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SUMMARY OF ARGUMENT

This home mortgage foreclosure case exhibits the grave constitutional due process infirmities that plague the mortgage foreclosure procedures employed currently in Maryland. Until the recent foreclosure crisis began depriving families of their homes in Maryland and across the nation in staggering numbers, these infirmities went largely unnoticed. The recent crisis highlights not only the scourge of predatory subprime lending that has caused so many of these foreclosures, but also the unreasonably summary procedure for carrying them out in Maryland with little or no notice to the homeowner.

This constitutionally flawed foreclosure procedure threatens to claim the home of Ms. Joyce Griffin, who received no notice of the foreclosure she now challenges. The process was invoked when her predatory mortgagee, Ameriquest, decided to foreclose the home she purchased with her fiancé who had died recently. The trustees carrying out the foreclosure mailed to Ms. Griffin via regular and certified mail, a statutorily-required notice concerning "rescue scams," but the certified mail notice was returned unclaimed. The trustees did nothing. Seven months later, using the same method of service that had failed previously, the trustees mailed a notice of the docketing of the foreclosure action. This mailing was, again, returned unclaimed. Unmoved by this second failure, the trustees again mailed a notice of the impending sale. It was not until after the sale that this mailing was also returned unclaimed. Ms. Griffin only became aware of the sale because the foreclosure purchaser left a note on Ms. Griffin's front door.

Current Maryland law does not require sufficient notice of a foreclosure action and the ensuing sale so as to satisfy the basic notion of due process that parties should have reasonable notice and an opportunity to be heard. Once the prescribed notices arrive in the mail, the current process results in a mere 10 days' notice of the foreclosure action and seven days' notice of the sale of the mortgaged property. Such a narrow window of time is inadequate for responding meaningfully to the action, whether it be to settle the debt or challenge the foreclosure with available defenses. The prescribed mailing of these notices as the method of service is also suspect because it does not provide the degree of assurance that process was served that is mandated by due process.

Given evolving standards, it is time for this Court to hold that due process requires, with such a vital interest as homeownership at risk and the unreasonably summary foreclosure procedures in place to adjudicate that interest, that the most reliable form of notice must be used to ensure that the homeowner is apprised of the impending loss of his or her most cherished asset. Thus, personal service, the most time-honored method of service for any type of legal action, should be required in Maryland mortgage foreclosure actions, given the gravity of the deprivation of a home.

INTERESTS OF *AMICI*[1]

Amici are ten local and national public interest and advocacy organizations dedicated to protecting civil rights, low-income homeowners and consumers, and the "American Dream" of homeownership. *Amici* are intimately familiar with the constitutionally flawed mortgage foreclosure process in Maryland and the real and dire consequences it presents for moderate- and low-income homeowners. On November 20, 2007, the Court granted the Motion of Public Justice Center for Leave to Participate as *Amicus Curiae*.[2]

The **Public Justice Center ("PJC")**, a non-profit civil rights and anti-poverty legal services organization founded in 1985, has a longstanding commitment to ensuring that persons harmed by the government are not denied a judicial remedy. The PJC's programs include its Appellate Advocacy Project, which seeks to improve the representation of indigent and disadvantaged persons and their interests before state and federal appellate courts. The Appellate Advocacy Project has submitted or joined in briefs of *amicus curiae* in recent cases involving claims by individuals faced with foreclosure. *See, e.g., Wells Fargo Home Mortg., Inc. v. Neal*, 398 Md. 705, 922 A.2d 538 (2007); *Henderson v. The Elmcroft Co.*, Court of Special Appeals No. 1063, Sept. Term 2005, *cert. denied*, 398 Md. 315, 920 A.2d 1059 (2007); *In re Attorneys Fees in Tax Sale Foreclosure Cases*, Baltimore City Circuit Court No. 24-C-03-3443. The PJC

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[1] *Amici* adopt the Statement of the Case, the Question Presented, and the Statement of Facts from the Appellant's brief.

has an interest in this case because the construction given to the mortgage foreclosure process will have a dramatic direct impact on families facing foreclosure and a sizeable indirect effect on low- and moderate-income residents of Maryland communities.

The **Baltimore CASH Campaign ("Baltimore CASH")** is a non-profit coalition of twenty organizations founded in 2001 to provide real opportunities for family economic stability and financial independence in Baltimore City. Through the programs and services of its coalition partners, Baltimore CASH has served over thirty thousand Maryland taxpayers through free tax preparation, financial education workshops, credit counseling, and other asset building programs -- including housing counseling. As the incidence of foreclosures increase in the Baltimore region, many homeowners' financial futures are ruined as well as the opportunities for their children and families. Their home was their main asset and, in some cases, the only financial security they had to leverage to send their children to college, start a small business, or plan for their retirement. Moreover, foreclosures severely impact the communities Baltimore CASH serves, decreasing property values, draining resources, and creating more vacant homes in struggling neighborhoods.

The **Center for Responsible Lending ("CRL")** is a non-profit organization that has done extensive empirical research and policy work on the negative impacts of

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[2] Simultaneous with the filing of this brief, Amicus Public Justice Center has requested by motion that the additional *amici* listed in this brief be permitted to join in its filing.

predatory lending, including the tendency to drain wealth from targeted borrowers by increasing the incidence of foreclosure. The organization helps identify and advance policies that provide greater rights to those victimized by predatory lending, including those facing foreclosure after receiving a predatory loan. CRL's supporting, or parent, organization is the Center for Community Self-Help, whose mission is to create ownership and economic opportunities for minorities, women, rural residents, and low-wealth families. Self-Help's loan fund has provided more than $5 billion in financing to help over 50,000 low-wealth borrowers in forty-seven states buy homes, build businesses, and strengthen community resources.

The **Community Law Center ("CLC")** is a non-profit public interest law firm which creates and implements innovative legal strategies to improve conditions for its clients. CLC's clients include community based organizations representing low-income urban communities. CLC has been a community leader in identifying and combating illegal and deceptive real estate transactions through its Project to End Deceptive and Predatory Real Estate Practices. This work has helped residents of Maryland who have experienced predatory lending, "flipping" (the quick purchase and resale of properties), mortgage fraud, and real estate scams. Victims of these practices in CLC's experience are individual homeowners, reputable lenders and entire neighborhoods that are devastated by vacancy and the consequences of foreclosure. CLC has an interest in this case because its experience has shown that Maryland's foreclosure process actually works against vulnerable homeowners, especially, in CLC's experience, when these

homeowners, through no fault of their own, end up in foreclosure because the professionals they trusted made a mistake, misled them, or concealed the truth from them.

The **Legal Aid Bureau, Inc. ("Legal Aid")** is a private, non-profit organization that provides free legal services to low-income Maryland residents from 13 offices located throughout the state. Legal Aid assists over 46,000 clients annually with a wide array of civil legal issues. Among those clients, Legal Aid represents hundreds of clients each year who are facing loss of their home through the foreclosure process. Legal Aid often sees clients who did not receive notice of a foreclosure proceeding or who received it so late in the process that there is insufficient time to raise any challenge prior to the foreclosure sale. Legal Aid has a strong interest in participating as an amicus because the validity of the Maryland foreclosure process has broad ramifications for its clients.

The **Maryland CASH Campaign ("Maryland CASH")** is a non-profit statewide coalition of twenty organizations founded in 2006 to provide real opportunities for family economic stability and financial independence throughout the state. Through the programs and services of their coalition partners, Maryland CASH has served over twenty thousand Maryland taxpayers through free tax preparation, financial education workshops, credit counseling, and other asset building programs -- including housing counseling. As the incidence of foreclosures increase in Maryland, many homeowners' financial futures are ruined as well as the opportunities for their children and families. Their home was their main asset and, in some cases, the only financial security they had

to leverage to send their children to college, start a small business, or plan for their retirement. Moreover, foreclosures severely impact Maryland communities, decreasing property values, draining resources, and creating more vacant homes in struggling neighborhoods.

The **Maryland Consumer Rights Coalition, Inc.** is a non-profit organization made up of individuals and organizations that care about educating and protecting consumers. The mission of the Maryland Consumer Rights Coalition is to advance and protect the interests of consumers through education and advocacy and works to ensure fairness and safety in the marketplace. Members of the Maryland Consumer Rights Coalition have participated in and followed the work of the Governor's Task Force on Foreclosure Reform and believe that reform in the rules governing foreclosures are long overdue.

The **National Association of Consumer Advocates ("NACA")** is a non-profit membership organization of over 1,300 law professors, public sector lawyers, private lawyers, legal services lawyers, and other consumer advocates across the country. NACA's interest in this appeal stems from the extensive work that NACA and its membership have done on predatory lending and foreclosure issues. NACA's members, as representatives of homeowners across this nation, have witnessed first-hand the negative impact of predatory lending practices in the subprime market, unscrupulous

"foreclosure mill" law firms, and outdated procedures that deprive consumers of a meaningful opportunity to defend their homes from foreclosure.

In response to the current foreclosure crisis, NACA and the Center for Responsible Lending recently announced the joint formation of the Institute for Foreclosure Legal Assistance to support groups giving legal representation to families facing foreclosure and financial ruin because of abusive subprime mortgages.

