

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1027

(Delegate Gilchrist, *et al.*)

Environmental Matters

Judicial Proceedings

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

This bill alters the procedures by which a mortgage, security instrument, or deed of trust may be released when the party whose debt has been satisfied fails to provide a release.

The bill takes effect July 1, 2007.

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: This bill authorizes a settlement agent licensed by MIA as a title producer, a title insurer, or a Maryland lawyer to record a statutory release affidavit in the land records when the debt secured by a mortgage, "lien instrument," or deed of trust has been paid in full or satisfied and the party who received the payment fails to provide a release. The release may be received by the clerk of the court and indexed and recorded,

as any other instrument in the nature of a release or certificate of satisfaction. The release has the same effect as a release of property for which the mortgage, deed of trust, or lien instrument is the security, as if a release were executed by the satisfied party.

Before a settlement agent, title insurer, or lawyer may record a statutory release affidavit, that person must allow at least a 60-day waiting period from the date of full payment of the mortgage, deed of trust, or lien instrument for the satisfied party to provide a release suitable for recording. That person must also send to the satisfied party by certified mail (with or without return receipt) a copy of the relevant statute authorizing the affidavit, a copy of the proposed affidavit, and a notice that unless a release suitable for recording is provided within 30 days, that person will obtain a release as authorized under this bill. After the mailing of the notice, that person must allow an additional waiting period of at least 30 days for the satisfied party to provide a release suitable for recording.

The statutory release affidavit must be in the form prescribed in the bill, which contains specific information about the payment or satisfaction of the note securing the mortgage, deed of trust, or lien instrument. The affidavit must also be accompanied by supporting evidence of satisfaction of the debt as prescribed in the bill and the land record reference of the instrument being released.

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.

The Check Clearing for the 21st Century Act, or Check 21 Act, modernizes the nation's check clearing system and makes the system quicker. The Act provides for "truncation" of original paper checks. Under the Act, truncation means removing an original paper check from the check collection or return process by sending the recipient a "substitute check" or, by agreement between institutions, information relating to the original check (in essence, a digital check or electronic fund transfer), regardless of whether the original check is delivered.

A substitute check is a paper reproduction of the original check that: (1) contains an image of the front and back of the original; (2) bears a MICR line (the line on a check with the routing number, account number, and check number) meeting specified qualifications; (3) conforms, in paper stock, dimension, and otherwise, with generally applicable industry standards for substitute checks; and (4) is suitable for automated processing in the same manner as the original check.

To the extent that they are inconsistent, the Check 21 Act preempts state law and supersedes state and federal law.

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: SB 220 (Senator Frosh) – Judicial Proceedings.

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

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