

March 30, 2021

By: Russ of the House

Howard of the Senate

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

Section 5008. A. As used in this section:

2. "Mortgagee" means:

a. the grantee of a mortgage,

1 b. if a mortgage has been assigned of record, the last
2 person or entity to whom the mortgage or judgment lien
3 has been assigned of record, or

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

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

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

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

13 a. the unpaid balance of a loan secured by a mortgage or
14 judgment lien, including principal, interest, and
15 other charges properly assessed under the loan
16 documentation of the mortgage or judgment lien, and

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

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

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

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

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

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

20 2. The affidavit is made on behalf of the mortgagor or a
21 transferee of the mortgagor who acquired title to the property
22 described in the mortgage;
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1 3. The mortgagee or judgment lienholder provided a payoff
2 statement with respect to the loan secured by the mortgage or
3 judgment lien;

4 4. The affiant has ascertained that the mortgagee or judgment
5 lienholder has received payment of the loan secured by the mortgage
6 or judgment lien in accordance with the payoff statement, as
7 evidenced by:

- 8 a. a bank check, certified check, cashier's check, escrow
9 account check from the title company or title
10 insurance agent or attorney trust account check that
11 has been negotiated by the mortgagee or judgment
12 lienholder,
- 13 b. wire transfer, or
- 14 c. another documentary evidence of the receipt of payment
15 by the mortgagee or judgment lienholder;

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

18 6. The title insurance company or its duly appointed agent has
19 given the mortgagee or judgment lienholder at least fifteen (15)
20 days' notice in writing by certified mail, return receipt requested,
21 of its intention to execute and record an affidavit in accordance
22 with this section, with a copy of the proposed affidavit attached to
23 the written notice; and
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1 7. The mortgagee or judgment lienholder has not responded in
2 writing to the notification at least fifteen (15) days before the
3 affidavit is recorded.

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

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

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

20 2. The payoff statement.

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

1 H. The county clerk shall index the affidavit against the real
2 property described in the mortgage or judgment lien and the
3 affidavit.

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

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

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

22 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
23 March 30, 2021 - DO PASS
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