



Office of the Secretary of State

Task Force to Study the Recording of Deeds for Victims of Domestic Violence
Wednesday, April 19, 2017
10 a.m. to 11:30 a.m.
Fred L. Wineland Building, 16 Francis Street, Annapolis, Maryland 21401

Members in Attendance

John Wobensmith, Secretary of State, Task Force Chair

Senator Susan Lee, Sponsor of SB 1047

Anne Hoyer, Director of the Address Confidentiality Program

Josaphine Yuzuik, Assistant Attorney General

Kevin Swanson, Maryland State Archives

Tim Baker, Maryland State Archives

Michael Higgs, Acting Director of the State Department of Assessments and Taxation

Brett Dieck, the Law Office of Brett M. Dieck, LLC and Old Line Title Company, Inc.

Kathleen Blough, Circuit Court Clerks, Supervisor of Land Records Department

Dorothy Lennig, Attorney at House of Ruth Domestic Violence Legal Clinic

Frederick Smalls, Maryland Municipal League

Matthew Fox, Bankers Association

Michael Lore, Chief of Staff for Senator Lee

David Rawle, for the Secretary of Commerce

April Miller Maenner, Shelter Director, Cecil County Domestic Violence Rape Crisis Center

Other Attendees

Kelley Mitchell

Cathleen Moeller

Tanya Pinkney

Margaret Rath



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Jessica Binenstock
Brittany Luzader
Sarah Smalt

Expansion of the Address Confidentiality Program

While waiting for the rest of the task force to arrive, Ms. Hoyer outlined recent expansion to the Address Confidentiality Program (ACP) to include new staff and the collecting of demographic information on each new application per request of the Governor's Office of Crime Control and Prevention.

Opening Remarks

The Secretary opened the meeting by announcing that the Human Trafficking Task Force had been extended. Governor Hogan signed the bill the day before so the Safe Harbor Work Group will continue to meet for a third year. Secretary Wobensmith explained the need to focus our attention on the close relation between domestic violence and human trafficking. He requested any additions or corrections to the minutes from February's meeting. The minutes were approved. The Secretary introduced two ACP participants who were to address the task force.

Words from ACP Participants

The first ACP participant explained that Ms. Hoyer sought to create the Deed Recording Task Force because of the issue this participant ran into when she purchased her home. Because no system was in place to shield her information, she now feels completely unprotected. A quick search on the Internet revealed her name and address together on 50 different websites. She reiterated the importance of the task force not for her protection, as it is too late for that, but to protect others in the future, such as her daughter, also a survivor of domestic violence. She highlighted the fact that current laws give her abuser the right to her personal information, but she has no right to be protected. She expressed her appreciation for everyone serving on the task force.

The second ACP participant read several excerpts from the book she is writing detailing her experience as a victim of domestic violence in order to present the human side of the deed recording issue. Among her stories was one in which her violent ex-husband actually used public records to find someone who had crossed him. She ended by sharing her desire to put down roots and find stability by owning a home and not renting indefinitely, but how she knows she cannot do so until there is a way for her information to be protected.

The Secretary thanked the participants for highlighting deed recording as a real problem affecting people's lives. He requested the first presentations from the subgroups. Mr. Dieck volunteered.



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Pros and Cons of Minnesota's Model

Mr. Dieck reminded the task force that his subgroup joined with that of Mr. Swanson and Mr. Baker. They agreed that Minnesota's system is strong because it is upheld by their law; if violated, it is a crime. He sees this as a pro because of its strength, but also as a con because of due process concerns. A person may unknowingly violate this law, but still be subject to a criminal penalty. His concern is that it is not clear whether the misdemeanor in Minnesota's law is a per se violation of the law versus an intentional violation. He listed several other pros: the ACP participant has control regarding who can access their information; nothing can be shared without written consent so the participants enjoy peace of mind; the real property notice gives structure to the system and establishes a process in addition to alerting title abstractors and examiners when they should look out for something different; and the fact that names and addresses are kept separately in this system so it is not possible to attach a name to an address. Mr. Dieck then noted the cons of Minnesota's deed recording system: it would be a drastic change to the system already in place in Maryland affecting all the players; the fact that the address must be disclosed allows for the possibility of clerical error; lenders with competitive rates may choose not to participate with those whose addresses must be shielded; it is burdensome and requires more time for the participant; it assigns more duties for clerks and those in charge of land records- bringing up again the possibility of clerical error; it makes clerks liable for a misdemeanor; it potentially creates a gap in the land records system; it requires an additional step for title extractors and examiners since they must go through the Secretary of State's office for access to the information; lastly the issue of privatization of land records- shielding information goes against why the current system was set up publicly in the first place.

