

1 HB382  
2 140117-3  
3 By Representatives Long, Henry, Baughn, Roberts, Sessions,  
4 Fincher, McClurkin, Ison, Wallace, Hubbard (J), Lee, Gaston,  
5 Ball, Shiver and Rich  
6 RFD: Financial Services  
7 First Read: 21-FEB-12



1 dwelling units. Without limitation, this act does not apply to  
2 mortgages on commercial or other types of property. This act  
3 also does not apply to a security interest exclusively in one  
4 or more fixtures as defined in Title 7, Article 9A, Code of  
5 Alabama 1975.

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

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

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

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

21 (4) SECURED CREDITOR. At any particular time, the  
22 person that currently holds or is the beneficiary of a  
23 security interest or that is authorized both to receive  
24 payments on behalf of a person that currently holds a security  
25 interest and to record a satisfaction of the security  
26 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  
26 Insurance as defined in Section 27-5-3, Code of Alabama 1975.

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

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

7                   (1) The entitled person's name.

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

12                   (3) The address to which the creditor must send the  
13 statement.

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

18                   (5) If the secured obligation is an equity line, a  
19 statement that the entitled person requests the secured  
20 creditor to close the equity line upon receipt of full payment  
21 of the equity line on the payoff date specified in the  
22 notification and authorizes the secured creditor, at the  
23 secured creditor's sole discretion and upon notification to  
24 the entitled person or to the entitled person's authorized  
25 agent, to suspend the extension of any additional amounts  
26 under the equity line for a period of time prior to the payoff  
27 date as designated by the secured creditor. Any payoff

1 statement on an equity line may qualify the payoff amount as  
2 being subject to change.

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

14 (1) The date on which it was prepared and the payoff  
15 amount as of that date, including the amount of unpaid  
16 principal, interest and fees, or other charges included within  
17 the payoff amount.

18 (2) The information reasonably necessary to  
19 calculate the payoff amount as of the requested payoff date,  
20 including the per diem interest amount. This subdivision does  
21 not apply to equity line security instruments.

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

25 (d) A secured creditor may qualify a payoff amount  
26 or state that it is subject to change before the payoff date  
27 and provide in the payoff statement information sufficient to

1 permit the entitled person or the person's authorized agent to  
2 request an updated payoff amount and to obtain that updated  
3 payoff amount during the secured creditor's normal business  
4 hours on the stated payoff date or the immediately preceding  
5 business day.

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

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

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

23 Section 3. (a) A secured creditor shall submit for  
24 recording a satisfaction of a security instrument within 30  
25 days after the creditor receives full payment and performance  
26 of the secured obligation, and the secured creditor has no  
27 obligation to make advances, incur obligations, or otherwise

1 give value under any agreement. Equity line security  
2 instruments are fully paid and performed only if, in addition  
3 to full payment and performance, the equity line previously  
4 has been closed pursuant to the request of the entitled person  
5 or the entitled person's authorized agent or otherwise closed  
6 as provided by law and all secured obligations have been paid  
7 in full.

8 (b) Notwithstanding anything to the contrary in this  
9 act, any notification demanding satisfaction of the security  
10 instrument must be sent to the secured creditor's address by a  
11 method that also provides proof of receipt by the secured  
12 creditor.

13 (c) A secured creditor that is required to submit a  
14 satisfaction of a security instrument for recording and does  
15 not do so by the end of the period specified in subsection (a)  
16 is liable to the mortgagors for five hundred dollars (\$500) if  
17 following the expiration of the time period in subsection (a)  
18 the mortgagors make a written request to the secured creditor  
19 to record a satisfaction and the secured creditor fails to do  
20 so within 21 days after receipt of the written request. The  
21 written request must be signed by the mortgagors and by all  
22 other persons who have a right to require the mortgage to  
23 extend value or signed by an authorized agent of these  
24 persons.

25 (d) A secured creditor that is required to submit a  
26 satisfaction of a security instrument for recording and does  
27 not do so by the end of the period specified in subsection (c)

1 is not liable to the mortgagors other than for the penalty set  
2 forth in subsection (c) and any actual economic damages  
3 directly caused by the failure to comply with this section.

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

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

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

10 (3) Fails to comply with its obligations either  
11 because of circumstances beyond its reasonable control or as a  
12 result of a bona fide error, notwithstanding maintenance of  
13 reasonable procedures of compliance.

14 (f) Subsections (a), (b), (c), and (d) do not apply  
15 if the secured creditor receives full payment or performance  
16 of the secured obligation before the effective date of this  
17 act.

