

D R A F T
FOR DISCUSSION ONLY

UNIFORM MORTGAGE SATISFACTION ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM MORTGAGE SATISFACTION ACT

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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 to the extent that today, one cannot feasibly expect the mortgagee to produce a recordable satisfaction contemporaneously with the closing of a sale or refinancing by the mortgagor. This geographical separation has contributed to an unfamiliarity or lack of trust between the distant assignee or loan servicer and a closing agent handling a sale or refinancing — making it less likely that the assignee or loan servicer would execute and deliver a release in anticipation of an expected closing. Further, the

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

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

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

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

1 legally satisfied. Unfortunately, not all buyers obtain an owner's policy of title insurance, or
2 appreciate the risks sufficiently to appreciate the need for title insurance protection against the
3 nonrelease of the seller's mortgage.
4

5 **The Mortgagee's Obligation to Record a Satisfaction: Timing and Consequences** 6

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

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

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

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

42 The Act attempts to ensure that mortgagees and their servicers have an appropriate incentive
43 to act promptly to clear a landowner's title. At the same time, however, the Act recognizes that

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

12 **The Payoff Statement**

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

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

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

40 Unfortunately, reliance upon estoppel theory is unpredictable because estoppel doctrine
41 typically protects only reasonable reliance, and it is not always clear whether reliance upon a
42 payoff statement is reasonable. In a few cases, doubt about the reasonableness of reliance may
43 result from the magnitude of the error in a payoff statement. If a mistake in a payoff statement is

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

11
12 The Act clarifies the scope of the mortgagee's obligation to provide a payoff statement by
13 stating this obligation in affirmative terms. The Act further provides that the recipient may rely
14 upon the payoff statement for the purpose of determining the payment required to obtain a
15 recorded satisfaction of the mortgage, so long as the recipient acts in good faith and neither
16 knows nor has reason to know that the amount specified is incorrect. Upon timely payment of
17 the amount specified in the payoff statement, the Act obligates the mortgagee to record a
18 satisfaction of the mortgage, even if the stated payoff amount was inaccurate.

19 20 21 **"Self-Help" Satisfaction** 22

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

30
31 An increasing number of states have enacted statutes authorizing a nonjudicial or "self-help"
32 satisfaction procedure. Under such a procedure, an agent who facilitated the closing of a sale or
33 refinancing transaction can clear the title if the mortgagee fails to record a timely satisfaction.
34 Typically, these statutes authorize the designated agent to execute and record an affidavit
35 demonstrating that the mortgagee has received payment of the balance of the obligations as
36 specified in a payoff statement, but has nevertheless failed to record a satisfaction (despite having
37 also received notice and an opportunity to cure this failure). The recording of this affidavit then
38 constitutes the statutory equivalent of a satisfaction of the mortgage.

39
40 Slightly more than one-half of the states have adopted a "self-help" procedure, but state
41 statutes vary widely in both scope and specifics. For example, some statutes limit the availability
42 of a "self-help" satisfaction based upon the mortgage amount or the type of mortgage; others
43 contain no such limitations. State statutes vary widely as to person(s) authorized to record an

1 affidavit of satisfaction. Some states permit only a licensed title insurer to perform this function;
2 other states permit a licensed attorney to do so, and yet others permit both to file the necessary
3 affidavit. A few states authorize such an affidavit to be filed by a refinancing lender or the lender
4 for a buyer. Finally, state statutes also vary widely both as to the content of the affidavit and the
5 duration of the grace period during which the mortgagee can either record a satisfaction on its
6 own or object to the recording of a satisfaction.

7
8 The Act adopts a “self-help” satisfaction procedure. Under the Act, a “closing agent”
9 (defined to include either a licensed attorney or a licensed title insurer) may prepare and record
10 the necessary affidavit of satisfaction, but only after first giving notification to the mortgagee and
11 giving the mortgagee 30 days to either record a satisfaction or raise an objection. In the event
12 that the mortgagee raises a timely objection, the self-help procedure is unavailable. In the event
13 that the mortgagee fails to raise a timely objection, the closing agent may record an affidavit of
14 satisfaction, which affidavit constitutes a satisfaction of the mortgage.

15 16 17 **Authorized Satisfaction by a Closing Agent**

18
19 Theoretically, one could eliminate the “time gap” in obtaining a recorded satisfaction of a
20 mortgage by authorizing the closing agent to record a satisfaction of the mortgage on behalf of
21 the mortgagee. At least two practical problems arise, however. First, no agreement or other
22 document typically used in real estate transactions presently authorizes a closing agent to act on
23 the mortgagee’s behalf to clear the mortgage of record. Second, under current state statutes
24 governing real estate transactions, any such authorization would have to be in form sufficient to
25 constitute a power of attorney.

26
27 The Joint Editorial Board for Real Property Acts has recently proposed that the issuance of a
28 payoff statement should, as a matter of law, authorize a closing agent to record a satisfaction of
29 the mortgage on the mortgagee’s behalf, if that closing agent facilitates payment to the mortgagee
30 of the amount specified in that statement. Similar legislation was introduced in the Illinois
31 legislature in 2003.

32
33 Rather than treat all payoff statements as legal authority for a closing agent to execute and
34 record a satisfaction on a mortgage lender’s behalf, the Act instead provides mortgage lenders
35 with an option. The mortgagee may either (a) issue a standard payoff statement, after which the
36 mortgage lender would remain legally responsible to record a timely satisfaction, or (b) issue a
37 “satisfaction” statement, which by its terms would authorize the closing agent to whom the
38 statement was issued to record a satisfaction of the mortgage following payment in accordance
39 with the terms of the statement. If a mortgage lender chose to issue a satisfaction statement, this
40 would effectively relieve the mortgage lender of any further obligation to record a satisfaction of
41 the mortgage — the responsibility to do so would shift at that point to the closing agent. The
42 closing agent’s certificate of satisfaction would constitute a legal satisfaction of the mortgage in
43 favor of a person thereafter purchasing an interest in the land.

1 By permitting the lender to elect whether to issue a standard payoff statement or a satisfaction
2 statement, the Act permits the parties to any particular sale or refinancing transaction to allocate
3 responsibility for title clearance in whatever manner they choose — either leaving that burden
4 with the original mortgagee (with whom it rests under current law) or shifting it to the closing
5 agent.
6

7 In the event that the closing agent wrongly records a certificate of satisfaction, the closing
8 agent is liable to the mortgagee for the injury it suffers as a result. For this reason, the Act limits
9 the class of “closing agents” to licensed attorneys and title insurers, against who an injured
10 mortgagee would have a reasonable prospect of recovery in the event a certificate of satisfaction
11 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.

12 (2) “Closing agent” means a person authorized and licensed to transact the business of
13 insuring titles to interests in real property in this state or an attorney licensed to practice in this
14 state and in good standing.

