

D R A F T

FOR DISCUSSION ONLY

UNIFORM MORTGAGE SATISFACTION ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM LAWS

For Drafting Committee Meeting January 23-25, 2004

UNIFORM MORTGAGE SATISFACTION ACT

WITH PREFATORY NOTE AND PRELIMINARY COMMENTS

December 19, 2003

Copyright © 2003

by

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM LAWS

The ideas, concepts and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been reviewed, debated or approved by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not reflect the views of the Conference and its Commissioners or the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal made by the National Conference of Commissioners on Uniform State Laws.

DRAFTING COMMITTEE ON UNIFORM MORTGAGE SATISFACTION ACT

EDWARD F. LOWRY, JR., 4200 N. 82nd St., Suite 2001, Scottsdale, AZ 85251, *Chair*

ELLEN F. DYKE, 2125 Cabots Point Lane, Reston, VA 20191

ROBERT L. MCCURLEY, JR., Alabama Law Institute, P.O. Box 861425, Tuscaloosa, AL
35486, *Enactment Plan Coordinator*

NEAL OSSEN, 21 Oak St., Suite 201, Hartford, CT 06106

ELWAINE F. POMEROY, 1415 SW Topeka Blvd., Topeka, KS 66612-1818

REGINA R. QUINN, P.O. Box 17239, Jackson, MS 39217-0239

R. WILSON FREYERMUTH, University of Missouri-Columbia School of Law, 215 Hulston
Hall, Columbia, MO 65211, *Reporter*

EX OFFICIO

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Road, Room
3056, Norman, OK 73019, *President*

LANI LIU EWART, Suite 1800, Alii Pl., 1099 Alakea St., Honolulu, HI 96813, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

PATRICK MEARS, 200 Ottawa Ave., NW, Ste. 900, Grand Rapids, MI 49503-2393,
American Bar Association Advisor

EXECUTIVE DIRECTOR

WILLIAM H. HENNING, University of Alabama School of Law, Box 870382, Tuscaloosa, AL
35487-0382, *Executive Director*

WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, *Executive Director Emeritus*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

211 E. Ontario Street, Suite 1300

Chicago, Illinois 60611

312/915-0195

www.nccusl.org

UNIFORM MORTGAGE SATISFACTION ACT

TABLE OF CONTENTS

ARTICLE 1

DEFINITIONS AND GENERAL PROVISIONS

SECTION 101. SHORT TITLE.	9
SECTION 102. DEFINITIONS.	9
SECTION 103. MANNER OF GIVING NOTIFICATION.	15
SECTION 104. DAY OF PERFORMANCE.	16

ARTICLE 2

SECURED CREDITOR TO RECORD SATISFACTION; LIABILITY FOR FAILURE

SECTION 201. DEFINITION.	18
SECTION 202. PAYOFF STATEMENT: REQUEST AND CONTENT.	18
SECTION 203. PAYOFF STATEMENT: EFFECT.	21
SECTION 204. SECURED CREDITOR TO RECORD SATISFACTION.	24
SECTION 205. FORM AND EFFECT OF SATISFACTION.	25
SECTION 206. LIABILITY OF SECURED CREDITOR FOR FAILURE TO RECORD SATISFACTION.	27
SECTION 207. REINSTATEMENT OF SECURITY INSTRUMENT; LIABILITY FOR ERRONEOUS REINSTATEMENT.	29

ARTICLE 3

SATISFACTION BY AFFIDAVIT

SECTION 301. DEFINITION.	32
SECTION 302. AFFIDAVIT OF SATISFACTION: NOTIFICATION TO SECURED CREDITOR.	32
SECTION 303. AFFIDAVIT OF SATISFACTION: AUTHORIZATION TO RECORD	35
SECTION 304. AFFIDAVIT OF SATISFACTION: FORM.	35
SECTION 305. AFFIDAVIT OF SATISFACTION: EFFECT.	38
SECTION 306. LIABILITY OF SATISFACTION AGENT.	40

ARTICLE 4

AUTHORIZED SATISFACTION BY CLOSING AGENT

SECTION 401. DEFINITIONS.	42
SECTION 402. ISSUANCE AND EFFECT OF SATISFACTION STATEMENT.	43
SECTION 403. CERTIFICATE OF SATISFACTION.	44
SECTION 404. EFFECT OF CERTIFICATE OF SATISFACTION.	46
SECTION 405. LIABILITY OF CLOSING AGENT.	48

ARTICLE 5

MISCELLANEOUS PROVISIONS

SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION.	50
SECTION 502. EFFECTIVE DATE.	50
SECTION 503. REPEALS.	50

UNIFORM MORTGAGE SATISFACTION ACT

Prefatory Note

Complete payment of a mortgage loan typically extinguishes the lien of the mortgage. Because no evidence of that extinguishment automatically appears on the public land records, however, the continued presence of the mortgage on the records creates a practical problem for the owner of the land described in the mortgage. For example, if the owner has contracted to sell the home to a buyer, the mortgagor cannot establish marketable title — and thus cannot compel the buyer to perform the contract — unless it can “clear” the existing mortgage document from the records. Likewise, even if the owner/mortgagor is merely refinancing its existing mortgage obligation with another lender, the mortgagor must be able to clear the existing mortgage from the public records in order to assure the new mortgage lender of its expected priority.

Traditionally, the mortgagor cleared its title by having the mortgagee execute and record a document evidencing satisfaction of the mortgage, or by having the mortgagee make a marginal notation of satisfaction on the page of the public records containing the mortgage. Decades ago, it was somewhat plausible to expect that title clearance could occur roughly contemporaneously with a sale or refinancing of mortgaged land. Historically, local thrift institutions held mortgage loans in their portfolios until maturity or prepayment. Thus, when making full payment, a mortgagor could simply go to the office where the mortgagee had originated the loan and obtain the necessary documentation almost immediately. Even if the mortgagee did not maintain the loan documents on-site, the mortgagee could typically have the documents available at closing if it had sufficient advance notice of the closing of a sale or refinancing transaction. Alternatively, in those jurisdictions where attorneys handled real estate closings, mortgagees would often send an executed release to the closing attorney, prior to closing, with instructions to record it only after making payment of the balance of the outstanding mortgage at closing.

Today, changes in the financial services industry have complicated the payoff, discharge, and release of mortgage instruments. Most originating mortgage lenders no longer retain mortgage loans in their portfolio, as local thrift institutions traditionally did. Instead, most originating lenders transfer mortgage loans on the secondary market, thereby facilitating the eventual securitization of mortgage loans and the issuance of mortgage-backed securities. When the originating lender sells a mortgage loan, it will typically transfer the loan documents to the new assignee or to a loan servicer (the party who collects loan payments from mortgagors on behalf of the party holding the mortgage debt), whose location may be hundreds or thousands of miles from the mortgagor and the mortgaged land. As this separation of mortgagor and mortgagee has become customary, it has influenced customary practices regarding the preparation and delivery of mortgage satisfaction documents. Today, the mortgagee does not typically produce a recordable satisfaction contemporaneously with the closing of a sale or refinancing by the mortgagor. The geographical and bureaucratic separation of the mortgagor and mortgagee has contributed to an unfamiliarity or lack of trust between the distant mortgagee or loan servicer and a closing agent handling a sale or refinancing — making it less likely that the mortgagee or loan

1 servicer would execute and deliver a release in anticipation of an expected closing. Further, the
2 geographical and bureaucratic separation of the mortgagor, the mortgagee and the servicer can
3 often create practical delays in communication that may serve to extend the practical “gap”
4 between the closing and the clearance of record title. This “gap” — which exists even when all
5 parties are acting in good faith — can sometimes be further exacerbated by a servicer or holder’s
6 poor loan administration practices.

7
8 Furthermore, the mortgagor’s ability to obtain the return of original loan documents and the
9 necessary satisfaction documentation is often complicated by a mortgagor’s uncertainty about the
10 identity of the mortgagee or the location of the documents themselves. Over the past two
11 decades, financial institutions have routinely merged or consolidated operations. By virtue of
12 merger or consolidation, a residential mortgage previously held by a local bank in one state may
13 now be held by a regional or national bank based in another state; however, if the loan is serviced
14 by a third party, the mortgagor may be unaware of the identity or location of the current holder of
15 the mortgage. Moreover, transfer of mortgage servicing sometimes occurs, and if the respective
16 holders of a mortgage loan have transferred servicing responsibilities one or more times during a
17 loan’s term, this may increase the risk that the original loan documentation is mislocated.
18 Finally, there is some concern that mortgage lenders, after having already collected full payment
19 from a borrower, may feel a diminished compunction to act quickly to provide prompt service
20 (*i.e.*, preparing and recording a satisfaction) for a now-“former” customer. These problems
21 create additional “bureaucratic” delay for the mortgagor seeking to obtain the needed evidence of
22 satisfaction to clear its title.

23
24 At present, solving these practical problems forces the parties to incur additional transaction
25 costs. Most frequently, parties use title insurance to address these title-clearance risks. Consider
26 a typical transaction in which Seller, who owns a home subject to a mortgage in favor of Bank
27 One, has contracted to sell a home to Buyer, with the closing to occur on June 1. Buyer plans to
28 complete the purchase using the proceeds of a mortgage loan from Bank Two, and Seller expects
29 to use the sale proceeds to satisfy the mortgage loan to Bank One. Once the Bank One mortgage
30 is paid off, Bank Two will have its expected priority for its mortgage lien. But until the Bank
31 One mortgage is paid off and extinguished, Bank Two bears a risk that full payment of the Bank
32 One mortgage will not occur — either because someone associated with the transaction
33 misappropriated the funds or because of a dispute about the outstanding balance of the Bank One
34 mortgage. Thus, as a condition of its obligation to make a mortgage loan to Buyer, Bank Two
35 will insist upon a lender’s title insurance policy that insures both the validity and priority of its
36 mortgage against the home. In this way, Bank Two shifts to the title insurer the potential priority
37 risk that Bank Two faces because Bank One has not yet released its mortgage of record.

38
39 Likewise, the Buyer in this transaction faces a similar risk with respect to the satisfaction of
40 the Seller’s mortgage. For example, if a closing agent misappropriates the closing proceeds and
41 does not use them to satisfy the Bank One mortgage, Bank One will refuse to release its
42 mortgage, and the Buyer’s title will thereafter be subject to the liens of both the Bank One and
43 Bank Two mortgages. As a result, a prudent Buyer should also obtain an owner’s policy of title

1 insurance that provides affirmative coverage against the risk that the Bank One mortgage is not
2 legally satisfied. Unfortunately, not all buyers obtain an owner's policy of title insurance, or
3 appreciate the risks sufficiently to appreciate the need for title insurance protection against the
4 nonrelease of the seller's mortgage.
5
6

7 **The Mortgagee's Obligation to Record a Satisfaction: Timing and Consequences**

8

9 At present, all 50 states have promulgated legislation that ostensibly requires a mortgagee to
10 act promptly to provide title-clearing documentation following repayment of the mortgage debt.
11 But because even the most conscientious of mortgagees will have some delay in responding to
12 mortgagor requests, existing state statutes typically allow a mortgagee some "grace period" in
13 which to record a satisfaction. Unfortunately, existing state laws vary widely from state to state,
14 and many impose time deadlines (in some cases as few as 7-10 days) that push the bounds of
15 practicality as applied to the modern mortgage loan; others permit grace periods (such as 90
16 days) that far exceed the time during which a reasonably conscientious mortgagee could act to
17 record a satisfaction.
18

19 In addition, all 50 states permit an injured party to recover any actual damages caused by the
20 mortgagee's failure to record a timely satisfaction, and most (but not all) states go further and
21 impose a statutory civil penalty upon a noncompliant mortgagee. Theoretically, these sanctions
22 should provide an economic incentive for the mortgagee to act promptly. Unfortunately, state
23 laws vary dramatically, ranging from a proverbial "slap on the wrist" that provides no real
24 economic incentive to the mortgagee (*e.g.*, fines as low as \$10 to \$25) to a draconian penalty that
25 would typically bestow a significant windfall upon the aggrieved party (*e.g.*, a penalty equal to
26 the lower of one-half of the mortgage debt or \$25,000 in South Carolina).
27

28 Finally, state laws differ substantially with respect to whether formal notification constitutes
29 a precondition to the mortgagee's liability for actual damages and/or statutory damages. In some
30 states, the mortgagee is liable only if it failed to record a timely satisfaction following a formal
31 demand by the owner of the mortgaged land. In others, the mortgagor need not make any
32 demand in order to trigger the mortgagee's potential liability.
33