The **National Consumer Law Center ("NCLC")** is a non-profit corporation established in 1969. NCLC staff attorneys write and publish seventeen treatises on federal and state consumer protection law. Chief Judge Posner relied on NCLC's *Truth In Lending* treatise, now in its 5th edition (2003), in *Adams v. Plaza Financial Co.*, 168 F.3d 932 (7th Cir. 1999). NCLC's publications include *Foreclosures* (2d ed. 2007), a manual for attorneys assisting homeowners facing foreclosure; and a guidebook for housing counselors and advocates: *Foreclosure Prevention Counseling: Preserving the American Dream.* For the past twenty-five years, NCLC staff members have frequently served on the Federal Reserve Board's Consumer Advisory Council and have provided oral and written testimony to the Board and Congress on the propriety of innumerable statutory and regulatory changes to the Truth in Lending Act and its implementing Regulation Z, respectively. For over a decade the Center has run a Sustainable Homeownership Initiative focused on helping low-income homeowners maintain home ownership. Through that initiative, NCLC has trained thousands of attorneys and advocates nationwide on foreclosure defense.

St. Ambrose Housing Aid Center, Inc. ("St. Ambrose") is a housing non-profit founded in 1968. Since its founding, St. Ambrose has been committed to providing innovative, comprehensive housing services and quality affordable homes to meet the challenges facing vulnerable homeowners and neighborhoods. It is the mission of St. Ambrose to create and maintain equal housing opportunities for low- and moderate-income people, and to encourage and support strong and diverse neighborhoods.

The Foreclosure Prevention Division of St. Ambrose works with over 2,000 families facing foreclosure each year. Accordingly, St. Ambrose has an interest in addressing the constitutional shortcomings to the Maryland foreclosure process addressed in this case. It has been the experience of St. Ambrose that the foreclosure process in Maryland fails to provide homeowners adequate time, notice or process of the impending auction of property and subsequent loss of their home. As it now stands, tenants in rental properties receive greater due process than do homeowners facing foreclosure. St. Ambrose believes, that with adherence to minimal constitutional standards, homeowners would receive an adequate opportunity to mitigate the devastating effects of the loss of their homes and have an opportunity to obtain repayment agreements with lenders or at least reach soft landings. Foreclosure uproots families, destroys credit and impairs the ability to sustain wealth or financial security. Foreclosure threatens the well-being of neighborhoods and communities throughout the State.

Each of these organizations is concerned that the continued application of the constitutionally inadequate notice procedures for mortgage foreclosures as codified currently in Maryland law presents a tremendous risk of otherwise avoidable mortgage foreclosures. *Amici*, therefore, respectfully urge this Court to reverse the judgment of the Anne Arundel County Circuit Court and remedy the constitutional infirmities of the current mortgage foreclosure notice scheme.

ARGUMENT

I. THE SUBPRIME MORTGAGE FORECLOSURE CRISIS HAS HAD, AND WILL CONTINUE TO HAVE, A DISASTEROUS EFFECT ON MARYLAND AND THE NATION.

A. Predatory Lending Practices by Companies Like Ameriquest and Market Forces Spurred the Collapse of the Subprime Mortgage Sector.

The market for subprime mortgages was created over time as an alternative form of securities investment that funded lenders willing to grant mortgage loans to aspiring home-buyers who did not qualify for traditional home mortgages.[3] As a result, subprime borrowers are able to obtain much more financing for more expensive homes than they otherwise would have been able to afford. Subprime mortgages are issued to these non-traditional borrowers typically at much higher interest rates than those found in conventional mortgages.[4] Tragically, many subprime lenders also issue these high-priced subprime loans to borrowers who, unbeknownst to them, qualify for a lower-rate prime loan.[5] The subprime loan market flourished for a number of years, marked by a meteoric

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[3] Heather M. Tashman, *The Subprime Lending Industry: An Industry in Crisis*, 124 BANKING L.J. 407, 409-11 (2007); Bob Yates, *Subprime Mortgages: An Invitation to a Meltdown*, CHICAGO LAWYER, Nov. 2007, at 18.

[4] Patricia A. McCoy, *Rethinking Disclosure in a World of Risk-Based Pricing*, 44 HARV. J. ON LEGIS. 123, 126 (2007).

[5] Baher Azmy, *Squaring The Predatory Lending Circle: A Case for States as Laboratories of Experimentation*, 57 FLA. L. REV. 295, 323 (2005). Early estimates indicated that as many as half of current subprime borrowers could have qualified for prime loans. Lauren E. Willis, *Decisionmaking and the Limits of Disclosure: The Problem of Predatory Lending: Price*, 65 MD. L. REV. 707, 730 (2006). A recent study indicates that in 2005, the peak year of the subprime boom, 55% of subprime borrowers qualified for prime loans, and the year after that, 61% of otherwise prime borrowers were ensnared in subprime loans. Rick Brooks & Ruth Simon, *Subprime Debacle Traps Even Very Credit-Worthy*, WALL ST. J., Dec. 3, 2007, at A1.

rise in loans from $35 billion in 1994 to $650 billion in 2007.[6] The most prevalent kind of subprime mortgage is the "adjustable rate mortgage," or "ARM," which is governed by unpredictable, fluctuating interest rates.[7] Often, ARMs offer a low, "teaser" interest rate that adjusts upward to a much higher rate after two years.[8] Another popular subprime loan is the "option ARM," which permits borrowers to select a structure that, for a short introductory period, requires only a small minimum monthly payment. This monthly payment, however, typically does not even pay off the interest due each month, resulting in negative amortization because the unpaid interest is added to the principal.[9]

The subprime market began to collapse in 2006 when home values fell precipitously, leading subprime borrowers to owe more on their mortgage notes than their homes were worth.[10] Concurrently, the short-term interest rate to which the rates for ARMs are tied, escalated in 2006 and into 2007.[11] Subprime borrowers became trapped in their mortgages, unable to refinance into a mortgage with a more affordable interest

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Evidence suggests that these borrowers were steered into these higher-cost loans by predatory and unethical practices. Willis, 65 MD. L. REV. at 730

[6] Tashman, *supra* note 3, at 410.

[7] Laurie A. Burlingame, *A Pro-Consumer Approach to Predatory Lending: Enhanced Protection Through Federal Legislation and New Approaches to Education*, 60 CONSUMER FIN. L.Q. REP. 460, 462 (2006).

[8] *ABI Directors Testify Before Congress*, AM. BANKR. INST. J., Nov. 26, 2007, at 10. These loans are often structured so that the borrower is paying only interest for the first two years of the loan. McCoy, *supra* note 4, at 143.

[9] McCoy, *supra* note 4, at 144.

[10] Kenneth R. Harney, *Forgiven Debt Has Bad Side: Huge Tax*, BALT. SUN, May 4, 2007, at 1E; Scott Frame, *Housing and the Subprime Mortgage Market*, ECONSOUTH, Sept. 22, 2007, at 1, 2.

[11] Frame, *supra* note 10, at 2.

rate.[12] Eventually, many borrowers could no longer meet the onerous payments of their subprime mortgage and fell into default, spurring a rash of foreclosures across the country.[13] Maryland has been anything but immune to this trend. *See infra* Part I.B.

"While subprime lending is not synonymous with predatory lending, the increase in subprime lending has prompted an increase in the predatory market."[14] Predatory lending is described generally as "onerous lending practices often targeted at naive borrowers or otherwise vulnerable populations resulting in devastating loss, including foreclosure, bankruptcy, and poverty." *Id.* The hallmarks of predatory lending include:

> (1) loan "flipping," (2) making loans without considering the borrower's ability to repay and primarily for the purpose of obtaining the collateral, (3) negative amortization loans, (4) the use of excessive prepayment penalties, (5) balloon payments, (6) the use of mandatory arbitration clauses, (7) fee "packing," and (8) steering individuals that would otherwise qualify for low-cost prime loans into high-cost subprime loans.[15]

Predatory lending practices contribute greatly to foreclosures.[16]

In January 2006, Ameriquest, the mortgagee of Ms. Griffin's loan, (Appellant's Br. at 5 & E. 82-83), settled an investigation begun by 49 states, including Maryland, and

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[12] Frame, *supra* note 10, at 2; Faten Sabry & Thomas Schopflocher, *The Subprime Meltdown: Not Again!*, AM. BANKR. INST. J., Sept. 26, 2007, at 1, 44.
[13] Jeff Benjamin, *More Problems Ahead From the Credit Crisis*, INVESTMENT NEWS, Nov. 5, 2007 at 2.
[14] Lynne F. Riley, *The Bankruptcy Perspective: Predatory Lending in the Home Mortgage Market*, 2007 NORTON ANNUAL SURVEY OF BANKRUPTCY LAW pt. II, § 13.
[15] Christopher R. Childs, Comment, *So You've Been Preempted--What are You Going to Do Now?: Solutions for States Following Federal Preemption of State Predatory Lending Statutes*, 2004 B.Y.U. L. REV. 701, 706-08 (footnotes omitted).
[16] Burlingame, *supra* note 7, at 461.

the District of Columbia[17] to examine widespread consumer complaints about the company's predatory practices.[18] As a consequence of the settlement, Ameriquest agreed to pay $325 million ($295 million in restitution to mortgagors and $30 million to the investigating states as reimbursement of investigation expenses),[19] and reform numerous predatory practices.[20] Importantly, mortgagors who agree to the Settlement do not lose the right to assert any possible defenses to a foreclosure of a mortgage originated or serviced by Ameriquest.[21]

Any defense "that shows that the plaintiff is not entitled to foreclose the mortgage may be set up in a proceeding to foreclose."[22] Potential defenses to foreclosure are numerous and include: mortgagee's failure to adhere to servicing requirements;[23] fraud;[24]

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[17] The only state not participating in the lawsuit was Virginia because Ameriquest did not conduct business in that state. Anna-Katrina S. Christakis, *Consumer Legislation, Regulation, and Litigation Update*, 61 CONSUMER FIN. L.Q. REP. 4, 6 (2007).

