
By: Senator Boozer

Introduced and read first time: February 6, 1997

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 Real Property - Recordation, Subordination Agreements, and Powers of Attorney

3 FOR the purpose of authorizing the recording of certain assumption agreements;
4 authorizing the recording of certified copies of certain documents from foreign
5 states and jurisdictions; authorizing the execution of a release by the holder of a
6 certain deed of trust note; requiring the clerk to accept certain documents for
7 recording; allowing the recordation of certain powers of attorney subsequent to
8 certain deeds; authorizing lenders to subordinate their interests in a certain
9 manner; providing a certain form for a certificate of partial satisfaction; clarifying
10 certain terms; and generally relating to instruments affecting real property.

11 BY repealing and reenacting, with amendments,
12 Article - Real Property
13 Section 3-102, 3-104(e), 3-105(b), (d), (e), and (h), 4-107, and 7-104
14 Annotated Code of Maryland
15 (1996 Replacement Volume and 1996 Supplement)

16 BY adding to
17 Article - Real Property
18 Section 3-105(i), 3-301(c), 4-111, and 4-203(e)
19 Annotated Code of Maryland
20 (1996 Replacement Volume and 1996 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article - Real Property**

24 3-102.

25 Any other instrument affecting property, including any contract for the grant of
26 property, any notice of deferred property footage assessment for street construction, [or]
27 any subordination agreement establishing priorities between interests in property, ANY
28 ASSUMPTION AGREEMENT BY WHICH A PERSON AGREES TO ASSUME THE LIABILITY
29 OF A DEBT OR OTHER OBLIGATION SECURED BY A MORTGAGE OR DEED OF TRUST,
30 OR ANY RELEASE OF PERSONAL LIABILITY OF A BORROWER OR GUARANTOR
31 UNDER A MORTGAGE OR UNDER A NOTE OR OTHER OBLIGATION SECURED BY A

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1 DEED OF TRUST may be recorded. The recording of any instrument constitutes
2 constructive notice from the date of recording.

3 3-104.

4 (e) (1) Any printed deed or other instrument offered for recordation shall be
5 printed in not less than eight-point type and in black letters and be on white paper of
6 sufficient weight and thickness to be clearly readable. If the deed or other instrument is
7 wholly typewritten or typewritten on a printed form, the typewriting shall be in black
8 letters, in not less than elite type and upon white paper of sufficient weight or thickness
9 as to be clearly readable. The foregoing provisions do not apply to manuscript covers or
10 backs customarily used on documents offered for recordation. The recording charge for
11 any instrument not conforming to these requirements shall be treble the normal charge.
12 In any clerk's office where the deeds or other instruments are photostated or
13 microfilmed, no instrument on which a rider has been placed or attached in a manner
14 obscuring, hiding, or covering any other part of the instrument may be offered or received
15 for record. No instrument not otherwise readily subject to photostating or microfilming
16 may be offered or received for record until treble the normal recording charge is paid to
17 the clerk and unless an affidavit, black type on white paper, is attached and made a part
18 of the document stating the kind of instrument, the date, the parties to the transaction,
19 description of the property, and all other pertinent data. After any document has been
20 recorded in one county, a certified copy of the recorded document may be recorded in
21 any other county.

22 (2) A CERTIFIED COPY OF ANY DOCUMENT FROM A STATE,
23 COMMONWEALTH, TERRITORY, OR POSSESSION OF THE UNITED STATES, OR THE
24 DISTRICT OF COLUMBIA THAT WOULD OTHERWISE BE RECORDABLE UNDER
25 MARYLAND LAW MAY BE RECORDED IN THIS STATE, IF THE DOCUMENT CONTAINS:

26 (I) AN ORIGINAL CERTIFICATION MADE BY THE CLERK OR OTHER
27 GOVERNMENTAL OFFICIAL HAVING RESPONSIBILITY FOR THE CERTIFICATION OR
28 AUTHENTICATION OF RECORDED DOCUMENTS IN THE JURISDICTION WHERE THE
29 DOCUMENT IS RECORDED; AND

30 (II) AN INDICATION OF THE RECORDING REFERENCE AND COURT
31 OR OTHER PUBLIC REGISTRY WHERE THE ORIGINAL DOCUMENT IS RECORDED.

32 3-105.

33 (b) A release may be endorsed on the original mortgage or deed of trust by the
34 mortgagee [or] his assignee, or the trustee or his successor under a deed of trust, OR BY
35 THE HOLDER OF THE DEBT OR OBLIGATION SECURED BY THE DEED OF TRUST. The
36 mortgage or the deed of trust, with the endorsed release, then shall be filed in the office
37 in which the mortgage or deed of trust is recorded. The clerk shall record the release
38 photographically, with an attachment or rider affixed to it containing the names of the
39 parties as they appear on the original mortgage or deed of trust, together with a reference
40 to the book and page number where the mortgage or deed of trust is recorded. When the
41 mortgage or deed of trust, with the attached release, is filed for the purpose of recording
42 the release, the clerk shall retain the mortgage or deed of trust in his office and not
43 permit it to be withdrawn for 25 years, after which time he may destroy it. If, however, the

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1 clerk preserves a photographic copy of the release, he may permit the original mortgage
2 or deed of trust with the release to be withdrawn.

3 (d) (1) When the debt secured by a deed of trust is paid fully or satisfied, and
4 any bond, note, or other evidence of the total indebtedness is marked "paid" or
5 "cancelled" by the holder or his agent, it may be received by the clerk and indexed and
6 recorded as any other instrument in the nature of a release. The marked note has the
7 same effect as a release of the property for which it is the security, as if a release were
8 executed by the named trustees, if there is attached to or endorsed on the note an
9 affidavit of the holder, the party making satisfaction, or an agent of either of them, that it
10 has been paid or satisfied, and specifically setting forth the land record reference where
11 the original deed of trust is recorded.

12 (2) When the debt secured by a mortgage is paid fully or satisfied, and the
13 original mortgage is marked "paid" or "cancelled" by the mortgagee or his agent, it may
14 be received by the clerk and indexed and recorded as any other instrument in the nature
15 of a release. The marked mortgage has the same effect as a release of the property for
16 which it is the security, as if a release were executed by the mortgagee, if there is attached
17 to or endorsed on the mortgage an affidavit of the mortgagee, the mortgagor, the party
18 making satisfaction, or the agent of any of them, that it has been paid or satisfied, and
19 specifically setting forth the land record reference where the mortgage is recorded.

20 (3) When the debt secured by a mortgage or deed of trust is paid fully or
21 satisfied, and the canceled check evidencing final payment is presented, it may be
22 received by the clerk and indexed and recorded as any other instrument in the nature of
23 a release. The canceled check has the same effect as a release of the property for which
24 the mortgage or deed of trust is the security, as if a release were executed by the
25 mortgagee or named trustees, if:

26 (i) The party making satisfaction of the mortgage or deed of trust has:

27 1. Allowed at least a 60-day waiting period, from the date the
28 mortgage or deed of trust is paid fully or is satisfied, for the party satisfied to provide a
29 release suitable for recording;

30 2. Sent the party satisfied a copy of this section and a notice
31 that, unless a release is provided within 30 days, the party making satisfaction will obtain
32 a release by utilizing the provisions of this paragraph; and

33 3. Following the mailing of the notice required under
34 sub-subparagraph 2. of this subparagraph, allowed an additional waiting period of at least
35 30 days for the party satisfied to provide a release suitable for recording; and

36 (ii) The canceled check contains the name of the party whose debt is
37 being satisfied, the debt account number, if any, and words indicating that the check is
38 intended as payment in full of the debt being satisfied; and

39 (iii) There is attached to the canceled check an affidavit made by a
40 member of the Maryland Bar that the mortgage or deed of trust has been satisfied, that
41 the notice required under subparagraph (i) of this paragraph has been sent, and
42 specifically setting forth the land record reference where the original mortgage or deed of
43 trust is recorded.

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1 (4) When the debt secured by a mortgage or deed of trust is fully paid or
2 satisfied and the holder or the agent of the holder of the mortgage or deed of trust note
3 OR OTHER OBLIGATION SECURED BY THE DEED OF TRUST, OR THE TRUSTEE OR
4 SUCCESSOR TRUSTEE UNDER THE DEED OF TRUST, executes and acknowledges a
5 certificate of satisfaction SUBSTANTIALLY in the form specified under § 4-203(d) of this
6 article, containing the name of the debtor, holder, [or] the authorized agent of the
7 holder, OR THE TRUSTEE OR SUCCESSOR TRUSTEE UNDER THE DEED OF TRUST, the
8 date, and the land record recording reference of the instrument to be released, it may be
9 received by the clerk and indexed and recorded as any other instrument in the nature of
10 a release. The certificate of satisfaction shall have the same effect as a release executed
11 by the holder of a mortgage or the named trustee under a deed of trust.

12 (5) WHEN THE HOLDER OF A MORTGAGE OR DEED OF TRUST NOTE OR
13 OTHER OBLIGATION SECURED BY THE DEED OF TRUST HAS AGREED TO RELEASE
14 CERTAIN PROPERTY FROM THE LIEN OF THE MORTGAGE OR DEED OF TRUST AND
15 THE HOLDER OR THE AGENT OF THE HOLDER OF THE MORTGAGE OR DEED OF
16 TRUST NOTE OR OTHER OBLIGATION SECURED BY THE DEED OF TRUST, OR THE
17 TRUSTEE OR SUCCESSOR TRUSTEE UNDER THE DEED OF TRUST EXECUTES AND
18 ACKNOWLEDGES A CERTIFICATE OF PARTIAL SATISFACTION OR PARTIAL RELEASE
19 SUBSTANTIALLY IN THE FORM SPECIFIED UNDER § 4-203(E) OF THIS ARTICLE,
20 CONTAINING THE NAME OF THE DEBTOR, HOLDER, THE AUTHORIZED AGENT OF
21 THE HOLDER, OR THE TRUSTEE OR SUCCESSOR TRUSTEE UNDER THE DEED OF
22 TRUST THE DATE, THE LAND RECORD RECORDING REFERENCE OF THE
23 INSTRUMENT TO BE PARTIALLY RELEASED, AND A DESCRIPTION OF THE REAL
24 PROPERTY BEING PARTIALLY RELEASED, IT MAY BE RECEIVED BY THE CLERK AND
25 INDEXED AND RECORDED AS ANY OTHER INSTRUMENT IN THE NATURE OF A
26 PARTIAL RELEASE. THE CERTIFICATE OF PARTIAL SATISFACTION OR PARTIAL
27 RELEASE SHALL HAVE THE SAME EFFECT AS A PARTIAL RELEASE EXECUTED BY
28 THE HOLDER OF A MORTGAGE, THE HOLDER OF THE DEBT SECURED BY A DEED OF
29 TRUST, OR THE NAMED TRUSTEE UNDER A DEED OF TRUST.

30 (e) A release of a mortgage or deed of trust may be made on a separate
31 instrument if it states that the mortgagee, HOLDER OF THE DEBT OR OBLIGATION
32 SECURED BY THE DEED OF TRUST, trustee, or assignee releases the mortgage or deed of
33 trust and states the names of the parties to the mortgage or deed of trust and the date and
34 recording reference of the mortgage or deed of trust to be released. In addition, any form
35 of release that satisfies the requirements of a deed and is recorded as required by this
36 article is sufficient.

37 (h) Unless otherwise expressly provided in the release, a full or partial release
38 that is recorded for a mortgage or deed of trust that is re-recorded, amended, modified,
39 or otherwise altered or affected by a supplemental instrument and which cites the
40 released mortgage or deed of trust by reference to only the original recorded mortgage,
41 deed of trust, or supplemental instrument to the original mortgage or deed of trust,
42 shall[:

43 (1) Be] BE effective as a full or partial release of the original mortgage or
44 deed of trust and all supplemental instruments to the original mortgage or deed of trust[;
45 and

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1 (2) Terminate or partially release any related financing statements but only
2 to the extent of the collateral described in the full or partial release that is recorded for
3 a mortgage or deed of trust with respect to the fixtures described in the financing
4 statement].

5 (I) UNLESS OTHERWISE EXPRESSLY PROVIDED IN THE RELEASE, A FULL OR
6 PARTIAL RELEASE THAT IS RECORDED FOR A MORTGAGE OR DEED OF TRUST, OR
7 FOR ANY RE-RECORDING, AMENDMENT, MODIFICATION, OR SUPPLEMENTAL
8 INSTRUMENT TO THE MORTGAGE OR DEED OF TRUST SHALL TERMINATE OR
9 PARTIALLY RELEASE ANY RELATED FINANCIAL STATEMENTS, BUT ONLY TO THE
10 EXTENT THAT THE FINANCING STATEMENTS DESCRIBE FIXTURES THAT ARE PART
11 OF THE COLLATERAL DESCRIBED IN THE FULL OR PARTIAL RELEASE.

12 3-301.

13 (C) THE CLERK MAY NOT REFUSE TO ACCEPT ANY DEED OR OTHER
14 DOCUMENT ENTITLED TO BE RECORDED, SOLELY ON THE GROUNDS THAT THE
15 DEED OR DOCUMENT CONTAINS A STRIKE-THROUGH, INTERLINEATION, OR OTHER
16 CORRECTIONS. THE CLERK MAY REFUSE TO ACCEPT FOR RE-RECORDING, A
17 PREVIOUSLY RECORDED DEED OR DOCUMENT THAT HAS BEEN CORRECTED OR
18 ALTERED BY A STRIKE-THROUGH, INTERLINEATION, OR SIMILAR CORRECTIVE
19 MEASURES, AND THAT HAS NOT BEEN RE-EXECUTED, INITIALLED, OR OTHERWISE
20 RATIFIED IN WRITING BY THE PARTY OR PARTIES AFFECTED BY THE CORRECTION.

21 4-107.

22 (A) Every power of attorney executed by any person authorizing an agent or
23 attorney to sell and grant any property shall be executed in the same manner as a deed
24 and recorded [with or prior to the deed executed pursuant to the power of attorney.]:

25 (1) BEFORE THE DAY ON WHICH THE DEED EXECUTED PURSUANT TO
26 THE POWER OF ATTORNEY IS RECORDED;

27 (2) ON THE SAME DAY AS THE DEED EXECUTED PURSUANT TO THE
28 POWER OF ATTORNEY; OR

29 (3) SUBJECT TO SUBSECTION (B) OF THIS SECTION, AFTER THE DAY ON
30 WHICH THE DEED EXECUTED PURSUANT TO THE POWER OF ATTORNEY IS
31 RECORDED.

32 (B) A POWER OF ATTORNEY MAY BE RECORDED AFTER THE DAY ON WHICH
33 THE DEED EXECUTED PURSUANT TO THE POWER OF ATTORNEY IS RECORDED, IF:

34 (1) THE POWER OF ATTORNEY IS BOTH DATED AND ACKNOWLEDGED
35 ON OR BEFORE THE EFFECTIVE DATE OF THE DEED EXECUTED PURSUANT TO THE
36 POWER OF ATTORNEY; AND

37 (2) THE DEED, OR A RECORDED INSTRUMENT OF WRITING
38 SUPPLEMENTING THE DEED CONTAINS AN AFFIDAVIT OR CERTIFICATION BY THE
39 AGENT OR ATTORNEY-IN-FACT NAMED IN THE POWER OF ATTORNEY, STATING
40 SUBSTANTIALLY, THAT THE AGENT OR ATTORNEY-IN-FACT DID NOT HAVE, AT THE
41 TIME OF THE EXECUTION OF THE DEED PURSUANT TO THE POWER OF ATTORNEY,
42 ACTUAL KNOWLEDGE OF THE REVOCATION OF THE POWER OF ATTORNEY, BY

6
1 DEATH OF THE PRINCIPAL OR, IF APPLICABLE, BY THE SUBSEQUENT DISABILITY OR
2 INCOMPETENCE OF THE PRINCIPAL.

3 (C) Any person executing a deed as agent or attorney for another shall describe
4 himself in and sign the deed as agent or attorney. A power of attorney is deemed to be
5 revoked when the instrument containing the revocation is recorded in the office where
6 the deed should be recorded.

7 4-111.

8 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
9 INDICATED.

10 (2) "LENDER" MEANS A PERSON HOLDING AN INTEREST IN OR LIEN ON
11 PROPERTY PURSUANT TO A MORTGAGE OR DEED OF TRUST.

12 (3) "SUBORDINATION AGREEMENT" MEANS AN AGREEMENT
13 ESTABLISHING PRIORITIES:

14 (I) BETWEEN OR AMONG LENDERS; OR

15 (II) BETWEEN OR AMONG A LENDER AND ANY OTHER PERSON OR
16 PERSONS HOLDING AN INTEREST IN PROPERTY.

