

1-1 By: Watson S.B. No. 1596
1-2 (In the Senate - Filed March 10, 2009; March 17, 2009, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 17, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; April 17, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1596 By: Watson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to a title insurance company affidavit as a release of
1-11 lien.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsection (a), Section 12.017, Property Code,
1-14 is amended by adding Subdivision (5-a) and amending Subdivision (6)
1-15 to read as follows:

1-16 (5-a) "Title insurance agent" means a person licensed
1-17 as a title insurance agent under Chapter 2651, Insurance Code.

1-18 (6) "Title insurance company" means a corporation or
1-19 other business entity authorized ~~[and licensed]~~ to engage in
1-20 ~~[transact]~~ the business of insuring titles to interests in real
1-21 property in this state.

1-22 SECTION 2. Section 12.017, Property Code, is amended by
1-23 amending Subsections (b), (c), (d), (e), (f), (g), (h), and (i) and
1-24 adding Subsections (j) and (k) to read as follows:

1-25 (b) This section applies only to a mortgage on:

1-26 (1) property consisting exclusively of a
1-27 one-to-four-family residence, including a residential unit in a
1-28 condominium regime; or

1-29 (2) property other than property described by
1-30 Subdivision (1), if the original face amount of the indebtedness
1-31 secured by the mortgage on the property is less than \$1.5 million.

1-32 (c) An ~~[If a mortgagee fails to execute and deliver a~~
1-33 ~~release of mortgage to the mortgagor or the mortgagor's designated~~
1-34 ~~agent within 60 days after the date of receipt of payment of the~~
1-35 ~~mortgage by the mortgagee in accordance with a payoff statement~~
1-36 ~~furnished by the mortgagee or its mortgage servicer, an]~~ authorized
1-37 officer of a title insurance company or a title insurance agent may,
1-38 on behalf of the mortgagor or a transferee of the mortgagor who
1-39 acquired title to the property described in the mortgage, execute
1-40 an affidavit that complies with the requirements of this section
1-41 and record the affidavit in the real property records of each county
1-42 in which the mortgage was recorded.

1-43 (d) An affidavit executed under Subsection (c) [this
1-44 section] must be in substantially the following form ~~[state that]~~:

1-45 AFFIDAVIT AS RELEASE OF LIEN

1-46 Before me, the undersigned authority, on this day personally
1-47 appeared (insert name of affiant) ("Affiant") who, being first duly
1-48 sworn, upon his/her oath states:

1-49 1. My name is (insert name of Affiant), and I am an
1-50 authorized officer of (insert name of title insurance company or
1-51 title insurance agent) ("Title Company").

1-52 2. This affidavit is made on behalf of the mortgagor or a
1-53 transferee of the mortgagor who acquired title to the property
1-54 described in the following mortgage:

1-55 (describe mortgage, the name of the mortgagor, and the property
1-56 described in the mortgage)

1-57 3. (Insert name of Mortgagee) ("Mortgagee") provided a
1-58 payoff statement with respect to the loan secured by the mortgage.

1-59 4. Affiant has ascertained that Title Company delivered to
1-60 Mortgagee payment of the loan secured by the mortgage in the amount
1-61 and time and to the location required by the payoff statement.

1-62 5. The mortgage relates to:

1-63 (A) property consisting exclusively of a

2-1 one-to-four-family residence, which may include a residential unit
2-2 in a condominium regime; or
2-3 (B) property, other than property described by
2-4 Paragraph (A) above, for which the original face amount of the
2-5 indebtedness secured by the mortgage on the property is less than
2-6 \$1.5 million.

2-7 6. Pursuant to Section 12.017, Texas Property Code, this
2-8 affidavit constitutes a full and final release of the mortgage from
2-9 the property.

2-10 Signed this ___ day of _____, ____.
2-11 _____ (signature of affiant)

2-12 State of _____
2-13 County of _____

2-14 Sworn to and subscribed to before me on _____ (date) by
2-15 _____ (insert name of affiant).

2-16 _____ (signature of notarial officer)
2-17 (Seal, if any, of notary) _____

2-18 _____ (printed
2-19 name)

2-20 My commission expires:

2-21 _____
2-22 ~~[(1) the affiant is an authorized officer of a title~~
2-23 ~~insurance company;~~

2-24 ~~[(2) the affidavit is made on behalf of the mortgagor~~
2-25 ~~or a transferee of the mortgagor who acquired title to the property~~
2-26 ~~described in the mortgage;~~

2-27 ~~[(3) the mortgagee provided a payoff statement with~~
2-28 ~~respect to the loan secured by the mortgage;~~

