

HOUSE BILL 1027

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71r2902
CF SB 220

By: **Delegates Gilchrist, Beidle, Ivey, and Ross**
Introduced and read first time: February 9, 2007
Assigned to: Environmental Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 20, 2007

CHAPTER _____

1 AN ACT concerning

2 **Real Property – Release of Mortgage, ~~Security Instrument, or~~ Deed of Trust,**
3 **or Lien Instrument**

4 FOR the purpose of authorizing ~~a security instrument to be released in a certain~~
5 ~~manner; altering the procedures by which a mortgage, security instrument, or~~
6 ~~deed of trust may be released when the party whose debt is satisfied fails to~~
7 ~~provide a release; altering the persons who are authorized to prepare and record~~
8 ~~a certain release and affidavit; authorizing, under certain conditions, the~~
9 ~~release of a mortgage, security instrument, or deed of trust when the debt~~
10 ~~secured by the mortgage or deed of trust is paid fully or satisfied by wire~~
11 ~~transfer; providing a form for a certain affidavit~~ certain persons to prepare and
12 record a statutory release affidavit when the debt secured by a mortgage, deed
13 of trust, or lien instrument is paid fully or satisfied and the party satisfied fails
14 to provide a release suitable for recording; providing for the effect of a statutory
15 release affidavit; requiring a person to send a certain notice in a certain manner
16 to the party satisfied and allow a certain waiting period before recording a
17 statutory release affidavit; requiring a statutory release affidavit to be in a
18 certain form and be accompanied by certain evidence of payment; making a
19 certain technical correction; defining a certain term; and generally relating to
20 recording of releases of mortgages, ~~security instruments, and~~ deeds of trust, and
21 lien instruments.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, with amendments,
 2 Article – Real Property
 3 Section 3–105(a) and ~~(d)(3)~~ (i)
 4 Annotated Code of Maryland
 5 (2003 Replacement Volume and 2006 Supplement)

6 BY adding to
 7 Article – Real Property
 8 Section 3–105.2
 9 Annotated Code of Maryland
 10 (2003 Replacement Volume and 2006 Supplement)

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

13 **Article – Real Property**

14 3–105.

15 (a) A mortgage, ~~SECURITY INSTRUMENT~~, or deed of trust may be released
 16 validly by any procedure enumerated in this section **OR § 3–105.2 OF THIS**
 17 **SUBTITLE.**

18 (i) Unless otherwise expressly provided in the release, a full or partial
 19 release that is recorded for a mortgage or deed of trust, or for any re-recording,
 20 amendment, modification, or supplemental instrument to the mortgage or deed of
 21 trust shall terminate or partially release any related [financial] FINANCING
 22 statements, but only to the extent that the financing statements describe fixtures that
 23 are part of the collateral described in the full or partial release.

24 **3–105.2.**

25 (A) **IN THIS SECTION, “LIEN INSTRUMENT” MEANS:**

26 (1) **A LIEN CREATED UNDER THE MARYLAND CONTRACT LIEN**
 27 **ACT;**

28 (2) **AN INSTRUMENT CREATING OR AUTHORIZING THE CREATION**
 29 **OF A LIEN IN FAVOR OF A HOMEOWNERS’ ASSOCIATION, A CONDOMINIUM**
 30 **COUNCIL OF UNIT OWNERS, A PROPERTY OWNERS ASSOCIATION, OR A**
 31 **COMMUNITY ASSOCIATION;**

1 **(3) A SECURITY AGREEMENT; OR**

2 **(4) A VENDOR'S LIEN.**

3 **(B) A MORTGAGE, DEED OF TRUST, OR LIEN INSTRUMENT MAY BE**
4 **RELEASED VALIDLY IN ACCORDANCE WITH THIS SECTION.**

5 **(C) WHEN THE DEBT SECURED BY A MORTGAGE, DEED OF TRUST, OR**
6 **LIEN INSTRUMENT IS PAID FULLY OR SATISFIED BY A SETTLEMENT AGENT**
7 **LICENSED BY THE MARYLAND INSURANCE ADMINISTRATION AS A TITLE**
8 **INSURANCE PRODUCER UNDER TITLE 10, SUBTITLE 1 OF THE INSURANCE**
9 **ARTICLE, A TITLE INSURER, OR A LAWYER ADMITTED TO THE MARYLAND BAR,**
10 **AND THE PARTY SATISFIED FAILS TO PROVIDE A RELEASE SUITABLE FOR**
11 **RECORDING, THE SETTLEMENT AGENT, TITLE INSURER, OR LAWYER MAY**
12 **PREPARE AND RECORD A STATUTORY RELEASE AFFIDAVIT THAT:**

