

Memorandum in Support

REAL PROPERTY LAW SECTION

RPLS #10

May 17, 2013

S. 2312

By: Senator DeFrancisco
Senate Committee: Judiciary
Effective Date: 30th day after it shall have become a law

AN ACT to amend the real property law, in relation to allowing an assignment of mortgage in lieu of a certificate of discharge

LAW AND SECTIONS REFERRED TO: Amends subdivision 2 of section 275 of the Real Property Law by adding a new closing paragraph

THE REAL PROPERTY LAW SECTION SUPPORTS THIS LEGISLATION

Section 275 of the Real Property Law provides that, whenever a real property mortgage is due and payable, and the full amount of principal and interest due is paid, a certificate of discharge of mortgage shall be given to the mortgagor or person designated by the mortgagor.

Subdivision 2 of section 275 provides that the full amount due shall not be considered to be paid if the mortgage continues to secure a bona fide debt and an enforceable lien continues to exist. This subdivision then lists several situations in which this condition may occur and in these cases the mortgage may be assigned. One such situation is described in paragraph (c) of subdivision 2 as, “the refinancing of an existing loan with a new lender, such as where the original lender assigns a note and the mortgage securing its payment to another lender in return for consideration and such mortgage is consolidated with another mortgage which secures any funds advanced by the new lender to the mortgagor.”

Unfortunately, this paragraph is permissive and, unlike subdivision 1, is not mandatory. As a result, mortgagors who are refinancing existing mortgage debt with a new lender are unable to require the existing lender to deliver an assignment of the mortgage and such mortgagors must pay a part of their mortgage recording tax twice—once when they borrow the original mortgage debt and again when they refinance the same mortgage debt with a new lender. The fact that paragraph (c) is permissive means that it is regularly employed only by mortgagors who have bargaining power sufficient to compel or encourage the existing lender to execute and deliver an assignment instead of a certificate of discharge. This bill remedies this situation by permitting any mortgagor

who has paid their mortgage as part of a refinancing to demand either an assignment or a certificate of discharge. An assignment may be demanded only for refinancing an existing loan with a new lender.

Based on the foregoing, the Real Property Law Section **SUPPORTS** this legislation.

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