

IN THE COURT OF APPEALS OF MARYLAND

R U L E S O R D E R

This Court's Standing Committee on Rules of Practice and Procedure having submitted its One Hundred Fifty-Ninth Report to the Court recommending adoption, on an emergency basis, of amendments to Rules 2-122, 14-201, 14-203, 14-204, and 14-205 of the Maryland Rules of Procedure; and

This Court having considered at an open meeting, notice of which was posted as prescribed by law, all those proposed rules changes, making on its own motion certain additions to the proposed rules changes, and finding that an emergency does in fact exist with reference to the proposed rules changes, it is this 22nd day of July, 2008,

ORDERED, by the Court of Appeals of Maryland, that amendments to Rules 2-122, 14-201, 14-203, 14-204, and 14-205 be, and they are hereby, adopted in the form attached to this Order; and it is further

ORDERED that the rules changes hereby adopted by this Court shall govern the courts of this State and all parties and their attorneys in all actions and proceedings, and shall take effect and apply to all actions commenced on or after July 23, 2008 and insofar as practicable to all actions then pending; and it is further

ORDERED that a copy of this Order be published in the next issue of the *Maryland Register*.

/s/ Robert M. Bell

Robert M. Bell

/s/ Glenn T. Harrell, Jr.

Glenn T. Harrell, Jr.

/s/ Lynne A. Battaglia

Lynne A. Battaglia

/s/ Clayton Greene, Jr.

Clayton Greene, Jr.

/s/ Joseph F. Murphy, Jr.

Joseph F. Murphy, Jr.

/s/ Sally D. Adkins

Sally D. Adkins

Filed: July 22, 2008

/s/ Bessie M. Decker

Clerk
Court of Appeals of Maryland

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-122 by deleting language referring to posting by "the sheriff" from and adding language referring to "a person authorized to serve process" to subsection (a)(3), as follows:

Rule 2-122. PROCESS - SERVICE - IN REM OR QUASI IN REM

(a) Service by Posting or Publication

In an in rem or quasi in rem action when the plaintiff has shown by affidavit that the whereabouts of the defendant are unknown and that reasonable efforts have been made in good faith to locate the defendant, the court may order service by the mailing of a notice to the defendant's last known address and:

(1) by the posting of the notice by the sheriff at the courthouse door or on a bulletin board within its immediate vicinity, or

(2) by publishing the notice at least once a week in each of three successive weeks in one or more newspapers of general circulation published in the county in which the action is pending, or

(3) in an action in which the rights relating to land including leasehold interests are involved, by the posting of the notice by ~~the sheriff~~ a person authorized to serve process in accordance with Rule 2-123 (a) in a conspicuous place on the

land.

Additionally, the court may order any other means of notice that it deems appropriate in the circumstances.

(b) Time

The mailing and the posting or publication shall be accomplished at least 30 days before the date by which a response to the complaint is to be filed.

(c) Content of Notice

The notice shall be signed by the clerk and shall include the caption of the case; describe the substance of the complaint and the relief sought; inform the defendant of the latest date by which the response is to be filed; warn the defendant that failure to file the response within the time allowed may result in a judgment by default or the granting of the relief sought; and contain any other information required by the court.

Source: This Rule is derived as follows:

Section (a) is derived from former Rules 105 b and 111 a.

Section (b) is derived from former Rule 105 b 2.

Section (c) is new and replaces former Rule 105 b 1 (a).

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-201 to add a definition of "residential property," as follows:

Rule 14-201. SCOPE AND DEFINITIONS

(a) Scope

The rules in this Chapter apply to foreclosure of liens upon property that are created or authorized to be created by a lien instrument or are created by a statute providing for foreclosure in the manner specified for foreclosure of mortgages. The procedure set forth in these Rules shall provide the sole remedy for the vendor for repossession of property sold under a land installment contract executed pursuant to Code, Real Property Article, Title 10, Subtitle 1 or its statutory predecessor. Otherwise, the foreclosure procedure provided in these Rules does not preclude other remedies, including but not limited to self-help, that may be available under Code, Commercial Law Article; Code, Real Property Article; or other law.

(b) Definitions

The following definitions apply in the rules in this Chapter:

(1) Assent to a Decree

"Assent to a decree" means a provision in a lien instrument declaring an assent to the entry of an order for the sale of the property subject to the lien upon a specified default.

(2) Debt

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

(3) Debtor

"Debtor" means the record owner of the property at the time the lien was created and the purchaser under a land installment contract.

(4) Lien

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

(5) Lien Instrument

"Lien instrument" means a mortgage, a deed of trust, a land installment contract, including those defined in Code, Real Property Article §10-101 (b), a contract creating a lien pursuant to Code, Real Property Article, §§14-201 through 14-205, a deed or other instrument reserving a vendor's lien, 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, a security agreement, and any other instrument creating or authorizing the creation of a lien upon the property.

(6) Power of Sale

"Power of sale" means a provision in a lien instrument

authorizing a person to sell the property upon a specified default.