34 This lack of uniformity is unfortunate, as it encourages national mortgage lenders to treat
35 otherwise similarly-situated mortgagors differently. Perhaps not surprisingly, national mortgage
36 lenders act to "prioritize" the process of providing satisfactions on a state-by-state basis,
37 depending upon a state's grace period and applicable sanctions for noncompliance. As a result,
38 national mortgage lenders tend to provide services first to customers in states with the most
39 punitive statutes. In turn, this may prompt states to engage in a "race to the bottom" to increase
40 the minimum sanction, in order to ensure preferential treatment of their own citizens. In fact,
41 since 1989, at least eleven states have increased their minimum statutory damage for untimely
42 satisfactions; no states have reduced it during that same period.
43

1 The Act attempts to ensure that mortgagees and their servicers have an appropriate incentive
2 to act promptly to clear a landowner's title. At the same time, however, the Act recognizes that
3 given the structure of today's mortgage market, conscientious mortgagees and their servicers
4 need a realistic period of time to record a satisfaction of a mortgage. Further, the Act takes the
5 view that the lender should not face liability without first receiving notice and an opportunity to
6 cure its failure. As a result, the Act provides that if a mortgage lender has not recorded a
7 satisfaction of the mortgage within 30 days after receiving payment of the obligations secured by
8 that mortgage, the owner of the mortgaged land may make written demand upon the mortgagee.
9 If the mortgagee still fails to record a satisfaction within an additional 30 days thereafter, the Act
10 permits the owner of the mortgaged land to recover statutory damages in addition to any actual
11 damages incurred as a result of the mortgagee's failure.
12
13

14 **The Payoff Statement**

15

16 In most transactions, the mortgagor repays the mortgage debt prior to its originally scheduled
17 maturity, when the mortgagor is either sells the land or refinances the outstanding mortgage debt.
18 In these transactions, the mortgagor typically asks the mortgagee to issue a "payoff statement"
19 that identifies the outstanding balance of the mortgage debt. The mortgagor (or, more typically, a
20 title insurer, attorney, lender, or other person facilitating the sale or refinancing) then uses the
21 information contained in the payoff statement in order to remit the specified outstanding balance
22 to the mortgagee.
23

24 If the payoff statement is accurate, payment of the stated balance legally satisfies the
25 mortgage debt — which in turn triggers the mortgagee's obligation to record a satisfaction of the
26 mortgage. If the payoff statement is incorrect, however, the effect of the mortgagor's payment is
27 less clear. As a matter of law, the mortgagor generally must satisfy the full balance of the
28 obligation (principal, interest, and any other costs or fees permitted under the terms of the loan
29 documents) in order to extinguish the mortgage. If the amount specified in the payoff statement
30 was too low, the mortgagor's payment would not satisfy the entire mortgage obligation.
31

32 Nevertheless, the parties to a sale or refinancing transaction typically rely upon the payoff
33 statement in completing that transaction. For example, a person buying the mortgaged land from
34 the mortgagor may choose to perform the contract believing that the mortgagee's receipt of the
35 amount specified in the payoff statement will extinguish the mortgage debt. In this situation, the
36 buyer will argue that the mortgagee should be equitably estopped from denying the accuracy of
37 the payoff statement. If a court recognizes this estoppel theory, then the mortgagee can still
38 collect the remaining balance of the debt from the mortgagor as a personal obligation, but cannot
39 enforce the lien of the mortgage against the buyer who relied upon the payoff statement — in
40 effect, estoppel would render the mortgage unenforceable against the buyer (or the buyer's
41 mortgage lender).
42

43 Unfortunately, reliance upon estoppel theory is unpredictable because estoppel doctrine

1 typically protects only reasonable reliance, and it is not always clear whether reliance upon a
2 payoff statement is reasonable. In a few cases, doubt about the reasonableness of reliance may
3 result from the magnitude of the error in a payoff statement. If a mistake in a payoff statement is
4 so large that a reasonable person in the buyer's position would question the statement's accuracy,
5 payment of the mistaken amount will not permit the buyer to raise an estoppel against the
6 mortgagee (whose mortgage will remain effective until the mortgage obligation is fully satisfied).
7 More commonly, doubt about the reasonableness of reliance may result from language in the
8 payoff statement that expressly qualifies the statement's reliability. For example, the payoff
9 statement may state that it can be relied upon only by the mortgagor and not third parties, or it
10 may state that it is subject to being corrected by the mortgagee for a specified period of time
11 (which may extend beyond the scheduled closing date of a sale or refinancing transaction). Such
12 express qualifications upon the reliability of a payoff statement may call into question the extent
13 to which third parties may authoritatively rely upon such statements.
14

15 The Act clarifies the scope of the mortgagee's obligation to provide a payoff statement by
16 stating this obligation in affirmative terms. The Act further provides that the recipient may rely
17 upon the payoff statement for the purpose of determining the payment required to obtain a
18 recorded satisfaction of the mortgage, so long as the recipient acts in good faith and neither
19 knows nor has reason to know that the amount specified is incorrect. Upon timely payment of
20 the amount specified in the payoff statement, the Act obligates the mortgagee to record a
21 satisfaction of the mortgage, even if the stated payoff amount was inaccurate. The Act specifies
22 the information that a payoff statement must contain and limits the extent to which the mortgagee
23 can qualify (*i.e.*, limit the reliability of) a payoff statement.
24
25

26 **"Self-Help" Satisfaction**

27

28 While each state has enacted legislation obligating mortgage lenders to record timely
29 mortgage satisfactions, not all states have provided effective remedial mechanisms to permit the
30 owner of the land to clear its title when the mortgagee has failed to respond to a proper request.
31 All states expressly or implicitly authorize the mortgagor to bring a judicial action against the
32 mortgagee to obtain an order or declaration that the mortgage has been satisfied. Unfortunately,
33 this remedy can be cumbersome and time-consuming, given the procedural delays and docket
34 congestion attendant to civil litigation in many jurisdictions.
35

36 An increasing number of states have enacted statutes authorizing a nonjudicial or "self-help"
37 satisfaction procedure. Under these state procedures, an agent who facilitated the closing of a
38 sale or refinancing transaction can take steps to clear the title if the mortgagee fails to record a
39 timely satisfaction document. Typically, these statutes authorize the designated agent to execute
40 and record an affidavit demonstrating that the mortgagee has received payment of the balance of
41 the obligations as specified in a payoff statement, but has nevertheless failed to record a
42 satisfaction (despite having also received notice and an opportunity to cure this failure). The
43 recording of this affidavit then constitutes the statutory equivalent of a satisfaction of the

1 mortgage.

2
3 Slightly more than one-half of the states have adopted a “self-help” procedure, but state
4 statutes vary widely in both scope and specifics. For example, some statutes limit the availability
5 of a “self-help” satisfaction based upon the mortgage amount or the type of mortgage; others
6 contain no such limitations. State statutes vary widely as to person(s) authorized to record an
7 affidavit of satisfaction. Some states permit only a licensed title insurer to perform this function;
8 other states permit a licensed attorney to do so, and yet others permit both to file the necessary
9 affidavit. A few states authorize such an affidavit to be filed by a refinancing lender or the lender
10 for a buyer. Finally, state statutes also vary widely both as to the content of the affidavit and the
11 duration of the grace period during which the mortgagee can either record a satisfaction on its
12 own or object to the recording of a satisfaction.

13
14 Unfortunately, the existing state law “self-help” procedures are rarely used, for two reasons.
15 First, most of the existing “self-help” statutes have notification and grace periods that render
16 them of little use in the majority of cases where a mortgage is being paid off in the context of a
17 sale or refinancing transaction. Under most of the existing “self-help” statutes, these notification
18 and grace periods mean that an affidavit of satisfaction cannot be recorded until (at a minimum)
19 90 to 120 days has passed following payment. Even if the mortgagee delays in executing and
20 recording a satisfaction document, this delay typically does not continue for the relatively long
21 periods contained in most state “self-help” procedures.

22
23 Second, the structure of the existing “self-help” statutes renders them of little value in the
24 more problematic case — where the mortgage is not being paid off in the context of a current
25 sale or refinancing transaction, but was instead paid off at a previous date. For example:

- 26
- 27 • Some of the state “self-help” statutes only apply where the closing agent specifically
28 facilitated the payoff of the mortgage. *See, e.g.*, Del. Code Ann. tit. 25, § 2120(a) (attorney
29 may prepare and record affidavit of satisfaction where attorney “paid in full or caused to be
30 paid in full a debt owed by any debtor to any creditor holding a mortgage securing such
31 debt”). Under these statutes, “self-help” satisfaction would be unavailable to a landowner
32 that paid off a mortgage in the ordinary course at maturity or in a transaction not facilitated
33 by a person eligible to prepare and record the necessary affidavit.
 - 34
35 • Most state “self-help” statutes require that closing agent file an affidavit stating, under
36 penalty of perjury, that the mortgagee provided a payoff statement with respect to the secured
37 obligations and that the mortgagee has received payment of the secured obligations in
38 accordance with the payoff statement. In many cases, the closing agent must even attach a
39 copy of the payoff statement and evidence of payment to the affidavit. *See, e.g.*, Vt. Stat.
40 Ann. tit. 27, § 464a(a), (c). These requirements render the statute effectively useless to a
41 landowner that paid off a mortgage in the ordinary course at maturity.
 - 42
43 • Finally, the language of many of the state “self-help” statutes renders them useless in the

1 precise situation in which they could be most useful for title clearing purposes — where the
2 secured creditor to whom payment was made is now defunct. Most of the state “self-help”
3 statutes require that the closing agent file an affidavit stating, under penalty of perjury, that
4 the mortgagee has received written notification of the closing agent’s intention to prepare and
5 record an affidavit evidencing the satisfaction of the secured obligations. *See, e.g.,* Vt. Stat.
6 Ann. tit. 27, § 464a(a). Where the secured creditor who received payment is now defunct and
7 a closing agent cannot unmistakably identify the financial institution that succeeded to the
8 rights of the defunct secured creditor, compliance with such stringent affidavit requirements
9 becomes impossible.

10
11 The Act adopts a “self-help” satisfaction procedure, but structures that procedure in a fashion
12 designed to make the procedure more useful, especially in cases involving a defunct mortgage
13 lender. Under the Act, a “satisfaction agent” may prepare and record an affidavit of satisfaction,
14 but only after first giving notification to the mortgagee and giving the mortgagee 30 days to
15 either record a satisfaction or object that the secured obligations remain unsatisfied. In the event
16 that the mortgagee raises a timely objection, the self-help procedure is unavailable. If the
17 mortgagee fails to raise a timely objection, the satisfaction agent may record an affidavit of
18 satisfaction, which affidavit constitutes a satisfaction of the mortgage — unless the satisfaction
19 agent receives notification that the mortgage has been assigned and identifying the name and
20 address of the assignee. In that event, the self-help procedure is unavailable until the satisfaction
21 agent has provided the necessary notification and grace period to the identified assignee.

22
23 In the event that a satisfaction agent wrongly records an affidavit of satisfaction, the
24 satisfaction agent is liable to the mortgagee for the injury it suffers as a result. For this reason,
25 the Act limits the class of “satisfaction agents” to licensed attorneys and title insurers, against
26 who an injured mortgagee would have a reasonable prospect of recovery in the event an affidavit
27 of satisfaction was improper.

30 **Authorized Satisfaction by a Closing Agent**

31
32 Theoretically, one could eliminate the “time gap” in obtaining a recorded satisfaction of a
33 mortgage by authorizing the closing agent to record a satisfaction of the mortgage on behalf of
34 the mortgagee. At least two practical problems arise, however. First, no agreement or other
35 document typically used in real estate transactions presently authorizes a closing agent to act on
36 the mortgagee’s behalf to clear the mortgage of record. Second, under current state statutes
37 governing real estate transactions, any such authorization would have to be in form sufficient to
38 constitute a power of attorney.

