
By: Senator Boozer

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Read second time: February 26, 1997

CHAPTER ____

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:

2

1 **Article - Real Property**

2 3-102.

3 Any other instrument affecting property, including any contract for the grant of
4 property, any notice of deferred property footage assessment for street construction, [or]
5 any subordination agreement establishing priorities between interests in property, ANY
6 ASSUMPTION AGREEMENT BY WHICH A PERSON AGREES TO ASSUME THE LIABILITY
7 OF A DEBT OR OTHER OBLIGATION SECURED BY A MORTGAGE OR DEED OF TRUST,
8 OR ANY RELEASE OF PERSONAL LIABILITY OF A BORROWER OR GUARANTOR
9 UNDER A MORTGAGE OR UNDER A NOTE OR OTHER OBLIGATION SECURED BY A
10 DEED OF TRUST may be recorded. The recording of any instrument constitutes
11 constructive notice from the date of recording.

12 3-104.

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

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

35 (I) AN ORIGINAL CERTIFICATION MADE BY THE CLERK OR OTHER
36 GOVERNMENTAL OFFICIAL HAVING RESPONSIBILITY FOR THE CERTIFICATION OR
37 AUTHENTICATION OF RECORDED DOCUMENTS IN THE JURISDICTION WHERE THE
38 DOCUMENT IS RECORDED; AND

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

41 3-105.

42 (b) A release may be endorsed on the original mortgage or deed of trust by the
43 mortgagee [or] his assignee, or the trustee or his successor under a deed of trust, OR BY

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1 THE HOLDER OF THE DEBT OR OBLIGATION SECURED BY THE DEED OF TRUST. The
 2 mortgage or the deed of trust, with the endorsed release, then shall be filed in the office
 3 in which the mortgage or deed of trust is recorded. The clerk shall record the release
 4 photographically, with an attachment or rider affixed to it containing the names of the
 5 parties as they appear on the original mortgage or deed of trust, together with a reference
 6 to the book and page number where the mortgage or deed of trust is recorded. When the
 7 mortgage or deed of trust, with the attached release, is filed for the purpose of recording
 8 the release, the clerk shall retain the mortgage or deed of trust in his office and not
 9 permit it to be withdrawn for 25 years, after which time he may destroy it. If, however, the
 10 clerk preserves a photographic copy of the release, he may permit the original mortgage
 11 or deed of trust with the release to be withdrawn.

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

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

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

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

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

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

42 3. Following the mailing of the notice required under
 43 sub-subparagraph 2. of this subparagraph, allowed an additional waiting period of at least
 44 30 days for the party satisfied to provide a release suitable for recording; and

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

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

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

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

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

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1 (h) Unless otherwise expressly provided in the release, a full or partial release
2 that is recorded for a mortgage or deed of trust that is re-recorded, amended, modified,
3 or otherwise altered or affected by a supplemental instrument and which cites the
4 released mortgage or deed of trust by reference to only the original recorded mortgage,
5 deed of trust, or supplemental instrument to the original mortgage or deed of trust,
6 shall[:

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

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

14 (I) UNLESS OTHERWISE EXPRESSLY PROVIDED IN THE RELEASE, A FULL OR
15 PARTIAL RELEASE THAT IS RECORDED FOR A MORTGAGE OR DEED OF TRUST, OR
16 FOR ANY RE-RECORDING, AMENDMENT, MODIFICATION, OR SUPPLEMENTAL
17 INSTRUMENT TO THE MORTGAGE OR DEED OF TRUST SHALL TERMINATE OR
18 PARTIALLY RELEASE ANY RELATED FINANCIAL STATEMENTS, BUT ONLY TO THE
19 EXTENT THAT THE FINANCING STATEMENTS DESCRIBE FIXTURES THAT ARE PART
20 OF THE COLLATERAL DESCRIBED IN THE FULL OR PARTIAL RELEASE.

21 3-301.

22 (C) THE CLERK MAY NOT REFUSE TO ACCEPT ANY DEED OR OTHER
23 DOCUMENT ENTITLED TO BE RECORDED, SOLELY ON THE GROUNDS THAT THE
24 DEED OR DOCUMENT CONTAINS A STRIKE-THROUGH, INTERLINEATION, OR OTHER
25 CORRECTIONS. THE CLERK MAY REFUSE TO ACCEPT FOR RE-RECORDING, A
26 PREVIOUSLY RECORDED DEED OR DOCUMENT THAT HAS BEEN CORRECTED OR
27 ALTERED BY A STRIKE-THROUGH, INTERLINEATION, OR SIMILAR CORRECTIVE
28 MEASURES, AND THAT HAS NOT BEEN RE-EXECUTED, INITIALLED, OR OTHERWISE
29 RATIFIED IN WRITING BY THE PARTY OR PARTIES AFFECTED BY THE CORRECTION.

30 4-107.

