

HOUSE BILL 1308

N1

71r2970

By: **Delegate Feldman**

Introduced and read first time: February 26, 2007

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Mortgage or Deed of Trust – Release by Title Insurance**
3 **Professional**

4 FOR the purpose of authorizing a title insurance professional to release a mortgage or
5 deed of trust by following certain procedures; requiring a title insurance
6 professional to pay the obligation secured by the mortgage or deed of trust in
7 accordance with a certain payoff statement; requiring a title insurance
8 professional to deliver certain documents to the secured party; requiring the
9 documents to include a certain notice of intention to file a certificate of
10 satisfaction, a copy of a certain payoff statement, a copy of a certain statement
11 concerning a line of credit under certain circumstances, and a certain statement
12 that the title insurance professional intends to execute and file a certain
13 certificate of satisfaction under certain circumstances; authorizing a title
14 insurance professional to file a certificate of satisfaction if the secured party
15 does not provide a response document within a certain time period; requiring
16 the title insurance professional to attach the certificate of satisfaction to a
17 certain affidavit; providing that a certificate of satisfaction executed in
18 accordance with certain provisions of this Act may be recorded; establishing
19 that the execution and recordation of a certificate of satisfaction does not
20 extinguish the liability of a person to repay a secured obligation; establishing
21 the liability of a title insurance professional for certain actions taken with gross
22 negligence or with knowledge that statements contained in a certain affidavit
23 are false; requiring a payoff statement to include certain information; providing
24 that a payoff statement may not qualify the payoff amount or state it is subject
25 to change before the payoff date unless the party requesting the payoff
26 statement may request and receive a certain updated payoff statement;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 providing that a secured party who provides a payoff statement that contains
2 erroneous information may not deny the accuracy of the payoff amount or use
3 lack of payment in full or the fact of error in the payoff statement as grounds for
4 objecting to the release of the mortgage or deed of trust by the title insurance
5 professional; establishing a certain affidavit form; defining certain terms; and
6 generally relating to the release and recordation of a mortgage or deed of trust.

7 BY adding to

8 Article – Real Property

9 Section 3–105.2 and 4–205

10 Annotated Code of Maryland

11 (2003 Replacement Volume and 2006 Supplement)

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

14 **Article – Real Property**

15 **3–105.2.**

16 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
17 MEANINGS INDICATED.

18 (2) “BENEFICIARY” MEANS THE OWNER OF AN OBLIGATION
19 SECURED BY A DEED OF TRUST.

20 (3) “CERTIFICATE OF SATISFACTION” MEANS A CERTIFICATE
21 SUBSTANTIALLY IN THE FORM SPECIFIED UNDER § 4–203(D) OF THIS ARTICLE.

22 (4) “LOAN SERVICER” MEANS A PERSON WHO, ACTING ON
23 BEHALF OF A MORTGAGEE OR BENEFICIARY WITH RESPECT TO AN OBLIGATION
24 SECURED BY A MORTGAGE OR DEED OF TRUST:

25 (I) RECEIVES PAYMENTS FOR AND PROVIDES A PAYOFF
26 STATEMENT FOR THE OBLIGATION; AND

27 (II) IF DIRECTED BY THE MORTGAGEE OR BENEFICIARY,
28 PROVIDES A RELEASE OF THE MORTGAGE OR DEED OF TRUST.

29 (5) “MORTGAGEE” MEANS:

1 (I) **THE GRANTEE OF A MORTGAGE; OR**

2 (II) **IF A MORTGAGE HAS BEEN ASSIGNED OF RECORD, THE**
3 **LAST PERSON TO WHOM THE MORTGAGE HAS BEEN ASSIGNED OF RECORD.**

4 (6) **“NOTIFICATION DATE” MEANS:**

5 (I) **3 DAYS AFTER THE DAY THE DOCUMENTS LISTED IN**
6 **SUBSECTION (D) OF THIS SECTION ARE DELIVERED TO THE U.S. POSTAL**
7 **SERVICE FOR DELIVERY BY CERTIFIED MAIL, POSTAGE PREPAID; OR**

8 (II) **THE DAY AFTER THE DOCUMENTS LISTED IN**
9 **SUBSECTION (D) OF THIS SECTION ARE DELIVERED TO A COMMERCIALY**
10 **REASONABLE DELIVERY SERVICE FOR OVERNIGHT DELIVERY.**

11 (7) **“PAYOFF STATEMENT” MEANS A STATEMENT THAT**
12 **ESTABLISHES THE AMOUNT OF MONEY NECESSARY TO SATISFY THE**
13 **OBLIGATION SECURED BY A MORTGAGE OR DEED OF TRUST.**

14 (8) **“RELEASE NOTIFICATION ADDRESS” MEANS:**

15 (I) **THE ADDRESS FOR THE SECURED PARTY SPECIFIED IN**
16 **THE PAYOFF STATEMENT;**

17 (II) **IF NO ADDRESS IS SPECIFIED IN THE PAYOFF**
18 **STATEMENT, ANY OTHER ADDRESS FOR THE SECURED PARTY ACTUALLY KNOWN**
19 **TO THE TITLE INSURANCE PROFESSIONAL; OR**

20 (III) **IF THE TITLE INSURANCE PROFESSIONAL HAS NO**
21 **ACTUAL KNOWLEDGE OF AN ADDRESS FOR THE SECURED PARTY:**

22 1. **FOR A MORTGAGEE, THE ADDRESS SPECIFIED IN**
23 **THE LAST RECORDED ASSIGNMENT OF THE MORTGAGE OR, IF THERE IS NO**
24 **RECORDED MORTGAGE ASSIGNMENT, IN THE MORTGAGE; OR**

25 2. **FOR A BENEFICIARY, THE ADDRESS SPECIFIED IN**
26 **THE DEED OF TRUST.**

27 (9) **“SECURED PARTY” MEANS:**

1 (I) A MORTGAGEE;

2 (II) A BENEFICIARY; OR

3 (III) A LOAN SERVICER.

4 (10) "TITLE INSURANCE AGENT" MEANS A TITLE INSURANCE
5 PRODUCER, AS DEFINED IN § 10-101 OF THE INSURANCE ARTICLE.

6 (11) "TITLE INSURANCE PROFESSIONAL" MEANS:

7 (I) A TITLE INSURER AUTHORIZED TO CONDUCT TITLE
8 INSURANCE BUSINESS IN THE STATE; OR

9 (II) A TITLE INSURANCE AGENT.

10 (B) A TITLE INSURANCE PROFESSIONAL MAY RELEASE A MORTGAGE OR
11 DEED OF TRUST VALIDLY BY USING THE PROCEDURES SPECIFIED IN THIS
12 SECTION.

13 (C) A TITLE INSURANCE PROFESSIONAL, ACTING IN GOOD FAITH AND
14 BELIEVING THAT THE PAYMENT REPRESENTS PAYMENT IN FULL, SHALL PAY
15 THE OBLIGATION SECURED BY THE MORTGAGE OR DEED OF TRUST IN
16 ACCORDANCE WITH THE PAYOFF STATEMENT PROVIDED BY THE SECURED
17 PARTY.

18 (D) AT THE TIME THE OBLIGATION SECURED BY THE MORTGAGE OR
19 DEED OF TRUST IS PAID IN FULL, OR AT ANY TIME THEREAFTER, THE TITLE
20 INSURANCE PROFESSIONAL SHALL DELIVER TO THE SECURED PARTY AT THE
21 SECURED PARTY'S RELEASE NOTIFICATION ADDRESS:

22 (1) A NOTICE OF INTENTION TO FILE A CERTIFICATE OF
23 SATISFACTION THAT:

24 (I) IS SIGNED BY THE TITLE INSURANCE PROFESSIONAL;
25 AND

26 (II) CONTAINS:

- 1 **1. THE NAME OF THE SECURED PARTY;**
- 2 **2. THE NAMES OF THE ORIGINAL PARTIES TO THE**
3 **MORTGAGE OR DEED OF TRUST; AND**
- 4 **3. INFORMATION SUFFICIENT TO IDENTIFY THE**
5 **MORTGAGE OR DEED OF TRUST FOR WHICH A RELEASE IS SOUGHT, INCLUDING:**
 - 6 **A. THE DATE OF THE INSTRUMENT;**
 - 7 **B. THE COUNTY LAND RECORDS RECORDING**
8 **REFERENCE; AND**
 - 9 **C. THE ADDRESS OR DESCRIPTION OF THE**
10 **PROPERTY SUBJECT TO THE MORTGAGE OR DEED OF TRUST;**
 - 11 **D. THE NAME AND MAILING ADDRESS OF THE TITLE**
12 **INSURANCE PROFESSIONAL; AND**
 - 13 **E. A STATEMENT THAT THE TITLE INSURANCE**
14 **PROFESSIONAL, ACTING IN GOOD FAITH AND BELIEVING THAT THE PAYMENT**
15 **REPRESENTS PAYMENT IN FULL, HAS PAID THE OBLIGATION SECURED BY THE**
16 **MORTGAGE OR DEED OF TRUST IN ACCORDANCE WITH THE PAYOFF STATEMENT**
17 **PROVIDED BY THE SECURED PARTY;**
- 18 **(2) A COPY OF THE PAYOFF STATEMENT;**
- 19 **(3) IF THE MORTGAGE OR DEED OF TRUST SECURES A LINE OF**
20 **CREDIT OBLIGATION, A COPY OF A STATEMENT FROM THE BORROWER**
21 **DIRECTING THE SECURED PARTY TO CLOSE AND DECLINE TO MAKE FURTHER**
22 **ADVANCES UNDER THE LINE OF CREDIT; AND**
- 23 **(4) A STATEMENT THAT THE TITLE INSURANCE PROFESSIONAL**
24 **INTENDS TO EXECUTE AND RECORD A CERTIFICATE OF SATISFACTION ON**
25 **BEHALF OF THE SECURED PARTY UNLESS, WITHIN 60 DAYS AFTER THE**
26 **NOTIFICATION DATE, THE SECURED PARTY PROVIDES TO THE TITLE INSURANCE**
27 **PROFESSIONAL, IN WRITING, A RESPONSE DOCUMENT THAT PROVIDES:**

1 (I) EVIDENCE OF THE RECORDATION OF A RELEASE; OR

2 (II) NOTICE THAT:

3 1. THE OBLIGATION SECURED BY THE MORTGAGE
4 OR DEED OF TRUST HAS NOT BEEN PAID IN FULL OR HAS BEEN ASSIGNED TO
5 ANOTHER PERSON; OR

6 2. THE SECURED PARTY OBJECTS TO THE RELEASE
7 OF THE MORTGAGE OR DEED OF TRUST.

8 (E) (1) IF THE TITLE INSURANCE PROFESSIONAL RECEIVES A
9 RESPONSE DOCUMENT LISTED IN SUBSECTION (D)(4)(I) OR (II) OF THIS
10 SECTION WITHIN THE 60-DAY PERIOD AFTER THE NOTIFICATION DATE, THE
11 TITLE INSURANCE PROFESSIONAL MAY NOT EXECUTE A CERTIFICATE OF
12 SATISFACTION OF THE MORTGAGE OR DEED OF TRUST.

13 (2) (I) IF THE TITLE INSURANCE PROFESSIONAL DOES NOT
14 RECEIVE A RESPONSE DOCUMENT LISTED IN SUBSECTION (D)(4)(I) OR (II) OF
15 THIS SECTION BY THE END OF THE 60TH DAY AFTER THE NOTIFICATION DATE,
16 THE TITLE INSURANCE PROFESSIONAL MAY EXECUTE A CERTIFICATE OF
17 SATISFACTION OF THE MORTGAGE OR DEED OF TRUST AS THE AGENT FOR THE
18 MORTGAGEE OR BENEFICIARY.

