

1 HB218
2 195982-1
3 By Representative Pringle
4 RFD: Financial Services
5 First Read: 19-MAR-19

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8 SYNOPSIS: Under existing law, secured creditors are
9 only required to submit for recording the
10 satisfaction of any residential mortgages.
11 Non-residential mortgages, including commercial
12 mortgages, are excluded from the satisfaction
13 reporting requirements of the Alabama Residential
14 Mortgage Satisfaction Act and a satisfaction is
15 only recorded upon a written request of a mortgagor
16 or a creditor of the mortgagor.

17 This bill would expand that act requiring
18 recordation of satisfaction to include
19 non-residential mortgages, and would rename that
20 act the "Alabama Mortgage Satisfaction Act."

21 This bill would also make conforming changes
22 in the Code.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 To expand the Alabama Residential Mortgage
2 Satisfaction Act to include non-residential mortgages and to
3 rename that act accordingly; and to amend Sections 35-10-26
4 and 35-10-30 to make conforming changes.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Sections 35-10-90, 35-10-91, 35-10-92,
7 35-10-94, 35-10-96, 35-10-26, and 35-10-30 of the Code of
8 Alabama 1975 are amended to read as follows:

9 "§35-10-90.

10 "(a) This article shall be known as the Alabama
11 ~~Residential Mortgage Satisfaction Act. This article applies~~
12 ~~only to mortgages securing residential real property located~~
13 ~~in this state which is used primarily for personal, family, or~~
14 ~~household purposes and is improved by one to four dwelling~~
15 ~~units. Without limitation, this article does not apply to~~
16 ~~mortgages on commercial or other types of property. This~~
17 ~~article also~~ does not apply to a security interest exclusively
18 in one or more fixtures as defined in Title 7, Article 9A.

19 "(b) For purposes of this article, the following
20 terms shall have the following meanings:

21 "~~(1) ENTITLED PERSON. The person or persons liable~~
22 ~~for payment or performance of the obligation secured by the~~
23 ~~real property described in a security instrument.~~

24 "~~(2)~~(1) EQUITY LINE SECURITY INSTRUMENT. A security
25 instrument securing, in whole or in part, indebtedness created
26 under a line of credit, a revolving or open-end credit
27 agreement, or a credit agreement that provides for future

1 advances. The credit agreement may be referred to in this
2 article as an "equity line" or an "equity line of credit."

3 "(2) MORTGAGOR. The person, persons, or entity
4 liable for payment or performance of the obligation secured by
5 the real property described in a security instrument.

6 "(3) ~~RESIDENTIAL REAL PROPERTY~~ or REAL PROPERTY.
7 ~~Real~~ Any real property located in this state. "Real property"
8 ~~which~~ includes both residential and non-residential
9 ~~property.~~ is used primarily for personal, family, or household
10 ~~purposes and is improved by one to four dwelling units.~~

11 "(4) SECURED CREDITOR. At any particular time, the
12 person that currently holds or is the beneficiary of a
13 security interest or that is authorized both to receive
14 payments on behalf of a person that currently holds a security
15 interest and to record a satisfaction of the security
16 instrument upon receiving full performance of the secured
17 obligation. The term does not include a trustee under a
18 security instrument.

19 "(5) SECURITY INSTRUMENT. A mortgage or other
20 agreement that creates or provides for an interest in
21 ~~residential~~ real property to secure payment or performance of
22 an obligation.

23 "(6) SECURITY INTEREST. An interest in ~~residential~~
24 real property created by a security instrument. For purposes
25 of this article, a security interest exclusively in one or
26 more fixtures, as defined in Title 7, Article 9A, does not
27 constitute an interest in ~~residential~~ real property.

1 "(7) SUBMIT FOR RECORDING. To deliver, with required
2 fees and taxes, a document, sufficient to be recorded, to the
3 judge of probate of the county in which the property is
4 located. For purposes of this article, without limitation,
5 mailing, delivering, or sending by overnight or other delivery
6 service a satisfaction of mortgage or other document to be
7 submitted for recording to the address of the office for
8 recording satisfactions of mortgages or other documents, as
9 applicable, is sufficient to constitute submission for
10 recording.