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

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

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

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

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

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

4 (2) THE DEED, OR A RECORDED INSTRUMENT OF WRITING
5 SUPPLEMENTING THE DEED CONTAINS AN AFFIDAVIT OR CERTIFICATION BY THE
6 AGENT OR ATTORNEY-IN-FACT NAMED IN THE POWER OF ATTORNEY, STATING
7 SUBSTANTIALLY, THAT THE AGENT OR ATTORNEY-IN-FACT DID NOT HAVE, AT THE
8 TIME OF THE EXECUTION OF THE DEED PURSUANT TO THE POWER OF ATTORNEY,
9 ACTUAL KNOWLEDGE OF THE REVOCATION OF THE POWER OF ATTORNEY, BY
10 DEATH OF THE PRINCIPAL OR, IF APPLICABLE, BY THE SUBSEQUENT DISABILITY OR
11 INCOMPETENCE OF THE PRINCIPAL.

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

16 4-111.

17 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
18 INDICATED.

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

21 (3) "SUBORDINATION AGREEMENT" MEANS AN AGREEMENT
22 ESTABLISHING PRIORITIES:

23 (I) BETWEEN OR AMONG LENDERS; OR

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

26 (B) A LENDER MAY SUBORDINATE ITS INTEREST UNDER A MORTGAGE OR
27 DEED OF TRUST TO THE INTEREST OF ANOTHER LENDER OR TO THE PROPERTY
28 INTEREST OF A PERSON, THROUGH EXECUTION OF A SUBORDINATION AGREEMENT
29 ON BEHALF OF THE SUBORDINATING LENDER BY:

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

32 (2) AS TO A LENDER SECURED BY A DEED OF TRUST, THE TRUSTEE OR
33 SUCCESSOR TRUSTEE OR THE HOLDER OF THE NOTE OR OTHER OBLIGATION
34 SECURED BY THE DEED OF TRUST.

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

37 4-203.

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

39 KNOW ALL MEN BY THESE PRESENTS:

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1 THAT _____ DOES HEREBY ACKNOWLEDGE THAT A CERTAIN
2 DEED OF TRUST/MORTGAGE MADE BY _____ AND
3 _____ DATED _____ AND RECORDED AMONG
4 THE LAND RECORDS OF _____ COUNTY/CITY, MARYLAND IN LIBER
5 NO. _____ FOLIO _____ HAS BEEN PARTIALLY SATISFIED OR PARTIALLY
6 RELEASED BY _____ THE HOLDER OF THE DEED OF
7 TRUST/MORTGAGE, AND THAT THE LIEN OF THE DEED OF TRUST/MORTGAGE IS
8 HEREBY RELEASED AS TO THE FOLLOWING DESCRIBED PROPERTY.

9 DESCRIPTION OF PROPERTY RELEASED: _____
10 _____
11 _____
12 _____

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

16 WITNESS THE HANDS AND SEALS OF THE HOLDERS OF THE SAID DEED
17 OF TRUST/MORTGAGE OR AGENT OR TRUSTEE OF THE HOLDER
18 THIS _____ DAY OF _____ 19____.

19 ATTEST:

20 _____ (SEAL)

21 _____ (SEAL)

22 STATE OF _____, COUNTY OF _____, TO WIT:

23 I HEREBY CERTIFY, THAT ON THIS _____ DAY OF _____, 19____,
24 BEFORE ME, THE SUBSCRIBER PERSONALLY APPEARED _____ (WHO
25 ACKNOWLEDGED _____ SELF TO BE THE AGENT OF _____) THE
26 HOLDER OF THE DEED OF TRUST/MORTGAGE REFERRED TO ABOVE AND
27 THAT _____ EXECUTED THE AFOREGOING CERTIFICATE OF
28 PARTIAL SATISFACTION OR PARTIAL RELEASE FOR THE PURPOSES THEREIN
29 CONTAINED (BY SIGNING THE NAME OF _____ AS ITS AGENT) AND
30 THAT THE FACTS SET FORTH THEREIN ARE TRUE.

31 WITNESS MY HAND AND NOTARIAL SEAL

32 _____
33 NOTARY PUBLIC

34 MY COMMISSION EXPIRES: _____ "

35 7-104.

36 If property is sold and granted, and [at the same time] AS PART OF THE SAME
37 TRANSACTION the purchaser gives a mortgage or deed of trust to secure total or partial
38 payment of the purchase money, the mortgage or deed of trust shall be preferred to any
39 previous judgment or decree for the payment of money which is obtained against the

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1 purchaser if it recites that the sum received is all or part of the purchase money of the
2 property OR OTHERWISE RECITES THAT IT IS A PURCHASE MONEY MORTGAGE OR
3 DEED OF TRUST. This section is applicable regardless of whether the mortgage or deed
4 of trust is given to the vendor of the property or to a third party who advances all or part
5 of the purchase money.

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