

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Sixtieth Report to the Court of Appeals, transmitting thereby a proposed major revision of Title 14, Chapters 100 and 200, and proposed amendments to Rules 1-202 (k) and (l) - (bb), 2-131, 2-221, 3-131, 3-221, 9-202, 11-104 f., 16-107, 16-401, 16-812.1, 16-813, and 17-104, and Form 4.504.1.

The Committee's One Hundred Sixtieth Report and the proposed new rules and amendments are set forth below.

Interested persons are asked to consider the Committee's Report and proposed rules changes and to forward on or before January 20, 2009 any written comments they may wish to make to:

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BESSIE M. DECKER

Clerk

Court of Appeals of Maryland

Category 4 proposes amendments to Rule 1-202 (k), dealing with holidays, Form 4-504.1, dealing with a petition for expungement of records, and Rule 11-104 f., dealing with juvenile court dockets. The first two are needed to conform those Rules to legislation enacted in the 2008 session of the General Assembly. The proposed change to Rule 11-104 f. is a "housekeeping" one that updates a statutory reference.

FORECLOSURE RULES

In July, 2008, the Court adopted, on an emergency basis, amendments to existing foreclosure Rules in order to conform those Rules to legislation enacted at the 2008 Session of the General Assembly. In the Rules Committee's One Hundred Fifty-Ninth Report, transmitting those amendments, the Committee advised that, in its view, the Rules governing the foreclosure of mortgage liens and other liens foreclosed in the manner of mortgages, especially against residential property, needed to be more widely examined and that a special subcommittee would be appointed for that purpose.

Such a subcommittee was appointed. Under the able leadership of its co-chairs, Linda M. Schuett, Esq. and Anne C. Ogletree, Esq., and with the assistance of consultants selected by it, the subcommittee looked at every aspect of the foreclosure process, in an historical context and in light of contemporary issues. It concluded, and the full Rules Committee agreed, that a significant number of changes ought to be made, both to the text of the Rules and to their sequence, and that to make those changes through specific amendments to the existing Rules would be hopelessly confusing and therefore ill-advised. Accordingly, the Committee has undertaken to rewrite the Rules and recommends that the existing Rules be repealed and replaced with the new Rules submitted herewith. The Reporter's Notes explain the changes made by each of the new Rules, but there are a few matters of general importance that warrant special mention in this Report.

Scope of Rules

Since at least 1975, the Rules governing foreclosure, previously contained in Chapter 1100, Subtitle W of the Md. Rules, applied not only to the foreclosure of mortgages and deeds of trust, but also to the foreclosure of security agreements (Rule W78), land installment contracts (Rule W79), vendors' liens (Rule W80), and condominium and other statutory liens (Rule W81). With respect to those kinds of liens, the Rules provided that they were to be foreclosed in accordance with the procedure prescribed for the foreclosure of mortgages, as if the secured party were the mortgagee and the debtor were the mortgagor.

The basis for that approach was that either the statutes or the lien instruments that created those kinds of liens themselves provided that the lien was to be foreclosed in the manner of a mortgage or deed of trust which, except with respect to land installment contracts, was generally the case.¹ That approach was carried over in the 1997 revisions to the foreclosure Rules, when they were relocated to Title 14, Chapter 200 (Rules 14-201 through 14-210). See current Rule 14-201 (a) and (b)(4), (5), (10), and (11). In 2007, the Legislature substantially revised the laws governing the enforcement of ground rents. The ejectment remedy historically employed was abrogated, and, in lieu thereof, the law now permits the ground lease holder to file a complaint to establish a lien for certain arrearages and to enforce the lien in the same manner as the foreclosure of a mortgage containing neither a power of sale nor an assent to a decree.

In 2008, the General Assembly mandated that certain procedures be followed in foreclosing liens created by mortgages and deeds of trust against residential property. See 2008 Md. Laws, ch. 2, enacting new §§ 3-104.1 and 7-105.1 to the Real Property Article (RP), a copy of which is attached as an Appendix A to this Report. Although the statute expressly applies the new requirements to the foreclosure of mortgages and deeds of trust, it is silent with respect to other kinds of liens against residential property that are foreclosed in the manner of mortgages or deeds of trust, thus raising the question of whether those requirements have such extended applicability. The Rules Committee believes that they do, essentially for two reasons:

First, the General Assembly was presumably aware of both its own statutes providing that certain of these other kinds

¹ Land installment contracts, which must be recorded among the land records, have always presented a unique problem. The statute governing them, Code, Real Property Article §§ 10-101 through 10-108, permits the purchaser, upon payment of 40% of the original cash price (or less, if the contract so provides) to demand a deed and purchase money mortgage. If that occurs, the purchaser would become the owner of the property and the seller would become a mortgagee, and a subsequent default would lead to a routine mortgage foreclosure. The statute is silent, however, as to the remedy and procedures when there is a default while the land installment contract is still in effect and the parties remain in a seller/purchaser relationship. Although technically, it is the buyer's contractual interest in the property that is foreclosed, the Rules Committee has been advised that, in practice, the property itself is sold and the seller gives a deed to the new buyer and often accepts a purchase money mortgage for all or part of the purchase price.

of liens were to be foreclosed in the manner of mortgages and this Court's long-standing Rules implementing those provisions, and there is no indication that the Rules Committee could discern from the 2008 statute itself or its legislative history of an intent to disturb that approach.

Second, to depart from that approach and, for the first time in more than 30 years, to draw a distinction between the foreclosure of mortgages and deeds of trust, on the one hand, and other liens against residential property required to be foreclosed in the manner of mortgages or deeds of trust, on the other, would appear to be inconsistent with the clear legislative intent to provide additional protections to homeowners through the newly required notices and procedures.

The Rules Committee's recommendation that the new statutory protections be applied to the broader category of liens against residential property is implemented through the definitions of "lien instrument," "secured party," and "statutory lien" in proposed Rule 14-202 and in the application of the other proposed Rules to actions to foreclose a "lien," rather than just a mortgage or deed of trust, against residential property. This would include liens in favor of condominium councils of unit owners and homeowners', property owners', and community associations covered by the Contract Lien Act (RP §§ 14-201 through 14-206) as well as other kinds of statutory liens that are foreclosed in the manner of mortgages, including liens for ground rent in arrears.²

Condominium Property

The provisions added by 2008 Md. Laws, ch. 2 apply only to "residential property," which is defined in RP §§ 3-104.1(a) and 7-105.1(a) as "real property improved by four or fewer single family dwellings." In considering the emergency Rules submitted with the Committee's 159th Report, the Court raised the question of how the new statutory provisions apply to condominium property, as to which the new law is silent. The Court agreed not to depart from the statutory definition for purposes of the

²RP § 14-204 provides that liens created under the Contract Lien Act "may be enforced and foreclosed by the party who obtained the lien in the same manner, and subject to the same requirements, as the foreclosure of mortgages or deeds of trust on property in this State containing a power of sale or an assent to a decree." The new law dealing with the enforcement of ground rents provides that a lien for unpaid ground rent may be enforced in the same manner and subject to the same requirements as the foreclosure of a mortgage or deed of trust *not* containing a power of sale or assent to decree. RP § 8-402.3(n).

emergency Rules but to have the Committee give attention to the matter in its broader review of the Rules.

