; if the fault is that of the homeowner, the secured party may advertise the sale.

Rule 14-211: Stay of the Sale; Dismissal of Action

The major proposed change to this Rule is in subsection (a) (2), providing a different time deadline for filing a motion to stay a sale with respect to foreclosures on owner-occupied residential property. The change is required because of the ability of a homeowner to move to stay a sale following the failure of foreclosure mediation, which is far later than the 15 days from service allowed under the current Rule. A new paragraph (A) is proposed to deal with that situation. A new paragraph (B) will continue the 15-days-from-service Rule for other property. Committee Notes are proposed after subsections (a) (3), (b) (1) (C), and section (e) to make clear that the failure to grant loss mitigation that should have been granted may constitute a defense to the action.

Rule 14-212: Alternative Dispute Resolution

A new applicability section is proposed to make clear that ADR under the Title 17 Rules is not available in cases eligible for foreclosure mediation under Code, Real Property Article, §7-105.1.

Rule 14-214: Sale

A cross reference concerning the timing of the sale of residential property is added.

For the further guidance of the Court and the public, following proposed new Rule 14-209.1 and each proposed amendment

to an existing Rule is a Reporter's Note describing in further detail the reasons for the proposal and any changes that would be effected in current law or practice. *We caution that the Reporter's Notes are not part of the Rules, have not been debated or approved by the Committee, and are not to be regarded as any kind of official comment or interpretation.* They are included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully submitted,

Alan M. Wilner
Chair

Linda M. Schuett
Vice Chair

AMW/LMS:cdc
cc: Bessie M. Decker, Clerk

Chapter 100. General Provisions

Rule 14-101. LOCATION OF PUBLIC SALE OF INTEREST IN REAL PROPERTY

Unless the court orders otherwise, a public sale of an interest in real property conducted pursuant to the Rules in this Title shall (a) take place in the county in which the property is located and (b) if the property is located in more than one county, take place in the county in which the action is pending. The sale shall be conducted immediately outside the courthouse entrance, on the property being sold, or at any other place ordered by the court.

Cross reference: See Rules 14-210 and 14-303 (b) regarding notice of the place of sale.

Source: This Rule is derived from the 2008 version of former Rules 14-101 and 14-207 (a).

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

AMEND Rule 14-102 to require a reasonable inquiry into the occupancy status of residential property sold at a foreclosure sale and to add statutory references, as follows:

Rule 14-102. JUDGMENT AWARDING POSSESSION

(a) Motion

(1) If the purchaser of an interest in real property at a sale conducted pursuant to the Rules in this Title is entitled to possession and the person in actual possession fails or refuses to deliver possession, the purchaser or a successor in interest who claims the right of immediate possession may file a motion for judgment awarding possession of the property.

(2) The motion shall state the legal and factual basis for the movant's claim of entitlement to possession.

(3) If the movant's right to possession arises from a foreclosure sale of a dwelling or residential property, the motion shall include averments, based on a reasonable inquiry into the occupancy status of the property and made to the best of the movant's knowledge, information, and belief, establishing either that the person in actual possession is not a bona fide tenant having rights under the Federal Protecting Tenants at Foreclosure Act of 2009 (P.L. 111-22) or Code, Real Property Article, §7-105.6 or, if the person in possession is such a bona

bona fide tenant, that the notice required under these laws has been given and that the tenant has no further right to possession. If a notice pursuant to the Federal Act or Code Real Property Article, §7-105.6 is required, the movant shall state the date the notice was given and attach a copy of the notice as an exhibit to the motion.

Committee note: Unless the purchaser is a foreclosing lender or there is waste or other circumstance that requires prompt remediation, the purchaser ordinarily is not entitled to possession until the sale has been ratified and the purchaser has paid the full purchase price and received a deed to the property. See *Legacy Funding v. Cohn*, 396 Md. 511 (2007) and *Empire v. Hardy*, 386 Md. 628 (2005).

The Federal Protecting Tenants at Foreclosure Act of 2009 (P.L. 111-22) requires that a purchaser at a foreclosure sale of a dwelling or residential property give a 90-day notice to a "bona fide tenant" before any eviction and precludes the eviction if the tenant has a "bona fide lease or tenancy," unless the new owner of the property will occupy the property as a primary residence.

(b) Affidavit and Notice

The motion shall be accompanied by:

(1) an affidavit that states:

(A) the name of the person in actual possession, if known;

(B) the actions taken to conduct a reasonable inquiry into the occupancy status of the property;

~~(B)~~ (C) whether the person in actual possession was a party to the action that resulted in the sale or to the instrument that authorized the sale;

~~(C)~~ (D) if the purchaser paid the full purchase price and received a deed to the property, the date the payment was made and the deed was received; and

~~(D)~~ (E) if the purchaser has not paid the full purchase price or has not received a deed to the property, the factual basis for the purchaser's claim of entitlement to possession; and

(2) if the person in actual possession was not a party to the action or instrument, a notice advising the person that any response to the motion must be filed within 30 days after being served or within any applicable longer time prescribed by Rule 2-321 (b) for answering a complaint. A copy of Rule 2-321 (b) shall be attached to the notice.

