

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 2397

By: Russ

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5  
6 AS INTRODUCED

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  
13 company shall appear on the affidavit if executed by  
14 an agent; and providing an effective date.

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

16 SECTION 1. AMENDATORY Section 1, Chapter 222, O.S.L.  
17 2015 (36 O.S. Supp. 2020, Section 5008), is amended to read as  
18 follows:

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

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

22 2. "Mortgagee" means:

23 a. the grantee of a mortgage,

24 b. if a mortgage has been assigned of record, the last  
person or entity to whom the mortgage or lien 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 lien. A person or entity  
6 transmitting a payoff statement is considered the mortgage servicer  
7 for the mortgage or 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 lien, including principal, interest, and other charges  
12 properly assessed under the loan documentation of the  
13 mortgage or 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 lien on ~~property~~  
20 ~~consisting exclusively of~~ all real property including commercial  
21 agriculture or a one- to four-family residence, including a  
22 residential unit in a condominium regime.

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

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

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

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

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

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

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

23 a. a bank check, certified check, cashier's check, escrow  
24 account check from the title company or title

1 insurance agent or attorney trust account check that  
2 has been negotiated by the mortgagee or lienholder,

3 b. wire transfer, or

4 c. another documentary evidence of the receipt of payment  
5 by the mortgagee or lienholder;

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

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

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

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

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

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

10 2. The payoff statement.

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

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

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

1 may award reasonable attorney fees and court costs to the prevailing  
2 party.

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

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

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