

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

# A Bill

SENATE BILL 179

## For An Act To Be Entitled

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

## Subtitle

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

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

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

"(a) No agreement for the extension of the date of maturity of the whole, or any part, of any debt or note secured by mortgage, deed of trust, or vendor's lien or for the renewal thereof, whether made in writing or otherwise, and no written or oral acknowledgment of indebtedness thereon, shall operate, so far as it affects the rights of third parties, to revive the debts or extend the operation of the statute of limitations with reference thereto unless the parties execute and acknowledge a written agreement setting forth the terms of the extension or renewal and the description of the property affected, and record it in the office of the recorder of the county in which the property is located or unless a memorandum showing the extension or renewal is endorsed on the margin of the record where the instrument is recorded, which endorsement shall be attested and dated by the clerk. *In counties which use other than paper recording systems, all marginal endorsements entered after December 31, 1995, are void.* The clerk *in counties which uses other than paper recording systems* shall not allow any marginal endorsement to be made after December 31, 1995, and

1 shall not attest nor date any marginal endorsement after December 31, 1995."

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

4 "18-40-104. Acknowledgment of satisfaction on record.

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

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

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

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

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

27 "18-40-106. Sufficiency of satisfaction - Transfer or assignment.

28 (a) Satisfaction of any mortgage, deed of trust, vendor's lien, or  
29 lien retained in deed or note made and endorsed on the margin of the record  
30 where the instrument is recorded by the mortgagee, trustee, beneficiary,  
31 agent of the owner of record of the indebtedness, or by the owner of record  
32 thereof, shall be full and complete protection for any subsequent purchaser,  
33 mortgagee, or judgment creditor of the mortgagor or grantor, unless there  
34 shall appear on the margin of the record where the instrument is recorded a  
35 memorandum showing that the mortgage, deed of trust, vendor's lien, lien

1 retained in deed or note, or other evidence of indebtedness secured thereby,  
2 has been transferred or assigned. The memorandum shall be signed by the  
3 transferor or assignor, giving the name of the transferee or assignee,  
4 together with the date of the transfer or assignment, the signature to be  
5 attested and dated by the clerk.

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

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

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

19 "18-40-107. Attestation of satisfaction - Separate release.

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

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

31 (c) *Effective January 1, 1996, subsection (a) of this section does not*  
32 *apply in counties which use other than paper recording systems. In counties*  
33 *which use other than paper recording systems, the clerk shall not allow a*  
34 *marginal notation of satisfaction of any indebtedness after December 31,*  
35 *1995. In counties which use other than paper recording systems, marginal*

1 notations made after December 31, 1995 are void."

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

4 "18-40-108. Validation of prior releases.

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

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

20 "18-40-109. Transfer, etc. by separate instrument.

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

1 invalidate the sale, transfer, or assignment recorded as provided in this  
2 section. The clerk *in counties which use other than paper recording systems*  
3 shall not allow any assignment by marginal notation after December 31, 1995,  
4 and any such marginal notation entered after December 31, 1995, is void."

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

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

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

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*/s/Walters*

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