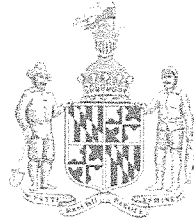


MARY-DULANY JAMES
Legislative District 34
Harford County



James Senate Office Building
11 Bladen Street, Room 103
Annapolis, Maryland 21401
410-841-3158 · 301-858-3158
800-492-7122 Ext. 3158
MaryDulany.James@senate.state.md.us

Judicial Proceedings Committee
Executive Nominations Committee

Senate Chair
Joint Committee on
Children, Youth, and Families

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

SB 971 is a modest proposal by the Real Estate section of the Maryland State Bar Association. It is a small step toward addressing two questions:

1. Why is it so difficult to record land record documents?
2. How can we begin to address this difficulty?

Attached to my remarks is a 5-page white paper explaining some of the many problems and obstacles that have grown over the years. At the heart of the issue is the fact that Maryland's land recording system is not unified nor uniform. Because state law says deeds and other instruments affecting real property must be filed in the county where the land is located (Real Property Code Section 3-103), our system is made up of 24 jurisdictions, each of which have differing requirements. Over the years, in addition to requiring that all real estate taxes be paid prior to the recording of instruments covering title, local governments have been loading up the process with all sorts of special assessments, special district taxes, public water and sewer assessments, personal property taxes, hotel taxes, local town or city taxes, and so on. These too all must be paid in full.

While starting in 2015, Maryland began allowing the electronic filing of documents, it was not until the pandemic that all the different jurisdictions embraced it. So far, however, only simple recording packages can be e-recorded. That means some residential real estate and most commercial transactions are not eligible. Thus, these different and often tangential fees and taxes are administered and collected by offices in addition to the Clerks of Court, such as city halls, local administrators, treasurers, or directors of finance that must be personally visited. These processes can take hours at each visit or require that documents be dropped off necessitating return trips. Some offices have their own special forms that are different from the standardized Maryland Land Intake Sheet. Not all fees, taxes, and assessments, nor their necessary information, are available online. Information that is provided online does not stop jurisdictions from demanding payment of fees and assessments not showing in the system but is due and owed. Local county offices have refused to process a deed based on these newly created bills with surprise undisclosed charges, and the practical effect of this sharp practice is that settlement companies are left with either becoming a de facto collection agency chasing after the responsible party who may claim they have no money to pay or taking a loss on the hidden charges.

There are many issues and complications because of the variability and inefficiencies across counties and even within counties that strongly suggest the real estate recordation system should be overhauled, ideally with all the stakeholders' collaboration behind it.

This bill is meant as a first step toward that cooperation by amending in two places within the Real Property Code as follows:

First, by changing the word "may" to "shall" in Real Property Section 3-703 (b) (7) and (c) (The Electronic Recording Act) so that it reads:

"(b) ... the clerk of a circuit court...

(7) ~~May~~ **SHALL** agree with other State or county officials on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording documents or the electronic payment of fees or taxes

(c) The State Department of Assessments and Taxation or a county ~~may~~**SHALL**:

(1) Accept by electronic means any fee or tax that the Department or county is authorized to collect as a condition precedent to recording a document; and

(2) Agree with the clerk of a circuit court or other State official on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording documents or the electronic payment of fees or taxes."

The Maryland Circuit Court Clerks Association supports this proposal and are willing to take the lead and work with the local finance officials to develop a process for allowing the electronic payment of all fees and taxes required to record documents (see their email attached).

Second, by inserting new language into Real Property Section 3-104 (b) (2) (iii), modeled after Baltimore City's Annotated Code Article 28 Sections 2-3. The exact language of this proposal is on page 4 and 5 of the attached white paper. The goal of this language is to improve the nature and quality of certificates already existing by mandating they be made accurate, complete, timely, and once issued, can be relied on in favor of all purchasers.

The real estate settlement industry is responsible for collecting billions of dollars on behalf of state, local and municipal governments each year at no cost. These taxes and fees (along with annual real property taxes) are the backbone of county revenues and budgets. It behooves our local governments to begin to modernize and streamline all facets of recordation and elevate notice, transparency, and certainty to its proper place.

James, Mary-Dulany Senator

From: Enten, D. Robert <denten@gflaw.com>
Sent: Thursday, March 16, 2023 11:30 AM
To: James, Mary-Dulany Senator
Subject: SB971

See email below to Biil O'Connell.

Bill, The Maryland Circuit Court Clerks' Association supports this legislation. A special Thank You goes out to Sen James for asking for our position. Please pass that along if you could.

Thank you,
Katherine

Katherine B. Hager
Clerk of Court
Circuit Court for Queen Anne's County
200 N. Commerce Street
Centreville, MD. 21617
410-758-1773 x5116
Katherine.Hager@mdcourts.gov

D. Robert Enten
Gordon Feinblatt
1001 Fleet Street
Suite 700
Baltimore, Maryland 21202
Office: 410 576 4114
Cellular: 410 790 8409
Fax: 410 576 4196
denten@gflaw.com
www.gflaw.com

We are have moved!