[18] *Id.* at 6.

[19] There are 12,340 Maryland homeowners who are eligible to receive $7.8 million in Ameriquest settlement funds. Laura Smitherman, *Md. Notifies Borrowers in Ameriquest Settlement*, BALT. SUN, July 13, 2007, at 1D.

[20] Christakis, *supra* note 17, at 6 (2007); Ameriquest Multi-State Settlement, *available at* http://www.ameriquestmultistatesettlement.com/pdfs/SettlementAgreement.pdf (last accessed Nov. 30, 2007).

[21] Press Release, Office of the New York State Attorney General, *25,000 New York State Homeowners Eligible For Restitution* (July 12, 2007), *available at* http://www.oag.state.ny.us/press/2007/jul/jul12b_07.html.

[22] 15 MD. LAW ENCYCLOPEDIA, *Mortgages* § 143 (2007) (citing *Heighe v. Sale of Real Estate*, 164 Md. 259, 164 A. 671 (1933)).

[23] *Wells Fargo Home Mortgage, Inc. v. Neal*, 398 Md. 705, 727, 922 A.2d 538, 551 (2007) (recognizing the equitable defense of clean hands to invalidate the declaration of a default when the foreclosing servicer failed to observe loss mitigation regulations).

[24] Maryland Rule 14-209(b)(1); *Fin. Credit Corp. v. Williams*, 246 Md. 575, 583, 229 A.2d 712, 715 (1967); *Klein v. Whitehead*, 40 Md. App. 1, 12-13, 389 A.2d 374, 381 (1978); *see also Witt v. Zions*, 194 Md. 186, 190, 70 A.2d 594, 596 (1949).

duress;[25] coercion;[26] mistake;[27] undue influence;[28] incompetence of the party;[29] misrepresentation;[30] unconscionability;[31] breach of contract;[32] breach of fiduciary duty;[33] estoppel;[34] invalidity of the mortgage;[35] a deed of trust unsecured by the purchaser's property;[36] payment, discharge, release, or satisfaction;[37] the amount sought by the mortgagee is excessive;[38] payment is not due;[39] and death of the mortgagee and

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[25] Because a mortgage is simply a form of contract, the full panoply of contract defenses is available to mortgagors. *Riggs Nat'l Bank v. Wines*, 59 Md. App. 219, 226, 474 A.2d 1360, 1363 ("A deed of trust, among other things, is a contract, and its language is to be construed in accordance with the law of contracts."), *cert. denied*, 301 Md. 43, 481 A.2d 802 (1984). Included among these contract defenses is duress. *Cannon v. Cannon*, 384 Md. 537, 575, 865 A.2d 563, 585 (2005).

[26] *See supra* note 25; *Cannon*, 384 Md. at 575, 865 A.2d at 585 (stating that coercion is a defense to contract).

[27] *See supra* note 25; *Cannon*, 384 Md. at 575, 865 A.2d at 585 (stating that mistake is a defense to contract).

[28] *See supra* note 25; *Cannon*, 384 Md. at 575, 865 A.2d at 585 (stating that undue influence is a defense to contract).

[29] *See supra* note 25; *Cannon*, 384 Md. at 575, 865 A.2d at 585 (stating that incompetence is a defense to contract).

[30] *See supra* note 25; *Whaley v. Md. State Bank*, 58 Md. App. 671, 681, 473 A.2d 1351, 1356 (1984) (stating that misrepresentation is a defense in a contract action); *see also Johnnycake Mt. Assocs. v. Ochs*, 932 A.2d 472 (Conn. App. Ct. 2007).

[31] *See supra* note 25; *Cannon*, 384 Md. at 575, 865 A.2d at 585 (stating that unconscionability is a defense to contract).

[32] *Hadjis v. Anderson*, 260 Md. 30, 271 A.2d 350 (1970) (holding that a mortgagee is not entitled to foreclose mortgage when purported default was the result of misapplication of insurance funds in accordance with agreement between mortgagor and mortgagee).

[33] *Klein*, 40 Md. App. at 12-13, 389 A.2d at 381.

[34] *Eberly v. Balducci*, 61 Md. App. 80, 484 A.2d 1043 (1984).

[35] *Bachrach v. Washington United Co-op.*, 181 Md. 315, 29 A.2d 822 (1943).

[36] *Frank v. Storer*, 66 Md. App. 459, 504 A.2d 1163, *rev'd on other grounds*, 308 Md. 194, 517 A.2d 1098 (1986).

[37] *See* Maryland Rule 14-209(b)(1); *see also Mechanics & Farmers Sav. Bank, FSB v. Delco Dev. Co.*, 656 A.2d 1075 (Conn. Super. Ct. 1993), *aff'd and remanded*, 656 A.2d 1034 (Conn.), *cert. denied*, 516 U.S. 930 (1995).

[38] *See* Maryland Rule 14-209(b)(1); *see also Gassert v. Black*, 27 P. 791 (Mont. 1891).

[39] *See* Maryland Rule 14-209(b)(1); *see also Gassert*, 27 P. 791.

subsequent lack of prosecution of the decree to foreclose.[40] There are also defenses available to mortgagors under various federal laws, such as the Truth in Lending Act,[41] Home Ownership and Equity Protection Act,[42] Real Estate Settlement Procedures Act,[43] Fair Debt Collections Practices Act,[44] and Equal Credit Opportunity Act.[45]

B. The Effect of Subprime Mortgage Foreclosures in Maryland is Devastating.

In Maryland alone, there were 8,340 foreclosure filings in the third quarter of 2007, an increase of 549 percent as compared to the second quarter.[46] In only six months' time, our state was catapulted from 37th to 16th place in nationwide foreclosure filing rates.[47] This drastic increase means that 1 in every 273 Maryland households was

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[40] *Appold v. Prospect Bldg. Ass'n*, 37 Md. 457 (1873).

[41] 15 U.S.C. §§ 1601 *et seq.* (2004); *Byrd v. Homecomings Fin. Network*, 407 F. Supp. 2d 937, 945 (N.D. Ill. 2005) (citing *Westbank v. Maurer*, 658 N.E.2d 1381, 1389 (Ill. App. Ct. 1995)).

[42] Pub. L. No. 103-325, 108 Stat. 2190 (codified at scattered sections of 15 U.S.C.); *In re Cmty. Bank of N. Va.*, 418 F.3d 277, 305 (3d Cir. 2005); *see also Bankers Trust Co. of Ca. v. Payne*, 730 N.Y.S.2d 200, 205-06 (N.Y. Sup. Ct. 2001).

[43] 12 U.S.C. §§ 2607 *et seq.* (2004); *see In re Rodriguez*, 377 B.R. 1 (Bankr. D. P.R. 2007); *Bankers Trust v. McFarland*, 743 N.Y.S.2d 804, 808 (N.Y. Sup. Ct. 2002). N.Y.Sup.,2002

[44] 28 U.S.C. §§ 3001 *et seq.* (2004); *Hallas v. Ameriquest Mortgage Co.*, 406 F. Supp. 2d 1176, 1182 (D. Or. 2005).

[45] 15 U.S.C. §§ 1691 *et seq.* (2004); *Stornaway Props., Inc. v. Moses*, 76 F. Supp. 2d 607, 613-14 (E.D. Pa. 1999); *Machias Sav. Bank v. Ramsdell*, 689 A.2d 595, ¶ 9, 12 (Me. 1997).

[46] Press Release, RealtyTrac, Foreclosure Activity Up 30 Percent in Third Quarter (Nov. 1, 2007), at http://www.realtytrac.com/ContentManagement/pressrelease.aspx?ChannelID=9&ItemID=3567&accnt=64847.

[47] Press Release, RealtyTrac, More Than 430,000 Foreclosure Filings Reported In Q1 (Apr. 25, 2007), at http://www.realtytrac.com/ContentManagement/pressrelease.aspx?ChannelID=9&ItemID=2313&accnt=64847, *compared with* Press Release, RealtyTrac, Foreclosure Activity Up

the subject of a foreclosure filing in the third quarter of 2007.[48] The number of properties currently saddled with foreclosure increased 491 percent from this time last year.[49]

The effect of foreclosure on the entire state is devastating. Thousands of families, as a result of foreclosure, lose their shelter,[50] forfeit the equity built up in the foreclosed property and face the risk of deficiency judgments,[51] suffer crippling damage to their creditworthiness,[52] and thus face foreboding challenges in subsequent attempts to buy an affordable home. In addition to those direct effects, other Marylanders are indirectly affected. It is estimated that, because of foreclosures on subprime mortgages such as Ms. Griffin's that were originated between 2005 and 2006, 1.43 million Maryland neighbors of those foreclosed properties experienced a decrease in their property values (an average of $5,597 per housing unit), resulting in the state losing approximately $8 billion in

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30 Percent in Third Quarter (Nov. 1, 2007), at http://www.realtytrac.com/ContentManagement/pressrelease.aspx?ChannelID=9&ItemID=3567&accnt=64847.