With respect to condominium property, the statutory language - "real property improved by four or fewer single family dwellings" - appears to be ambiguous. It could refer to (1) a structure containing four or fewer individual condominium units, which could itself be the subject of a mortgage or deed of trust, (2) the individual condominium units contained within a structure, to the extent that they constitute single family dwellings, which also may be the subject not only of a mortgage or deed of trust but to a lien under the Contract Lien Act, or (3) both the structure and the individual units. Some of the ambiguity arises from the words "improved by."

From its review of the statute and the legislative history of the statute, the Rules Committee suggests to the Court that the intent of the General Assembly was to apply the new protections to (1) each individual condominium unit that is a single family dwelling, however many such units may be within a structure, and (2) to a structure that contains four or fewer such units, but (3) not to a structure that contains five or more individual units. The Committee proposes to make that clear by not including the words "improved by" in the general definition of "residential property" in proposed Rule 14-202 (i), and, consistent with a proposed regulation of the Department of Labor, Licensing and Regulation, adding more specific language to the definition of "residential property."

Notice to Current Record Owner Other than Mortgagor or Grantor

The current Rules, when juxtaposed with the existing statutory law, create some inconsistencies with respect to the giving of notice of foreclosure events to persons who are, or once were, record owners of the property, but who are not a mortgagor or a grantor under a deed of trust. The Rules Committee recommends that those inconsistencies be eliminated by (1) requiring that all mandated notices be provided not only to persons falling within the definition of "borrower," but also to persons who were record owners of the property 30 days prior to the date the notice is provided, and (2) repealing the requirement, which exists only by Rule, that notice of any kind be sent to persons who owned the property when the lien was created but who are not mortgagors or grantors, who are not liable on the debt, and who have no current interest in the property.

Motion to Stay Sale

A number of significant changes are recommended to the Rule governing a stay of the sale (proposed Rule 14-211). The Rules Committee proposes to detach that procedure from the Rules governing injunctions and to deal with it in a Rule specific to foreclosure sales. The Rule attempts to strike a fair balance by providing borrowers and others with sufficient standing, who have a legitimate defense to the foreclosure, a reasonable and practical opportunity to raise the defense, but not allowing for frivolous motions intended solely to delay the proceeding. Because the only basis for a stay of sale will be a defense to the lien or the action itself, the motion to stay will be treated as a motion to dismiss the foreclosure action.

For the further guidance of the Court and the public, following each proposed new Rule and amendments to existing Rules 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

MARYLAND RULES OF PROCEDURE
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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).

REPORTER'S NOTE

Revised Rule 14-101 includes provisions from current Rule 14-207 (a) and clarifies the provisions of current Rule 14-101 as to the county in which the sale is to be held and the location within the county. The court, by order, may allow the sale to be held elsewhere. In lieu of the last clause of current Rule 14-101 that contains a reference to the "advertisement" of the location of the sale, a cross reference to Rules 14-210 and 14-303 (b) is added.

Rule 14-102. JUDGMENT AWARDING POSSESSION

(a) Motion

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 may file a motion for judgment awarding possession of the property. If the purchaser has not paid the full purchase price and received a deed to the property, the motion shall state the legal basis for the purchaser's claim of entitlement to possession. Except as otherwise provided in this Rule, Rule 2-311 applies.

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).

(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) 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) 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) 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.

(4) Judgment of Possession

If a timely response to the motion is not filed, the court may enter a judgment awarding possession.

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

Revised Rule 14-102 expands upon current Rule 14-102.

Section (a) carries forward the substance of the current Rule, except that the second sentence and Committee note to the section are new. The Committee note, which cites *Legacy Funding v. Cohn*, 396 Md. 511 (2007) and *Empire v. Hardy*, 386 Md. 628

(2005), states the general rule that a purchaser ordinarily is not entitled to possession of an interest in real property purchased at a sale pursuant to the Rules in Title 14 unless the purchaser has paid the full purchase price and has received a deed to the property. A common exception to the general rule is the situation in which the purchaser is a foreclosing lender. If this or another exception exists, the new second sentence of section (a) requires that it be stated in the motion.

Subsection (b)(1) adds an affidavit requirement to the Rule.

Subsection (b)(2) carries forward, from the last sentence of current Rule 14-102 (b), the requirement of notice to the person in possession who was not a party to the instrument or action. Added to the Rule is the requirement that a copy of Rule 2-321 (b) be attached to the notice, because most likely the recipient of the notice is not an attorney.

Section (c) is new. It was added at the request of practitioners, who advised that some courts routinely issue show cause orders in these cases which, in light of the provisions for service of the papers and an ability to respond to the motion, is unnecessary.

Subsection (d)(1) carries forward the provisions of current Rule 14-102 (b)(1).

Subsection (d)(2) carries forward the service provisions of current Rule 14-102, as to a party to the action or instrument.

Subsection (d)(3) modifies the service provisions as to a person who was not a party to the action or instrument. Instead of service in accordance with Rule 2-121, the section borrows the service procedure of Code, Real Property Article, §7-105.1 (e).

Subsection (d)(4) is new. It makes clear that a judgment of possession may be entered if no timely response to the motion is filed.

A cross reference to Rule 2-647 is carried forward from the current Rule.

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).

REPORTER'S NOTE

This Rule is derived from current Rule 14-201 (a), with style changes.

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) Lien

"Lien" means a statutory lien or a lien upon property

created or authorized to be created by a lien instrument.

(e) 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.

(f) 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.

(g) Property

"Property" means real and personal property of any kind located in this State, including a condominium unit and a time share unit.

(h) 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) Residential Property

"Residential property" means real property with four or fewer single family dwelling units and 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) Sale

"Sale" means a foreclosure sale.

(k) 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) 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

In Rule 14-202, the definitions set forth in sections (a), (c), (d), (f), (j), and (l) are derived from current Rule 14-201 (b)(1), (2), (4), (6), (9), and (11), respectively, with style changes.

In section (b), a definition of "borrower" replaces the current definition of "debtor." The Committee was advised that "borrower" is the term commonly used. In conjunction with the revised definition of "record owner" in section (h), the new definition provides a listing of persons to whom notices must be given. Not carried forward in either definition is the concept of "record owner of the property at the time the lien was created." As noted in the One Hundred Sixtieth Report, if that person does not fit within one of the seven categories listed in the definition of "borrower" or the two categories listed in the

definition of "record owner," the Committee is of the opinion that notices need not be given.