(7) Property

"Property" means real and personal property of any kind situated within this State.

(8) Record Owner of Property

"Record owner of property" includes the record holder of the rights of a purchaser under a land installment contract.

(9) Residential Property

"Residential property" means real property improved by four or fewer single family dwelling units.

Cross reference: See Code, Real Property Article, §7-105.1 (a)

~~(9)~~ (10) Sale

"Sale" means foreclosure sale.

~~(10)~~ (11) Secured Party

"Secured party" means a mortgagee, the holder of a note secured by a deed of trust, a vendor holding a vendor's lien, a condominium council of unit owners, a homeowners' association, a property owners' or community association, and any other party secured by a lien. "Secured party" includes any assignee or successor in interest of a secured party.

~~(11)~~ (12) 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.

Source: This Rule is derived as follows:

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 14-203 to add a new subsection (a)(3) pertaining to the requirement to send a notice of intent to foreclose a mortgage or deed of trust on residential property and to add a cross reference after subsection (a)(3), as follows:

Rule 14-203. CONDITIONS PRECEDENT; VENUE

(a) Conditions Precedent

(1) Generally

An action to foreclose a lien may be filed after (A) the instrument creating or giving notice of the existence of the lien has been filed for record, and (B) there has been a default in a condition upon which the lien instrument provides that a sale may be made or there is a default in the payment of the debt secured by a statutory lien.

Cross reference: Code, Real Property Article, §§14-201 through 14-206.

(2) Land Installment Contract

An action to foreclose a land installment contract as defined in Code, Real Property Article, §10-101 (b) shall be instituted only after the secured party: (A) serves on the debtor and the current record owner of the property, either by delivery to the person to be served or by certified mail to the last known address of the person to be served, a written notice stating the

amount of payment in default and the nature of any claimed default in any other condition or requirement of the contract, and advising the person served that foreclosure proceedings will be instituted on or after a designated day, not less than 30 days after service of the notice, unless the debtor or the current record owner before that time cures the default, and (B) files proof by affidavit that the required notice has been given.

(3) Foreclosure on Residential Property

(A) An action to foreclose on residential property may not be filed until the later of 90 days after the default or 45 days after the sending of the notice of intent to foreclose required by subsection (a)(3)(B) of this Rule.

(B) At least 45 days before the filing of an action to foreclose a mortgage or a deed of trust on residential property, the secured party shall send a written notice of intent to foreclose to the mortgagor or grantor and to the record owner of the property in conformance with Code, Real Property Article, §7-105.1 (c), except that the action may be filed without sending the notice if:

(i) the loan secured by the mortgage or deed of trust was obtained by fraud or deception,

(ii) no payments have ever been made on the loan secured by the mortgage or deed of trust,

(iii) the property subject to the mortgage or deed of trust has been destroyed, or

(iv) the default occurred after a stay has been lifted in

a bankruptcy hearing.

Cross reference: For the form of the notice and any other information that the Commissioner of Financial Regulation requires, see COMAR 09.03.11.01 et seq. (as to emergency regulations) and COMAR 09.03.12.01 et seq. (as to final regulations).

(b) 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.

(c) Jurisdiction - Attaches Upon Commencement of Action

The jurisdiction of the court over property subject to a lien shall attach upon the commencement of an action filed pursuant to Rule 14-204, with or without the bond described in Rule 14-206 (a).

Source: This Rule is derived from former Rule W72 and W79.

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-204 to add a provision to section (a) stating that certain items be included and that certain items need not be included in the complaint to foreclose or order to docket, to delete section (b), to add a new section (b) setting out procedures for service in foreclosures on residential property, to add language to section (c) that refers to residential property foreclosures, and to correct two references to federal law, as follows:

Rule 14-204. COMMENCEMENT OF ACTION AND PROCESS

(a) Methods of Commencing Action

An action to foreclose a lien pursuant to a power of sale shall be commenced by filing an order to docket. An action to foreclose a lien pursuant to an assent to a decree or where the lien instrument contains neither a power of sale nor an assent to a decree shall be commenced by filing a complaint to foreclose. When a lien instrument contains both a power of sale and an assent to a decree, the lien may be foreclosed pursuant to either the power of sale or the assent to a decree. The complaint or order to docket shall be accompanied by:

(1) the original or a certified copy of the lien instrument or, in an action to foreclose a statutory lien, an original or a

certified copy of a notice of the existence of the lien,

(2) a statement of the debt remaining due and payable supported by an affidavit of the plaintiff or the secured party or the agent or attorney of the plaintiff or the secured party,

(3) in the case of a deed of trust, a copy of the debt instrument certified by the attorney or the trustee conducting the sale, and

(4) if any defendant is a natural person, an affidavit that either the person is not in the military service of the United States as defined in ~~Section 511 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended,~~ Servicemembers Civil Relief Act, 50 U.S.C. Appendix, 520, app. §§501 et seq., or that the action is authorized by the Act, and

(5) in an action to foreclose a mortgage or deed of trust on residential property, the information and papers 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.