[48] Press Release, RealtyTrac, Foreclosure Activity Up 30 Percent in Third Quarter (Nov. 1, 2007), at http://www.realtytrac.com/ContentManagement/pressrelease.aspx?ChannelID=9&ItemID=3567&accnt=64847.

[49] *Id.*

[50] Anne Balcer Norton, *Reaching the Glass Usury Ceiling: Why State Ceilings and Federal Preemption Force Low-Income Borrowers into Subprime Mortgage Loans*, 35 U. BALT. L. REV. 213, 227 (2005).

[51] Julia Patterson Forrester, *Constructing a New Theoretical Framework for Home Improvement Financing*, 75 OR. L. REV. 1095, 1125 (1996); Alex M. Johnson, Jr., *Critiquing the Foreclosure Process: An Economic Approach Based on the Paradigmatic Norms of Bankruptcy*, 79 VA. L. REV. 959, 959 (1993) (noting foreclosure sale prices are inadequate, causing debtors to lose home equity or expose them to deficiency judgments).

[52] Michael Giusto, *Mortgage Foreclosure for Secondary Breaches: A Practitioner's Guide to Defining "Security Impairment,"* 26 CARDOZO L. REV. 2563, 2568 (2005).

property values and tax base.[53] Maryland is home to four of the top 40 counties nationwide in terms of property-value and tax-base loss due to subprime mortgage foreclosures.[54]

Unfortunately, by all indications, the foreclosure crisis is only going to get worse in the coming year. "On even the most optimistic estimates, the rate of foreclosure will more than double over the next year as rates reset on subprime mortgages and home values fall."[55] The deleterious effects of this continuing plunge into foreclosures is forecast to be felt most acutely in places like Maryland where there was previously very strong appreciation in the home value market.[56] The Governor's Home Ownership Preservation Task Force noted in the first page of its 2007 report that, in addition to the current crisis, "we know it is likely that the spike in foreclosures has not yet reached its peak, and the trend is troubling."[57]

C. Homeownership is an Interest of Vital Importance.

The implications of the alarming rate of foreclosures in Maryland and the sheer number of the state's families that will be affected must be understood in the context of

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[53] CENTER FOR RESPONSIBLE LENDING, SUBPRIME SPILLOVER 2, cht. 1 (Nov. 13, 2007).
[54] *Id.* at 3-4 (Prince George's County, Baltimore City, Montgomery County, and Baltimore County).
[55] Lawrence Summers, *Wake Up to the Dangers of a Deepening Crisis*, FIN. TIMES, Nov. 26, 2007, at 11
[56] Tashman, *supra* note 3, at 412-13 (citing CENTER FOR RESPONSIBLE LENDING, LOSING GROUND: FORECLOSURES IN THE SUBPRIME MARKET AND THEIR COST TO HOMEOWNERS 17 (2006)).
[57] MARYLAND HOMEOWNERSHIP PRESERVATION TASK FORCE, MARYLAND HOMEOWNERSHIP PRESERVATION TASK FORCE REPORT 35 (2007) [hereinafter "TASK FORCE REPORT"], *available at* http://www.gov.state.md.us/documents/HomePreservationReport.pdf.

its impact on homeownership. For low-income households, homeownership can play a critical role in achieving economic security.[58] Beyond its short-term financial benefits,[59] the greatest potential derived from homeownership is to eventually "transition to higher valued owned units over time."[60] For these homeowners, the equity that they build often becomes their "most important financial asset, and an important vehicle for transmitting wealth from generation to generation."[61]

The benefits of homeownership for low-income homeowners, however, go beyond the accumulation of wealth. For example, researchers have found that homeownership makes a positive contribution to all homeowners' self-esteem,[62] regardless of income. One study in Baltimore documented a link between homeownership and self-satisfaction in "relatively less desirable neighborhoods."[63] In addition, the children of low-income

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[58] *See, e.g.*, Thomas P. Boehm & Alan Schlottmann, *Wealth Accumulation and Homeownership: Evidence for Low-Income Households* (2004) (concluding that for low-income households homeownership is "an important means of wealth accumulation"), http://www.huduser.org/intercept.asp?loc=/Publications/pdf/WealthAccumulationAndHomeownership.pdf; Paulette J. Williams, *The Continuing Crisis in Affordable Housing: Systemic Issues Requiring Systemic Solutions*, 31 FORDHAM URB. L.J. 413 (2004) (noting the beneficial role home ownership has played for middle-income Americans and arguing that it can do the same for low-income Americans).

[59] *See, e.g.*, 26 U.S.C. § 163(h)(3)(A) (2004) (providing the home mortgage interest tax deduction).

[60] *See* Boehm & Schlottmann, *supra* note 58, at VI.

[61] DAVID RUSK, THE BROOKINGS INSTITUTION, THE "SEGREGATION TAX": THE COST OF RACIAL SEGREGATION TO BLACK HOMEOWNERS 1 (2001).

[62] *See, e.g.*, WILLIAM M. ROHE, ET AL., JOINT CTR. FOR HOUS. STUDIES AT HARVARD UNIV., THE SOCIAL BENEFITS AND COSTS OF HOMEOWNERSHIP: A CRITICAL ASSESSMENT OF THE RESEARCH 6 (2001).

[63] *Id.* at 7 (citing W.M. Rohe & M. Stegman, *The Impact of Home Ownership on the Social and Political Involvement of Low-Income People*, 30 URB. AFF. Q. 152-172 (1994)).

homeowners tend to achieve greater "educational attainment, earnings, and welfare independence in young adulthood," than their counterparts in rental housing.[64]

Communities also benefit from increased homeownership by low-income households because homeowners have a vested interest in safeguarding actively their investments. In other words, because homeowners are less mobile than renters and because they have a strong incentive to invest in their property and neighborhood, homeowners tend to be more involved in local issues that threaten the value of their homes.[65] Communities likewise benefit from increased property values, tax revenues, and economic growth.[66]

Policy makers at the federal, state, and local levels have endorsed and promoted vigorously the goal of high homeownership rates[67] by implementing programs that

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[64] JOSEPH HARNESS & SANDRA NEWMAN, FANNIE MAY FOUND., DIFFERENTIAL EFFECTS OF HOMEOWNERSHIP ON CHILDREN FROM HIGHER- AND LOWER-INCOME FAMILIES 1 (2003); *see also* HUD, HUD STRATEGIC PLAN, FY 2003 - FY 2008, 5 (2003) [hereinafter HUD Strategic Plan] ("Holding other factors equal, homeownership improves outcomes for children on a number of dimensions, including school achievement and dropout rates.").

[65] *See, e.g.*, DENISE DIPASQUALE & EDWARD L. GLAESER, INCENTIVES AND SOCIAL CAPITAL: ARE HOMEOWNERS BETTER CITIZENS? 3 (Nat'l Bureau of Econ. Res., Working Paper No. W6363, 1998) ("Homeowners are . . . 10 percent more likely to work to solve local problems . . . [and] 16 percent more likely to vote in local elections."), *available at* http://www.nber.org/papers/w6363; RICHARD WILLIAMS, ET AL., THE CHANGING FACE OF INEQUALITY IN HOME MORTGAGE LENDING 4 (Univ. of Notre Dame, Working Paper & Technical Report Series No. 2003-04, revised 2005) ("[H]omeowners tend to be more involved in their communities, helping to promote strong neighborhoods and good schools."), *available at* www.nd.edu/~soc2/workpap/2003/cfi.pdf.

[66] *See, e.g.*, HUD STRATEGIC PLAN, *supra*, at 9 ("*Homeownership helps stabilize* neighborhoods, strengthen communities and stimulate economic growth.").

[67] *See, e.g.*, Press Release, Office of the White House, Proclamation of President George W. Bush: National Homeownership Month, 2006 (May 24, 2006) ("The hard work, financial discipline, and personal responsibility of our country's homeowners help

encourage and support homeownership by moderate- and low-income households. For instance, the federal government provides down payment and closing cost assistance to low-income homebuyers through the American Dream Down Payment Initiative.[68] Its purpose is to "increase the homeownership rate, especially among lower income and minority households, and to revitalize and stabilize communities."[69] The federal government also enacted the Home Ownership Equity Protection Act, which requires specific disclosures and prohibits specific loan provisions for high-cost predatory loans.[70]

Maryland policymakers have also consistently demonstrated a strong interest in promoting the important public policy of low-income homeownership. Since 1980, the Single Family Housing Community Development Administration Maryland Mortgage Program has provided low-interest mortgage loans to low- and moderate-income homebuyers throughout the state.[71] In addition, through the Down Payment and Settlement Expense Loan Program, Maryland provides no-interest loans to low- and

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transform neighborhoods throughout our Nation and reflect the best qualities of America."), *available at* http://www.whitehouse.gov/news/releases/2006/05/20060524-6.html; *see also* Healthy Neighborhoods, About Healthy Neighborhoods, http://www.healthyneighborhoods.org/pages/about.html (outlining the benefits of Baltimore's Healthy Neighborhoods Initiative, which includes increasing property values in target neighborhoods and "forg[ing] strong connections among neighbors") (last visited June 21, 2007).

[68] 42 U.S.C. § 12821 (2004).

[69] HUD, Summary, American Dream Downpayment Initiative, http://www.hud.gov/offices/cpd/affordablehousing/programs/home/addi/ (Jul. 21, 2005).