In section (e), the definition of "lien instrument" has been revised so that it states the definition first, followed by examples. The current definition (subsection (b)(5) of Rule 14-201) begins with examples and concludes with "and any other instrument creating or authorizing the creation of a lien upon the property." The Committee believes that, whenever feasible, the general rule should be stated before examples of it are given.

In section (g), defining "property," the clause, "including a condominium unit and a time share unit" has been added to the definition.

In section (h), the definition of "record owner" is limited to the enumerated categories by using the word "means" rather than "includes." The term is relevant primarily in determining who gets notice of foreclosure events and who may move to dismiss the foreclosure action. Because it is impracticable for the foreclosing agent to check the land records on the day each notice is to be sent, the Committee, at the suggestion of practitioners, defines "record owner" as "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."

Section (i), defining "residential property," is derived from the statutory definition of that term set forth in Code, Real Property Article, §7-105.1, with the addition of a provision concerning condominium units. As noted in the One Hundred Sixtieth Report, the Committee believes that the legislative intent was to include individual residential condominium units, regardless of the number of such units within a structure or complex, within the statutory protections afforded with respect to "residential property."

As with section (e), section (k), defining "secured party," has been revised to state the definition first, followed by examples. The current definition (the first sentence of subsection (b)(10) of Rule 14-201) begins with examples and concludes "and any other party secured by a lien."

Following section (l), the definition of "statutory lien," is a new Committee note that highlights two kinds of statutory liens.

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).

REPORTER'S NOTE

In Rule 14-203, section (a) carries forward the language of current Rule 14-203 (b), without change. Section (b) carries forward the substance of current Rule 14-203 (c), with style changes and the deletion of the phrase, "with or without the bond described in Rule 14-206 (a)."

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).

REPORTER'S NOTE

Rule 14-204 carries forward the substance of current Rule 14-202, with style changes.

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) 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

Rule 14-205 carries forward the substance of current Rule 14-203 (a), with certain changes.

In section (b), the list of exceptions set forth in current Rule 14-203 as subsections (a)(3)(B)(i), (ii), (iii), and (iv) has been transferred to new Rule 14-206 (a).

In section (c), the defined terms "borrower" and "record owner" are substituted for "debtor" and "current record owner." The phrase "other than residential property" has been added to section (c). Additionally, a requirement that notice be provided to the person in possession of the property, if that person is not a "borrower" or "record owner," has been added to section (c).

The method of service set forth as subsection (c)(1) is amended to allow service by personal delivery to a resident of suitable age and discretion at the dwelling house or usual place of abode of the person to be served or, if service is by mail, to

require service by first class mail in addition to certified mail.

Stylistic changes also have been made to the Rule.

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.

Source: This Rule is new.

REPORTER'S NOTE

Rule 14-206 provides a mechanism to implement Code, Real Property Article, §7-105.1 (b)(2), which allows a secured party to petition the court for leave to commence immediately an action to foreclose a lien against residential property if one of the four circumstances listed in subsections (a)(1) - (a)(4) exists. The Rule provides for notice to the borrower and record owner and requires a hearing if a genuine dispute of material fact is raised as to whether the petitioner is entitled to the relief requested. If no genuine dispute of material fact is raised, the court may grant or deny the petition without a hearing.

Regardless of whether the petition is granted, section (f) requires that an order to docket or complaint to foreclose be filed in the same action as the petition. That is to avoid a double filing fee.

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 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;

(7) 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) of this Rule, 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; and

Committee note: Subsection (b)(7) of this Rule does not require

the filing of any information or papers that are substantially similar to information or papers provided in accordance with subsections (b)(1) through (b)(5). 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) 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.

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

Rule 14-207 clarifies and expands upon current Rule 14-204 (a) and (c).

Section (a) of the new Rule carries forward the current practice of allowing a foreclosure proceeding to be initiated by the filing of either an assent to a decree or an order to docket, and specifies the circumstances under which each may be used. If the lien instrument contains a power of sale or an assent to a decree, no process shall issue. If neither exists, the action is commenced by the filing of a complaint to foreclose, process

shall issue, and subsequent proceedings are in accordance with Rule 14-208.

Section (b) lists all documents that must accompany the complaint to foreclose or order to docket. In lieu of an original or clerk-certified document, a copy of each required document, supported by an affidavit that it is a true and accurate copy, is permitted.

New section (c) allows a circuit court to adopt, as part of its case management plan, procedures for screening orders to docket and complaints to foreclose. If the pleadings and papers do not comply with all statutory and Rule requirements, the plaintiff is given notice that the action will be dismissed without prejudice if the plaintiff, within 30 days, does not cure the deficiency or demonstrate that the papers are legally sufficient. Several circuit courts currently employ a screening process in foreclosure cases.

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. 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

Rule 14-208 carries forward the substance of current Rule 14-205 (a) and (b), with style changes, including in section (a) the addition of a specific reference to "service in accordance with Title 2, Chapter 100 of these Rules."

Subsection (b)(1) of current Rule 14-205 is not carried forward in that it is considered substantive, rather than procedural, in nature. In addition, the subsection is considered contrary to the statement in section (a) of the new Rule that "the action shall proceed in the same manner as any other civil action."

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 Occupant by First-Class Mail

When an action to foreclose on residential property is filed, the plaintiff shall send by first-class mail addressed to "Occupant" at the address of the property a notice in substantially the following form:

NOTICE

An action to foreclose a Mortgage Deed of Trust Land Installment Contract Contract or Statutory Lien on the property located at (Insert Address) has been filed in the Circuit Court for (County).

A foreclosure sale of the property may occur at any time after 45 days from the date of this notice. You may want to consult with an attorney because you could be evicted, even if you are a tenant and have paid the rent due and complied with your lease. For further information, you may review the file in the office of the Clerk of the Circuit Court.

(d) Affidavit of Service and Mailing

(1) Time for Filing

An affidavit of service under section (a) or (b) of this Rule and mailing under section (c) 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.

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.

REPORTER'S NOTE

By Rules Order dated July 22, 2008, effective July 23, 2008, the Court of Appeals adopted amendments to current Rule 14-204 that substantially revised the Rule to conform it to 2008 Md. Laws, Ch. 2 (HB 365). Rule 14-209 carries forward the service provisions of section (b) of that Rule, applicable in actions to foreclose on residential property.

In addition to style changes, two substantive changes are made. First, in the current Rule, the person to be served is the "mortgagor or grantor." This is changed to the more expansive defined terms, "borrower" and "record owner." Second, at the suggestion of representatives from the Legal Aid Bureau, a new section (c) is added to provide notice to the occupant of residential property.