13 **(1) MAY BE RECEIVED BY THE CLERK AND INDEXED AND**
14 **RECORDED AS ANY OTHER INSTRUMENT IN THE NATURE OF A RELEASE OR**
15 **CERTIFICATE OF SATISFACTION; AND**

16 **(2) HAS THE SAME EFFECT AS A RELEASE OF THE PROPERTY FOR**
17 **WHICH THE MORTGAGE, DEED OF TRUST, OR LIEN INSTRUMENT IS THE**
18 **SECURITY, AS IF A RELEASE WERE EXECUTED BY THE MORTGAGEE, NAMED**
19 **TRUSTEES, OR SECURED PARTY.**

20 **(D) BEFORE THE SETTLEMENT AGENT, TITLE INSURER, OR LAWYER**
21 **MAY RECORD A STATUTORY RELEASE AFFIDAVIT UNDER THIS SECTION, THAT**
22 **PERSON SHALL:**

23 **(1) ALLOW AT LEAST A 60-DAY WAITING PERIOD FROM THE DATE**
24 **THE MORTGAGE, DEED OF TRUST, OR LIEN INSTRUMENT IS PAID FULLY OR**
25 **SATISFIED FOR THE PARTY SATISFIED TO PROVIDE A RELEASE SUITABLE FOR**
26 **RECORDING;**

27 **(2) SEND BY CERTIFIED MAIL, WITH OR WITHOUT A RETURN**
28 **RECEIPT, TO THE PARTY SATISFIED:**

29 **(I) A COPY OF THIS SECTION;**

1 **(II) A COPY OF THE PROPOSED STATUTORY RELEASE**
 2 **AFFIDAVIT THAT THE PERSON INTENDS TO RECORD; AND**

3 **(III) A NOTICE THAT UNLESS A RELEASE SUITABLE FOR**
 4 **RECORDING IS PROVIDED WITHIN 30 DAYS, THE PERSON WILL OBTAIN A**
 5 **RELEASE IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION;**

6 **(3) AFTER THE MAILING OF THE NOTICE UNDER ITEM (2) OF THIS**
 7 **SUBSECTION, ALLOW AN ADDITIONAL WAITING PERIOD OF AT LEAST 30 DAYS**
 8 **FOR THE PARTY SATISFIED TO PROVIDE A RELEASE SUITABLE FOR RECORDING.**

9 **(E) A STATUTORY RELEASE AFFIDAVIT RECORDED UNDER THIS**
 10 **SECTION SHALL:**

11 **(1) BE IN SUBSTANTIALLY THE FOLLOWING FORM:**

12 **“STATUTORY RELEASE AFFIDAVIT**

13 **I HEREBY DECLARE OR AFFIRM, UNDER THE PENALTIES OF PERJURY, THAT:**

14 **(1) ON (INSERT DATE), I CAUSED TO BE PAID OFF THE DEBT SECURED**
 15 **BY THE MORTGAGE, DEED OF TRUST, OR LIEN INSTRUMENT, FOUND IN**
 16 **LIBER/BOOK _____, AT FOLIO/PAGE _____, IN THE LAND RECORDS OF**
 17 **_____ COUNTY/BALTIMORE CITY, MARYLAND.**

18 **(2) I OBTAINED A WRITTEN PAYOFF STATEMENT FROM THE PERSON TO**
 19 **WHOM THE DEBT WAS OWED OR THE PERSON’S AGENT, THE FUNDS PAID TO THE**
 20 **PERSON OR THE PERSON’S AGENT WERE SUFFICIENT TO PAY OFF THE DEBT IN**
 21 **FULL, AND, AS AUTHORIZED BY THE OBLIGOR ON THE ACCOUNT, I INSTRUCTED**
 22 **THE PERSON OR THE PERSON’S AGENT TO CLOSE THE ACCOUNT.**

23 **(3) ON (INSERT DATE), I SENT THE NOTICE REQUIRED UNDER §**
 24 **3-105.2(D)(2) OF THE REAL PROPERTY ARTICLE TO THE PERSON SATISFIED BY**
 25 **CERTIFIED MAIL.**

26 **(4) THE PERSON SATISFIED HAS FAILED TO PROVIDE A RELEASE**
 27 **SUITABLE FOR RECORDING.**

28 **(5) I AM:**

1 A SETTLEMENT AGENT WHO HOLDS A TITLE INSURANCE
2 PRODUCER LICENSE IN GOOD STANDING FROM THE MARYLAND INSURANCE
3 ADMINISTRATION;

