



Rep. Sidney H. Mathias

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09300HB6253ham001

LRB093 14596 AMC 49505 a

1 AMENDMENT TO HOUSE BILL 6253

2 AMENDMENT NO. _____. Amend House Bill 6253 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Mortgage Act is amended by changing
5 Sections 2 and 4 as follows:

6 (765 ILCS 905/2) (from Ch. 95, par. 52)

7 Sec. 2. Release; manner.

8 (a) Every mortgagee of real property, his assignee of
9 record, or other legal representative, having received full
10 satisfaction and payment of all such sum or sums of money as
11 are really due to him from the mortgagor, and every trustee, or
12 his successor in trust, in a deed of trust in the nature of a
13 mortgage, the notes, bonds or other indebtedness secured
14 thereby having been fully paid before September 7, 1973, shall,
15 at the request of the mortgagor, or grantor in a deed of trust
16 in the nature of a mortgage, his heirs, legal representatives
17 or assigns, in case such mortgage or trust deed has been
18 recorded or registered, make, execute and deliver to the
19 mortgagor or grantor in a deed of trust in the nature of a
20 mortgage, his heirs, legal representatives or assigns, an
21 instrument in writing executed in conformity with the
22 provisions of this section releasing such mortgage or deed of
23 trust in the nature of a mortgage, which release shall be
24 entitled to be recorded or registered and the recorder or

1 registrar upon receipt of such a release and the payment of the
2 recording fee therefor shall record or register the same.

3 Mortgages of real property and deeds of trust in the nature
4 of a mortgage shall be released of record only in the manner
5 provided herein or as provided in the Mortgage Certificate of
6 Release Act; however, nothing contained in this Act shall in
7 any manner affect the validity of any release of a mortgage or
8 deed of trust made prior to January 1, 1952 on the margin of
9 the record.

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

1 mortgagee or trustee in a deed of trust in the nature of a
2 mortgage, its assignee of record, or other legal
3 representative, may include a reasonable fee in its payoff
4 statement for delivering a release as required by this Section
5 or for obtaining verification from a title insurance company
6 that the title insurance company has satisfied the requirements
7 of the Mortgage Certificate of Release Act.

8 (b) A release, in substantially the following form, that is
9 delivered as required by this Section by a mortgagee or trustee
10 in a deed of trust in the nature of a mortgage, its assignee of
11 record, or other legal representative, shall be sufficient if
12 it includes the following:

13 (i) the names of the mortgagors;

14 (ii) the name of the original mortgagee;

15 (iii) the name of the mortgage servicer (if any);

16 (iv) the volume and page or document number of the
17 mortgage recording;

18 (v) an identification of the property described in the
19 mortgage by Permanent Index Number and common address; and

20 (vi) a statement to the effect that the mortgage has
21 been paid in accordance with its terms.

22 (Source: P.A. 92-765, eff. 8-6-02; 93-428, eff. 12-31-03.)

23 (765 ILCS 905/4) (from Ch. 95, par. 54)

24 Sec. 4. If any mortgagee or trustee, in a deed in the
25 nature of a mortgage, of real property, or his executor or
26 administrator, heirs or assigns, or title insurance company
27 that is required to record a certificate of release pursuant to
28 the Mortgage Certificate of Release Act, knowing the same to be
29 paid, shall not, within one month after the payment of the debt
30 secured by such mortgage or trust deed, comply with the
31 requirements of Section 2 of this Act or the Mortgage
32 Certificate of Release Act, he shall, for every such offense,
33 be liable for and pay to the party aggrieved the sum of \$200

1 which may be recovered by the party aggrieved in a civil
2 action, together with reasonable attorney's fees. In any such
3 action, introduction of a loan payment book or receipt which
4 indicates that the obligation has been paid shall be sufficient
5 evidence to raise a presumption that the obligation has been
6 paid. Upon a finding for the party aggrieved, the court shall
7 order the mortgagee or trustee, or his executor or
8 administrator, heirs or assigns, or title insurance company, to
9 make, execute and deliver the release as provided in Section 2
10 of this Act or the Mortgage Certificate of Release Act. The
11 successor in interest to the mortgagee or trustee in a deed in
12 the nature of a mortgage shall not be liable for the penalty
13 prescribed in this Section if he complies with the requirements
14 of Section 2 of this Act within one month after succeeding to
15 the interest.