15 (3) “Day” means calendar day.

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

18 (5) “Good faith” means honesty in fact and the observance of reasonable commercial
19 standards of fair dealing.

20 (6) “Landowner” means a person that owns the real property described in a security
21 instrument.

22 (7) “Notification” means a document containing required information and signed by the

1 person required to provide the information.

2 (8) "Payoff statement" means a statement of the amount of the unpaid balance of the
3 secured obligations, containing at a minimum the information specified in Section 201(c).

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

7 (10) "Purchase" means taking by sale, mortgage, lien, security interest, gift, or any other
8 voluntary transaction creating an interest in real property.

9 (11) "Purchaser" means a person who takes by purchase.

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

13 (13) "Recording data" means the date and [book and page number] [document number]
14 at which a document is recorded in the [office of the county recorder].

15 (14) "Residential real property" means real property that, when a security instrument was
16 entered into with respect to the property, was used or was intended by its owner to be used
17 primarily for the personal, family, or household purposes of its owner and was improved, or was
18 intended by its owner to be improved, by one to four dwelling units.

19 (15) "Secured creditor" means a person that holds a security interest or that is authorized
20 both to receive payments on behalf of a person that holds a security interest and to record a
21 satisfaction of the security instrument upon receiving full performance of the secured obligations.

22 (16) "Security instrument" means an agreement, whether denominated a mortgage, deed

1 of trust, trust deed, security deed, or otherwise, that creates or provides for a security interest.
2 Such an agreement is a security instrument even if it also creates or provides for a lien upon
3 personal property.

4 (17) “Security interest” means an interest in residential real property located in this state,
5 created by a security instrument and securing performance of an obligation.

6 (18) “Secured obligations” means all obligations, whether monetary or nonmonetary, the
7 performance of which are secured by a security interest.

8 (19) “Sign” means to execute or adopt any symbol with the present intent to adopt or
9 accept a document.

10 **Preliminary Comments**

11
12 *Introductory comment to definitions.* Under American law and customary practice, there are
13 a variety of different documents — such as the mortgage, the deed of trust, the deed to secure
14 debt (to name but a few) — by which parties may use an interest in real property as security for
15 debts and obligations. Many existing state laws governing the satisfaction of these documents
16 use the traditional terms “mortgage,” “mortgagor,” and “mortgagee.” The Act does not use these
17 terms, so as to dispel any notion that the Act’s coverage is limited only to a “mortgage.” Instead,
18 the Act uses terms that have no common law or statutory roots tying them to any particular form.
19 Instead of terms such as “mortgage” or “deed of trust,” the Act substitutes the general term
20 “security instrument.” In place of “mortgagee” or “beneficiary,” the Act uses “secured creditor.”
21 The interest in real property that conveyed to the secured creditor is defined as a “security
22 interest” rather than as a “lien” or as “title.” Thus, for purposes of the Act it is irrelevant whether
23 a state follows the “lien theory” or “title theory” of mortgage law.
24

25 The Act does not seek to define “real property,” but leaves the parameters of that term to
26 other state law.
27

28 1. “Address for notification.” The Act requires a landowner to give notification to a secured
29 creditor before the landowner can recover statutory and/or actual damages from the secured
30 creditor that fails to record a satisfaction in a timely manner. Section 202(d). Likewise, before a
31 closing agent may execute and record an affidavit of satisfaction when the secured creditor has
32 failed to record a satisfaction in a timely manner, the closing agent must give the secured creditor
33 notification and a 30-day grace period in which to fulfill its obligation to record that satisfaction
34 or otherwise object to the recording of a satisfaction. Section 301. In each case, notification

1 shall be given to the secured creditor at the address identified in the most recent document
2 provided by the secured creditor to the person giving that notification. In the typical situation,
3 this document will be a payoff statement delivered by the secured creditor at the request of the
4 landowner or a closing agent.
5

6 The Act also requires the secured creditor to give a timely notification to the closing agent if
7 the secured creditor disputes whether the secured obligations have been satisfied and the secured
8 creditor objects to closing agent's proposal to record an affidavit of satisfaction. Section 301. In
9 such a case, the secured party shall give notification to the closing agent at the address identified
10 in the notification provided by the closing agent under Section 301 (unless the closing agent shall
11 have subsequently notified the secured creditor to use a different address).
12

13 2. "Closing agent." In most modern residential real estate transfer transactions, a closing
14 agent facilitates the completion (or "closing") of the transaction. Most typically, this function is
15 served by a title insurance company that is insuring title for the purchaser of land and the
16 purchaser's mortgage lender. In some instances, this function is served by an attorney, especially
17 in those states in which an attorney (by law or customary practice) reviews and/or certifies title.
18

19 In Article 3, the Act permits a "closing agent," which it defines as either a licensed title
20 insurance company or a licensed attorney, to assist a landowner in clearing title to the land where
21 full payment of the secured obligations has occurred but the secured creditor has failed to record
22 a satisfaction of the mortgage in a timely fashion. Likewise, in Article 4, the Act permits a
23 closing agent to execute a record a satisfaction on behalf of the secured creditor where the
24 secured creditor has issued a "satisfaction statement" (see section 401(a)).
25

26 3. "Day." The definition of "day" is identical to that used in Section 102(3) of the Uniform
27 Nonjudicial Foreclosure Act. Days must be counted to determine the expiration of the various
28 grace periods prescribed by the Act. All days including Saturdays, Sundays, and holidays are
29 counted. Nevertheless, Section 104 provides that if the final day for giving a required notification
30 would fall on a Saturday, Sunday, or legal holiday, that notification may properly be given on the
31 next weekday that is not a legal holiday.
32

33 4. "Document." The definition of "document" is media-neutral and is consistent with the
34 definition of the term "record" as used in Section 2(7) of the Uniform Real Property Electronic
35 Recordation Act. Because this Act uses the term "record" in its customary fashion under real
36 estate law — *i.e.*, as a verb to describe the act of filing an instrument of conveyance with the
37 recorder's office — the Act does not use the term "record" as a noun, and instead uses the term
38 "document."
39

40 5. "Good faith." This definition is identical to the definition contained in the Uniform
41 Commercial Code. Generally, the Act imposes liability (both for statutory and actual damages)
42 upon a secured creditor who fails to record a satisfaction within a timely period following notice
43 and opportunity to cure. Section 203(a). However, a secured creditor is not liable if it has

1 established a reasonable procedure for recording satisfactions of security instruments, has
2 complied with that procedure in good faith, and was unable to record because of the action or
3 inaction of another person beyond its control. Section 203(b).
4

5 In addition, Section 201(d) provides that the recipient of a payoff statement may rely upon
6 that statement for the purpose of determining the payment necessary to obtain a recorded
7 satisfaction of the security instrument, if the recipient acts in good faith and does not know or
8 have reason to know that the payoff amount specified in the statement is incorrect.
9

