

HOUSE BILL 633

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CF SB 562

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

Introduced and read first time: February 3, 2010

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 16, 2010

CHAPTER _____

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 providing that failure to name any trustee in a deed of trust does
5 not have any effect on an instrument under certain circumstances; clarifying
6 that a mortgage or deed of trust may authorize the sale of property or declare a
7 borrower's assent to the passing of a decree for the sale of the property under
8 certain circumstances; clarifying that a power of sale or assent to decree
9 authorized in a mortgage or deed of trust may be exercised only by an
10 individual; providing that the individual selling the property under a power of
11 sale need not be named in the mortgage or deed of trust; providing that an error
12 or omission in a mortgage or deed of trust concerning the designation of the
13 trustee or individual authorized to exercise a power of sale does not invalidate
14 the instrument or the ability of the mortgagee or beneficiary of the deed of trust
15 to appoint an individual to exercise the power of sale; authorizing the holder of
16 a mortgage or deed of trust to make ~~in any foreclosure proceeding a substitution~~
17 appointments or substitutions of the a trustee or an individual authorized to
18 exercise a power of sale under certain circumstances; defining a certain term;
19 providing for the application of this Act; and generally relating to the authority
20 to exercise a power of sale in mortgages and deeds of trust.

21 BY repealing and reenacting, with amendments,

22 Article – Real Property

23 Section ~~4-109~~ and 7-105

24 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (2003 Replacement Volume and 2009 Supplement)

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

4 **Article – Real Property**

5 4–109.

6 (a) If an instrument was recorded before January 1, 1973, any failure of the
7 instrument to comply with the formal requisites listed in this section has no effect,
8 unless the defect was challenged in a judicial proceeding commenced by July 1, 1973.

9 (b) If an instrument is recorded on or after January 1, 1973, whether or not
10 the instrument is executed on or after that date, any failure to comply with the formal
11 requisites listed in this section has no effect unless it is challenged in a judicial
12 proceeding commenced within six months after it is recorded.

13 (c) For the purposes of this section, the failures in the formal requisites of an
14 instrument are:

15 (1) A defective acknowledgment;

16 (2) A failure to attach any clerk’s certificate;

17 (3) An omission of a notary seal or other seal;

18 (4) A lack of or improper acknowledgment or affidavit of consideration,
19 agency, or disbursement; [or]

20 (5) An omission of an attestation; OR

21 (6) A FAILURE TO NAME ANY TRUSTEE IN A DEED OF TRUST.

22 7–105.

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

24 (b) (1) A [provision may be inserted in a] mortgage or deed of trust
25 [authorizing any natural person named in the instrument, including the secured
26 party, to sell] **MAY AUTHORIZE THE SALE OF** the property or [declaring] **DECLARE**
27 the borrower’s assent to the passing of a decree for the sale of the property, on default
28 in a condition on which the mortgage or deed of trust provides that a sale may be
29 made.

30 (2) **A POWER OF SALE OR ASSENT TO DECREE AUTHORIZED IN A**
31 **MORTGAGE OR DEED OF TRUST MAY BE EXERCISED ONLY BY AN INDIVIDUAL.**

1 **(3) THE INDIVIDUAL SELLING THE PROPERTY UNDER A POWER**
 2 **OF SALE NEED NOT BE NAMED IN THE MORTGAGE OR DEED OF TRUST.**

3 ~~(3)~~ **(4)** AN ERROR OR OMISSION IN A MORTGAGE OR DEED OF
 4 TRUST CONCERNING THE DESIGNATION OF THE TRUSTEE OR THE INDIVIDUAL
 5 AUTHORIZED TO EXERCISE A POWER OF SALE DOES NOT INVALIDATE THE
 6 INSTRUMENT OR THE ABILITY OF THE MORTGAGEE OR BENEFICIARY OF THE
 7 DEED OF TRUST TO APPOINT AN INDIVIDUAL TO EXERCISE THE POWER OF SALE.

8 ~~(4)~~ **(5)** IF A MORTGAGE OR DEED OF TRUST ALLOWS FOR THE
 9 APPOINTMENT OR SUBSTITUTION OF THE A TRUSTEE OR AN INDIVIDUAL
 10 AUTHORIZED TO EXERCISE A POWER OF SALE, THE HOLDER OF THE MORTGAGE
 11 OR DEED OF TRUST MAY MAKE ~~A SUBSTITUTION IN ANY FORECLOSURE~~
 12 ~~PROCEEDING~~ THE APPOINTMENTS OR SUBSTITUTIONS FROM TIME TO TIME.

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

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
 21 construed to apply retroactively and shall be applied to and interpreted to affect any
 22 mortgage or deed of trust on record or recorded on or after June 1, 2010.

23 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
 24 effect ~~October~~ June 1, 2010.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.