39
40 The Joint Editorial Board for Real Property Acts has recently proposed that the issuance of a
41 payoff statement should, as a matter of law, authorize a closing agent to record a satisfaction of
42 the mortgage on the mortgagee’s behalf, if that closing agent facilitates payment to the mortgagee
43 of the amount specified in that statement. In 2003, Illinois modified its Mortgage Certificate of

1 Release Act, Ill. Cons. Stat. tit. 765, § 935/5 et seq., to adopt this approach.
2

3 Rather than treat all payoff statements as legal authority for a closing agent to execute and
4 record a satisfaction on a mortgage lender's behalf, the Act instead adopts an "opt-in" approach.
5 Under the Act, the mortgagee may either (a) issue a standard payoff statement, after which the
6 mortgage lender would remain legally responsible to record a timely satisfaction, or (b) issue a
7 "satisfaction" statement, which by its terms would authorize the closing agent to whom the
8 statement was issued to record a satisfaction of the mortgage following payment in accordance
9 with the terms of the statement. If a mortgage lender accepted payment of the secured
10 obligations as identified in a reliable satisfaction statement, the mortgagee would have no further
11 legal obligation to record a satisfaction of the mortgage — the responsibility to record a
12 certificate of satisfaction would shift at that point to the closing agent. The closing agent's
13 certificate of satisfaction would constitute a legal satisfaction of the mortgage in favor of a
14 person thereafter purchasing an interest in the land.
15

16 By permitting the lender to elect whether to issue a standard payoff statement or a satisfaction
17 statement, the Act permits the parties to any particular sale or refinancing transaction to allocate
18 responsibility for title clearance in whatever manner they choose — either leaving that burden
19 with the original mortgagee (with whom it rests under current law) or shifting it to the closing
20 agent.
21

22 In the event that the closing agent wrongly records a certificate of satisfaction, the closing
23 agent is liable to the mortgagee for the injury it suffers as a result. For this reason, the Act limits
24 the class of "closing agents" to licensed attorneys and title insurers, against whom an injured
25 mortgagee would have a reasonable prospect of recovery in the event a certificate of satisfaction
26 was improper.

1 **UNIFORM MORTGAGE SATISFACTION ACT**

2 **ARTICLE 1**

3 **DEFINITIONS AND GENERAL PROVISIONS**

4
5 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Uniform Mortgage
6 Satisfaction Act.

7
8 **SECTION 102. DEFINITIONS.** In this [act]:

9 (1) “Address for notification” means the address as identified in a document most
10 recently provided by the intended recipient of the notification to the person giving the
11 notification. If the person giving the notification has reason to know of a more accurate address,
12 then the term means that address.

13 (2) “Day” means calendar day.

14 (3) “Document” means information that is inscribed on a tangible medium or that is
15 stored on an electronic or other medium and is retrievable in perceivable form.

16 (4) “Good faith” means honesty in fact and the observance of reasonable commercial
17 standards of fair dealing.

18 (5) “Landowner” means a person that owns the equitable right of redemption in the real
19 property described in a security instrument.

20 (6) “Notification” means a document containing required information and signed by the
21 person required to provide the information.

22 (7) “Organization” means a person other than an individual.

1 (8) “Payoff statement” means a document containing at a minimum the information
2 specified in Section 201(c).

3 (9) “Person” means an individual, corporation, business trust, estate, trust, partnership,
4 limited liability company, association, joint venture, public corporation, or government,
5 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

6 (10) “Record” means to submit a document complying with applicable legal standards,
7 with required fees and taxes paid, to the appropriate governmental office under [the recording act
8 of this state].

9 (11) “Recording data” means the date and [book and page number] [document number]
10 at which a document is recorded in the appropriate governmental office under [the recording act
11 of this state].

12 (12) “Secured creditor” means a person that holds a security interest or that is authorized
13 both to receive payments on behalf of a person that holds a security interest and to record a
14 satisfaction of the security instrument upon receiving full performance of the secured obligations.

15 (13) “Security instrument” means an agreement, whether denominated a mortgage, deed
16 of trust, trust deed, security deed, or otherwise, that creates or provides for a security interest.
17 Such an agreement is a security instrument even if it also creates or provides for a lien upon
18 personal property.

19 (14) “Security interest” means an interest in real property located in this state, created by
20 a security instrument and securing payment or performance of an obligation.

21 (15) “Secured obligations” means all obligations the payment or performance of which
22 are secured by a security interest.

1 (16) “Sign” means, with present intent adopt or accept a document, to execute or adopt a
2 tangible symbol or to attach to or logically associate with the document an electronic sound,
3 symbol, or process.

4 (17) “State” means a State of the United States, the District of Columbia, Puerto Rico,
5 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
6 of the United States.

7 Preliminary Comments

8
9 *Introductory comment to definitions.* Under American law and customary practice, there are
10 a variety of different documents — such as the mortgage, the deed of trust, the deed to secure
11 debt (to name but a few) — by which parties may use an interest in real property as security for
12 debts and obligations. Many existing state laws governing the satisfaction of these documents
13 use the traditional terms “mortgage,” “mortgagor,” and “mortgagee.” The Act does not use these
14 terms, so as to dispel any notion that the Act’s coverage is limited only to a “mortgage.” Instead,
15 the Act uses terms that have no common law or statutory roots tying them to any particular form.
16 Instead of terms such as “mortgage” or “deed of trust,” the Act substitutes the general term
17 “security instrument.” In place of “mortgagee” or “beneficiary,” the Act uses “secured creditor.”
18 The interest in real property that conveyed to the secured creditor is defined as a “security
19 interest” rather than as a “lien” or as “title.” Thus, for purposes of the Act it is irrelevant whether
20 a state follows the “lien theory” or “title theory” of mortgage law.

21
22 The Act does not seek to define “real property,” but leaves the parameters of that term to
23 other state law.

24
25 1. “Address for notification.” The Act requires a landowner to give notification and
26 opportunity to cure to a secured creditor before the landowner can recover statutory and/or actual
27 damages for failure to record a timely satisfaction. Section 204(b). Likewise, before a
28 satisfaction agent may execute and record an affidavit of satisfaction when the secured creditor
29 has failed to record a satisfaction in a timely manner, the satisfaction agent must give the secured
30 creditor notification and a 30-day grace period in which to fulfill its obligation to record that
31 satisfaction or otherwise object to the recording of a satisfaction. Sections 302 and 303. In each
32 case, notification shall be given to the secured creditor at the address identified in the most recent
33 document provided by the secured creditor to the person giving that notification. In the typical
34 situation, this document will be a payoff statement delivered by the secured creditor at the
35 request of the landowner or a closing agent.

36
37 The Act also requires the secured creditor to give a timely notification to the satisfaction

1 agent if the secured creditor disputes whether the secured obligations have been satisfied and
2 objects to the recording of an affidavit of satisfaction. Sections 302 and 303. In such a case, the
3 secured party shall give notification to the satisfaction agent at the address identified in the
4 notification provided by the satisfaction agent under Section 302 (unless the satisfaction agent
5 shall have subsequently notified the secured creditor to use a different address).
6

7 2. “Day.” The definition of “day” is identical to that used in Section 102(3) of the Uniform
8 Nonjudicial Foreclosure Act. Days must be counted to determine the expiration of the various
9 grace periods prescribed by the Act. All days including Saturdays, Sundays, and holidays are
10 counted. Nevertheless, Section 104 provides that if the final day for giving a required notification
11 would fall on a Saturday, Sunday, or legal holiday, that notification may properly be given on the
12 next weekday that is not a legal holiday.
13

14 3. “Document.” The definition of “document” is media-neutral and is consistent with the
15 definition of the term “record” as used in Section 2(7) of the Uniform Real Property Electronic
16 Recordation Act. Because this Act uses the term “record” in its customary fashion under real
17 estate law — *i.e.*, as a verb to describe the act of filing an instrument of conveyance with the
18 recorder’s office — the Act does not use the term “record” as a noun, and instead uses the term
19 “document.”
20

21 4. “Good faith.” This definition is identical to the definition contained in the Uniform
22 Commercial Code. Generally, the Act imposes liability (both for statutory and actual damages)
23 upon a secured creditor who fails to record a satisfaction within a timely period following notice
24 and opportunity to cure. Section 206(a). However, a secured creditor is not liable if it has
25 established a reasonable procedure for recording satisfactions of security instruments, has
26 complied with that procedure in good faith, and was unable to record because of circumstances
27 beyond its control. Section 206(b).
28

29 In addition, Section 203(a) provides that the recipient of a payoff statement may rely upon
30 that statement for the purpose of determining the payment necessary to obtain a recorded
31 satisfaction of the security instrument, if the recipient acts in good faith and does not know or
32 have reason to know that the payoff amount specified in the statement is incorrect.
33

34 5. “Landowner.” Under the “title theory” of mortgages, a mortgagee holds legal title to the
35 mortgaged premises. By contrast, under the “lien theory” of mortgages followed in the majority
36 of American jurisdictions, the mortgagee (or “secured creditor” under the Act) holds only a
37 security interest in the mortgaged premises. The Act defines the term “landowner” to mean the
38 owner of the equitable right to redeem the real property described in the security instrument. The
39 Act defines the term in this fashion so as to make it irrelevant whether a particular state adopting
40 the Act follows title theory or lien theory. Furthermore, this definition of “landowner” makes it
41 irrelevant whether a particular jurisdiction uses the deed of trust rather than the mortgage. Even
42 though the trustee under a deed of trust may technically hold legal title to the premises, the
43 beneficiary under that deed of trust holds the equitable right of redemption and thus would be the

1 “landowner” within the meaning of the Act.

2
3 The identity of the “landowner” may vary in this Act depending upon context. For example,
4 suppose that Bank holds a mortgage on Blackacre, a parcel of real property owned by X. X has
5 entered into a contract to sell Blackacre to Y. For the purpose of obtaining a payoff statement
6 with respect to the balance of the mortgage obligation, X is the “landowner” within the meaning
7 of the Act, even though X seeks the payoff statement in anticipation of a sale of the real property
8 to Y. By contrast, assume that X has now performed the contract of sale by deeding the real
9 property to Y. If Bank fails to record a timely satisfaction of its mortgage as required by this Act,
10 Y is now the “landowner” for the purpose of giving notification to the Bank of its failure, or for
11 the purpose of recovering any damages on account of Bank’s failure.
12

13 6. “Notification.” In several places, the Act requires one person to give “notification” to
14 another. Such a notification must be in the form of a “document” (Section 102(3)), must contain
15 the information required by the specific provision of the Act, and must be “signed” (Section
16 102(15)) by the person required to provide the notification.
17

18 7. “Organization.” This is the boilerplate definition of the term as used in uniform acts.
19

20 8. “Payoff statement.” Most mortgage loans are paid off prior to maturity, either upon a
21 transfer of the mortgaged land or upon a refinancing by the landowner. In these situations, the
22 mortgage lender customarily issues a payoff statement, specifying the payment needed to satisfy
23 the outstanding balance of the mortgage loan.
24

25 Under the Act, the secured creditor must issue a payoff statement complying with Section
26 202(a) within 10 days after receiving a request from an “entitled person” as defined in Section
27 201. Until the secured creditor corrects or updates the information contained in the payoff
28 statement, the recipient may rely upon the payoff statement for the purpose of determining the
29 amount that must be paid on the payoff date to obtain a recorded satisfaction of the security
30 instrument. Upon receipt of that amount, the secured creditor is thereafter obligated to record a
31 satisfaction of the security instrument within the 30-day period specified in Section 204(a).
32

33 Under the Act, the secured creditor must also execute a timely satisfaction of the security
34 instrument following full performance of the secured obligations, regardless of whether the
35 secured creditor issued a payoff statement. Thus, the secured creditor has the same obligation
36 regardless of whether the obligation was satisfied at its maturity or prior to its originally
37 scheduled maturity (*i.e.*, in conjunction with a transfer or refinancing).
38

39 9. “Person” includes both natural persons (individuals) and all forms of legally recognized
40 public and private organizations.
41

42 10. “Record.” The Act requires a secured creditor to record a satisfaction of the security
43 instrument upon full performance of the secured obligation. Section 204. The Act also permits a

1 “satisfaction agent” to record an affidavit of satisfaction if the secured creditor has failed to
2 record a satisfaction in a timely fashion following notice and an opportunity to cure such failure.
3 Section 303. Finally, the Act permits a closing agent to record a certificate of satisfaction where
4 the secured creditor has issued a satisfaction statement expressly authorizing the closing agent to
5 satisfy the security instrument on the secured creditor’s behalf. Section 402(c). To “record”
6 means that the person submitting a document has complied with the state’s existing recording
7 act. However, for purposes of this Act, a document is “recorded” even if the recording office’s
8 personnel have indexed it incorrectly or otherwise failed to comply with their legal duties.
9

10 11. “Recording data.” This definition is similar to that used in Section 102(15) of the
11 Uniform Nonjudicial Foreclosure Act, and refers to the customary way of identifying the precise
12 place where a document is recorded in the jurisdiction. Some jurisdictions customarily refer to
13 book and page number, some to a document number, and others to other types of designations.
14

15 12. “Secured creditor” means a person that holds a security interest. The term includes a
16 person who is servicing the debt evidenced by a security instrument, if that person is also
17 authorized by the secured creditor to record a satisfaction of the security instrument upon
18 receiving full payment or performance of the secured obligations.
19