10 6. “Landowner.” The term “landowner” refers to the owner of the real property described in
11 the security instrument. Under the Act, it is the landowner who is entitled to recover actual and
12 statutory damages (Section 203(a)) in the event that the secured creditor fails to record a
13 satisfaction within a timely period following notice and opportunity to cure.
14

15 7. “Notification.” The Act requires notification to the secured creditor in two instances.
16 First, before the landowner can recover statutory and actual from the secured creditor for failure
17 to record a satisfaction in a timely manner, the landowner must give the secured creditor
18 notification and a 30-day grace period in which to fulfill its obligation to record that satisfaction.
19 Section 202(d). Second, before a closing agent may execute and record an affidavit of
20 satisfaction when the secured creditor has failed to record a satisfaction in a timely manner, the
21 closing agent must give the secured creditor notification and a 30-day grace period in which to
22 fulfill its obligation to record that satisfaction or otherwise object to the recording of a
23 satisfaction. Section 301. In each case, notification shall be given to the secured creditor in the
24 manner specified in Section 103.
25

26 The Act also requires the secured creditor to give a timely notification to the closing agent if
27 the secured creditor disputes whether the secured obligations have been satisfied and the secured
28 creditor objects to closing agent’s proposal to record an affidavit of satisfaction. Section 301. In
29 such a case, the secured party shall give notification to the closing agent at the address identified
30 in the notification provided by the closing agent under Section 301 (unless the closing agent shall
31 have subsequently notified the secured creditor to use a different address).
32

33 8. “Payoff statement.” Most mortgage loans are paid off prior to maturity, either upon a
34 transfer of the mortgaged land or upon a refinancing by the landowner. In these situations, the
35 mortgage lender customarily issues a payoff statement, specifying the payment needed to satisfy
36 the outstanding balance of the mortgage loan.
37

38 Under the Act, the secured creditor must issue a payoff statement complying with Section
39 201(c) within 10 days after receiving a request from an “entitled person” as defined in Section
40 201(a). Unless and until the secured creditor corrects or updates the information contained in the
41 payoff statement, the recipient may rely upon the payoff statement for the purpose of determining
42 the amount that must be paid in order to obtain a recorded satisfaction of the security instrument.
43 Upon receipt of that amount, the secured creditor is thereafter obligated to record a satisfaction of

1 the security instrument within the period specified in Section 202.

2
3 Under the Act, the secured creditor must also execute a timely satisfaction of the security
4 instrument following full performance of the secured obligations, regardless of whether the
5 secured creditor issued a payoff statement. Thus, the secured creditor has the same obligation
6 regardless of whether the obligation was satisfied at its maturity or prior to its originally
7 scheduled maturity (*i.e.*, in conjunction with a transfer or refinancing).
8

9 9. “Person” includes both natural persons (individuals) and all forms of legally recognized
10 public and private organizations.
11

12 10. “Purchase” means to acquire an interest in real property by virtue of a voluntary
13 transaction, and includes taking by sale, gift, or mortgage. See U.C.C. Section 1-201(b)(29).
14

15 11. “Purchaser” means one who takes an interest in real property by purchase, and includes
16 both a buyer and a mortgagee. See U.C.C. Section 1-201(b)(30).
17

18 12. “Record.” The Act requires a secured creditor to record a satisfaction of the security
19 instrument upon full performance of the secured obligation. Section 201. The Act also permits a
20 closing agent to record an affidavit of satisfaction if the secured creditor has failed to record a
21 satisfaction in a timely fashion following notice and an opportunity to cure such failure. Section
22 302. Finally, the Act permits a closing agent to record a certificate of satisfaction where the
23 secured creditor has issued a satisfaction statement expressly authorizing the closing agent to
24 satisfy the security instrument on the secured creditor’s behalf. Section 402. To “record” means
25 that the person submitting a document has complied with the state’s existing recording act.
26 However, for purposes of this Act, a document is “recorded” even if the recording office’s
27 personnel have indexed it incorrectly or otherwise failed to comply with their legal duties.
28

29 13. “Recording data.” This definition is similar to that used in Section 102(15) of the
30 Uniform Nonjudicial Foreclosure Act, and refers to the customary way of identifying the precise
31 place where a document is recorded in the jurisdiction. Some jurisdictions customarily refer to
32 book and page number, some to a document number, and others to other types of designations.
33

34 14. “Residential real property.” This definition is similar to that used in Section 102(17) of
35 the Uniform Nonjudicial Foreclosure Act. There are two aspects of the definition. The first
36 relates to the owner’s use of the real property. “Residential real property” must be used or
37 intended to be used primarily for personal, family, or household purposes of its owner. This
38 definition is similar to that found in the Uniform Consumer Credit Code, the Federal Trade
39 Commission’s Holder in Due Course Rule, and various other consumer protection statutes.
40 Under this definition, an owner could make some limited commercial or other nonresidential use,
41 so long as the primary use is residential.
42

43 The second aspect of the definition relates to improvements on the real property.

1 “Residential real property” must either be improved with one to four dwelling units at the time
2 the security instrument is entered into, or the owner must intend at that time to so improve it in
3 the future. Therefore, a vacation home or other “second home” qualifies as residential real
4 property, because there is no requirement that a dwelling unit on the premises be the primary
5 residence of the owner (only that the primary use be residential). The limitation on the number
6 of dwelling units excludes larger apartment buildings.

7
8 The Act applies only to security instruments covering residential real property.
9

10 15. “Secured creditor” means a person that holds a security interest. The term includes a
11 person who is servicing the debt evidenced by a security instrument, if that person is also
12 authorized by the secured creditor to record a satisfaction of the security instrument upon
13 receiving full payment or performance of the secured obligations.
14

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

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

28 17. “Security interest.” Under the Act, a security interest arises in any transaction, regardless
29 of its form, in which a person receives or retains an interest in real property for the purpose of
30 securing an obligation owed to that person. Certain types of interests in land, such as judgment
31 liens and mechanics liens, arise only by statute or operation of law, and these liens do not
32 constitute “security interests” within the meaning of the Act. Accordingly, the Act does not
33 address the obligation of a judgment lien holder to record evidence of the satisfaction of that
34 judgment lien.
35

36 18. “Secured obligations.” The term “secured obligations” covers all obligations the
37 performance of which is secured by a security interest.
38

39 19. “Sign.” This definition is media-neutral and comparable to that contained in Uniform
40 Commercial Code § 1-201(b)(37).
41
42
43

1 intended recipient has agreed (either in the loan documents or otherwise) to receive notification
2 in this manner. For example, if the landowner requests that the secured creditor provide a payoff
3 statement by facsimile transmission, this request will authorize the secured creditor to provide
4 the notification by facsimile transmission even if the security instrument itself does not so
5 provide. The Act also permits a person to give notification by electronic mail, but again only
6 where the intended recipient had agreed to receive notification by electronic mail.

