

SENATE BILL 678

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2003 Regular Session
3r2233
CF 3r2283

By: **Senator Gladden**

Introduced and read first time: February 14, 2003

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of establishing a certain time period after a loan secured by a
4 mortgage or deed of trust has been paid in full for the holder to take certain
5 action for the release and recordation of the satisfaction of the mortgage or deed
6 of trust; requiring the holder to pay certain costs and expenses of an action to
7 require delivery of a release, including reasonable attorney's fees under certain
8 circumstances; providing certain exemptions from paying certain costs; and
9 generally relating to the release and recordation of a mortgage or deed of trust.

10 BY repealing and reenacting, without amendments,
11 Article - Financial Institutions
12 Section 11-501(a) and (g) and 11-502(b)(1) and (11) and (c)
13 Annotated Code of Maryland
14 (1998 Replacement Volume and 2002 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article - Real Property
17 Section 3-105.1
18 Annotated Code of Maryland
19 (1996 Replacement Volume and 2002 Supplement)

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

22 **Article - Financial Institutions**

23 11-501.

24 (a) In this subtitle the following words have the meanings indicated.

25 (g) "Licensee" means a person who is licensed under the Maryland Mortgage
26 Lender Law.

1 11-502.

2 (b) The provisions of this subtitle do not apply to:

3 (1) Any bank, trust company, savings bank, savings and loan association,
4 or credit union incorporated or chartered under the laws of this State or the United
5 States or any other-state bank having a branch in this State;

6 (11) A subsidiary or affiliate of an institution described in subsection (c) of
7 this section, which subsidiary or affiliate:

8 (i) Is subject to audit or examination by a regulatory body or
9 agency of this State, the United States, or the state where the subsidiary or affiliate
10 maintains its principal office; and

11 (ii) Files with the Commissioner, prior to making mortgage loans,
12 information sufficient to identify:

13 1. The correct corporate name of the subsidiary or affiliate;

14 2. An address and telephone number of a contact person for
15 the subsidiary or affiliate;

16 3. A resident agent; and

17 4. Any additional information considered necessary by the
18 Commissioner for protection of the public;

19 (c) The exemption in subsection (b)(11) of this section applies to subsidiaries
20 and affiliates of:

21 (1) Any bank, trust company, savings bank, savings and loan association,
22 or credit union incorporated or chartered under the laws of this State or the United
23 States that maintains its principal office in this State;

24 (2) Any out-of-state bank, as that term is defined in § 5-1001 of this
25 article, having a branch that accepts deposits in this State; or

26 (3) Any institution incorporated under federal law as a savings
27 association or savings bank that does not maintain its principal office in this State
28 but has a branch that accepts deposits in this State.

29 **Article - Real Property**

30 3-105.1.

31 (a) (1) In this section the following words have the meanings indicated.

32 (2) "Borrower" means an individual who is mortgagor or grantor on a
33 mortgage or deed of trust and whose loan was for personal, household, or family
34 purposes or for a commercial purpose not in excess of \$75,000.

1 (3) (i) "Holder" means the person to whom a loan secured by a
2 mortgage or deed of trust is owed or that person's designee.

3 (ii) "Holder" does not include a responsible person.

4 (4) "Loan" means all indebtedness and other obligations of a borrower
5 secured by a mortgage or deed of trust.

6 (5) "Mortgage or deed of trust" means a mortgage, deed of trust, security
7 agreement, or other lien secured by a borrower's principal dwelling.

8 (6) (i) "Responsible person" means a person other than the holder or
9 the holder's designee who has undertaken responsibility for filing a release of a
10 mortgage or deed of trust with the governmental agency charged with recording the
11 release.

12 (ii) "Responsible person" includes:

13 1. The person responsible for the disbursement of funds in
14 connection with the grant of title to the property; and

15 2. An attorney or other person responsible for preparing the
16 HUD-1 settlement statement required under the federal Real Estate Settlement
17 Procedures Act.

18 (b) (1) Except as provided in paragraph (2) of this subsection, this section
19 does not apply to a mortgage or deed of trust given to secure or guaranty a commercial
20 loan as defined in § 12-101 of the Commercial Law Article.

21 (2) This section applies to a mortgage or deed of trust given by an
22 individual to secure a commercial loan to that individual if the commercial loan was
23 not in excess of \$75,000 and was secured by the borrower's principal dwelling.

24 (c) Within a reasonable time after a loan secured by an existing mortgage or
25 deed of trust has been paid in full and there is no further commitment by the holder
26 to make an advance or by the borrower to incur an obligation secured by that
27 mortgage or deed of trust, the holder shall:

28 (1) (i) Indelibly mark with the word "paid" or "canceled" and return to
29 the borrower each agreement, note, or other evidence of the loan secured by that
30 mortgage or deed of trust; or

31 (ii) Furnish the borrower with a written statement that identifies
32 the loan secured by that mortgage or deed of trust and states that the loan has been
33 paid in full; and

34 (2) Release any recorded mortgage or deed of trust securing the loan.

35 (d) The release shall be:

36 (1) In writing; and

1 (2) Prepared at the expense of the holder.

2 (e) (1) If the holder does not record the release or provide the release to a
3 responsible person for recording WITHIN 45 DAYS AFTER A LOAN SECURED BY AN
4 EXISTING MORTGAGE OR DEED OF TRUST HAS BEEN PAID IN FULL AND THERE HAS
5 BEEN NO FURTHER COMMITMENT BY THE HOLDER TO MAKE AN ADVANCE OR BY
6 THE BORROWER TO INCUR AN OBLIGATION SECURED BY THE MORTGAGE OR DEED
7 OF TRUST, the holder shall furnish the borrower with:

8 (i) The release in a recordable form; and

9 (ii) A notice disclosing the location where the release should be
10 recorded and the estimated amount of any fee required to be paid to a governmental
11 entity in order to record the release.

12 (2) If the holder records the release, the holder shall furnish the
13 borrower with a copy of the release.

14 (f) (1) A fee for the recording of a release may be collected by the holder
15 from the borrower subject to this subsection.

16 (2) If a fee is collected for the recording of a release:

17 (i) The release shall be recorded by the holder; and

18 (ii) Any portion of the fee not paid to a governmental entity for
19 recording the release that exceeds \$15 shall be refunded to the borrower.

20 (3) A fee authorized under this subsection is not interest with respect to
21 any loan.

22 (4) If a fee is not collected for the recording of a release, the holder is not
23 obligated to record the release.

24 (G) (1) THIS SUBSECTION DOES NOT APPLY TO:

25 (I) A LICENSEE UNDER TITLE 11, SUBTITLE 5 OF THE FINANCIAL
26 INSTITUTIONS ARTICLE; OR

27 (II) AN ENTITY DESCRIBED IN § 11-502(B)(1) OR (B)(11) OF THE
28 FINANCIAL INSTITUTIONS ARTICLE.

29 (2) EXCEPT AS PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION, IF
30 THE BORROWER IS THE PREVAILING PARTY IN AN ACTION TO REQUIRE THE
31 DELIVERY OF THE RELEASE, THE HOLDER IS LIABLE FOR THE DELIVERY OF A
32 RELEASE AND FOR ALL COSTS AND EXPENSES IN CONNECTION WITH THE BRINGING
33 OF THE ACTION, INCLUDING REASONABLE ATTORNEY'S FEES.

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