

Department of Legislative Services

Maryland General Assembly

2002 Session

FISCAL NOTE

Revised

House Bill 1404

(Delegate Minnick)

Economic Matters

Judicial Proceedings

Real Property - Mortgage or Deed of Trust - Enforcement of Release

This bill provides that within 45 days after a loan has been paid in full with no further commitment required by the borrower: (1) the required release of a mortgage or deed of trust on a borrower's principal residence must be executed and the required notices about the release must be sent; or (2) the release must be sent in a recordable form with a notice of where to record it and the recordation price. If the holder of the mortgage or deed of trust fails to release the mortgage or send the release in a recordable form, the borrower may bring an action to require delivery of the release in the circuit court for the county in which the property is located. A borrower who is a prevailing party in an action for the delivery of a release is entitled to costs and expenses in connection with bringing the action, including reasonable attorney's fees.

Fiscal Summary

State Effect: This bill would not materially affect the finances or operations of the Judiciary.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: Under Chapter 492 of 2001, the holder of a mortgage or trust deed, within a reasonable time after the loan secured by the mortgage or trust deed has been paid in full and there is no further obligation by the borrower, must release any recorded mortgage or trust deed and either: (1) furnish the borrower with a written statement identifying the loan as having been paid in full; or (2) indelibly marking the word “paid” or “cancelled” on any evidence of the loan and return it to the borrower. The release must be in writing and prepared at the holder’s expense. If the holder records the release, the holder may keep up to \$15 of any fee collected from the borrower in excess of any recordation fee paid by the holder. If the holder does not record the release or provide it to a “responsible person” for recording, the holder must furnish the borrower with a notice disclosing the location where the release should be recorded and the estimated amount of any required fee. Chapter 492 applies only to a mortgage or deed of trust that secures: (1) a loan for personal, family, or household purposes; or (2) a commercial loan to an individual if the loan: (a) does not exceed \$75,000; and (b) was secured by the borrower’s principal dwelling.

Generally, a person who is responsible for disbursing funds in a real estate transaction in which title to the property passes, must mail or deliver to the seller and the purchaser in the transaction a recorded release of any mortgage or deed of trust within 30 days of the delivery of the deed granting title to the property. If the person responsible for distributing funds does not comply, the seller, purchaser, or a bar association of the State may petition a court of equity to order an audit of the accounts maintained by the person for funds received in connection with closing real estate transactions. The court may order the audit and other relief it deems necessary.

A person with a lien on real property after the lien is satisfied, upon written request, must furnish the person responsible for disbursement of funds in connection with the grant of title to the property the original copy of the release of the lien. If the holder fails to provide the release within 30 days, the person responsible for the disbursement of funds, after having demanded the release, may bring an action to force the granting of the release. The action must be brought in the circuit court for the county in which the property is located. In the action, the lienholder, the lienholder’s agent, or both are liable for delivery of the release and for all costs and expenses in connection with bringing the action, including reasonable attorney fees. In *Green v. Taylor*, 142 Md. App. 44 (2001), the Court of Special Appeals held that the provision authorizing this statutory cause of action and its damages, including attorney fees, is not available to a person who is merely the borrower in the transaction. The *Green* court stated that these provisions do not apply to a borrower who is not responsible for the disbursement of funds in connection with the grant of title to the property.

Background: Generally, attorney fees are not recoverable as damages in a civil action absent a requirement in statute, in a contractual agreement, or under the Maryland Rules. Under the Maryland Rules, a court must find that the conduct of a party in maintaining or defending a proceeding was in bad faith or without substantial justification before the court may require the offending party, the attorney advising the conduct, or both to pay the adverse party's costs, including reasonable attorney's fees.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

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