19 (II) THE CERTIFICATE OF SATISFACTION SHALL BE
20 ATTACHED TO AN AFFIDAVIT OF THE TITLE INSURANCE PROFESSIONAL
21 SUBSTANTIALLY IN THE FORM SPECIFIED UNDER § 4-205 OF THIS ARTICLE.

22 (F) (1) A CERTIFICATE OF SATISFACTION THAT IS EXECUTED IN
23 ACCORDANCE WITH THIS SECTION MAY BE RECORDED.

24 (2) THE EXECUTION AND RECORDATION OF A CERTIFICATE OF
25 SATISFACTION IN ACCORDANCE WITH THIS SECTION DOES NOT, BY ITSELF,
26 EXTINGUISH THE LIABILITY OF A PERSON FOR REPAYMENT OF THE SECURED
27 OBLIGATION.

28 (G) (1) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,
29 A TITLE INSURANCE PROFESSIONAL THAT RECORDS A CERTIFICATE OF
30 SATISFACTION WITH GROSS NEGLIGENCE OR WITH KNOWLEDGE THAT THE

1 STATEMENTS CONTAINED IN THE AFFIDAVIT DESCRIBED IN SUBSECTION
2 (E)(2)(II) OF THIS SECTION ARE FALSE, SHALL BE LIABLE TO THE SECURED
3 PARTY FOR ACTUAL DAMAGES CAUSED BY THE WRONGFUL RECORDATION.

4 (II) A RECORDING OF A CERTIFICATE OF SATISFACTION IS
5 NOT WRONGFUL IF THE TITLE INSURANCE PROFESSIONAL, ACTING
6 REASONABLY AND IN GOOD FAITH, GIVES PROPER NOTICE TO THE SECURED
7 PARTY UNDER SUBSECTION (D) OF THIS SECTION AND THE SECURED PARTY
8 FAILS TO PROVIDE A RESPONSE DOCUMENT TO THE TITLE INSURANCE
9 PROFESSIONAL IN ACCORDANCE WITH SUBSECTION (D)(4) OF THIS SECTION.

10 (2) A TITLE INSURANCE PROFESSIONAL IS NOT LIABLE FOR
11 FAILING TO USE THE PROCEDURES AUTHORIZED BY THIS SECTION.

12 (H) (1) A PAYOFF STATEMENT PROVIDED BY A SECURED PARTY
13 SHALL STATE:

14 (I) THE DATE ON WHICH IT WAS PREPARED;

15 (II) THE PAYOFF AMOUNT BY TYPE OF EACH FEE, CHARGE,
16 OR OTHER SUM INCLUDED IN THE PAYOFF AMOUNT AS OF THE DATE THE
17 PAYOFF STATEMENT WAS PREPARED;

18 (III) THE PER DIEM INTEREST AMOUNT, IF ANY;

19 (IV) THE PAYMENT CUTOFF TIME, IF ANY;

20 (V) THE ADDRESS OR PLACE WHERE PAYMENT MUST BE
21 MADE; AND

22 (VI) ANY LIMITATION AS TO AUTHORIZED METHOD OF
23 PAYMENT.

24 (2) A PAYOFF STATEMENT MAY NOT QUALIFY THE PAYOFF
25 AMOUNT OR STATE THAT IT IS SUBJECT TO CHANGE BEFORE THE PAYOFF DATE
26 UNLESS THE PARTY REQUESTING THE PAYOFF STATEMENT IS ALLOWED TO
27 REQUEST AND RECEIVE AN UPDATED PAYOFF STATEMENT THAT IS:

28 (I) IN WRITING;

1 **(II) DELIVERED BY A METHOD THAT INCLUDES FACSIMILE**
2 **OR ELECTRONIC MAIL DELIVERY;**

3 **(III) AT NO CHARGE;**

4 **(IV) DURING THE SECURED PARTY'S NORMAL BUSINESS**
5 **HOURS; AND**

6 **(V) ON THE PAYOFF DATE, OR ON THE BUSINESS DAY**
7 **IMMEDIATELY PRECEDING THE PAYOFF DATE.**

8 **(3) A SECURED PARTY WHO PROVIDES A PAYOFF STATEMENT**
9 **THAT CONTAINS AN ERRONEOUS PAYOFF AMOUNT OR OTHER ERRONEOUS**
10 **INFORMATION:**

