

1 SB347  
2 140132-3  
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  
2  
3

4 ENGROSSED  
5  
6

7 A BILL  
8

9 TO BE ENTITLED  
10

11 AN ACT  
12

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. (a) This act shall be known as the Alabama Residential Mortgage Satisfaction Act. This act applies only to mortgages securing residential real property located in this state which is used primarily for personal, family, or household purposes and is improved by one to four dwelling units. Without limitation, this act does not apply to mortgages on commercial or other types of property. This act also does not apply to a security interest exclusively in one or more fixtures as defined in Title 7, Article 9A, Code of Alabama 1975.

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

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

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

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

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

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

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

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

1 applicable, is sufficient to constitute submission for  
2 recording.

3 (8) TITLE INSURANCE COMPANY. An organization  
4 authorized to conduct the business of insuring titles to real  
5 property in this state and licensed by the Department of  
6 Insurance as defined in Section 27-5-3, Code of Alabama 1975.

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

12 (b) Proper notice must contain all of the following:  
13 (1) The entitled person's name.  
14 (2) If given by a person other than an entitled  
15 person, the name of the person giving the notification and a  
16 statement, if required by the secured party evidence, that the  
17 person is an authorized agent of the entitled person.

18 (3) The address to which the creditor must send the  
19 statement.

20 (4) The account number assigned by the secured  
21 creditor or other sufficient information to enable the  
22 creditor to identify the secured obligation and the real  
23 property encumbered by the security interest.

24 (5) If the secured obligation is an equity line, a  
25 statement that the entitled person requests the secured  
26 creditor to close the equity line upon receipt of full payment

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

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

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

25 (2) The information reasonably necessary to  
26 calculate the payoff amount as of the requested payoff date,

1 including the per diem interest amount. This subdivision does  
2 not apply to equity line security instruments.

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

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

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

17 (f) If a secured creditor determines that the payoff  
18 statement it provided was erroneous, the creditor may send a  
19 corrected payoff statement. If the entitled person or the  
20 person's authorized agent receives and has a reasonable  
21 opportunity to act upon a corrected payoff statement before  
22 making payment, the corrected statement supersedes an earlier  
23 statement. This act does not affect the right of a secured  
24 creditor to recover any sum that it did not include in a  
25 payoff amount from any person liable for payment of the

1       secured obligation, including, without limitation, the  
2       entitled person who requested the payoff statement.

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

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

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

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

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

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

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

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

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

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

25 (f) Subsections (a), (b), (c), and (d) do not apply  
26 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.

25                   (2) Identification of the security instrument for  
26 which a recorded satisfaction is sought, including the names

1 of the original parties to, and the recording data for, the  
2 security instrument.

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

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

8 b. That the person to which the notification is  
9 being given is the secured creditor.

10 c. That the secured creditor has received full  
11 payment and performance of the secured obligation.

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

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

21 a. The secured creditor submits a satisfaction of  
22 the security instrument for recording.

23 b. The satisfaction agent receives from the secured  
24 creditor a notification stating that the secured obligation  
25 remains unsatisfied.

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

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

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

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

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

(b) A satisfaction agent may not sign and submit for recording an affidavit of satisfaction of a security instrument if it has received a notification stating that the

1       secured obligation remains unsatisfied or information that the  
2       security instrument has been assigned.

3               (c) If a satisfaction agent receives information  
4       that the security instrument has been assigned, the  
5       satisfaction agent may not submit for recording an affidavit  
6       of satisfaction of the security instrument without giving a  
7       notification of intent to submit for recording an affidavit of  
8       satisfaction to the assignee.

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

11               (1) Identify the original parties to the security  
12      instrument, the secured creditor, and the recording data for  
13      the security instrument.

14               (2) State the basis upon which the person signing  
15      the affidavit is a satisfaction agent including, without  
16      limitation, that the person signing the affidavit is  
17      authorized to sign on behalf of, and to bind, the insurance  
18      company acting as satisfaction agent.

19               (3) State that the person signing the affidavit has  
20      determined that the real property described in the security  
21      instrument is residential real property or was residential  
22      real property at the time the security instrument was made.

23               (4) State that the person signing the affidavit  
24      determined that the secured creditor has received full payment  
25      or performance of the secured obligation and, if the security

1 instrument is an equity line security instrument, that the  
2 equity line has been closed.

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

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

10 (7) State either of the following:

11 a. That more than 30 days have elapsed since the  
12 receipt of notification by the secured party, no satisfaction  
13 has been recorded, and the satisfaction agent has not received  
14 a notification that the secured obligation remains unsatisfied  
15 or received information that the secured obligation has been  
16 assigned.

17 b. That the secured creditor authorized the person  
18 signing the affidavit to sign and record an affidavit of  
19 satisfaction.

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

23 Section 8. (a) Upon recording, an affidavit  
24 complying with the requirements of this act constitutes a  
25 termination of the security interest described in the  
26 affidavit.

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

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

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

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

"§35-10-26.

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

"Payment or satisfaction of the real property mortgage debt" shall not occur until there is no outstanding indebtedness or other obligation secured by the mortgage, and no commitment or

1 agreement by the mortgagee to make advances, incur obligations  
2 or otherwise give value (collectively referred to as "extend  
3 value"), under any agreement, including, without limitation,  
4 agreements providing for future advances, open end, revolving  
5 or other lines of credit, or letters of credit. Upon Except as  
6 otherwise specifically provided to the contrary in the Alabama  
7 Residential Mortgage Satisfaction Act, upon the written  
8 request to satisfy a mortgage signed by the mortgagors and by  
9 all other persons who have a right to require the mortgagee to  
10 extend value or signed by other authorized representatives on  
11 behalf of the mortgagors and such other persons, which notice  
12 shall actually be served upon the mortgagee, and provided  
13 there is no outstanding obligation secured by the mortgage at  
14 that time, the mortgagee shall file a properly executed and  
15 notarized satisfaction of the mortgage or otherwise cause the  
16 mortgage to be satisfied in accordance with other applicable  
17 provisions of law. From and after such written request for  
18 mortgage satisfaction, neither the mortgagors nor any other  
19 person who signed such request, or on whose behalf such  
20 request was signed, shall have the right to request or demand  
21 that the mortgagee extend value under the mortgage or other  
22 agreements and the mortgagee shall be released from all  
23 obligations and commitments to extend value thereunder.

24 "§35-10-30.

25 "(a) If, for 30 days after such request, the  
26 mortgagee or assignee or transferee, trustee or cestui que

1 trust, fails to make any entry required by this article he  
2 forfeits to the party making the request \$200.00 unless there  
3 is pending, or there is instituted, an action within that  
4 time, in which the fact of partial payment or satisfaction is  
5 or may be contested. In construing this article, the right of  
6 action given herein shall be considered as a personal right,  
7 and shall not be lost or waived by a sale of the property  
8 covered by the mortgage or deed of trust before a demand was  
9 made for the satisfaction to be entered upon the record.

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

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

16                     Section 11. This act shall be effective March 1,  
17 2013, following its passage and approval by the Governor, or  
18 its otherwise becoming law.

1  
2  
3 Senate

4 Read for the first time and referred to the Senate  
5 committee on Banking and Insurance..... 21-FEB-12  
6  
7 Read for the second time and placed on the calen-  
8 dar with 1 substitute and..... 05-APR-12  
9  
10 Read for the third time and passed as amended .... 10-APR-12

11 Yeas 28  
12 Nays 0

13  
14  
15 Patrick Harris  
16 Secretary  
17