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 by certified mail and by first-class mail to (1) the borrower, (2) the record owner of the property, (3) the holder of any subordinate interest in the property subject to the lien, and (4) "Occupant" at the address of the property. Except for the notice to "Occupant," 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.

REPORTER'S NOTE

Rule 14-210 carries forward the provisions of current Rule 14-206 (b), with style and other changes.

In section (a), which is derived from current Rule 14-206 (b)(1), the first phrase of the first sentence, "After commencement of an action," is deleted as unnecessary in light of the phrase, "in which the action is pending," at the end of the sentence. Also, language that describes the phrase "newspaper of general circulation" as used in the context of the Rule is moved verbatim from the text of the Rule to a Committee note. The move is stylistic only; no substantive change is intended. The Committee intends to examine whether a universal definition consistent with the Committee note would be appropriate for inclusion in Title 1 of the Rules. If such a Rule is promulgated, the Committee note can be deleted.

In section (b), which is derived from current Rule 14-206 (b)(2), the defined terms of "borrower" and "record owner" are now used. Added to the Rule is a requirement that notice of the time, place, and terms of sale also be sent to "Occupant" at the address of the property. Also added to the section is the

concept that the last known address of a person includes the last address reasonably ascertainable from public records that are recorded, indexed, and available for public inspection 30 days before the date of the sale.

Sections (d), (e), and (f) are derived from current Rule 14-206 (b)(3), (4), and (5), respectively, with style changes.

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

In an action to foreclose a lien on 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. 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;

(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.

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.

(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 defense. 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.

Source: This Rule is new.

REPORTER'S NOTE

Rule 14-211 is new. It replaces the provisions of current Rule 14-209 (b), Injunction to Stay Foreclosure. Sections (a) and (c) of current Rule 14-209 also are not carried forward.

As noted in the One Hundred Sixtieth Report, the new Rule couples a motion to stay the sale with a motion to dismiss the foreclosure action. A motion to "stay or dismiss" must state a valid defense to (1) the validity of the lien, (2) the validity of the lien instrument, or (3) the right of the plaintiff to foreclose on the pending action, and comply with the other requirements of the Rule.

Subsection (a)(1) provides a list of persons eligible to file the motion. The list includes "a person who claims an equitable interest in the property." A cross reference following section (a) contains statutory references to examples of such persons.

To reduce the number of last-minute motions to stay, subsection (a)(2) contains time requirements as to when the motion may be filed. The subsection keys the time for filing the motion to whether or not the moving party was served pursuant to Rule 14-209. If the moving party was served, the motion must be filed within 15 days after service. Otherwise, the motion must be filed within 15 days after the moving party first became aware of the action. The court may extend either time requirement or excuse non-compliance, for good cause.

Subsection (a)(3) requires that the motion be under oath or supported by affidavit and contains five other requirements of the motion. The subsection permits a request for a referral to alternative dispute resolution to be included in the motion.

Section (b) requires the court, with or without a hearing, to deny the motion if (1) the time requirement of subsection (a)(2) has not been met or excused, (2) the motion does not substantially comply with the requirements of the Rule, or (3) the motion does not state on its face a valid defense to the foreclosure action. If the motion is not denied, a hearing on the merits of the defense is held. If practicable, the hearing

is scheduled for a time prior to the sale.

If it is not practicable to hold the hearing on the merits prior to the sale, the court enters a temporary stay in accordance with subsection (c)(1). Subsection (c)(2) provides for a hearing, in-person or by telephone or electronic means, with respect to the setting of appropriate conditions for the stay.

Section (d) allows the court to enter a scheduling order in accordance with Rule 2-504.

Section (e) provides for a final determination of the matter after the hearing on the merits.

Rule 14-212. 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

Based upon a suggestion by Suzanne Sangree, Chief Solicitor, City of Baltimore Department of Law, Rule 14-212 allows the court to refer to mediation or another appropriate form of alternative dispute resolution a contested action in which a prima facie defense has been raised by a motion filed pursuant to Rule 14-211. The referral is subject to the provisions of Rule 17-103. If the court appoints a mediator other than by agreement of the parties, the mediator must have the qualifications set out in new section (f) of Rule 17-104, the format of which is based upon Rule 17-104 (e).

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).

REPORTER'S NOTE

Rule 14-213 carries forward the provisions of current Rule 14-206 (a), with style changes.

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.

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

Rule 14-214 carries forward the provisions of Rule 14-207 (b) and (c), with style changes. Additionally, the current gap as to the sale procedure when there is no power of sale or assent to a decree is filled by new section (d), which expands to that situation the procedure currently applicable to a sale made pursuant to a statutory lien.

The newly defined term "individual" is substituted for the term "natural person" in the current Rule. See the proposed amendment to Rule 1-202.

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).

REPORTER'S NOTE

Rule 14-215 carries forward the substance of current Rule 14-207 (d), (e), and (f), with style changes.

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.

REPORTER'S NOTE

Rule 14-216 carries forward the substance of current Rule 14-208, with style changes and expanded service provisions. In section (b), the revised Rule provides for a motion for a deficiency judgment to be served in accordance with Rule 1-321 upon a person who is a party to the action. Otherwise, the motion must be served in accordance with Rule 2-121 and accompanied by (1) a notice advising the person served that any response 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 and (2) a copy of Rule 2-321 (b).

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).

REPORTER'S NOTE

Rule 14-217 carries forward the substance of current Rule 14-209 (a) and (c), with style changes.

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.

REPORTER'S NOTE

Rule 14-218 carries forward the substance of current Rule 14-210, with style changes.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 200 - CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-202 to add a definition of "Individual," as follows:

Rule 1-202. DEFINITIONS

. . .

(1) Individual

"Individual" means a human being.

~~(l)~~ (m) Individual Under Disability

. . .

~~(m)~~ (n) Judge

. . .

~~(n)~~ (o) Judgment

. . .

~~(o)~~ (p) Levy

. . .

~~(p)~~ (q) Money Judgment

. . .

~~(q)~~ (r) Original Pleading

. . .

~~(r)~~ (s) Person

. . .

~~(s)~~ (t) Pleading

. . .

~~(t)~~ (u) Proceeding

. . .

~~(u)~~ (v) Process

. . .

~~(v)~~ (w) Property

. . .

~~(w)~~ (x) Return

. . .

~~(x)~~ (y) Sheriff

. . .

~~(y)~~ (z) Subpoena

. . .

~~(z)~~ (aa) Summons

. . .

~~(aa)~~ (bb) Writ

. . .

Source: This Rule is derived as follows:

. . .

Section (l) is new.

Section ~~(l)~~ (m) is derived from former Rule 5 r.

Section ~~(m)~~ (n) is derived from former Rule 5 n.

