

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(17) (text unchanged)

(18) “Nationwide Mortgage Licensing System and Registry [(NMLSR)] (*NMLS*)” has the meaning stated in Financial Institutions Article, [§11-501] §1-101, Annotated Code of Maryland.

(19)—(29) (text unchanged)

(30) “Vacant and abandoned” means a finding by the appropriate circuit court that a residential property is vacant and abandoned pursuant to Real Property Article, [§7-105.14(c)] §7-105.18(c), Annotated Code of Maryland.

.02 Notice of Intent to Foreclose.

A. Subject to §§[E and] F, G, and H of this regulation, a person required to send a notice of intent to foreclose under Real Property Article, §7-105.1, Annotated Code of Maryland, shall send a notice of intent to foreclose, which shall fully conform with §B, C, or D of this regulation.

B. Owner-Occupied Residential Property.

(1) Subject to §C of this regulation, a notice of intent to foreclose on owner-occupied residential property shall be in a form substantially similar to that in:

(a) Appendix A of this [chapter] *regulation* if the loan is not a federally related mortgage loan;

(b) Appendix A-f of this [chapter] *regulation* if the loan is a federally related mortgage loan; or

(c) With respect to a notice of intent to foreclose from a secured party offering prefile mediation for a loan that is not a federally related mortgage loan, Appendix A-1 of this [chapter] *regulation*, as follows:

(i) Appendix A-1 shall be accompanied in the same envelope or package by the packets of documents and forms substantially similar to Schedule 1 (Prefile Mediation Packet) and Schedule 2 (Loss Mitigation Packet) of Appendix A-1 of this [chapter] *regulation*.

(ii) Each of the documents and forms constituting Appendix A-1, Schedule 1, and Schedule 2 as required under subparagraph (i) of this paragraph shall be in the sequence of documents and forms presented in Appendix A-1, Schedule 1, and Schedule 2, respectively *of this regulation*. Appendix A-1 shall be the first in the sequence. Schedule 1 shall be the second in the sequence and shall be directly behind Appendix A-1. Schedule 2 shall be the third in the sequence and shall be directly behind Schedule 1. Appendix A-1, Schedule 1, and Schedule 2 shall be separated from each other by any reasonable method that ensures that the borrower can identify the forms and documents constituting each of Appendix A-1, Schedule 1, and Schedule 2.

(iii) The Loss Mitigation Application and Instruction required in Schedule 2 of Appendix A-1 may be in the form authorized under Regulation [.06].03 of this chapter.

(d) With respect to a notice of intent to foreclose from a secured party offering prefile mediation for a loan that is a federally related mortgage loan, Appendix A-1(f) of this [chapter] *regulation*, as follows:

(i) Appendix A-1(f) shall be accompanied in the same envelope or package by the packets of documents and forms substantially similar to Schedule 1 (Prefile Mediation Packet) and Schedule 2 (Loss Mitigation Packet) of Appendix A-1(f) of this [chapter] *regulation*.

(ii) (text unchanged)

(iii) The Loss Mitigation Application and Instruction required in Schedule 2(f) of Appendix A-1(f) may be in the form authorized under Regulation [.06].03 of this chapter.

(2) For purposes of the notice set forth in §B(1) of this regulation, the names and license numbers of mortgage lender licensees and mortgage loan originator licensees are required to be included in the notice only if this information is included on or recorded with the security instrument securing the mortgage loan related to the notice, or is otherwise known to the person sending the notice. The person sending the notice set forth in §B(1) of this regulation may satisfy the requirement to include the license number of the mortgage lender licensee and mortgage loan originator licensee by including the [NMLSR] *NMLS* unique identifier. If the mortgage lender was exempt from licensure under Financial Institutions Article, §11-501 et seq., Annotated Code of Maryland, at the time the mortgage loan was made, then a mortgage lender license number is not required under this section. If the mortgage loan originator was exempt from licensure under Financial Institutions Article, §11-601 et seq., Annotated Code of Maryland, at the time the mortgage loan was originated, then a mortgage lender license number is not required under this section.