[70] 15 U.S.C. § 1639 (2004).

[71] *See* Maryland Dep't of Housing & Cmty. Dev., More House 4 Less, http://www.morehouse4less.com (last visited June 21, 2007); Maryland Dep't of Housing & Cmty. Dev., http://mdhousing.org/Website/home/index.aspx (last visited June 21, 2007).

moderate-income homebuyers to cover down payment and settlement costs.[72] In 2005, the Maryland General Assembly enacted emergency legislation containing a variety of statutory protections for homeowners in foreclosure due to an increasing effort of some predatory lenders who promised to save a home from foreclosure but actually stole tens of thousands of dollars in the homeowner's equity.[73]

Baltimore City, which has extremely high foreclosure rates, implemented the Healthy Neighborhoods Initiative ("HNI"), encouraging home ownership in targeted neighborhoods in order to "[i]ncrease home values" and "[f]orge strong connections among neighbors."[74] Specifically, HNI provides loans that support homebuyers in acquiring and rehabilitating single-family homes in targeted neighborhoods and blocks within the City of Baltimore.[75] The City, in partnership with local community groups, also implemented the Baltimore Homeownership Preservation Coalition, which seeks to reduce the number of foreclosures in Baltimore through "free legal advice, assistance negotiating with mortgage lenders and a host of other foreclosure counseling and prevention services."[76]

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[72] *See supra* note 71.
[73] *See* Real Property §§ 7-301 to 7-321.
[74] Healthy Neighborhoods, http://www.healthyneighborhoods.org (last visited June 21, 2007); *see also* Baltimore Housing, http://www.baltimorehousing.org/index/home.asp (last visited June 21, 2007).
[75] *See supra* note 74.
[76] *See Homes for Keeps*, BALT. SUN, Sep. 29, 2006, Editorial; *see also* Baltimore Home Ownership Preservation Coalition, http://www.preservehomeownership.org (last visited June 21, 2007).

II. THE MORTGAGE FORECLOSURE PROCESS AS CODIFIED IN MARYLAND LAW LACKS PRACTICAL SAFEGUARDS FOR THE PRESERVATION OF HOMEOWNERSHIP.

Every aspect of the process for mortgage foreclosure in Maryland can be summarized fairly in one word: spare. The most common method of foreclosure may be filed without any forewarning to homeowners, must only be noticed by mail just days before the sale of the foreclosed property, and may not be set aside by a post-sale redemption. This process cannot possibly be reasonably calculated to inform homeowners that their most valued asset is about to be taken from them, nor does it provide a meaningful opportunity to defend that asset.

A. Power of Sale Mortgages are the Most Common in Maryland.

There exist in Maryland three primary species of mortgage foreclosures, listed in the order of their statutory evolution: (1) the strict foreclosure, (2) the foreclosure by assent to a decree, and (3) the foreclosure pursuant to a power of sale. *Ex parte Aurora Fed. Sav. & Loan Ass'n*, 223 Md. 135, 136-37, 162 A.2d 739, 740 (1960). Strict foreclosures, now nearly extinct,[77] require significant court involvement before a foreclosure of the mortgagor's right of redemption. *Simard v. White*, 383 Md. 257, 278, 859 A.2d 168, 180 (2004). Foreclosures by assent to a decree or pursuant to a power of sale are summary, *ex parte* mechanisms for foreclosure effectuated by eponymous clauses contained in the mortgage note granting mortgagees the authority to sell the foreclosed property through a trustee who is identified, at least in the case of a power of

[77] *Simard v. White*, 383 Md. 257, 277-78, 859 A.2d 168, 180 (2004); *Fairfax Sav., F.S.B. v. Kris Jen Ltd. P'ship*, 338 Md. 1, 21, 655 A.2d 1265, 1275 (1995).

sale, in the mortgage note.[78] *Id.* at 307-10, 859 A.2d at 198-99. Mortgagees have come to favor these methods of foreclosure because they permit mortgagees to institute foreclosure actions without significant court involvement, thus hastening the foreclosure process and incurring less expense for the mortgagee. Michael H. Schill, *An Economic Analysis of Mortgagor Protection Laws*, 77 VA. L. REV. 489, 493 (1991).

B. Power of Sale Foreclosures in Maryland Allow an Exceptionally Brief Period of Notice and Opportunity for Homeowners to Defend Their Property.

The procedures for notifying mortgagors of a foreclosure action and the ensuing sale are contained primarily in two sources: Maryland Code (1974, 2003 Repl. Vol.), Real Property § 7-105 and Maryland Rule 14-206. These provisions permit a breathtakingly expedited judicial process for mortgage foreclosures in Maryland. A foreclosure sale may be held as soon as 15 days[79] from the time of the acceleration of the

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[78] In a foreclosure initiated pursuant to an assent to decree, the court appoints a trustee. ALEXANDER GORDON IV, GORDON ON MARYLAND FORECLOSURES § 1.5 (4th ed. 2004) [hereinafter "GORDON ON FORECLOSURES"].

[79] This Court commented in *G.E. Capital Mortgage Services, Inc. v. Levenson*, 338 Md. 227, 657 A.2d 1170 (1995), that a foreclosure sale could be performed "approximately twenty-one days after docketing." *Id.* at 245, 657 A.2d at 1178. Sixteen years earlier, the Court of Special Appeals in *Billingsley v. Lawson*, 43 Md. App. 713, 406 A.2d 946 (1979), rejected a mortgagor's argument that foreclosure was invalid based on the fact that the publication of the sale ran for only 17 rather than 21 days. *Id.* at 721, 713, 406 A.2d at 952. The intermediate appellate court simply noted that the published notice ran for three successive weeks, with the "first publication not less than fifteen days prior to sale and the last not more than one week prior to sale." *Id.* Notwithstanding these vague approximations of the minimal lapse of time that may pass between the docketing of a foreclosure action and the sale, other authorities place that time span at 15 days. GORDON ON FORECLOSURES § 1.11 (4th ed. 2004); TASK FORCE REPORT, *supra* note 57, at 35; MD. CONSUMER RTS. COAL., PROTECTING HOMEOWNERSHIP: THE CHALLENGE OF PREVENTING ABUSIVE LENDING AND FORECLOSURE PRACTICES 20 (2006) [hereinafter

defaulted mortgage and docketing of the foreclosure action. ALEXANDER GORDON IV, GORDON ON FORECLOSURES § 1.11 (4th ed. 2004) [hereinafter "GORDON ON FORECLOSURES"]; MARYLAND HOMEOWNERSHIP PRESERVATION TASK FORCE, MARYLAND HOMEOWNERSHIP PRESERVATION TASK FORCE REPORT 35 (2007), *available at* http://www.gov.state.md.us/documents/HomePreservationReport.pdf. Rule 14-206(b)(1) requires that subsequent to the commencement of an action to foreclose, "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." Almost certainly because the publication notice is not likely to apprise the mortgagor of the pendency of the action,[80] Real Property § 7-105(a-1)(3)(i) requires that notice of the commencement of the foreclosure action be *sent*, at the latest, *two days after* the action is docketed.[81] Thus, the 15-day notice period for a foreclosure action is already reduced to 13 days before a notice even has to be sent, much

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COALITION REPORT], *available at* http://www.mdconsumers.org/HOME_PRES_REPORT_FINAL.pdf.

[80] *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315, 70 S. Ct. 652, 658 (1950) ("Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper's normal circulation the odds that the information will never reach him are large indeed."); TASK FORCE REPORT, *supra* note 57, at 39 ("It also was believed that newspaper publication benefits potential purchasers and does little to alert homeowners.").

[81] This notice is not required to inform the recipient mortgagor of anything more than that "an action to foreclose the mortgage or deed of trust may be or has been docketed and that a foreclosure sale of the property will be held." Maryland Code (1974, 2003 Repl. Vol.), Real Property § 7-105(a-1)(3)(ii). Critically, this notice does not have to specify the date, place, and terms of the putative sale.

less received. Assuming three days' delivery time,[82] the mortgagor may not even be made aware until 10 days before the sale that a foreclosure action "*may be* or has been docketed," Real Property § 7-105(a-1)(3)(ii) (emphasis added), and that a sale is pending at some unknown time in the future.

It is not until 10 days before the sale that the foreclosing party is required to send the notice indicating when, where, and how the sale is to be conducted. Real Property § 7-105(b)(2)(ii) ("The notice shall state the time, place, and terms of the sale and shall be sent not earlier than 30 days and *not later than 10 days before the date of sale*") (emphasis added); Maryland Rule 14-206 ("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 . . . .*") (emphasis added). Again assuming three days' delivery time, the mortgagor may not receive this notice until seven days before the conduct of the foreclosure sale. Recipients of the previous notice informing them that an action to foreclosure their mortgage may or may not have been filed discover soon thereafter, by virtue of this second notice, that their home may be lost in as little as a week.

C. The Maryland Foreclosure Scheme Lacks a Statutory Right of Redemption.

Aggravating the already untenable situation created by the notice provisions, the current statutory and rule-based foreclosure scheme does not provide a redemption period for mortgagors. This means that "once the gavel falls" on the foreclosure auction, mortgagors cannot redeem their property even if they have raised the requisite funds.

