

**MEMORANDUM**

October 28, 2016

TO: County Council

FROM: Amanda Mihill, Legislative Attorney *A. Mihill*

SUBJECT: **Public Hearing:** Bill 38-16, Housing and Building Maintenance Standards – Foreclosed Property Registration Penalty

Bill 38-16, Housing and Building Maintenance Standards – Foreclosed Property Registration Penalty, sponsored by Lead Sponsor Councilmember Huckler and Co-Sponsors Councilmember Navarro, Vice President Berliner, Councilmembers Elrich, Riemer, and Leventhal, and Council President Floreen, was introduced on September 20, 2016. A Planning, Housing and Economic Development Committee worksession is tentatively scheduled for November 21 at 2:00 p.m.

Bill 38-16 would impose a civil penalty for failure to register a foreclosure purchase. Additional background materials from Lead Sponsor Huckler is attached at ©4.

This packet contains:	<u>Circle #</u>
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Bill No. 38-16  
Concerning: Housing and Building  
Maintenance Standards – Foreclosed  
Property Registration Penalty  
Revised: 3/7/2016 Draft No. 1  
Introduced: September 20, 2016  
Expires: March 20, 2018  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Councilmember Hucker  
Co-Sponsors: Councilmember Navarro, Vice President Berliner, Councilmembers Elrich, Riemer,  
and Leventhal, and Council President Floreen

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**AN ACT** to:

- (1) impose a civil penalty for failure to register a foreclosure purchase; and
- (3) generally amend the law regarding housing and building maintenance standards.

By adding

Montgomery County Code  
Chapter 26, Housing and Building Maintenance Standards  
Article I, General

Article II, Foreclosed Property Registry  
Section 26-19

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*



## LEGISLATIVE REQUEST REPORT

Bill 38-16

*Housing and Building Maintenance Standards – Foreclosed Property Registration Penalty*

<b>DESCRIPTION:</b>	Bill 38-16 would impose a civil penalty for failure to register a foreclosure purchase.
<b>PROBLEM:</b>	In 2012, the General Assembly enacted House Bill 1373, which requires the purchaser of a foreclosed property to register with the state. The law also authorizes local jurisdictions to impose a fine for failing to register.
<b>GOALS AND OBJECTIVES:</b>	To use the authority given by the state to impose a fine for failing to register a foreclosed property purchase.
<b>COORDINATION:</b>	
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Amanda Mihill, Legislative Attorney, 240-777-7815
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	To be researched.
<b>PENALTIES:</b>	\$1,000 for failing to register.



**MONTGOMERY COUNTY COUNCIL**  
ROCKVILLE, MARYLAND

**TOM HUCKER**  
COUNCILMEMBER  
DISTRICT 5

**MEMORANDUM**

**TO:** Councilmembers

**FROM:** Tom Hucker

**DATE:** July 13, 2016

**RE:** **Establishing a penalty for failing to register a foreclosed property**

I will soon be introducing a series of housing bills that are meant to address the growing number of neglected and vacant properties in the county. The first seeks to incentivize property owners and banks to adhere to current law and ensure homes are properly maintained and taxes are paid.

In 2012, at the request of Maryland Department of Labor, Licensing and Regulation (DLRR) and the Maryland Foreclosure Task Force, the General Assembly passed HB 1373 - Foreclosed Property Registry. The law requires the purchaser of a foreclosed property to register with DLRR within 30 days of the property's foreclosure sale. The law also authorizes local jurisdictions to enact legislation to impose a fine of \$1,000 for failing to register. The law was meant to address the nine to eighteen month period that frequently occurs between the date of a foreclosure and the date that the property title is transferred. During this time, local jurisdictions have a hard time identifying the party responsible for maintenance, security, and taxes.

To date, Montgomery County has not enacted any punitive fine and hundreds of foreclosed properties have gone unregistered. Based on the data from the State Foreclosure Registry, there were 1,432 foreclosures countywide in FY15. Of these, 34% (492) either failed to register or registered long after the deadline. These unregistered properties are much more likely to go unmaintained costing the county thousands in housing code enforcement and dragging down nearby property values.<sup>[1]</sup>

In addition, many purchasers - often banks and out-of-state investors - wait to record the deed to the property until it is resold to another purchaser.<sup>[1]</sup> By circumventing the normal process and improperly (and illegally) transferring the property to a new homeowner in this fashion, the County does not receive the recordation tax or the transfer tax, which shortchanges County coffers of over \$6,000 in revenue for a property of average value.