[(3) The notice of intent to foreclose may include a separate addendum, sequenced at the end of the notice of intent to foreclose, with additional information, a notice, or advice relating to default that is required in advance of commencement of a foreclosure by a covenant of the deed of trust or mortgage that is the subject of the notice, or by the servicer, investor, insurer, or government regulator guidelines applicable to the deed of trust or mortgage that is the subject of the notice, provided the additional information, notice, or advice does not contradict any information required to be contained in the notice of intent to foreclose.]

[(4)] (3) The notice of intent to foreclose shall be accompanied in the same envelope or package by:

(a) A loss mitigation application for loss mitigation programs that are applicable to the loan secured by the mortgage or deed of trust that is the subject of the notice. If the secured party does not have its own loss mitigation application, the secured party shall use the form of loss mitigation application set forth in Regulation [.06].03 of this chapter;

(b) (text unchanged)

(c) A description of the eligibility requirements for the loss mitigation programs offered by the secured party that may be applicable to the loan secured by the mortgage or deed of trust that is the subject of the notice. If the mortgage loan is owned, securitized, insured, or guaranteed by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or Federal Housing Administration[, or if the servicing agent is participating in the federal Making Home Affordable Modification Program (also known as “HAMP”)], providing documentation to the borrower as required by those programs satisfies the requirement to provide a description of the eligibility requirement for the applicable loss mitigation program; and

(d) An addressed envelope in conformity with Regulation [.07] .10 of this chapter addressed to the person (an individual, a group of individuals, or a department such as a “loss mitigation department”) responsible for conducting the loss mitigation analysis on behalf of the secured party for the mortgage loan.

C. If the basis for the authority to foreclose on the owner-occupied residential property is a homeowners’ association lien, condominium association lien, mechanic’s lien, a similar statutory or contractual lien, or a basis other than a mortgage loan default, a notice of intent to foreclose shall be in a form substantially similar to that in Appendix B of this [chapter] *regulation*.

D. (text unchanged)

E. Any notice of intent to foreclose under this regulation may include a separate addendum, sequenced at the end of the notice of intent to foreclose, with any additional information, notice, or advice required as a prerequisite to commencing foreclosure by the terms of the deed of trust or mortgage that is the subject of the notice, government regulatory guidelines applicable to such deed of trust or mortgage or by the servicer, investor, or insurer of such deed of trust or mortgage, provided the additional information, notice, or advice does not contradict any information required to be contained in the notice of intent to foreclose.

[E.] F. Filing Electronically. A person required to send the Commissioner a copy of a notice of intent to foreclose under Real Property Article, §7-105.1, Annotated Code of Maryland, shall meet that requirement by making an electronic submission within 5 business days of mailing a notice of intent to foreclose through the [Commissioner’s Notice of Intent to Foreclose Electronic System] *Maryland Foreclosure Registration System* (the “System”). A link to the System is available on the Commissioner’s website at <http://www.labor.maryland.gov/finance>.

[F.] G. (text unchanged)

H. A notice of intent to foreclose that is sent in compliance with Real Property Article, §7-105.1, Annotated Code of Maryland, and is otherwise valid under the law, shall expire and will not be effective:

(1) If, after 1 year from the date on which it is sent to the borrower, an action to foreclose the mortgage or deed of trust pursuant to such notice of intent to foreclose has not been filed;

(2) If an action to foreclose the mortgage or deed of trust filed pursuant to such notice of intent to foreclose is dismissed by the appropriate adjudicative body;

(3) If the borrower cures the default described in the notice of intent to foreclose and becomes current on payment, whether pursuant to the terms of the mortgage or deed of trust or a loss mitigation agreement entered into by the parties;

(4) As provided for in Real Property Article, §7-105.1(d)(18), Annotated Code of Maryland; or

(5) As provided for in §D(4) of this regulation.

