

CHAPTER 20

(Senate Bill 220)

AN ACT concerning

Real Property – Release of Mortgage, ~~Security Instrument, or~~ Deed of Trust, or Lien Instrument

FOR the purpose of authorizing ~~a security instrument to be released in a certain manner; altering the procedures by which a mortgage, security instrument, or deed of trust may be released when the party whose debt is satisfied fails to provide a release; altering the persons who are authorized to prepare and record a certain release and affidavit; authorizing, under certain conditions, the release of a mortgage, security instrument, or deed of trust when the debt secured by the mortgage or deed of trust is paid fully or satisfied by wire transfer; providing a form for a certain affidavit~~ certain persons to prepare and record a statutory release affidavit when the debt secured by a mortgage, deed of trust, or lien instrument is paid fully or satisfied and the party satisfied fails to provide a release suitable for recording; providing for the effect of a statutory release affidavit; requiring a person to send a certain notice in a certain manner to the party satisfied and allow a certain waiting period before recording a statutory release affidavit; requiring a statutory release affidavit to be in a certain form and be accompanied by certain evidence of payment; making a certain technical correction; defining a certain term; and generally relating to recording of releases of mortgages, ~~security instruments, and~~ deeds of trust, and lien instruments.

BY repealing and reenacting, with amendments,
 Article – Real Property
 Section 3–105(a) and ~~(d)(3)~~ (i)
 Annotated Code of Maryland
 (2003 Replacement Volume and 2006 Supplement)

BY adding to
Article – Real Property
Section 3–105.2
Annotated Code of Maryland
(2003 Replacement Volume and 2006 Supplement)

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

Article - Real Property

3-105.

(a) A mortgage, ~~SECURITY INSTRUMENT~~, or deed of trust may be released validly by any procedure enumerated in this section **OR § 3-105.2 OF THIS SUBTITLE.**

(i) Unless otherwise expressly provided in the release, a full or partial release that is recorded for a mortgage or deed of trust, or for any re-recording, amendment, modification, or supplemental instrument to the mortgage or deed of trust shall terminate or partially release any related [financial] FINANCING statements, but only to the extent that the financing statements describe fixtures that are part of the collateral described in the full or partial release.

3-105.2.

(A) IN THIS SECTION, "LIEN INSTRUMENT" MEANS:

(1) A LIEN CREATED UNDER THE MARYLAND CONTRACT LIEN ACT;

(2) AN INSTRUMENT CREATING OR AUTHORIZING THE CREATION OF A LIEN IN FAVOR OF A HOMEOWNERS' ASSOCIATION, A CONDOMINIUM COUNCIL OF UNIT OWNERS, A PROPERTY OWNERS ASSOCIATION, OR A COMMUNITY ASSOCIATION;

(3) A SECURITY AGREEMENT; OR

(4) A VENDOR'S LIEN.

(B) A MORTGAGE, DEED OF TRUST, OR LIEN INSTRUMENT MAY BE RELEASED VALIDLY IN ACCORDANCE WITH THIS SECTION.

(C) WHEN THE DEBT SECURED BY A MORTGAGE, DEED OF TRUST, OR LIEN INSTRUMENT IS PAID FULLY OR SATISFIED BY A SETTLEMENT AGENT LICENSED BY THE MARYLAND INSURANCE ADMINISTRATION AS A TITLE

INSURANCE PRODUCER UNDER TITLE 10, SUBTITLE 1 OF THE INSURANCE ARTICLE, A TITLE INSURER, OR A LAWYER ADMITTED TO THE MARYLAND BAR, AND THE PARTY SATISFIED FAILS TO PROVIDE A RELEASE SUITABLE FOR RECORDING, THE SETTLEMENT AGENT, TITLE INSURER, OR LAWYER MAY PREPARE AND RECORD A STATUTORY RELEASE AFFIDAVIT THAT:

(1) MAY BE RECEIVED BY THE CLERK AND INDEXED AND RECORDED AS ANY OTHER INSTRUMENT IN THE NATURE OF A RELEASE OR CERTIFICATE OF SATISFACTION; AND

(2) HAS THE SAME EFFECT AS A RELEASE OF THE PROPERTY FOR WHICH THE MORTGAGE, DEED OF TRUST, OR LIEN INSTRUMENT IS THE SECURITY, AS IF A RELEASE WERE EXECUTED BY THE MORTGAGEE, NAMED TRUSTEES, OR SECURED PARTY.