17 (B) A LENDER MAY SUBORDINATE ITS INTEREST UNDER A MORTGAGE OR
18 DEED OF TRUST TO THE INTEREST OF ANOTHER LENDER OR TO THE PROPERTY
19 INTEREST OF A PERSON, THROUGH EXECUTION OF A SUBORDINATION AGREEMENT
20 ON BEHALF OF THE SUBORDINATING LENDER BY:

21 (1) AS TO A LENDER SECURED BY A MORTGAGE, THE MORTGAGEE OR
22 ASSIGNEE; OR

23 (2) AS TO A LENDER SECURED BY A DEED OF TRUST, THE TRUSTEE OR
24 SUCCESSOR TRUSTEE OR THE HOLDER OF THE NOTE OR OTHER OBLIGATION
25 SECURED BY THE DEED OF TRUST.

26 (C) THIS SECTION APPLIES TO ALL SUBORDINATION AGREEMENTS EXISTING
27 ON OR AFTER OCTOBER 1, 1997.

28 4-203.

29 (E) "CERTIFICATE OF PARTIAL SATISFACTION OR PARTIAL RELEASE

30 KNOW ALL MEN BY THESE PRESENTS:

31 THAT _____ DOES HEREBY ACKNOWLEDGE THAT A CERTAIN
32 DEED OF TRUST/MORTGAGE MADE BY _____ AND
33 _____ DATED _____ AND RECORDED AMONG
34 THE LAND RECORDS OF _____ COUNTY/CITY, MARYLAND IN LIBER
35 NO. _____ FOLIO _____ HAS BEEN PARTIALLY SATISFIED OR PARTIALLY
36 RELEASED BY _____ THE HOLDER OF THE DEED OF
37 TRUST/MORTGAGE, AND THAT THE LIEN OF THE DEED OF TRUST/MORTGAGE IS
38 HEREBY RELEASED AS TO THE FOLLOWING DESCRIBED PROPERTY.

39 DESCRIPTION OF PROPERTY RELEASED: _____

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1 _____

2 _____

3 _____

4 RESERVING, HOWEVER, THE LIEN OF THE DEED OF TRUST/MORTGAGE ON ALL
5 PROPERTY DESCRIBED IN THE DEED OF TRUST/MORTGAGE WHICH HAS NOT BEEN
6 HEREIN NOR HERETOFORE RELEASED.

7 WITNESS THE HANDS AND SEALS OF THE HOLDERS OF THE SAID DEED
8 OF TRUST/MORTGAGE OR AGENT OR TRUSTEE OF THE HOLDER
9 THIS ____ DAY OF ____ 19____.

10 ATTEST:

11 ____ (SEAL)

12 ____ (SEAL)

13 STATE OF ____, COUNTY OF ____, TO WIT:

14 I HEREBY CERTIFY, THAT ON THIS ____ DAY OF ____, 19____,
15 BEFORE ME, THE SUBSCRIBER PERSONALLY APPEARED ____ (WHO
16 ACKNOWLEDGED ____ SELF TO BE THE AGENT OF ____) THE
17 HOLDER OF THE DEED OF TRUST/MORTGAGE REFERRED TO ABOVE AND
18 THAT ____ EXECUTED THE AFOREGOING CERTIFICATE OF
19 PARTIAL SATISFACTION OR PARTIAL RELEASE FOR THE PURPOSES THEREIN
20 CONTAINED (BY SIGNING THE NAME OF ____ AS ITS AGENT) AND
21 THAT THE FACTS SET FORTH THEREIN ARE TRUE.

22 WITNESS MY HAND AND NOTARIAL SEAL

23 _____
24 NOTARY PUBLIC

25 MY COMMISSION EXPIRES: ____"

26 7-104.

27 If property is sold and granted, and [at the same time] AS PART OF THE SAME
28 TRANSACTION the purchaser gives a mortgage or deed of trust to secure total or partial
29 payment of the purchase money, the mortgage or deed of trust shall be preferred to any
30 previous judgment or decree for the payment of money which is obtained against the
31 purchaser if it recites that the sum received is all or part of the purchase money of the
32 property OR OTHERWISE RECITES THAT IT IS A PURCHASE MONEY MORTGAGE OR
33 DEED OF TRUST. This section is applicable regardless of whether the mortgage or deed
34 of trust is given to the vendor of the property or to a third party who advances all or part
35 of the purchase money.

36 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
37 October 1, 1997.