That is why I am introducing legislation to enact a penalty of \$1,000 per day for a foreclosed property that has not been registered. This deterrent is critically needed when

[1][https://www.richmondfed.org/~-/media/richmondfedorg/conferences\\_and\\_events/community\\_development/2012/pdf/md\\_foreclosure\\_task\\_force\\_rpt.pdf](https://www.richmondfed.org/~-/media/richmondfedorg/conferences_and_events/community_development/2012/pdf/md_foreclosure_task_force_rpt.pdf)

foreclosed property owners can save many thousands of dollars in maintenance costs and taxes by refusing to register and transfer ownership of their properties. These properties, often are in persistent disrepair, hurt neighborhoods and force the County to expend resources to enforce code violations. This bill gives us another 'stick' we can use to address this problem.

Attached is a copy of this bill and an FAQ sheet. I hope you will join me in cosponsoring this legislation. Please let me know if I can provide any additional information.

## **Foreclosure Registry Frequently Asked Questions**

### **1. What is the Maryland Foreclosed Property Registry?**

The Foreclosed Property Registry is an online system managed by the Office of the Commissioner of Financial Regulation in the Maryland Department of Labor, Licensing and Regulation (DLLR). State law requires that every residential property purchased at a foreclosure sale be registered in this system.

### **2. What is the purpose of the foreclosure registry?**

In 2012, the Maryland Foreclosure Task Force identified a limbo period of nine to eighteen months between the property's foreclosure sale and the deed recordation in the public land records. During this limbo period, it is difficult for jurisdictions to identify the party responsible for foreclosed property, which often causes the property to fall into disrepair. The Foreclosed Property Registry closes this gap by creating one centralized database of information.

### **3. What causes this limbo period?**

According to the Foreclosure Task Force, this limbo period is caused by the following six factors:

- Right of property owner to challenge the foreclosure auction
- Time required for Courts to ratify the foreclosure sale
- Clearing of any priority government liens against the property
- Lengthy eviction proceedings or eviction requirements
- Market demand or lack thereof for the property by a new homeowner; and
- Whether or not foreclosure purchasers record the deed prior to resale, or in the alternative, wait to record upon resale to a third-party purchaser.

### **4. Why would a foreclosure purchaser wait to record a deed upon resale?**

By postponing the deed recordation, a foreclosure purchaser can avoid paying thousands of dollars in transfer and recordation taxes, which become the responsibility of the third-party purchaser.

### **5. How much are property transfer and recordation taxes?**

Transfer taxes are generally 1% of the value of the improved (building) and unimproved (land) value of a property transferred to a new owner. Recordation taxes are 0.69% of the

amount of the transaction. In Montgomery County, the recordation and transfer tax for a property of median value in Montgomery County is about \$6,600. The foreclosure purchaser avoids paying these taxes, and often passes the costs on to the next person who purchases the property.

**6. What is a foreclosure sale?**

In Maryland, a lender may file for foreclosure on a property 45 days after the first missed mortgage payment. If the loan is not brought current or the loan is not modified, then the lender can sell the property at a foreclosure sale. Typically, loans sold at foreclosure are bought by other banks or real estate investors.

**7. Who has to register the property?**

The company or individual that purchases the foreclosed property is required to register the property. The property does not need to be re-registered when the foreclosure purchaser sells the property to a third-party purchaser.

**8. What is the process for registering a property?**

Purchasers are required to submit an initial registration of the property within 30 days of the foreclosure sale, which includes the name, address, and telephone number of the purchaser, their legal representative, property maintenance company, and the property's occupancy status. The purchaser is also required to complete a final registration within 30 days of recording the property's new deed.

**9. How is compliance enforced?**

The statute that created the registry gives local jurisdictions the authority to enforce compliance. A jurisdiction may enact a local law that imposes a civil penalty for failure to register a property.

**10. What is the noncompliance rate?**

DLLR estimates that 20% of foreclosure purchasers do not register their property or register after the deadline. In Montgomery County, however, that number is much higher. In FY15, there were 1,432 foreclosures in the county, and 34% either failed to register or were registered after the deadline.



