

E. What effect will all these problems have on the negotiability of the notes that are secured by the deed of trust?

Senate Bill 209 does not give answers to any of these problems. These types of problems are ones which led Paul L. Plack, Senior Vice President of The Title Guarantee Company, to write with respect to Senate Bill 209:

"The only effect S. B. No. 209 could accomplish is to hamstring the lenders with no real benefits to citizens of Maryland, and I would recommend the same be vetoed."

We submit that lenders should not be discouraged to lend money in Maryland by having restrictive statutes such as Senate Bill 209.

#### IV.

The apparent model on which this statute was allegedly based is a Virginia statute contained in 8 Va. Ann. Code (1950, 1969 Replacement Vol.), Section 55-58.1. Many of the problems referred to in this memorandum would have been solved automatically if the draftsmen of Senate Bill 209 had incorporated Virginia's entire statute. However, the draftsmen of Senate Bill 209 simply took one section of the Virginia statute and omitted the curative aspects of the Virginia statute, which would have relieved Senate Bill 209 from many of the more objectionable consequences.

For example, the Virginia statute goes on to state that the clerk of the land records shall not record a deed of trust if the instrument does not state the residence of the trustee. If the clerk does admit the instrument to record and it states that the trustee is a Virginia resident, the statute creates a conclusive irrebuttable presumption that the trustee is in fact a resident of Virginia. The Virginia statute further states that if the clerk should accept the deed of trust for record without a statement as to the residence of the trustee, the instrument will still be a valid instrument and all acts taken by the trustees will be valid. The inclusion of these provisions would have eliminated all of the enormous title problems that concern the real estate bar. A title searcher is not, in Virginia, constrained to make an independent determination of the residence of trustees of deeds of trust. He can rely on the irrebuttable statutory presumption that if the deed of trust has been recorded, he need not concern himself with the prohibition against non-residents. The elimination of this safeguard in the Maryland statute, especially when viewed in terms of the fact that the Maryland statute was ostensibly patterned on the Virginia statute, creates the strong inference that in Maryland, every time someone must search a title in which a deed of trust appears in the chain, an independent determination of residence will have to be made. This is hardly a salutary situation.

#### CONCLUSION

From the point of view of the practising real estate bar and those persons engaged in preserving the marketability of title to real estate, Senate Bill 209 is a very bad bill with extremely serious consequences. It deserves the same veto it received last year.

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