16 (Source: P.A. 78-587.)

17 Section 10. The Mortgage Certificate of Release Act is
18 amended by changing Section 5, 10, 10.1, 25, 35, and 40 as
19 follows:

20 (765 ILCS 935/5)

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

22 "Hold-harmless agreement" means a letter whereby a title
23 insurance company, as defined in the Title Insurance Act,
24 agrees to indemnify another title insurance company preparing
25 to insure a present transaction that the indemnifying title
26 insurance company has previously insured over without taking an
27 exception to its title insurance policy for matters remaining
28 of record, such as a previously paid but unreleased mortgage. A
29 model form of a hold-harmless agreement is set forth in Section
30 70 of this Act.

31 "Mortgage" means a mortgage or mortgage lien on an interest
32 in one-to-four family residential real property in this State

1 given to secure a loan in the original principal amount of less
2 than \$500,000. Trust deeds are not included.

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

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

12 "Mortgagor" means the grantor of a mortgage.

13 "Payoff statement" means a written statement issued by
14 mortgagee or its mortgage servicer that includes a statement
15 of: ~~for the amount of the~~ (i) the amount of the unpaid balance
16 of a loan secured by a mortgage as of a specified payoff date,
17 including the principal, interest, and any other charges, fees
18 and costs due under or secured by the mortgage; (ii) any
19 additional charges, fees and costs as may be recited therein
20 including, but not limited to, fees for preparation of a
21 release, charges for delivering a release, late fees, facsimile
22 charges, and other miscellaneous charges; ~~and (ii)~~ (iii)
23 interest on a per diem ~~day~~ basis for the unpaid balance after
24 the specified payoff date; (iv) the place where payment must be
25 made; and (v) any limitation as to the authorized method of
26 payment or other qualifications for satisfaction of the amount
27 due under or secured by the mortgage.

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

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

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

34 "Title insurance company" has the same meaning ascribed to

1 it as in Section 3 of the Title Insurance Act.

2 (Source: P.A. 92-765, eff. 8-6-02; 93-428, eff. 12-31-03.)

3 (765 ILCS 935/10)

4 Sec. 10. Certificate of release; mortgage presently being
5 paid off. ~~Receipt of payment pursuant to the lender's written~~
6 ~~payoff statement shall constitute authority to record a~~
7 ~~certificate of release.~~

8 (a) A title insurance company or its duly appointed title
9 insurance agent shall execute and deliver for recording a
10 certificate of release pursuant to this Act when:

11 (1) the title insurance company is issuing title
12 insurance in a transaction in which a mortgage to be
13 released is presently being paid off by the title insurance
14 company;

15 (2) the mortgagee or the mortgage servicer has issued a
16 payoff statement; and

17 (3) the mortgagee or the mortgage servicer has received
18 payment in full of the balance needed to satisfy the
19 obligations secured by the mortgage and set forth in the
20 payoff statement.

21 (b) A certificate of release shall be delivered for
22 recording to the recorder of each county in which the mortgage
23 is recorded, together with the other documents from the new
24 transaction, including a deed or new mortgage, or both by the
25 title insurance company or its duly appointed title insurance
26 agent.

27 (c) The title insurance company or its duly appointed title
28 insurance agent shall furnish written notification of the
29 execution and delivery for recording of the certificate of
30 release to the mortgagee or mortgage servicer. The notification
31 shall be included in the transmittal letter or form sent to the
32 mortgagee or mortgage servicer with the payment, or as
33 otherwise directed by the mortgagee or mortgage servicing

1 agent. In the case of a payoff by a wire transfer or other
2 electronic means, a separate notification shall be sent.

3 (Source: P.A. 92-765, eff. 8-6-02; 93-428, eff. 12-31-03.)