4 AN OFFICER OF A TITLE INSURER; OR

5 A MEMBER OF THE MARYLAND BAR.

6 **(6) THE PAYOFF OF THE DEBT WAS ACCOMPLISHED BY:**

7 THE ORIGINAL CHECK, WRITTEN ON AN ESCROW ACCOUNT
8 CONTROLLED BY THE UNDERSIGNED INDIVIDUAL, WHICH IS ATTACHED TO THIS
9 AFFIDAVIT AND INCORPORATED BY REFERENCE;

10 A CHECK, WRITTEN ON AN ESCROW ACCOUNT CONTROLLED BY
11 THE UNDERSIGNED INDIVIDUAL, A CHECK FACSIMILE OF WHICH IS ATTACHED
12 TO THIS AFFIDAVIT AND INCORPORATED BY REFERENCE, AND WHICH HAS BEEN
13 CERTIFIED AS A TRUE COPY OF THE ORIGINAL CHECK BY THE ISSUING BANK; OR

14 A WIRE TRANSFER, THE WIRE TRANSFER REMITTANCE ADVICE
15 FOR WHICH CONTAINS THE INFORMATION REQUIRED UNDER §
16 3-105.2(E)(2)(III)2 OF THE REAL PROPERTY ARTICLE AND IS ATTACHED TO
17 THIS AFFIDAVIT AND INCORPORATED BY REFERENCE.

18 _____
19 (SIGNATURE)

20 _____
21 (PRINTED OR TYPED NAME)

22 _____
23 (DATE)”

24 ; **AND**

25 **(2) BE ACCOMPANIED BY:**

26 (1) THE CANCELED CHECK EVIDENCING FINAL PAYMENT,
27 WHICH SHALL CONTAIN THE NAME OF THE PARTY WHOSE DEBT IS BEING
28 SATISFIED, THE DEBT ACCOUNT NUMBER, IF ANY, AND WORDS INDICATING THAT
29 THE CHECK IS INTENDED AS PAYMENT IN FULL OF THE DEBT BEING SATISFIED;

1 **(II) IF THE CANCELED CHECK IS UNAVAILABLE, A CHECK**
 2 **FACSIMILE, AS DEFINED IN § 5-513 OF THE FINANCIAL INSTITUTIONS ARTICLE,**
 3 **THAT CONTAINS THE INFORMATION REQUIRED UNDER ITEM (I) OF THIS ITEM,**
 4 **ACCOMPANIED BY A CERTIFICATION FROM AN AUTHORIZED AGENT OF THE**
 5 **INSTITUTION ON WHICH THE CHECK WAS DRAWN STATING THE CHECK**
 6 **FACSIMILE IS A TRUE AND GENUINE IMAGE OF THE ORIGINAL CHECK; OR**

7 **(III) IF THE DEBT SECURING THE MORTGAGE, DEED OF**
 8 **TRUST, OR LIEN INSTRUMENT WAS PAID OFF BY A WIRE TRANSFER, THE WIRE**
 9 **TRANSFER REMITTANCE ADVICE, WHICH SHALL:**

10 **1. BE ACCOMPANIED BY A CERTIFICATION FROM AN**
 11 **AUTHORIZED AGENT OF THE INSTITUTION FROM WHICH THE WIRE TRANSFER**
 12 **WAS INITIATED STATING THAT THE DOCUMENT IS A TRUE AND GENUINE IMAGE**
 13 **OF THE ORIGINAL WIRE TRANSFER CONFIRMATION ORDER ISSUED BY THE**
 14 **INSTITUTION; AND**

15 **2. CONTAIN THE NAME OF THE PERSON FOR WHOM**
 16 **THE PAYOFF WAS MADE, THE NAME OF THE INSTITUTION THAT WAS PAID THE**
 17 **MONEY, A TRUNCATED VERSION OF THE NUMBER OF THE ACCOUNT FROM**
 18 **WHICH THE FUNDS WERE TRANSFERRED, A TRUNCATED VERSION OF THE**
 19 **NUMBER OF THE ACCOUNT TO WHICH THE FUNDS WERE TRANSFERRED, THE**
 20 **FEDERAL RESERVE BANK'S REFERENCE NUMBERS FOR THE WIRE TRANSFER,**
 21 **THE LOAN NUMBER FOR THE NOTE THAT WAS PAID OFF, THE AMOUNT OF THE**
 22 **PAYOFF MADE BY THE WIRE TRANSFER, AND THE DATE AND TIME OF THE WIRE**
 23 **TRANSFER.**

24 ~~(d) (3) When the debt secured by a mortgage, SECURITY INSTRUMENT,~~
 25 ~~or deed of trust is paid fully or satisfied [, and the canceled check evidencing final~~
 26 ~~payment or, if the canceled check is unavailable, a copy of the canceled check~~
 27 ~~accompanied by a certificate from the institution on which the check was drawn~~
 28 ~~stating that the copy is a true and genuine image of the original check is presented, it]~~
 29 ~~BY A SETTLEMENT AGENT LICENSED BY THE MARYLAND INSURANCE~~
 30 ~~ADMINISTRATION AS A TITLE INSURANCE PRODUCER UNDER TITLE 10,~~
 31 ~~SUBTITLE 1 OF THE INSURANCE ARTICLE, THE SETTLEMENT AGENT MAY~~
 32 ~~PREPARE AND RECORD A SETTLEMENT AGENT'S RELEASE THAT~~ may be received
 33 ~~by the clerk and indexed and recorded as any other instrument in the nature of a~~
 34 ~~release]. The canceled check or copy accompanied by the certificate] OR CERTIFICATE~~
 35 ~~OF SATISFACTION AND has the same effect as a release of the property for which the~~

1 ~~mortgage, SECURITY INSTRUMENT, or deed of trust is the security, as if a release~~
2 ~~were executed by the [mortgagee] SECURED PARTY or named trustees, if:~~

3 ~~(i) The [party making satisfaction of the mortgage or deed of~~
4 ~~trust] SETTLEMENT AGENT has:~~

5 ~~1. Allowed at least a 60 day waiting period, from the~~
6 ~~date the mortgage, SECURITY INSTRUMENT, or deed of trust is paid fully or is~~
7 ~~satisfied, for the party satisfied to provide a release suitable for recording;~~

8 ~~2. Sent the party satisfied a copy of this section and a~~
9 ~~notice that, unless a release is provided within 30 days, the [party making~~
10 ~~satisfaction] SETTLEMENT AGENT will obtain a release by utilizing the provisions of~~
11 ~~this paragraph; and~~

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

15 ~~(ii) The SETTLEMENT AGENT'S RELEASE IS ACCOMPANIED~~
16 ~~BY:~~

17 ~~1. A. THE canceled check EVIDENCING FINAL~~
18 ~~PAYMENT, WHICH SHALL CONTAIN THE NAME OF THE PARTY WHOSE DEBT IS~~
19 ~~BEING SATISFIED, THE DEBT ACCOUNT NUMBER, IF ANY, AND WORDS~~
20 ~~INDICATING THAT THE CHECK IS INTENDED AS PAYMENT IN FULL OF THE DEBT~~
21 ~~BEING SATISFIED; or~~

22 ~~B. IF THE CANCELED CHECK IS UNAVAILABLE, A copy~~
23 ~~OF THE CANCELED CHECK FROM THE REMITTER'S BANK THAT CONTAINS THE~~
24 ~~INFORMATION REQUIRED UNDER ITEM A OF THIS ITEM AND THAT CONFORMS~~
25 ~~TO THE PROVISIONS OF THE FEDERAL CHECK 21 ACT, P.L. 108-100,~~
26 ~~accompanied by [the certificate contains the name of the party whose debt is being~~
27 ~~satisfied, the debt account number, if any, and words indicating that the check is~~
28 ~~intended as payment in full of the debt being satisfied] A CERTIFICATION FROM AN~~
29 ~~AUTHORIZED AGENT OF THE INSTITUTION ON WHICH THE CHECK WAS DRAWN~~
30 ~~STATING THE COPY IS A TRUE AND GENUINE IMAGE OF THE ORIGINAL CHECK;~~

1 ~~2. IF THE NOTE SECURING THE MORTGAGE,~~
2 ~~SECURITY INSTRUMENT, OR DEED OF TRUST WAS PAID OFF BY A WIRE~~
3 ~~TRANSFER, THE WIRE TRANSFER ADVICE, WHICH SHALL:~~

4 ~~A. BE ACCOMPANIED BY A CERTIFICATION FROM AN~~
5 ~~AUTHORIZED AGENT OF THE INSTITUTION ON WHICH THE WIRE TRANSFER WAS~~
6 ~~DRAWN STATING THAT THE DOCUMENT IS A TRUE AND GENUINE IMAGE OF THE~~
7 ~~ORIGINAL WIRE TRANSFER CONFIRMATION ORDER ISSUED BY THE~~
8 ~~INSTITUTION; AND~~