7
8 Subsection (a)(3) also permits a person to give notification in any manner that would result in
9 the notification being received within the time that the recipient would have received it if the
10 notification had been given by mail or commercial delivery service. This subsection would
11 permit a person to give a notification by means of physical delivery to its intended recipient.

12
13 2. The Act requires a landowner to give a secured creditor notification and a 30-day cure
14 period before the landowner can recover statutory and/or actual damages from the secured
15 creditor that fails to record a satisfaction in a timely manner. Section 202(d). Likewise, before a
16 closing agent may execute and record an affidavit of satisfaction when the secured creditor has
17 failed to record a satisfaction in a timely manner, the closing agent must give the secured creditor
18 notification and a 30-day period in which to fulfill its obligation to record that satisfaction or
19 otherwise object to the recording of a satisfaction. Section 301. In order to avoid uncertainty
20 about the expiration of these grace/cure periods, the Act provides that these periods shall
21 commence upon the “effective date” of a notification. Subsection (b) specifies the effective date
22 of a particular notification, determined by reference to the approximate delivery time for a
23 particular manner of delivery.

24
25
26 **SECTION 104. DAY OF PERFORMANCE.** If this [act] or a notification given pursuant
27 to this [act] requires performance on or by a certain day and that day is a Saturday, Sunday, or
28 legal holiday, the performance is sufficient if done on the next day that is not a Saturday, Sunday,
29 or legal holiday.

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

1 **ARTICLE 2**

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

4
5
6 **SECTION 201. PAYOFF STATEMENT.**

7 (a) In this section, “entitled person” means a landowner, any person liable for
8 performance of the secured obligations, or any person that holds an interest in the real property
9 described in a security instrument.

10 (b) An entitled person may give the secured creditor a notification requesting a payoff
11 statement. The notification must identify the payoff date for which the statement is requested,
12 which must be no more than 30 days after the date of the notification, and contain:

- 13 (1) the entitled person’s name;
- 14 (2) the address to which the creditor must deliver the statement; and
- 15 (3) sufficient information to enable the creditor to identify the secured obligations
16 and the real property encumbered by the lien of the security instrument.

17 (c) Within 10 days after a secured creditor receives a notification complying with
18 subsection (b), the creditor shall issue a payoff statement and give it to the entitled person in the
19 manner prescribed in Section 103 for giving notification. The statement must identify the total
20 amount required to satisfy the secured obligations as of the specified payoff date, and must
21 itemize by type each fee, charge, or other sum that comprises the balance of the secured
22 obligations. The statement must also set forth the per diem interest amount, the payment cutoff
23 time, if any, the place where payment must be made, and any limitation as to the authorized
24 method of payment.

1 (d) An entitled person may rely upon a payoff statement to determine the amount that
2 must be paid to the secured creditor to obtain a recorded satisfaction of the security instrument, if
3 the entitled person acts in good faith and does not know or have reason to know that the amount
4 is incorrect. Upon receipt of timely payment of that amount, the secured creditor must record a
5 satisfaction of the security instrument. This subsection (d) shall not preclude the secured creditor
6 from recovering any sums which it failed to include in the payoff statement from any person
7 personally liable for performance of the secured obligations.

8 (e) If a secured creditor determines that information it provided in a payoff statement is
9 inaccurate, the creditor may furnish a corrected payoff statement to the entitled person. Upon
10 receipt by the entitled person of a corrected payoff statement, the corrected payoff statement
11 supersedes an earlier payoff statement; however, for purposes of subsection (d), the entitled
12 person may continue to rely on the earlier payoff statement until the entitled person actually
13 receives the corrected payoff statement.

14 (f) If a secured creditor fails without reasonable cause to deliver a timely payoff
15 statement when required to do so by this section, the creditor is liable to the entitled person for
16 the actual loss caused by the failure, reasonable attorney's fees and costs, and the additional sum
17 of \$500.

18 (g) An entitled person can request one payoff statement without charge during any six-
19 month period. A secured creditor may impose a charge not exceeding \$25 for each additional
20 request for a payoff statement during a six-month period. In addition, a secured creditor may
21 impose a reasonable fee for expedited delivery of a payoff statement if the entitled person
22 requests expedited delivery. A secured creditor may include in a payoff statement any fees

1 imposed under this subsection.

2 Preliminary Comments

3
4 1. Most mortgage loans are paid off prior to maturity, either upon a transfer of the
5 mortgaged land or upon a refinancing by the landowner. In these situations, the mortgage lender
6 customarily issues a payoff statement, specifying the payment needed to satisfy the outstanding
7 balance of the loan.

8
9 Under the Act, the secured creditor must issue a payoff statement complying with subsection
10 (c) within 10 days after receiving a request from an “entitled person” as defined in subsection (a).
11 An “entitled person” includes the landowner, any person liable on the secured obligations, and
12 any other person holding an interest in the mortgaged land, including a purchaser of the land or
13 the holder of a subordinate lien on the land. This affirmative obligation to provide a payoff
14 statement is consistent with the duty articulated in Restatement of Property (Third) — Mortgages
15 § 1.6, as well as U.C.C. Section 9-210, which places a comparable obligation upon the secured
16 creditor holding a security interest in personal property.

17
18 Unless and until the secured creditor corrects or updates the information contained in the
19 payoff statement, the recipient of the payoff statement may rely upon it for the purpose of
20 determining the amount that must be paid in order to obtain a recorded satisfaction of the security
21 instrument. Upon receipt of that amount, the secured creditor must record a timely satisfaction of
22 the security instrument.

23
24 2. If the secured creditor fails to issue a timely payoff statement, without reasonable cause,
25 subsection (f) provides a minimum statutory damage recovery for the entitled person. This
26 subsection is patterned on U.C.C. Section 9-210(f) and ensures that the secured creditor’s
27 nondelivery of a payoff statement will generally result in liability regardless of any injury that
28 may have resulted. In addition, the entitled person may recover any loss actually resulting from
29 the secured creditor’s failure, subject to ordinary rules of pleading and proof.

30
31 3. The secured creditor may discover, after issuing a payoff statement, that it erroneously
32 understated the outstanding balance of the secured obligations. Subsection (e) permits the
33 secured creditor to issue a corrected payoff statement that supersedes the erroneous statement.

34
35 It is possible, however, that the secured creditor will have accepted payment pursuant to the
36 erroneous statement before the secured creditor discovers the error and can issue a corrected
37 statement. In such a case, subsection (d) makes clear that the secured creditor must record a
38 satisfaction, unless the entitled party knew or should have known that the original statement was
39 erroneous. For example, suppose that Bank holds a mortgage on Owner’s home that secures
40 repayment of a loan with an outstanding balance of \$100,000, and Bank issues a payoff statement
41 indicating that the balance due is \$10,000. A payment of \$10,000 by Owner would not obligate
42 Bank to record a satisfaction of the mortgage. The Act leaves to judicial resolution the question

1 of when a mistake is of sufficient magnitude that the entitled person has reason to know of the
2 mistake.

