

1 SB347
2 140132-4
3 By Senators Scofield, Marsh, Waggoner, Allen, Holley,
4 Brewbaker, Reed, Whatley, Bussman, Sanford, Ward, Blackwell,
5 Figures, Glover, Beasley, Singleton, Fielding, Dunn, Coleman,
6 Orr, Smitherman, Keahey, Holtzclaw, Brooks and Taylor
7 RFD: Banking and Insurance
8 First Read: 21-FEB-12

1 SB347

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4 ENROLLED, An Act,

5 To adopt the Alabama Residential Mortgage
6 Satisfaction Act; to provide a method for a person liable for
7 payment or performance of the obligations secured by a
8 security interest, a mortgagor, or other entitled person to
9 request a payoff statement pursuant to proper notification; to
10 require a secured creditor, upon proper notification, to
11 comply with the request for a payoff statement within a
12 designated time period; to require secured creditors to record
13 mortgage satisfactions within a designated time period after
14 the occurrence of stated conditions; to provide remedies for
15 violations; to provide a title clearing remedy pursuant to the
16 use of an affidavit of satisfaction and a satisfaction agent;
17 and to amend Sections 35-10-26 and 35-10-30, Code of Alabama
18 1975, to conform those code sections to the act.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. (a) This act shall be known as the
21 Alabama Residential Mortgage Satisfaction Act. This act
22 applies only to mortgages securing residential real property
23 located in this state which is used primarily for personal,
24 family, or household purposes and is improved by one to four
25 dwelling units. Without limitation, this act does not apply to

1 mortgages on commercial or other types of property. This act
2 also does not apply to a security interest exclusively in one
3 or more fixtures as defined in Title 7, Article 9A, Code of
4 Alabama 1975.

5 (b) For purposes of this act, the following terms
6 shall have the following meanings:

7 (1) ENTITLED PERSON. The person or persons liable
8 for payment or performance of the obligation secured by the
9 real property described in a security instrument.

10 (2) EQUITY LINE SECURITY INSTRUMENT. A security
11 instrument securing, in whole or in part, indebtedness created
12 under a line of credit, a revolving or open-end credit
13 agreement, or a credit agreement that provides for future
14 advances. The credit agreement may be referred to in this act
15 as an "equity line" or an "equity line of credit."

16 (3) RESIDENTIAL REAL PROPERTY or REAL PROPERTY. Real
17 property located in this state which is used primarily for
18 personal, family, or household purposes and is improved by one
19 to four dwelling units.

20 (4) SECURED CREDITOR. At any particular time, the
21 person that currently holds or is the beneficiary of a
22 security interest or that is authorized both to receive
23 payments on behalf of a person that currently holds a security
24 interest and to record a satisfaction of the security
25 instrument upon receiving full performance of the secured

1 obligation. The term does not include a trustee under a
2 security instrument.

3 (5) SECURITY INSTRUMENT. A mortgage or other
4 agreement that creates or provides for an interest in
5 residential real property to secure payment or performance of
6 an obligation.

7 (6) SECURITY INTEREST. An interest in residential
8 real property created by a security instrument. For purposes
9 of this act, a security interest exclusively in one or more
10 fixtures, as defined in Title 7, Article 9A of the Code of
11 Alabama 1975, does not constitute an interest in residential
12 real property.

13 (7) SUBMIT FOR RECORDING. To deliver, with required
14 fees and taxes, a document, sufficient to be recorded, to the
15 judge of probate of the county in which the property is
16 located. For purposes of this act, without limitation,
17 mailing, delivering, or sending by overnight or other delivery
18 service a satisfaction of mortgage or other document to be
19 submitted for recording to the address of the office for
20 recording satisfactions of mortgages or other documents, as
21 applicable, is sufficient to constitute submission for
22 recording.

23 (8) TITLE INSURANCE COMPANY. An organization
24 authorized to conduct the business of insuring titles to real
25 property in this state and licensed by the Department of

1 Insurance as defined in subdivision (9) of Section 27-25-3,
2 Code of Alabama 1975.

3 Section 2. (a) A person liable for payment or
4 performance of the obligation secured by the real property
5 described in a security instrument who makes proper notice
6 pursuant to this section shall be entitled to receive a payoff
7 statement.

8 (b) Proper notice must contain all of the following:

9 (1) The entitled person's name.

10 (2) If given by a person other than an entitled
11 person, the name of the person giving the notification and a
12 statement, if required by the secured party evidence, that the
13 person is an authorized agent of the entitled person.

14 (3) The address to which the creditor must send the
15 statement.

16 (4) The account number assigned by the secured
17 creditor or other sufficient information to enable the
18 creditor to identify the secured obligation and the real
19 property encumbered by the security interest.