9 ~~B. CONTAIN THE NAME OF THE PERSON FOR WHOM~~
10 ~~THE PAYOFF WAS MADE, THE NAME OF THE INSTITUTION THAT WAS PAID THE~~
11 ~~MONEY, THE NUMBER OF THE ACCOUNT FROM WHICH THE FUNDS WERE~~
12 ~~TRANSFERRED, THE FEDERAL RESERVE BANK'S REFERENCE NUMBER FOR THE~~
13 ~~WIRE TRANSFER, THE LOAN NUMBER FOR THE NOTE THAT WAS PAID OFF, THE~~
14 ~~AMOUNT OF THE PAYOFF MADE BY THE WIRE TRANSFER, AND THE DATE AND~~
15 ~~TIME OF THE WIRE TRANSFER; and~~

16 ~~[(iii)] 3. [There is attached to the canceled check or copy~~
17 ~~accompanied by the certificate an] AN affidavit [made by a member of the Maryland~~
18 ~~Bar that the mortgage or deed of trust has been satisfied, that the notice required~~
19 ~~under subparagraph (i) of this paragraph has been sent, and specifically setting forth~~
20 ~~the land record reference where the original mortgage or deed of trust is recorded] IN~~
21 ~~THE FOLLOWING FORM:~~

22 ~~“SETTLEMENT AGENT’S AFFIDAVIT~~

23 ~~I HEREBY DECLARE OR AFFIRM, UNDER THE PENALTIES OF PERJURY, THAT:~~

24 ~~(1) I HAVE CAUSED TO BE PAID OFF THE NOTE SECURING THE~~
25 ~~MORTGAGE, SECURITY INSTRUMENT, OR DEED OF TRUST FOUND IN~~
26 ~~LIBER/BOOK _____, AT FOLIO/PAGE _____, IN THE LAND RECORDS OF~~
27 ~~_____ COUNTY/BALTIMORE CITY, MARYLAND.~~

28 ~~(2) I OBTAINED A WRITTEN PAYOFF STATEMENT FROM THE~~
29 ~~INSTITUTION HOLDING THE NOTE AND THE FUNDS PAID TO THE INSTITUTION~~
30 ~~WERE SUFFICIENT TO PAY OFF THE NOTE IN FULL.~~

31 ~~(3) ON _____, 200_, I SENT THE INSTITUTION THE NOTICE REQUIRED~~
32 ~~UNDER § 3-105(D)(3)(I) OF THE REAL PROPERTY ARTICLE.~~

1 ~~(4) I AM A SETTLEMENT AGENT WITH A RESIDENT INDIVIDUAL TITLE~~
2 ~~INSURANCE PRODUCER OR FIRM RESIDENT TITLE INSURANCE PRODUCER~~
3 ~~LICENSE IN GOOD STANDING FROM THE MARYLAND INSURANCE~~
4 ~~ADMINISTRATION.~~

5 ~~(5) THE PAYOFF OF THE NOTE WAS ACCOMPLISHED BY (CHECK ONE):~~

6 ~~== THE ORIGINAL CHECK, WRITTEN ON AN ESCROW ACCOUNT~~
7 ~~CONTROLLED BY THE UNDERSIGNED SETTLEMENT AGENT, WHICH IS ATTACHED~~
8 ~~TO THIS AFFIDAVIT AND INCORPORATED BY REFERENCE;~~

9 ~~== A CHECK, WRITTEN ON AN ESCROW ACCOUNT CONTROLLED BY~~
10 ~~THE UNDERSIGNED SETTLEMENT AGENT, A COPY OF WHICH IS ATTACHED TO~~
11 ~~THIS AFFIDAVIT AND INCORPORATED BY REFERENCE, AND WHICH CONFORMS~~
12 ~~TO THE REQUIREMENTS OF THE FEDERAL CHECK 21 ACT AND HAS BEEN~~
13 ~~CERTIFIED AS A TRUE COPY OF THE ORIGINAL CHECK BY THE ISSUING BANK; OR~~

14 ~~== A WIRE TRANSFER, THE WIRE TRANSFER REMITTANCE ADVICE~~
15 ~~FOR WHICH CONTAINS THE INFORMATION REQUIRED UNDER § 3-105(D)(3)(I)2~~
16 ~~OF THE REAL PROPERTY ARTICLE AND IS ATTACHED TO THIS AFFIDAVIT AND~~
17 ~~INCORPORATED BY REFERENCE.~~

18 _____
19 ~~(SIGNATURE)~~

20 _____
21 ~~(PRINTED OR TYPED NAME)~~

22 _____
23 ~~TITLE INSURANCE PRODUCER LICENSE NUMBER”.~~

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 July 1, 2007.