(D) BEFORE THE SETTLEMENT AGENT, TITLE INSURER, OR LAWYER MAY RECORD A STATUTORY RELEASE AFFIDAVIT UNDER THIS SECTION, THAT PERSON SHALL:

(1) ALLOW AT LEAST A 60-DAY WAITING PERIOD FROM THE DATE THE MORTGAGE, DEED OF TRUST, OR LIEN INSTRUMENT IS PAID FULLY OR SATISFIED FOR THE PARTY SATISFIED TO PROVIDE A RELEASE SUITABLE FOR RECORDING;

(2) SEND BY CERTIFIED MAIL, WITH OR WITHOUT A RETURN RECEIPT, TO THE PARTY SATISFIED:

(I) A COPY OF THIS SECTION;

(II) A COPY OF THE PROPOSED STATUTORY RELEASE AFFIDAVIT THAT THE PERSON INTENDS TO RECORD; AND

(III) A NOTICE THAT UNLESS A RELEASE SUITABLE FOR RECORDING IS PROVIDED WITHIN 30 DAYS, THE PERSON WILL OBTAIN A RELEASE IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION;

(3) AFTER THE MAILING OF THE NOTICE UNDER ITEM (2) OF THIS SUBSECTION, ALLOW AN ADDITIONAL WAITING PERIOD OF AT LEAST 30 DAYS FOR THE PARTY SATISFIED TO PROVIDE A RELEASE SUITABLE FOR RECORDING.

(E) A STATUTORY RELEASE AFFIDAVIT RECORDED UNDER THIS SECTION SHALL:

(1) BE IN SUBSTANTIALLY THE FOLLOWING FORM:

“STATUTORY RELEASE AFFIDAVIT

I HEREBY DECLARE OR AFFIRM, UNDER THE PENALTIES OF PERJURY, THAT:

(1) ON (INSERT DATE), I CAUSED TO BE PAID OFF THE DEBT SECURED BY THE MORTGAGE, DEED OF TRUST, OR LIEN INSTRUMENT, FOUND IN LIBER/BOOK _____, AT FOLIO/PAGE _____, IN THE LAND RECORDS OF _____ COUNTY/BALTIMORE CITY, MARYLAND.

(2) I OBTAINED A WRITTEN PAYOFF STATEMENT FROM THE PERSON TO WHOM THE DEBT WAS OWED OR THE PERSON’S AGENT, THE FUNDS PAID TO THE PERSON OR THE PERSON’S AGENT WERE SUFFICIENT TO PAY OFF THE DEBT IN FULL, AND, AS AUTHORIZED BY THE OBLIGOR ON THE ACCOUNT, I INSTRUCTED THE PERSON OR THE PERSON’S AGENT TO CLOSE THE ACCOUNT.

(3) ON (INSERT DATE), I SENT THE NOTICE REQUIRED UNDER § 3-105.2(D)(2) OF THE REAL PROPERTY ARTICLE TO THE PERSON SATISFIED BY CERTIFIED MAIL.

(4) THE PERSON SATISFIED HAS FAILED TO PROVIDE A RELEASE SUITABLE FOR RECORDING.