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[82] Three days is the uniform period of time assumed for mailed notices to reach their

GORDON ON FORECLOSURES § 1.11 (4th ed. 2004) ("There is no redemption period, as with a tax sale. Once the hammer comes down at the foreclosure sale, ... [t]he property is lost."); 5 L. Distressed Real Est. § 72:2 (2007) ("In Maryland, . . . when one purchases property at a foreclosure sale, the only way the mortgagor can have the sale set aside is on technical grounds and not by merely tendering the money due after the sale."). As Gordon notes, even tax sale foreclosures permit a post-sale redemption. The lack of such an opportunity in Maryland foreclosures exacerbates the foreclosure crisis, because it prevents homeowners not made aware of the sale because of the ineffective notice provisions from saving their homes. Many homeowners are not aware that this vital protection does not exist. MD. CONSUMER RTS. COAL., PROTECTING HOMEOWNERSHIP: THE CHALLENGE OF PREVENTING ABUSIVE LENDING AND FORECLOSURE PRACTICES 20 (2006) [hereinafter COALITION REPORT], *available at* http://www.mdconsumers.org/HOME_PRES_REPORT_FINAL.pdf.

In contrast, many states allow homeowners the right to redeem their properties, at least until the sale is ratified by the court. *See, e.g.*, New Jersey Statutes Ann. § 54:5-58 (2002) (allowing mortgagors to redeem their properties within ten days of foreclosure sale and until an order confirming sale if objections are filed); Iowa Code Ann. § 628.3 (1998) (permitting a debtor to redeem a property within one year from the sale); *Hausman v. City of Dayton*, 653 N.E.2d 1190, 1194 (Ohio 1995) (construing Ohio Rev. Code § 2329.33 (1976) (granting debtors the right to redeem until the sale is approved by the court)); *Wilson v. Glancy*, 913 P.2d 286 (Okla. 1995) (construing 42 Oklahoma

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recipients. *See* Maryland Rule 1-203(c).

Statutes Ann. § 18 (2001) (stating that the right of redemption is not foreclosed until the sale is affirmed)); Florida Statutes Ann. § 45.0315 (2005) (stating that the right to redeem the property terminates the later of when the certificate of sale is filed by the clerk or at the time specified in the foreclosure judgment); *Washington Trust Co. v. Smith*, 699 A.2d 73, 78 (Conn. 1997) ("[Redemption] rights survive the auction of the foreclosed property and may be exercised until such time as the judicial authority approves the foreclosure sale."), *overruled on other grounds by Kerrigan v. Comm'r of Pub. Health*, 904 A.2d 137 (Conn. 2006); Michigan Compiled Laws Ann. § 600.3240(8) (2000) (extending mortgagors 6 months from the foreclosure sale to redeem the property).

III. UPON BALANCING THE INTERESTS INVOLVED IN MORTGAGE FORECLOSURE SALES, PERSONAL SERVICE OF MORTGAGORS SHOULD BE CONSTITUTIONALLY REQUIRED.

Process is due when the state acts to deprive someone of a property interest. *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 902 (1976); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S. Ct. 652, 657 (1950); *accord Sapero v. Mayor & City Council of Baltimore*, 398 Md. 317, 343, 920 A.2d 1061, 1076 (2007). It is undisputed that Ms. Griffin and other homeowners struggling to pay their mortgages are possessed of a fundamental property interest in their homes. *Sapero*, 398 Md. at 343, 920 A.2d at 1076. The element of state action is present in foreclosure proceedings because such proceedings are "conducted pursuant to a legislatively enacted statute and rules promulgated by the Court of Appeals . . . ." *Knapp v. Smethurst*, 139 Md. App. 676, 706, 779 A.2d 970, 987 (2001); *see also McCann v. McGinnis*, 257 Md. 499, 505, 263 A.2d 536, 539 (1970) (holding that the court actually serves as the vendor, accepting

the purchaser's bid at a foreclosure sale); *Merryman v. Bremmer*, 250 Md. 1, 8, 241 A.2d 558, 563 (1968) (same); GORDON ON FORECLOSURES § 1.5 (4th ed. 2004) (same).

Thus, it is manifest that due process is constitutionally required to effectuate the foreclosure of a mortgage. The remaining question then becomes: precisely how much process is due to mortgagors facing the loss of their home? *In re Maria P.*, 393 Md. 661, 675, 904 A.2d 432, 440 (2006). "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Mathews*, 424 U.S. at 334, 96 S. Ct. at 902 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 2600 (1972)); *accord Maria P.*, 393 Md. at 674, 904 A.2d at 440. The question of how much process is due is analyzed by a tripartite balancing inquiry into: (1) the relative importance of the "private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335, 96 S. Ct. at 903. Although the Supreme Court recently said that, as a matter of federal law, it has applied the *Mullane* "reasonableness test" in procedural due process cases regarding the method of notice given, *Dusenbery v. United States*, 534 U.S. 161, 167-68, 122 S. Ct. 694, 699-700 (2002); *accord In re Katherine C.*, 390 Md. 554, 572 n.22, 890 A.2d 295, 306 n.22 (2006) (acknowledging both the *Mullane* and *Mathews* tests), it is certainly this Court's constitutional prerogative to apply *Mathews* as a matter of

Maryland due process.[83] *See infra* Part III.D. Each of the three "*Mathews* test" prongs will be explored in turn with the thesis that personal service should be constitutionally mandated in mortgage foreclosure actions.

A. Private Interests in Property Rights and Homeownership Jeopardized by Mortgage Foreclosure Sales are of Exceptional Importance.

Inquiry into the first prong of the *Mathews* balancing test yields a clear endorsement of the importance of homeownership in our society and the constitutional significance of the right to hold property. The volumes of the Maryland Reporter are replete with references to the sanctity of property rights. *See, e.g.*, *Sapero*, 398 Md. at 343, 920 A.2d at 1076; *Mayor & City Council of Baltimore City v. Valsamaki*, 397 Md. 222, 241, 916 A.2d 324, 335 (2007) ("The right to private property, and the protection of that right, is a bedrock principle of our constitutional republic."); *Canaj, Inc. v. Baker & Div. Phase III, LLC*, 391 Md. 374, 425, 893 A.2d 1067, 1097-98 (2006) ("A land owner's interest in their property is one of the fundamental principles upon which both the United States' and Maryland's Constitutions were created."); *Weyler v. Gibson*, 110 Md. 636, 654, 73 A. 261, 263 (1909) (stating that of "the solemn constitutional guarantees," one serves to "place private property among the fundamental and indestructible rights of the citizen."). This brief discussed previously why homeownership is such a valued and encouraged status in Maryland and in larger American society. Homeownership helps

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[83] Even if the *Mullane* standard were applied, personal service would still be required in mortgage foreclosure sale actions as the most "reasonabl[y] calculated [form of notice], under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane*, 338 U.S. at 314, 70 S. Ct. at 657.

low- and moderate-income families achieve financial security, increases the self-esteem of the homeowner, enhances the educational success of the children of homeowners, encourages homeowners to become more actively involved in the community, stabilizes neighborhoods, and raises tax revenues. *See supra* Part I.C. Accordingly, it is clear that the private interests of mortgagors weigh heavily in favor of personal service when homeownership is threatened by foreclosure proceedings.

B. The Risk of Erroneous Deprivation of Property Which is Manifest in the Current Process for Mortgage Foreclosure Sales in Maryland Can Be Most Reliably Avoided by a Requirement of Personal Service.

The exceedingly summary process for mortgage foreclosures in Maryland is discussed previously in this brief. *See supra* Part II. Although this Court in *Wells Fargo Home Mortgage, Inc. v. Neal*, 398 Md. 705, 922 A.2d 538 (2007), stated previously that it is "the policy of Maryland law to expedite mortgage foreclosures," *id.* at 726, 922 A.2d at 550 (quoting *G.E. Capital Mortgage Servs., Inc. v. Levenson*, 338 Md. 227, 245, 657 A.2d 1170, 1178 (1995)), the Court qualified that statement in the next sentence by adding that "[w]e, however, do not construe the Rule governing power of sale foreclosures to prohibit mortgagors from raising viable defenses to a foreclosure to which the mortgagee is not entitled." *Id.* (citing *Bachrach v. Washington United Coop.*, 181 Md. 315, 319, 29 A.2d 822, 825 (1943) ("The purpose of this legislation was to provide a more expeditious, and less expensive, method of enforcing mortgages than the former proceeding by formal bill in equity, but not, by any means, to impair or defeat the right of the mortgagor to be heard in defense of his property.") (citation omitted)). In *Wells Fargo*, the Court recognized an equitable "unclean hands" affirmative defense to

foreclosure available to Fair Housing Administration ("FHA") loan mortgagors when servicers fail to observe certain loss mitigation regulations prescribed by the FHA program. *Id.* at 730, 922 A.2d at 553. Because of the current Maryland foreclosure scheme, many mortgagors like Ms. Griffin are not permitted a meaningful opportunity to assert equitable and other defenses to inequitable and/or illegal conduct on the part of predatory lenders like Ameriquest and other mortgagees who disregard clear indications that notice has not been effectuated.

