

*As Engrossed: 4/5/95*

1 **State of Arkansas**  
2 **80th General Assembly**  
3 **Regular Session, 1995**  
4 **By: Senator Walters**

# **A Bill**

**ACT 1025 OF 1995**  
**SENATE BILL 179**

## **For An Act To Be Entitled**

8 "AN ACT TO AMEND THE ARKANSAS CODE TO ELIMINATE MARGINAL  
9 NOTATIONS AS A METHOD OF EVIDENCING THE EXISTENCE OF AN  
10 INTEREST IN REAL PROPERTY; AND FOR OTHER PURPOSES."

### **Subtitle**

13 "TO ELIMINATE MARGINAL NOTATIONS AS A  
14 METHOD OF EVIDENCING THE EXISTENCE OF AN  
15 INTEREST IN REAL PROPERTY."

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19 SECTION 1. Arkansas Code 18-40-103 (a) is amended to read as follows:

20 "(a) No agreement for the extension of the date of maturity of the  
21 whole, or any part, of any debt or note secured by mortgage, deed of trust, or  
22 vendor's lien or for the renewal thereof, whether made in writing or  
23 otherwise, and no written or oral acknowledgment of indebtedness thereon,  
24 shall operate, so far as it affects the rights of third parties, to revive the  
25 debts or extend the operation of the statute of limitations with reference  
26 thereto unless the parties execute and acknowledge a written agreement setting  
27 forth the terms of the extension or renewal and the description of the  
28 property affected, and record it in the office of the recorder of the county  
29 in which the property is located or unless a memorandum showing the extension  
30 or renewal is endorsed on the margin of the record where the instrument is  
31 recorded, which endorsement shall be attested and dated by the clerk. *In*  
32 *counties which use other than paper recording systems, all marginal*  
33 *endorsements entered after December 31, 1995, are void. The clerk in counties*  
34 *which uses other than paper recording systems shall not allow any marginal*  
35 *endorsement to be made after December 31, 1995, and shall not attest nor date*  
36 *any marginal endorsement after December 31, 1995."*

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SECTION 2. Arkansas Code 18-40-104 is amended to read as follows:

"18-40-104. Acknowledgment of satisfaction on record.

(a) If any mortgagee, or his executor, administrator, or assignee, shall receive full satisfaction for the amount due on any mortgage, then, at the request of the person making satisfaction, the mortgagee shall acknowledge satisfaction thereof on the margin of the record in which the mortgage is recorded.

(b) Acknowledgment of satisfaction, made as stated in subsection (a) of this section, shall have the effect to release the mortgage, bar all actions brought thereon, and revert in the mortgagor or his legal representatives all title to the mortgaged property.

(c) If any person receiving satisfaction does not, within sixty (60) days after being requested, acknowledge satisfaction as stated in subsection (a) of this section, he shall forfeit to the party aggrieved any sum not exceeding the amount of the mortgage money, to be recovered by a civil action in any court of competent jurisdiction.

*(d) Effective January 1, 1996, this section does not apply in counties which use other than paper recording systems. The clerk in counties which use other than a paper recording system shall not allow satisfactions by marginal notations after December 31, 1995. Satisfactions by marginal notations made in counties which use other than paper recording systems after December 31, 1995, are void."*

SECTION 3. Arkansas Code 18-40-106 is amended to read as follows:

"18-40-106. Sufficiency of satisfaction - Transfer or assignment.

(a) Satisfaction of any mortgage, deed of trust, vendor's lien, or lien retained in deed or note made and endorsed on the margin of the record where the instrument is recorded by the mortgagee, trustee, beneficiary, agent of the owner of record of the indebtedness, or by the owner of record thereof, shall be full and complete protection for any subsequent purchaser, mortgagee, or judgment creditor of the mortgagor or grantor, unless there shall appear on the margin of the record where the instrument is recorded a memorandum showing that the mortgage, deed of trust, vendor's lien, lien retained in deed or note, or other evidence of indebtedness secured thereby, has been transferred

1 or assigned. The memorandum shall be signed by the transferor or assignor,  
2 giving the name of the transferee or assignee, together with the date of the  
3 transfer or assignment, the signature to be attested and dated by the clerk.

4 (b) Where it shall appear from a memorandum endorsed upon the margin of  
5 the record and attested as provided in subsection (a) of this section that the  
6 mortgage, deed of trust, vendor's lien or other evidence of indebtedness has  
7 been transferred, satisfaction shall be made by the party appearing therein as  
8 the transferee.

