

January 6, 2006

The Honorable Robert M. Bell,
Chief Judge

The Honorable Irma S. Raker
The Honorable Alan M. Wilner
The Honorable Dale R. Cathell
The Honorable Glenn T. Harrell, Jr.
The Honorable Lynne A. Battaglia
The Honorable Clayton Greene, Jr.,
Judges

The Court of Appeals of Maryland
Robert C. Murphy Courts of
Appeal Building
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this Letter Report and recommends that the Court adopt, on an emergency basis, the proposed amendments to Rules 14-204, 14-205, and 14-206.

The proposed amendments correct an error in the amendments to Rule 14-206 that were intended to conform the Rule to Chapter 509, Acts of 2005. Practitioners in the area of foreclosure advise that the error in the amendments to Rule 14-206 that became effective January 1, 2006 could jeopardize all foreclosures filed after that date. The proposed Rules changes submitted herewith correct that situation.

For the guidance of the Court and the public, following each proposed Rules change is a Reporter's Note describing the reasons for the proposal and any changes that would be effected in current law or practice. We caution that these Reporter's Notes were prepared initially for the benefit of the Rules Committee; they are not part of the Rules and have not been debated or

approved by the Committee; and they 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,

Joseph F. Murphy, Jr.
Chairperson

Linda M. Schuett
Vice Chairperson

JFM/LMS:cdc

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

AMEND Rule 14-206 to delete a certain provision concerning notice to the record owner, as follows:

Rule 14-206. PROCEDURE PRIOR TO SALE

(a) Bond

Before making a sale of property to foreclose a lien, the person 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 the amount of the debt plus the estimated expenses of the proceeding. On application by a person having an interest in the property or by the person authorized to make the sale, the court may increase or decrease the amount of the bond pursuant to Rule 1-402 (d).

(b) Notice

(1) By Publication

After commencement of an action to foreclose a lien and before making a sale of the property subject to the lien, the person authorized to make the sale shall publish notice of the time, place, and terms of sale in a newspaper of general circulation in the county in which the action is pending.

"Newspaper of general circulation" means 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. For the sale of an interest in real property, the notice shall be given at least once a week for three successive weeks, the first publication to be not less than 15 days prior to sale and the last publication to be not more than one week prior to sale. For the sale of personal property, the notice shall be given not less than five days nor more than 12 days before the sale.

(2) By Certified and First Class Mail

(A) Before making a sale of the property, the person authorized to make the sale shall send notice of the time, place, and terms of sale by certified mail and by first class mail to the last known address of (i) the debtor, (ii) the record owner of the property, and (iii) the holder of any subordinate interest in the property subject to the lien.

(B) ~~The notice of the sale shall be sent to the record owner of the property no later than two days after the action to foreclose is docketed and shall include the notice required by Code, Real Property Article, §7-105 (a).~~

~~(C) The notice of the sale shall be sent not more than 30~~

days and not less than ten days before the date of the sale to all ~~other~~ such persons whose identity and address are actually known to the person authorized to make the sale or are reasonably ascertainable from a document recorded, indexed, and available for public inspection 30 days before the date of the sale.

(3) To Counties or Municipal Corporations

In addition to any other required notice, not less than 15 days prior to the sale of the property, the person authorized to make the sale shall send written notice to the county or municipal corporation where the property subject to the lien is located as to:

(A) the name, address, and telephone number of the person authorized to make the sale; and

(B) the time, place, and terms of sale.

(4) Other Notice

If the person authorized to make the sale receives actual notice at any time before the sale is held 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 person 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 in any manner, including by telephone or electronic transmission, that is reasonably calculated to apprise the interest holder of the sale. This notice need not be given to anyone to whom notice was sent pursuant to subsection (b) (2) of this Rule.

(5) Return Receipt or Affidavit

The person giving notice pursuant to subsections (b) (2), (b) (3), and (b) (4) of this Rule shall file in the proceedings an affidavit (A) that the person has complied with the provisions of those subsections or (B) that the identity or address of the debtor, 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 pursuant to subsection (b) (4), the affidavit shall state the date, manner, and content of the notice given.

(c) Postponement

If the sale is postponed, notice of the new date of sale shall be published in accordance with subsection (b) (1) of this Rule. No new or additional notice under subsection (b) (2) or (b) (3) of this Rule need be given to any person to whom notice of the earlier date of sale was sent, but notice shall be sent to persons entitled to notice under subsections (b) (2) (B) and (4) of this Rule to whom notice of the earlier date of sale was not sent.

Cross reference: Regarding foreclosure consulting contracts, see Code, Real Property Article, §§7-301 through 7-321.

Source: This Rule is derived in part from former Rule W74 and is in part new.

REPORTER'S NOTE

The proposed amendments to Rule 14-206, 14-204, and 14-205 correct a provision in Rule 14-206 pertaining to a notice that is required by Code, Real Property Article, §7-105 (a-1) to be sent to the record owner of residential real property no later than two days after the action to foreclose is docketed. This notice is in addition to the notice of sale that is required to be sent "not more than 30 days and not less than ten days before the date of the sale."

The correction is made by (1) a deletion from Rule 14-206 and (2) the addition of a new section (b), Notice to Record Owner, to Rules 14-204 and 14-205 that provides for the separate notice to the record owner of residential real property required by Code, Real Property Article, §7-105 (a-1) to be given two days after the foreclosure action is docketed.

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

AMEND Rule 14-204 by adding a new section (b) pertaining to a certain notice to the record owner, as follows:

Rule 14-204. COMMENCEMENT OF ACTION AND PROCESS

(a) Methods of Commencing Action

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

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

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

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

the sale, and

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

(b) Notice to Record Owner of Residential Real Property

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

~~(b)~~ (c) Process and Hearing Not Required

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

Cross reference: Sections 511 and 532 of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. Appendix.

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

REPORTER'S NOTE

See the Reporter's note to Rule 14-206.

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

AMEND Rule 14-205 to add a new section (b) pertaining to a certain notice to the record owner, as follows:

Rule 14-205. LIEN INSTRUMENTS OR STATUTORY LIENS - CONTAINING NEITHER POWER OF SALE NOT ASSENT TO DECREE

(a) Commencement of Action and Process

When a complaint to foreclose a lien instrument or statutory lien containing neither a power of sale nor an assent to a decree is filed, process shall issue and be served, and the action shall proceed as in any other civil action.

(b) Notice to Record Owner of Residential Real Property

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

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

(1) Generally

In an action to foreclose a lien instrument or statutory lien containing neither a power of sale nor an assent to a decree, the court shall first determine whether a default has occurred. If the court finds that a default has occurred it shall (A) fix the amount of the debt, interest, and costs then

due and (B) provide a reasonable time within which payment may be made. The court may order that if payment is not made within the time fixed in the order, so much of the property as may be necessary to satisfy the amount due shall be sold.

(2) Order Directing Sale Before Judgment in Exceptional Case

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

Source: This Rule is derived from former Rule W73.

REPORTER'S NOTE

See the Reporter's note to Rule 14-206.