

AN ACT concerning mortgages.

Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:

Section 5. The Mortgage Act is amended by changing  
Section 2 as follows:

(765 ILCS 905/2) (from Ch. 95, par. 52)

Sec. 2. Every mortgagee of real property, his assignee of record, or other legal representative, having received full satisfaction and payment of all such sum or sums of money as are really due to him from the mortgagor, and every trustee, or his successor in trust, in a deed of trust in the nature of a mortgage, the notes, bonds or other indebtedness secured thereby having been fully paid before September 7, 1973, shall, at the request of the mortgagor, or grantor in a deed of trust in the nature of a mortgage, his heirs, legal representatives or assigns, in case such mortgage or trust deed has been recorded or registered, make, execute and deliver to the mortgagor or grantor in a deed of trust in the nature of a mortgage, his heirs, legal representatives or assigns, an instrument in writing executed in conformity with the provisions of this section releasing such mortgage or deed of trust in the nature of a mortgage, which release shall be entitled to be recorded or registered and the recorder or registrar upon receipt of such a release and the payment of the recording fee therefor shall record or register the same.

Mortgages of real property and deeds of trust in the nature of a mortgage shall be released of record only in the manner provided herein or as provided in the Mortgage Certificate of Release Act; however, nothing contained in this Act shall in any manner affect the validity of any

release of a mortgage or deed of trust made prior to January 1, 1952 on the margin of the record.

Except in the case of a mortgage that is required to be released under the Mortgage Certificate of Release Act, every mortgagee of real property, his assignee of record, or other legal representative, having received full satisfaction and payment of all such sum or sums of money as are really due to him from the mortgagor, and every trustee, or his successor in trust, in a deed of trust in the nature of a mortgage, the notes, bonds or other indebtedness secured thereby having been fully paid after September 7, 1973, shall make, execute and deliver to the mortgagor or grantor in a deed of trust in the nature of a mortgage, his heirs, legal representatives or assigns, an instrument in writing releasing such mortgage or deed of trust in the nature of a mortgage or shall deliver that release to the recorder or registrar for recording or registering. If the release is delivered to the mortgagor or grantor, it must have imprinted on its face in bold letters at least 1/4 inch in height the following: "FOR THE PROTECTION OF THE OWNER, THIS RELEASE SHALL BE FILED WITH THE RECORDER OR THE REGISTRAR OF TITLES IN WHOSE OFFICE THE MORTGAGE OR DEED OF TRUST WAS FILED". The recorder, or registrar, upon receipt of such a release and the payment of the recording or registration fee, shall record or register the release. A certificate of release issued and recorded by a title insurance company or its duly appointed agent pursuant to the Mortgage Certificate of Release Act shall satisfy the requirements of this Section 2.

(Source: P.A. 92-765, eff. 8-6-02.)

Section 10. The Mortgage Certificate of Release Act is amended by changing Sections 5, 10, 15, 20, 35, 40, and 50 and by adding Sections 10.1 and 70 as follows:

(765 ILCS 935/5)

(Section scheduled to be repealed on January 1, 2004)

Sec. 5. Definitions. As used in this Act:

"Hold-harmless agreement" means a letter whereby a title insurance company, as defined in the Title Insurance Act, agrees to indemnify another title insurance company preparing to insure a present transaction that the indemnifying title insurance company has previously insured over without taking an exception to its title insurance policy for matters remaining of record, such as a previously paid but unreleased mortgage. A model form of a hold-harmless agreement is set forth in Section 70 of this Act.

"Mortgage" means a mortgage or mortgage lien on an interest in one-to-four family residential real property in this State given to secure a loan in the original principal amount of less than \$500,000. Trust deeds are not included.

"Mortgagee" means either: (i) the grantee of a mortgage; or (ii) if a mortgage has been assigned of record, the last person to whom the mortgage has been assigned of record.

"Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage. A person transmitting a payoff statement is the mortgage servicer for the mortgage described in the payoff statement.

"Mortgagor" means the grantor of a mortgage.

"Notice-of-intention-to-file-a-certificate-of-release" means a statement from a title insurance company or title insurance agent to the person to whom payment of the loan secured by the mortgage was made in accordance with the payoff statement of the intention to record a certificate of release.

"Payoff statement" means a statement for the amount of the (i) unpaid balance of a loan secured by a mortgage,

including principal, interest, and any other charges due under or secured by the mortgage; and (ii) interest on a per day basis for the unpaid balance.

"Record" means to deliver the certificate of release for recording with the county recorder.

"Title insurance agent" has the same meaning ascribed to it as in Section 3 of the Title Insurance Act.

"Title insurance company" has the same meaning ascribed to it as in Section 3 of the Title Insurance Act.

(Source: P.A. 92-765, eff. 8-6-02.)

(765 ILCS 935/10)

(Section scheduled to be repealed on January 1, 2004)

Sec. 10. Mortgage presently being paid off. Receipt of payment pursuant to the lender's written payoff statement shall constitute authority to record a certificate of release. ~~Content-and-delivery-of-notice-of-intention-to-file certificate-of-release. (a)-The-Notice-of-intention-to-file-a certificate--of--release--shall state--that--if--the---title insurance--company--or-title-insurance-agent-does-not-receive from-the-mortgagee-or-mortgage-servicer-or-its--successor--in interest--either--a--release--or--a--written-objection-to-the issuance-of-a-certificate-of-release-pursuant--to--subsection (e)--of--this-Section, A certificate of release shall may be delivered for recording to the recorder of each county in which the mortgage is recorded, together with the other documents from the new transaction, including a deed or new mortgage, or both by the title insurance company or its duly appointed agent. ~~A-notice-of-intention-to-file-a--certificate of--release--should--be--in--a--form-and-include-content-that substantially-complies-with--Section--65--of--this--Act.--The notice--of--intention--shall--include--a--copy-of-the-closing statement-or-HUD-1-form-and-the-payoff-check-or-a-copy-of-it,~~ ~~or-a-copy-of-the-wire-transfer-order.~~~~

(b) The notice of intention to file a certificate of release shall be sent by certified mail, return receipt requested, with postage prepaid, or by another service providing receipted delivery, no sooner than the day of closing and no later than 30 days after receipt of payment. The notice shall be delivered to the location identified in the payoff statement or as otherwise directed in writing by the mortgagee or mortgage servicer or its successor in interest. The notice may be sent with the payment, and need not be sent separately.

(c) Within 90 days after receipt of the notice of intention to file a certificate of release, the mortgagee or mortgage servicer or its successor in interest may issue a release or may object in writing to the issuance of a certificate of release, and by doing so shall prevent the title insurance company or title insurance agent from executing and recording a certificate of release pursuant to this Act. Any written objection submitted by the mortgagee or mortgage servicer or its successor in interest shall state the reason for which the release or certificate of release should not be issued. The written objection shall be sent to the title insurance company or title insurance agent by certified mail, return receipt requested, with postage prepaid, or by another service providing receipted delivery. A title insurance company or title insurance agent shall not cause a certificate of release to be recorded pursuant to this Section if the title insurance company or title insurance agent receives a written objection from the mortgagee or mortgage servicer or its successor in interest.

(Source: P.A. 92-765, eff. 8-6-02.)

(765 ILCS 935/10.1 new)

Sec. 10.1. Previously paid mortgages. A title insurance company or its duly appointed title insurance agent may issue

a mortgage certificate of release pursuant to this Act for a mortgage that appears in the chain of title prior to the mortgage presently being paid. The title insurance company must have proof of payment from its own prior files that it paid the mortgage or mortgages pursuant to a payoff statement. Where another title insurance company has paid off an unreleased mortgage pursuant to a payoff statement, the title insurance company or its duly appointed title insurance agent in the current transaction may rely upon the hold-harmless letter of that prior title insurance company to issue a mortgage certificate of release. This grant of authority is subject to the condition that the issuer of the mortgage certificate of release does not have notice that the lender opposes its release. A single mortgage certificate of release may include more than one mortgage, including both presently and previously paid mortgages.