11 "(8) TITLE INSURANCE COMPANY. An organization
12 authorized to conduct the business of insuring titles to real
13 property in this state and licensed by the Department of
14 Insurance as defined in subdivision (9) of Section 27-25-3.

15 "§35-10-91.

16 "(a) ~~A person liable for payment or performance of~~
17 ~~the obligation secured by the real property described in a~~
18 ~~security instrument~~ mortgagor who makes proper notice pursuant
19 to this section shall be entitled to receive a payoff
20 statement.

21 "(b) Proper notice must contain all of the
22 following:

23 "(1) The ~~entitled person's~~ mortgagor's name.

24 "(2) If given by a person other than ~~an entitled~~
25 ~~person~~ a mortgagor, the name of the person giving the
26 notification and a statement, if required by the secured party

1 evidence, that the person is an authorized agent of the
2 ~~entitled person~~ mortgagor.

3 "(3) The address to which the secured creditor must
4 send the statement.

5 "(4) The account number assigned by the secured
6 creditor or other sufficient information to enable the
7 creditor to identify the secured obligation and the real
8 property encumbered by the security interest.

9 "(5) If the secured obligation is an equity line, a
10 statement that the ~~entitled person~~ mortgagor requests the
11 secured creditor to close the equity line upon receipt of full
12 payment of the equity line on the payoff date specified in the
13 notification and authorizes the secured creditor, at the
14 secured creditor's sole discretion and upon notification to
15 the ~~entitled person~~ mortgagor or to the ~~entitled person's~~
16 mortgagor's authorized agent, to suspend the extension of any
17 additional amounts under the equity line for a period of time
18 prior to the payoff date as designated by the secured
19 creditor. Any payoff statement on an equity line may qualify
20 the payoff amount as being subject to change.

21 "(c) Within 14 days after the receipt of a
22 notification that complies with subsection (b), the secured
23 creditor shall issue a payoff statement. A secured creditor
24 may take reasonable measures to verify the identity of any
25 person acting on behalf of the ~~entitled person~~ mortgagor and
26 to obtain the entitled person's authorization to release
27 information to that person before the 14-day time period

1 begins. If a secured obligation cannot be prepaid, a statement
2 of that fact is sufficient; otherwise, a payoff statement must
3 contain, in substance and with no particular phrasing
4 required, the following:

5 "(1) The date on which it was prepared and the
6 payoff amount as of that date, including the amount of unpaid
7 principal, interest and fees, or other charges included within
8 the payoff amount.

9 "(2) The information reasonably necessary to
10 calculate the payoff amount as of the requested payoff date,
11 including the per diem interest amount or any prepayment
12 penalty which may apply. This subdivision does not apply to
13 equity line security instruments.

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

17 "(d) A secured creditor may qualify a payoff amount
18 or state that it is subject to change before the payoff date
19 and provide in the payoff statement information sufficient to
20 permit the ~~entitled person~~ mortgagor or the ~~person's~~
21 mortgagor's authorized agent to request an updated payoff
22 amount and to obtain that updated payoff amount during the
23 secured creditor's normal business hours on the stated payoff
24 date or the immediately preceding business day.

25 "(e) A secured creditor is not required to send a
26 payoff statement by means other than first class mail,
27 facsimile, or electronic mail.

1 "(f) If a secured creditor determines that the
2 payoff statement it provided was erroneous, the creditor may
3 send a corrected payoff statement. If the ~~entitled person~~
4 mortgagor or the ~~person's~~ mortgagor's authorized agent
5 receives and has a reasonable opportunity to act upon a
6 corrected payoff statement before making payment, the
7 corrected statement supersedes an earlier statement. This
8 article does not affect the right of a secured creditor to
9 recover any sum that it did not include in a payoff amount
10 from any person or entity liable for payment of the secured
11 obligation, including, without limitation, the ~~entitled person~~
12 mortgagor who requested the payoff statement.

13 "(g) This section does not preclude, nor does it
14 apply to, other methods of obtaining payoff information such
15 as telephone calls, electronically, or other methods.

16 "§35-10-92.

