
To: Judicial Proceedings Committee (Senate)

From: Legislative Committee of the Real Property Section

Date: January 13, 2025 [Hearing Date January 15, 2025]

Subject: **SB 150 – Real Property – Recordation and Land Records – Requirements**

Position: **Support with Amendments**

The Real Property Section of the Maryland State Bar Association (MSBA) **Supports with Amendments, Senate Bill 150 – Real Property – Recordation and Land Records – Requirements.**

The Real Property Section has worked with the Circuit Court Clerks’ association and is supportive of its goals to ameliorate the process of recording documents in the Land Records and modernize the code to reflect the technological advances that have been made since the existing provisions of the code were enacted.

Bginning on Page 3, line 21 through page 4, line 5, the proposed bill seeks to amend Real Property Article, §3-104(e)(1) by adding the following provisions:

- “1. BE printed in not less than [eight–point] 10 POINT type and in black letters . . .
 2. INCLUDE AT LEAST A 3–INCH MARGIN AT THE TOP OF THE FIRST PAGE AND 1–INCH MARGINS ON ALL REMAINING SIDES OF EACH PAGE OF THE INSTRUMENT FOR OFFICIAL USE.
- (II) A CLERK MAY REFUSE TO RECORD AN INSTRUMENT THAT DOES NOT MEET THE REQUIREMENTS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH.

The Real Property Section understands that margins are intended to create a dedicated space for recording information so as to prevent such information from having to be printed on top of the content of the document and to prevent inadequate or ineffective scanning of a document submitted for recording. However, the attorney conducting the closing or submitting documents for recording does not always have the ability to create or format the documents presented to them for recording in order to complete the closing of the transaction. In addition, the closing attorney does not have the legal capacity to refuse to accept documents on the grounds that they do not meet Maryland standards for recording.

Many documents are standardized forms, (e.g., the standard FNMA/FHLMC deed of trust instrument used in most residential purchase transactions), which do not meet the margin requirements as the footer for each page is located within the last 1-inch margin.

There are already enough documents being rejected for recording. We do not need more rules that allow for rejection. A refusal to accept the document for recording would subject the title company or attorney that handled the closing, as well as its title insurer to potential liability to buyers, seller and lenders for failure to record or the resulting delay in recording while the matter is resolved and the document is recreated and re-executed in order to bring it into compliance. As Maryland is a Race-Notice recording state, these liabilities could be extensive.

Thus, the Real Property Section requests that the proposed provision be modified to read as follows:

“1. BE printed in not less than [eight–point] 10 POINT type and in black letters . . .

“2. INCLUDE AT LEAST A 3–INCH MARGIN AT THE TOP OF THE FIRST PAGE AND 1–INCH MARGINS ON ALL REMAINING SIDES OF EACH PAGE OF THE INSTRUMENT FOR OFFICIAL USE.

(II) A CLERK MAY REFUSE TO RECORD AN INSTRUMENT THAT DOES NOT MEET THE REQUIREMENTS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH WILL NOT BE LIABLE FOR THE FAILURE OF A DOCUMENT THAT DOES NOT MEET THE REQUIREMENTS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH TO BE EFFECTIVELY SCANNED OR PRESERVED FOR RECORD.

In addition, on page 10, lines 23-25, the proposed bill seeks to amend Real Property Article, §3-302(a)(2) by adding the following provisions:

(3) The clerk shall index every deed or other instrument [retaining a vendor’s lien both as a deed and as a vendor’s lien,] in the same manner as mortgages are indexed.

If “retaining a vendor’s lien both as a deed and as a vendor’s lien” is removed from the provision, paragraph 3 will lose its meaning and simply restate what is required in the provisions above it. A “Vendor” is any person who makes a sale of property by means of a land installment contract.” (Real Property Article, §10-101(f).) A “Vendor” is also a “seller”. (Real Property Article, §1-101(n).) Thus, a “vendor’s lien” is a seller “take back” mortgage or deed of trust. (See Real Property Article, §3-107.) In essence, the purchaser borrows the money from the seller to purchase the seller’s property and such loan is secured by mortgage or deed of trust. If the statute is amended as proposed, it will lose its meaning. As such, the code should remain as set forth in current law and the deletion brackets removed from the proposed bill, to wit:

(3) The clerk shall index every deed or other instrument {retaining a vendor’s lien both as a deed and as a vendor’s lien,} in the same manner as mortgages are indexed.

For these reasons, the Real Property Section of the MSBA **supports with amendments Senate Bill 150 and asks for a favorable with amendments report.** Thank you for your consideration.