(c) No Show Cause Order, Summons, or Other Process

The court shall not issue a show cause order, summons, or other process by reason of the filing of a motion pursuant to this Rule.

(d) Service and Response

(1) On Whom

The motion and all accompanying documents shall be served on the person in actual possession and on any other person affected by the motion.

(2) Party to Action or Instrument

(A) If the person to be served was a party to the action that resulted in the sale or to the instrument that authorized the sale, the motion shall be served in accordance with Rule 1-321.

(B) Any response shall be filed within the time set forth in Rule 2-311.

(3) Not a Party to Action or Instrument

(A) If the person to be served was not a party to the action that resulted in the sale or a party to the instrument that authorized the sale, the motion shall be served:

(i) by personal delivery to the person or to a resident of suitable age and discretion at the dwelling house or usual place of abode of the person, or

(ii) if on at least two different days a good faith effort was made to serve the person under subsection (d)(3)(A)(i) of this Rule but the service was not successful, by (a) mailing a copy of the motion by certified and first-class mail to the person at the address of the property and (b) posting in a conspicuous place on the property a copy of the motion, with the date of posting conspicuously written on the copy.

(B) Any response shall be filed within the time prescribed by sections (a) and (b) of Rule 2-321 for answering a complaint. If the person asserts that the motion should be denied because the person is a bona fide tenant having a right of possession under the Federal Protecting Tenants at Foreclosure Act of 2009 (P.L. 111-22) or Code, Real Property Article, §7-105.6, the response shall (i) state the legal and factual basis for the assertion and (ii) be accompanied by a copy of any bona fide lease or documents establishing the existence of such a lease or state why the lease or documents are not attached.

(4) Judgment of Possession

If a timely response to the motion is not filed and the court finds that the motion complies with the requirements of

sections (a) and (b) of this Rule, the court may enter a 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), 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.

REPORTER'S NOTE

References to Code, Real Property Article, §7-105.6 are proposed to be added to Rule 14-102 in three places to conform the Rule to Chapter 587, Laws of 2010 (SB 654). Additionally, language is added to subsection (a)(3) and section (b) to require that the purchaser of residential property at a foreclosure sale make a reasonable inquiry into the occupancy status of the property to facilitate implementation of the protections to which bona fide tenants in possession of the property are entitled under federal and State law.

Chapter 200. Foreclosure of Lien Instruments

Rule 14-201. APPLICABILITY; OTHER REMEDIES

(a) Applicability

The Rules in this Chapter apply to foreclosures under lien instruments and statutory liens.

(b) Not Exclusive Remedy; Exception

The foreclosure procedure set forth in the Rules in this Chapter does not preclude other remedies available by law, except that the procedure is the sole remedy for the repossession of property sold under a land installment contract executed pursuant to Code, Real Property Article, Title 10, Subtitle 1 or its statutory predecessor.

Source: This Rule is derived from the 2008 version of former Rule 14-201 (a).

Section (a) is derived from former Rules W70 b and W79 c.

Section (b) is in part derived from former Rule W70 a and in part new.

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-202 to add definitions of "Final Loss Mitigation Affidavit," "Foreclosure Mediation," "Loss Mitigation Analysis," "Loss Mitigation Program," "Owner-Occupied Residential Property," and "Preliminary Loss Mitigation Affidavit," 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) Debt

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

(d) 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) Foreclosure Mediation

"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) require that the foreclosure mediation be conducted by the Office of Administrative Hearings.

~~(d)~~ (f) Lien

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

~~(e)~~ (g) 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) 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) 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) 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.

~~(f)~~ (k) 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) 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.

~~(g)~~ (m) Property

"Property" means real and personal property of any kind

located in this State, including a condominium unit and a time share unit.

~~(h)~~ (n) 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.

~~(i)~~ (o) 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).

~~(j)~~ (p) Sale

"Sale" means a foreclosure sale.

~~(k)~~ (q) 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).

~~(1)~~ (r) 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.

REPORTER'S NOTE

Proposed to be added to Rule 14-202 are six definitions derived from definitions added to Code, Real Property Article, §7-105.1 by Chapter 485, Laws of 2010 (HB 472).

The definitions of "foreclosure mediation," "loss mitigation analysis," "loss mitigation program," and "owner-occupied residential property" are taken from the statute, either verbatim or with minor stylistic changes.