I. If a notice of intent to foreclosure expires and becomes ineffective as provided for in §H(1) of this regulation, the secured party shall send a new notice of intent to foreclose in compliance with Real Property Article, §7-105.1, Annotated Code of Maryland, and this regulation prior to filing an action to foreclose a mortgage or deed of trust on residential property.

[G.] J. (text unchanged)

[.09] .04 Prefile Mediation Process.

A. (text unchanged)

B. Within 5 business days after the date on which the secured party or the identified representative of the secured party receives an application for prefile mediation from a borrower, the secured party or the representative of the secured party shall notify the Office of Administrative Hearings that the borrower has submitted an application for prefile mediation. The notification shall be in a form substantially similar to that in Appendix I of *this regulation*.

C.—E. (text unchanged)

F. Good Faith and Fair Dealing. The secured party, or any representative of the secured party, has a duty of good faith and fair dealing in its participation at a prefile foreclosure mediation, including, but not limited to:

(1) Providing the borrower with an accurate accounting of the debt owed;

(2) Making the borrower aware of all loss mitigation options and services offered by the secured party; and

(3) Pursuing loss mitigation when reasonably possible.

[.03] .05 Preliminary Loss Mitigation Affidavit.

A. Subject to §B of this regulation, a preliminary loss mitigation affidavit required by Real Property Article, §7-105.1(h)(3), Annotated Code of Maryland, and this chapter shall be in a form substantially similar to that in Appendix D of this [chapter] *regulation*.

B. (text unchanged)

[.04] .06 Final Loss Mitigation Affidavit.

A. Subject to §B of this regulation, a final loss mitigation affidavit required by Real Property Article, §7-105.1(h)(4), Annotated Code of Maryland, and this chapter shall be in a form substantially similar to that in Appendix E of this [chapter] *regulation*.

B. (text unchanged)

[.08] .07 Notice of [Filing] Foreclosure Action.

A. Notice of [Filing] *Foreclosure Action* to Accompany a Preliminary Loss Mitigation Affidavit.

(1) A form substantially similar to that in Appendix H-1 of this [chapter] *regulation* shall be used to comply with the notice of filing requirement when accompanying a preliminary loss mitigation affidavit, as well as an order to docket or complaint to foreclose, as required by Real Property Article, §7-105.1, Annotated Code of Maryland.

(2)—(5) (text unchanged)

B. Notice of [Filing] *Foreclosure Action* to Accompany a Final Loss Mitigation Affidavit.

(1) A form substantially similar to that in Appendix H-2 of this [chapter] *regulation* shall be used to comply with the notice of filing requirement when accompanying a final loss mitigation affidavit and the form used under this chapter to request postfile mediation, as well as an order to docket or complaint to foreclose, as required by Real Property Article, §7-105.1, Annotated Code of Maryland.

(2) (text unchanged)

(3) The form used under this chapter to request postfile mediation shall be the second in the sequence of papers and documents in the packet sent to the borrower and shall be directly behind the form used under [§A of this regulation] *this section*.

(4)—(6) (text unchanged)

C. Notice of [Filing] *Foreclosure Action* with Respect to Borrowers Who Have Participated in Prefile Mediation.

(1) A form substantially similar to that in Appendix H-3 of this [chapter] *regulation* shall be used to comply with the notice of filing requirement when accompanying an order to docket or complaint to foreclose for owner-occupied residential property with respect to which the borrower has participated in prefile mediation that has not resulted in a prefile mediation agreement, as required by Real Property Article, §7-105.1, Annotated Code of Maryland.

(2) A form substantially similar to that in Appendix H-4 of this [chapter] *regulation* shall be used to comply with the notice of filing requirement when accompanying an order to docket or complaint to foreclose for owner-occupied residential property with respect to which the borrower has participated in prefile mediation that has resulted in a prefile mediation agreement, as required by Real Property Article, §7-105.1, Annotated Code of Maryland.

D. Notice of [Filing] *Foreclosure Action* for Non Owner-Occupied Properties. A form substantially similar to that in Appendix H-5 of this [chapter] *regulation* shall be used to comply with the notice of [filing] *foreclosure action* requirement when accompanying an order to docket or complaint to foreclose with respect to a property that is not an owner-occupied residential property, as required by Real Property Article, §7-105.1, Annotated Code of Maryland.

E. *Notice of Foreclosure Action Based on a Certificate of Vacancy or a Certificate of Property Unfit for Human Habitation.*

(1) *A form substantially similar to that in Appendix H-6 of this regulation shall be used to comply with the notice of filing requirement when accompanying an order to docket or complaint to foreclose based on a certificate of vacancy or a certificate of property unfit for human habitation pursuant to Real Property Article, §7-105.13, Annotated Code of Maryland.*

(2) *The form used under this section to comply with the notice of filing requirement based on a certificate of vacancy or a certificate of property unfit for human habitation shall be the first in the sequence of papers and documents in the packet sent to the borrower, and shall be on yellow paper.*

(3) *The form used under this chapter to describe the procedure to challenge a certificate of vacancy or certificate of property unfit for human habitation shall be the second in the sequence of papers and documents in the packet sent to the borrower and shall be directly behind the form used under this section.*

(4) *The form used under this chapter to make a challenge to a certificate of vacancy or certificate of property unfit for human habitation shall be the third in the sequence of papers and documents in the packet sent to the borrower and shall be directly behind the form used to describe the procedure to challenge a certificate of vacancy or certificate of property unfit for human habitation.*

(5) *The remainder of the papers and documents in the packet sent to the borrower may be in any other sequence.*

(6) *The sequence requirements of §E(2), (3), and (4) of this regulation apply only to the papers and documents sent to the borrower.*

[E.] F. Notice of [Filing] *Foreclosure Action* with Respect to Properties Found to Be Vacant and Abandoned. A form substantially similar to that in Appendix H-6 of this [chapter] *regulation* shall be used to comply with the notice of filing requirement when accompanying an order to docket or complaint to foreclose with respect to a property that is vacant and abandoned.

[.05] .08 Postfile Foreclosure Mediation.

A. Subject to §B of this regulation, a request for postfile mediation required by Real Property Article, §7-105.1(h)(4), Annotated Code of Maryland, and this chapter shall be in a form substantially similar to that in Appendix F of this [chapter] *regulation*.

B. (text unchanged)

C. *Good Faith and Fair Dealing.* The secured party, or any representative of the secured party, has a duty of good faith and fair dealing in its participation at a postfile foreclosure mediation, including, but not limited to:

- (1) Providing the borrower with an accurate accounting of the debt owed;
- (2) Making the borrower aware of all loss mitigation options and services offered by the secured party; and
- (3) Pursuing loss mitigation when reasonably possible.

[.10].09 Office of Administrative Hearings.

A. Borrower Information Worksheet and Instructions.

(1) With respect to a scheduled prefile mediation session, the Office of Administrative Hearings shall provide the Borrower(s) Information Worksheet and the instructions regarding the documents and information that must be provided by each party to the other and to the Office of Administrative Hearings in a form substantially similar to that in Appendix OAH-1 of this [chapter] regulation.

(2) With respect to a scheduled postfile mediation session, the Office of Administrative Hearings shall provide the Borrower(s) Information Worksheet and the instructions regarding the documents and information that must be provided by each party to the other and to the Office of Administrative Hearings in a form substantially similar to that in Appendix OAH-2 of this [chapter] regulation.

B. Housing Counseling.

(1) (text unchanged)

(2) At the option of the secured party, a borrower who fails to deliver the housing counseling certification may sign a borrower certification of housing counseling in a form substantially similar to that in Appendix OAH-5 of this [chapter] regulation.

