

AN ACT

relating to a title insurance company affidavit as a release of lien.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 12.017(a), Property Code, is amended by amending Subdivision (6) and adding Subdivision (7) to read as follows:

(6) "Title insurance company" means a corporation or other business entity authorized ~~[and licensed]~~ to engage in ~~[transact]~~ the business of insuring titles to interests in real property in this state.

(7) "Authorized title insurance agent," with respect to an Affidavit as Release of Lien under this section, means a person licensed as a title insurance agent under Chapter 2651, Insurance Code, and authorized in writing by a title insurance company by instrument recorded in the real property records in the county in which the property to which the affidavit relates is located to execute one or more Affidavits as Release of Lien in compliance with this section, subject to any terms, limitations, and conditions that are set forth in the instrument executed by the title insurance company.

SECTION 2. Section 12.017, Property Code, is amended by amending Subsections (b), (c), (d), (e), (f), (g), (h), and (i) and adding Subsections (j) and (k) to read as follows:

(b) This section applies only to a mortgage on:

(1) property consisting exclusively of a one-to-four-family residence, including a residential unit in a condominium regime; or

(2) property other than property described by Subdivision (1), if the original face amount of the indebtedness secured by the mortgage on the property is less than \$1.5 million.

(c) An ~~[If a mortgagee fails to execute and deliver a release of mortgage to the mortgagor or the mortgagor's designated agent within 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 an authorized title insurance agent may, on behalf of the mortgagor or a transferee of the mortgagor who acquired title to the property described in the mortgage, execute an affidavit that complies with the requirements of this section and record the affidavit in the real property records of each county in which the mortgage was recorded.

(d) An affidavit executed under Subsection (c) ~~[this section]~~ must be in substantially the following form ~~[state that]~~:

AFFIDAVIT AS RELEASE OF LIEN

Before me, the undersigned authority, on this day personally appeared (insert name of affiant) ("Affiant") who, being first duly sworn, upon his/her oath states:

1. My name is (insert name of Affiant), and I am an authorized officer of (insert name of title insurance company or authorized title insurance agent) ("Title Company").

1 2. This affidavit is made on behalf of the mortgagor or a
2 transferee of the mortgagor who acquired title to the property
3 described in the following mortgage:

4 (describe mortgage, the name of the mortgagor, and the property
5 described in the mortgage)

6 3. (Insert name of Mortgagee) ("Mortgagee") provided a
7 payoff statement with respect to the loan secured by the mortgage.

8 4. Affiant has ascertained that Title Company delivered to
9 Mortgagee payment of the loan secured by the mortgage in the amount
10 and time and to the location required by the payoff statement.

11 5. The mortgage relates to:

12 (A) property consisting exclusively of a
13 one-to-four-family residence, which may include a residential unit
14 in a condominium regime; or

15 (B) property, other than property described by
16 Paragraph (A) above, for which the original face amount of the
17 indebtedness secured by the mortgage on the property is less than
18 \$1.5 million.

19 6. Pursuant to Section 12.017, Texas Property Code, this
20 affidavit constitutes a full and final release of the mortgage from
21 the property.

22 Signed this__ day of _____, ____.

23 _____ (signature of affiant)

24 State of _____

25 County of _____

26 Sworn to and subscribed to before me on _____ (date) by

27 _____ (insert name of affiant).

1 _____ (signature of notarial officer)

2 (Seal, if any, of notary) _____

3 _____ (printed
4 name)

5 My commission expires:

6 _____

7 ~~[(1) the affiant is an authorized officer of a title~~
8 ~~insurance company;~~

9 ~~[(2) the affidavit is made on behalf of the mortgagor~~
10 ~~or a transferee of the mortgagor who acquired title to the property~~
11 ~~described in the mortgage;~~

12 ~~[(3) the mortgagee provided a payoff statement with~~
13 ~~respect to the loan secured by the mortgage;~~

14 ~~[(4) the affiant has ascertained that the mortgagee~~
15 ~~has received payment of the loan secured by the mortgage in~~
16 ~~accordance with the payoff statement, as evidenced by:~~

17 ~~[(A) a bank check, certified check, escrow~~
18 ~~account check from the title company or title insurance agent, or~~
19 ~~attorney trust account check that has been negotiated by the~~
20 ~~mortgagee, or~~

21 ~~[(B) another documentary evidence of the receipt~~
22 ~~of payment by the mortgagee;~~