17 "(a) A secured creditor shall submit for recording a
18 satisfaction of a security instrument within 30 days after the
19 creditor receives full payment and performance of the secured
20 obligation, and the secured creditor has no obligation to make
21 advances, incur obligations, or otherwise give value under any
22 agreement. Equity line security instruments are fully paid and
23 performed only if, in addition to full payment and
24 performance, the equity line previously has been closed
25 pursuant to the request of the ~~entitled person~~ mortgagor or
26 the ~~entitled person's~~ mortgagor's authorized agent or

1 otherwise closed as provided by law and all secured
2 obligations have been paid in full.

3 "(b) Notwithstanding anything to the contrary in
4 this article, any notification demanding satisfaction of the
5 security instrument must be sent to the secured creditor's
6 address by a method that also provides proof of receipt by the
7 secured creditor.

8 "(c) 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 (a)
11 is liable to the mortgagors for five hundred dollars (\$500) if
12 following the expiration of the time period in subsection (a)
13 the mortgagors make a written request to the secured creditor
14 to record a satisfaction and the secured creditor fails to do
15 so within 21 days after receipt of the written request. The
16 written request must be signed by the mortgagors and by all
17 other persons who have a right to require the mortgage to
18 extend value or signed by an authorized agent of these
19 persons.

20 "(d) A secured creditor that is required to submit a
21 satisfaction of a security instrument for recording and does
22 not do so by the end of the period specified in subsection (c)
23 is not liable to the mortgagors other than for the penalty set
24 forth in subsection (c) and any actual economic damages
25 directly caused by the failure to comply with this section.

26 "(e) A secured creditor is not liable under this
27 article if it does the following:

1 "(1) Establishes a reasonable procedure to achieve
2 compliance with its obligations under this article.

3 "(2) Complies with that procedure in good faith as
4 defined in Section 7-9A-102(43).

5 "(3) Fails to comply with its obligations either
6 because of circumstances beyond its reasonable control or as a
7 result of a bona fide error, notwithstanding maintenance of
8 reasonable procedures of compliance.

9 "(f) (1) Subsections (a), (b), (c), and (d) do not
10 apply if the secured creditor receives full payment or
11 performance of the secured obligation relating to residential
12 property before March 1, 2013.

13 "(2) Subsections (a), (b), (c), and (d) do not apply
14 if the secured creditor receives full payment or performance
15 of the secured obligation relating to nonr-residential
16 property before the effective date of the act adding this
17 amendatory language."

18 "§35-10-94.

19 "(a) If a secured creditor has not submitted for
20 recording a satisfaction of a security instrument within the
21 time set forth in Section 35-10-92 after full and complete
22 payment of all indebtedness secured by the security
23 instrument, a satisfaction agent acting for and with authority
24 from the mortgagors may give the secured creditor a
25 notification that the satisfaction agent intends to submit for
26 recording an affidavit of satisfaction of the security

1 instrument. The notification must include all of the
2 following:

3 "(1) The identity and mailing address of the
4 satisfaction agent.

5 "(2) Identification of the security instrument for
6 which a recorded satisfaction is sought, including the names
7 of the original parties to, and the recording data for, the
8 security instrument.

9 "(3) A statement that the satisfaction agent has
10 determined all of the following:

11 "a. ~~That~~ Whether the real property described in the
12 security instrument ~~is~~ was, at the time the security interest
13 was made, residential real property or, ~~at the time the~~
14 ~~security interest was made,~~ was residential non-residential
15 real property.

16 "b. That the person to which the notification is
17 being given is the secured creditor.

18 "c. That the secured creditor has received full
19 payment and performance of the secured obligation.

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

22 "(5) A statement that the satisfaction agent, acting
23 with the authorization of the mortgagors of the real property
24 described in the security instrument, intends to sign and
25 submit for recording an affidavit of satisfaction of the
26 security instrument unless, within 30 days after receipt of

1 the notification by the secured creditor, any of the following
2 occurs:

3 "a. The secured creditor submits a satisfaction of
4 the security instrument for recording.

5 "b. The satisfaction agent receives from the secured
6 creditor a notification stating that the secured obligation
7 remains unsatisfied.

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

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

22 "§35-10-96.

23 "An affidavit of satisfaction of a security
24 instrument must do all of the following:

25 "(1) Identify the original parties to the security
26 instrument, the secured creditor, and the recording data for
27 the security instrument.