ROCKVILLE, MARYLAND

MEMORANDUM

October 10, 2016

TO: Nancy Floreen, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget  
Alexandre A. Espinosa, Director, Department of Finance

SUBJECT: FEIS for  
Bill 38-16, Housing and Building Maintenance Standards – Foreclosed Property  
Registration Penalty; and  
Bill 39-16, Housing and Building Maintenance Standards – Registration of  
Vacant Property

Please find attached the fiscal and economic impact statements for the above-referenced legislations.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer  
Lisa Austin, Offices of the County Executive  
Joy Nurmi, Special Assistant to the County Executive  
Patrick Lacefield, Director, Public Information Office  
Clarence J. Snuggs, Director, Department of Housing and Community Affairs  
David Platt, Department of Finance  
Dennis Hetman, Department of Finance  
Pofen Salem, Office of Management and Budget  
Nacem Mia, Office of Management and Budget

## Fiscal Impact Statement

### Bill 38-16

## Housing and Building Maintenance Standards - Foreclosed Property Registration Penalty

### 1. Legislative Summary

The proposed legislation would impose a civil penalty for failure to register a foreclosure purchase. Bill 38-16 would enact the County's authority referenced in HB-1373 which requires every residential property purchased at a foreclosure sale to be registered within 30 days into the Foreclosed Property Registry. HB-1373 authorizes local jurisdictions to impose a fine of \$1,000 for failing to register. State law was intended to address a limbo period of nine to eighteen months between the property's foreclosure sale and the deed recordation in the public land records. During this limbo period, it is difficult for local jurisdictions to identify the party responsible for maintenance, security, and taxes of foreclosed property. The Foreclosed Property Registry is designed to close this gap by creating one centralized database of information.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

The Maryland Department of Labor, Licensing and Regulation (DLLR) estimates that twenty percent of foreclosure purchasers do not register properties or register after the deadline, and that number is much higher in Montgomery County. According to the "Foreclosure Registry Frequently Asked Questions", which was submitted in the introduction package for Bill 38-16, there were 1,432 foreclosures countywide in FY15. Of these, 34% (492 properties) either failed to register or were registered after the deadline. Bill 38-16 would impose a maximum penalty of \$1,000 for noncompliance. Therefore, assuming the aforementioned 492 properties, this would generate an additional \$492,000 in revenue. However, the intent of the bill is to increase the compliance rate. Therefore, the revenues could be less.

DHCA currently does not perform the billing and full compliance of foreclosed properties to be registered in the Foreclosed Property Registry. DHCA administers the Clean and Lien Program, a similar program, aimed at enforcing code compliance at certain noncompliant ownership properties. The Clean and Lien program utilizes a Program Manager I position to maintain 200-250 properties per year. DHCA estimates Bill 38-16 could require the same level of effort with one additional staff to enforce code compliance at those noncompliant foreclosed properties. DHCA estimates that the total personnel cost, including fringe benefits, for a Program Manager I position is \$95,165. The compliance rate will be monitored to determine if the additional staffing is necessary.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

The total estimated six-year revenue or expenditure is based on the assumption of approximately 492 foreclosed properties remain noncompliant per year:

	FY17	FY18	FY19	FY20	FY21	FY22	Total
Revenue (@\$1,000 penalty per property)	492,000	492,000	492,000	492,000	492,000	492,000	2,952,000
Expenditure (1.0 FTE for Program Manager I)	95,165	95,165	95,165	95,165	95,165	95,165	570,993

*Note: The percentage of noncompliance foreclosed properties in Montgomery County is higher than the State average (20%). The revenue estimates are based on the assumption of 34% of identified foreclosed properties in FY15. Personnel cost does not include future wage increases.*

- An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not Applicable.

- An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not applicable.

- Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not applicable; the proposed legislation does not authorize future spending.

- An estimate of the staff time needed to implement the bill.

As mentioned in #2, DHCA currently does not perform this task. DHCA administers the Clean and Lien Program, a similar program, aimed at enforcing code compliance at certain noncompliant ownership properties. The Clean and Lien program utilizes a Program Manager I position to maintain 200-250 properties per year. DHCA estimates Bill 38-16 could require the same level of effort, if the non-compliance rate isn't significantly reduced, with one additional staff to enforce code compliance at those noncompliant foreclosed properties. DHCA estimates that the total personnel cost, including fringe benefits, for a Program Manager I position is \$95,165.