18 Section 4. (a) Only a title insurance company or an  
19 attorney licensed in this state acting as the agent of and for  
20 a title insurance company pursuant to a certificate of  
21 authority and within the scope of his or her agency agreement  
22 with a title insurance company may serve as a satisfaction  
23 agent pursuant to this act.

24 (b) This act does not require a title insurance  
25 company to agree to serve as a satisfaction agent or any  
26 attorney or other agent to act on behalf of a title insurance  
27 company.

1           Section 5. (a) If a secured creditor has not  
2 submitted for recording a satisfaction of a security  
3 instrument within the time set forth in Section 3 after full  
4 and complete payment of all indebtedness secured by the  
5 security instrument, a satisfaction agent acting for and with  
6 authority from the mortgagors may give the secured creditor a  
7 notification that the satisfaction agent intends to submit for  
8 recording an affidavit of satisfaction of the security  
9 instrument. The notification must include all of the  
10 following:

11                   (1) The identity and mailing address of the  
12 satisfaction agent.

13                   (2) Identification of the security instrument for  
14 which a recorded satisfaction is sought, including the names  
15 of the original parties to, and the recording data for, the  
16 security instrument.

17                   (3) A statement that the satisfaction agent has  
18 determined all of the following:

19                   a. That the real property described in the security  
20 instrument is residential real property or, at the time the  
21 security interest was made, was residential real property.

22                   b. That the person to which the notification is  
23 being given is the secured creditor.

24                   c. That the secured creditor has received full  
25 payment and performance of the secured obligation.

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

1           (5) A statement that the satisfaction agent, acting  
2 with the authorization of the mortgagors of the real property  
3 described in the security instrument, intends to sign and  
4 submit for recording an affidavit of satisfaction of the  
5 security instrument unless, within 30 days after receipt of  
6 the notification by the secured creditor, any of the following  
7 occurs:

8           a. The secured creditor submits a satisfaction of  
9 the security instrument for recording.

10           b. The satisfaction agent receives from the secured  
11 creditor a notification stating that the secured obligation  
12 remains unsatisfied.

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

20           (b) A notification to the secured creditor under  
21 subsection (a) must be sent by a method that provides proof of  
22 receipt by the secured creditor for giving a notification for  
23 the purpose of requesting a payoff statement or, if the  
24 satisfaction agent cannot ascertain that address, to the  
25 secured creditor's address for notification for any other  
26 purpose.

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

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

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

10           (b) A satisfaction agent may not sign and submit for  
11 recording an affidavit of satisfaction of a security  
12 instrument if it has received a notification stating that the  
13 secured obligation remains unsatisfied or information that the  
14 security instrument has been assigned.

15           (c) If a satisfaction agent receives information  
16 that the security instrument has been assigned, the  
17 satisfaction agent may not submit for recording an affidavit  
18 of satisfaction of the security instrument without giving a  
19 notification of intent to submit for recording an affidavit of  
20 satisfaction to the assignee.

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

23           (1) Identify the original parties to the security  
24 instrument, the secured creditor, and the recording data for  
25 the security instrument.

26           (2) State the basis upon which the person signing  
27 the affidavit is a satisfaction agent including, without

1 limitation, that the person signing the affidavit is  
2 authorized to sign on behalf of, and to bind, the insurance  
3 company acting as satisfaction agent.

4 (3) State that the person signing the affidavit has  
5 determined that the real property described in the security  
6 instrument is residential real property or was residential  
7 real property at the time the security instrument was made.

8 (4) State that the person signing the affidavit  
9 determined that the secured creditor has received full payment  
10 or performance of the secured obligation and, if the security  
11 instrument is an equity line security instrument, that the  
12 equity line has been closed.

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

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

20 (7) State either of the following:

21 a. That more than 30 days have elapsed since the  
22 receipt of notification by the secured party, no satisfaction  
23 has been recorded, and the satisfaction agent has not received  
24 a notification that the secured obligation remains unsatisfied  
25 or received information that the secured obligation has been  
26 assigned.

1           b. That the secured creditor authorized the person  
2 signing the affidavit to sign and record an affidavit of  
3 satisfaction.

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

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

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

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

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

1 satisfaction agent who erroneously executes an affidavit of  
2 satisfaction.

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

5 §35-10-26.

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

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

25 Section 11. This act shall be effective March 1,  
26 2013, following its passage and approval by the Governor, or  
27 its otherwise becoming law.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
  
16  
17  
18  
19

House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Financial Ser-  
vices..... . . . . 21-FEB-12

Read for the second time and placed  
on the calendar with 1 substitute  
and..... . . . . 05-APR-12

Read for the third time and passed  
as amended..... . . . . 17-APR-12

Yeas 102, Nays 1, Abstains 0

Greg Pappas  
Clerk