

June 9, 2009

The Honorable Robert M. Bell,
Chief Judge
The Honorable Glenn T. Harrell, Jr.
The Honorable Lynne A. Battaglia
The Honorable Clayton Greene, Jr.
The Honorable Joseph F. Murphy, Jr.
The Honorable Sally D. Adkins
The Honorable Mary Ellen Barbera,
Judges
The Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
Annapolis, Maryland 21401

Your Honors:

On May 26, 2009, the Rules Committee submitted to the Court its One Hundred Sixty-First Report, Category 1 of which proposes emergency amendments to Rule 14-102. Those amendments are designed to conform the Rule to legislation enacted in the 2009 Session of the General Assembly and that is currently in effect. Regrettably, the Committee was unaware at the time of the enactment by Congress of the Federal Protecting Tenants At Foreclosure Act of 2009 (P.L. 111-22), which was signed by the President and took effect May 20, 2009.

That Act, which is a small part (Title VII of Division A) of the more comprehensive Helping Families Save Their Homes Act of 2009, requires some additional changes to Rule 14-102, which are respectfully submitted as emergency measures in this Supplement to the One Hundred Sixty-First Report.

A copy of the Protecting Tenants At Foreclosure Act of 2009, comprising Sections 701 through 704 of the more comprehensive statute, is attached. That Act, as the Court will note, applies to the foreclosure of any "federally related mortgage loan" or on "any dwelling or residential property." Also attached is a copy of 12 U.S.C., §2602, which defines the term "federally related mortgage loan" very broadly, as including loans made by any

lender whose deposits are insured by any Federal agency or that are intended to be sold to the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation.

The Federal law provides protections for bona fide tenants. The purchaser at a foreclosure sale may not evict any bona fide tenant without giving a 90-day notice. If the tenant has a bona fide lease, the tenant is entitled to remain in the property until expiration of the remaining term of the lease, unless a successor in interest to the purchaser intends to occupy the property as his/her primary residence.

In order to implement those protections, the Rules Committee is proposing (1) additional language to section (a) of Rule 14-102 to require a person moving for a judgment of possession to aver, in the motion, compliance with the Federal Act, (2) an expanded Committee note calling attention to the Act, and (3) language in section (d) to require that a response to the motion filed by a tenant in possession state the basis of any defense the tenant wishes to raise under the Act. The intent is to alert the court to whether the Act applies to the particular foreclosure and, if so, whether there has been compliance with its requirements.

The emergency amendments proposed in this Supplement have been sent to all of the persons who acted as consultants to the Committee or who otherwise participated in the development of the new foreclosure Rules, and the Committee will endeavor to see that as much notice as possible under the circumstances is given to the public.

Respectfully submitted,

Alan M. Wilner
Chair

Linda M. Schuett
Vice-Chair

AMW:cdc

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 14-102 to add a certain notice to "All Occupants" and affidavit requirement pertaining to a judgment awarding possession of residential property and to add provisions relating to the Federal Protecting Tenants at Foreclosure Act of 2009, as follows:

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 or a successor in interest who claims the right of immediate possession 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~~ The motion shall state the legal and factual basis for the purchaser's movant's claim of entitlement to possession. Except as otherwise provided in this Rule, Rule 2-311 applies. If the movant's right to possession arises from a foreclosure sale of a dwelling or residential property, the motion shall include averments, made to the best of the movant's knowledge, information, and belief, establishing either that the

person in possession is not a bona fide tenant having rights under the Federal Protecting Tenants at Foreclosure Act of 2009 (P.L. 111-22) or, if the person in possession is such a bona fide tenant, that the notice required under that Act has been given and that the tenant has no further right to possession. If a notice pursuant to the Federal Act is required, the movant shall state the date the notice was given and attach a copy of the notice as an exhibit to the motion.

Committee note: Unless the purchaser is a foreclosing lender or there is waste or other circumstance that requires prompt remediation, the purchaser ordinarily is not entitled to possession until the sale has been ratified and the purchaser has paid the full purchase price and received a deed to the property. See *Legacy Funding v. Cohn*, 396 Md. 511 (2007) and *Empire v. Hardy*, 386 Md. 628 (2005).

The Federal Protecting Tenants at Foreclosure Act of 2009 (P.L. 111-22) requires that a purchaser at a foreclosure sale of a dwelling or residential property give a 90-day notice to a "bona fide tenant" before any eviction and precludes the eviction if the tenant has a "bona fide lease or tenancy," unless the new owner of the property will occupy the property as a primary residence.

(b) Affidavit and Notice

The motion shall be accompanied by:

(1) an affidavit that states:

(A) the name of the person in actual possession, if known;

(B) 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. If the person asserts that the motion should be denied because the person is a bona fide tenant having a right of possession under the Federal Protecting Tenants at Foreclosure Act of 2009 (P.L. 111-22), the response shall (1) state the legal and factual basis for the assertion and (2) be accompanied by a copy of any bona fide lease or documents establishing the existence of such a lease or state why the lease or documents are not attached.

(4) Judgment of Possession

If a timely response to the motion is not filed and the court finds that the motion complies with the requirements of

sections (a) and (b) of this Rule, the court may enter a judgment awarding possession.

(e) Residential Property; Notice and Affidavit

After entry of a judgment awarding possession of residential property as defined in Rule 14-202 (i), but before executing on the judgment, the purchaser shall:

(1) send by first-class mail the notice required by Code, Real Property Article, §7-105.9 (d) addressed to "All Occupants" at the address of the property; and

(2) file an affidavit that the notice was sent.

Cross reference: Rule 2-647 (Enforcement of Judgment Awarding Possession).

Source: This Rule is derived in part from the 2008 version of former Rule 14-102 and is in part new.

REPORTER'S NOTE

Proposed new section (e) conforms Rule 14-102 to new requirements of Code, Real Property Article, §7-105.9 (d), added by Chapter 615, Laws of 2009 (HB 776).

Amendments to section (a), the Committee note following section (a), and subsections (d)(3) and (4) are proposed to implement the protections afforded to "bona fide tenants" under the Federal Protecting Tenants at Foreclosure Act of 2009 (P.L. 111-22).