
To: Members of the Senate Judicial Proceedings Committee

From: **William A. O’Connell**, Real Property Section Legislative Chair

Date: **January 21, 2020**

Subject: **SB Bill #154** – Real Property – Recordation of Deeds – Assignment of Rents and Assignment of Leases for Security Purposes

Position: **Supports**

The Maryland State Bar Association (MSBA) **supports Senate Bill #154 - Real Property – Recordation of Deeds – Assignment of Rents and Assignment of Leases for Security Purposes.**

The subject matter of this bill is certificates of preparation that must be added to certain instruments that are presented for recordation among the land records. A predecessor of the current statute became law in 1966 and required certificates of preparation by Maryland lawyers only when documents were recorded in Montgomery County. By 1989, this requirement had grown to apply to five Maryland counties. In 1990 Senator Walter Baker, then Chair of this Committee, sponsored what became Chapter 424, which provided that “no deed, mortgage, or deed of trust” could be recorded in any of the land records of Maryland without a certificate of preparation. The certificate could be signed by either an attorney or by a party to the instrument.

Under the definitions provisions of the Real Property Article (“RP”), the term “deed” is defined very broadly to include any deed, mortgage, deed of trust, lease, and assignment, pertaining to land or property or any interest in them. This includes an assignment of an interest in rents and profits from rents.

RP §3-104(f) was most recently amended three years ago by Chapters 520 and 521 of the Laws of Maryland of 2017 to provide that deeds of trust and mortgages may be recorded without a certificate of preparation. This was done because of the frequent situation with **residential** closings in which there is no lawyer available to sign the certificate. The amendment did not differentiate between residential and commercial deeds of trust and mortgages, and so it applies in both contexts. In commercial transactions, there is now the anomalous situation that a certificate of preparation is not necessary for a deed of trust or mortgage, but under the current language of the Real Property Article a certificate of preparation is required for a much less significant



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document -- the Assignment of Rents and Leases. The purpose of SB 154 is to enable Assignments of Rents and Leases when used as security instruments to be recorded without an accompanying certificate of preparation.

Therefore, on behalf of the Maryland State Bar Association Real Property Section, I urge that you vote in favor of SB 154.

Thank you for your consideration.

If you have any questions, please contact me.

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