

1-1 By: Orr (Senate Sponsor - Watson) H.B. No. 3945
1-2 (In the Senate - Received from the House May 5, 2009;
1-3 May 6, 2009, read first time and referred to Committee on Business
1-4 and Commerce; May 18, 2009, reported favorably by the following
1-5 vote: Yeas 8, Nays 0; May 18, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to a title insurance company affidavit as a release of
1-9 lien.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 12.017(a), Property Code, is amended by
1-12 amending Subdivision (6) and adding Subdivision (7) to read as
1-13 follows:

1-14 (6) "Title insurance company" means a corporation or
1-15 other business entity authorized ~~[and licensed]~~ to engage in
1-16 ~~[transact]~~ the business of insuring titles to interests in real
1-17 property in this state.

1-18 (7) "Authorized title insurance agent," with respect
1-19 to an Affidavit as Release of Lien under this section, means a
1-20 person licensed as a title insurance agent under Chapter 2651,
1-21 Insurance Code, and authorized in writing by a title insurance
1-22 company by instrument recorded in the real property records in the
1-23 county in which the property to which the affidavit relates is
1-24 located to execute one or more Affidavits as Release of Lien in
1-25 compliance with this section, subject to any terms, limitations,
1-26 and conditions that are set forth in the instrument executed by the
1-27 title insurance company.

1-28 SECTION 2. Section 12.017, Property Code, is amended by
1-29 amending Subsections (b), (c), (d), (e), (f), (g), (h), and (i) and
1-30 adding Subsections (j) and (k) to read as follows:

1-31 (b) This section applies only to a mortgage on:

1-32 (1) property consisting exclusively of a
1-33 one-to-four-family residence, including a residential unit in a
1-34 condominium regime; or

1-35 (2) property other than property described by
1-36 Subdivision (1), if the original face amount of the indebtedness
1-37 secured by the mortgage on the property is less than \$1.5 million.

1-38 (c) ~~An [If a mortgagee fails to execute and deliver a~~
1-39 ~~release of mortgage to the mortgagor or the mortgagor's designated~~
1-40 ~~agent within 60 days after the date of receipt of payment of the~~
1-41 ~~mortgage by the mortgagee in accordance with a payoff statement~~
1-42 ~~furnished by the mortgagee or its mortgage servicer, an]~~ authorized
1-43 officer of a title insurance company or an authorized title
1-44 insurance agent may, on behalf of the mortgagor or a transferee of
1-45 the mortgagor who acquired title to the property described in the
1-46 mortgage, execute an affidavit that complies with the requirements
1-47 of this section and record the affidavit in the real property
1-48 records of each county in which the mortgage was recorded.

1-49 (d) An affidavit executed under Subsection (c) ~~[this~~
1-50 ~~section]~~ must be in substantially the following form [state that]:

1-51 AFFIDAVIT AS RELEASE OF LIEN

1-52 Before me, the undersigned authority, on this day personally
1-53 appeared (insert name of affiant) ("Affiant") who, being first duly
1-54 sworn, upon his/her oath states:

1-55 1. My name is (insert name of Affiant), and I am an
1-56 authorized officer of (insert name of title insurance company or
1-57 authorized title insurance agent) ("Title Company").

1-58 2. This affidavit is made on behalf of the mortgagor or a
1-59 transferee of the mortgagor who acquired title to the property
1-60 described in the following mortgage:

1-61 (describe mortgage, the name of the mortgagor, and the property
1-62 described in the mortgage)

1-63 3. (Insert name of Mortgagee) ("Mortgagee") provided a
1-64 payoff statement with respect to the loan secured by the mortgage.

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

5. The mortgage relates to:

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

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

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

Signed this ___ day of ___, ____.

(signature of affiant)

State of _____

County of _____

Sworn to and subscribed to before me on _____ (date) by _____ (insert name of affiant).

(signature of notarial officer)

(Seal, if any, of notary) _____

(printed

name)

My commission expires: _____

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

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

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

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

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

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

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

~~[(6) the title insurance company or its agent has given the mortgagee at least 15 days' notice in writing of its intention to execute and record an affidavit in accordance with this section, with a copy of the proposed affidavit attached to the written notice; and~~

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

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

(f) On or after the date of the payment to which the affidavit relates, the title insurance company or authorized title insurance agent must notify the mortgagee at the location to which the payment is sent that the title insurance company or authorized title insurance agent may file for record at any time the affidavit as a release of lien. If notice required by this section is not provided to the mortgagee, the title insurance company or authorized title insurance agent may not file for record the affidavit as a release of lien. The mortgagee may file a separate affidavit describing the mortgage and property and controverting the affidavit by the title insurance company or authorized title

insurance agent as a release of lien on or before the 45th day after the date the mortgagee receives the notice if the mortgagee mails a copy of the mortgagee's affidavit to the title insurance company or authorized title insurance agent within that 45-day period. ~~[The affiant must attach to the affidavit a photostatic copy, certified as a true copy of the original document, of:~~

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

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

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

(1) is executed;

(2) is recorded; and

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

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

(i) A person who knowingly causes an affidavit with false information to be executed and recorded under this section is liable for the penalties for filing a false affidavit, including the penalties for commission of offenses under Section 37.02 of the Penal Code~~[, and to a party injured by the affidavit for actual damages or \$5,000, whichever is greater]~~. The attorney general may sue to collect the penalty. A person who negligently causes an affidavit with false information to be executed and recorded under this section is liable to a party injured by the affidavit for actual damages. If the attorney general or an injured party bringing suit substantially prevails in an action under this subsection, the court may award reasonable attorney's fees and court costs to the prevailing party.

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

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

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

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

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