A Committee note after the definition of "foreclosure mediation" distinguishes that process from the alternative dispute resolution processes to which the Rules in Title 17 apply.

Clarifying language requiring an affidavit to be "substantially in the form prescribed by regulation adopted by the Commissioner of Financial Regulation" is added to the definitions of "final loss mitigation affidavit" and "preliminary loss mitigation affidavit." Committee notes following those definitions refer to the forms of affidavits set forth in the uncodified portion of the new statute, which are to be used prior to promulgation of the regulations.

In section (d) of the Rule, the term "owner-occupied" is deleted from the statutory definition of "final loss mitigation affidavit." This deletion, together with new subsection (b)(7) in Rule 14-207, requires that a final loss mitigation affidavit be filed in all actions for foreclosure against residential property, regardless of whether the property is owner-occupied. If the secured party is able to determine that the property is not owner-occupied or that, for any other reason, no loss mitigation analysis is required, the secured party completes the appropriate section of the final loss mitigation affidavit form and proceeds with the foreclosure action. The borrower will receive a copy of the affidavit, as well as other documents that are required by Code, Real Property Article, §7-105.1 (c) and (d). This allows any factual dispute as to owner-occupancy to be raised and resolved early in the proceedings.

Rule 14-203. VENUE AND ATTACHMENT OF JURISDICTION

(a) Venue

An action to foreclose a lien shall be filed in the county in which all or any part of the property subject to the lien is located.

(b) Attachment of Jurisdiction

The court's jurisdiction over the property subject to the lien attaches when an action to foreclose is filed.

Source: This Rule is derived from the 2008 version of former Rule 14-203 (b) and (c).

Rule 14-204. INSTITUTION OF ACTION

(a) Who May File

(1) Under Power of Sale

Subject to compliance with subsection (a) (3) of this Rule, any individual authorized to exercise a power of sale may institute an action to foreclose the lien.

(2) Under Assent to Decree

A secured party may file an action to foreclose the lien under an assent to a decree, except that an action to foreclose a deed of trust shall be instituted by the beneficiary of the deed of trust, any trustee appointed in the deed, or any successor trustee.

(3) Fractional Owners of Debt

Except when the lien instrument is a deed of trust, a power of sale may not be exercised, and the court may not enter an order for a sale under an assent to a decree, unless the power is exercised or application for an order is made or consented to by the holders of 25% or more of the entire debt due under the lien instrument.

(b) Priority of Actions

If more than one party is authorized under these Rules to file an action to foreclose a lien, the first such party to file an action acquires the exclusive right to foreclose.

Source: This Rule is derived as follows:

Subsection (a) (1) is derived from the 2008 version of former Rule 14-202 (a) (1).

Subsection (a) (2) is derived from the 2008 version of former Rule 14-202 (a) (2).

Subsection (a) (3) is derived from the 2008 version of former Rule 14-202 (b) (1) and (c).

Section (b) is derived from the 2008 version of former Rule 14-202 (b) (2).

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-205 to incorporate by reference all items that are required to accompany a notice of intent to foreclose, as follows:

Rule 14-205. CONDITIONS PRECEDENT TO THE FILING OF AN ACTION

(a) Generally

An action to foreclose may not be filed unless (1) the instrument creating or giving notice of the existence of the lien has been filed for record, and (2) there is a default that lawfully allows a sale.

Cross reference: Code, Real Property Article, Title 14, Subtitle 2 (Maryland Contract Lien Act).

(b) Foreclosure of Liens on Residential Property

Unless otherwise ordered by the court pursuant to Rule 14-206, an action to foreclose a lien on residential property may not be filed until the later of (1) 90 days after a default for which the lien instrument lawfully allows a sale, or (2) 45 days after the notice of intent to foreclose required by Code, Real Property Article, §7-105.1 (c), together with all items required by that section to accompany the notice, has been sent in the manner required by that section.

Cross reference: For the form of the notice and any other information that the Commissioner of Financial Regulation requires, see COMAR 09.03.12.01 et seq.

(c) Land Installment Contract

(1) Notice

An action to foreclose a land installment contract on property other than residential property may not be filed until at least 30 days after the secured party has served written notice on the borrower, the record owner of the property, and, if different, the person in possession at the address of the property. The notice shall describe the default with particularity and state that foreclosure proceedings will be filed on or after a designated day, not less than 30 days after service of the notice, unless the default is cured prior to that day.

(2) Method of Service

The secured party shall serve the notice required by subsection (1) of this section by (A) certified and first-class mail to the last known address of the person or (B) personal delivery to the person or to a resident of suitable age and discretion at the dwelling house or usual place of abode of the person.

Cross reference: For the definition of "land installment contract," see Code, Real Property Article, §10-101 (b).

