

Department of Legislative Services  
Maryland General Assembly  
2015 Session

**FISCAL AND POLICY NOTE**

Senate Bill 292

(Senator Ramirez, *et al.*)

Judicial Proceedings

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**Real Property - Land Records - Fraudulent Recordings**

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This bill prohibits a person from causing to be recorded a deed or other instrument affecting real property that the person knows, or reasonably should know, (1) is false; (2) contains fraudulent statements; or (3) is not related to an existing or potential real estate transaction. A violation of the bill's provisions is a misdemeanor subject to a maximum fine of \$5,000 for a first offense and a maximum fine of \$10,000 for a second or subsequent offense. The bill also requires the clerk of the court to mail a notice containing specified information to the parties named in the recorded instrument within 30 days after recordation.

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**Fiscal Summary**

**State Effect:** Minimal increase in general fund revenues from fines collected in District Court cases. Significant increase in special fund expenditures to provide the notifications to property owners required by the bill. Significant increase in general fund expenditures to the extent that revenues from the Circuit Court Real Property Records Improvement Fund are unable to cover the expenditures associated with the new notification function.

**Local Effect:** Minimal increase in local revenues from fines collected in circuit court cases. Expenditures are not affected.

**Small Business Effect:** Minimal.

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**Analysis**

**Bill Summary:** The notice sent by the clerk of the court to the parties named in the recorded instrument must contain, the following: at a minimum, (1) a statement that the clerk has recorded a deed or other instrument that may affect the property interest of the parties named in the recorded instrument; (2) a description of the recorded instrument;

(3) instructions on how the parties named in the instrument can get a copy of the record; and (4) instructions for obtaining legal assistance if any party believes that the instrument is fraudulent. The bill requires that the notice be sent by certified mail, return receipt requested.

**Current Law:** There is no specific prohibition against recording a fraudulent deed or other instrument in the Real Property Article, nor is there a requirement that notice be sent to parties named in a recorded land instrument. However, sections of the Criminal Law Article do address counterfeit or fraudulent deeds and attempts to file such a deed in public records.

#### *False Entries in Public Records*

A person, with intent to defraud another, may not counterfeit, cause to be counterfeited, or willingly aid or assist in counterfeiting any deed or release or discharge for money or property. A violator is guilty of a felony and is subject to maximum penalties of 10 years imprisonment and/or a \$1,000 fine. Further, a person may not knowingly, willfully, and with fraudulent intent possess a counterfeit deed, release, or discharge for money or property. A violator is guilty of a misdemeanor and is subject to maximum penalties of 3 years imprisonment and/or a fine of \$1,000.

#### *Making False Entries in Public Records*

A person also may not willfully make or attempt to make a false entry in a public record or willfully alter, deface, destroy, remove, or conceal a public record or attempt such an action without proper authority. A violator is guilty of a misdemeanor and is subject to maximum penalties of three years imprisonment and/or a fine of \$1,000.

**Background:** Other jurisdictions have enacted programs or laws to prevent fraudulent recordings of deeds or other documents related to land transactions.

The City of Philadelphia Records Department has developed the Document Notice Program. The program is intended to combat fraud by informing property owners of real estate transactions registered with the city. The Records Department notifies current property owners each time a deed or mortgage is recorded by mailing a letter to them that provides details of the transaction. Property owners have the ability to verify transactions and learn of possible fraudulent transactions involving their property. Owners receive information on legal services and advice on how to take action if a transaction is fraudulent.

In Miami-Dade County, Florida, in an effort to reduce the recording of fraudulent deeds, the Clerk of Court Recorder sends a courtesy letter to the property owner whenever a quitclaim deed is recorded. If a property owner suspects that another person has obtained

a fraudulent deed to their property, he or she is encouraged to notify the Economic Crimes Unit of the Miami-Dade Police Department and to obtain the services of an attorney as soon as possible. A property owner can request a certified copy of the recorded deed from the county recorder's office online, by mail, or in person.

Notaries in Cook County, Illinois are required to provide the county recorder's office with records of each document purporting to transfer ownership of residential real property in the county. These records are available to law enforcement and can be used to assist state investigations into property or recording fraud. Illinois established penalties for intentionally and knowingly recording a document that clouds title to a property and authorized land recorders to review deeds and other instruments for evidence that the instrument may be fraudulent, unlawfully altered, or intended to unlawfully cloud title or transfer title to real property. If the land recorder finds evidence of fraud, he or she must forward the case to an administrative law judge for review. The notification system in Illinois authorizes expedited review of land records that may be fraudulent or otherwise unlawful.

**State Expenditures:** Significant increase in general fund expenditures to the extent that special fund revenues allocated to the land records function do not defray the expenditures associated with the new duties for the clerks of court required by the bill.

The clerk's office of the circuit court in each county and Baltimore City imposes a surcharge on each recordable instrument that is recorded among the jurisdiction's land records or financing statement records. The surcharges are deposited as special funds in the Circuit Court Real Property Records Improvement Fund, which is managed by the State Court Administrator. The fund supports all personnel and operating costs within the land records offices of the clerks of the circuit court. It further supports the maintenance costs of the Electronic Records Online Imagery System and its website. Revenues for the fund are generated through a recordation surcharge on all real estate transactions.

Large structural deficits have occurred in the fund since fiscal 2009, with the exception of fiscal 2013. Even if the fund's structural deficit is eliminated for the foreseeable future, it is unlikely, without additional special fund revenues allocated to this new function, that any special fund revenue surplus based on the existing fee structure would be sufficient to sustain the expenditures associated with the functions required by the bill. *By way of illustration*, the Administrative Office of the Courts (AOC) advises that about 800,000 instruments related to land are recorded on average in a typical year. The bill requires the clerks of court to give notice to the parties on a recordable instrument no later than 30 days after recordation of a deed or other instrument affecting real property. The notice must be sent by certified mail, return receipt requested. AOC advises that a minimum of two parties would receive the required notice. The cost for a certified letter, return receipt requested, with an electronic signature is \$5.13. If the required notice is sent

to two parties for each of the 800,000 recordable land transactions covered by the bill, State expenditures increase by *at least* \$8.2 million annually. Expenditures may increase further for additional staff and development of notices to comply with the bill. To the extent special fund revenues are unable to cover the cost of this new notification function, general fund expenditures increase significantly to cover the personnel and operating costs of the land records offices.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** State Department of Assessments and Taxation, Judiciary (Administrative Office of the Courts), U.S. Postal Service, Department of Legislative Services

**Fiscal Note History:** First Reader - March 4, 2015  
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