The Secretary asked if there had been any litigation for the issues raised. Mr. Dieck responded that there has been litigation on per se or knowing and cited drunk driving as an example. Senator Lee mentioned that misdemeanor for disclosure is the intent element for the penalty up to 90 days. Mr. Dieck suggested looking to see if any Minnesota litigation was on the books. Senator Lee wondered about gross negligence. Mr. Dieck responded that it was unclear from the Minnesota statute.

Trust Option

Mr. Fox brought up the trust option and why it would be a problem with down payment assistance or for those using the FHA assistance. He said that the FHA requires the name of the owner/occupant to be on the Deed of Trust. Mr. Lore reminded that the owner is the beneficiary and must be noted on the deed. Mr. Fox affirmed this, adding that it could not be a master trust, but an individual trust for each buyer. Mr. Dieck mentioned that the FHA is federal, so perhaps the same thing can be done as in Minnesota regarding compliance with the Patriot Act. Ms. Yuzuik added that the federal government agency, FinCEN, authorized an exemption for participants in address confidentiality programs (ACPs) from the usual USA PATRIOT Act requirement that people provide financial institutions, or banks, their actual residential address. Ms. Yuzuik questioned whether FHA would fall under this exemption and be considered a financial institution. Mr. Dieck remarked that the FHA is not the lender or the investor, but would have another institution, perhaps Wells Fargo as the loan servicer. They are just putting up the money. Mr. Fox said that while that is costly, a private loan is even more expensive.



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Shielding Information

Mr. Baker explained that upon request, they redact the handwritten social security number, but maintain the original. He said that whatever is out there for the public is redacted, so a similar system could be put into place for ACP participants. He suspects the number of requests would be manageable. He continued saying that anyone that needed to be shielded should be flagged in real time so they can be aware who is coming down the pike and redact the information before it is made public. Ms. Blough expressed her concern that the information is there when it is scanned unless it is the Elroy system. Mr. Baker worried that people can go to the courthouse to search the Elroy system. Mr. Lore said that Minnesota has a carve out for the courts. The Secretary asked Ms. Yuzuik to look into that. She agreed and continued to say that the Minnesota option does not create a cloud on title because it ensures further inquiry is necessary. Ms. Yuzuik further explained that the notice requires consent from ACP participants and that the title companies are aware of the issue. She agreed that it would be minimal burden on the current system because there are not thousands and thousands of participants who are seeking to purchase homes. She also suggested including protections as part of legislation to ensure unnecessary burdens are not placed upon the courts and the land recorders. Ms. Yuzuik elaborated on the trust option that the additional cost and burden it places on the State to preserve the victim's right to home ownership might not be warranted when a title searching system could be set up to shield information and permit access on a need to know basis. Since the trust option has so many issues, amending the current deed recording system is preferable. Ms. Blough shared her concern with Minnesota's system that the name is included in the grantor/grantee index. Ms. Yuzuik replied that in Maryland the participant's county would be accessible by pulling the land record. She is unaware of any way around that. She confirmed that in Minnesota, the name is included in the index, but not collocated with the address. The Secretary asked if Minnesota has had any problems with their shielding system. Ms. Hoyer reported no negative feedback from Minnesota.