It is beyond cavil that the exceptionally brief notice periods permitted by Maryland's unduly summary process will deprive many, if not most, homeowners of sufficient time to save their homes from foreclosure. Notice that a foreclosure action has been filed may arrive in the mortgagor's mailbox only ten days prior to the sale, without even revealing that fact. *See supra* Part II.B. It is also possible that it will be only a week before the sale that the mortgagor is actually informed of the time and place of the sale, which is the only notice of any utility because it provides a time certain by which action is required. *See supra* Part II.B. A mere 10 days is, in the overwhelming majority of cases, not enough time either to cure the default -- especially for subprime mortgagors for whom already strained budgets forbid such a costly proposition[84] -- or to find and retain an attorney who would be available on such short notice to contest the foreclosure

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[84] Predatory Mortgages, Payday Loans, and Foreclosures that Plague Inner-City America: Hearings Before the House Subcomm. on Domestic Policy of the House Comm. on Oversight and Gov't Reform, 110th Cong. ___ (2007) (Statement of William E. Rinehart); *see also* Deborah Goldstein, *Protecting Consumers from Predatory Lenders: Defining the Problem and Moving Toward Workable Solutions*, 35 HARV. C.R.-C.L. L. REV. 225, 250 (2000).

action. Further, even if the homeowner finds a housing counselor immediately, it usually takes 30 to 45 days for the counselor to work through the loss mitigation process with lenders, leaving little time for this vital effort to be utilized. COALITION REPORT at 20. It is no surprise, then, that the Maryland Homeownership Preservation Task Force created by the Governor recognized this failing of the current system and proposed several reforms with respect to the amount of time for homeowners to act to save their homes.[85]

Of course, it is not safe to assume that the notices sent by first-class and certified mail are actually received by the mortgagor. There are myriad possible reasons that the mailed notices will not reach the mortgagor prior to the sale. If this occurs, it becomes literally impossible for mortgagors to save their homes because they were never aware of the pending foreclosure and sale from which the house needed to be saved. As in the case of Ms. Griffin, each of the mailed notices were returned to the trustees unclaimed after a period of 26 and 25 days, respectively, from the date they were sent. (Appellant's Brief 5-6). If a foreclosing party were to take advantage of the exceptionally brief 15-day foreclosure period as described above, but the notices were returned unclaimed in the same timeframe as they were in this case, neither the court nor the foreclosing party would have any possibility of learning, before the sale, whether the prescribed notices

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[85] First, the Task Force recommended that mortgagees would not be permitted to file a foreclosure action less than 90 days after default, second, mortgagees would be required to send a notice of intent to foreclose to the mortgagor 45 days before the docketing the action, and finally, foreclosure sales could not be held less than 45 days from the docketing the foreclosure action. TASK FORCE REPORT, *supra* note 57, at 43. The Maryland Consumer Rights Coalition made similar recommendations, in addition to other vital protections of mortgagors, such as the provision of work-out counseling. COALITION REPORT, *supra* note 79, at 23-24.

were actually received. As a result, the time frame for a response and the method of service permitted in the current foreclosure scheme represents a formula for unscrupulous mortgagees and trustees to effect foreclosures without the most important party -- the homeowner -- ever having been notified.

Ms. Griffin's situation of never having received the mailed notices that were returned unclaimed is just one illustration of the many possible reasons why a mortgagor may not receive a mailed notice. (Appellant's Brief at 26-27). This Court observed in *Miserandino v. Resort Properties, Inc.*, 345 Md. 43, 691 A.2d 208 (1997), that service by mail, while "often quicker and less expensive than service by a sheriff or private process server, [] may present a problem with respect to proof of service." *Id.* at 58, 691 A.2d at 215. Moreover, the *Miserandino* Court acknowledged that even service by certified mail as a substitute for personal service is vulnerable to the same lack of assurance that the process was served. *Id.* at 59-62, 691 A.2d at 215-17.

Thus, the gross unfairness created by the shortage of time allowed by the current foreclosure process to prevent a foreclosure is compounded by the lack of any assurance that the notices of the foreclosure action and sale even reach the homeowner. As such, the current process, which cannot reasonably assure that mortgagors will be notified of the action against them, stands as an affront to the basic notion that "[f]undamentally, due process requires the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Pitsenberger v. Pitsenberger*, 287 Md. 20, 30, 410 A.2d 1052, 1058 (1980) (quoting *Mathews*, 424 U.S. at 333, 96 S. Ct. at 902).

Whether or not notice is actually received, such a short period of time is simply not adequate to mount the defenses to which mortgagors are entitled. *See supra* Part I.A. Thus, the current process presents an overwhelming risk that mortgagors will be erroneously deprived of their cherished property interests without any meaningful opportunity to exercise the right to be heard. After all, this right "has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." *Mullane*, 339 U.S. at 314, 70 S. Ct. at 657. Under the circumstances, any notice falling short of personal service will "impair or defeat the right of the mortgagor to be heard in defense of his property," *Bachrach*, 181 Md. at 319, 29 A.2d at 825, and represents a violation of due process.

Personal service of mortgagors is the manner of notice most "reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections," *Mullane*, 339 U.S. at 314, 70 S.Ct. at 657, so as to avoid the risk of erroneous deprivation. Personal service is the benchmark of notice required to provide due process. This Court in *Miserandino* stated that "[t]his method of service, properly executed, provides a high degree of probability that the defendant received the required notice." 345 Md. at 58, 691 A.2d at 215. Personal service, then, is the superior method of both notifying homeowners of the tragedy that is about to befall them and providing them an actual opportunity to forestall that fate, as well as assuring the court that the foreclosure that it must later ratify was attained under a process affording notice that was reasonably calculated to notify the homeowner of the foreclosure.

C. Requiring Personal Service for Mortgage Foreclosure Sales Will Not Impose Prohibitive Burdens and Will Further the State's Interest in Fairly Adjudicated Foreclosures.

It is true that mortgagees have an interest in efficient foreclosure actions. It is also true that part of that efficiency is derived from the service of process by mail, which is both inexpensive and requires little time to perform. But what is more important is that the interest in efficiency is thwarting the competing interest on the part of the State and mortgagors in fairly adjudicated foreclosures, which can only be obtained by ensuring that the mortgagor has adequate notice of the foreclosure proceeding.

To the extent that personal service may present any burden on mortgagees over the current mailing and publication notice scheme, that burden is surely justified.[86] Although Maryland law favors summary foreclosure actions, this Court has made it clear that the purpose of what limited judicial role there is in foreclosures is to ensure that the mortgagee gets the foreclosure action done correctly, rather than just getting it done. *Wells Fargo*, 398 Md. at 726, 922 A.2d at 550 (citing *Bachrach*, 181 Md. at 319, 29 A.2d at 825 ("The purpose of this legislation was to provide a more expeditious, and less expensive, method of enforcing mortgages than the former proceeding by formal bill in equity, but not, by any means, to impair or defeat the right of the mortgagor to be heard in defense of his property.") (citation omitted)). Moreover, because personal service is required in most civil actions in Maryland where stakes are relatively low, it makes little

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[86] If the Court were to rule that personal service is constitutionally required, the Court could provide a cost savings in the form of reducing the number of publications required by Rule 14-206(b)(1), given the unreliability and cost associated with that method of notice. *See infra* note 89; *see also* TASK FORCE REPORT, *supra* note 57, at 43.

sense to not to require personal service in a home foreclosure action where such a vital interest -- a family's home -- is at stake.

Other states have recognized the value of personal service in mortgage foreclosures and require them in such actions. *See, e.g., Batchin v. Barnett Bank of S.W. Fla.*, 647 So.2d 211, 213 (Fla. Dist. Ct. App. 1994) (citing Florida Stat. Ann. §§ 49.011, 49.021 (1991)); *Manocchio v. Narain*, 534 N.Y.S.2d 297, 298 (N.Y. App. Div. 1988) (citing N.Y. CPLR § 308(1)); *Cont'l Bank v. Rapp*, 485 A.2d 480, 483 (Pa. Super. Ct. 1984) (citing Pa.R.C.P. 1145); *Fed. Nat'l Mortgage Ass'n v. O'Donnell*, 446 So.2d 395, 398 (La. Ct. App. 1984) (citing La. Code Civ. Proc. Ann. art. 6) *Kan. Fed. Sav. & Loan Ass'n v. Burke*, 666 P.2d 203 (Kan. 1983); *see also Bankers Trust Aames MT 2000-1 v. Hernandez*, 116 P.3d 702 (Haw. 2005) (unpublished) (citing Haw. Rules of Civ. Proc. 4(d)(1)(A)); 5 L. Distressed Real Est. § 72:2 ("In some states, process must issue, be served, and there is an opportunity to file an answer and engage in extensive discovery and litigation.").

D. The *Mathews* Balancing Inquiry and the Evolving Notions of Due Process Counsel for the Provision of Personal Service in Mortgage Foreclosure Actions.

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is *notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.*" *Mullane*, 339 U.S. 306, 314, 70 S. Ct. at 657 (emphasis added). It has been stated already that personal service "provides a high degree of probability that the defendant received the required notice." *Miserandino*, 345

Md. at 58, 691 A.2d at 215. That "high degree of probability" of receipt of process is imperative in the circumstances of a mortgage foreclosure action: at risk is a family's greatest asset -- their home -- and they are given exceptionally short notice, if any, to prevent its loss. With such a strong interest to defend and with so little time to act in its defense, due process militates that the most reliable form of notice be given to the party most inclined to prevent the foreclosure -- the homeowner. *Golden Sands Club v. Waller*, 313 Md. 484, 501, 545 A.2d 1332, 1341 (1988) ("It is [] true that the more significant the interest at stake, the greater the required certainty that the notice will be effective."). Notice by mail, even certified mail, is too unreliable in reaching the homeowner pursuant to the timeline permitted by Maryland law to be reasonably calculated to give a homeowner an opportunity to be heard. After all, this Court has said previously that even strict compliance with the mailing requirements of Real Property § 7-105 and Rule 14-206 may not be enough to accord due process. *Knapp*, 139 Md. App. at 708, 779 A.2d at 988 ("Even if a party has complied with the applicable rules or statutes, however, this does not necessarily satisfy the requirements of due process.").

