

Title 09

MARYLAND DEPARTMENT OF LABOR

Subtitle 03 COMMISSIONER OF FINANCIAL REGULATION

09.03.12 Foreclosure Procedures for Residential Property

Authority: Financial Institutions Article, §2-105.1; Real Property Article, §§7-105.1, 7-105.13, and 7-105.18; Annotated Code of Maryland

Notice of Final Action

[22-015-F]

On July 22, 2022, the Commissioner of Financial Regulation adopted amendments to existing Regulations **.01** and **.02**, amendments to and the recodification of existing Regulations **.03**, **.04**, **.05**, **.08**, **.09**, and **.10** to be Regulations **.05**, **.06**, **.08**, **.07**, **.04**, and **.09**, respectively, the recodification of existing Regulations **.06** and **.07** to be Regulations **.03** and **.10**, respectively, and new Regulations **.13** and **.14** under **COMAR 09.03.12 Foreclosure Procedures for Residential Property**. This action, which was proposed for adoption in 49:2 Md. R. 81—85 (January 14, 2022), has been adopted with the nonsubstantive changes shown below.

Effective Date: March 1, 2023.

Attorney General's Certification

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the Attorney General certifies that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:

As a general matter, these changes do not substantively affect the benefits or burdens of any party subject to the Regulations. Rather, the changes provide additional clarity by: moving language within the proposed text to better suited locations; restating certain language to better highlight an applicable timeframe for borrowers and removing unnecessary language.

Regulation .09 I: In response to comments received, Regulation .09 I is eliminated with the language contained in Regulation .09 I moved to Regulation .04 F and .08 C. This change and the two which immediately follow relate to the same comment. The proposed text of Regulation .09 I imposed a duty of good faith and fair dealing on the secured party and its representatives in any foreclosure mediation. A commenter suggested this duty should be moved to those Regulations expressly addressing mediation. The Final Rule moves the language from the proposed text of Regulation .09 I to Regulation .04 F, which addresses prefile mediation, and Regulation .08 C, which addresses post file mediation. Other than specifying either prefile or postfile mediation, the Final Rule moved identical language from the proposed text. As such, the Final Rule does not alter the burden or benefit of any party.

Regulation .04 F: As indicated above, in response to comments received, this section is added to contain language moved from Regulation .09 I, with additional language added to refer to prefile mediation.

Regulation .08 C: As indicated above, in response to comments received, this section is added to contain language moved from Regulation .09 I, with additional language added to refer to postfile mediation.

Regulation .09 H(1)(d): In response to comments received, Regulation .09 H(1)(d) of the proposed text is eliminated from the Final Rule as unnecessary. Regulation .09 H specified the report of mediation (Report) the Office of Administrative Hearing (OAH) must file with the Court pursuant to applicable law must include three mandatory items listed in paragraphs (a)-(c) and could include one item within the OAH's discretion listed in paragraph (d). The Final Rule eliminates paragraph (d). Elimination of Regulation .09 H(1)(d) from the Final Rule does not limit what the OAH may include in the Report nor prohibit the OAH from including any information the OAH deems relevant. Further, neither consumers nor secured parties possessed any ability under the proposed text to compel or even request the OAH to include additional information in the Report. For these reasons, elimination of (d) does not alter the burden or benefit of any party.

Regulation .09 H(3): In response to comments received, the Final Rule eliminates language recognizing the Court's ability to deem all or any portion of the Report as not privileged. Specifically, the proposed text stated the content of the Report is privileged and added "unless the court deems all, or any portion thereof, otherwise." Because this language simply noted the Court's ability to override the privilege, it is eliminated as unnecessary. The elimination of this language does not impact the Court's ability to override the privilege and therefore does not alter the burden or benefit of any party.

Appendix F: In response to comments received, the Final Rule makes two changes to Appendix F. First, the proposed text of Appendix F allowed a borrower to supply its preferred contact information but included this language at the bottom of the page. The Final Rule moves this language to the top of the page to make it more visible to the borrower. As this change simply moves existing language, it does not alter the burden or benefit of any party. Second, Appendix F listed the website address for Maryland Homeowner Assistance in 2 places. This website address has changed and the Final Rule revises Appendix F to substitute the new website address in the 2 places where this website address appears. This change corrects outdated information and does not alter the benefit or burden of any party.

Appendix OAH-1 and Appendix OAH-2: In response to comments received, identical language contained in the proposed text of Appendix OAH-1 and OAH-2 is changed to better highlight the timeframe in which a borrower may request a correspondence log in the mediation process. Specifically, the proposed text for each Appendix stated: "Correspondence log from the time the loan went into default until the date of submission, if requested by the borrower prior to the document submission deadline." The Final Rule revises this language on both Appendix OAH-1 and OAH-2 to state: "Correspondence log from the time the loan went into default until the date of submission, if requested by the borrower. NOTE: If the borrower requests the correspondence log, their request must be made to the servicer prior to the document submission deadline." This change simply rewords the proposed text without any change in meaning to better highlight the time frame in which a borrower may request the correspondence log. As such, it does not alter the benefit or burden of either party.

Note: [Any appendices referenced in this chapter that have been amended since the publication of the proposed action appear at the end of the Final Action on Regulations section of this issue.](#)

.04 Prefile Mediation Process.

A.—E. (proposed 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.*

.08 Postfile Foreclosure Mediation.

A.—B. (proposed 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.*

.09 Office of Administrative Hearings.

A.—G. (proposed text unchanged)

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) (proposed text unchanged)*
- (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[[]; and[]].*
- [[d) Any other information deemed relevant by the Office of Administrative Hearings.]]*

(2) (proposed text unchanged)

(3) The contents of the report filed by the Office of Administrative Hearings pursuant to Real Property Article, §7-105.1(l)(4), Annotated Code of Maryland, shall be privileged [[unless the court deems all, or any portion thereof, otherwise.]]

[[I. 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 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.]]*

ANTONIO P. SALAZAR
Commissioner of Financial Regulation

Subtitle 32 UNEMPLOYMENT INSURANCE

09.32.07 Reconsideration of Unemployment Insurance Overpayment Recovery and Waiver Request

Authority: Labor and Employment Article, §§8-305 and 8-809, Annotated Code of Maryland

Notice of Final Action

[22-130-F]

On December 5, 2022, the Secretary of Labor adopted amendments to Regulations .02—.04 and .08 under **COMAR 09.32.07 Reconsideration of Unemployment Insurance Overpayment Recovery and Waiver Request**. This action, which was proposed for adoption in 49:17 Md. R. 798 (August 12, 2022), has been adopted as proposed.

Effective Date: December 26, 2022.

TIFFANY P. ROBINSON
Secretary of Labor

Title 14 INDEPENDENT AGENCIES

Subtitle 23 ALCOHOL AND TOBACCO COMMISSION

Notice of Final Action

[22-185-F]

On November 23, 2022, the Executive Director of the Alcohol and Tobacco Commission adopted under a new subtitle, **Subtitle 23 Alcohol and Tobacco Commission**:

(1) Amendments to and the recodification of existing Regulations .03, .04, .11—.13, .15—.20, .22, and .05 under **COMAR 03.02.01 Alcoholic Beverages** to be Regulations .02, .03, .07—.09, .11—.16, .18, and .19 under a new chapter, **COMAR 14.23.01 Alcoholic Beverages**, respectively; the recodification of existing Regulations .06, .07, .09, .14, and .21 under **COMAR 03.02.01** to be Regulations .04, .05, .06, .10, and .17 under **COMAR 14.23.01**, respectively; and new Regulation .01 under **COMAR 14.23.01**;