STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

SENATE BILL 443 By: Newberry

AS INTRODUCED

An Act relating to title insurance; defining terms; stating applicability of act; authorizing execution of affidavit in certain circumstances; specifying required contents of certain affidavit; requiring certain attachments; providing for release of certain mortgage; requiring indexing of certain affidavit; specifying penalties for certain violation; authorizing action by Attorney General; allowing award of certain fees and costs; authorizing pursuit of certain remedies; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5008 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Mortgage" means a contract lien on an interest in real property;

2. "Mortgagee" means:

a. the grantee of a mortgage,

b. if a mortgage has been assigned of record, the last person or entity to whom the mortgage has been assigned of record, or

c. if a mortgage is serviced by a mortgage servicer, the mortgage servicer;

3. "Mortgage servicer" means the last person or entity to whom a mortgagor has been instructed by a mortgagee to send payments for the loan secured by a mortgage. A person or entity transmitting a payoff statement is considered the mortgage servicer for the mortgage described in the payoff statement;

4. "Mortgagor" means the grantor of a mortgage;

5. "Payoff statement" means a statement of the amount of:

a. the unpaid balance of a loan secured by a mortgage, including principal, interest, and other charges properly assessed under the loan documentation of the mortgage, and

b. interest on a per diem basis for the unpaid balance; and

6. "Title insurance company" means a corporation or other business entity authorized and licensed to transact business of insuring titles to interests in real property in this state.

B. This section applies only to a mortgage on property consisting exclusively of a one- to four-family residence, including a residential unit in a condominium regime.

C. If a mortgagee fails to execute and deliver a release of mortgage to the mortgagor or designated agent of the mortgagor within sixty (60) days after the date of receipt of payment of the mortgage by the mortgagee in accordance with a payoff statement furnished by the mortgagee or its mortgage servicer, an authorized officer of a title insurance company or a duly appointed agent of the title insurance company, on behalf of the mortgagor or a transferee of the mortgagor who acquired title to the property described in the mortgage, may execute and record an affidavit in the real property records of each county in which the mortgage was recorded. The written approval of the title insurance company shall appear on the affidavit if executed by an agent.

D. An affidavit executed under this section shall state that:

1. The affiant is an authorized officer or a duly appointed agent of a title insurance company;

2. The affidavit is made on behalf of the mortgagor or a transferee of the mortgagor who acquired title to the property described in the mortgage;

3. The mortgagee provided a payoff statement with respect to the loan secured by the mortgage;

4. The affiant has ascertained that the mortgagee has received payment of the loan secured by the mortgage in accordance with the payoff statement, as evidenced by:

a. a bank check, certified check, cashier's check, escrow account check from the title company or title insurance agent or attorney trust account check that has been negotiated by the mortgagee,

b. wire transfer, or

c. another documentary evidence of the receipt of payment by the mortgagee;

5. More than sixty (60) days have elapsed since the date payment was received by the mortgagee;

6. The title insurance company or its duly appointed agent has given the mortgagee at least fifteen (15) days' notice in writing by certified mail, return receipt requested, of its intention to execute and record an affidavit in accordance with this section, with a copy of the proposed affidavit attached to the written notice; and

7. The mortgagee has not responded in writing to the notification at least fifteen (15) days before the affidavit is recorded.

E. The affidavit must include the names of the mortgagor and the mortgagee, the date of the mortgage, the legal description of the property, and the book and page or clerk's document number of the real property records where the mortgage and/or modification is recorded, together with similar information for a recorded assignment of the mortgage.

F. The affiant shall attach to the affidavit a photostatic copy, certified by the affiant as a true copy of the original document, of:

1. The documentary evidence that payment has been received by the mortgagee, including the endorsement of the mortgagee of a negotiated check if paid by check or proof of a wire transfer if paid by wire. The bank account number and routing number on the check or proof of wire transfer may be redacted by the filer; and

2. The payoff statement.

G. An affidavit that is executed and recorded as provided by this section shall operate as a release of the mortgage described in the affidavit.

H. The county clerk shall index the affidavit against the real property described in the mortgage and the affidavit.

I. A person who knowingly causes an affidavit with false information to be executed and recorded under this section is liable for the penalties for filing a false affidavit, including the penalties for commission of offenses pursuant to appropriate section of the penal code, and to a party injured by the affidavit for actual damages of Five Thousand Dollars ($5,000.00), whichever is greater. The Attorney General may sue to collect the penalty. If the Attorney General or an injured party bringing suit substantially prevails in an action under this subsection, the court may award reasonable attorney fees and court costs to the prevailing party.

J. Nothing provided for in this section shall preclude the mortgagor from availing itself of the remedies provided for in Section 15 of Title 46 of the Oklahoma Statutes which provides for penalties against the mortgagee for failure to release a mortgage pursuant to the payment in full and request for release on behalf of the mortgagor.

SECTION 2. This act shall become effective November 1, 2015.

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