1 "(2) State the basis upon which the person signing
2 the affidavit is a satisfaction agent including, without
3 limitation, that the person signing the affidavit is
4 authorized to sign on behalf of, and to bind, the insurance
5 company acting as satisfaction agent.

6 "(3) State that the person signing the affidavit has
7 determined ~~that~~ whether the real property described in the
8 security instrument ~~is residential real property or was,~~ at
9 the time the security instrument was made, residential real
10 property or non-residential real property ~~at the time the~~
11 ~~security instrument was made.~~

12 "(4) State that the person signing the affidavit
13 determined that the secured creditor has received full payment
14 or performance of the secured obligation and, if the security
15 instrument is an equity line security instrument, that the
16 equity line has been closed.

17 "(5) State that the person signing the affidavit,
18 acting with the authority of the owner of the real property
19 described in the security instrument, gave notification to the
20 secured creditor of its intention to sign and submit for
21 recording an affidavit of satisfaction.

22 "(6) Describe the method by which the person signing
23 the affidavit gave notification in compliance with this
24 article.

25 "(7) State either of the following:

26 "a. That more than 30 days have elapsed since the
27 receipt of notification by the secured party, no satisfaction

1 has been recorded, and the satisfaction agent has not received
2 a notification that the secured obligation remains unsatisfied
3 or received information that the secured obligation has been
4 assigned.

5 "b. That the secured creditor authorized the person
6 signing the affidavit to sign and record an affidavit of
7 satisfaction.

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

11 "§35-10-26.

12 "The payment or satisfaction of the real property
13 mortgage debt divests the title passing by the mortgage.
14 "Payment or satisfaction of the real property mortgage debt"
15 shall not occur until there is no outstanding indebtedness or
16 other obligation secured by the mortgage, and no commitment or
17 agreement by the mortgagee to make advances, incur obligations
18 or otherwise give value (collectively referred to as "extend
19 value"), under any agreement, including, without limitation,
20 agreements providing for future advances, open end, revolving
21 or other lines of credit, or letters of credit. Except as
22 otherwise specifically provided to the contrary in the Alabama
23 ~~Residential~~ Mortgage Satisfaction Act, upon the written
24 request to satisfy a mortgage signed by the mortgagors and by
25 all other persons who have a right to require the mortgagee to
26 extend value or signed by other authorized representatives on
27 behalf of the mortgagors and such other persons, which notice

1 shall actually be served upon the mortgagee, and provided
2 there is no outstanding obligation secured by the mortgage at
3 that time, the mortgagee shall file a properly executed and
4 notarized satisfaction of the mortgage or otherwise cause the
5 mortgage to be satisfied in accordance with other applicable
6 provisions of law. From and after such written request for
7 mortgage satisfaction, neither the mortgagors nor any other
8 person who signed such request, or on whose behalf such
9 request was signed, shall have the right to request or demand
10 that the mortgagee extend value under the mortgage or other
11 agreements and the mortgagee shall be released from all
12 obligations and commitments to extend value thereunder."

13 "§35-10-30.

14 "(a) If, for 30 days after such request, the
15 ~~mortgagee~~ secured creditor or assignee or transferee, trustee
16 or cestui que trust, fails to make any entry required by this
17 article he or she forfeits to the party making the request two
18 hundred dollars (\$200) unless there is pending, or there is
19 instituted, an action within that time, in which the fact of
20 partial payment or satisfaction is or may be contested. In
21 construing this article, ~~the~~ this right of action ~~given herein~~
22 shall be considered as a personal right, and shall not be lost
23 or waived by a sale of the property covered by the mortgage or
24 deed of trust before a demand was made for the satisfaction to
25 be entered upon the record.

26 "(b) All actions for the recovery of the penalties
27 ~~mentioned~~ provided in this article shall be brought in the

1 county where ~~such~~ the mortgage or other instrument is
2 recorded.

3 "(c) This section does not apply to satisfactions of
4 ~~residential~~ mortgages which are governed by the Alabama
5 ~~Residential~~ Mortgage Satisfaction Act."

6 Section 2. Section 35-10-27 of the Code of Alabama
7 1975 is repealed.

8 Section 3. This act shall become effective on the
9 first day of the third month following its passage and
10 approval by the Governor, or its otherwise becoming law.