
By: **Delegate Schisler**

Introduced and read first time: February 6, 2003

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property - Recording - Memorandum of Security Instrument**

3 FOR the purpose of authorizing a memorandum of security instrument to be recorded
4 in the land records in lieu of certain instruments; requiring a memorandum of
5 security instrument to be signed by certain persons and contain certain
6 information; requiring a lender to give a borrower a copy of the signed security
7 instrument; requiring a lender or the lender's successor in interest to keep the
8 original security instrument for a certain period of time; defining a certain term;
9 and generally relating to recording certain instruments in the land records.

10 BY repealing and reenacting, with amendments,
11 Article - Real Property
12 Section 3-101
13 Annotated Code of Maryland
14 (1996 Replacement Volume and 2002 Supplement)

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

17 **Article - Real Property**

18 3-101.

19 (a) Except as otherwise provided in this section, no estate of inheritance or
20 freehold, declaration or limitation of use, estate above seven years, or deed may pass
21 or take effect unless the deed granting it is executed and recorded.

22 (b) Subsection (a) does not limit any other method of transferring or creating
23 an estate, declaration, or limitation which is permitted by the law of the State except
24 to the extent required by law.

25 (c) The recording requirement of subsection (a) does not apply to any lease for
26 an initial term not exceeding seven years if each renewal term under the lease (i) is
27 for seven years or less, and (ii) by the provisions of the lease, may be effected or
28 prevented by a party to the lease or his assigns.

1 (d) If a lease required to be executed and recorded under the provisions of
2 subsection (a) is executed but not recorded, the lease is valid and fully effective both
3 at law and in equity (i) between the original parties to the lease and their personal
4 representatives, (ii) against their creditors, and (iii) against and for the benefit of any
5 other person who claims by, through, or under an original party and who acquires the
6 interest claimed with actual notice of the lease or at a time when the tenant, or
7 anyone claiming by, through, or under the tenant, is in such actual occupancy as to
8 give reasonable notice to the person.

9 (e) In lieu of recording a lease as prescribed above, a memorandum of the
10 lease, executed by every person who is a party to the lease, may be recorded with like
11 effect. A memorandum of lease thus entitled to be recorded shall contain at least the
12 following information with respect to the lease: (1) the name of the lessor and the
13 name of the lessee; (2) any addresses of the parties set forth in the lease; (3) a
14 reference to the lease, with its date of execution; (4) a description of the leased
15 premises in the form contained in the lease; (5) the term of the lease, with the date of
16 commencement and the date of termination of the term; and (6) if there is a right of
17 extension or renewal, the maximum period for which or date to which it may be
18 renewed, and any date on which the right of extension or renewal is exercisable. If
19 any date is unknown, then the memorandum of lease shall contain the formula from
20 which the date is to be computed. When a memorandum of lease is presented for
21 recording, the lease also shall be submitted to the recording office for the purpose of
22 examination to determine whether or not the lease or the memorandum authorized by
23 this section is subject to any transfer or other tax or requires any recording stamp.
24 The clerk shall stamp the lease when submitted so that it may be identified as the
25 instrument presented to the clerk at the time of recording the memorandum, and the
26 clerk shall collect any required tax.

27 (f) (1) In this subsection, "option" includes any agreement or contract
28 creating:

29 (i) An option with respect to the purchase, lease, or grant of
30 property; or

31 (ii) A right of first refusal, a right of first offer, or similar right, with
32 respect to the purchase, lease, or grant of property.

33 (2) In lieu of recording an option as prescribed above, a memorandum of
34 the option, executed by each person who is a party to the option, may be recorded with
35 like effect.

36 (3) A memorandum of option thus entitled to be recorded shall contain at
37 least the following information with respect to the option:

38 (i) The name of the parties to the option;

39 (ii) Any addresses of the parties set forth in the option;

40 (iii) A reference to the option, with its date of execution;

1 (iv) A description of the property affected by the option in the form
2 contained in the option;

3 (v) The nature of the right or interest created;

4 (vi) If stated, the term of the option, with the date of commencement
5 and the date of termination of the term; and

6 (vii) If there is a right of extension or renewal, the maximum period
7 for which or date to which it may be renewed, and any date on which the right of
8 extension or renewal is exercisable.

9 (4) If any date is unknown, then the memorandum of option shall
10 contain the formula, if any, from which the date is to be computed.

11 (G) (1) IN THIS SUBSECTION, "SECURITY INSTRUMENT" MEANS A
12 MORTGAGE OR DEED OF TRUST.

13 (2) IN LIEU OF RECORDING A SECURITY INSTRUMENT AS REQUIRED
14 UNDER THIS SECTION, A MEMORANDUM OF THE SECURITY INSTRUMENT MAY BE
15 RECORDED WITH LIKE EFFECT.

16 (3) A MEMORANDUM OF SECURITY INSTRUMENT SHALL BE SIGNED BY
17 EACH PERSON WHO SIGNED THE SECURITY INSTRUMENT AND SHALL CONTAIN AT
18 LEAST THE FOLLOWING INFORMATION WITH RESPECT TO THE SECURITY
19 INSTRUMENT:

20 (I) THE NAMES AND ADDRESSES OF THE PARTIES TO THE
21 SECURITY INSTRUMENT;

22 (II) THE DATE THAT THE SECURITY INSTRUMENT WAS SIGNED AND
23 ACKNOWLEDGED BEFORE A NOTARY;

24 (III) THE AMOUNT AND MATURITY DATE OF THE LOAN SECURED BY
25 THE SECURITY INSTRUMENT;

26 (IV) WHETHER THE SECURITY INSTRUMENT SECURES FUTURE
27 ADVANCES;

28 (V) WHETHER THE LOAN SECURED BY THE SECURITY
29 INSTRUMENT IS A PURCHASE MONEY MORTGAGE LOAN, A REVOLVING LOAN, A
30 REFINANCING OF AN EXISTING LOAN, OR A SECOND MORTGAGE LOAN;

31 (VI) THE CONDITIONS OF DEFAULT ON WHICH THE SECURITY
32 INSTRUMENT MAY BE FORECLOSED AND WHETHER THE SECURITY INSTRUMENT
33 PROVIDES A POWER OF SALE OR AN ASSENT TO DECREE FOR SALE; AND

34 (VII) A DESCRIPTION OF THE PROPERTY SUBJECT TO THE SECURITY
35 INSTRUMENT.

1 (4) (I) THE LENDER SHALL GIVE THE BORROWER A COPY OF THE
2 SIGNED SECURITY INSTRUMENT.

3 (II) THE LENDER OR THE LENDER'S SUCCESSOR IN INTEREST
4 SHALL KEEP THE ORIGINAL SECURITY INSTRUMENT UNTIL THE LOAN SECURED BY
5 THE SECURITY INSTRUMENT HAS BEEN PAID IN FULL.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2003.