3
4 Subsection (d) also provides that in a case where the secured creditor has understated the
5 payoff amount — but must nevertheless record a satisfaction because it accepted payment of the
6 specified payoff amount before issuing a corrected payoff statement — the secured creditor can
7 still seek to recover the remaining balance of the obligations from any person personally liable
8 for those obligations under law other than this Act. For example, suppose that Bank holds a
9 mortgage on Owner's home that secures Owner's personal obligation on the mortgage note.
10 Owner requests a payoff statement in conjunction with a sale of the home to Buyer. Bank issues
11 a payoff statement that reflects an outstanding principal and interest balance of \$100,000. In fact,
12 Owner has also incurred \$150 of late charges pursuant to the mortgage, but Bank failed to reflect
13 those late charges on the payoff statement. Owner makes and Bank accepts payment in
14 accordance with the payoff statement before Bank issues a corrected payoff statement. In these
15 circumstances, Bank must record a satisfaction of the mortgage, but Bank may still recover the
16 \$150 in late charges from Owner as an unsecured obligation unless, based upon the facts and
17 circumstances, Owner would have a sufficient defense under the doctrines of waiver, estoppel, or
18 the like.

19
20 4. If the secured creditor overstates the payoff amount — in other words, if the total
21 specified in the payoff statement exceeds the actual balance of the secured obligations — the
22 secured creditor's obligation to record a satisfaction is instead governed by Section 202(a).
23 Under that section, if the secured creditor accepts payment of an amount that in fact constitutes
24 the outstanding balance of the secured obligations, the secured creditor is obligated to record a
25 satisfaction of the security instrument even though the payment was for less than the incorrect
26 amount identified in the payoff statement.

27
28 For example, suppose that Bank holds a mortgage on Owner's home and provides a payoff
29 statement to Owner indicating that the required payoff amount is \$52,000. Because the Bank
30 miscalculated the accrued interest based upon an incorrect interest rate, however, the correct
31 balance of the secured obligations is only \$51,500. If the Owner pays \$51,500 to the Bank, this
32 payment will satisfy the secured obligations, and Section 202(a) will require Bank to execute and
33 record a satisfaction.

34
35 5. Because mortgage loans may vary significantly in their terms and conditions, the Act does
36 not specify any particular form that a payoff statement must take in order to satisfy this section.
37 Instead, subsection (c) provides certain information that the secured creditor must include in
38 order to comply with its obligation to deliver a payoff statement. The Act does require that the
39 payoff statement must itemize by type each fee, charge, or other sum that comprises the balance
40 of the secured obligations. The purpose of this requirement is to enable the party requesting the
41 payoff statement to ascertain how the payoff amount was calculated.

42
43 The secured creditor may include other information beyond that specified in subsection (c),

1 but that additional information cannot include disclaimers or other language intended to defeat
2 the ability of the entitled person to rely upon the accuracy of the payoff statement as provided in
3 subsection (d).
4

5
6
7 **SECTION 202. SECURED CREDITOR TO RECORD SATISFACTION.**

8 (a) A secured creditor must record a satisfaction of a security instrument after the
9 creditor receives full performance of the secured obligations or becomes required to record a
10 satisfaction under Section 201(d). If a security instrument secures an open-end line of credit or
11 future advances, the secured creditor must record a satisfaction of the security instrument only if
12 the secured creditor has received a notification requesting the creditor to terminate the line of
13 credit or containing a statement sufficient to terminate the future effectiveness of the future
14 advance provisions in the security instrument.

15 (b) If a secured creditor acquired a security instrument by an unrecorded assignment, or if
16 any prior assignment of the security instrument is unrecorded, then the satisfaction of the security
17 instrument must identify the current record holder of the security instrument, state that the
18 secured creditor holds the security instrument by assignment, and identify any intermediate
19 assignments of the security instrument.

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

21 (1) is signed by the secured creditor and acknowledged as required by law for a
22 conveyance of an interest in real property;

23 (2) contains language indicating the secured creditor's intention to terminate the
24 effectiveness of the security instrument;

25 (3) identifies the security instrument, the original parties to the security instrument,

1 the county and state of recording, and the recording data for the security instrument; and

2 (4) contains the information required by subsection (b), if any.

3 (d) If a secured creditor has not recorded a satisfaction of a security instrument within ____
4 days after receiving full performance of the secured obligations or becoming required to record a
5 satisfaction under Section 201(d), the landowner may give to the creditor a notification
6 demanding that the creditor record a satisfaction of the security instrument no later than 30 days
7 following the effective date of the notification.

8 Preliminary Comments

9 1. Subsection (a) provides that the secured creditor has an affirmative obligation to record a
10 satisfaction of a security instrument upon receiving full performance of the secured obligations or
11 receiving payment of the amount specified in a reliable payoff statement. As explained in
12 Section 201(d), a secured creditor who receives payment of the amount specified in a reliable
13 payoff statement must record a satisfaction of the security instrument, even if it turns out that the
14 payoff statement erroneously understated the balance of the secured obligations.

15
16 2. Although the Act imposes both statutory and actual damages upon a secured creditor who
17 fails to record a timely satisfaction of a security instrument, subsection (d) requires the
18 landowner to provide the secured creditor with notice and opportunity to cure before the
19 landowner may enforce such liability against the secured creditor. If the secured creditor has not
20 recorded a satisfaction of the security instrument within ____ days after becoming legally obligated
21 to do so, the landowner may give a notification to the secured creditor demanding that the
22 secured creditor record a satisfaction of the security instrument within 30 days of the notification.
23 The landowner must give this notice in a manner specified in Section 103.

24
25 3. Existing state laws vary widely as to the content required for a sufficient instrument of
26 satisfaction. This variation needlessly increases the cost for national mortgage lenders to comply
27 with the obligation to record mortgage satisfactions. Accordingly, subsection (c) provides
28 standard content for a satisfaction document. If the document completed by the secured creditor
29 contains this information and is submitted to the recording officer with the appropriate recording
30 fee, that document will be sufficient to constitute a satisfaction of the security instrument.