Other Issues

The Secretary asked the other subgroups if there was anything else to be addressed. Ms. Yuzuik said that the Address Confidentiality Program would have to be expanded to 3rd parties. Ms. Hoyer agreed, stressing the importance of passing legislation to include private companies. Mr. Lore advised against recommending a 90 day misdemeanor for failure to accept the ACP provisions based upon the inability to pass similar legislation for failure to report child abuse. He suggested civil citation liability instead. Ms. Lennig wondered about intentionally disclosing the information, if a title company gives the address on purpose. Ms. Higgs said we could create a private cause of action. Senator Lee affirmed that we want a criminal penalty. Ms. Lennig suggested getting a group together to draft the statute and another group to examine the procedural issues in the clerk's office, to address the real life problems and take that back to the clerk's office. Senator Lee said that making something criminal gives it real teeth, but there must be intent. Ms. Yuzuik stated that the PIA also has a misdemeanor element for government officials who release information. The Secretary said that we first need to formulation legislation, then we can pick at it and make changes as needed. Ms. Lennig laughed that we have 260 days to do so. The Secretary replied that we do not want to wait that long since we need support in both the house and the senate and we have work to do educating people, especially regarding the outcome. Mr. Swanson asked if we had decided on some variation of Minnesota's model; that the trust model was completely out. The Secretary replied that everything seemed mostly positive from Minnesota's model, but that Ms. Yuzuik had pointed out several



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problems with the trust option. Mr. Dieck asked if we could speak with a liaison in Minnesota. He said that title searches are done by either name or address and questioned what Minnesota does if someone were to get a civil judgment and a creditor wants to attach a lien. Ms. Yuzuik responded that a judgment creditor has other tools to seek out assets and that the courts are subject to ACP provisions. In Minnesota, they can search by name and see that property is owned, but it does not disclose where. A judgment creditor must seek consent and the office of the Secretary of State must provide the information. She continued that the creditor can keep digging; it requires an extra step, but they can contact the Secretary of State. Also, protections can be written in allowing creditors to fully collect a debt. Mr. Dieck said that a judgment notice is subject to all protections. Many times, it is passive. After 30 days it is a lien, but in some counties it is not a lien unless indexed. He continued saying that when searching someone, they need to be sure that person does not have other property. In order to clarify a judgment or subpoena, one could get a judge to issue a court order. The Secretary asked Ms. Yuzuik and Mr. Dieck to get together, call Minnesota, then report back to the group once everything is sorted out. Ms. Hoyer added that Minnesota would be willing to come out and testify once we go for legislation. Mr. Lore asked if we should reach out to the FHA since they were able to make the necessary changes in Minnesota. Mr. Fox offered to look into that, and suggested a trust as an option in the meantime for participants while the changes to the current system are put into place. One of the ACP participants said that before buying her home she attempted the trust option, but it did not work because the lender would not lend to a trust even though he understood her situation and tried really hard to make it work. The discussion circled around the trust option once again until Ms. Yuzuik reminded that with all the uncertainty and potential issues, including too much intertwining of State and private, that a trust simply is not a viable option. Mr. Lore agreed, saying we can tell private entities to do certain things, like keeping information private, but we cannot tell them they must give a loan. Ms. Lennig added that there are so many advantages to the Minnesota option; while it is a change in the system, it is not a completely new system that needs to be implemented. The Secretary asked if anyone backed the trust option. Mr. Higgs said one positive about the trust option is that it is available right now, no need to wait on legislation.

Next Steps

Ms. Lennig suggested that the best thing to do is to get all the stakeholders together in the same room. The Secretary agreed that we should proceed, call Minnesota and get legislation together. Senator Lee said passing legislation is possible, but we are going to need all the stakeholders to be involved. Mr. Swanson said we need to make inquiries to Minnesota. Ms. Yuzuik will find out if they have had any criminal prosecution. Mr. Baker offered to be on the call to Minnesota. Mr. Rawle also volunteered. The Secretary asked if Mr. Lore was willing. He agreed. The Secretary urged the group to start drafting legislation. Ms. Yuzuik reminded that the General Assembly has a drafting office. Senator Lee recommended getting a sample together and offered to help should any issues arise. Mr. Lore said that April Morton (who attended the first deed recording meeting) is a drafter and that we can talk with her directly. Both Ms. Lennig and Mr. Dieck offered to take part in the drafting. The Secretary said we ought to call Minnesota soon, within the next couple of weeks. Ms. Hoyer requested input regarding the timeline for the next meeting. The group agreed on June.

Closing Remarks

The Secretary thanked the group and expressed special gratitude for the ACP participants who shared their experiences with everyone. The meeting adjourned at approximately 11:30 pm.