20 (5) If the secured obligation is an equity line, a
21 statement that the entitled person requests the secured
22 creditor to close the equity line upon receipt of full payment
23 of the equity line on the payoff date specified in the
24 notification and authorizes the secured creditor, at the
25 secured creditor's sole discretion and upon notification to

1 the entitled person or to the entitled person's authorized
2 agent, to suspend the extension of any additional amounts
3 under the equity line for a period of time prior to the payoff
4 date as designated by the secured creditor. Any payoff
5 statement on an equity line may qualify the payoff amount as
6 being subject to change.

7 (c) Within 14 days after the receipt of a
8 notification that complies with subsection (b), the secured
9 creditor shall issue a payoff statement. A secured creditor
10 may take reasonable measures to verify the identity of any
11 person acting on behalf of the entitled person and to obtain
12 the entitled person's authorization to release information to
13 that person before the 14-day time period begins. If a secured
14 obligation cannot be prepaid, a statement of that fact is
15 sufficient; otherwise, a payoff statement must contain, in
16 substance and with no particular phrasing required, the
17 following:

18 (1) The date on which it was prepared and the payoff
19 amount as of that date, including the amount of unpaid
20 principal, interest and fees, or other charges included within
21 the payoff amount.

22 (2) The information reasonably necessary to
23 calculate the payoff amount as of the requested payoff date,
24 including the per diem interest amount. This subdivision does
25 not apply to equity line security instruments.

1 (3) The payment cutoff time, if any, the address or
2 place where payment must be made, and any limitation as to the
3 authorized method of payment.

4 (d) A secured creditor may qualify a payoff amount
5 or state that it is subject to change before the payoff date
6 and provide in the payoff statement information sufficient to
7 permit the entitled person or the person's authorized agent to
8 request an updated payoff amount and to obtain that updated
9 payoff amount during the secured creditor's normal business
10 hours on the stated payoff date or the immediately preceding
11 business day.

12 (e) A secured creditor is not required to send a
13 payoff statement by means other than first class mail,
14 facsimile, or electronic mail.

15 (f) If a secured creditor determines that the payoff
16 statement it provided was erroneous, the creditor may send a
17 corrected payoff statement. If the entitled person or the
18 person's authorized agent receives and has a reasonable
19 opportunity to act upon a corrected payoff statement before
20 making payment, the corrected statement supersedes an earlier
21 statement. This act does not affect the right of a secured
22 creditor to recover any sum that it did not include in a
23 payoff amount from any person liable for payment of the
24 secured obligation, including, without limitation, the
25 entitled person who requested the payoff statement.

1 (g) This section does not preclude, nor does it
2 apply to, other methods of obtaining payoff information such
3 as telephone calls, electronically, or other methods.

4 Section 3. (a) A secured creditor shall submit for
5 recording a satisfaction of a security instrument within 30
6 days after the creditor receives full payment and performance
7 of the secured obligation, and the secured creditor has no
8 obligation to make advances, incur obligations, or otherwise
9 give value under any agreement. Equity line security
10 instruments are fully paid and performed only if, in addition
11 to full payment and performance, the equity line previously
12 has been closed pursuant to the request of the entitled person
13 or the entitled person's authorized agent or otherwise closed
14 as provided by law and all secured obligations have been paid
15 in full.

16 (b) Notwithstanding anything to the contrary in this
17 act, any notification demanding satisfaction of the security
18 instrument must be sent to the secured creditor's address by a
19 method that also provides proof of receipt by the secured
20 creditor.

21 (c) A secured creditor that is required to submit a
22 satisfaction of a security instrument for recording and does
23 not do so by the end of the period specified in subsection (a)
24 is liable to the mortgagors for five hundred dollars (\$500) if
25 following the expiration of the time period in subsection (a)

1 the mortgagors make a written request to the secured creditor
2 to record a satisfaction and the secured creditor fails to do
3 so within 21 days after receipt of the written request. The
4 written request must be signed by the mortgagors and by all
5 other persons who have a right to require the mortgage to
6 extend value or signed by an authorized agent of these
7 persons.

8 (d) A secured creditor that is required to submit a
9 satisfaction of a security instrument for recording and does
10 not do so by the end of the period specified in subsection (c)
11 is not liable to the mortgagors other than for the penalty set
12 forth in subsection (c) and any actual economic damages
13 directly caused by the failure to comply with this section.

14 (e) A secured creditor is not liable under this act
15 if it does the following:

16 (1) Establishes a reasonable procedure to achieve
17 compliance with its obligations under this act.

18 (2) Complies with that procedure in good faith as
19 defined in Section 7-9A-102(43), Code of Alabama 1975.

