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Senate Committee Backs Bill to Simplify Clearance of Paid Mortgages

Mortgages Paid but Unrecorded: Legislation to the Rescue of Homeowners

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Members of the Senate Committee on Budget, Appropriations and Finance met on Monday to approve legislation that would, according to sponsor Senator Marise James, “aid in discharging mortgages which have been paid or presumed paid, but for which documentation of payment does not exist at the recorder of deeds.”

During her introduction of Bill 35-0099, Sen. James relied on her experience as a real estate attorney, explaining that “often, property owners believe that old mortgages that they have paid, or other instruments creating a security interest in real property to secure a debt, they think that it simply goes away with time.”

That is not the case, however. “When they purchase a property and they secure a loan, the lender places a mortgage on their property so that property has a lien on it and it exists until the mortgage is discharged. During a property sales transaction, any outstanding mortgages must be paid and recorded as satisfied. If they are not satisfied at closing, the buyer risks the newly purchased property being foreclosed by a pre-existing mortgage,” Sen. James said. Complicating matters further, “A title insurer may refuse to insure a property with an outstanding mortgage which cannot be recorded as satisfied or discharged,” the senator noted.

The bill would establish a time limit of five years, after which certain mortgages and other security interests would expire, thus releasing property that would otherwise be encumbered. This is not debt relief, Sen. James clarified, noting “this legislation is not intended to relieve mortgagors or borrowers from their obligation to repay the loan.” She then urged her colleagues to support the legislation, arguing that “it will help the sale of property to go smoothly in the Virgin Islands.”

Walt Frazer of the V.I. Territorial Association of Realtors testified in support of the measure, saying that he believes the legislation could “create more inventory for potential buyers, especially first-time home buyers who deserve more pathways to home ownership,” by removing “at least one roadblock for those utilizing a mortgage to purchase a home.”

He suggested adding an education component to mortgage closings, however. As they’re getting the mortgage, remind them of this process: when you pay this off, keep your paperwork, go in yourself.” Mr. Frazer believes that property owners should be reminded that they do not have to rely on the bank to inform the recorder of deeds that the mortgage is paid off.

Recorder of Deeds for St. Croix C. Portia Pierre requested that clarifying language be added to the draft legislation to state that, “the lien owner of the security interest shall be required to file written notice in the recorder of deed’s office where the instrument is recorded, that a lien, mortgage, deed of trust or any other instrument that creates a security interest has expired, failing which, the property owner may provide notice.”

As legal counsel in the Lieutenant Governor’s Office Nadia Harrigan explained, “We thought that it would be key that the lien holder file an actual notice with the recorder of deeds office. That puts the onus on banks or anybody that has a security interest to notify the recorder of deeds office that [it] has expired. If the lien owner does not do this, the property owner must do this.”

While Sen. James did not necessarily agree that the additional language was required, she expressed willingness to cooperate on the bill’s final text. “I think it’s an amendment we can work on together,” she said. Ms. Harrigan emphasized that there should be a “mechanism by which the recorder of deeds office would be notified that the lien or security interest has been discharged.”

Committee members seemed enthusiastic about the proposed measure, which Senator Marvin Blyden called “common sense legislation.” Senator Javan James Sr. inquired about the immediate course of action should the bill be signed into law, to which Ms. Pierre responded that a public education drive on releasing old mortgages would be a priority. Committee chair Senator Donna Frett-Gregory wondered whether the timeframe for the expiration of a security interest should be adjusted from 5 to 7 years to align with the national Fair Credit Reporting Act, a suggestion to which Ms. Harrigan said the Lieutenant Governor’s office was not opposed.

Ultimately, the bill was approved in committee and will now be vetted and presumably appropriately amended in the Committee on Rules and Judiciary.

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