

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 Sixty-Fourth Report to the Court recommending adoption, on an emergency basis, of proposed new Rule 14-209.1 and proposed amendments to Rules 14-102, 14-202, 14-205, 14-206, 14-207, 14-208, 14-211, 14-212, and 14-214 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, together with comments received, making on its own motion certain additions and deletions to the proposed rules changes, and finding that an emergency does in fact exist with reference to the proposed rules changes, it is this 7th day of June, 2010,

ORDERED, by the Court of Appeals of Maryland, that new Rule 14-209.1 be, and it is hereby, adopted in the form attached to this Order; and it is further

ORDERED that amendments to Rules 14-102, 14-202, 14-205, 14-206, 14-207, 14-208, 14-211, 14-212, and 14-214 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 1, 2010; 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

/s/ Mary Ellen Barbera

Mary Ellen Barbera

Filed: June 7, 2010
/s/ Bessie M. Decker

Clerk
Court of Appeals of Maryland

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.

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.

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.

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.

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 provide that the documentation required by certain federal programs satisfies a certain statutory requirement to provide a description of the eligibility requirement for the applicable loss mitigation program, 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 (A) 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 (B) if the mortgage loan is owned, securitized, insured, or guaranteed by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or Federal Housing Administration, or if the servicing agent is participating in the federal Making Home Affordable Modification Program (also known as "HAMP"), providing documentation as required by those programs satisfies the requirement to provide a description of the

eligibility requirement for the applicable loss mitigation program; 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.

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).

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

(A) Filing of Request

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 and be accompanied by the foreclosure mediation filing fee required by Code, Real Property Article, §7-105.1 (h)(1)(ii) or a written

request in accordance with Rule 1-325 for an order waiving or reducing the fee. The borrower shall serve a copy of the request on the other parties. The clerk shall not accept for filing a request for foreclosure mediation that does not contain a certificate of service or is not accompanied by the required fee or request for an order waiving or reducing the fee.

Cross reference: See Rules 1-321 and 1-323. For the Request for Foreclosure Mediation form prescribed by regulation adopted by the Commissioner of Financial Regulation, see COMAR 09.03.12.05.

(B) Transmittal of Request

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: The transmittal to the Office of Administrative Hearings shall be made within the time required by subsection (c)(1)(B) of this Rule, regardless of the status of a request for waiver or reduction of the foreclosure mediation filing fee.

(C) Ruling on Request for Fee Waiver or Reduction

The court promptly shall rule upon a request for an order waiving or reducing the foreclosure mediation filing fee. The court may make its ruling *ex parte* and without a hearing. If the court does not waive the fee in its entirety, the court shall specify in its order the dollar amount to be paid and the amount of time, not to exceed ten days, within which the sum shall be paid. The order shall direct the clerk to strike the request for foreclosure mediation if the sum is not paid within the time allowed and, if the request is stricken, to promptly notify the Office of Administrative Hearings that the request for foreclosure mediation has been stricken.

(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 reasons sufficient to overcome the presumption that the borrower is entitled to foreclosure mediation 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 a department of the Administrative Office of the Courts 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.

(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.

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.

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.

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 or 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.