9 (c) *Effective January 1, 1996, this section does not apply in counties*  
10 *which use other than paper recording systems. The clerk in counties that use*  
11 *other than paper recording systems shall not allow any marginal endorsement to*  
12 *be made after December 31, 1995. In counties which use other than paper*  
13 *recording systems, marginal endorsements made after December 31, 1995 are*  
14 *void."*

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16 SECTION 4. Arkansas Code 18-40-107 is amended to read as follows:

17 "18-40-107. Attestation of satisfaction - Separate release.

18 (a) In all cases where the party receiving satisfaction of any  
19 indebtedness secured by mortgage, deed of trust, or lien affecting real estate  
20 is required by law to acknowledge it on the margin of the record, the  
21 satisfaction shall be signed by the party and his signature shall be attested  
22 and dated by the clerk. The attestation by the clerk shall be evidence of the  
23 facts recited therein.

24 (b) The effectual discharge of any lien, deed of trust, or mortgage  
25 lien in note, bond, or other instrument may be made by a separate release deed  
26 or instrument duly executed, acknowledged, and recorded. This instrument, when  
27 so recorded, shall be of the same effect as a marginal entry.

28 (c) *Effective January 1, 1996, subsection (a) of this section does not*  
29 *apply in counties which use other than paper recording systems. In counties*  
30 *which use other than paper recording systems, the clerk shall not allow a*  
31 *marginal notation of satisfaction of any indebtedness after December 31, 1995.*  
32 *In counties which use other than paper recording systems, marginal notations*  
33 *made after December 31, 1995 are void."*

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35 SECTION 5. Arkansas Code 18-40-108 is amended to read as follows:

1 "18-40-108. Validation of prior releases.

2 All releases of mortgages, liens, liens under deeds of trust, vendor's  
3 liens, or other liens appearing upon the record, either upon the margin of the  
4 record of the instrument reserving the lien or by separate instrument upon the  
5 record, when appearing upon the record as of the date of the passage of this  
6 act, whether the releases purport to be executed by the mortgagee, trustee, or  
7 the beneficiary in the lien, or by the agent or attorney of the mortgagee,  
8 trustee, or beneficiary, or by the circuit clerk or his deputy, or by the  
9 assignee of any notes secured by the liens, or by the assignee of the  
10 instrument reserving a lien, shall be valid and effectual as a release of the  
11 lien as fully as if executed by the person entitled to release it. The clerk  
12 *in counties which use other than paper recording systems* shall not allow  
13 marginal releases to be entered after December 31, 1995, and marginal releases  
14 entered after December 31, 1995 are void."

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16 SECTION 6. Arkansas Code 18-40-109 is amended to read as follows:

17 "18-40-109. Transfer, etc. by separate instrument.

18 No provision contained in §§ 18-40-103, 18-40-106, 18-40-107, and this  
19 section shall prevent any mortgagee, trustee, agent of owner of record, or the  
20 owner of record, transferee, or assignee appearing of record from selling,  
21 transferring, or assigning any deed of trust, mortgage, or vendor's lien  
22 retained in deed by separate instrument duly acknowledged and recorded. At the  
23 time of recording any separate instrument transferring any mortgage, deed of  
24 trust, vendor's lien, or lien retained in deed, note, bond, or other  
25 instrument, the clerk and ex officio recorder in the office in which the  
26 transfer or assignment shall appear shall note on the margin of the record of  
27 the original mortgage, deed of trust, or deed retaining vendor's lien a  
28 memorandum noting that the lien contained in the instrument, and the notes or  
29 other instruments evidenced thereby, have been transferred, to whom  
30 transferred, the date of the transfer, and the book and page where the  
31 separate instrument and transfer may be found. The failure of the clerk and ex  
32 officio recorder to make the marginal entry or notation shall not invalidate  
33 the sale, transfer, or assignment recorded as provided in this section. The  
34 clerk *in counties which use other than paper recording systems* shall not allow  
35 any assignment by marginal notation after December 31, 1995, and any such

1 marginal notation entered after December 31, 1995, is void."

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3 SECTION 7. All provisions of this act of a general and permanent nature  
4 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
5 Revision Commission shall incorporate the same in the Code.

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7 SECTION 8. If any provision of this act or the application thereof to  
8 any person or circumstance is held invalid, such invalidity shall not affect  
9 other provisions or applications of the act which can be given effect without  
10 the invalid provision or application, and to this end the provisions of this  
11 act are declared to be severable.

12 SECTION 9. All laws and parts of laws in conflict with this act are  
13 hereby repealed.

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*/s/Walters*

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APPROVED: 4-10-95

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