

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 220

(Senator Frosh)

Judicial Proceedings

Environmental Matters

Real Property - Release of Mortgage, Deed of Trust, or Lien Instrument

This bill authorizes a settlement agent, title insurer, or Maryland lawyer to record a “statutory release affidavit” in the land records when the debt secured by a mortgage, deed of trust, or lien instrument has been paid off and the person who received the payment fails to provide a release.

Fiscal Summary

State Effect: Special fund revenues could increase minimally to the extent the bill encourages more individuals to obtain title insurance producer licenses from the Maryland Insurance Administration (MIA). Any increase in MIA’s workload could be handled with existing resources. Altering the method of recording a release of a mortgage, security interest, or deed of trust would not materially affect the finances or operations of the Judiciary.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: When the debt secured by a mortgage, deed of trust, or lien instrument is paid fully or satisfied by a settlement agent licensed by MIA as a title insurance producer, a title insurer, or a lawyer admitted to the Maryland Bar, and the party satisfied fails to provide a release suitable for recording, the settlement agent, title insurer, or lawyer may prepare and record a statutory release affidavit.

The statutory release affidavit may be received by the clerk and indexed and recorded as any other instrument in the nature of a release or certificate of satisfaction and has the same effect as a release of the property for which the mortgage, deed of trust, or lien instrument is the security, as if a release were executed by the mortgagee, named trustees, or secured party.

Before a settlement agent, title insurer, or lawyer may record a statutory release affidavit under the bill, that person must:

- allow at least a 60-day waiting period from the date the mortgage, deed of trust, or lien instrument is paid fully or satisfied for the party satisfied to provide a release suitable for recording;
- send by certified mail, with or without a return receipt, to the party satisfied:
 - a copy of the law authorizing the recording of a statutory release affidavit;
 - a copy of the proposed statutory release affidavit that the person intends to record; and
 - a notice that unless a release suitable for recording is provided within 30 days, the person will obtain a release in accordance with the provisions of this bill; and
- after the mailing of the notice, allow an additional waiting period of at least 30 days for the party satisfied to provide a release suitable for recording.

A statutory release affidavit must be in substantially the same form set forth in the bill and be accompanied by evidence of the payment of the debt (the canceled check, a copy of the canceled check, or wire transfer advice).

Current Law: Generally, a mortgage or deed of trust may be released validly by several methods, including endorsing a release on the original document and recording it in the land records, recording a certificate of satisfaction or release in the land records, or recording evidence of the fully paid or satisfied debt in the land records.

When the debt secured by a mortgage or deed of trust is fully paid or satisfied, and the canceled check (or a copy accompanied by a certificate from the institution on which it was drawn if the original check is unavailable) is presented, it may be received by the clerk of the court and recorded as any other instrument in the nature of a release.

In order to record a release in this manner, the party making satisfaction must have: (1) allowed at least a 60-day waiting period from the date of satisfaction, for the satisfied party to provide a release suitable for recording; (2) sent the satisfied party a copy of the law governing releases and a notice that the agent will obtain a release under the bill unless a release is provided within 30 days; and (3) after mailing the notice, allowed an additional waiting period of at least 30 days for the satisfied party to provide a release.

The canceled check or copy must contain the name of the party whose debt is being satisfied, the debt account number, if any, and words indicating that the check is intended as payment in full of the debt. An affidavit made by a member of the Maryland Bar Association must also be attached to the check or copy stating that the mortgage or deed of trust has been satisfied, that the required notice has been sent, and the land record reference where the original mortgage or deed of trust is recorded.

State Revenues: It is unknown how many individuals would seek to obtain title insurance producer licenses from MIA because of the bill, but the total number of applicants for a new license is assumed to be minimal. Each successful applicant would be required to pay an \$88 examination fee and a \$54 fee for the two-year license. Renewal licenses are \$69, which includes a \$15 anti-fraud fee.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Insurance Administration; Department of Labor, Licensing, and Regulation; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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