(765 ILCS 935/15)

(Section scheduled to be repealed on January 1, 2004)

Sec. 15. Certificate of release. An officer or duly appointed agent of a title insurance company may, on behalf of a mortgagor or a person who has acquired from a mortgagor title to all or part of the property described in the mortgage, execute a certificate of release that complies with the requirements of this Act and record the certificate of release with the recorder of each county in which the mortgage is recorded, provided that payment of the loan secured by the mortgage was made in accordance with a written payoff statement furnished by the mortgagee or the mortgage servicer. The title insurance company or its duly appointed agent shall not be required to search the public record for a possible recorded satisfaction or release. ~~that a satisfaction or release of the mortgage has not previously been recorded, and that a notice of intention to file a~~

~~certificate--of--release--was--sent--in--accordance--with--Section  
10-~~

(Source: P.A. 92-765, eff. 8-6-02.)

(765 ILCS 935/20)

(Section scheduled to be repealed on January 1, 2004)

Sec. 20. Contents of certificate of release. A certificate of release executed under this Act must contain substantially all of the following for each mortgage being released:

(a) The name of the mortgagor, the name of the original mortgagee, and, if applicable, the mortgage servicer at the date of the mortgage, the date of recording, and the volume and page or document number or other official recording designation in the real property records where the mortgage is recorded. ~~7-together-with-similar-information-for-the--last recorded-assignment-of-the-mortgage-~~

(b) A statement that the mortgage was paid in accordance with the written payoff statement ~~received-from-the-mortgagee or--mortgage--servicer~~ and there is no objection from the mortgagee or mortgage servicer or its successor in interest. With respect to previously paid mortgages, the hold-harmless letter from a title insurance company, as provided in Section 10.1 of this Act, shall satisfy this requirement.

(c) A statement that the person executing the certificate of release is an officer or a duly appointed agent of a title insurance company authorized and licensed to transact the business of insuring titles to interests in real property in this State pursuant to subsections (2) and (3) of Section 3 of the Title Insurance Act.

(d) A statement that the certificate of release is made on behalf of the mortgagor or a person who acquired title from the mortgagor to all or a part of the property described in the mortgage.

(e) A statement that the mortgagee or mortgage servicer provided a written payoff statement. The hold-harmless letter from a title insurance company, as provided in Section 10.1 of this Act, shall satisfy this requirement with respect to previously paid mortgages.

(Source: P.A. 92-765, eff. 8-6-02.)

(765 ILCS 935/35)

(Section scheduled to be repealed on January 1, 2004)

Sec. 35. Effect of recording certificate of release. For purposes of releasing the lien of the mortgage, a certificate of release containing the information and statements provided for in Section 20 and executed as provided in Section 25 is prima facie evidence of the facts contained therein, and upon being recorded with the recorder, shall constitute a release of the lien of the mortgage described in the certificate of release. The title insurance company or title insurance agent recording the certificate of release may use the recording fee it may have collected for the recording of a release or satisfaction of the mortgage to effect the recording of the certificate of release.

(Source: P.A. 92-765, eff. 8-6-02.)

(765 ILCS 935/40)

(Section scheduled to be repealed on January 1, 2004)

Sec. 40. Wrongful or erroneous certificate of release. Recording of a wrongful or erroneous certificate of release by a title insurance company or its title insurance agent shall not relieve the mortgagor or the mortgagor's successors or assignees from any personal liability on the loan or other obligations secured by the mortgage. In addition to any other remedy provided by law, a title insurance company executing or recording a certificate of release under this Act ~~that has actual knowledge that the information and statements~~



~~contained--therein--are--false~~ is liable to the mortgagee for actual damages sustained due to the recording of the certificate of release. The prevailing party in any action or proceeding seeking actual damages due to the recording of a certificate of release shall be entitled to the recovery of reasonable attorneys fees and costs incurred in that action or proceeding.