Section ~~(n)~~ (o) is derived from former Rule 5 o.

Section ~~(o)~~ (p) is new.

Section ~~(p)~~ (q) is new.

Section ~~(q)~~ (r) is derived from the last sentence of former Rule 5 v.

Section ~~(r)~~ (s) is derived from former Rule 5 q.

Section ~~(s)~~ (t) is new and adopts the concept of federal practice set forth in the 1963 version of Fed. R. Civ. P. 7 (a).

Section ~~(t)~~ (u) is derived from former Rule 5 w.

Section ~~(u)~~ (v) is derived from former Rule 5 y.
Section ~~(v)~~ (w) is derived from former Rule 5 z.
Section ~~(w)~~ (x) is new.
Section ~~(x)~~ (y) is derived from former Rule 5 cc.
Section ~~(y)~~ (z) is derived from former Rule 5 ee.
Section ~~(z)~~ (aa) is new.
Section ~~(aa)~~ (bb) is derived from former Rule 5 ff.

REPORTER'S NOTE

The proposed addition of new section (l) to Rule 1-202 defines "individual" as a "human being." This term is distinguished from the broader term "person," which is defined in relettered section (s).

To conform to the relettering of Rule 1-202, amendments to Rules 2-131, 2-221, 3-131, 3-221, 9-202, and 16-401 also are made.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-131 to conform to the relettering of Rule
1-202, as follows:

Rule 2-131. APPEARANCE

. . .

Cross reference: Rules 1-311, 1-312, 1-313; Rules 14, 15, and 16
of the Rules Governing Admission to the Bar. See also Rule 1-202
(~~r~~) (s) for the definition of "person".

Source: This Rule is derived from former Rule 124.

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 200 - PARTIES

AMEND Rule 2-221 to conform to the relettering of Rule
1-202, as follows:

Rule 2-221. INTERPLEADER

. . .

Cross reference: For the definition of property, see Rule 1-202
(~~v~~) (w).

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-131 to conform to the relettering of Rule 1-202, as follows:

Rule 3-131. APPEARANCE

. . .

Cross reference: Rules 1-311, 1-312, 1-313; Rules 14 and 15 of the Rules Governing Admission to the Bar. See also Rule 1-202 (~~r~~) (s) for the definition of "person", and Code, Business Occupations and Professions Article, §10-206 (b) (1), (2), and (4) for certain exceptions applicable in the District Court.

Source: This Rule is derived from former Rule 124.

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

MARYLAND RULES OF PROCEDURE
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT
CHAPTER 200 - PARTIES

AMEND Rule 3-221 to conform to the relettering of Rule
1-202, as follows:

Rule 3-221. INTERPLEADER

. . .

Cross reference: For the definition of property, see Rule 1-202
(~~v~~) (w).

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

MARYLAND RULES OF PROCEDURE
TITLE 9 - FAMILY LAW ACTIONS
CHAPTER 200 - DIVORCE, ANNULMENT, ALIMONY, CHILD SUPPORT,
AND CHILD CUSTODY

AMEND Rule 9-202 to conform to the relettering of Rule
1-202, as follows:

Rule 9-202. PLEADING

. . .

Cross reference: See Rule 1-202 ~~(s)~~ (t).

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 400 - ATTORNEYS, OFFICERS OF COURT AND OTHER PERSONS

AMEND Rule 16-401 to conform to the relettering of Rule 1-202, as follows:

Rule 16-401. PROSCRIBED ACTIVITIES - GRATUITIES, ETC.

. . .

Cross reference: For definition of "person," see Rule 1-202 (~~r~~) (s).

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

MARYLAND RULES OF PROCEDURE
TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION
CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-104 by adding a new section (f) pertaining to the qualifications of a mediator other than by agreement of the parties in an action to foreclose a lien instrument, as follows:

Rule 17-104. QUALIFICATIONS AND SELECTION OF MEDIATORS

. . .

(f) Additional Qualifications -- Proceedings to Foreclose Lien Instruments

To be designated by the court as a mediator in a proceeding to foreclose a lien instrument, other than by agreement of the parties, the person must:

(1) have the qualifications prescribed in section (a) of this Rule;

(2) have completed as a mediator at least five non-domestic circuit court mediations or five non-domestic non-circuit court mediations of comparable complexity;

(3) be knowledgeable about lien instruments and foreclosure proceedings because of experience, training, or education; and

(4) agree to complete any continuing education training required by the court.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 14-212.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE,
JUDICIAL DUTIES, ETC.

AMEND Rule 16-107 to add a new section (b) pertaining to terms of grand juries and extension of the terms under certain circumstances, as follows:

Rule 16-107. ~~SINGLE~~ TERM OF COURT AND GRAND JURY

(a) Term of Court

For accounting and statistical reporting purposes, each circuit court shall hold a single term each year beginning on July 1 and ending on the following June 30.

(b) Term of Grand Jury; Extension to Complete Investigation

The jury plan of a county shall specify the term for a grand jury for the county. The term of service of any additional grand jury appointed pursuant to Code, Courts Article, §8-413 shall be as determined by the county administrative judge. On motion of the State's Attorney, the county administrative judge or the jury judge may extend the term of a grand jury or additional grand jury so that it may complete an investigation specified by the judge in the order. The grand jury shall continue until it concludes its investigation or is sooner discharged by the judge, but is limited to the investigation specified in the order. In this Rule, "State's Attorney"

includes the Attorney General, when using a grand jury pursuant to Article V, §3 of the Maryland Constitution and the State Prosecutor, when using a grand jury pursuant to Code, Criminal Procedure Article, §14-110.

Cross reference: For the definition of "jury plan," see Code, Courts Article, §8-101 (c).

Source: This Rule is derived in part from former Rule 1206 and is in part new.

REPORTER'S NOTE

The proposed amendment to Rule 16-107 requires that the term for a grand jury of a county (other than an additional grand jury appointed pursuant to Code, Courts Article, §8-413) be specified in the jury plan for that county. The term of service of an additional grand jury is as determined by the county administrative judge.

The amendment also includes a provision that allows the county administrative judge or jury judge, on motion of the State's Attorney (as defined in the Rule) to extend the term of a grand jury or additional grand jury so that an investigation may be completed.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-812.1 to add to the composition of the Judicial Ethics Committee a former judge who is approved for recall for temporary service under Maryland Constitution, Article IV, §3A and another member who is not a judge, an officer or employee of the Judiciary, or a lawyer; to provide that the former judge serves at the pleasure of the Chief Judge of the Court of Appeals; and to amend section (d) to provide that the terms of not more than four members expire each year; as follows:

Rule 16-812.1. JUDICIAL ETHICS COMMITTEE

(a) Definitions

In this Rule the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(1) Committee

"Committee" means the Judicial Ethics Committee.