31
32 The Act is not intended to provide the sole mechanism for effecting the satisfaction of a
33 mortgage. For example, if another state statute permitted the secured creditor to present an
34 affidavit that instructs the recording officer to enter a notation of satisfaction in the margin of the
35 record where the security instrument itself appears in the record, the secured creditor could

1 satisfy its obligation to record a satisfaction by complying with that statute rather than by
2 executing and recording a satisfaction document under subsection (c).
3

4 4. Frequently, the secured creditor is not the original lender, but has acquired the security
5 instrument by means of one or more assignments. Ideally, each intermediate assignment of the
6 security instrument will have been recorded. In that event, the secured creditor's "chain of title"
7 to the security instrument will be complete and the land records will reflect no serious doubt
8 regarding the secured creditor's ability to execute and record the necessary satisfaction.
9

10 Unfortunately, in many circumstances assignments occur but no assignment of the mortgage
11 is recorded — such that the actual holder of the security instrument but does not appear to be its
12 record holder. In these cases, the secured creditor's authority to execute and record a satisfaction
13 is not apparent from the face of the land records. Furthermore, if such a secured creditor records
14 a satisfaction of the security instrument, the satisfaction may be insufficiently connected to the
15 chain of title to land described in the security instrument, at least in a jurisdiction that uses
16 grantor-grantee indexing.
17

18 To address this situation, subsection (b) provides that if the secured creditor does not appear
19 to be the record holder of the security instrument due to an unrecorded assignment, the
20 satisfaction document of the security instrument must identify the current record holder of the
21 security instrument, state that the secured creditor holds the security instrument by assignment,
22 and identify all intermediate assignments (if any) between the record holder of the security
23 instrument and the secured creditor. This identification will permit the satisfaction to be indexed
24 in the name of the record holder of the security instrument, thereby alleviating any chain of title
25 concerns.
26
27

28 **SECTION 203. LIABILITY OF SECURED CREDITOR.**

29 (a) Except as otherwise provided in subsection (b), a secured creditor who must record a
30 satisfaction of a security instrument and fails to do so within 30 days after the effective date of
31 the notification specified in Section 202(d) is liable to the landowner for:

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

34 ***ALTERNATIVE A***

35 (2) the additional sum of \$1,000.

1 **ALTERNATIVE B**

2 (2) the additional sum of \$100 per day, for each day following the expiration of the
3 30-day period specified in this subsection, until the secured creditor records a satisfaction of the
4 security instrument, up to a maximum of ____.

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

6 (1) established a reasonable procedure to record satisfactions of security instruments
7 in a timely manner after the full performance of the obligations secured thereby;

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

9 (3) was unable to record a satisfaction of a security instrument within the period
10 specified in subsection (a) because of the action or inaction of a person beyond its direct control.

11 **Preliminary Comments**

12
13 1. Subsection (a)(1) sets forth the basic remedy for the secured creditor's failure to comply
14 with the requirements of the Act: a damage recovery in the amount of the loss caused by the
15 secured creditor's noncompliance. The exercise of this remedy is subject to the normal rules of
16 pleading and proof.

17
18 2. Subsection (a)(2) provides statutory damages of \$1,000 for the secured creditor's failure
19 to comply with the requirements of the Act, which the landowner may recover in addition to any
20 actual damages recoverable under subsection (a)(1). This provision is patterned in part upon
21 U.C.C. Section 9-625(e)(4), which provides for a minimum statutory damage recovery whenever
22 an Article 9 secured party fails to provide a termination statement within a timely manner.

23
24 [Alternative Comment 2. Subsection (a)(2) statutory damages for the secured creditor's
25 failure to comply with the requirements of the Act, which the landowner may recover in addition
26 to any damages recoverable under subsection (a)(1). This provision is somewhat similar to
27 U.C.C. Section 9-625(e)(4), which provides for a minimum statutory damage recovery whenever
28 an Article 9 secured party fails to provide a termination statement within a timely manner.
29 Subsection (a)(2) calculates these statutory damages on a per-day basis, so that the amount of the
30 statutory damages will increase for each day that the secured creditor fails to fulfill its obligation
31 to record a timely satisfaction, subject to a maximum of ____.]

32
33 3. Subsection (b) provides a secured creditor with a defense to liability if the secured

1 creditor has established reasonable procedures to ensure the timely recordation of satisfactions
2 and has complied with those procedures in good faith, but where recordation does not occur
3 because of the action or inaction of a third party beyond the control of the secured creditor. The
4 Act does not specify what procedures are “reasonable,” but leaves the question to judicial
5 resolution.
6

7 Subsection (b) may be implicated where a secured creditor takes appropriate steps to record a
8 timely satisfaction but where recording does not occur because of transmittal problems beyond
9 the secured creditor’s control. For example, suppose that First Bank holds a deed of trust on
10 Owner’s land. Owner obtains a refinancing loan through Second Bank and uses the proceeds of
11 this loan to pay off the balance of the debt to First Bank. When First Bank fails to record a
12 satisfaction of the deed of trust within 30 days following the payoff, Owner gives notification to
13 First Bank in accordance with Section 202(d). Upon receiving this notification, First Bank
14 promptly executes a satisfaction and transmits it to the recorder of deeds for recording, via U.S.
15 mail. Because of error caused by a faulty postal zip code scanner, delivery of the package to the
16 recorder’s office is delayed. By the time the package arrives at the recorder’s office and the
17 satisfaction is recorded, the additional 30-day grace period has expired so that the recording is
18 untimely. Assuming that First Bank can demonstrate that its conduct complied with its own
19 reasonable internal procedures, Owner may not recover from First Bank.
20

21 Depending upon other state law, subsection (b) might be implicated where a secured creditor
22 takes appropriate steps to record a timely satisfaction but where recording does not occur because
23 the recording official wrongfully rejects the document. In most states, First Bank would be
24 protected from liability in this instance because its presentation of a correct satisfaction would
25 constitute a sufficient “recording” despite the recording official’s rejection — thereby fulfilling
26 its obligation to record a satisfaction. Even if not, First Bank could avoid liability by
27 demonstrating that it had complied with its own reasonable procedures and that it had no control
28 over the recorder’s wrongful rejection.
29

30 4. In many cases, secured creditors will delegate responsibility for servicing mortgage loans,
31 including the responsibility to record satisfactions of security instruments. In these cases, the Act
32 treats the servicer as a “secured creditor,” and the landowner thus could hold the servicer liable
33 under the terms of the Act. Such delegations of authority do not automatically relieve the
34 delegating secured creditor of its obligations under the Act. Nevertheless, a delegating secured
35 creditor may be able to plead and prove its compliance with reasonable procedures as a defense
36 to liability, where the secured creditor had issued timely directions to its servicer to record a
37 satisfaction and the servicer failed to do so.
38

39 5. Under the Act, the secured creditor must record a satisfaction only if it has received full
40 performance of the secured obligations, or payment of the amount specified in a reliable payoff
41 statement. The mere existence of a dispute over the balance of the secured obligations does not
42 by itself toll the 30-day grace period. If the secured creditor does not record a satisfaction within
43 30 days after receiving notification under Section 202(d), the secured creditor bears the risk that a

1 court might later conclude that the landowner did in fact tender full performance or did make
2 payment of the amount specified in a reliable payoff statement.
3
4

5 **SECTION 204. REINSTATEMENT OF SECURITY INSTRUMENT; LIABILITY**
6 **FOR ERRONEOUS REINSTATEMENT.**

7 (a) If a secured creditor has recorded a satisfaction of a security instrument in error, the
8 creditor may execute and record a document stating that the satisfaction was erroneously
9 recorded and that the secured obligations remain unsatisfied. When recorded, this document
10 shall rescind an erroneously recorded satisfaction and reinstate the lien of the security instrument.