Source: This Rule is derived in part from the 2008 version of Rule 14-203 (a) and is in part new.

REPORTER'S NOTE

Chapter 485, Laws of 2010 (HB 472) added to Code, Real Property Article, §7-105.1 (c) a list of forms, envelopes, and information that must accompany a notice of intent to foreclose a

lien on residential property. Language is proposed to be added to Rule 14-205 (b) to incorporate by reference the requirement that those items accompany the notice.

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

AMEND Rule 14-206 to add a Committee note, as follows:

Rule 14-206. PETITION FOR IMMEDIATE FORECLOSURE AGAINST
RESIDENTIAL PROPERTY

(a) Right to File

A secured party may file a petition to be excused from the time and notice requirements of Code, Real Property Article, §7-105.1 (b) and (c) and Rule 14-205 (b) and for leave to file an action for immediate foreclosure of a lien against residential property if:

- (1) the debt secured by the lien instrument was obtained by fraud or deception;
- (2) no payments have ever been made on the debt;
- (3) the property subject to the lien has been destroyed; or
- (4) the default occurred after all stays have been lifted in a bankruptcy proceeding.

(b) Contents of Petition

A petition filed under this Rule shall state with particularity the facts alleged in support of the petition and shall be under oath or supported by affidavit.

(c) Notice to Borrower and Record Owner

The secured party shall send by certified and first-class

mail a copy of the petition and all papers attached to it to each borrower and record owner of the property at the person's last known address, and, if the person's last known address is not the address of the property, to the person at the address of the property. The mailing shall include a notice that the addressee may file a response to the petition within 10 days after the date of the mailing. Promptly after the mailing, the secured party shall file an affidavit that states with particularity how compliance with this section was accomplished, including the date on which the petition was mailed and the names and addresses of the persons to whom it was mailed.

(d) Response

(1) Procedure

Within 10 days after the mailing pursuant to section (c) of this Rule, a borrower or record owner of the property may file a written response. The response shall state with particularity any defense to the petition and shall be under oath or supported by affidavit. A person who files a response shall serve a copy of the response and any supporting documents on the petitioner by first-class mail, and shall file proof of such service with the response.

Cross reference: See Rules 1-321 (a) and 1-323.

(2) Non-waiver if No Timely Response Filed

A person's failure to file a timely response to the petition does not waive the person's right to raise any defense in the action to foreclose, including a defense based upon

noncompliance with the time or notice requirements of Code, Real Property Article, §7-105.1 (b) and (c).

(e) Hearing

The court may not grant the petition without a hearing if a response presents a genuine dispute of material fact as to whether the petitioner is entitled to the relief requested. Otherwise, the court may grant or deny the petition without a hearing.

(f) Filing of Order to Docket or Complaint

An order to docket or complaint to foreclose shall be filed in the same action as the petition.

Committee note: If this Rule applies in an action to foreclose a lien against owner-occupied residential property, the loss mitigation analysis and affidavit requirements of Code, Real Property Article, §7-105.1 are not applicable and foreclosure mediation under the statute is not available.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 485, Laws of 2010 (HB 472) made no changes to the four circumstances under which the secured party may petition the court for leave to file an action for foreclosure of a lien against residential property. The four circumstances are listed in section (a) of Rule 14-206 and in Code, Real Property Article, §7-105.1 (b)(2). A Committee note is proposed to be added at the end of Rule 14-206 to clarify that if leave to file an action for immediate foreclosure of a lien against owner-occupied residential property is granted, the loss mitigation analysis and affidavit requirements of the new statute do not apply and there is no right to foreclosure mediation under the statute.

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

AMEND Rule 14-207 to add the words "include or" to section (b), to add to subsection (b)(6) a requirement of certain statements in boldface type, to add a new subsection (b)(7) requiring a final loss mitigation affidavit as to residential property that is not owner-occupied residential property, to add a Committee note, and to make stylistic changes, as follows:

Rule 14-207. PLEADINGS; COURT SCREENING

(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;

(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 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 ~~or not~~ 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;

~~(7)~~ (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) (5)~~ (b) (7) of this Rule, the information and ~~papers~~ items required by Code, Real Property Article, §7-105.1 (d), except that 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

Committee note: Subsection ~~(b) (7)~~ (b) (8) of this Rule does not require the filing of any information or ~~papers~~ items that are substantially similar to information or ~~papers~~ items provided in accordance with subsections (b) (1) through ~~(b) (5)~~ (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.

~~(8)~~ (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).

(c) Court Screening

As part of its case management plan, a circuit court may adopt procedures for the court to screen orders to docket and complaints to foreclose a lien. If the court determines that the papers filed do not comply with all statutory and Rule requirements, it may give notice to the plaintiff that the action will be dismissed without prejudice if the plaintiff does not demonstrate within 30 days that the papers are legally sufficient or that the deficiency has been cured.

