

1 ENGROSSED HOUSE
2 BILL NO. 2397

By: Russ of the House

3 and

4 Howard of the Senate
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7 An Act relating to mortgage releases and liens on
8 real property; amending Section 1, Chapter 222,
9 O.S.L. 2015 (36 O.S. Supp. 2020, Section 5008), which
10 relates to release of mortgage affidavits by title
11 insurance officer or agent; removing the requirement
12 that a written approval of the title insurance
company shall appear on the affidavit if executed by
an agent; and providing an effective date.

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

14 SECTION 1. AMENDATORY Section 1, Chapter 222, O.S.L.
15 2015 (36 O.S. Supp. 2020, Section 5008), is amended to read as
16 follows:

17 Section 5008. A. As used in this section:

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

20 2. "Mortgagee" means:

21 a. the grantee of a mortgage,

22 b. if a mortgage has been assigned of record, the last
23 person or entity to whom the mortgage or judgment lien
24 has been assigned of record, or

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

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

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

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

- 10 a. the unpaid balance of a loan secured by a mortgage or
11 judgment lien, including principal, interest, and
12 other charges properly assessed under the loan
13 documentation of the mortgage or judgment lien, and
14 b. interest on a per diem basis for the unpaid balance;
15 and

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

19 B. This section applies only to a mortgage or judgment lien on
20 ~~property consisting exclusively of~~ all real property including
21 commercial or agriculture or a one- to four-family residence,
22 including a residential unit in a condominium regime.

23 C. If a mortgagee or judgment lienholder fails to execute and
24 deliver a release of mortgage or judgment lien to the mortgagor or

1 designated agent of the mortgagor within sixty (60) days after the
2 date of receipt of payment of the mortgage by the mortgagee or
3 judgment lienholder in accordance with a payoff statement furnished
4 by the mortgagee or judgment lienholder or its mortgage servicer, an
5 authorized officer of a title insurance company or a duly appointed
6 agent of the title insurance company, on behalf of the mortgagor or
7 a transferee of the mortgagor who acquired title to the property
8 described in the mortgage, may execute and record an affidavit in
9 the real property records of each county in which the mortgage or
10 judgment lien was recorded. The written ~~approval~~ signature of the
11 agent of the title insurance company or attorney shall appear on the
12 affidavit ~~if executed by an agent~~.

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

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

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

19 3. The mortgagee or judgment lienholder provided a payoff
20 statement with respect to the loan secured by the mortgage or
21 judgment lien;

22 4. The affiant has ascertained that the mortgagee or judgment
23 lienholder has received payment of the loan secured by the mortgage
24

1 or judgment lien in accordance with the payoff statement, as
2 evidenced by:

3 a. a bank check, certified check, cashier's check, escrow
4 account check from the title company or title
5 insurance agent or attorney trust account check that
6 has been negotiated by the mortgagee or judgment
7 lienholder,

8 b. wire transfer, or

9 c. another documentary evidence of the receipt of payment
10 by the mortgagee or judgment lienholder;

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

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

19 7. The mortgagee or judgment lienholder has not responded in
20 writing to the notification at least fifteen (15) days before the
21 affidavit is recorded.

22 E. The affidavit must include the names of the mortgagor and
23 the mortgagee or judgment lienholder, the date of the mortgage, the
24 legal description of the property, and the book and page or clerk's

1 document number of the real property records where the mortgage or
2 lien and/or modification is recorded, together with similar
3 information for a recorded assignment of the mortgage or judgment
4 lien.

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

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

14 2. The payoff statement.

15 G. An affidavit that is executed and recorded as provided by
16 this section shall operate as a release of the mortgage or judgment
17 lien described in the affidavit.

18 H. The county clerk shall index the affidavit against the real
19 property described in the mortgage or judgment lien and the
20 affidavit.

21 I. A person who knowingly causes an affidavit with false
22 information to be executed and recorded under this section is liable
23 for the penalties for filing a false affidavit, including the
24 penalties for commission of offenses pursuant to the appropriate

1 section of the penal code, and to a party injured by the affidavit
2 for actual damages of Five Thousand Dollars (\$5,000.00), whichever
3 is greater. The Attorney General may sue to collect the penalty.
4 If the Attorney General or an injured party bringing suit
5 substantially prevails in an action under this subsection, the court
6 may award reasonable attorney fees and court costs to the prevailing
7 party.

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

14 SECTION 2. This act shall become effective November 1, 2021.

15 Passed the House of Representatives the 10th day of March, 2021.

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Presiding Officer of the House
of Representatives

19 Passed the Senate the ____ day of _____, 2021.

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Presiding Officer of the Senate