11 **(I) MAY NOT DENY THE ACCURACY OF THE PAYOFF**
12 **AMOUNT AS AGAINST ANY PERSON WHO PAYS THE AMOUNT IN REASONABLE**
13 **RELIANCE ON THE PAYOFF STATEMENT; AND**

14 **(II) MAY NOT USE THE LACK OF PAYMENT IN FULL OF THE**
15 **OBLIGATION OR THE FACT OF AN ERROR IN THE PAYOFF STATEMENT AS**
16 **GROUND FOR OBJECTING TO THE RELEASE OF THE MORTGAGE OR DEED OF**
17 **TRUST BY THE TITLE INSURANCE PROFESSIONAL.**

18 **4-205.**

19 **"AFFIDAVIT OF TITLE INSURER OR TITLE AGENT**

20 **THE UNDERSIGNED HEREBY STATES AS FOLLOWS:**

21 **I AM (AN OFFICER OR A DULY AUTHORIZED REPRESENTATIVE OF)**
22 **THE BELOW-REFERENCED LICENSED TITLE INSURANCE PRODUCER OR**
23 **(AN OFFICER OR A DULY AUTHORIZED REPRESENTATIVE OF) THE**
24 **BELOW-REFERENCED TITLE INSURER AUTHORIZED TO CONDUCT TITLE**
25 **INSURANCE BUSINESS IN THE STATE OF MARYLAND.**

26 **I AM EXECUTING THIS AFFIDAVIT TO EVIDENCE FULL PAYMENT OF**
27 **THE OBLIGATION SECURED BY THE MORTGAGE OR DEED OF TRUST**

1 REFERENCED IN THE CERTIFICATE OF SATISFACTION ATTACHED TO AND
2 MADE A PART OF THIS AFFIDAVIT.

3 I HAVE PAID THE OBLIGATION SECURED BY THE MORTGAGE OR
4 DEED OF TRUST TO THE SECURED PARTY AND BELIEVE, IN GOOD FAITH,
5 THAT THE PAYMENT REPRESENTS PAYMENT IN FULL OF THE OBLIGATION
6 SECURED BY THE MORTGAGE OR DEED OF TRUST DESCRIBED IN THE
7 CERTIFICATE OF SATISFACTION.

8 ON (DATE OF DELIVERY TO THE U.S. POSTAL SERVICE OR
9 COMMERCIAL DELIVERY SERVICE), I DEPOSITED FOR DELIVERY TO THE
10 SECURED PARTY DOCUMENTS THAT INCLUDED A NOTICE OF INTENTION
11 TO RECORD A CERTIFICATE OF SATISFACTION, A PAYOFF STATEMENT, A
12 DIRECTIVE, IF APPLICABLE, FROM A BORROWER CONCERNING A LINE OF
13 CREDIT ATTACHED TO THE MORTGAGE OR DEED OF TRUST, AND A
14 STATEMENT INFORMING THE SECURED PARTY THAT I WOULD EXECUTE
15 AND RECORD A CERTIFICATE OF SATISFACTION OF THE MORTGAGE OR
16 DEED OF TRUST IF, WITHIN 60 DAYS AFTER THE NOTIFICATION DATE, I
17 HAD NOT RECEIVED A RESPONSE DOCUMENT FROM THE SECURED PARTY.

18 THE 60-DAY PERIOD HAS ELAPSED AND I HAVE NOT RECEIVED A
19 RESPONSE DOCUMENT FROM THE SECURED PARTY.

20 (NAME OF TITLE INSURER OR TITLE AGENT)

21 _____
22 SIGNATURE OF TITLE INSURER OR TITLE AGENT OR ITS
23 AUTHORIZED REPRESENTATIVE.

24 SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME THIS _____ DAY OF
25 _____.

26 WITNESS MY HAND AND NOTARIAL SEAL.

27 _____
28 NOTARY PUBLIC

29 MY COMMISSION EXPIRES: _____”

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