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.

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

REPORTER'S NOTE

In Rule 14-207, the words "include or" are proposed to be added to the stem of section (b) to reflect that the required materials and information may either be in the complaint or order to docket or filed as an attachment to that document.

Subsection (b) (6) is amended to facilitate the screening permitted by section (c) by requiring that two statements appear in boldface type: (1) whether the property that is the subject of the action is owner-occupied residential property, if known, and (2) whether a final loss mitigation affidavit is attached.

Chapter 485, Laws of 2010 (HB 472) makes numerous additions to the list of items that Code, Real Property Article, §7-105.1 (d) requires to be included in or accompany an order to docket or a complaint to foreclose a lien instrument on residential property. The new requirements include, as to owner-occupied residential property, either a preliminary loss mitigation affidavit or a final loss mitigation affidavit. The requirements of Code, Real Property Article, §7-105.1 (d) are incorporated by reference in current Rule 14-207 (b) (7), now relettered (b) (8).

New subsection (b) (7) adds a requirement that a final loss mitigation affidavit be filed with respect to residential property that is not owner-occupied residential property. As explained in the Committee note at the end of the Rule, even though a final loss mitigation affidavit will be filed with respect to residential property that is not owner-occupied residential property, no loss mitigation analysis is required.

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-208 to clarify that the applicable requirements of a certain statutory provision must be satisfied prior to the entry of an order for sale of the property before judgment, as follows:

Rule 14-208. SUBSEQUENT PROCEEDINGS IF NO POWER OF SALE OR ASSENT TO A DECREE

(a) Process and Service

When a complaint is filed to foreclose a lien that has neither a power of sale nor an assent to a decree, process shall issue and be served in accordance with Title 2, Chapter 100 of these Rules, except that in an action to foreclose a lien on residential property, service shall be in accordance with Rule 14-209. Except as provided in section (b) of this Rule, the action shall proceed in the same manner as any other civil action.

(b) Order Directing Immediate Sale

If after a hearing, the court finds that the interests of justice require an immediate sale of the property that is subject to the lien and that a sale would likely be ordered as a result of a judgment entered in the action, the court may order a sale of the property before judgment and shall appoint an individual

to make the sale pursuant to Rule 14-214, provided any applicable requirements of Code, Real Property Article, §7-105.1 have been satisfied. The court shall order that the proceeds be deposited or invested pending distribution pursuant to judgment.

Source: This Rule is derived from the 2008 version of former Rule 14-205 (a) and (b) (2).

REPORTER'S NOTE

Language is proposed to be added to Rule 14-208 (b) to clarify that in an action to foreclose a lien that has neither a power of sale nor an assent to a decree, any applicable requirements of Code, Real Property Article, §7-105.1 must have been satisfied prior to the entry of any order for the sale of the property before judgment.

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. 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.

(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, 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.

(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

ADD new Rule 14-209.1, 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 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

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. The borrower shall serve a copy of the request on the other parties. 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: Code, Real Property Article, §7-105.1 (h) (1) (ii) requires that a fee of \$50.00 accompany the request, unless the fee is waived or reduced by the court.

(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 the reasons 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 days after the court transmitted the request for foreclosure mediation.

(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 the Administrative Office of the Courts, or a department or unit within that office, 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, except that after notice to the parties and an opportunity to be heard, the court may deny or limit any agreed-upon stay. If an action is dismissed as a result of an agreement arising out of foreclosure mediation, the court shall reserve jurisdiction to re-open the action for good cause shown.

Committee note: Ordinarily, the action taken by the court will implement the agreement of the parties. The agreement may contemplate a dismissal of the action or a continued stay of the

proceeding for a set period of time. Because a stay is discretionary with the court, however, the court, after an opportunity for a hearing, may deny or limit a further stay.

(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.

REPORTER'S NOTE

Proposed new Rule 14-209.1 is intended to collect in one Rule procedures required to implement the provisions pertaining to owner-occupied residential property added to Code, Real Property Article, §7-105.1 by Chapter 485, Laws of 2010 (HB472).

Section (a) makes the Rule applicable to actions to foreclose a lien on residential property where the secured party either knows that the property is owner-occupied residential

property or is uncertain as to owner-occupancy at the time the action is filed.

Code, Real Property Article, §7-105.1 (l) places restrictions on the timing of a foreclosure sale of residential property, with additional restrictions applicable to owner-occupied residential property. The statute is silent as to when advertising of the sale may begin. Section (b) of the new Rule precludes the advertising of the sale of owner-occupied residential property until at least 20 days after the final loss mitigation affidavit is filed. If, within that time period, foreclosure mediation is requested, advertising may not begin until after the request is stricken or the report from the Office of Administrative Hearings is filed with the court. Absent such a provision, sales could be advertised, only to be stayed because of a dispute over a final loss mitigation affidavit, or because of a request for foreclosure mediation. The Committee's intent is to avoid the unnecessary running of costs.

