

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 955 (Senator Della)
Judicial Proceedings

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

This bill requires the party making satisfaction of a mortgage or a deed of trust to record a release, certificate of satisfaction, or other instrument in the nature of a release within 30 days of: (1) the date the instrument is executed or endorsed; (2) the date that the bond, note, or other evidence of the indebtedness is marked "paid" or "cancelled;" (3) the date that the original mortgage is marked "paid" or "cancelled;" or (4) the date that the additional 30-day waiting period required for a release by recording the check used for final payment under specified conditions.

Fiscal Summary

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

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: Generally, a mortgage or deed of trust may be released validly by releasing on the mortgage or deed of trust, on the land records, on the evidence of the debt, or in a separate instrument.

Release on the Mortgage or Deed of Trust

When the release is on the mortgage or deed of trust, it may be endorsed on the original instrument by the mortgagee or an assignee, the trustee or a successor, or by the holder of the debt or obligation secured by the deed of trust. The instrument, with the endorsed release, must be filed in the office in which it is recorded. The clerk must record the release in a specified manner, with an attachment or rider affixed to it containing the names of the parties as they appear on the original instrument.

When the mortgage or deed of trust, with the attached release, is filed for the purpose of recording the release, the clerk must retain the mortgage or deed of trust in the clerk's office and not permit it to be withdrawn for 25 years. After that, the clerk may destroy it. If the clerk preserves a photographic copy of the release, the clerk may permit the original mortgage or deed of trust with the release to be withdrawn.

Release on the Records

At the option of the clerk of the appropriate circuit court, the release may be written by the mortgagee, the mortgagee's assignee, the trustee, or the trustee's successor on the record where the instrument is recorded and attested by the clerk. At the time a mortgage or deed of trust is recorded, the clerk must leave a blank space at the foot of the instrument to enter a release.

Release on the Evidence of the Debt

When the debt secured by a deed of trust is paid fully or satisfied and the evidence of the indebtedness is marked "paid" or "cancelled," the clerk may receive, index, and record it as any other instrument in the nature of a release. The marked note has the same effect as a release by the trustee under specified conditions.

When the debt secured by a mortgage is paid fully or satisfied and the original is marked "paid" or "cancelled," the clerk may receive, index, and record it as any other instrument in the nature of a release. The mortgage has the same effect as a release by the mortgagee under specified conditions.

When the debt secured by a mortgage or deed of trust is paid fully or satisfied and the canceled check evidencing final payment, or a copy of the canceled check under specified conditions, is presented, the clerk may receive, index, and record it as any other instrument in the nature of a release. The canceled check or copy has the same effect as a release of the property, as if a release were executed by the mortgagee or trustee if: (1) the party making satisfaction has allowed a 60-day waiting period for the satisfied party

to provide a suitable release, sent a notice with specified information stating that unless a release is provided within 30 days, the party will use the check as evidence of a release, and allows an additional 30-day waiting period; (2) the canceled check is accompanied with specified information about the debt; and (3) an affidavit made by a member of the Maryland Bar containing specified information accompanies the check or certificate.

When the debt secured by a mortgage or deed of trust is fully paid or satisfied and the holder, trustee, or other party satisfied executes and acknowledges a certificate of satisfaction containing specified information, the clerk may receive, index, and record the certificate as any other instrument in the nature of a release. A certificate of partial satisfaction may also be received, indexed, and recorded in the same manner.

Release on a Separate Instrument

The release of a mortgage or deed of trust may be made on a separate instrument if it specifies the release, and states the parties, the date and recording reference of the mortgage or deed of trust to be released. Any form of release that satisfies the requirements of a deed and is recorded is sufficient.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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