

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 1308 (Delegate Feldman)
Environmental Matters

**Real Property - Mortgage or Deed of Trust - Release by Title Insurance
Professional**

This bill establishes procedures by which a title insurance professional may validly release a mortgage or deed of trust.

Fiscal Summary

State Effect: 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: A title insurance professional, acting in good faith and believing that payment represents payment in full, must pay the obligation secured by the mortgage or deed of trust in accordance with the payoff statement.

When the obligation secured by the mortgage or deed of trust is paid in full, or at any time thereafter, the title insurance professional must deliver to the secured party, at that party's release notification address:

- a notice of the intention to file a certificate of satisfaction that meets specified criteria;

- a copy of the payoff statement;
- if the mortgage or deed of trust secures a line of credit obligation, a copy of a statement from the borrower directing the secured party to close and decline to make further advances under it; and
- a statement that the title insurance professional intends to execute and record a certificate of satisfaction on behalf of the secured party unless, within 60 days after the date of notification, the secured party provides a written response document containing specified information.

If a title insurance professional receives a response document within the 60-day period, the title insurance professional may not execute a certificate of satisfaction. If the title insurance professional does not receive a response document by the end of the sixtieth day, the title insurance professional may execute a certificate of satisfaction as the agent for the mortgage or beneficiary under the deed of trust. The certificate must be attached to the affidavit of the title insurance professional.

A properly executed certificate of satisfaction may be recorded, although its execution and recordation do not, by themselves, extinguish the liability of a person for repayment of the secured obligation.

A title insurance professional that records a certificate of satisfaction with gross negligence or with knowledge that the statements contained in the affidavit are false is liable to the secured party for actual damages caused by the wrongful recordation. Recordation is not wrongful if the title insurance professional, acting reasonably and in good faith, gives proper notice to the secured party and the secured party fails to respond. A title insurance professional is not liable for failing to use the procedures authorized under the bill.

A payoff statement provided by a secured party must state specified information and may not qualify the payoff amount or state that it is subject to change before the payoff date unless specified criteria are met.

A party that provides a payoff statement containing an erroneous payoff amount or other erroneous information may not:

- deny the accuracy of the payoff amount as against a person who pays the amount in reasonable reliance on the payoff statement; and
- use the lack of payment in full of the obligation or the error for objecting to the release of the mortgage or deed of trust by the title insurance professional.

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.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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