(2) Ethics Provision

"Ethics provision" means:

(A) a provision of Code, State Government Article, Title 15, Subtitle 5 or 6;

(B) as to a judge, also a provision of the Maryland Code of Judicial Conduct; and

(C) as to a judicial appointee as defined in Rule 16-814, also a provision of the Maryland Code of Conduct for Judicial Appointees.

(3) State Official in Judicial Branch

"State official in the Judicial Branch" means an individual who is in the Judicial Branch and is a State official, as defined in Code, State Government Article, §15-102.

(b) Creation

There is a Judicial Ethics Committee.

(c) Composition

The Committee consists of ~~nine~~ 11 members appointed by the Chief Judge of the Court of Appeals. Of the ~~nine~~ 11 members:

(1) one shall be a judge of the Court of Special Appeals;

(2) two shall be circuit court judges;

(3) two shall be judges of the District Court;

(4) one shall be a judge of an orphans' court;

(5) one shall be a former judge who is approved for recall for temporary service under Maryland Constitution, Article IV, §3A;

~~(5)~~ (6) one shall be a clerk of a circuit court;

~~(6)~~ (7) one shall be a judicial appointee as defined in Rule 16-814; and

~~(7)~~ (8) ~~one~~ two shall not be a judge or other officer or employee of the Judicial Branch of the State government or a lawyer.

(d) Term

(1) The term of a member is three years and begins on July 1, except that the former judge appointed pursuant to subsection (c)(5) of this Rule shall not have a term and shall serve at the pleasure of the Chief Judge of the Court of Appeals.

(2) The terms of the members shall be staggered so that the terms of ~~three~~ not more than four members expire each year.

(3) At the end of a term, a member continues to serve until a successor is appointed.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed.

(5) A member appointed on or after July 1, 2005, may not serve more than two consecutive three-year terms.

(e) Chair and Vice Chair

The Chief Judge of the Court of Appeals shall designate one judicial member as the Chair of the Committee and one judicial member as the Vice Chair. In the absence or disability of the Chair or upon an express delegation of authority by the Chair, the Vice Chair shall have the authority and perform the duties of the Chair.

(f) Meetings

The Committee shall meet at the times and places that the Chair directs.

(g) Quorum

The presence of a majority of the members then serving constitutes a quorum for the transaction of all business other than adjournment of a meeting for lack of a quorum.

(h) Committee Staff

The Committee shall have staff as the State Court Administrator directs.

(i) Duties

In addition to its other duties imposed by law, the Committee:

(1) shall give advice, as provided in this Rule, with respect to the application or interpretation of the Maryland Code of Judicial Conduct and the Maryland Code of Conduct for Judicial Appointees;

(2) is designated as the body to give advice with respect to the application or interpretation of any provision of Code, State Government Article, Title 15, Subtitles 5 and 6, to a State official in the Judicial Branch;

(3) shall review timely appeals from the State Court Administrator's decision not to extend, under Rule 16-815 or 16-816, the period for filing a financial disclosure statement;

(4) shall determine, under Rule 16-815 f or Rule 16-816 g, whether to allow a judge or judicial appointee to correct a deficiency as to a financial disclosure statement or to refer the matter, as to a judge, to the Commission on Judicial Disabilities or, as to a judicial appointee, to the State Ethics Commission; and

(5) shall submit to the Court of Appeals recommendations for necessary or desirable changes in any ethics provision.

(j) (1) Requester

A request for the opinion of the Committee may be made only by:

(A) a State official in the Judicial Branch, as to the proper interpretation of an ethics provision as applied to that State official; or

(B) the Chief Judge of the Court of Appeals, as to the proper interpretation of an ethics provision.

(2) Form of Request

Each request for an opinion of the Committee shall:

(A) be in writing;

(B) describe the act or activity about which the opinion is requested;

(C) include all documentation or other information necessary for the Committee to perform its function, which may include citation to rules, statutes, and published opinions of the Committee that the requester believes to be relevant to the request; and

(D) include an address to which the Committee shall direct correspondence.

(3) Opinion

The Committee may render an opinion, in writing, with regard to any request made under this Rule and shall decide whether an opinion is to be published or unpublished. The Chair shall cause to be prepared an edited version of each opinion designated to be published, in which the identity and specific court or geographical location of the requester and the identity

of other persons mentioned in the opinion shall not be disclosed and shall have the opinion published in the manner that the State Court Administrator deems proper.

(4) Letter of Advice

If the Chair decides that the full Committee cannot provide a timely written opinion or that prior opinions of the Committee render full Committee review unnecessary, a panel of not less than three members appointed by the Chair may issue a written letter of advice, which shall not be published and shall have no precedential effect.

(5) Protection from a Charge of Violation

A State official in the Judicial Branch who requests an opinion as to application of an ethics provision and is in compliance with an opinion of, or letter of advice issued for, the Committee is protected from a charge of violation of that ethics provision.

Committee note: The Judicial Ethics Committee noted that, given the binding effect of opinions, they generally should be issued only to a State official in the Judicial Branch requesting advice as to the official's own conduct. This practice would avoid comment either on hypothetical conduct or conduct incompletely or inaccurately described. However, there may be instances, such as those in which an opinion would affect numerous State officials in the Judicial Branch or the implementation of administrative duties, that make it appropriate to have a mechanism for requesting an interpretation of an ethics provision but not an opinion as to its application. Therefore, language in former Maryland Code of Judicial Conduct (1987), Canon 7 suggesting that persons other than a State official in the Judicial Branch could request an opinion has been omitted, but a provision for the Chief Judge of the Court of Appeals to request guidance on interpretation has been added. The addition is patterned on the practice for requesting an opinion from the Attorney General.

(6) Filing; Confidentiality

The Chair shall file with the State Court Administrator every opinion of, and letter of advice issued for, the Committee. A request and the letter of advice or the opinion, other than the edited version designated to be published, filed in response are confidential and, unless otherwise directed by the Court of Appeals or required by law, are not public information.

Cross reference: See Rule 16 813 (Maryland Code of Judicial Conduct) and Rule 16-814 (Maryland Code of Conduct for Judicial Appointees).

Source: This Rule is derived from former Maryland Code of Judicial Conduct (1987), Canon 7, as it was set forth in former Rule 1231 (renumbered Rule 16-813 by Rules Order dated January 18, 1996, effective July 1, 1996).

REPORTER'S NOTE

In accordance with a request from the Honorable Robert M. Bell, a proposed amendment to Rule 16-812.1 adds to the composition of the Judicial Ethics Committee a former judge who is approved for recall for temporary service under Maryland Constitution, Article IV, §3A. The former judge does not have a specified term. He or she serves on the Committee at the pleasure of the Chief Judge of the Court of Appeals.

