



**MONTANA ASSOCIATION
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STATE BUSINESS & INDUSTRY

SENATE BILL NO. 9

DATE 2/17/05

BILL NO. SB 466

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To: Glenn Oppel, Government Affairs Director, Montana Association of Realtors®
From: James A. Bowditch, General Counsel, Montana Association of Realtors®
Boone Karlberg P.C., Missoula, MT, jbowditch@boonekarlberg.com
Re: Senate Bill 466
Date: February 15, 2005

I have now reviewed Senate Bill 466 ("SB 466") and discussed it with some representatives of local title insurance companies. In fact SB 466 was requested by the Montana Land Title Association.

Apparently, title companies have had problems with certain lenders (called the beneficiary in a trust indenture) who are late in providing, or who do not provide at all, a request for reconveyance (a request from the lender to release the trust indenture) for a trust indenture that secures an obligation that the title company has paid or that the title company knows has been paid. This causes a problem in that it either postpones a closing until the request for reconveyance is received or forces the title company to exclude this trust indenture as an exception to the title report even though the trust indenture is still of record. This is a potential problem for title insurance companies and, to some extent, real estate licensees who have to endure postponed closings due to a lender's refusal to respond to a legitimate request to release their trust indenture.

SB 466 provides that a title insurer may reconvey a trust indenture if the obligation securing the trust indenture was paid by the title insurer or another title insurer. SB 466 also requires that the title insurer send notice to the lender requiring that the lender respond within 90 days by either recording a reconveyance or providing notice as to why the trust indenture should not be released by the title insurer.

The bill also contains some protections. First, a forged reconveyance is void. Second, a reconveyance does not, by itself, discharge the underlying obligation. Finally, a title insurer is liable to the lender for damages suffered by the lender if the obligation secured by the trust indenture was not paid in full, the title insurer did not comply with the sections concerning notice or the title insurer acted with gross negligence or in bad faith.

In general, I think SB 466 is a good bill that deserves the support of MAR. While it is primarily designed to provide title insurers with a method to handle unresponsive lenders, it should also eliminate some postponed closings that real estate licensees may have experienced.