Effective April 19, 2021, we moved our offices, mailing address and center of remote operations to 1001 Fleet Street, Suite 700, Baltimore, MD 21202. Our email addresses and phone numbers are unchanged.

The information supplied in this message may be legally privileged. If you are the intended recipient of this message, the sender does not intend delivery to you to waive any privilege or right pertaining to this message. If you have received this message in error, please immediately notify the sender by return e-mail, and delete the errant message. Thank you.

transaction. Frequently, the settlement company will hold back from the settlement proceeds the amount of money that it thinks will be necessary to satisfy the liens and claims of the jurisdiction where the property is located.

Some of the problems with the current system are explained in further detail below. While the entire process should be overhauled, with 24 jurisdictions and 24 different ways of doing things, that would be difficult without a concerted effort by all stakeholders. Instead, as a meaningful first step, we propose some modest changes that we hope will lead to cooperation by all stakeholders to fix our antiquated system.

A. Prerequisites To Recording Documents

Prerequisites to recording documents can be found in RP §3–104. This code section contains about 80 provisions. This paper will focus on the several most responsible for rejections:

B. The Most Common Reasons for Recording Rejections

1. Pay Open Assessments

RP §3–104(a)(1) states that “[t]he Clerk of the Circuit Court may record an instrument that effects a change of ownership if the instrument is: (i) Endorsed with the certificate of the collector of taxes of the county in which the property is assessed. . . .”

All public taxes, and if applicable, special assessments, special district taxes, public water and sewer assessments, front foot benefit charges, personal property taxes, hotel taxes, rollback or recapture taxes, local town or city taxes and municipal fees due and owing on the property must be paid in full to the treasurer, tax collector, or director of finance of the jurisdiction in which the property is assessed.

Obtaining the amounts due often takes *herculean* effort. Six jurisdictions require purchasing official lien certificates. Four have optional certificates or tax reports. These lien certificates or tax reports typically contain only the basic real property tax information. Few include any other additional fees or charges that may need to be remitted in order to record a document. Seventeen jurisdictions have incorporated municipalities that must be separately contacted. Some require special water readings. Some have special forms in addition to the Maryland Land Intake Sheet. Some jurisdictions have separate utility companies owned by municipalities that you must contact directly. Some may have various departments under one roof, but you need to contact each individual department to inquire about charges and obtain a sign off. All have different turnaround times (from as little as three days to two weeks, and most recently in Baltimore City six weeks or more) and varying expiration dates.

Not all necessary information is available through online systems. Information provided online does not prevent jurisdictions from demanding fees or assessments not showing in the system. Surprises at the county finance level happen frequently. Sometimes, the County will create a new bill (even when you obtain their voluntary lien certificate) once it receives the deed attempting to transfer title to a

property and will refuse to process the deed until such new, undisclosed, and undiscoverable “lien” is paid in full.

The problem with all this, as noted above, is that the money on deposit with settlement company has already been disbursed or allocated to expected expenses, and there are no funds left from which to pay these hidden charges. The settlement company is left in the untenable position of trying to collect after the “closing” the additional sums from the responsible party before the deed is recorded or paying the hidden charges and trying to thereafter collect from a party who may then claim that it “has no money,” or arguing with the jurisdiction that rejected the deed, which goes nowhere.

The real estate settlement industry is responsible for collecting countless billions of dollars on behalf of the State and local governments each year for which the State and local governments pay nothing. Is it fair to make settlement companies the guarantor of hidden or undisclosed charges? Is it unreasonable to demand that each jurisdiction state promptly after request what must be paid to transfer title and allow the settlement companies to rely on such statement? If a mistake is made and the jurisdiction does not request all of the funds to which it might be entitled, the jurisdiction could demand payment from the responsible party (usually the seller) after the deed has been recorded, but that should not hold up recording or prevent a *bona fide* purchaser from obtaining record title to the property. .

2. *Recording v. e-Recording*

Maryland began allowing electronic recording in some jurisdictions in 2015, and because of the pandemic that last remaining counties have now embraced it. Only simple recording packages can be e-recorded. As noted above, for a basic residential real estate transaction, if the documents are e-recorded, the documents could make it to record in as little as a day or two, or as long as a month or more.

But most commercial transactions are not eligible to be processed in the e-recording system, and thus, must be presented in person or by overnight mail (e.g., FedEx, UPS, DHL etc. . .). If presented in person, recording can be accomplished on the same day in some jurisdictions, but in others the documents must be left at each stop. Two or three office stops (Town, County Finance, Clerk of Court) is normal and can add hours of travel between the offices. Some jurisdictions require you to drop off the package and wait for clerks to get to yours for review. The delay between drop off and processing varies based on jurisdiction, time of year and the complexities of the recording package. It can be a few days or months if there is a problem. Often one does not learn that a document has been rejected for several weeks.