Section (c) implements statutory provisions pertaining to foreclosure mediation. A borrower's request for foreclosure mediation must be filed within the time allowed by Code, Real Property Article, §7-105.1 (h) (i). The Rule requires that the request contain the caption of the case and the names and addresses of the parties and that the borrower serve those parties with a copy of the request. Code, Real Property Article, §7-105.1 (c) (1) requires transmittal of the request to the Office of Administrative Hearings within five days after the court receives the request.

A Committee note following subsection (c) (1) draws attention to the statutory provision that allows the court to waive or reduce the \$50.00 foreclosure mediation filing fee.

Subsections (c) (2), (3), and (4) implement the provisions of Code, Real Property Article, §7-105.1 (h) (2) pertaining to a motion to strike a request for foreclosure mediation.

Code, Real Property Article, §7-105.1 (i) (2) requires the Office of Administrative Hearings to complete the foreclosure mediation within 60 days after transmittal of the request, and it may extend the time for an additional 30 days. Subsection (d) (1) of the Rule requires the Office of Administrative Hearings to notify the court of any such extension within 65 days after the transmittal. Subsection (d) (2) implements the provisions of Code, Real Property Article, §7-105.1 (j) (3) concerning a report to the court, and the Rule requires that each party to the foreclosure mediation be provided with a copy of the report.

To facilitate the transmittal required by subsection (c)(1) of the Rule and other communications between the court and the Office of Administrative Hearings, section (e) of the Rule allows the communications to be transmitted electronically, in accordance with an agreement between the Administrative Office of the Courts and the Office of Administrative Hearings, provided that an appropriate docket entry is made.

Section (f) pertains to what occurs following receipt of the report from the Office of Administrative Hearings. If a foreclosure mediation is held but does not result in an agreement, the secured party may advertise the sale, subject to a motion to stay under Rule 14-211. If the parties do reach an agreement in foreclosure mediation, the court must take such reasonable action as it finds reasonably necessary to implement the agreement, provided that (1) if the agreement calls for a trial period which would, if effect, stay further proceedings, the court, in defense of its time standards, may deny or limit such a stay, and (2) if the agreement results in a dismissal of the action, the court must reserve jurisdiction to re-open the action for good cause. That latter provisions is to avoid requiring the secured party to file a new action (with a new \$450 fee) and go through all the notices again if the agreement does not ultimately resolve the default.

Subsection (f)(2) takes account of the circumstance where no mediation is held because either the secured party or the homeowner fails to appear or fails to produce the documents required by regulation of the Commissioner of Financial Regulation and the notice provided by the Office of Administrative Hearings. If the fault is that of the secured party, the court may dismiss the action; if the fault is that of the homeowner, the secured party may advertise the sale.

Rule 14-210. NOTICE PRIOR TO SALE

(a) By Publication

Before selling property in an action to foreclose a lien, the individual authorized to make the sale shall publish notice of the time, place, and terms of the sale in a newspaper of general circulation in the county in which the action is pending. Notice of the sale of an interest in real property shall be published at least once a week for three successive weeks, the first publication to be not less than 15 days before the sale and the last publication to be not more than one week before the sale. Notice of the sale of personal property shall be published not less than five days nor more than 12 days before the sale.

Committee note: In this Rule, "newspaper of general circulation" is intended to mean a newspaper satisfying the criteria set forth in Code, Article 1, Section 28. A newspaper circulating to a substantial number of subscribers in a county and customarily containing legal notices with respect to property in the county shall be regarded as a newspaper of general circulation in the county, notwithstanding that (1) its readership is not uniform throughout the county, or (2) its content is not directed at all segments of the population.

(b) By Certified and First-class Mail

Before selling the property subject to the lien, the individual authorized to make the sale shall also send notice of the time, place, and terms of sale (1) by certified mail and by first-class mail to (A) the borrower, (B) the record owner of the property, and (C) the holder of any subordinate interest in the property subject to the lien and (2) by first-class mail to "All Occupants" at the address of the property. The notice to "All

occupants" shall be in the form and contain the information required by Code, Real Property Article, §7-105.9 (c). Except for the notice to "All Occupants," the mailings shall be sent to the last known address of all such persons, including to the last address reasonably ascertainable from a document recorded, indexed, and available for public inspection 30 days before the date of the sale. The mailings shall be sent not more than 30 days and not less than ten days before the date of the sale.