20 13. “Security instrument.” This definition is identical to that used in Section 102(19) of the
21 Uniform Nonjudicial Foreclosure Act, and recognizes that the title given to a document by its
22 parties is not dispositive of whether the document is a security instrument. Instead, the key issue
23 is whether the document creates a security interest.
24

25 For purposes of the Act, a “security instrument” must cover real property, although it may
26 additionally cover personal property. A secured creditor’s compliance with the Act (*e.g.*, by
27 recording a timely satisfaction of a security instrument following full performance of the secured
28 obligations) may not fully discharge the secured creditor’s legal obligations with respect to a
29 secured transaction that also covers personal property. In such a case, the secured creditor may
30 also have to file a Uniform Commercial Code termination statement with respect to the personal
31 property collateral. U.C.C. § 9-513.
32

33 The Act does not specifically address the extent to which its provisions apply to an
34 installment land contract or contract for deed. In those states where existing statutory provisions
35 or judicial decisions have equated a contract for deed and a mortgage, the contract for deed
36 would constitute a “security instrument” and the provisions of this Act would apply. In other
37 states, the Act leaves to judicial resolution the extent to which its provisions would apply to the
38 installment contract vendor and vendee and their respective successors.
39

40 14. “Security interest.” Under the Act, a security interest arises in any transaction, regardless
41 of its form, in which a person receives or retains an interest in real property for the purpose of
42 securing an obligation owed to that person. Certain types of interests in land, such as judgment
43 liens and mechanics liens, arise only by statute or operation of law, and these liens do not

1 constitute “security interests” within the meaning of the Act. Accordingly, the Act does not
2 address the obligation of a judgment lien holder to record evidence of the satisfaction of that
3 judgment lien.
4

5 15. “Secured obligations.” The term “secured obligations” covers all obligations the
6 performance of which is secured by a security interest.
7

8 16. “Sign.” This definition is media-neutral and comparable to that contained in Uniform
9 Commercial Code § 2-103(1)(p).
10

11 17. “State.” This definition is the boilerplate definition of the term as used in uniform acts.
12
13

14 **SECTION 103. MANNER OF GIVING NOTIFICATION.**

15 (a) A person gives notification by:

16 (1) depositing it in the mail or with any commercially reasonable delivery service,
17 properly addressed to the recipient’s address for notification, with postage or cost of delivery
18 provided for;

19 (2) transmitting it by facsimile transmission or electronic mail to an address identified
20 by the recipient, but only if the recipient agreed to receive notification in that manner; or

21 (3) otherwise causing it to be received within the time that it would have been
22 received if properly given under subsection (1).

23 (b) The effective date of a notification under subsection (a) is:

24 (1) one day following the date that it is deposited with a commercially reasonable
25 delivery service for overnight delivery;

26 (2) three days following the date that it is deposited in the mail or with a
27 commercially reasonable delivery service for delivery other than by overnight delivery;

28 (3) the date the notification is transmitted, if transmitted under subsection (a)(2); or

(4) the date it is received, if transmitted by any other method permitted by this Act.

Preliminary Comments

1. This section specifies the methods for giving any notification required by the Act. Generally speaking, notices required by the Act may be transmitted by registered or certified mail, regular mail, or commercial delivery services. Proper dispatch, not receipt, satisfies the obligation to give notification.

Often, customary practice in real estate transfer or refinancing transactions will involve notification by facsimile transmission. For example, a secured creditor may provide a payoff statement by facsimile transmission (often at the specific request of the landowner or closing agent). Subsection (a)(2) permits a person to give notification by facsimile transmission if the intended recipient has agreed (either in the loan documents or otherwise) to receive notification in this manner. For example, if the landowner requests that the secured creditor provide a payoff statement by facsimile transmission, this request will authorize the secured creditor to provide the notification by facsimile transmission even if the security instrument itself does not so provide. The Act also permits a person to give notification by electronic mail, but again only where the intended recipient had agreed to receive notification by electronic mail.

Subsection (a)(3) also permits a person to give notification in any manner that would result in the notification being received within the time that the recipient would have received it if the notification had been given by mail or commercial delivery service. This subsection would permit a person to give a notification by means of physical delivery to its intended recipient.

The person asserting that notification was given has the burden of proof that notification was given in accordance with the provisions of Section 103.

2. The Act requires a landowner to give a secured creditor notification and a 30-day cure period before the landowner can recover statutory and/or actual damages from the secured creditor that fails to record a satisfaction in a timely manner. Section 202(d). Likewise, before a closing agent may execute and record an affidavit of satisfaction when the secured creditor has failed to record a satisfaction in a timely manner, the closing agent must give the secured creditor notification and a 30-day period in which to fulfill its obligation to record that satisfaction or otherwise object to the recording of a satisfaction. Section 301. In order to avoid uncertainty about the expiration of these grace/cure periods, the Act provides that these periods shall commence upon the "effective date" of a notification. Subsection (b) specifies the effective date of a particular notification, determined by reference to the approximate delivery time for a particular manner of delivery.

SECTION 104. DAY OF PERFORMANCE. If this [act] or a notification given pursuant

1 to this [act] requires performance on or by a certain day and that day is a Saturday, Sunday, or
2 legal holiday under the laws of this State or the United States, the performance is sufficient if
3 done on the next day that is not a Saturday, Sunday, or legal holiday.

4 *Legislative note: This section may be omitted if the jurisdiction has in force a general statute*
5 *with substantially the same effect.*

1 **ARTICLE 2**

2
3 **SECURED CREDITOR TO RECORD SATISFACTION; LIABILITY FOR FAILURE**

4
5
6 **SECTION 201. DEFINITION.** In this Article and in Article 4, “entitled person” means a
7 landowner or any person liable for payment or performance of the secured obligations.

8 **Preliminary Comments**

9 1. Most mortgage loans are paid off prior to maturity, either upon a transfer of the
10 mortgaged land or upon a refinancing by the landowner. In these situations, the mortgage lender
11 customarily issues a payoff statement, specifying the payment needed to satisfy the outstanding
12 balance of the loan. Sections 201 through 203 address the nature and scope of the mortgage
13 lender’s obligation to issue a payoff statement, the contents and effect of such a statement, and
14 the consequences of the mortgage lender’s failure to issue such a statement.

15
16 2. As discussed in the comments to Section 102, the identity of the “landowner” under the
17 Act is contextual. In this context, the “landowner” is the party who owns the mortgaged land at
18 the time of the request for a payoff statement. If a payoff statement is being requested in
19 conjunction with an upcoming sale or transfer of the mortgaged land, the “landowner” would be
20 the seller/transferor, not the buyer/transferee. Consistent with the principles of agency law, a
21 “landowner” under this section may act through any authorized agent acting on the landowner’s
22 behalf. For example, if Seller has contracted to sell mortgaged land to Buyer, and Seller has
23 authorized Attorney to represent her in the transaction, Attorney may properly request a payoff
24 statement on Seller’s behalf.

25
26 3. Under the Act, only the landowner or a person liable for payment or performance of the
27 secured obligations (such as a guarantor, or a predecessor in title who was the original
28 mortgagor) may rightfully demand a payoff statement. In some circumstances, there may be
29 other persons who want to obtain payoff information. For example, in the context of a default
30 under a senior mortgage, a junior lienholder may wish to obtain payoff information regarding the
31 senior mortgage in order to evaluate what steps the junior lienholder should take to protect its
32 interest in the mortgaged land. Under the Act, the junior lienholder would have the right to
33 obtain a payoff statement as an agent of the landowner if the landowner has so authorized, either
34 in the loan documents evidencing the junior lien or otherwise.

35
36 **SECTION 202. PAYOFF STATEMENT: REQUEST AND CONTENT.**

37 (a) An entitled person may give to the secured creditor a notification requesting a payoff

1 statement. The notification must identify the payoff date for which the statement is requested,
2 which must be no more than 30 days after the date of the notification, and contain:

- 3 (1) the entitled person's name;
- 4 (2) the name of the entitled person's authorized agent, if the notification requests
5 delivery of the statement to that agent;
- 6 (3) the address to which the creditor must deliver the statement;
- 7 (4) the date that the notification is given; and
- 8 (5) sufficient information to enable the creditor to identify the secured obligations
9 and the real property encumbered by the security interest.

10 (b) If the notification in subsection (a) directs the secured creditor to deliver the payoff
11 statement to an authorized agent of the entitled person, the secured creditor may presume that the
12 agent is so authorized and may provide the statement to the agent unless the secured creditor has
13 reasonable grounds to believe that the entitled person has not authorized the request.

14 (c) Within 10 days after the effective date of a notification complying with subsection
15 (a), the secured creditor shall issue a payoff statement and deliver it to the entitled person in the
16 manner prescribed in Section 103 for giving notification. Delivery of the payoff statement to the
17 entitled person constitutes a waiver of any claim that the notification failed to satisfy the
18 requirements of subsection (a). The payoff statement must:

- 19 (1) identify the date on which it was prepared and the amount required to satisfy the
20 secured obligations as of that date, including an itemization by type of each fee, charge, or other
21 sum that comprises the balance of the secured obligations;
- 22 (2) include the information reasonably necessary to calculate the payoff amount as of

1 the requested payoff date, including the per diem interest amount; and

2 (3) set forth the payment cutoff time, if any, the place where payment must be made,
3 and any limitation as to the authorized method of payment.

4 (d) A secured creditor may not qualify a payoff statement or state that it is subject to
5 change prior to the payoff date unless the payoff statement provides information sufficient to
6 permit the entitled person to obtain, at no charge, an updated and reliable payoff amount during
7 the secured creditor's normal business hours on the payoff date or the immediately preceding
8 business day.

9 (e) An entitled person can request one payoff statement without charge during any six-
10 month period. A secured creditor may charge a fee of not more than \$25 for each additional
11 request for a payoff statement during a six-month period. In addition, if the entitled person
12 requests delivery of the payoff statement by means other than first-class mail, the secured
13 creditor may charge a reasonable fee for the requested manner of delivery. A secured creditor
14 may include in a payoff statement any fees authorized under this subsection. A secured creditor
15 may not charge a fee, however, for providing an updated payoff amount under subsection (d), or
16 for providing a corrected payoff statement under Section 203(b).

17 **Preliminary Comments**

18 1. An entitled person may request a payoff statement by giving a notification containing
19 such a request in the manner specified by Section 103. The notification must identify the
20 proposed payoff date, which cannot be more than 30 days following the date of the notification.
21 The notification must provide the information required by subsection (a); however, as subsection
22 (c) makes clear, the secured creditor's delivery of a payoff statement constitutes a waiver of any
23 technical defect in the contents of the notification.

24
25 2. In many cases, a title insurer, attorney, lender, escrow agent, or other person may request
26 a payoff statement on the entitled person's behalf and with the entitled person's authority, where

1 the requesting person is assisting the entitled person in the closing of a sale or refinancing
2 transaction. Potential concerns arise with respect to the privacy of financial information, such as
3 the outstanding balance of a mortgage loan, where the secured creditor is disclosing that
4 information to someone other than the obligor. Subsection (b) seeks to provide some comfort for
5 the secured creditor, allowing the secured creditor to presume that the requesting person is
6 authorized to make the request on behalf of the entitled person, absent reasonable grounds to
7 believe that the request is unauthorized.
8

9 3. Because mortgage loans may vary significantly in their terms and conditions, the Act does
10 not specify any particular form that a payoff statement must take in order to satisfy this section.
11 Instead, subsection (c) provides certain information that the secured creditor must include in
12 order to comply with its obligation to deliver a payoff statement. The Act does require that the
13 payoff statement must itemize by type each fee, charge, or other sum that comprises the balance
14 of the secured obligations. The purpose of this requirement is to enable the party requesting the
15 payoff statement to ascertain how the secured creditor calculated the payoff amount.
16

17 The secured creditor may include other information beyond that specified in subsection (c),
18 but that additional information cannot include disclaimers or other language intended to defeat
19 the ability of the entitled person to rely generally upon the accuracy of the payoff statement. It is
20 possible, of course, that the balance of the secured obligations may change between the date that
21 a secured creditor issues a payoff statement and the proposed payoff date — whether because of a
22 change in the applicable interest rate (either because the mortgage note bears a variable rate or
23 includes a provision for default interest), because the lender had to advance additional funds to
24 protect its security, or because the lender incurred other costs for which the obligor bears
25 responsibility under the terms of the loan documents. Subsection (d) does permit the mortgage
26 lender, in issuing a payoff statement, to state that the balance may be subject to change prior to
27 the payoff date. However, the mortgage lender can make such a qualification of the payoff
28 statement's reliability only if the payoff statement provides sufficient information to permit the
29 entitled person to obtain a reliable updated payoff amount on the payoff date or the immediately
30 preceding business day (*e.g.*, by telephone, facsimile transmission, or electronic mail).
31

32 4. Subsection (e) provides that the entitled person may receive one payoff statement without
33 charge during any six-month period. For this payoff statement, the secured creditor can impose
34 no fee, other than a reasonable fee for expedited delivery of the payoff statement (*i.e.*, delivery by
35 means other than first-class United States mail) if the entitled person requests expedited delivery.
36 Subsection (e) also makes clear that the secured creditor cannot impose any fee for a corrected
37 payoff statement or for updating a qualified payoff statement issued under subsection (d).
38

39 **SECTION 203. PAYOFF STATEMENT: EFFECT.**

40 (a) Subject to subsections (b) and (c), an entitled person may rely upon a payoff

1 statement to determine the amount that must be paid to the secured creditor as of the payoff date
2 to obtain a recorded satisfaction of the security instrument, if the entitled person acts in good
3 faith and does not know or have reason to know that the amount is incorrect. Upon timely
4 receipt of payment of that amount, the secured creditor shall record a satisfaction of the security
5 instrument within the time period specified in Section 204(a).

6 (b) If a secured creditor determines that information it provided in a payoff statement is
7 inaccurate, the creditor may furnish a corrected payoff statement to the entitled person. If the
8 entitled person receives a corrected payoff statement before making payment, the corrected
9 statement supersedes an earlier statement.

10 (c) If a secured creditor issued a payoff statement qualified in the manner specified in
11 Section 202(d), the entitled person may rely only upon the updated payoff amount provided by
12 the secured creditor, unless the secured creditor fails to provide an updated payoff amount with
13 one business day following a proper request.

14 (d) Nothing in this section shall preclude the secured creditor from recovering any sums
15 which it failed to include in the payoff statement from any person personally liable for
16 performance of the secured obligations.

17 (e) If a secured creditor fails without reasonable cause to deliver a timely payoff
18 statement when required to do so by this section, the creditor is liable to the entitled person for
19 the actual loss caused by the failure, reasonable attorney's fees and costs, and the additional sum
20 of [\$500]. A recipient of a notification under Section 202(a) that does not claim any interest in
21 the secured obligations has reasonable cause for failure to deliver a timely payoff statement
22 within the meaning of this subsection.

Preliminary Comments

1. If the secured creditor fails to issue a timely payoff statement, without reasonable cause, the entitled person may recover any loss actually resulting from the secured creditor's failure, subject to ordinary rules of pleading and proof. In addition, subsection (e) provides a minimum statutory damage recovery for the entitled person. This subsection is patterned on U.C.C. Section 9-210(f) and ensures that the secured creditor's nondelivery of a payoff statement will generally result in liability regardless of any injury that may have resulted.

In some cases, an entitled person may direct a request for a payoff statement to a creditor that claims no interest in the secured obligations. Subsection (e) makes clear that such a creditor has reasonable cause for its failure to provide a timely payoff statement.

2. The secured creditor may discover, after issuing a payoff statement, that it erroneously understated the outstanding balance of the secured obligations. Subsection (b) permits the secured creditor to issue a corrected payoff statement that supersedes the erroneous statement. Subsection (c) also allows the secured creditor to update a payoff statement that the secured creditor had properly qualified pursuant to Section 202(d).

If the secured creditor does not issue a corrected payoff statement, or fails to provide a timely updated payoff statement following a request for such an updated statement, the entitled person may rely upon the payoff statement for the purpose of determining the amount that must be paid in order to obtain a recorded satisfaction of the security instrument. Upon receipt of that amount, subsection (a) makes clear that the secured creditor must record a timely satisfaction of the security instrument.

It is possible, therefore, that a secured creditor will not discover an error in an already-issued payoff statement prior to the payoff date. In that event, the secured creditor may receive payment pursuant to the erroneous statement before it can issue a corrected statement. In such a case, subsection (a) makes clear that the secured creditor must record a satisfaction, unless the entitled party knew or should have known that the original statement was erroneous. For example, suppose that Bank holds a mortgage on Owner's home that secures repayment of a loan with an outstanding balance of \$100,000, and Bank issues a payoff statement indicating that the balance due is \$10,000. A payment of \$10,000 by Owner would not obligate Bank to record a satisfaction of the mortgage. The Act leaves to judicial resolution the question of when a mistake is of sufficient magnitude that the entitled person has reason to know of the mistake.

3. Subsection (d) provides that in a case where the secured creditor has understated the payoff amount — but must nevertheless record a satisfaction because it received good faith payment of the specified payoff amount before issuing a corrected payoff statement — the secured creditor can still seek to recover the remaining balance of the obligations from any person personally liable for those obligations under law other than this Act. For example, suppose that Bank holds a mortgage on Owner's home that secures Owner's personal obligation

1 on the mortgage note. Owner requests a payoff statement in conjunction with a sale of the home
2 to Buyer. Bank issues a payoff statement that reflects an outstanding principal and interest
3 balance of \$100,000. In fact, Owner has also incurred \$150 of late charges pursuant to the
4 mortgage, but Bank failed to reflect those late charges on the payoff statement. On the payoff
5 date, Owner makes and Bank accepts payment in accordance with the payoff statement, before
6 Bank issues a correction. In this situation, Bank must record a satisfaction of the mortgage, but
7 Bank may still recover the \$150 in late charges from Owner as an unsecured obligation unless,
8 based upon the facts and circumstances, Owner would have a sufficient defense under the
9 doctrines of waiver, estoppel, or the like.

10
11 4. If the secured creditor overstates the payoff amount — in other words, if the total
12 specified in the payoff statement exceeds the actual balance of the secured obligations — the
13 secured creditor's obligation to record a satisfaction is instead governed by Section 204(a).
14 Under that section, if the secured creditor receives payment of an amount that in fact constitutes
15 the outstanding balance of the secured obligations, the secured creditor must record a satisfaction
16 of the security instrument even though the payment was for less than the amount identified in the
17 payoff statement.

18
19 For example, suppose that Bank holds a mortgage on Owner's home and provides a payoff
20 statement to Owner indicating that the required payoff amount is \$52,000. Because the Bank
21 miscalculated the accrued interest based upon an incorrect interest rate, however, the correct
22 balance of the secured obligations is only \$51,500. If the Owner pays \$51,500 to the Bank, this
23 payment will satisfy the secured obligations, and Section 204(a) will require Bank to execute and
24 record a satisfaction.
25

26 **SECTION 204. SECURED CREDITOR TO RECORD SATISFACTION.**

27 (a) Subject to the provisions of Article 4, a secured creditor must record a satisfaction of
28 a security instrument within 30 days after the creditor receives full payment or performance of
29 the secured obligations or becomes required to record a satisfaction under Section 203(a). If a
30 security instrument secures a line of credit or future advances, the secured creditor must record a
31 satisfaction of the security instrument only if the secured creditor has received a notification
32 requesting the creditor to terminate the line of credit or containing a statement sufficient to
33 terminate the effectiveness of the future advance provisions in the security instrument.

34 (b) If a secured creditor has not recorded a satisfaction within the period specified in

subsection (a), the landowner may give to the creditor a notification demanding that the creditor record a satisfaction of the security instrument no later than 30 days following the effective date of the notification.

Preliminary Comments

1. Subsection (a) provides that the secured creditor has an affirmative obligation to record a satisfaction of a security instrument upon receiving full performance of the secured obligations or receiving payment of the amount specified in a reliable payoff statement. As explained in Section 203(a), a secured creditor who receives payment of the amount specified in a reliable payoff statement must record a satisfaction of the security instrument, even if it turns out that the payoff statement erroneously understated the balance of the secured obligations.

2. Although the Act imposes both statutory and actual damages upon a secured creditor who fails to record a timely satisfaction of a security instrument, subsection (b) requires the landowner to provide the secured creditor with notice and opportunity to cure before the landowner may enforce such liability against the secured creditor. If the secured creditor has not recorded a satisfaction of the security instrument within 30 days after becoming legally obligated to do so, the landowner may give a notification to the secured creditor demanding that the secured creditor record a satisfaction of the security instrument within 30 days of the notification. The landowner must give this notice in a manner specified in Section 103, and may give this notice either directly or through its authorized agent.

SECTION 205. FORM AND EFFECT OF SATISFACTION.

(a) A document is sufficient to constitute a satisfaction if it:

(1) identifies the security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument was recorded;

(2) states that the secured creditor is the holder of the security interest created by the security instrument;

(3) contains language terminating the effectiveness of the security instrument; and

1 (4) is signed by the secured creditor and acknowledged as required by law for a
2 conveyance of an interest in real property.

3 (b) A document complying with subsection (a) must be accepted for recording in the
4 [appropriate governmental office under the recording act of this state]. Upon recording, the
5 document shall be effective to constitute a satisfaction of the security instrument in favor of a
6 person who acquires an interest in the real property after the document is recorded and who is
7 entitled to protection under [the recording act of this state].

8 **Preliminary Comments**

9 1. The Act is not intended to provide the sole mechanism for effecting the satisfaction of a
10 mortgage. For example, if another state statute permitted the secured creditor to present an
11 affidavit that instructs the recording officer to enter a notation of satisfaction in the margin of the
12 record where the security instrument itself appears in the record, the secured creditor could
13 satisfy its obligation to record a satisfaction by complying with that statute.

14
15 2. Subsection (a) is intended to foster uniformity by specifying minimal standard
16 information for recorded satisfactions, which should facilitate the development of standard
17 satisfaction forms in states adopting the Act. Under the Act, a satisfaction document must
18 identify the security instrument, the original parties to that instrument, and the recording data and
19 office in which it was recorded. The satisfaction document must also contain language
20 terminating the instrument's effectiveness, as well as a recital that the secured creditor is the
21 holder of the security interest created by the security instrument. Finally, the satisfaction
22 document must be signed by the secured creditor and acknowledged as required by law for an
23 effective conveyance of an interest in real property.

24
25 3. Subsection (b) provides that a document complying with the Act's requirements must be
26 accepted for recording and, upon recording, operates as a satisfaction in favor of persons entitled
27 to the benefit of the state's recording act. This provision addresses a problem that results in some
28 jurisdictions where a mortgagee attempts to record a satisfaction of a mortgage that it holds via
29 one or more unrecorded assignments. In some jurisdictions, recording officers may refuse to
30 accept a satisfaction for recording if the secured creditor is not an original party to the security
31 instrument, unless the satisfaction document recites the chain of recorded assignments by which
32 the secured creditor claims an interest in the real property. Subsection (b) makes clear that where
33 the satisfaction document complies with subsection (a) — and thus contains the recital that the
34 secured creditor is the present holder of the security interest created by the security instrument —
35 the recorder must record the document even if it does not recite the chain of recorded

1 assignments by which the secured creditor acquired its interest. This provision is critical to
2 advance the Act's objective of providing a landowner with an efficient title-clearing mechanism.
3 In many instances, it would be either prohibitively expensive or time-consuming for the secured
4 creditor to locate and record the complete chain of intermediate assignments of the security
5 instrument. In other cases, where such intermediate assignments have been lost and where
6 intermediate assignors are defunct, reconstructing a complete record chain of assignments is
7 simply impossible.
8

9 **SECTION 206. LIABILITY OF SECURED CREDITOR FOR FAILURE TO**
10 **RECORD SATISFACTION.**

11 (a) Except as otherwise provided in subsection (b), a secured creditor who must record a
12 satisfaction of a security instrument and fails to do so within the period specified in Section
13 204(b) is liable to the landowner for:

14 (1) damages in the amount of any loss caused by the failure, reasonable attorneys'
15 fees and costs, and

16 (2) the additional sum of \$100 per day, for each day following the expiration of the
17 period specified in Section 204(b), until the secured creditor records a satisfaction of the security
18 instrument, up to a maximum of \$3,000.

19 (b) A secured creditor is not liable under subsection (a) if the creditor:

20 (1) has established a reasonable procedure to record satisfactions of security
21 instruments;

22 (2) complied with this procedure in good faith; and

23 (3) was unable to record a satisfaction of a security instrument within the period
24 specified in Section 204(b) because of circumstances beyond its control.

25 **Preliminary Comments**
26

1 1. Subsection (a)(1) sets forth the basic remedy for the secured creditor's failure to comply
2 with the requirements of the Act: a damage recovery in the amount of the loss caused by the
3 secured creditor's noncompliance. The exercise of this remedy is subject to the normal rules of
4 pleading and proof.
5

6 2. Subsection (a)(2) provides statutory damages for the secured creditor's failure to comply
7 with the requirements of the Act, which the landowner may recover in addition to any damages
8 recoverable under subsection (a)(1). This provision is conceptually similar to U.C.C. Section 9-
9 625(e)(4), which provides for a minimum statutory damage recovery whenever an Article 9
10 secured party fails to provide a termination statement within a timely manner. Unlike that
11 provision, however, subsection (a)(2) calculates these statutory damages on a per-day basis, so
12 that the amount of the statutory damages will increase for each day that the secured creditor fails
13 to fulfill its obligation to record a timely satisfaction, subject to a maximum of \$3,000.
14

15 3. Subsection (b) provides a secured creditor with a defense to liability if the secured
16 creditor has established reasonable procedures to ensure the timely recordation of satisfactions
17 and has complied with those procedures in good faith, but where recordation does not occur
18 because of the circumstances beyond the control of the secured creditor. The Act does not
19 specify what procedures are "reasonable," but leaves the question to judicial resolution.
20

21 Subsection (b) may be implicated where a secured creditor takes appropriate steps to record a
22 timely satisfaction but where recording does not occur because of transmittal problems beyond
23 the secured creditor's control. For example, suppose that First Bank holds a deed of trust on
24 Owner's land. Owner obtains a refinancing loan through Second Bank and uses the proceeds of
25 this loan to pay off the balance of the debt to First Bank. When First Bank fails to record a
26 satisfaction of the deed of trust within 30 days following the payoff, Owner gives notification to
27 First Bank in accordance with Section 204(b). Upon receiving this notification, First Bank
28 promptly executes a satisfaction and transmits it to the recorder of deeds for recording, via U.S.
29 mail. Because of error caused by a faulty postal zip code scanner, delivery of the package to the
30 recorder's office is delayed. By the time the package arrives at the recorder's office and the
31 satisfaction is recorded, the additional 30-day grace period has expired so that the recording is
32 untimely. Assuming that First Bank can demonstrate that its conduct complied with its own
33 reasonable internal procedures, Owner may not recover from First Bank.
34

35 Depending upon other state law, subsection (b) might be implicated where a secured creditor
36 takes appropriate steps to record a timely satisfaction but where recording does not occur because
37 the recording official wrongfully rejects the document. In many states, First Bank would be
38 protected from liability in this instance because its presentation of a correct satisfaction would
39 constitute a sufficient "recording" despite the recording official's rejection — thereby fulfilling
40 its obligation to record a satisfaction. Even if not, First Bank could avoid liability by
41 demonstrating that it had complied with its own reasonable procedures and that it had no control
42 over the recorder's wrongful rejection.
43

1 4. In many cases, secured creditors will delegate responsibility for servicing mortgage loans,
2 including the responsibility to record satisfactions of security instruments. In these cases, the Act
3 treats the servicer as a “secured creditor,” and the landowner thus could hold the servicer liable
4 under the terms of the Act. Such delegations of authority do not automatically relieve the
5 delegating secured creditor of its obligations under the Act. Nevertheless, a delegating secured
6 creditor may be able to plead and prove its compliance with reasonable procedures as a defense
7 to liability, where the secured creditor had issued timely directions to its servicer to record a
8 satisfaction and the servicer failed to do so.
9

10 5. Under the Act, the secured creditor must record a satisfaction only if it has received full
11 performance of the secured obligations, or payment of the amount specified in a reliable payoff
12 statement. The mere existence of a dispute over the balance of the secured obligations does not
13 by itself toll the 30-day grace period. If the secured creditor does not record a satisfaction within
14 30 days after receiving notification under Section 204(b), the secured creditor bears the risk that a
15 court might later conclude that the landowner did in fact tender full performance or did make
16 payment of the amount specified in a reliable payoff statement.
17
18

19 **SECTION 207. REINSTATEMENT OF SECURITY INSTRUMENT; LIABILITY**
20 **FOR ERRONEOUS REINSTATEMENT.**

21 (a) If a person has recorded a satisfaction of a security instrument in error, the person
22 may execute and record a document rescinding the erroneous satisfaction. This document shall
23 state that the satisfaction was erroneously recorded, that the secured obligations remain
24 unsatisfied, and that the security instrument remains in force. When recorded, this document
25 rescinds an erroneously recorded satisfaction and reinstates the lien of the security instrument.

26 (b) A recorded document of rescission under subsection (a) has no effect upon the rights
27 of any person who acquired an interest in the real property described in the security instrument
28 after the recording of the satisfaction but prior to the recording of the document of rescission, and
29 who would otherwise have priority over or take free of the lien of the secured creditor under [the
30 recording act of this state].

31 (c) A person who wrongfully records a document of rescission under subsection (a) is

1 liable to any person injured thereby for damages in the amount of any loss caused by the
2 wrongful recording, reasonable attorneys' fees and costs.

3 **Preliminary Comments**

4
5 1. Subsection (a) permits a person that has erroneously recorded a satisfaction of a security
6 instrument to prepare and record a document rescinding this satisfaction and reinstating the lien
7 of the security instrument. In this manner, the Act attempts to address the practical and logistical
8 problems associated with the inadvertent or erroneous recording of a mortgage satisfaction.
9

10 For example, suppose that Bank receives a payoff of a loan secured by a mortgage on Parcel
11 X, but because a Bank employee mistakenly transposes the mortgage loan number, Bank
12 mistakenly transmits to the recording official a satisfaction of the mortgage on Parcel Y (on
13 which there remains a significant outstanding balance). While Bank can request the owner of
14 Parcel Y to execute a new mortgage, the owner of Parcel Y may not cooperate in this effort (even
15 if the owner of Parcel Y is legally obligated to do so). In this example, subsection (a) would
16 permit the Bank to rescind the erroneous satisfaction and reinstate its lien against Parcel Y.
17

18 2. Subsection (b) addresses the situation in which a third party acquires an interest in the
19 real property following the inadvertent or erroneous satisfaction but before the recording of the
20 rescission document. Subsection (b) makes clear that the rescission is ineffective against any
21 such person entitled to the protection of the state's recording act. For example, consider the
22 hypothetical described in comment 1 above. Suppose that following the Bank's inadvertent
23 satisfaction of the mortgage on Parcel Y, the owner of Parcel Y sold that parcel to Buyer. Buyer
24 paid value and had neither knowledge nor reason to know that Bank's recorded satisfaction was
25 erroneous. Subsection (b) confirms that in a jurisdiction with a pure notice recording statute,
26 Buyer would take Parcel Y free and clear of Bank's mortgage, and that Bank's subsequent
27 attempt to rescind the erroneous satisfaction is ineffective against Buyer.
28

29 The Act leaves to the state's recording statute what classes of intervening persons may claim
30 the protection of subsection (b). For example, recording acts in most states protect only reliance
31 creditors (e.g., buyers and mortgagees). In those states, a intervening judgment lien creditor or a
32 donee would not be able to claim the protection of subsection (b). In a state that permits
33 judgment lien creditors to obtain the protection of the recording act, however, subsection (b)
34 would provide the intervening creditor with priority over the secured creditor's reinstated lien..
35

36 3. Subsection (a) permits a person to record a document rescinding a satisfaction only where
37 it was recorded "in error." For purposes of this Act, a satisfaction cannot be recorded "in error"
38 if the secured creditor was legally obligated to record that satisfaction. For example, suppose
39 that Bank holds a mortgage on Parcel Y, owned by Landowner, and that Landowner pays off the
40 amount specified by Bank in a reliable payoff statement. Under Section 204(a), Bank is legally
41 obligated to record a satisfaction of the mortgage, even if the payoff amount specified in the

1 statement was erroneous and the secured obligations remain unsatisfied. If Bank records a
2 satisfaction of the mortgage on Parcel Y, subsection (a) does not authorize Bank to record a
3 rescission of that satisfaction if it subsequently discovers that the payoff amount was erroneous.
4

5 4. Subsection (c) authorizes a person injured by the wrongful recording of a document of
6 rescission to recover damages in the amount of the loss caused by the secured creditor's conduct,
7 reasonable attorneys' fees and costs. The exercise of this remedy is subject to the normal rules of
8 pleading and proof.
9

10 5. Under Article 3 of this Act, a "satisfaction agent" may file an affidavit of satisfaction
11 following the secured creditor's failure to record a timely satisfaction in accordance with the
12 provisions of Article 2. Under Section 305(a), a recorded affidavit of satisfaction constitutes a
13 "satisfaction" for purposes of this Act. Accordingly, a satisfaction agent that recorded an
14 affidavit of satisfaction in error could, in appropriate cases, record a document rescinding the
15 affidavit of satisfaction under this section.
16

17 Likewise, under Article 4 of this Act, a "closing agent" may file a certificate of satisfaction if
18 authorized to do so by the secured creditor following payment of the amount specified in a
19 reliable satisfaction statement. Under Section 404(a), a recorded certificate of satisfaction
20 constitutes a "satisfaction" for purposes of this Act. Accordingly, a closing agent that recorded a
21 certificate of satisfaction in error could, in appropriate cases, record a document rescinding the
22 certificate of satisfaction under this section.

1 **ARTICLE 3**

2 **SATISFACTION BY AFFIDAVIT**

3
4
5
6 **SECTION 301. DEFINITION.** In this Article:

7 (1) “Satisfaction agent” means

8 (a) a title insurance company, acting directly or through its authorized agent, or

9 (b) an attorney licensed to practice law in this state and in good standing.

10 (2) “Title insurance company” means an organization authorized to conduct the business
11 of insuring titles to real property in this state.

12 **Preliminary Comments**

13 1. Article 3 permits a landowner, acting through a “satisfaction agent,” to record an affidavit
14 of satisfaction of a security instrument in circumstances where the secured creditor is legally
15 obligated to record a satisfaction but has failed to do so following notification and an opportunity
16 to cure. Under Section 305, this affidavit of satisfaction shall have the same legal effect of a
17 satisfaction of the security instrument. In the event that the satisfaction agent wrongfully records
18 an affidavit of satisfaction, Section 306 provides that the satisfaction agent is liable to the secured
19 creditor for damages caused by the wrongful recording. As a result, the Act provides that a
20 “satisfaction agent” must be either a title insurance company (acting directly or through its
21 authorized agent) or a licensed attorney in good standing. This limitation increases the likelihood
22 that affidavits of satisfaction will be recorded only by persons who have the financial
23 responsibility necessary to recompense a secured creditor in the event that such a creditor suffers
24 damages as a result of the recording of a wrongful affidavit of satisfaction.

25
26 Because the satisfaction agent acts in this instance pursuant to the authority of the Act, it is
27 irrelevant whether the satisfaction agent is named as a party in the security instrument.
28

29 **SECTION 302. AFFIDAVIT OF SATISFACTION: NOTIFICATION TO SECURED**
30 **CREDITOR.**

31 (a) If a secured creditor has not recorded a satisfaction of a security instrument within the
32 period specified in Section 204(a), a satisfaction agent acting for and with authority from the

landowner may give the secured creditor notification that the satisfaction agent intends to record an affidavit of satisfaction of the security instrument. A notification satisfies the requirements of this section if it includes the following:

- (1) the identity and mailing address of the satisfaction agent;
- (2) the date that the notification is given in accordance with Section 103;
- (3) identification of the security instrument for which a recorded satisfaction is sought, including the names of the original parties to, and the recording data for, the security instrument;
- (4) a statement that the satisfaction agent has reasonable grounds to believe that the person to whom the notification is being given is the secured creditor;
- (5) a statement that the satisfaction agent possesses evidence that the secured creditor has received full payment or performance of the secured obligations;
- (6) a statement that the secured creditor has not recorded a satisfaction of the security instrument; and
- (7) a statement that the satisfaction agent intends to execute and record an affidavit of satisfaction unless, within 30 days following the effective date of the notification, the secured creditor:
 - (A) records a satisfaction of the security instrument;
 - (B) gives notification to the satisfaction agent that the secured obligations remain unsatisfied, or
 - (C) gives notification to the satisfaction agent stating that it has assigned the security instrument and identifying the name and mailing address of the assignee.

(b) In the event that the satisfaction agent receives a notification under subsection (a)(7)(C) indicating an assignment of the security instrument, the satisfaction agent may not record an affidavit of satisfaction without giving a notification complying with subsection (a) to the identified assignee.

Preliminary Comments

1. Article 3 provides a timetable that should permit a diligent secured creditor sufficient time in which to record a satisfaction of a security instrument and thus avoid the filing of an affidavit of satisfaction. If the secured creditor has not recorded a satisfaction within 30 days after becoming legally obligated to do so, the satisfaction agent may give notification to the secured creditor instructing the secured creditor to act within 30 days either to record a satisfaction of the security instrument or to object that the secured obligations remain unsatisfied. During this 30-day grace period, the secured creditor can record a satisfaction; thus, in all instances the secured creditor will have a minimum of 60 days in which to record a satisfaction and avoid the filing of an affidavit of satisfaction.

2. Section 302 specifies the contents of the satisfaction agent's notification to the secured creditor. This notification is distinct from the separate notification requirement imposed upon the landowner by Section 204(b). Section 204(b) provides that if the secured creditor has not recorded a satisfaction within 30 days of becoming legally obligated to do so, the landowner may give the secured creditor notification of this failure — thereby triggering a 30-day grace period within which the secured creditor may record a satisfaction without incurring liability under Section 205. The notification in Section 204(b) thus serves as a prerequisite to triggering the secured creditor's liability for failure to record a timely satisfaction under Section 205.

Because the notification required by Section 302 serves a different function than the notification required under Section 204(b), the landowner may not use one notification to satisfy both sections. However, the landowner could provide both notifications at the same time (i.e., at any time after the 31st day following the point at which the secured creditor became legally obligated to record a satisfaction of the security instrument), and thus the 30-day grace periods in Sections 204(b) and Section 303 may run contemporaneously.

3. Section 302 merely states the minimum requirements for an acceptable notification under Article 3. It does not prevent the satisfaction agent from providing additional information (such as a street address for the mortgaged premises or the mortgage loan number) that might assist the secured creditor in identifying the security instrument or the secured obligations.

4. In some cases, a satisfaction agent may give a notification under Section 302(a) and receive a response indicating that the notified person had previously assigned the security

instrument. If the response identifies the name and address of the assignee, the satisfaction agent could not proceed to record an affidavit of satisfaction under Article 3 without first giving the identified assignee a notification as required by Section 302(a) and an additional 30-day grace period in which to record a satisfaction.

SECTION 303. AFFIDAVIT OF SATISFACTION: AUTHORIZATION TO

RECORD. If a secured creditor fails to record a satisfaction of a security instrument within 30 days after the effective date of a notification complying with Section 302, the satisfaction agent may execute and record an affidavit of satisfaction complying with the requirements of Section 304 unless the satisfaction agent has received a notification under Section 302(a)(7)(B) stating that the secured obligations remain unsatisfied.

Preliminary Comments

1. If the secured creditor fails, within 30 days of the effective date of a notification complying with Section 302, either to record a satisfaction or to object that the secured obligations remain unsatisfied, the satisfaction agent may execute and record an affidavit of satisfaction in accordance with Section 304.

Under this section, the secured creditor may object to the recording of an affidavit of satisfaction if it gives notification within the 30-day grace period indicating that the secured obligations remain unsatisfied. If the secured creditor so objects, the satisfaction agent may not execute and record an affidavit of satisfaction. However, while the secured creditor's objection may prevent the satisfaction agent from using Article 3's "self-help" satisfaction procedure, it does not shield the secured creditor from potential liability under Section 205. If subsequent litigation established that the secured creditor was legally obligated to record a satisfaction, but failed to do so within 30 days after the effective date of a notification complying with Section 204(b), the secured creditor will have violated its obligations under the Act and the landowner may recover statutory and actual damages under Section 205.

SECTION 304. AFFIDAVIT OF SATISFACTION: FORM.

(a) An affidavit of satisfaction must:

(1) identify the original parties to the security instrument, the secured creditor, and

1 the recording data for the security instrument;

2 (2) state that the person executing the affidavit of satisfaction is an officer or a duly
3 appointed agent of a title insurance company authorized to transact the business of insuring titles
4 to interests in real property in this state, or an attorney in good standing and licensed to practice
5 law in this state;

6 (3) state that the person executing the affidavit possesses evidence that the secured
7 creditor has received full payment or performance of the secured obligations;

8 (4) state that the person executing the affidavit gave notification to the secured
9 creditor of its intention to execute and record an affidavit of satisfaction, that more than 30 days
10 have elapsed following the effective date of that notification, and that the creditor has neither
11 recorded a satisfaction of the security instrument nor given notification that the secured
12 obligations remain unsatisfied; and

13 (5) be executed and acknowledged as required by law for a conveyance of an interest
14 in real property.

15 (b) No particular phrasing of an affidavit of satisfaction is required; however, the
16 following form of affidavit, when properly completed, is sufficient to satisfy the requirements of
17 subsection (a):

18 “
19 _____
20 (Date of Affidavit)

21 **AFFIDAVIT OF SATISFACTION**

22 The undersigned hereby states as follows:

23 1. I am [an officer or a duly appointed agent of [Name of title insurance

1 company], which is authorized to transact the business of insuring titles to
2 interests in real property] [an attorney in good standing and licensed to practice
3 law] in this state.

4 2. I am executing this Affidavit of Satisfaction to evidence full payment or
5 performance of the obligations secured by land covered by the following security
6 instrument (the “Security Instrument”) currently held by _____ (the
7 “Secured Creditor”):

8 Title of Security Instrument:

9 Original Parties to Security Instrument:

10 County and State of Recording:

11 Recording Data for Security Instrument:

12 3. I possess evidence that the secured creditor has received full payment or
13 performance of the balance of the obligations secured by the security instrument.

14 4. On _____ [Date of Notification of Intent to Execute and Record Affidavit of
15 Satisfaction], I delivered notification to the secured creditor that I would
16 execute and record an affidavit of satisfaction of the security instrument if the
17 secured creditor did not record a satisfaction of the security instrument within 30
18 days of the effective date of that notification. This 30-day period has elapsed, and
19 the secured creditor has neither recorded a satisfaction of the security instrument
20 nor given notification that the secured obligations remain unsatisfied.

21

22

1 (Signature of Satisfaction Agent)

2

3 _____”

4 (Notarization)

5

6

Preliminary Comments

7

8 1. Subsection (a) sets forth the information necessary for a sufficient affidavit of
9 satisfaction. An affidavit that lacks any of the information required by subsection (a) does not
10 operate as a satisfaction of the security instrument under Section 305, even if it is accepted for
11 recording.

12

13 2. Although subsection (b) provides that a particular phrasing is not required, it also
14 specifies a safe-harbor form that, when properly completed, satisfies subsection (a).

15

16

SECTION 305. AFFIDAVIT OF SATISFACTION: EFFECT.

17

18 (a) An affidavit of satisfaction complying with Section 304 must be accepted for
19 recording in the [appropriate governmental office under the recording act of this state]. Upon
20 recording, the affidavit:

21

(1) constitutes a satisfaction of the security instrument described in the affidavit;

22

(2) shall be considered properly recorded under [the recording act of this state]; and

23

(3) is conclusive evidence of the facts contained in it as to a person who acquires an
24 interest in the real property after the affidavit is recorded and who is entitled to protection under
25 [the recording act of this state].

26

(b) The recording of an affidavit of satisfaction does not itself extinguish any liability of
27 any person liable for repayment of the secured obligations.

28

Preliminary Comments

29

30 1. In most states, other state statutes specify the form and content necessary for a document

1 to constitute a sufficient satisfaction. Section 305(a) makes clear that the recording officer must
2 accept for recording any affidavit of satisfaction that complies with the provisions of Section
3 304, even if the affidavit would not satisfy other state law provisions governing the form and
4 content necessary for a satisfaction piece.
5

6 2. Sometimes, a secured creditor may hold a security instrument by virtue of one or more
7 unrecorded assignments. In this circumstance, some recording officers will reject a satisfaction
8 document prepared by the secured creditor on the ground that the secured creditor is not the
9 secured creditor of record (due to the unrecorded assignments). Such a requirement creates a
10 significant title problem, especially where intermediate assignments of a security instrument
11 cannot be found and recorded to reconstruct the appropriate chain of assignments on the real
12 property records. Furthermore, in some circumstances, it may be practically impossible for the
13 current secured creditor to reconstruct a record chain of assignments where one or more
14 intermediate assignors are institutions that no longer exist.
15

16 Section 305(a) addresses this problem by providing that the recording officer may not refuse
17 to accept an affidavit of satisfaction because the secured creditor is not the secured creditor of
18 record. If the affidavit of satisfaction complies with Section 304, the recording officer must
19 accept the document for recording and must record it. Section 305(a) also makes clear that the
20 affidavit of satisfaction has the same legal effect as a recorded satisfaction and is deemed
21 properly recorded under the state's recording act.
22

23 3. Section 305(a)(3) ensures that the affidavit of satisfaction fulfills the necessary "title-
24 clearing" function needed to address the problem caused by unrecorded mortgage assignments.
25 Subsection (a)(3) provides that the affidavit of satisfaction is conclusive evidence of the facts
26 contained in the affidavit as to any person that acquires an interest in the real property after
27 recording of the affidavit, if that person is entitled to assert the benefit of the state's recording
28 act. For example, suppose that Landowner believes it has satisfied a mortgage on its home by
29 full payment to Creditor B (whom it believes to be the holder of the security instrument by means
30 of an unrecorded assignment). On behalf of Landowner, Title Insurer provides timely
31 notification to Creditor B under Section 302. During the following 30 days, Creditor B neither
32 records a satisfaction nor objects that the secured obligations remain unsatisfied. As a result,
33 Title Insurer thus records an affidavit of satisfaction complying with Section 304 on behalf of
34 Landowner. Shortly thereafter, Landowner sells the real property to Buyer, who purchases the
35 land for value and without knowledge or reason to know that Creditor A (the actual holder of the
36 security instrument) has not received full performance of the secured obligations. Section
37 305(a)(3) provides that the affidavit of satisfaction is conclusive evidence of satisfaction in favor
38 of Buyer, and thus Creditor A cannot enforce the lien of the security instrument against Buyer.
39

40 In this situation, Title Insurer would face liability to Creditor A for damages suffered by
41 Creditor A because Title Insurer wrongfully recorded an affidavit of satisfaction. As a result,
42 satisfaction agents are unlikely to act on behalf of landowners to record affidavits of satisfaction
43 without substantial evidence that the secured obligations have been satisfied. The Act does not

1 precisely specify, however, exactly what evidence of payment the satisfaction agent must
2 possess.

3
4 Section 305(a)'s conclusive presumption that the affidavit of satisfaction is valid works only
5 in favor of parties entitled to the benefit of the state's recording act. In most states, this does not
6 include "non-reliance" third parties such as judgment lien creditors or donees. However, to the
7 extent that a state's recording statute operates in favor of judgment lien creditor or donee, that
8 judgment lien creditor or donee could likewise claim the benefit of Section 305(a).
9

10 4. Subsection (b) provides that the recording of an affidavit of satisfaction does not affect
11 the enforceability of the secured obligations. If a satisfaction agent executes and records an
12 affidavit of satisfaction even though the secured creditor has not received full payment or
13 performance of the secured obligations, the Act does not preclude the secured creditor from
14 enforcing the secured obligations against anyone personally liable for those obligations. Whether
15 the secured creditor has in fact received full payment or performance of the secured obligations is
16 governed by law other than this Act. Likewise, the Act does not preclude the secured creditor
17 from enforcing any other security it may hold to secure payment or performance of the
18 obligations (i.e., security other than the real property described in the security instrument).
19

20 21 **SECTION 306. LIABILITY OF SATISFACTION AGENT.**

22 (a) A satisfaction agent that records an erroneous affidavit of satisfaction is liable to the
23 secured creditor for any damages caused by the recording of the erroneous affidavit, reasonable
24 attorneys' fees and court costs.

25 (b) If a satisfaction agent records an affidavit of satisfaction with knowledge that the
26 statements contained in the affidavit are false, subsection (a) does not:

- 27 (1) limit a court from awarding punitive damages on account of such conduct;
28 (2) limit the secured creditor from proceeding against the satisfaction agent under the
29 applicable law of this state other than the act; and
30 (3) prevent the enforcement of any criminal statute proscribing such conduct.

31 **Preliminary Comments**

- 32
33 1. If a satisfaction agent wrongly executes and records an affidavit of satisfaction, the

1 secured creditor may effectively lose the ability to enforce the security instrument as a means to
2 facilitate its collection of the remaining balance of the obligation. In such a case, Section 306(a)
3 permits the affected secured creditor to recover damages from the satisfaction agent, subject to
4 the usual rules of pleading and proof.

5
6 2. The availability of a self-help satisfaction remedy in Article 3 creates the risk that in some
7 circumstances, a satisfaction agent may execute and record an affidavit of satisfaction with
8 knowledge that the statements contained in that affidavit are false. In order to discourage such
9 conduct, section 306(b) clarifies that in appropriate cases, a court may award punitive damages
10 against such a satisfaction agent. Section 306(b) also preserves the applicability of other state
11 civil law (such as a statute proscribing unfair or deceptive trade practices) or criminal law (such
12 as perjury) against such conduct.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3

SECTION 401. DEFINITIONS. In this Article:

(a) a title insurance company, acting directly or through its authorized agent, or

(b) an attorney licensed to practice law in this state and in good standing.