11 (b) A rescission under subsection (a) has no effect on the rights of any person who:

12 (1) acquired an interest in the real property after the secured creditor recorded the
13 erroneous satisfaction but prior to the rescission, and

14 (2) would otherwise have priority over or take free of the lien of the secured creditor
15 under [the recording act of this state].

16 (c) If a secured creditor wrongfully records a rescission of satisfaction, the secured
17 creditor is liable to any person injured thereby for damages in the amount of any loss caused by
18 the wrongful recording, including reasonable attorneys' fees and costs, and the additional sum of
19 \$1,000. A rescission of satisfaction is wrongful as to a person described in subsection (b).

20
21 **Preliminary Comments**
22

23 1. Subsection (a) permits a secured creditor that has erroneously recorded a satisfaction of a
24 security instrument to prepare and record a document rescinding this satisfaction and reinstating
25 the lien of the security instrument. For example, suppose that Bank receives a payoff of a loan
26 secured by a mortgage on Parcel X, but because a filing clerk has inadvertently misfiled the
27 mortgage, Bank mistakenly transmits to the recording official a satisfaction of the mortgage on
28 Parcel Y (on which there remains a significant outstanding balance). Bank could always request

1 the owner of Parcel Y to execute a new mortgage, but the owner of Parcel Y may not cooperate
2 in this effort, even if the owner of Parcel Y is otherwise legally obligated to do so. In this
3 situation, subsection (a) permits Bank to rescind the erroneous satisfaction and reinstate its lien
4 against Parcel Y.

5
6 Although the Act permits the secured creditor to rescind an erroneous satisfaction, the
7 secured creditor may not do so to the detriment of third parties who can claim the benefit of the
8 jurisdiction's recording act. Thus, in the above example, suppose that after Bank had recorded
9 the satisfaction with respect to Parcel Y, the owner of Parcel Y sold that parcel to Buyer for
10 value, and that Buyer neither knew nor had reason to know that Bank's recorded satisfaction was
11 erroneous. In a jurisdiction with a pure notice recording statute, Buyer would take Parcel Y free
12 and clear of Bank's mortgage, even if the Bank later attempted to reinstate its lien by rescinding
13 the erroneous satisfaction. Subsection (a) confirms this result.

14
15 Accordingly, a secured creditor should take caution in recording a rescission of satisfaction
16 where third parties have acquired intervening interests. In the above example, if the Bank
17 recorded a rescission of the satisfaction, the Bank's conduct would be wrongful and would
18 subject the Bank to liability under subsection (b).

19
20 Generally speaking, subsection (a) will operate to protect the priority of claims of third
21 parties who relied upon an erroneously recorded satisfaction, such as buyers and mortgagees.
22 Most state recording statutes do not protect involuntary or nonreliance creditors, such as the
23 holders of judgment liens. In these states, under subsection (a), the rescission of an erroneously
24 recorded satisfaction would reinstate the lien created by the security instrument, and this
25 reinstated lien would take priority over the claim of an intervening judgment lien creditor.
26 However, in those jurisdictions where the recording act protects judgment lien creditors, an
27 intervening judgment lien will have priority over the secured creditor's reinstated lien.

28
29 2. Subsection (b) authorizes a person injured by the secured creditor's wrongful rescission
30 of satisfaction a security instrument to recover damages in the amount of the loss caused by the
31 secured creditor's conduct. The exercise of this remedy is subject to the normal rules of pleading
32 and proof. Subsection (b) also provides for statutory damages of \$1,000 for the secured
33 creditor's wrongful rescission of a satisfaction, which an injured person may recover in addition
34 to any actual damages.

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SATISFACTION OF SECURITY INSTRUMENT BY AFFIDAVIT

SECTION 301. AUTHORIZATION TO RECORD AFFIDAVIT OF SATISFACTION.

(a) If a secured creditor has not recorded a satisfaction of a security instrument within ____ days after receiving full performance of the secured obligations or becoming required to record a satisfaction under Section 201(d), a closing agent acting for and with authority from the landowner may give the secured creditor notification that the closing agent intends to record an affidavit of satisfaction of the security instrument. A notification satisfies the requirements of this subsection (a) if it includes the following information:

(1) the identity and mailing address of the closing agent;

(2) the effective date of the notification;

(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 closing agent possesses evidence that the secured creditor has received full performance of the secured obligations;

(5) a statement that the secured creditor has not recorded a satisfaction of the security instrument; and

(6) a statement that the closing agent will execute and record an affidavit of satisfaction unless the secured creditor, within 30 days following the effective date of the notification, either records a satisfaction of the security instrument or gives to the closing agent a

1 notification stating that the secured obligations remain unsatisfied.

2 (b) If a secured creditor fails to record a satisfaction of a security instrument within 30
3 days after the effective date of a notification complying with subsection (a), and the closing agent
4 has not received notification that the secured obligations remain unsatisfied, the closing agent
5 may execute and record an affidavit of satisfaction complying with the requirements of Section
6 302.

7 Preliminary Comments

8
9 1. Article 3 of the Act establishes a procedure that allows a landowner who has fully
10 performed the secured obligations to clear its title via affidavit if the secured creditor has failed
11 to record a satisfaction after notification and an opportunity to cure. Section 301 sets forth a
12 timetable that should permit a diligent secured creditor sufficient time in which to record a
13 satisfaction and avoid the filing of an affidavit of satisfaction. If the secured creditor has not
14 recorded a satisfaction within __ days after becoming legally obligated to do so, a closing agent
15 (Section 102(2)) may give notification to the secured creditor instructing the secured creditor to
16 record a satisfaction of the security instrument or provide an objection within 30 days of the
17 effective date of the notification. During this 30-day grace period, the secured creditor can
18 record a satisfaction; thus, in all instances the secured creditor has a minimum of __ days in
19 which to record the satisfaction and avoid the filing of an affidavit of satisfaction.
20

21 If the secured creditor properly objects to satisfaction within the 30-day period, the closing
22 agent may not execute and record an affidavit of satisfaction. However, while the secured
23 creditor's objection may prevent the closing agent from using the Act's self-help satisfaction
24 procedure, it does not necessarily shield the secured creditor from potential liability under
25 Section 203. If subsequent litigation establishes that the secured creditor was legally obligated to
26 record a satisfaction but failed to do so within 30 days after the effective date of a notification
27 complying with Section 202(d), the secured creditor will have violated its obligations under
28 Section 201 and the landowner may recover statutory and actual damages under Section 203.
29