The question of the constitutional sufficiency of the notice scheme provided in the Maryland mortgage foreclosure law has never been decided by this Court, but the evolution of Maryland case law suggests that there is a trend towards recognizing the necessity for personal service. "The rolling ball of constitutional notions of due process, state action, and just plain fair play are moving toward service of process in all *in personam* actions and some *in rem* actions." GORDON ON FORECLOSURES § 2.1 (citing *Miserandino*, 345 Md. 43, 691 A.2d 208). Indeed, it is ironic that while personal service

is not currently required to notify a mortgagor of an impending foreclosure, such service is required should the mortgagee seek a deficiency judgment against the homeowner after the sale or the foreclosure purchaser seek an order awarding possession. GORDON ON FORECLOSURES § 2.5. These anomalies are likely owing solely to the artificial distinction of *in personam* and *in rem* jurisdiction, which should have no bearing on the dictates of due process for a proceeding that holds a person's home in the balance. (Appellant's Brief 14-17).

Twenty-eight years ago, the Court of Special Appeals in *Billingsley v. Lawson*, 43 Md. App. 713, 406 A.2d 946, *cert. denied*, 286 Md. 743 (1979), *and cert. denied*, 446 U.S. 919, 100 S. Ct. 1853 (1980), addressed a due process challenge to the "W Rules" governing foreclosure raised by a mortgagor who had received actual notice prior to the sale and sought to enjoin it by use of the various means provided in the Rules. 43 Md. App. at 724, 406 A.2d at 954. The intermediate appellate court rejected the due process challenge "under such circumstances." *Id.* As such, the court's statement that "[a]fter a thorough consideration of the W Rules, we are convinced they meet [federal and state] due process requirements," can only be regarded as a determination of an "as applied" challenge to the facts in that particular case (where the mortgagor had actual notice). *See Goodyear Tire & Rubber Co. v. Ruby*, 312 Md. 413, 420, 540 A.2d 482, 485 (1988) ("What constitutes a sufficient method of notification in cases . . . may vary depending upon the circumstances of the case and the particular relief sought."). Unlike the mortgagor in *Billingsley*, Ms. Griffin never received notice of the foreclosure of her home

and, given the narrow window of time given for notice under Maryland law, her situation is unlikely to be an aberration among Maryland homeowners.

Then, in 1988, this Court in *Golden Sands Club v. Waller*, was confronted with the question of the constitutional sufficiency of mailed notices concerning an action seeking a lien on a condominium. In that case, the Court upheld as satisfying due process the notice provisions of the Maryland Contract Lien Act ("MCLA"), requiring condominium unit owners to be notified of a lien by certified or registered mail, return receipt requested. 313 Md. at 503-04, 545 A.2d at 1342. Again, though, it is clear that the circumstances in *Golden Sands Club* are different from those faced by Ms. Griffin and other home mortgagors like her. While a lien on a condominium is a substantial imposition on a property right, it cannot compare to the imminent foreclosure of a home.[87] Further, the MCLA allowed the condominium owner to file a complaint challenging the probable cause for the lien within 30 days from time he was served with the notice. *Id.* at 487, 545 A.2d at 1334 (citing Real Property § 14-203(c)). It was under these circumstances that the *Golden Sands Club* Court stated its synthesis of recent Supreme Court holdings: "It thus appears that for notice purposes in circumstances involving the potential deprivation of a substantial interest in property, the court has equated personal service and mail service as means equally well-calculated to attain actual notice and, therefore, acceptable from the due process viewpoint." 313 Md. at 502, 545 A.2d at 1342.

Seven years later, however, this Court in *Miserandino* held that first class mail was constitutionally insufficient to effect notice and vest a Virginia court with personal jurisdiction over a Maryland resident. 345 Md. at 67, 691 A.2d at 219-20. In *Miserandino*, this Court nonetheless recognized the inherent risks of notice by mail and its failure to ensure that parties are apprised of the action at hand. Finally, only last year, the United States Supreme Court recognized the need for additional notice of a tax sale foreclosure when the mailed notices were returned unclaimed. *Jones v. Flowers*, 547 U.S. 220, 225, 126 S. Ct. 1708, 1713 (2006).

The evolving notions of due process and the judiciary's role in controlling that evolution empower this Court to recognize the urgent need for personal service as the constitutionally required form of due process for mortgage foreclosure sales. *Kulko v. Superior Court*, 436 U.S. 84, 101, 98 S. Ct. 1690, 1701 (1978) (acknowledging the "evolving standards of [procedural] due process"); *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 162, 71 S. Ct. 624, 643 (1951) (Frankfurter, J., concurring) ("Expressing as it does in its ultimate analysis respect enforced by law for that feeling of just treatment which has been evolved through centuries of Anglo-American constitutional history and civilization, 'due process' cannot be imprisoned within the treacherous limits of any formula."); *see also Frank v. Maryland*, 359 U.S. 360, 371, 79 S. Ct. 804, 811 (1959) (discussing the evolution of substantive due process); *Harper v. Bd. of Elections*, 383 U.S. 663, 669, 86 S. Ct. 1079, 1082-83 (1966) (same).

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[87] The *Golden Sands Club* decision itself states that "the more significant the interest at stake, the greater the required certainty that the notice will be effective." 313 Md. 484,

Moreover, this Court is possessed of the authority to interpret Maryland's Due Process Clause[88] in a manner bestowing greater due process than that which is given under the Federal Constitution. *Koshko v. Haining*, 398 Md. 404, 444 & n.22, 921 A.2d 171, 194 & n.22 (2007) (interpreting Article 24 to provide stronger due process parental rights than provided by the federal counterpart and cataloging cases); *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 482 n.10, 914 A.2d 735, 742 n.10 (2007) (cataloging cases); *see also Frankel v. Bd. of Regents*, 361 Md. 298, 313, 761 A.2d 324, 332 (2000); *Attorney Gen. v. Waldron*, 289 Md. 683, 426 A.2d 929 (1981). As Justice Brennan once noted:

> state courts cannot rest when they have afforded their citizens the full protections of the federal Constitution. State constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law. The legal revolution which has brought federal law to the fore must not be allowed to inhibit the independent protective force of state law-for without it, the full realization of our liberties cannot be guaranteed.

William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 491 (1977). It is clear, then, that

> state courts are absolutely free to interpret state constitutional provisions to accord greater protection to individual rights than do similar provisions of the United States Constitution. They also are free to serve as experimental laboratories, in the sense that Justice Brandeis used that term in his dissenting opinion in *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311, 52 S. Ct. 371, 386, 76 L. Ed. 747 (1932).

Arizona v. Evans, 514 U.S. 1, 8, 115 S. Ct. 1185, 1190 (1995); *see also Koshko*, 398 Md. at 443-44, 921 A.2d at 194 ("[T]he extent of protection bestowed upon liberty interests

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501, 545 A.2d 1332, 1341 (1988).

recognized as being enshrined within the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution does not dictate necessarily the full compliment of safeguards extended to liberty interests available under the Maryland due process . . . .[88]"). Thus, Maryland courts are not bound to an interpretation of federal due process that, according to *Golden Sands Club*, "has equated personal service and mail service as means equally well-calculated to attain actual notice" in property deprivation cases. 313 Md. at 502, 545 A.2d at 1342. Implicit in the words of Justice Marshall that "[i]t is emphatically the province and duty of the judicial department to say what the law is," *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803) (quoted in *Ehrlich v. Perez*, 394 Md. 691, 737, 908 A.2d 1220, 1247 (2006)), this Court must say what *Maryland* law is, rather than serving as a "mere echo of the prevailing Fourteenth Amendment jurisprudence."[89] *Koshko*, 398 Md. at 444 n.22, 921 A.2d at 194 n.22; *see also Michigan v. Long*, 463 U.S. 1032, 1041, 103 S. Ct. 3469, 3476 (1983) (refusing to review state court decisions that rest on "independent and adequate" state law grounds). Under the circumstances of the alarming rate of foreclosures and the clear risk of erroneous deprivation under current Maryland foreclosure law, this Court should now hold that Maryland due process requires personal service in mortgage foreclosure actions.

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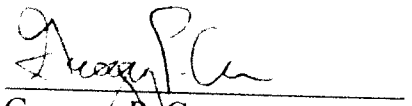
[88] MD. CONST., DECL. OF RTS. art. 24.

[89] Notably, the Court could also act legislatively to modify Rule 14-206 to ensure due process in mortgage foreclosure proceedings, which would supersede the pre-existing statutory scheme. MD. CONST., art. 4, § 18(a); *Johnson v. Swann*, 314 Md. 285, 289-90, 550 A.2d 703, 704-05 (1988).

CONCLUSION

For the foregoing reasons, and for the additional reasons cited in the Brief of Appellant, *Amici* respectfully request that this Court reverse the judgment of the Circuit Court for Anne Arundel County.

Respectfully submitted,



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December 5, 2007
Times New Roman, 13 Point

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