

Virginia Foreclosure Task Force – 2011 Issue Meetings & Related Legislation

Issue	Bill Nos. (patron)	Line Nos.	Summary
APRIL 19 MEETING- Foreclosure Process			
1. Notice to Mortgagor	HB 1506 (Delegate Marshall)	34-41	45 days prior to foreclosure sale, secured party or servicer must give notice by certified or registered mail to owner stating notice of intent to foreclose and providing contact information of the secured party, trustee and mortgage servicer for alternatives to foreclosure.
	HB 1665 (Delegate Alexander)	13-26	2 business days after the beneficiary declares default, accelerates debt or institutes collection, the beneficiary or its agent must give notice by first class mail to grantor of (i) the action taken, (ii) programs or options to avoid foreclosure that the secured party provides or has knowledge of, and (ii) contact information for HUD approved counseling agencies.
	HB 2473 (Delegate Marshall)	38-47	40 days prior to the notice of sale, the secured party or servicer must give notice by certified or registered mail to owner of (i) intent to foreclose and (ii) contact information of secured party, trustee and servicer for alternatives to foreclosure
MAY 17 MEETING- Documentation and recordation			
2. Recordation of assignments	HB 1506 (Delegate Marshall)	89-106, 183-189	On or after 7/1/11, all assignments must be recorded, and foreclosure may not proceed unless (i) all assignments have been recorded and (ii) holder of secured debt can trace interest through recorded assignments.
	HB 1920 (Delegate Abbott)	66-70	For deeds of trust executed on or after 7/1/11, foreclosure may not proceed unless a duly recorded instrument has been recorded evidencing the assignment to the holder of the secured obligation.
	HB 1921 (Delegate Abbott)	12-20	For deeds of trust executed on or after 7/1/11, foreclosure may not proceed unless a duly recorded assignment has been recorded evidencing the assignment from the original mortgagee to the holder of the secured obligation. If more than one assignment, each assignment must be recorded.
	HB 2473 (Delegate Marshall)	95-114, 192-198	On or after 7/1/11, all assignments must be recorded, and foreclosure may not proceed unless (i) all assignments have been recorded and (ii) the trustee can trace the interest of the holder of secured debt through recorded assignments.
3. Authority of nominees	HB 1506 (Delegate Marshall)	107-112	Nominees have no authority to request trustee to foreclose. Nominee is defined to include who is designated in deed of trust, or subsequently designated to act on behalf of the mortgagee, and does not include an agent or other fiduciary.
	HB 2473 (Delegate Marshall)	115-120	Nominees have no authority to request trustee to foreclose. Nominee is defined to include who is designated in deed of trust, or subsequently designated to act on behalf of the mortgagee, and does not include an agent or other fiduciary.
4. Lost note affidavit	HB 1506 (Delegate Marshall)	65-81	Penalty of perjury applies for false affidavit. Sale shall not be permitted by the court unless the court finds that the borrower will be adequately protected against loss if another person should make a claim to enforce the note.
	HB 2473 (Delegate Marshall)	71-87	Penalty of perjury applies for false affidavit. Sale shall not be permitted by the court unless the court finds that the borrower will be adequately protected against loss if another person should make a claim to enforce the note.

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JUNE 21 MEETING- Rights, Duties and Remedies			
5. Duty to respond to inquiries	HB 1665 (Delegate Alexander)	27-35	After the beneficiary declares default, accelerates debt or institutes collection, the beneficiary may not unreasonably refuse (i) to provide grantor information on loan status, including amount necessary to cure or (ii) to respond to grantor's inquiries regarding loan status or any programs or options to avoid foreclosure that the beneficiary provides or has knowledge of.
6. Right to cure	HB 1665 (Delegate Alexander)	36-64	The grantor has right to cure and reinstate (and nullify any acceleration) the loan once every 18 months by (i) paying all delinquent sums, (ii) performing all other obligations, (iii) paying attorney fees of trustee and beneficiary, and (iv) paying all late charges. No fee, charge or penalty may be required to exercise the right to cure. This requirement applies to: mortgage lenders; federal and state banks, savings institutions, credit unions, and industrial loan associations; insurance companies; and small business investment companies (the statutory references in lines 63 and 64 are not current).
7. Remedies for fraud	HB 1506 (Delegate Marshall)	113-128	A person who knowingly makes or uses a false document or statement or swears or affirms falsely as to any matter in support of foreclosure shall be liable for a civil penalty of \$5,000 for each violation (in addition to any criminal penalties). The Commonwealth attorney or the attorney for the jurisdiction may bring an action to recover the penalty, plus attorney's fees and costs. The owner may recover three times the damages plus attorney's fees and costs.
	HB 2473 (Delegate Marshall)	121-137	A person who knowingly makes or uses a document or statement or swears or affirms as to any matter in support of foreclosure knowing the same to be false shall be liable for a civil penalty of \$5,000 for each violation (in addition to any criminal penalties). The attorney for the jurisdiction may bring an action to recover the penalty, plus attorney's fees and costs. The owner may recover the damages plus attorney's fees and costs.
	SB 837 (Senator Petersen)	10-18	A person who knowingly makes or uses a false document in support of foreclosure shall be liable to the injured party for compensatory and punitive damages and attorneys' fees and costs, as well as equitable relief.