

Chapter 323

(House Bill 633)

AN ACT concerning

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

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

BY repealing and reenacting, with amendments,
 Article – Real Property
 Section ~~4-109~~ and 7-105
 Annotated Code of Maryland
 (2003 Replacement Volume and 2009 Supplement)

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

Article – Real Property

4-109.

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

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

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

- (1) A defective acknowledgment;
- (2) A failure to attach any clerk's certificate;
- (3) An omission of a notary seal or other seal;
- (4) A lack of or improper acknowledgment or affidavit of consideration, agency, or disbursement; [or]
- (5) An omission of an attestation; OR
- (6) A FAILURE TO NAME ANY TRUSTEE IN A DEED OF TRUST.

7-105.

(a) IN THIS SECTION, "INDIVIDUAL" MEANS A NATURAL PERSON.

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

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

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

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

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

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

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

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

Approved by the Governor, May 4, 2010.