

HOUSE BILL 633

N1

0lr1733
CF 0lr2542

By: **Delegates Niemann, Beidle, Holmes, and McConkey**

Introduced and read first time: February 3, 2010

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Mortgages and Deeds of Trust – Authority to Exercise a**
3 **Power of Sale**

4 FOR the purpose of clarifying that a mortgage or deed of trust may authorize the sale
5 of property or declare a borrower's assent to the passing of a decree for the sale
6 of the property under certain circumstances; clarifying that a power of sale
7 authorized in a mortgage or deed of trust may be exercised only by an
8 individual; providing that an error or omission in a mortgage or deed of trust
9 concerning the designation of the individual authorized to exercise a power of
10 sale does not invalidate the ability of the individual to exercise the power of
11 sale; authorizing the holder of a mortgage or deed of trust to make in any
12 foreclosure proceeding a substitution of the individual authorized to exercise a
13 power of sale under certain circumstances; defining a certain term; and
14 generally relating to the authority to exercise a power of sale in mortgages and
15 deeds of trust.

16 BY repealing and reenacting, with amendments,
17 Article – Real Property
18 Section 7–105
19 Annotated Code of Maryland
20 (2003 Replacement Volume and 2009 Supplement)

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

23 **Article – Real Property**

24 7–105.

25 (a) **IN THIS SECTION, “INDIVIDUAL” MEANS A NATURAL PERSON.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(B) (1)** A [provision may be inserted in a] mortgage or deed of trust
2 [authorizing any natural person named in the instrument, including the secured
3 party, to sell] **MAY AUTHORIZE THE SALE OF** the property or [declaring] **DECLARE**
4 the borrower's assent to the passing of a decree for the sale of the property, on default
5 in a condition on which the mortgage or deed of trust provides that a sale may be
6 made.

7 **(2) A POWER OF SALE AUTHORIZED IN A MORTGAGE OR DEED OF**
8 **TRUST MAY BE EXERCISED ONLY BY AN INDIVIDUAL.**

9 **(3) AN ERROR OR OMISSION IN A MORTGAGE OR DEED OF TRUST**
10 **CONCERNING THE DESIGNATION OF THE INDIVIDUAL AUTHORIZED TO**
11 **EXERCISE A POWER OF SALE DOES NOT INVALIDATE THE ABILITY OF THE**
12 **INDIVIDUAL TO EXERCISE THE POWER OF SALE.**

13 **(4) IF A MORTGAGE OR DEED OF TRUST ALLOWS FOR THE**
14 **SUBSTITUTION OF THE INDIVIDUAL AUTHORIZED TO EXERCISE A POWER OF**
15 **SALE, THE HOLDER OF THE MORTGAGE OR DEED OF TRUST MAY MAKE A**
16 **SUBSTITUTION IN ANY FORECLOSURE PROCEEDING.**

17 **[(b)] (C)** A sale made pursuant to this section, §§ 7–105.1 through 7–105.8
18 of this subtitle, or the Maryland Rules, after final ratification by the court and grant of
19 the property to the purchaser on payment of the purchase money, has the same effect
20 as if the sale and grant were made under decree between the proper parties in relation
21 to the mortgage or deed of trust and in the usual course of the court, and operates to
22 pass all the title which the borrower had in the property at the time of the recording of
23 the mortgage or deed of trust.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2010.