(Source: P.A. 92-765, eff. 8-6-02.)

(765 ILCS 935/50)

(Section scheduled to be repealed on January 1, 2004)

Sec. 50. Form of certificate of release. A certificate of release, in substantially the following form, allowing for alterations to permit the inclusion of multiple mortgages, both presently and previously paid, complies with this Act.

CERTIFICATE OF RELEASE

Date:....Title Order No.:.....

1. Name of mortgagor(s):.....

2. Name of original mortgagee:.....

3. Name of mortgage servicer (if any):.....

~~4. Name of last assignee of mortgage or record (if any):.....~~

4. ~~5.~~ Mortgage recording: Vol.:.....Page:.....or Document No.:.....

~~6. Last assignment recording (if any):~~

~~Vol.:.....Page:.....or Document No.:.....~~

5. ~~7.~~ The above referenced mortgage has been paid in accordance with the payoff statement received ~~from:.....~~ and there is no objection from the mortgagee or mortgage servicer or its successor in interest to the recording of this certificate of release.

6. ~~8.~~ The person executing this certificate of release is an officer or duly appointed agent of a title insurance company authorized and licensed to transact the business of insuring titles to interests in real property in this State pursuant

to Section 30 of this Act.

7. 9- This certificate of release is made on behalf of the mortgagor or a person who acquired title from the mortgagor to all or part of the property described in the mortgage.

8. 10- The mortgagee or mortgage servicer provided a payoff statement.

9. 11- The property described in the mortgage is as follows:  
Permanent Index Number:.....

Common Address:.....

(Name of title insurance company)

By:.....

(Name of officer and title or name of agent and name of officer / representative thereof)

Address:.....

Telephone No.:.....

State of Illinois)

)

County of )

This instrument was acknowledged before me on .....(date) by .....(name of person) as .....(officer for / agent of) .....(title insurance company).

.....

Notary Public

My commission expires on.....

(Source: P.A. 92-765, eff. 8-6-02.)

(765 ILCS 935/70 new)

Sec. 70. Form of hold-harmless agreement. A hold-harmless agreement in substantially the following form, allowing for alterations to reflect the facts of the transaction and identity of the title insurance companies, complies with this Act.

Hold-harmless Agreement

TO: ..... (Presently insuring title insurance company)

Re: Policy No.: ..... (Previously insuring title insurance company)

Policy amount: \$.....

Policy/Commitment No.: ..... (Presently insuring title insurance company)

You show as exception number(s) ..... in your above referenced commitment for title insurance dated ....., the following exception(s):

Mortgage dated ....., recorded as Document No. .... made by ..... (borrow) to ..... (lender) to secure an indebtedness in the amount of \$.....

For and in consideration of your deleting said exception(s), we agree to indemnify you against loss that you may sustain as a result of said deletion. In no event may said indemnity exceed the face amount of our policy as noted above.

In the event any claim is made against you as a result of your deletion, you agree to notify us within 30 days of the date the claim is made.

Any action you take with respect to the claim will not obligate us under this letter unless the aforesaid notice has been furnished us and we have adequate time to consider our approval or disapproval of the action.

.....

Title Insurance Company (Previously insuring)

Public Act 093-0428  
HB2550 Enrolled

LRB093 09802 LCB 10047 b

(765 ILCS 935/65 rep.)

(765 ILCS 935/90 rep.)

Section 20. The Mortgage Certificate of Release Act is amended by repealing Sections 65 and 90.

Section 99. Effective date. This Act takes effect December 31, 2003.