20 (3) Fails to comply with its obligations either
21 because of circumstances beyond its reasonable control or as a
22 result of a bona fide error, notwithstanding maintenance of
23 reasonable procedures of compliance.

24 (f) Subsections (a), (b), (c), and (d) do not apply
25 if the secured creditor receives full payment or performance

1 of the secured obligation before the effective date of this
2 act.

3 Section 4. (a) Only a title insurance company or an
4 attorney licensed in this state acting as the agent of and for
5 a title insurance company pursuant to a certificate of
6 authority and within the scope of his or her agency agreement
7 with a title insurance company may serve as a satisfaction
8 agent pursuant to this act.

9 (b) This act does not require a title insurance
10 company to agree to serve as a satisfaction agent or any
11 attorney or other agent to act on behalf of a title insurance
12 company.

13 Section 5. (a) If a secured creditor has not
14 submitted for recording a satisfaction of a security
15 instrument within the time set forth in Section 3 after full
16 and complete payment of all indebtedness secured by the
17 security instrument, a satisfaction agent acting for and with
18 authority from the mortgagors may give the secured creditor a
19 notification that the satisfaction agent intends to submit for
20 recording an affidavit of satisfaction of the security
21 instrument. The notification must include all of the
22 following:

23 (1) The identity and mailing address of the
24 satisfaction agent.

1 (2) Identification of the security instrument for
2 which a recorded satisfaction is sought, including the names
3 of the original parties to, and the recording data for, the
4 security instrument.

5 (3) A statement that the satisfaction agent has
6 determined all of the following:

7 a. That the real property described in the security
8 instrument is residential real property or, at the time the
9 security interest was made, was residential real property.

10 b. That the person to which the notification is
11 being given is the secured creditor.

12 c. That the secured creditor has received full
13 payment and performance of the secured obligation.

14 (4) A statement that a satisfaction of the security
15 instrument does not appear of record in the chain of title.

16 (5) A statement that the satisfaction agent, acting
17 with the authorization of the mortgagors of the real property
18 described in the security instrument, intends to sign and
19 submit for recording an affidavit of satisfaction of the
20 security instrument unless, within 30 days after receipt of
21 the notification by the secured creditor, any of the following
22 occurs:

23 a. The secured creditor submits a satisfaction of
24 the security instrument for recording.

1 b. The satisfaction agent receives from the secured
2 creditor a notification stating that the secured obligation
3 remains unsatisfied.

4 c. The satisfaction agent receives from the secured
5 creditor a notification stating that the secured creditor has
6 assigned the security instrument or otherwise does not claim
7 an interest in the security instrument. In this event, the
8 satisfaction agent will use all reasonable efforts to
9 determine the name and address of, and notify, the secured
10 creditor then owning the securing instrument.

11 (b) A notification to the secured creditor under
12 subsection (a) must be sent by a method that provides proof of
13 receipt by the secured creditor for giving a notification for
14 the purpose of requesting a payoff statement or, if the
15 satisfaction agent cannot ascertain that address, to the
16 secured creditor's address for notification for any other
17 purpose.

18 Section 6. (a) Subject to subsections (b) and (c), a
19 satisfaction agent may sign and submit for recording an
20 affidavit of satisfaction of a security instrument complying
21 with this act if either of the following occurs:

22 (1) There does not appear of record a satisfaction
23 of a security instrument within 30 days after the receipt by
24 the secured creditor of the notification.

1 (2) The secured creditor authorizes the satisfaction
2 agent to do so.

3 (b) A satisfaction agent may not sign and submit for
4 recording an affidavit of satisfaction of a security
5 instrument if it has received a notification stating that the
6 secured obligation remains unsatisfied or information that the
7 security instrument has been assigned.

8 (c) If a satisfaction agent receives information
9 that the security instrument has been assigned, the
10 satisfaction agent may not submit for recording an affidavit
11 of satisfaction of the security instrument without giving a
12 notification of intent to submit for recording an affidavit of
13 satisfaction to the assignee.

14 Section 7. An affidavit of satisfaction of a
15 security instrument must do all of the following:

16 (1) Identify the original parties to the security
17 instrument, the secured creditor, and the recording data for
18 the security instrument.

19 (2) State the basis upon which the person signing
20 the affidavit is a satisfaction agent including, without
21 limitation, that the person signing the affidavit is
22 authorized to sign on behalf of, and to bind, the insurance
23 company acting as satisfaction agent.

24 (3) State that the person signing the affidavit has
25 determined that the real property described in the security

1 instrument is residential real property or was residential
2 real property at the time the security instrument was made.

3 (4) State that the person signing the affidavit
4 determined that the secured creditor has received full payment
5 or performance of the secured obligation and, if the security
6 instrument is an equity line security instrument, that the
7 equity line has been closed.