(3) At the option of the secured party, the secured party may waive the housing counseling certification at the prefile mediation session by signing the waiver of housing counseling in a form substantially similar to that in Appendix OAH-6 of this [chapter] regulation.

(4) (text unchanged)

C. Mediation Checklist.

(1) The mediation checklist required by Real Property Article, §7-105.1(d)(10), Annotated Code of Maryland, to be used in a prefile mediation shall be in a form substantially similar to that in Appendix OAH-3 of this [chapter] regulation and may, as applicable, include Appendix OAH-5 or Appendix OAH-6 of this regulation.

(2) The mediation checklist required by Real Property Article, §7-105.1(l), Annotated Code of Maryland, to be used in a postfile mediation shall be in a form substantially similar to that in Appendix OAH-4 of this [chapter] regulation.

D. (text unchanged)

E. Appearance.

(1)—(3) (text unchanged)

(4) *If the secured party, itself or through a representative of the secured party, is found by the mediator to have failed to appear at a scheduled foreclosure mediation, then the secured party may not schedule a foreclosure sale until:*

(a) *The secured party, or a representative of the secured party, appears and participates in a foreclosure mediation;*

(b) *The borrower withdraws the borrowers' request to participate in the foreclosure mediation; or*

(c) *The foreclosure action has been dismissed and a new foreclosure action is filed in full compliance with State law and this chapter.*

F. [Filing Electronically] *Mediation Documents and Information.*

(1) The Commissioner may allow the submission of information and documents required for the foreclosure mediation under this regulation by an electronic method.

(2) *Documents and information provided by one party to another and to the Office of Administrative Hearing as provided for in this regulation, shall be furnished timely and in an accessible and legible format.*

G. *Postfile Mediation Agreement Terms.* *If the postfile mediation results in an agreement, including a conditional agreement, the Office of Administrative Hearings shall draft the postfile mediation agreement term sheet during the mediation session, and, at the conclusion of a postfile mediation session, the mediator and each party shall sign the term sheet.*

H. *Mediation Outcome.*

(1) *Pursuant to the time frame provided for in Real Property Article, §7-105.1(l)(4), Annotated Code of Maryland, the Office of Administrative Hearings shall file a report with the court that states the outcome of the request for foreclosure mediation that will include:*

(a) *A statement as to whether the postfile mediation was held and, if not, the reasons why it was not held;*

(b) *If applicable, a copy of the mediation checklist as provided for in this regulation; and*

(c) *If applicable, the documented postfile mediation agreement term sheet provided for in §G of this regulation.*

(2) *The Office of Administrative Hearings shall furnish a copy of the report provided for in Real Property Article, §7-105.1(l)(4), Annotated Code of Maryland, as described in this section, to each party that appears at the mediation.*

(3) The contents of the report filed by the Office of Administrative Hearings pursuant to Real Property Article, §7-105.1(1)(4), Annotated Code of Maryland, shall be privileged.

.13 Challenges to Certificates of Vacancy or Certificates of Unfitness for Human Habitation.

A. A form substantially similar to that in Appendix J of this regulation shall be used to comply with the requirement to provide a description of the procedure to challenge a certificate of vacancy or certificate of property unfit for human habitation when accompanying an order to docket or complaint to foreclose based on a certificate of vacancy or a certificate of property unfit for human habitation pursuant to Real Property Article, §7-105.13, Annotated Code of Maryland.

B. A form substantially similar to that in Appendix K of this regulation shall be used to comply with the requirement to provide the form to be used to make a challenge to a certificate of vacancy or certificate of property unfit for human habitation when accompanying an order to docket or complaint to foreclose based on a certificate of vacancy or a certificate of property unfit for human habitation pursuant to Real Property Article, §7-105.13, Annotated Code of Maryland.

.14 Enforcement.

The Commissioner may enforce the provisions of this chapter by exercising any of the powers provided under Financial Institutions Article, §§2-114—2-116, Annotated Code of Maryland.