

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

HOUSE BILL 4151

By: Schreiber

AS INTRODUCED

An Act relating to insurance; amending 36 O.S. 2021, Section 5008, which relates to release of mortgage affidavit; providing that a title insurance company may not charge a preemptive fee for the filing of a release of mortgage affidavit under certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2021, Section 5008, is amended to read as follows:

Section 5008. 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 or judgment lien has been assigned of record, or
- c. if a mortgage is serviced by a mortgage servicer, the mortgage servicer;

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

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

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

8 a. the unpaid balance of a loan secured by a mortgage or
9 judgment lien, including principal, interest, and
10 other charges properly assessed under the loan
11 documentation of the mortgage or judgment lien, and

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

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

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

21 C. If a mortgagee or judgment lienholder fails to execute and
22 deliver a release of mortgage or judgment lien to the mortgagor or
23 designated agent of the mortgagor within sixty (60) days after the
24 date of receipt of payment of the mortgage by the mortgagee or
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1 judgment lienholder in accordance with a payoff statement furnished
2 by the mortgagee or judgment lienholder or its mortgage servicer, an
3 authorized officer of a title insurance company or a duly appointed
4 agent of the title insurance company, on behalf of the mortgagor or
5 a transferee of the mortgagor who acquired title to the property
6 described in the mortgage, may execute and record an affidavit in
7 the real property records of each county in which the mortgage or
8 judgment lien was recorded. The written signature of the agent of
9 the title insurance company or attorney shall appear on the
10 affidavit. An authorized officer of a title insurance company or a
11 duly appointed agent of the title insurance company may not charge a
12 preemptive fee for the filing of said affidavit as part of the same
13 transaction in which the mortgage or judgment lien is being paid in
14 accordance with a payoff statement furnished by the mortgagee or
15 judgment lienholder.

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

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

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

22 3. The mortgagee or judgment lienholder provided a payoff
23 statement with respect to the loan secured by the mortgage or
24 judgment lien;
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1 4. The affiant has ascertained that the mortgagee or judgment
2 lienholder has received payment of the loan secured by the mortgage
3 or judgment lien in accordance with the payoff statement, as
4 evidenced by:

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

10 b. wire transfer, or

11 c. another documentary evidence of the receipt of payment
12 by the mortgagee or judgment lienholder;

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

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

21 7. The mortgagee or judgment lienholder has not responded in
22 writing to the notification at least fifteen (15) days before the
23 affidavit is recorded.
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1 E. The affidavit must include the names of the mortgagor and
2 the mortgagee or judgment lienholder, the date of the mortgage, the
3 legal description of the property, and the book and page or clerk's
4 document number of the real property records where the mortgage or
5 lien and/or modification is recorded, together with similar
6 information for a recorded assignment of the mortgage or judgment
7 lien.

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

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

17 2. The payoff statement.

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

21 H. The county clerk shall index the affidavit against the real
22 property described in the mortgage or judgment lien and the
23 affidavit.
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1 I. A person who knowingly causes an affidavit with false
2 information to be executed and recorded under this section is liable
3 for the penalties for filing a false affidavit, including the
4 penalties for commission of offenses pursuant to the appropriate
5 section of the penal code, and to a party injured by the affidavit
6 for actual damages of Five Thousand Dollars (\$5,000.00), whichever
7 is greater. The Attorney General may sue to collect the penalty.
8 If the Attorney General or an injured party bringing suit
9 substantially prevails in an action under this subsection, the court
10 may award reasonable attorney fees and court costs to the prevailing
11 party.

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

18 SECTION 2. This act shall become effective November 1, 2024.
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