

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

A Bill

SENATE BILL 937

5 By: Senator Rice
6 By: Representative Vines
7

For An Act To Be Entitled

9 AN ACT TO PERMIT THE RELEASE OF A MORTGAGE, DEED OF
10 TRUST OR OTHER LIEN BASED ON AN AFFIDAVIT BY AN
11 ATTORNEY OR A TITLE AGENT THAT THE LIEN HAS BEEN
12 SATISFIED; TO DECLARE AN EMERGENCY; AND FOR OTHER
13 PURPOSES.
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Subtitle

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17 TO PERMIT THE RELEASE OF A MORTGAGE, DEED
18 OF TRUST OR OTHER LIEN BASED ON AN
19 AFFIDAVIT BY AN ATTORNEY OR A TITLE AGENT
20 THAT THE LIEN HAS BEEN SATISFIED; AND TO
21 DECLARE AN EMERGENCY.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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26 SECTION 1. Arkansas Code § 18-40-104 is amended to read as follows:

27 18-40-104. Acknowledgement of satisfaction on record.

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

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



1 (c) The trustee of a deed of trust or a person employed by the trustee
2 shall reconvey all or any part of the property encumbered by a deed of trust
3 to the person entitled to the property on written request of the beneficiary
4 of the deed of trust for a reasonable fee plus costs.

5 (d) If ~~any~~ a person receiving satisfaction does not, within sixty (60)
6 days after being requested, acknowledge satisfaction as stated in subsection
7 (a) of this section or request the trustee to reconvey the property as stated
8 in subsection (c) of this section, he or she shall forfeit to the party
9 aggrieved any sum not exceeding the amount of the mortgage money, to be
10 recovered by a civil action in any court of competent jurisdiction.

11 (e) If a person receiving satisfaction does not, within sixty (60)
12 days after being requested, acknowledge satisfaction as stated in subsection
13 (a) of this section or fails to cause the trustee to reconvey the property as
14 stated in subsection (c) of this section, then, in addition to the rights
15 provided in subsection (d) of this section, a satisfaction affidavit may be
16 recorded in the county where the lien is recorded which shall have the same
17 effect as an acknowledgment of satisfaction as stated in subsection (b) of
18 this section or a reconveyance of the property as stated in subsection (c) of
19 this section.

20 (f) A satisfaction affidavit may be executed and recorded by a:

21 (1) Licensed attorney who prepared the original mortgage or deed
22 of trust;

23 (2) Licensed attorney who represents the person making or having
24 received satisfaction; or

25 (3) Licensed title agent employed by a title company that
26 tendered the satisfaction on behalf of the person making satisfaction.

27 (g) A satisfaction affidavit shall:

28 (1) Be sworn to and acknowledged before a person authorized to
29 administer an oath under the laws of this state;

30 (2) Conspicuously identify in its title that it is a
31 "Satisfaction Affidavit"; and

32 (3) Contain the following information concerning the
33 satisfaction:

34 (A) The names of all parties to the original instrument;

35 (B) The recording information, including the recording
36 date of the original instrument;

1 (C) The date of payment and the amount paid to satisfy the
2 indebtedness; and

3 (D) That more than sixty (60) days have elapsed since the
4 request for the acknowledgement of satisfaction.

5 (h) A satisfaction affidavit may be prepared in substantially the
6 following form:

7 “SATISFACTION AFFIDAVIT

8 KNOW ALL PERSONS BY THESE PRESENTS that:

9 I, [Name of Affiant], am the [Attorney for the Mortgagor or Employee of
10 a Title Company that Tendered the Satisfaction on Behalf of the Mortgagor].

11 [Name of Mortgagor] mortgaged certain real property to [Name of
12 Mortgagee] to secure the original principal indebtedness of [Amount of
13 Indebtedness] which was evidenced by that certain [Name of Instrument]
14 recorded on [Date] in the real property records of [Name of County] County,
15 Arkansas as [Instrument Number or Book and Page].

16 On [Date], [Name of Mortgagor] tendered to [Name of Mortgagee] the sum
17 of [Amount of Satisfaction], which sum represents the full satisfaction of
18 the amount due on the [Name of Instrument]. [Name of Mortgagor] requested
19 from [Name of Mortgagee] an acknowledgment of satisfaction on [Date]. More
20 than sixty (60) days have elapsed since the request of the acknowledgement of
21 satisfaction.

22 Further affiant sayeth naught.

23 WITNESS my hand and seal on this _____ day of _____, 20_____.

24
25 [Signature]

26 Name printed:

27 ACKNOWLEDGMENT

28 STATE OF _____ }

29 }ss.

30 COUNTY OF _____ }

31 On this day of _____ day of _____, 20_____, before me, a
32 Notary Public in and for the said county and state, personally appeared
33 _____, to me well known, and acknowledged that [he/shel
34 had executed the foregoing document for the consideration, uses, and purposes
35 therein mentioned and set forth.

36 IN WITNESS WHEREOF, I hereunto set my hand and official seal.

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Notary Public

My Commission Expires: "

(i) A satisfaction affidavit that complies with this section in substantially the form provided by subsection (h) of this section or in a custom form shall be:

(1) Recorded by the county recorder in the land records of the county where the real property is located; and

(2) Indexed by the county recorder in the same manner as an acknowledgment of satisfaction.

~~(e)-(l)~~(j)(1) Subsections (a) and (b) of this section do not apply in a county which uses a system other than a paper recording system.

(2) The clerk in a county which uses a system other than a paper recording system shall not allow a satisfaction by a marginal notation after December 31, 1995.

(3) A satisfaction by a marginal notation made in a county which uses a system other than a paper recording system after December 31, 1995, is void.

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that historically low interest rates make conditions favorable for the citizens of this state to obtain financing to purchase or refinance a home; that the ability to close the purchase or refinance of a home at a favorable interest rate can save citizens thousands of dollars on one of their largest and most important investments; that delays due to the failure to timely release a mortgage after the mortgage has been paid can result in immediate and substantial harm; that due to mortgage industry practices it can be extremely difficult to locate the proper lender to obtain a mortgage release and therefore an immediate need exists to provide an alternative method to obtain the release. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the

1 bill; or

2 (3) If the bill is vetoed by the Governor and the veto is
3 overridden, the date the last house overrides the veto.

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