For purposes of (1) determining whether there is a quorum for the transaction of business and (2) having an odd number of members when a vote is taken, the size of the Committee is increased to eleven. The eleventh member is a person who is not a judge or other officer or employee of the Judiciary or a lawyer.

Because the number of members who have terms is increased from nine to ten, an amendment to section (d) provides that the terms of not more than four members expire each year.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-813 to make Canon 4C (Charitable, Civic, and Governmental Activities) applicable to retired judges approved to recall, as follows:

Rule 16-813. MARYLAND CODE OF JUDICIAL CONDUCT

. . .

CANON 4

Extra Judicial Activities

A. Extra-judicial Activities in General

. . .

B. Avocational Activities

. . .

C. Charitable, Civic, and Governmental Activities

(1) Except when acting in a matter that involves the judge or the judge's interests, when acting as to a matter that concerns the administration of justice, the legal system, or improvement of the law, or when acting as otherwise allowed under Canon 4, a judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official.

COMMENT

As suggested in the Reporter's Notes to the ABA Model Code of Judicial Conduct (1990), the "administration of justice" is

not limited to "matters of judicial administration" but is broad enough to include other matters relating to the judiciary.

(2) Except as otherwise provided by law and subject to Canon 4A, a judge may accept appointment to a governmental advisory commission, committee, or position.

COMMENT

A judge may not accept a governmental appointment that could interfere with the effectiveness and independence of the judiciary, assume or discharge an executive or legislative power (Maryland Declaration of Rights, Article 8), or hold an "office" under the constitution or other laws of the United States or State of Maryland (Maryland Declaration of Rights, Articles 33 and 35).

Committee note: The Judicial Ethics Committee notes that the supremacy clause of U.S. Constitution Article IV may allow service in reserve components of the armed forces that otherwise might be precluded under this Code, such as service as a judge advocate or military judge. However, the Attorney General, rather than the Judicial Ethics Committee, traditionally has rendered opinions with regard to issues of dual or incompatible offices.

(3) A judge may represent this country, a state, or a locality on ceremonial occasions or in connection with cultural, educational, or historical activities.

(4) (a) Subject to other provisions of this Code, a judge may be a director, member, non legal adviser, officer, or trustee of a charitable, civic, educational, fraternal or sororal, law related, or religious organization.

COMMENT

See the Comment to Canon 4B regarding use of the phrase "subject to other provisions of this Code." As an example of the meaning of the phrase, a judge permitted under Canon 4C (4) to serve on the board of an organization may be prohibited from such service by, for example, Canon 2C or 4A, if the organization

practices invidious discrimination or if service on the board otherwise causes a substantial question as to the judge's capacity to act impartially as a judge or as to service as an adviser.

(b) A judge shall not be a director, adviser, officer, or trustee of an organization that is conducted for the economic or political advantage of its members.

(c) A judge shall not be a director, adviser, officer, or trustee of an organization if it is likely that the organization:

(i) will be engaged regularly in adversary proceedings in any court; or

(ii) deals with people who are referred to the organization by any court.

COMMENT

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine whether it is proper to continue a relationship with it. For example, in many jurisdictions, charitable organizations are more frequently in court now than in the past or make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(d)(i) A judge shall not participate personally in:

(A) solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise appellate or supervisory jurisdiction; or

(B) a membership solicitation that reasonably might be perceived as coercive or, except as permitted in Canon 4C

(4)(d)(i)(A), is essentially a fund-raising mechanism.

(ii) A judge shall not participate as a guest of honor or speaker at a fund-raising event.

(iii) Except as allowed by Canon 4C (4)(d), a judge shall not use or lend the prestige of judicial office for fund-raising or membership solicitation.

(iv) A judge may:

(A) assist an organization in planning fund-raising;

(B) participate in the investment and management of an organization's funds; and

(C) make recommendations to private and public fund-granting organizations on programs and projects concerning the administration of justice, the legal system, or improvement of the law.

COMMENT

As a director, member, non-legal adviser, officer, or trustee of an organization that is devoted to the administration of justice, the legal system, or improvement of the law or for a not-for-profit charitable, civic, educational, fraternal or sororal, or religious organization, a judge may solicit membership and encourage or endorse membership efforts for the organization, as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor who is in a position of control or influence. A judge may be listed as a director, officer, or trustee of an organization but must not engage in direct, individual solicitation of funds or memberships in person, by telephone, or in writing, for that organization, except in the following cases: (1) a judge may solicit, for funds or memberships, other judges over whom the judge does not exercise appellate or supervisory authority; (2) a judge may solicit, for membership in an organization described above, other persons if neither those persons nor persons with whom they are affiliated are likely to appear before the court on which the judge serves; and (3) a judge who is an officer of an organization described above may send a general membership

solicitation mailing over the judge's signature.

Use of an organization's letterhead for fund-raising or membership solicitation does not violate Canon 4C (4) if the letterhead lists only the judge's name and office or other position in the organization. A judge's judicial office also may be listed if comparable information is listed for other individuals. A judge must make reasonable efforts to ensure that court officials, the judge's staff, and others subject to the judge's direction and control do not use or refer to their relationship with the judge to solicit funds for any purpose, charitable or otherwise.

Although a judge is not permitted to be a guest of honor or speaker at a fund-raising event, Canon 4 does not prohibit a judge from attending an event if otherwise consistent with this Code.

~~Cross reference: As to exemption for former judges approved for recall, see Canon 6C.~~

D. Financial Activities

. . .

E. Fiduciary Activities

. . .

F. Service as Arbitrator or Mediator

. . .

G. Practice of Law

. . .

CANON 6

Compliance

A. Courts

This Code applies to each judge of the Court of Appeals, the Court of Special Appeals, a circuit court, the District Court, or an orphans' court.

B. Construction

Violation of any of the Canons by a judge may be regarded as conduct prejudicial to the proper administration of justice within the meaning of Maryland Rule 16-803 (j), as to the Commission on Judicial Disabilities.

Committee note: Whether a violation is or is not prejudicial conduct is to be determined by the Court of Appeals of Maryland. Maryland Constitution, Article IV, §4B gives that Court the authority to discipline any judge upon recommendation of the Commission on Judicial Disabilities. This disciplinary power is alternative to and cumulative with the impeachment authority of the General Assembly.

C. Former Judges

This Code, other than Canon ~~4C (Charitable, Civic, and Governmental Activities)~~ and **E 4E (Fiduciary Activities)**, applies to each former judge of one of those courts who is approved for recall for temporary service under Maryland Constitution, Article IV, §3A. Except if there is non-recusal by agreement as permitted by Canon 3E, a former judge approved for recall for temporary service shall not preside over a judicial proceeding in which the former judge's **impartiality** might reasonably be questioned because of the former judge's ~~charitable, civic, governmental, or~~ **fiduciary** activities.