23 ~~[(5) more than 60 days have elapsed since the date~~
24 ~~payment was received by the mortgagee;~~

25 ~~[(6) the title insurance company or its agent has~~
26 ~~given the mortgagee at least 15 days' notice in writing of its~~
27 ~~intention to execute and record an affidavit in accordance with~~

1 ~~this section, with a copy of the proposed affidavit attached to the~~
2 ~~written notice; and~~

3 ~~[(7) the mortgagee has not responded in writing to the~~
4 ~~notification, or a request for additional payment made by the~~
5 ~~mortgagee has been complied with at least 15 days before the date of~~
6 ~~the affidavit.]~~

7 (e) An [The] affidavit filed under Subsection (c) or (f)
8 must include the names of the mortgagor and the mortgagee, the date
9 of the mortgage, and the volume and page or clerk's file number of
10 the real property records where the mortgage is recorded, together
11 with similar information for a recorded assignment of the mortgage.

12 (f) On or after the date of the payment to which the
13 affidavit relates, the title insurance company or authorized title
14 insurance agent must notify the mortgagee at the location to which
15 the payment is sent that the title insurance company or authorized
16 title insurance agent may file for record at any time the affidavit
17 as a release of lien. If notice required by this section is not
18 provided to the mortgagee, the title insurance company or
19 authorized title insurance agent may not file for record the
20 affidavit as a release of lien. The mortgagee may file a separate
21 affidavit describing the mortgage and property and controverting
22 the affidavit by the title insurance company or authorized title
23 insurance agent as a release of lien on or before the 45th day after
24 the date the mortgagee receives the notice if the mortgagee mails a
25 copy of the mortgagee's affidavit to the title insurance company or
26 authorized title insurance agent within that 45-day period. [The
27 ~~affiant must attach to the affidavit a photostatic copy, certified~~

1 ~~as a true copy of the original document, of:~~

2 ~~[(1) the documentary evidence that payment has been~~
3 ~~received by the mortgagee, including the mortgagee's endorsement of~~
4 ~~a negotiated check if paid by check, and~~

5 ~~[(2) the payoff statement.]~~

6 (g) An affidavit under Subsection (c) ~~[that is executed and~~
7 ~~recorded as provided by this section]~~ operates as a release of the
8 mortgage described in the affidavit if the affidavit, as provided
9 by this section:

10 (1) is executed;

11 (2) is recorded; and

12 (3) is not controverted by a separate affidavit by the
13 mortgagee in accordance with the requirements of Subsection (f).

14 (h) The county clerk shall index an ~~[the]~~ affidavit filed
15 under this section in the names of the original mortgagee and the
16 last assignee of the mortgage appearing of record as the grantors
17 and in the name of the mortgagor as grantee.

18 (i) A person who knowingly causes an affidavit with false
19 information to be executed and recorded under this section is
20 liable for the penalties for filing a false affidavit, including
21 the penalties for commission of offenses under Section 37.02 of the
22 Penal Code~~[, and to a party injured by the affidavit for actual~~
23 ~~damages or \$5,000, whichever is greater]~~. The attorney general may
24 sue to collect the penalty. A person who negligently causes an
25 affidavit with false information to be executed and recorded under
26 this section is liable to a party injured by the affidavit for
27 actual damages. If the attorney general or an injured party

1 bringing suit substantially prevails in an action under this
2 subsection, the court may award reasonable attorney's fees and
3 court costs to the prevailing party.

4 (j) A title insurance company or authorized title insurance
5 agent that, at any time after payment of the mortgage, files for
6 record an affidavit executed under Subsection (c) may use any
7 recording fee collected for the recording of a release of the
8 mortgage for the purpose of filing the affidavit.

9 (k) This section does not affect any agreement or obligation
10 of a mortgagee to execute and deliver a release of mortgage.

11 SECTION 3. The change in law made by this Act applies only
12 to an affidavit filed on or after the effective date of this Act. An
13 affidavit filed before the effective date of this Act is governed by
14 the law in effect immediately before the effective date of this Act,
15 and that law is continued in effect for that purpose.

16 SECTION 4. This Act takes effect September 1, 2009.

H.B. No. 3945

President of the Senate

Speaker of the House

I certify that H.B. No. 3945 was passed by the House on May 4, 2009, by the following vote: Yeas 143, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3945 was passed by the Senate on May 26, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor