

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 595

(Delegate McMillan, *et al.*)

Environment and Transportation

Judicial Proceedings

Mortgages and Deeds of Trust - Prerequisites to Recording

This bill specifies that a deed *other than* a mortgage, deed of trust, or an assignment or release of a mortgage or deed of trust may not be recorded unless the instrument bears either (1) the certification of an attorney admitted to the Bar of this State that the instrument has been prepared by the attorney or under the attorney's supervision or (2) a certification by a party named in the instrument that the instrument was prepared by that party. For purposes of the certification, "under the attorney's supervision" includes review of an instrument by the certifying attorney. Accordingly, the bill repeals the prohibition against the recordation of a mortgage or deed of trust without one of these prerequisites to recording. The bill also specifies that a mortgage, deed of trust, or an assignment or release of a mortgage or deed of trust prepared by *any attorney* or one of the parties named in the instrument may be recorded without the required certification.

Fiscal Summary

State Effect: The bill does not impact State government operations or finances.

Local Effect: The bill does not impact the operations or finances of the circuit courts.

Small Business Effect: Minimal.

Analysis

Current Law: A deed, mortgage, or deed of trust may not be recorded unless it bears either (1) the certification of an attorney that the instrument has been prepared by an attorney or under an attorney's supervision or (2) a certification that the instrument was prepared by one of the parties named in the instrument.

Generally, “deed” includes any deed, grant, mortgage, deed of trust, lease, assignment, and release, pertaining to land or property or any interest in property. “Deed of trust” means only a deed of trust which secures a debt or the performance of an obligation, and it does not include a voluntary grant unrelated to security purposes. “Grant” includes conveyance, assignment, and transfer. “Lease” means any oral or written agreement, express or implied, creating a landlord and tenant relationship. “Mortgage” means any mortgage, including a deed in the nature of mortgage.

Background: In addition to the State requirement, individual jurisdictions may have a similar requirement in public local laws or ordinances. For example, in St. Mary's County, the clerk of the circuit court is prohibited from accepting for inclusion in the land records any deed, assignment, mortgage, deed of trust, or other document concerning real property unless the instrument was prepared by (1) an attorney licensed to practice in the State; (2) an employee of the attorney; or (3) one of the parties named in the instrument.

Additional Information

Prior Introductions: None.

Cross File: SB 376 (Senator Norman) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - February 8, 2017
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