(c) To Counties or Municipal Corporations

In addition to any other required notice, not less than 15 days before the sale, the individual authorized to make the sale shall send written notice to the county or municipal corporation where the property subject to the lien is located. The notice shall include the name, address, and telephone number of the individual authorized to make the sale and the time, place, and terms of sale.

(d) Holders of a Subordinate Interest

If the individual authorized to make the sale receives actual notice at any time before the sale that there is a person holding a subordinate interest in the property and if the interest holder's identity and address are reasonably ascertainable, the individual authorized to make the sale shall give notice of the time, place, and terms of sale to the interest holder as promptly as reasonably practicable. The notice may be given in any manner reasonably calculated to apprise the interest holder of the sale, including by telephone or electronic

transmission. This notice need not be given to anyone to whom notice was sent pursuant to section (b) of this Rule.

(e) Affidavit of Notice by Mail

An individual who is required by this Rule to give notice by mail shall file an affidavit stating that (1) the individual has complied with the mailing provisions of this Rule or (2) the identity or address of the borrower, record owner, or holder of a subordinate interest is not reasonably ascertainable. If the affidavit states that an identity or address is not reasonably ascertainable, the affidavit shall state in detail the reasonable, good faith efforts that were made to ascertain the identity or address. If notice was given to the holder of a subordinate interest in the property, the affidavit shall state the date, manner, and content of the notice.

Source: This Rule is derived in part from the 2008 version of former Rule 14-206 (b) and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-211 to add provisions concerning the time for filing a motion to stay the sale of owner-occupied residential property and dismiss the action, to modify the provisions of subsection (a) (2) (B) to include all actions other than actions concerning owner-occupied residential property, to add to subsection (a) (3) (F) a reference to Rule 14-212, and to add Committee notes following subsections (a) (3) (B) and (b) (1) (C) and section (e), 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.

(B) Other Property

In an action to foreclose a lien on ~~residential~~ 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 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. 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.

REPORTER'S NOTE

The proposed amendments to Rule 14-211 blend into the Rule the right of a borrower, after an unsuccessful referral to foreclosure mediation, to file a motion to stay the sale of owner-occupied residential property and request dismissal of the action. Code, Real property Article, §7-105.1 (k) (2) (iii) requires that the motion "allege specific reasons why loss mitigation should have been granted."

As indicated in the Committee note that follows subsection (a) (3) (B) of the Rule, the Committee views the failure to grant loss mitigation that should have been granted as a possible defense to the right of the plaintiff to foreclose in the pending action. The Rule allows this defense and all other grounds for a stay of the sale and dismissal of the action to be included in a single motion.

Subsection (a) (2), Time for Filing, is divided into three parts. A new paragraph (A) pertains only to owner-occupied residential property. Paragraph (B), which is the current Rule, is amended so that it is inapplicable to owner-occupied residential property and is made applicable to all other property, whether residential, commercial, unimproved, or other. Paragraph (C) is the existing Rule, allowing the court to extend the time requirements of subsection (a) (2) or excuse non-compliance, for good cause shown.

Subsection (a) (2) (A) is structured so that the motion to stay and dismiss must be filed no later than 15 days after last to occur of three events set forth as subsections (a) (2) (A) (i), (ii), and (iii). Subsection (a) (2) (A) (i) applies when foreclosure mediation is not requested. Subsection (a) (2) (A) (ii) applies when foreclosure mediation is requested, but a motion to strike the request is granted. Subsection (a) (2) (A) (iii) applies when foreclosure mediation was requested and the request was not stricken. Paragraphs (a) and (b) are taken from Code, Real Property Article, §7-105.1 (k) (2) (ii) (1) and (2). Paragraph (c) is added to the Rule to address the circumstance, albeit unlikely, that no report regarding the foreclosure mediation is filed.

An amendment to subsection (a) (3) (F), together with an amendment to Rule 14-212, requires that a borrower who seeks a referral to alternative dispute resolution and is eligible for foreclosure mediation under Code, Real Property Article, §7-105.1 use the process established by the statute.

A Committee note following subsection (b) (1) (C) highlights the requirement of specificity on the face of the motion.

A Committee note following section (e) notes that if the grounds for granting a motion to stay and dismiss is that loss mitigation should have been granted, the court may stay entry of its order of dismissal, pending further order of court, to allow loss mitigation to be implemented.

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

AMEND Rule 14-212 by making the Rule applicable to actions that are ineligible for foreclosure mediation under Code, Real Property Article, §7-105.1, as follows:

Rule 14-212. ALTERNATIVE DISPUTE RESOLUTION

(a) Applicability

This Rule applies to actions that are ineligible for foreclosure mediation under Code, Real Property Article, §7-105.1.