(3) “Title insurance company” means an organization authorized to conduct the business of insuring titles to real property in this state.

Preliminary Comments

Article 2 of the Act presumptively places the burden upon a secured creditor to execute and record a satisfaction of a security instrument following full payment or performance of the secured obligations. As set forth in Section 206, a secured creditor who fails to execute and record that satisfaction may be subject to statutory damages plus liability for any actual loss sustained by the landowner as a consequence of the secured creditor's failure.

Article 4 of the Act creates a mechanism — the “satisfaction statement” — by which the secured creditor can authorize the closing agent, upon full payment of the amount specified in that statement, to execute and record a satisfaction of the security instrument in the name of the secured party. If the secured creditor issues a satisfaction statement and contemporaneously or subsequently accepts payment of the sums identified in that statement, the closing agent can execute and record a certificate of satisfaction of the security instrument (Section 403). Upon recording, this certificate shall operate as a satisfaction of the security instrument (Section 404).

Several decades ago — when mortgage lending was a more localized transaction — mortgagees often completed recordable satisfaction documents prior to the closing of a sale or

1 refinancing transaction, and delivered those documents to the attorney or other party handling the
2 closing for recording after closing occurred. As the mortgage market evolved into a national
3 market in which there is often a geographical and bureaucratic separation between the mortgagor
4 and the mortgagee, mortgagees gradually stopped providing recordable satisfaction documents in
5 advance of closing — instead choosing to provide satisfaction documents after the closing had
6 occurred. This practice has typically produced a gap between the time of payment of the
7 mortgage debt and recording of a satisfaction of the mortgage. In Article 4, the Act seeks to
8 encourage the mortgagee to provide a satisfaction statement in order to eliminate this
9 transactional delay.
10

11 **SECTION 402. ISSUANCE AND EFFECT OF SATISFACTION STATEMENT.**

12 (a) Upon receiving a request for a payoff statement under Section 202(a), a secured
13 creditor may provide a satisfaction statement to the entitled person. A secured creditor is not
14 obligated to provide a satisfaction statement unless the security instrument so provides.

15 (b) The provisions of Sections 202 and 203 shall determine the extent to which the
16 recipient of a satisfaction statement may rely upon that statement for the purpose of determining
17 the amount necessary to satisfy the secured obligations.

18 (c) Upon payment of the amount identified in a satisfaction statement, a closing agent
19 may execute and record in the name of a secured creditor a certificate of satisfaction of a security
20 instrument complying with the provisions of Section 403.

21 (d) A secured creditor's acceptance of performance of the secured obligations pursuant to
22 a satisfaction statement is a defense to the secured creditor's liability under Section 206.

23 **Preliminary Comments**

24
25 1. The secured creditor need not issue a satisfaction statement, even if the entitled person or
26 its closing agent so requests, unless the security instrument by its terms obligates the secured
27 creditor to do so. Instead, the secured creditor may simply issue a traditional payoff statement. If
28 so, secured creditor remains responsible to record a satisfaction in accordance with the provisions
29 of Article 2.
30

1 Where a secured creditor deals frequently with a particular closing agent and has no reason to
2 question the closing agent's integrity or financial responsibility, the secured creditor may readily
3 decide to issue a satisfaction statement. By executing a satisfaction statement, the secured
4 creditor can shift to the closing agent the responsibility associated with recording a satisfaction of
5 the security instrument. If the secured creditor accepts payment of the secured obligations as
6 identified in the satisfaction statement, then the secured creditor cannot later be held liable under
7 Section 206 if the closing agent fails to record a certificate of satisfaction in a timely fashion. By
8 contrast, if the secured creditor is not familiar with a particular closing agent or is not satisfied
9 with the closing agent's financial responsibility, the secured creditor may choose to issue a
10 traditional payoff statement and retain the legal responsibility for recording a timely satisfaction
11 of the security instrument.

12
13 2. The reliability of a satisfaction statement is subject to the same rules as apply to the
14 reliability of a payoff statement under Sections 202 and 203. Thus, the secured creditor can
15 qualify a satisfaction statement only to the extent that the secured creditor can properly qualify a
16 payoff statement under those sections.

17 18 19 **SECTION 403. CERTIFICATE OF SATISFACTION.**

20 (a) A certificate of satisfaction must:

21 (1) identify the original parties to the security instrument, the secured creditor, and
22 the recording data for the security instrument;

23 (2) state that the person executing the certificate is an officer or a duly appointed
24 agent of a title insurance company authorized and licensed to transact the business of insuring
25 titles to interests in real property in this state or an attorney in good standing and licensed to
26 practice law in this state;

27 (3) state that the secured creditor provided a satisfaction statement that authorized the
28 person executing the certificate to execute and record a satisfaction of the security instrument
29 following payment of the amount identified in that statement;

30 (4) state that the person executing the certificate has evidence that the secured
31 creditor has received payment of the amount identified in the satisfaction statement; and

(5) be executed and acknowledged as required by law for a conveyance of an interest in real property.

(b) No particular phrasing of the certificate is required; however, the following form of certificate, when properly completed, is sufficient to satisfy the requirements of subsection (a):

(Date of Certificate)

CERTIFICATE OF SATISFACTION

The undersigned hereby states as follows:

1. I am [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] [an attorney in good standing and licensed to practice law] in this state.

2. I am executing this Certificate of Satisfaction to evidence full performance of the obligations secured by land covered by the following security instrument (the "Security Instrument"), presently held by _____ (the "Secured Creditor"):

Title of Security Instrument:

Original Parties to Security Instrument:

County and State of Recording:

Recording Data for Security Instrument: _____

3. I received from the Secured Creditor a satisfaction statement regarding the obligations described in the Security Instrument. This statement authorized me to

1 execute and record a satisfaction of the Security Instrument following full
2 performance of the secured obligations as specified in that satisfaction statement.
3 4. I possess evidence that the Secured Creditor has received full performance of
4 the secured obligations as specified in that satisfaction statement.

5

6 _____
7 (Signature of Closing Agent)
8

9 _____”
10 (Notarization)

Preliminary Comments

11
12
13
14 1. Subsection (a) sets forth the information necessary for a sufficient certificate of
15 satisfaction. A certificate that lacks any of the information required by subsection (a) does not
16 operate as a satisfaction of the security instrument under Section 404, even if it is accepted for
17 recording.

18
19 2. Although subsection (b) provides that a particular phrasing is not required, it also
20 specifies a safe-harbor form that, when properly completed, satisfies subsection (a).
21

SECTION 404. EFFECT OF CERTIFICATE OF SATISFACTION.

22
23 (a) A certificate of satisfaction complying with Section 403 must be accepted for
24 recording in the [appropriate governmental office under the recording act of this state]. Upon
25 recording, the certificate:

26 (1) constitutes a satisfaction of the security instrument described in the certificate;

27 (2) shall be considered properly recorded under [the recording act of this state]; and

28 (3) is conclusive evidence of the facts contained in it as to a person who acquires an

1 interest in the real property after the certificate is recorded and who is entitled to protection under
2 [the recording act of this state].

3 (b) The recording of an certificate of affidavit of satisfaction does not itself extinguish
4 any liability of any person liable for repayment of the secured obligations.

6 Preliminary Comments

7
8 1. In most states, other state statutes specify the form and content necessary for a document
9 to constitute a sufficient satisfaction. Section 404(a) makes clear that the recording officer must
10 accept for recording any certificate of satisfaction that complies with the provisions of Section
11 403, even if the certificate would not satisfy other state law provisions governing the form and
12 content necessary for a satisfaction piece.

13
14 2. Sometimes, a secured creditor may hold a security instrument by virtue of one or more
15 unrecorded assignments. In this circumstance, some recording officers will reject a satisfaction
16 document prepared by the secured creditor on the ground that the secured creditor is not the
17 secured creditor of record (due to the unrecorded assignments). Such a requirement creates a
18 significant title problem, especially where intermediate assignments of a security instrument
19 cannot be found and recorded to reconstruct the appropriate chain of assignments on the real
20 property records. Furthermore, in some circumstances, it may be practically impossible for the
21 current secured creditor to reconstruct a record chain of assignments where one or more
22 intermediate assignors are institutions that no longer exist.

23
24 Section 404(a) addresses this problem by providing that the recording officer may not refuse
25 to accept a certificate of satisfaction because the secured creditor is not the secured creditor of
26 record. If the certificate of satisfaction complies with Section 403, the recording officer must
27 accept the document for recording and must record it. Section 404(a) also makes clear that the
28 certificate of satisfaction has the same legal effect as a recorded satisfaction and is deemed
29 properly recorded under the state's recording act.

30
31 3. Section 404(a)(3) ensures that the certificate of satisfaction fulfills the necessary "title-
32 clearing" function needed to address the problem caused by unrecorded mortgage assignments.
33 Subsection (a)(3) provides that the certificate of satisfaction is conclusive evidence of the facts
34 contained in the certificate as to any person that acquires an interest in the real property after
35 recording of the certificate, if that person is entitled to assert the benefit of the state's recording
36 act. For example, suppose that Mortgagee issues a satisfaction statement to Landowner in
37 anticipation of the closing of a contract under which Landowner has agreed to sell the land to
38 Buyer. At closing, Landowner pays to Mortgagee the amount specified in the satisfaction
39 statement, and Landowner delivers a deed to the land to Buyer. Closing Agent then records the

1 certificate of satisfaction and the deed to Buyer. The following day, Mortgagee notifies Closing
2 Agent that the satisfaction statement understated the balance of the secured obligations by \$50.
3 Section 404(a)(3) provides that the certificate of satisfaction is conclusive evidence of
4 satisfaction in favor of Buyer, and Mortgagee cannot enforce the lien of the security instrument
5 against Buyer.
6

7 Section 404(a)'s conclusive presumption that the certificate of satisfaction is valid works
8 only in favor of parties entitled to the benefit of the state's recording act. In most states, this does
9 not include "non-reliance" third parties such as judgment lien creditors or donees. However, to
10 the extent that a state's recording statute operates in favor of judgment lien creditor or donee, that
11 judgment lien creditor or donee could likewise claim the benefit of Section 404(a).
12

13 4. Subsection (b) provides that the recording of a certificate of satisfaction does not affect
14 the enforceability of the secured obligations. If a closing agent executes and records a certificate
15 of satisfaction even though the secured creditor has not received full performance of the secured
16 obligations, the Act does not preclude the secured creditor from enforcing the secured obligations
17 against anyone personally liable for those obligations. Whether the secured creditor has in fact
18 received full performance of the secured obligations is governed by law other than this Act.
19 Likewise, the Act does not preclude the secured creditor from enforcing any other security it may
20 hold to secure payment or performance of the obligations (i.e., security other than the real
21 property described in the security instrument).
22
23

24 **SECTION 405. LIABILITY OF CLOSING AGENT.**

25 (a) A closing agent that records an erroneous certificate of satisfaction is liable to the
26 secured creditor for any damages caused by the recording of the erroneous certificate, reasonable
27 attorneys' fees and court costs.

28 (b) If a closing agent records a certificate of satisfaction with knowledge that one or more
29 statements contained in the certificate are false, subsection (a) does not:

- 30 (1) limit a court from awarding punitive damages on account of such conduct;
31 (2) limit the secured creditor from proceeding against the closing agent under the
32 applicable law of this state other than the act; and
33 (3) prevent the enforcement of any criminal statute proscribing such conduct.

Preliminary Comments

1. In some cases, a closing agent may erroneously execute a record a certificate of satisfaction. For example, a closing agent may execute and record a certificate of satisfaction because it honestly (but incorrectly) believed that the secured creditor had issued a satisfaction statement. As a result, the secured creditor may effectively lose the ability to enforce the security instrument as a means to facilitate its collection of the remaining balance of the obligation. In such cases, Section 405(a) permits the affected secured creditor to recover damages from the closing agent, subject to the usual rules of pleading and proof.

2. Authorizing a closing agent to record a certificate of satisfaction creates the risk that in some circumstances, a closing agent may execute and record a certificate of satisfaction with knowledge that one or more of the statements contained in that certificate are false. In order to discourage such conduct, section 405(b) clarifies that in such cases, a court may award punitive damages against such a closing agent. Section 405(b) also preserves the applicability of other state civil law (such as a statute proscribing unfair or deceptive trade practices) or criminal law (such as perjury) against such conduct.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13

2
3
4
5
6
7
8
9
10
11
12
13

6
7
8
9
10
11
12
13

10
11
12
13

12

13