- An explanation of how the addition of new staff responsibilities would affect other duties.

The proposed task cannot be absorbed with current staff and would require an additional 1.0 FTE.

- An estimate of costs when an additional appropriation is needed.

An additional appropriation of \$95,165 for a Program Manager I position could be necessary if compliance rates remain unchanged.

10. A description of any variable that could affect revenue and cost estimates.

The revenue estimates could be affected by the number of foreclosure events in a given fiscal year, the uncertainty of whether the \$1,000 penalty for noncompliance is challenged and upheld in court, and whether the legislation's goal of increasing compliance is achieved.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

12. If a bill is likely to have no fiscal impact, why that is the case.

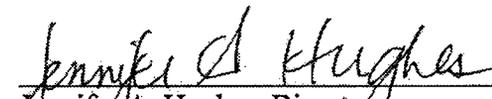
Not applicable.

13. Other fiscal impacts or comments.

Not applicable.

14. The following contributed to and concurred with this analysis:

Clarence Snuggs, DHCA  
Tim Goetzinger, DHCA  
Chris Anderson, DHCA  
Dan, McHugh, DHCA  
Pofen Salem, Office of Management and Budget

  
\_\_\_\_\_  
Jennifer A. Hughes, Director  
Office of Management and Budget

10/6/16  
Date

**Economic Impact Statement**  
**Bill 38-16, Housing and Building Maintenance Standards – Foreclosed Property**  
**Registration Penalty**

**Background:**

This legislation would impose a civil penalty for failure to register a foreclosure purchase. In 2012, the General Assembly enacted House Bill 1373 that requires the purchaser of a foreclosed property to register with the state and authorizes local jurisdictions to impose a fine for failing to register.

**1. The sources of information, assumptions, and methodologies used.**

Sources of information include the Maryland Department of Housing and Community Development (DHCD), RealtyTrac, and the Maryland Department of Labor, Licensing and Regulation (DLLR). The Department of Finance (Finance) did not develop assumptions or methodologies in the preparation of the economic impact statement.

According to DHCD in its report “Property Foreclosures in Maryland: Third Quarter 2015”, there were 943 property foreclosure events or foreclosure filings in Montgomery County which represented 8.7 percent of the total statewide events. Those events included notices of default (313), notices of sales (412), and lender purchases (291). The sum of the three events exceeds the number of total foreclosure filings because DHCD eliminates multiple counting of events from the total. The total foreclosure filings during the third quarter of 2015 was 6.4 percent above the rate during the third quarter of 2014.

Bill 38-16 addresses the issue of the failure by purchasers of foreclosed property to register the property or failure to register after the deadline with the DLLR’s Foreclosed Property Registry (Registry). According to data provided by the Registry, 492 properties failed to register or registered after the deadline in FY15. Bill 38-15 would impose a maximum penalty or fine of \$1,000 for each failure to register or registered after the deadline. Therefore, the maximum total cost to purchasers of foreclosed property would be \$492,000.

**2. A description of any variable that could affect the economic impact estimates.**

The purpose of the economic impact statement is not to analyze the economic impact of foreclosures on the County’s economy but the economic impact attributed to imposing a fine for purchasers who failed to register and registered after the deadline. As such, the variable that could impact the County’s economy is the number of properties that failed to register and the amount of the fine per noncompliance.

**3. The Bill’s positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.**

Based on data provided in paragraph 1, Bill 38-16 would have a modest impact on the incomes of purchasers of foreclosed property who fail to register or failed to meet the deadline. The legislation would not have a significant impact on the overall economy.

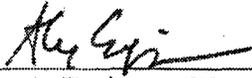
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**Economic Impact Statement**  
**Bill 38-16, Housing and Building Maintenance Standards – Foreclosed Property**  
**Registration Penalty**

4. If a Bill is likely to have no economic impact, why is that the case?

See #3

5. The following contributed to or concurred with this analysis: David Platt, Dennis Hetman, and Robert Hagedoorn, Finance.



\_\_\_\_\_  
Alexandre A. Espinosa, Director  
Department of Finance

10/7/2016

\_\_\_\_\_  
Date