~~(b) Notice to Record Owner of Residential Real Property~~

~~The person authorized to make a sale shall comply with the notice requirement contained in Code, Real Property Article, §7-105 (a-1) and, at any time before the sale is ratified, shall file an affidavit in the proceedings that the notice requirement~~

~~has been satisfied.~~

(b) Service in Residential Property Foreclosures

(1) Service by Personal Delivery

When an order to docket or a complaint to foreclose a lien instrument or statutory lien on residential property is filed, a copy of the order to docket or complaint to foreclose and the accompanying papers shall be served by personal delivery to the mortgagor or grantor or by leaving them with a resident of suitable age and discretion at the dwelling house or usual place of abode of the mortgagor or grantor.

(2) Service by Mailing and Posting

If on at least two different days a good faith effort was made to serve the mortgagor or grantor under subsection (b)(1) of this Rule and service was not successful, the plaintiff may effect service by (A) mailing a copy of the order to docket or complaint to foreclose and accompanying papers by certified mail, return receipt requested, and first-class mail to the last known address of the mortgagor or grantor and, if different, to the address of the residential property subject to the mortgage or deed of trust; and (B) posting a copy of the order to docket or complaint to foreclose and accompanying papers in a conspicuous place on the residential property subject to the mortgage or deed of trust. Service is complete when the property has been posted and the mailings have been made in accordance with this subsection.

(3) Affidavit of Service

(A) Time for Filing

An affidavit of service shall be filed promptly and in any event before the date of the sale.

(B) If Service by an Individual Other than a Sheriff

In addition to the requirements of subsection (b)(3)(C) or (D) of this Rule, 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.

(C) Contents of Affidavit of Personal Delivery

If service is effected pursuant to subsection (b)(1) of this Rule, the affidavit shall set forth the name of the person served and the date and particular place of service. If delivery is to a person other than the mortgagor or grantor, the affidavit also shall include a description of the individual served and the facts upon which the individual making service concluded that the individual served is of suitable age and discretion.

(D) Contents of Affidavit of Service by Mailing and Posting

If service is effected pursuant to subsection (b)(2) of this Rule, the affidavit shall (i) describe with particularity the good faith efforts to serve the mortgagor or grantor by personal delivery; (ii) state the date on which the required papers were mailed by first-class and certified mail, return receipt requested, and the name and address of the addressee; and

(iii) include the date of the posting and a description of the location of the posting on the property. If available, the original certified mail return receipt shall be attached to the affidavit.

(c) Process and Hearing Not Required

In an action to foreclose a lien pursuant to a power of sale or pursuant to an order for sale under an assent to a decree, including a foreclosure on residential property, it is not necessary that process issue or that a hearing be held prior to sale.

Cross reference: See the Sections 511 and 532 of the Soldiers' and Sailors' Civil Relief Act of 1940 Servicemembers Civil Relief Act, 50 U.S.C. Appendix app. §§501 et seq.

Source: This Rule is derived in part from former Rule W72 c, d, and e and is in part new.

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-205 to require that service in residential property foreclosures be in accordance with Rule 14-204 (b) and to delete section (b), as follows:

Rule 14-205. LIEN INSTRUMENTS OR STATUTORY LIENS - CONTAINING NEITHER POWER OF SALE NOR ASSENT TO DECREE

(a) Commencement of Action and Process

When a complaint to foreclose a lien instrument or statutory lien containing neither a power of sale nor an assent to a decree is filed, process shall issue and be served, and the action shall proceed as in any other civil action, except that service in residential property foreclosures shall be in accordance with Rule 14-204 (b).

~~(b) Notice to Record Owner of Residential Real Property~~

~~The plaintiff shall comply with the notice requirement contained in Code, Real Property Article, §7-105 (a-1) and, at any time before the sale is ratified, shall file an affidavit in the proceedings that the notice requirement has been satisfied.~~

~~(c)~~ (b) Order of Court Directing Sale - Conditions

(1) Generally

In an action to foreclose a lien instrument or statutory lien containing neither a power of sale nor an assent to a

decree, the court shall first determine whether a default has occurred. If the court finds that a default has occurred it shall (A) fix the amount of the debt, interest, and costs then due and (B) provide a reasonable time within which payment may be made. The court may order that if payment is not made within the time fixed in the order, so much of the property as may be necessary to satisfy the amount due shall be sold.

(2) Order Directing Sale Before Judgment in Exceptional Case

If after a hearing the court is satisfied that the interests of justice require an immediate sale of the property that is subject to the lien, and that a sale would be ordered as a result of the final hearing of the action, the court may order a sale of the property before judgment and shall appoint a person to make the sale pursuant to Rule 14-207. The court shall order the proceeds of any sale before judgment to be deposited or invested pending distribution pursuant to judgment.

Source: This Rule is derived from former Rule W73.