(b) Referral to Alternative Dispute Resolution

In an action in which a motion to stay the sale and dismiss the action has been filed, and was not denied pursuant to Rule 14-211 (b) (1), the court at any time before a sale of the property subject to the lien may refer a matter to mediation or another appropriate form of alternative dispute resolution, subject to the provisions of Rule 17-103, and may require that individuals with authority to settle the matter be present or readily available for consultation.

Cross reference: For qualifications of a mediator other than one selected by agreement of the parties, see Rule 17-104 (f).

Source: This Rule is new.

REPORTER'S NOTE

In conjunction with an amendment to Rule 14-211 (a) (3) (F), the proposed addition of new section (a), Applicability, to Rule 14-212 requires that a borrower who seeks a referral to alternative dispute resolution and is eligible for foreclosure mediation under Code, Real Property Article, §7-105.1 use the process established by the statute.

Rule 14-213. BOND BY INDIVIDUAL MAKING SALE

Before selling property subject to a lien, the individual authorized to make the sale shall file a bond to the State of Maryland conditioned upon compliance with any court order that may be entered in relation to the sale of the property or distribution of the proceeds of the sale. Unless the court orders otherwise, the amount of the bond shall be \$25,000. If the property is sold to a person other than the holder of the indebtedness or a person designated by the holder in a writing filed in the proceeding to take title on the holder's behalf, the individual authorized to make the sale shall increase the amount of the bond, before the sale is ratified, to the amount of the sale price as set forth in the report of sale. On application by a person having an interest in the property or by the individual authorized to make the sale, the court may increase or decrease the amount of the bond pursuant to Rule 1-402(d).

Source: This Rule is derived from the 2008 version of former Rule 14-206 (a).

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

AMEND Rule 14-214 to add a cross reference at the end of the Rule, 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 of 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).

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

REPORTER'S NOTE

The proposed amendment to Rule 14-214 adds a cross reference to statutory restrictions on the timing of a foreclosure sale of residential property.

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.

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

Rule 14-216. PROCEEDS OF SALE

(a) Distribution of Surplus

At any time after a sale of property and before final ratification of the auditor's account, any person claiming an interest in the property or in the proceeds of the sale of the property may file an application for the payment of that person's claim from the surplus proceeds of the sale. The court shall order distribution of the surplus equitably among the claimants.

(b) Deficiency Judgment

At any time within three years after the final ratification of the auditor's report, a secured party or any appropriate party in interest may file a motion for a deficiency judgment if the proceeds of the sale, after deducting all costs and expenses allowed by the court, are insufficient to satisfy the debt and accrued interest. If the person against whom the judgment is sought is a party to the action, the motion shall be served in accordance with Rule 1-321. Otherwise, the motion shall be served in accordance with Rule 2-121 and shall be accompanied by a notice advising the person that any response to the motion must be filed within 30 days after being served or within any applicable longer time prescribed by Rule 2-321(b) for answering a complaint. A copy of Rule 2-321 (b) shall be attached to the notice.

Source: This Rule is derived in part from the 2008 version of former Rule 14-208 and is in part new.

Rule 14-217. RELEASE OR ASSIGNMENT; INSOLVENCY

(a) Release or Assignment of Claim

A person entitled to release or assign a claim under a lien may file a written release or assignment of the claim and of any order for the sale of the property entered in the action. The release or assignment shall be signed and acknowledged before an individual authorized to take acknowledgments of deeds. The release or assignment shall take effect at the time of entry on the docket.

(b) Insolvency Proceeding - Effect on Foreclosure

When property of an insolvent is subject to a lien, the institution of or pendency of insolvency proceedings by or against the insolvent under the laws of this State shall not stay a sale of property pursuant to a foreclosure action instituted prior to the insolvency proceeding.

Source: This Rule is derived from the 2008 version of former Rule 14-209 (a) and (c).

Rule 14-218. REMOVAL OF TRUSTEE UNDER A DEED OF TRUST

(a) Inapplicable Where Procedure set forth in Lien Instrument

The procedure for removal of a trustee under a deed of trust set forth in this Rule shall not supersede or nullify any procedure for the removal or substitution of a trustee that may be provided for in the deed of trust.

(b) Motion to Remove Trustee

When a trustee who has the right to institute a foreclosure action fails or refuses to do so, or if there is other good cause for the removal of the trustee under a deed of trust, secured parties holding not less than 25%, or any lesser percentage provided in the deed of trust, of the beneficial interest under the deed of trust may file a motion for the removal of the trustee and appointment of a new trustee. The motion shall be supported by affidavit and shall state the facts alleged to constitute grounds for removal. The motion may be filed in any court in which an action to foreclose may be instituted.

(c) Notice to Trustee

Unless the court orders otherwise, notice of the filing of the motion shall be served on the trustee by mailing a copy of the motion by certified mail to the last known address of the trustee.

Source: This Rule is derived from the 2008 version of former Rule 14-210, with style changes.