Cross reference: As to approval of a former judge for recall, see Code, Courts Article, §1-302.

D. Time for Compliance

An individual to whom this Code becomes applicable shall comply immediately with all provisions of this Code except: Canon 2C (Avoidance of Impropriety and the Appearance of Impropriety),

Canon 4D (2) (Financial Activities), and Canon 4E (**Fiduciary** Activities). The individual shall comply with Canons 2C and 4D (2) and E as soon as reasonably possible, and shall do so in any event as to Canon 2C within two years and as to Canon 4D (2) and E within one year.

Source: . . .

Canon 6.

Canon 6A is derived from Maryland Code (1987), Canon 6A, with the Committee note omitted.

Canon 6B is derived from Maryland Code (1987), Canon 6B, with substitution of "Canons" for "any of the provisions of this Code of Judicial Conduct" to clarify that a judge can be charged only with violating a Canon and not a Comment or Committee note.

Canon 6C is derived from Maryland Code (1987), Canon 6C, but with the entire Code other than Canon ~~4C~~ and ~~E~~ 4E made applicable to recalled judges. The second sentence is new.

Canon 6D is derived from ABA Code (2000), Canon 6F.

. . .

REPORTER'S NOTE

The amendments to Rule 16-813 make Canon 4C (Charitable, Civic, and Governmental Activities) applicable to retired judges approved for recall for temporary service under Maryland Constitution, Article IV, §3A. The amendments:

- (1) delete the Cross reference following Canon 4C;
- (2) delete from the first sentence of Canon 6C the reference to Canon 4C;
- (3) delete from the second sentence of Canon 6C the phrase, "charitable, civic, governmental, or"; and
- (4) delete from the Source note to Canon 6C the reference to Canon 4C.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 200 - CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-202 (k) to conform the Committee note following the section to recent legislation, as follows:

Rule 1-202. DEFINITIONS

. . .

(k) Holiday

"Holiday" means an "employee holiday" set forth in Code, State Personnel and Pensions Article, §9-201.

Committee note: The "employee holidays" listed in Code, State Personnel and Pensions Article are:

(1) January 1, for New Year's Day;

(2) January 15, for Dr. Martin Luther King, Jr.'s Birthday, unless the United States Congress designates another day for observance of that legal holiday, in which case, the day designated by the United States Congress;

(3) the third Monday in February, for Presidents' Day;

(4) May 30, for Memorial Day, unless the United States Congress designates another day for observance of that legal holiday, in which case, the day designated by the United States Congress;

(5) July 4, for Independence Day;

(6) the first Monday in September, for Labor Day;

(7) October 12, for Columbus Day, unless the United States

Congress designates another day for observance of that legal holiday, in which case, the day designated by the United States Congress;

(8) November 11, for Veterans' Day;

(9) the fourth Thursday in November, for Thanksgiving Day;

(10) the Friday after Thanksgiving Day, for American Indian Heritage Day;

(11) December 25, for Christmas Day;

(12) each statewide general election day in this State; and

(13) each other day that the President of the United States or the Governor designates for general cessation of business.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 1-202 adds a reference to American Indian Heritage Day to the Committee note following section (k) to conform it to Chapter 486, Laws of 2008 (HB 83).

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
FORMS FOR EXPUNGEMENT OF RECORDS

AMEND Form 4-504.1 to conform the Form to recent legislation,
as follows:

Form 4-504.1. PETITION FOR EXPUNGEMENT OF RECORDS

(Caption)

PETITION FOR EXPUNGEMENT OF RECORDS

1. (Check one of the following boxes) On or about _____,
(Date)
I was [] arrested, [] served with a summons, or [] served
with a citation by an officer of the _____
(Law Enforcement Agency)
at _____, Maryland, as
a result of the following incident _____

_____.

2. I was charged with the offense of _____
_____.

3. On or about _____,
(Date)
the charge was disposed of as follows (check one of the following
boxes):

[] I was acquitted and either three years have passed since

disposition or a General Waiver and Release is attached.

[] The charge was dismissed or quashed and either three years have passed since disposition or a General Waiver and Release is attached.

[] A judgment of probation before judgment was entered on a charge that is not a violation of Code*, Transportation Article, §21-902 or Code*, Criminal Law Article, §§2-503, 2-504, 2-505, or 2-506, or former Code*, Article 27, §388A or §388B, and either (a) at least three years have passed since the disposition, or (b) I have been discharged from probation, whichever is later. Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

[] A Nolle Prosequi was entered and either three years have passed since disposition or a General Waiver and Release is attached. Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or

regulations not carrying a possible sentence of imprisonment.

[] The proceeding was placed on the Stet docket and three years have passed since disposition. Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

[] I was convicted of a crime specified in Code, Criminal Procedure Article, §10-105 (a)(9); three years have passed since the later of the conviction or satisfactory completion of the sentence, including probation; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

[] The case was compromised or dismissed pursuant to Code*, Criminal Law Article, §3-207, former Code*, Article 27, §12A-5, or former Code*, Article 10, §37 and three years have passed since disposition.

[] On or about _____ , I was granted
(Date)

a full and unconditional pardon by the Governor for the

one criminal act, not a crime of violence as defined in Code*, Criminal Law Article, §14-101 (a), of which I was convicted. Not more than ten years have passed since the Governor signed the pardon, and since the date the Governor signed the pardon I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

WHEREFORE, I request the Court to enter an Order for Expungement of all police and court records pertaining to the above arrest, detention, confinement, and charges.

I solemnly affirm under the penalties of perjury that the contents of this Petition are true to the best of my knowledge, information and belief, and that the charge to which this Petition relates was not made for any nonincarcerable violation of the Vehicle Laws of the State of Maryland, or any traffic law, ordinance, or regulation, nor is it part of a unit the expungement of which is precluded under Code, Criminal Procedure Article, §10-107.

(Date)

Signature

(Address)

(Telephone No.)

* References to "Code" in this Petition are to the Annotated Code of Maryland.

REPORTER'S NOTE

Chapter 616, Laws of 2008 (HB 685) added conviction of certain minor crimes to the categories of items that may be expunged. The proposed amendment to Form 4-504.1 conforms the Form to the new law.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

AMEND Rule 11-104 f. to correct a statutory reference, as follows:

Rule 11-104. DUTIES OF CLERK

. . .

f. List of Open Hearings.

Prior to the convening of court on each day that the juvenile court is in session, the clerk shall prepare and make available to the public a list of the hearings scheduled for that day that are required by Code, Courts Article, ~~§3-812~~ §3-8A-13 (f) to be conducted in open court. The list shall include the full name of each respondent and the time and location of the hearing.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 11-104 f. updates an obsolete statutory reference.