

"FOR the purpose of permitting, under certain circumstances, a mortgage to be indexed and recorded when marked 'paid or canceled' and allowing the mortgage to act as a release."
(Emphasis added.)

The bill proposes to amend § 3-105 of the Real Property Article, by adding the following new subsection (e):

"WHEN THE DEBT SECURED BY A MORTGAGE IS PAID FULLY OR SATISFIED, AND WHEN THE MORTGAGE PROVIDES FOR THE EXECUTION OF A SEPARATE MORTGAGE NOTE, BOND OR OTHER INSTRUMENT AS PART OF THE EVIDENCE OF THE INDEBTEDNESS, AND WHEN SUCH NOTE, BOND OR OTHER EVIDENCE OF THE TOTAL INDEBTEDNESS IS MARKED 'PAID' OR 'CANCELLED' BY THE HOLDER OR HIS AGENT, IT MAY BE RECEIVED BY THE CLERK AND INDEXED AND RECORDED AS ANY OTHER INSTRUMENT IN THE NATURE OF A RELEASE. THE MARKED NOTE, BOND OR OTHER EVIDENCE OF THE TOTAL INDEBTEDNESS HAS THE SAME EFFECT AS A RELEASE OF THE PROPERTY FOR WHICH IT IS THE SECURITY, AS IF A RELEASE WERE EXECUTED BY THE NAMED MORTGAGEE OR HIS ASSIGNEE, IF THERE IS ATTACHED TO OR ENDORSED ON THE NOTE AN AFFIDAVIT OF THE HOLDER, THE PARTY MAKING SATISFACTION [sic], OR AN AGENT OF EITHER OF THEM, THAT IT HAS BEEN PAID OR SATISFIED, AND SPECIFICALLY SETTING FORTH THE LAND RECORD REFERENCE WHERE THE ORIGINAL MORTGAGE IS RECORDED." (Emphasis added.)

Thus, while the title refers to the indexing and recording, by way of release, of a "mortgage" that has been marked "paid" or "cancelled", the new law would provide for the indexing and recording, by way of release, of a marked "separate mortgage note, bond or other instrument" that had been previously executed "as part of the evidence of indebtedness". 1/ Such a note, bond, or other instrument is not a "mortgage"; rather, it is a separate instrument that is, in turn, itself secured by a mortgage.

The release of a mortgage by means of an endorsement on and the filing of the original mortgage itself - to which the title apparently refers - is a procedure essentially provided for already in the present law, in § 3-105(b). It is evident that the purpose and intended effect of proposed new § 3-105(e) is to permit a mortgage to be released by means of the filing of a document other than the original mortgage - a purpose that is, unfortunately, not at all reflected in the title. 2/

For these reasons, we cannot approve Senate Bill 374 for constitutionality.