(5) I AM:

_____ A SETTLEMENT AGENT WHO HOLDS A TITLE INSURANCE PRODUCER LICENSE IN GOOD STANDING FROM THE MARYLAND INSURANCE ADMINISTRATION;

_____ AN OFFICER OF A TITLE INSURER; OR

_____ A MEMBER OF THE MARYLAND BAR.

(6) THE PAYOFF OF THE DEBT WAS ACCOMPLISHED BY:

THE ORIGINAL CHECK, WRITTEN ON AN ESCROW ACCOUNT CONTROLLED BY THE UNDERSIGNED INDIVIDUAL, WHICH IS ATTACHED TO THIS AFFIDAVIT AND INCORPORATED BY REFERENCE;

A CHECK, WRITTEN ON AN ESCROW ACCOUNT CONTROLLED BY THE UNDERSIGNED INDIVIDUAL, A CHECK FACSIMILE OF WHICH IS ATTACHED TO THIS AFFIDAVIT AND INCORPORATED BY REFERENCE, AND WHICH HAS BEEN CERTIFIED AS A TRUE COPY OF THE ORIGINAL CHECK BY THE ISSUING BANK; OR

A WIRE TRANSFER, THE WIRE TRANSFER REMITTANCE ADVICE FOR WHICH CONTAINS THE INFORMATION REQUIRED UNDER § 3-105.2(E)(2)(III)2 OF THE REAL PROPERTY ARTICLE AND IS ATTACHED TO THIS AFFIDAVIT AND INCORPORATED BY REFERENCE.

(SIGNATURE)

(PRINTED OR TYPED NAME)

(DATE)''

; AND

(2) BE ACCOMPANIED BY:

(I) THE CANCELED CHECK EVIDENCING FINAL PAYMENT, WHICH SHALL CONTAIN THE NAME OF THE PARTY WHOSE DEBT IS BEING SATISFIED, THE DEBT ACCOUNT NUMBER, IF ANY, AND WORDS INDICATING THAT THE CHECK IS INTENDED AS PAYMENT IN FULL OF THE DEBT BEING SATISFIED;

(II) IF THE CANCELED CHECK IS UNAVAILABLE, A CHECK FACSIMILE, AS DEFINED IN § 5-513 OF THE FINANCIAL INSTITUTIONS ARTICLE, THAT CONTAINS THE INFORMATION REQUIRED UNDER ITEM (I) OF THIS ITEM, ACCOMPANIED BY A CERTIFICATION FROM AN AUTHORIZED AGENT OF THE INSTITUTION ON WHICH THE CHECK WAS DRAWN STATING THE CHECK FACSIMILE IS A TRUE AND GENUINE IMAGE OF THE ORIGINAL CHECK; OR

(III) IF THE DEBT SECURING THE MORTGAGE, DEED OF TRUST, OR LIEN INSTRUMENT WAS PAID OFF BY A WIRE TRANSFER, THE WIRE TRANSFER REMITTANCE ADVICE, WHICH SHALL:

1. BE ACCOMPANIED BY A CERTIFICATION FROM AN AUTHORIZED AGENT OF THE INSTITUTION FROM WHICH THE WIRE TRANSFER WAS INITIATED STATING THAT THE DOCUMENT IS A TRUE AND GENUINE IMAGE OF THE ORIGINAL WIRE TRANSFER CONFIRMATION ORDER ISSUED BY THE INSTITUTION; AND

2. CONTAIN THE NAME OF THE PERSON FOR WHOM THE PAYOFF WAS MADE, THE NAME OF THE INSTITUTION THAT WAS PAID THE MONEY, A TRUNCATED VERSION OF THE NUMBER OF THE ACCOUNT FROM WHICH THE FUNDS WERE TRANSFERRED, A TRUNCATED VERSION OF THE NUMBER OF THE ACCOUNT TO WHICH THE FUNDS WERE TRANSFERRED, THE FEDERAL RESERVE BANK'S REFERENCE NUMBERS FOR THE WIRE TRANSFER, THE LOAN NUMBER FOR THE NOTE THAT WAS PAID OFF, THE AMOUNT OF THE PAYOFF MADE BY THE WIRE TRANSFER, AND THE DATE AND TIME OF THE WIRE TRANSFER.

~~(d) (3) When the debt secured by a mortgage, SECURITY INSTRUMENT, or deed of trust is paid fully or satisfied [, and the canceled check evidencing final payment or, if the canceled check is unavailable, a copy of the canceled check accompanied by a certificate from the institution on which the check was drawn stating that the copy is a true and genuine image of the original check is presented, it] BY A SETTLEMENT AGENT LICENSED BY THE MARYLAND INSURANCE ADMINISTRATION AS A TITLE INSURANCE PRODUCER UNDER TITLE 10, SUBTITLE 1 OF THE INSURANCE ARTICLE, THE SETTLEMENT AGENT MAY PREPARE AND RECORD A SETTLEMENT AGENT'S RELEASE THAT may be received by the clerk and indexed and recorded as any other instrument in the nature of a release[. The canceled check or copy accompanied by the certificate] OR CERTIFICATE OF SATISFACTION AND has the same effect as a release of the property for which the mortgage, SECURITY INSTRUMENT, or deed of trust is the security, as if a release were executed by the [mortgagee] SECURED PARTY or named trustees, if:~~

~~(i) The [party making satisfaction of the mortgage or deed of trust] SETTLEMENT AGENT has:~~

~~1. Allowed at least a 60-day waiting period, from the date the mortgage, SECURITY INSTRUMENT, or deed of trust is paid fully or is satisfied, for the party satisfied to provide a release suitable for recording;~~

~~2. Sent the party satisfied a copy of this section and a notice that, unless a release is provided within 30 days, the [party making satisfaction] SETTLEMENT AGENT will obtain a release by utilizing the provisions of this paragraph; and~~

~~3. Following the mailing of the notice required under sub-subparagraph 2 of this subparagraph, allowed an additional waiting period of at least 30 days for the party satisfied to provide a release suitable for recording; and~~

~~(ii) The SETTLEMENT AGENT'S RELEASE IS ACCOMPANIED BY:~~

~~1. A. THE canceled check EVIDENCING FINAL PAYMENT, WHICH SHALL CONTAIN THE NAME OF THE PARTY WHOSE DEBT IS BEING SATISFIED, THE DEBT ACCOUNT NUMBER, IF ANY, AND WORDS INDICATING THAT THE CHECK IS INTENDED AS PAYMENT IN FULL OF THE DEBT BEING SATISFIED; or~~

~~B. IF THE CANCELED CHECK IS UNAVAILABLE, A copy OF THE CANCELED CHECK FROM THE REMITTER'S BANK THAT CONTAINS THE INFORMATION REQUIRED UNDER ITEM A OF THIS ITEM AND THAT CONFORMS TO THE PROVISIONS OF THE FEDERAL CHECK 21 ACT, P.L. 108-100, accompanied by [the certificate contains the name of the party whose debt is being satisfied, the debt account number, if any, and words indicating that the check is intended as payment in full of the debt being satisfied] A CERTIFICATION FROM AN AUTHORIZED AGENT OF THE INSTITUTION ON WHICH THE CHECK WAS DRAWN STATING THE COPY IS A TRUE AND GENUINE IMAGE OF THE ORIGINAL CHECK;~~

~~2. IF THE NOTE SECURING THE MORTGAGE, SECURITY INSTRUMENT, OR DEED OF TRUST WAS PAID OFF BY A WIRE TRANSFER, THE WIRE TRANSFER ADVICE, WHICH SHALL:~~

~~A. BE ACCOMPANIED BY A CERTIFICATION FROM AN AUTHORIZED AGENT OF THE INSTITUTION ON WHICH THE WIRE TRANSFER WAS DRAWN STATING THAT THE DOCUMENT IS A TRUE AND GENUINE IMAGE OF THE~~

~~ORIGINAL WIRE TRANSFER CONFIRMATION ORDER ISSUED BY THE INSTITUTION; AND~~

~~B. CONTAIN THE NAME OF THE PERSON FOR WHOM THE PAYOFF WAS MADE, THE NAME OF THE INSTITUTION THAT WAS PAID THE MONEY, THE NUMBER OF THE ACCOUNT FROM WHICH THE FUNDS WERE TRANSFERRED, THE FEDERAL RESERVE BANK'S REFERENCE NUMBER FOR THE WIRE TRANSFER, THE LOAN NUMBER FOR THE NOTE THAT WAS PAID OFF, THE AMOUNT OF THE PAYOFF MADE BY THE WIRE TRANSFER, AND THE DATE AND TIME OF THE WIRE TRANSFER; and~~

~~[(iii)] 3. [There is attached to the canceled check or copy accompanied by the certificate an] AN affidavit [made by a member of the Maryland Bar that the mortgage or deed of trust has been satisfied, that the notice required under subparagraph (i) of this paragraph has been sent, and specifically setting forth the land record reference where the original mortgage or deed of trust is recorded] IN THE FOLLOWING FORM:~~

~~"SETTLEMENT AGENT'S AFFIDAVIT~~

~~I HEREBY DECLARE OR AFFIRM, UNDER THE PENALTIES OF PERJURY, THAT:~~

~~(1) I HAVE CAUSED TO BE PAID OFF THE NOTE SECURING THE MORTGAGE, SECURITY INSTRUMENT, OR DEED OF TRUST FOUND IN LIBER/BOOK _____, AT FOLIO/PAGE _____, IN THE LAND RECORDS OF _____ COUNTY/BALTIMORE CITY, MARYLAND.~~

~~(2) I OBTAINED A WRITTEN PAYOFF STATEMENT FROM THE INSTITUTION HOLDING THE NOTE AND THE FUNDS PAID TO THE INSTITUTION WERE SUFFICIENT TO PAY OFF THE NOTE IN FULL.~~

~~(3) ON _____, 200_, I SENT THE INSTITUTION THE NOTICE REQUIRED UNDER § 3-105(D)(3)(I) OF THE REAL PROPERTY ARTICLE.~~

~~(4) I AM A SETTLEMENT AGENT WITH A RESIDENT INDIVIDUAL TITLE INSURANCE PRODUCER OR FIRM RESIDENT TITLE INSURANCE PRODUCER LICENSE IN GOOD STANDING FROM THE MARYLAND INSURANCE ADMINISTRATION.~~

~~(5) THE PAYOFF OF THE NOTE WAS ACCOMPLISHED BY (CHECK ONE):~~

~~THE ORIGINAL CHECK, WRITTEN ON AN ESCROW ACCOUNT CONTROLLED BY THE UNDERSIGNED SETTLEMENT AGENT, WHICH IS ATTACHED TO THIS AFFIDAVIT AND INCORPORATED BY REFERENCE;~~

~~A CHECK, WRITTEN ON AN ESCROW ACCOUNT CONTROLLED BY THE UNDERSIGNED SETTLEMENT AGENT, A COPY OF WHICH IS ATTACHED TO THIS AFFIDAVIT AND INCORPORATED BY REFERENCE, AND WHICH CONFORMS TO THE REQUIREMENTS OF THE FEDERAL CHECK 21 ACT AND HAS BEEN CERTIFIED AS A TRUE COPY OF THE ORIGINAL CHECK BY THE ISSUING BANK; OR~~

~~A WIRE TRANSFER, THE WIRE TRANSFER REMITTANCE ADVICE FOR WHICH CONTAINS THE INFORMATION REQUIRED UNDER § 3-105(D)(3)(H)2 OF THE REAL PROPERTY ARTICLE AND IS ATTACHED TO THIS AFFIDAVIT AND INCORPORATED BY REFERENCE.~~

~~_____
(SIGNATURE)~~

~~_____
(PRINTED OR TYPED NAME)~~

~~TITLE INSURANCE PRODUCER LICENSE NUMBER"~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2007.

Approved by the Governor, April 10, 2007.