8 (5) State that the person signing the affidavit,
9 acting with the authority of the owner of the real property
10 described in the security instrument, gave notification to the
11 secured creditor of its intention to sign and submit for
12 recording an affidavit of satisfaction.

13 (6) Describe the method by which the person signing
14 the affidavit gave notification in compliance with this act.

15 (7) State either of the following:

16 a. That more than 30 days have elapsed since the
17 receipt of notification by the secured party, no satisfaction
18 has been recorded, and the satisfaction agent has not received
19 a notification that the secured obligation remains unsatisfied
20 or received information that the secured obligation has been
21 assigned.

22 b. That the secured creditor authorized the person
23 signing the affidavit to sign and record an affidavit of
24 satisfaction.

1 (8) Be sworn or affirmed, signed, and acknowledged
2 as required by law for a conveyance of an interest in real
3 property.

4 Section 8. (a) Upon recording, an affidavit
5 complying with the requirements of this act constitutes a
6 termination of the security interest described in the
7 affidavit.

8 (b) The recording of an affidavit of satisfaction of
9 a security instrument does not extinguish, offset, or
10 otherwise affect any responsibility or liability of a person
11 for payment or performance of the debt or other obligation
12 secured by the security instrument.

13 Section 9. (a) Except as otherwise provided in
14 subsection (b), a satisfaction agent or any other person who
15 executes an affidavit of satisfaction of a security instrument
16 erroneously or as a result of negligence or non-compliance
17 with the act is liable to the secured creditor for any actual
18 economic damages caused by the recording of the satisfaction.

19 (b) This act does not apply to the liability of a
20 satisfaction agent who executes an affidavit of satisfaction
21 of a security instrument erroneously as a result of
22 wantonness, recklessness, or deliberate misconduct, nor does
23 this act apply to the liability of a person other than a
24 satisfaction agent who erroneously executes an affidavit of
25 satisfaction.

1 Section 10. Sections 35-10-26 and 35-10-30 of the
2 Code of Alabama 1975, are amended to read as follows:

3 "§35-10-26.

4 "The payment or satisfaction of the real property
5 mortgage debt divests the title passing by the mortgage.

6 "Payment or satisfaction of the real property mortgage debt"
7 shall not occur until there is no outstanding indebtedness or
8 other obligation secured by the mortgage, and no commitment or
9 agreement by the mortgagee to make advances, incur obligations
10 or otherwise give value (collectively referred to as "extend
11 value"), under any agreement, including, without limitation,
12 agreements providing for future advances, open end, revolving
13 or other lines of credit, or letters of credit. Except as
14 otherwise specifically provided to the contrary in the Alabama
15 Residential Mortgage Satisfaction Act, upon the written
16 request to satisfy a mortgage signed by the mortgagors and by
17 all other persons who have a right to require the mortgagee to
18 extend value or signed by other authorized representatives on
19 behalf of the mortgagors and such other persons, which notice
20 shall actually be served upon the mortgagee, and provided
21 there is no outstanding obligation secured by the mortgage at
22 that time, the mortgagee shall file a properly executed and
23 notarized satisfaction of the mortgage or otherwise cause the
24 mortgage to be satisfied in accordance with other applicable
25 provisions of law. From and after such written request for

1 mortgage satisfaction, neither the mortgagors nor any other
2 person who signed such request, or on whose behalf such
3 request was signed, shall have the right to request or demand
4 that the mortgagee extend value under the mortgage or other
5 agreements and the mortgagee shall be released from all
6 obligations and commitments to extend value thereunder.

7 "§35-10-30.

8 "(a) If, for 30 days after such request, the
9 mortgagee or assignee or transferee, trustee or cestui que
10 trust, fails to make any entry required by this article he
11 forfeits to the party making the request \$200.00 unless there
12 is pending, or there is instituted, an action within that
13 time, in which the fact of partial payment or satisfaction is
14 or may be contested. In construing this article, the right of
15 action given herein shall be considered as a personal right,
16 and shall not be lost or waived by a sale of the property
17 covered by the mortgage or deed of trust before a demand was
18 made for the satisfaction to be entered upon the record.

19 "(b) All actions for the recovery of the penalties
20 mentioned in this article shall be brought in the county where
21 such mortgage or other instrument is recorded.

22 "(c) This section does not apply to satisfactions of
23 residential mortgages which are governed by the Alabama
24 Residential Mortgage Satisfaction Act."

1 Section 11. This act shall be effective March 1,
2 2013, following its passage and approval by the Governor, or
3 its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB347

Senate 10-APR-12

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris
Secretary

House of Representatives
Amended and passed 24-APR-12

Senate concurred in House amendment 26-APR-12

By: Senator Scofield