2-29 ~~[(4) the affiant has ascertained that the mortgagee~~
2-30 ~~has received payment of the loan secured by the mortgage in~~
2-31 ~~accordance with the payoff statement, as evidenced by:~~

2-32 ~~[(A) a bank check, certified check, escrow~~
2-33 ~~account check from the title company or title insurance agent, or~~
2-34 ~~attorney trust account check that has been negotiated by the~~
2-35 ~~mortgagee; or~~

2-36 ~~[(B) another documentary evidence of the receipt~~
2-37 ~~of payment by the mortgagee;~~

2-38 ~~[(5) more than 60 days have elapsed since the date~~
2-39 ~~payment was received by the mortgagee;~~

2-40 ~~[(6) the title insurance company or its agent has~~
2-41 ~~given the mortgagee at least 15 days' notice in writing of its~~
2-42 ~~intention to execute and record an affidavit in accordance with~~
2-43 ~~this section, with a copy of the proposed affidavit attached to the~~
2-44 ~~written notice; and~~

2-45 ~~[(7) the mortgagee has not responded in writing to the~~
2-46 ~~notification, or a request for additional payment made by the~~
2-47 ~~mortgagee has been complied with at least 15 days before the date of~~
2-48 ~~the affidavit.]~~

2-49 (e) ~~An~~ [The] affidavit filed under Subsection (c) or (f)
2-50 must include the names of the mortgagor and the mortgagee, the date
2-51 of the mortgage, and the volume and page or clerk's file number of
2-52 the real property records where the mortgage is recorded, together
2-53 with similar information for a recorded assignment of the mortgage.

2-54 (f) ~~On or after the date of the payment to which the~~
2-55 ~~affidavit relates, the title insurance company or title insurance~~
2-56 ~~agent must notify the mortgagee at the location to which the payment~~
2-57 ~~is sent that the company or agent may file for record at any time the~~
2-58 ~~affidavit as a release of lien. If notice required by this section~~
2-59 ~~is not provided to the mortgagee, the title insurance company or~~
2-60 ~~title insurance agent may not file for record the affidavit as a~~
2-61 ~~release of lien. The mortgagee may file a separate affidavit~~
2-62 ~~describing the mortgage and property and controverting the~~
2-63 ~~affidavit by the title insurance company or title insurance agent~~
2-64 ~~as a release of lien on or before the 45th day after the date the~~
2-65 ~~mortgagee receives the notice if the mortgagee mails a copy of the~~
2-66 ~~mortgagee's affidavit to the title insurance company or title~~
2-67 ~~insurance agent within that 45-day period [The affiant must attach~~
2-68 ~~to the affidavit a photostatic copy, certified as a true copy of the~~
2-69 ~~original document, of:~~

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

3-5 (g) An affidavit under Subsection (c) ~~[that is executed and~~
3-6 ~~recorded as provided by this section]~~ operates as a release of the
3-7 mortgage described in the affidavit if the affidavit, as provided
3-8 by this section:

3-9 (1) is executed;

3-10 (2) is recorded; and

3-11 (3) is not controverted by a separate affidavit by the
3-12 mortgagee in accordance with the requirements of Subsection (f).

3-13 (h) The county clerk shall index an [the] affidavit filed
3-14 under this section in the names of the original mortgagee and the
3-15 last assignee of the mortgage appearing of record as the grantors
3-16 and in the name of the mortgagor as grantee.

3-17 (i) A person who knowingly causes an affidavit with false
3-18 information to be executed and recorded under this section is
3-19 liable for the penalties for filing a false affidavit, including
3-20 the penalties for commission of offenses under Section 37.02 of the
3-21 Penal Code, and to a party injured by the affidavit for actual
3-22 damages or \$10,000 ~~[\$5,000]~~, whichever is greater. The attorney
3-23 general may sue to collect the penalty. If the attorney general or
3-24 an injured party bringing suit substantially prevails in an action
3-25 under this subsection, the court may award reasonable attorney's
3-26 fees and court costs to the prevailing party.

3-27 (j) A title insurance company or title insurance agent that,
3-28 at any time after payment of the mortgage, files for record an
3-29 affidavit executed under Subsection (c) may use any recording fee
3-30 collected for the recording of a release of the mortgage for the
3-31 purpose of filing the affidavit.

3-32 (k) This section does not affect any agreement or obligation
3-33 of a mortgagee to execute and deliver a release of mortgage.

3-34 SECTION 3. The change in law made by this Act applies only
3-35 to an affidavit filed on or after the effective date of this Act. An
3-36 affidavit filed before the effective date of this Act is governed by
3-37 the law in effect immediately before the effective date of this Act,
3-38 and that law is continued in effect for that purpose.

3-39 SECTION 4. This Act takes effect September 1, 2009.

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