4 (765 ILCS 935/10.1)

5 Sec. 10.1. Certificate of release; previously paid
6 mortgages. A title insurance company or its duly appointed
7 title insurance agent may issue a ~~mortgage~~ certificate of
8 release pursuant to this Act for a mortgage that appears in the
9 chain of title prior to the mortgage presently being paid. The
10 title insurance company must have proof of payment from its own
11 prior files that it paid the mortgage or mortgages pursuant to
12 a payoff statement. Where another title insurance company has
13 paid off an unreleased mortgage pursuant to a payoff statement,
14 the title insurance company or its duly appointed title
15 insurance agent in the current transaction may rely upon the
16 hold-harmless letter of that prior title insurance company to
17 issue a ~~mortgage~~ certificate of release. This grant of
18 authority is subject to the condition that the issuer of the
19 ~~mortgage~~ certificate of release does not have notice that the
20 lender opposes its release. A single ~~mortgage~~ certificate of
21 release may include more than one mortgage, including both
22 presently and previously paid mortgages.

23 (Source: P.A. 93-428, eff. 12-31-03.)

24 (765 ILCS 935/25)

25 Sec. 25. Execution. A certificate of release issued under
26 Sections 10 and 10.1 ~~authorized by Section 15~~ must be executed
27 and acknowledged as required by law, as in the case of a deed,
28 and may be executed by an officer or a duly appointed agent of
29 a title insurance company. The agent must be a currently
30 registered title insurance agent of the title insurance
31 company.

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

1 (765 ILCS 935/35)

2 Sec. 35. Effect of recording certificate of release. For
3 purposes of releasing the lien of the mortgage, a certificate
4 of release containing the information and statements provided
5 for in Section 20 and executed as provided in Section 25 is
6 prima facie evidence of the facts contained therein, and upon
7 being recorded with the recorder, shall constitute a release of
8 the lien of the mortgage described in the certificate of
9 release. The title insurance company or title insurance agent
10 recording the certificate of release may use the recording fee
11 it may have collected for the recording of a release or
12 satisfaction of the mortgage to effect the recording of the
13 certificate of release. The title insurance company or its duly
14 appointed title insurance agent may rely upon a payoff
15 statement to determine the amount that must be paid to the
16 mortgagee or mortgage servicer in order to execute and deliver
17 for recording a certificate of release if the title insurance
18 company or its duly appointed title insurance agent acts in
19 good faith and does not know or have reason to know the amount
20 is incorrect. The recording of the certificate of release does
21 not itself extinguish the liability of any person liable for
22 repayment of the obligations secured by the mortgage. The
23 mortgagee or mortgage servicer may recover any sums from the
24 mortgagor or any other person personally liable for the
25 performance of the obligations secured by the mortgage, even if
26 those sums were not included in the payoff statement prior to
27 payment of the obligation in full.

28 (Source: P.A. 92-765, eff. 8-6-02; 93-428, eff. 12-31-03.)

29 (765 ILCS 935/40)

30 Sec. 40. Wrongful or erroneous certificate of release.
31 Delivery for recording of a wrongful or erroneous certificate
32 of release by a title insurance company or its title insurance

1 agent shall not relieve the mortgagor or the mortgagor's
2 successors or assignees from any personal liability on the loan
3 or other obligations secured by the mortgage. In addition to
4 any other remedy provided by law, a title insurance company
5 executing and delivering for ~~or~~ recording a certificate of
6 release under this Act, directly or by its duly appointed title
7 insurance agent, is liable to the mortgagee for actual damages
8 sustained due to the recording of the certificate of release.
9 The prevailing party in any action or proceeding seeking actual
10 damages due to the recording of a certificate of release shall
11 be entitled to the recovery of reasonable attorneys fees and
12 costs incurred in that action or proceeding.

13 (Source: P.A. 92-765, eff. 8-6-02; 93-428, eff. 12-31-03.)

14 (765 ILCS 935/15 rep.)

15 Section 15. The Mortgage Certificate of Release Act is
16 amended by repealing Section 15.

17 Section 99. Effective date. This Act takes effect upon
18 becoming law."