C. **A Modest Proposal to Correct Some of the Problems**

This paper has highlighted some of the challenges to successful recording in Maryland but does not cover every pitfall. The process is complicated even if there are no hidden fees or rejections based on a county’s view of the transaction. The real estate settlement industry has noticed that the Clerks and

the Finance Offices often do not work together to improve the process. And thus, we propose to change the word “may” to “shall” in RP§ 3-703 (i.e., the Electronic Recording Act) which states in relevant part (with the proposed change shown):

(a) In this section, “paper document” means a document received by the clerk of a circuit court in a form that is not electronic.

(b) In compliance with any standards established by the Administrative Office of the Courts, the clerk of a circuit court: . . .

(7) ~~May~~ SHALL agree with other State or county officials on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording documents or the electronic payment of fees or taxes.

(c) The State Department of Assessments and Taxation or a county ~~may~~ SHALL: . . .

(2) Agree with the clerk of a circuit court or other State official on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording documents or the electronic payment of fees or taxes.

The second proposed change is to require each jurisdiction to provide a timely lien certification that can be relied on to show all charges and fees assessed against the property and prevent recording rejections based on charges not shown on the lien certificate. In exchange, the jurisdictions may charge a modest fee to cover the cost of producing such certificates.

Thus, the real estate settlement industry proposes adding such a requirement with the addition to RP § 3-104 of a new section (b)(2)(iii) stating:

(iii) THE DIRECTOR OF FINANCE, OR HIS OR HER DESIGNEE, FOR EACH COUNTY SHALL MAKE PROVISIONS FOR:

(1) THE TIMELY, SYSTEMATIC, AND RELIABLE COLLECTION OF ACCURATE DATA IN REGARD TO ALL COUNTY AND MUNICIPAL, IF APPLICABLE, CHARGES OR ASSESSMENTS AFFECTING ANY PARTICULAR PIECE OF REAL PROPERTY SITUATE IN THE COUNTY; AND

(2) THE ISSUANCE WITHIN FIVE BUSINESS DAYS OF RECEIPT OF THE APPLICATION OF ANY PERSON TENDERING A FEE OF \$55 FOR EACH SEPARATE PIECE OF PROPERTY INQUIRED ABOUT, OF A CERTIFICATE SHOWING PLAINLY AND ACCURATELY THE KIND AND AMOUNT OF ALL SUCH CHARGES OR ASSESSMENTS AGAINST SUCH PARTICULAR PIECE OF PROPERTY THAT WILL BE REQUIRED TO OBTAIN THE ENDORSEMENT CONTEMPLATED IN SECTION (II).

(3) SUCH CERTIFICATE HEREBY PROVIDED TO BE ISSUED, WHEN ISSUED, SHALL BE AND BECOME EFFECTUAL IN FAVOR OF EVERY BONA FIDE PURCHASER FOR

VALUE AND WITHOUT NOTICE TO BAR ANY CLAIM THEREAFTER, FOR AND ON ACCOUNT OF ANY CHARGE OR ASSESSMENT AGAINST ANY PARTICULAR PIECE OF PROPERTY, PRECLUDED BY THE FACT OF SAID CERTIFICATE;

(4) SUCH CERTIFICATE SHALL BE ACCEPTED BY THE COLLECTING AGENT IF PRESENTED WITHIN 45 DAYS OF ISSUANCE WHO SHALL ENDORSE THE DEED AS REQUIRED IN (III) AND UPON PAYMENT OF ALL CHARGES SET FORTH IN SAID CERTIFICATE ALONG WITH ANY APPLICABLE TRANSFER AND RECORDATION TAXES.

(5) NEITHER THE PAYMENT OF THE SAID FEE NOR THE ISSUANCE OF SUCH CERTIFICATE MENTIONED SHALL IN ANY EVENT BE HELD TO PRECLUDE THE CLAIM BY THE COUNTY TO ANY CHARGE OR ASSESSMENT AS AGAINST THE OWNER OF THE PROPERTY AT THE TIME SUCH CERTIFICATE AS IS HEREIN PROVIDED FOR IS APPLIED FOR AND ISSUED OR ANY PERSON ACQUIRING SAID PROPERTY WITH KNOWLEDGE OF SUCH CLAIM.

This proposed addition to RP § 3-104 is modeled after Baltimore City Code Article 28, Section § 2-3, which says in relevant part, “The Director of Finance, through the Chief Clerk in charge of said Bureau, to be appointed as aforesaid, shall make provisions for: (1) the systematic and reliable collection of accurate data in regard to all municipal charges or assessments affecting any particular piece of real property situate in the City of Baltimore; and (2) the issuance, upon the application of any person tendering a fee . . . for each separate piece of property inquired about, of a certificate showing plainly and accurately the kind and amount of all such charges or assessments against such particular piece of property. . . . Said certificate hereby provided to be issued, when issued, shall be and become effectual in favor of every bona fide purchaser for value and without notice to bar any claim thereafter, for and on account of any charge or assessment against any particular piece of property, precluded by the fact of said certificate. . . .”

We recognize that this proposal will not cure all of the problems related to the recording process and delays in recording in Maryland, but we believe that this includes an important first step to doing so.