30 2. Because the closing agent acts in this instance pursuant to the authority of the Act, it is
31 irrelevant whether the closing agent is named as a party in the security instrument. Under
32 Section 302, the affidavit of satisfaction includes sufficient information to permit the recording
33 officer to index the affidavit of satisfaction in a manner that will sufficiently connect it to the
34 chain of title to the land covered by the security instrument.
35
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1 **SECTION 302. AFFIDAVIT OF SATISFACTION.**

2 (a) An affidavit of satisfaction must:

3 (1) identify the original parties to the security instrument, the landowner, the secured
4 creditor, the record holder of the security instrument if different from the secured creditor, and
5 the recording data for the security instrument;

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

10 (3) state that the secured creditor provided a payoff statement that identified the
11 balance needed to satisfy the secured obligations and that the creditor received payment of the
12 balance specified in that statement;

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

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

20 (b) No particular phrasing of an affidavit of satisfaction is required; however, the
21 following form of affidavit, when completed, is sufficient to satisfy the requirements of
22 subsection (a):

1 “ _____
2 (Date of Affidavit)
3

4 **AFFIDAVIT OF SATISFACTION**

5 The undersigned hereby states as follows:

6 1. I am [an officer or a duly appointed agent of a title insurance company
7 authorized and licensed to transact the business of insuring titles to interests in
8 real property] [an attorney in good standing and licensed to practice law] in this
9 state.

10 2. I am executing this Affidavit of Satisfaction to evidence satisfaction of the
11 obligations secured by land covered by the following security instrument (the
12 “Security Instrument”), currently held by _____ (the “Secured
13 Creditor”):

14 Title of Security Instrument:

15 Original Parties to Security Instrument:

16 County and State of Recording:

17 Current Record Holder of Security Instrument, if other than Secured Creditor:

18 Recording Data for Security Instrument:

19 3. I possess satisfactory evidence that the secured creditor has received payment
20 of the balance of the obligations secured by the security instrument, as specified in
21 a payoff statement.

22 4. On _____ [Date of Notification of Intent to Execute and Record Affidavit of
23 Satisfaction]_____, I gave notification to the secured creditor that I would execute

1 and record an affidavit of satisfaction of the security instrument if the secured
2 creditor did not record a satisfaction of the security instrument within 30 days of
3 _____, the effective date identified in that notification. This 30-day period
4 has elapsed, and the secured creditor has neither recorded a satisfaction of the
5 security instrument nor given notification that the secured obligations remain
6 unsatisfied.

7
8 _____
9 (Signature of Closing Agent)
10

11 _____”
12 (Notarization)

13
14 **Preliminary Comments**

15
16 1. Subsection (a) sets forth the information necessary for a sufficient affidavit of
17 satisfaction. An affidavit that lacks any of the information required by subsection (a) does not
18 operate as a satisfaction of the security instrument under Section 303, even if it is accepted for
19 recording.
20

21 2. Although subsection (b) provides that a particular phrasing is not required, it also
22 specifies a safe-harbor form that, when properly completed, satisfies subsection (a).
23
24

25 **SECTION 303. EFFECT OF AFFIDAVIT OF SATISFACTION.**

26 (a) An affidavit of satisfaction complying with section 302(a) is evidence of the facts
27 contained in it, must be accepted for recording in the [appropriate governmental office under the
28 recording act of this state], and upon recording operates as a satisfaction of the security
29 instrument described in the affidavit.

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

3 Preliminary Comments 4

5 1. In most states, other state statutes specify the form and content necessary for a document
6 to constitute a sufficient satisfaction. Subsection (a) makes clear that the recording officer must
7 accept for recording any affidavit of satisfaction that complies with the provisions of Section
8 302. Subsection (a) also makes clear that the affidavit of satisfaction has the same legal effect as
9 a recorded satisfaction, even if the affidavit would not satisfy other state law provisions
10 governing the form and content necessary for a satisfaction piece.
11

12 2. Subsection (b) provides that the recording of an affidavit of satisfaction affects only the
13 effectiveness of the security instrument described in it, and not the enforceability of the secured
14 obligations. If the closing agent executes and records an affidavit of satisfaction even though the
15 secured obligations have not in fact been fully performed, the Act does not preclude the secured
16 creditor from enforcing the secured obligations against anyone personally liable for those
17 obligations. Whether the obligations have in fact been fully performed is governed by law other
18 than this Act.
19
20

21 **SECTION 304. LIABILITY OF CLOSING AGENT.** A closing agent that erroneously
22 records an affidavit of satisfaction is liable to the secured creditor for any loss sustained due to
23 the recording of the affidavit, including reasonable attorneys' fees and court costs. If a closing
24 agent records an affidavit of satisfaction knowing that the statements contained in the affidavit
25 are false, the closing agent is liable to the secured creditor for treble the loss sustained due to the
26 recording of the affidavit, including reasonable attorneys' fees and court costs[, and is subject to
27 other applicable sanctions for such conduct under [cite statutes for perjury or similar criminal
28 offense]].

29 Preliminary Comments 30

31 1. If a closing agent wrongly executes and records an affidavit of satisfaction, the secured
32 creditor may effectively lose the ability to enforce the security instrument as a means to facilitate
33 its collection of the remaining balance of the obligation. In such a case, Section 304 permits the

1 affected secured creditor to recover damages from the closing agent, subject to the usual rules of
2 pleading and proof. To the extent the landowner's equity in the real estate exceeded the
3 remaining unpaid balance of the obligation, the affected secured creditor would be able to
4 recover (at a minimum) the remaining unpaid balance of the obligation.
5

6 2. In the event that the closing agent executes and records an affidavit of satisfaction
7 knowing that the statements contained in it are false, this section permits the secured creditor to
8 recover treble its actual damages. Moreover, under the criminal law of some states, the filing of
9 a knowingly false affidavit or certification may constitute perjury or a distinct criminal offense.
10 This section makes clear that the Act does not constrain the ability of public officials to prosecute
11 such conduct under criminal law.

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SECTION 401. ISSUANCE AND EFFECT OF SATISFACTION STATEMENT.

(b) Upon request by a landowner or a closing agent on behalf of the landowner, a secured creditor may provide to the requester a satisfaction statement. A secured creditor is not obligated to provide a satisfaction statement unless the security instrument so provides.

(d) Upon payment of the amount identified in the satisfaction statement, including payment of the fee authorized by subsection (c), a closing agent may execute and record in the name of a secured creditor a certificate of satisfaction of a security instrument complying with the provisions of Section 402.

(e) A secured creditor's acceptance of performance of the secured obligations pursuant to a satisfaction statement is a defense to the secured creditor's liability under Section 203.

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 203, 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.

1 Article 4 of the Act creates a mechanism — the “satisfaction statement” — by which the
2 secured creditor can authorize the closing agent, upon full payment of the debt, to execute and
3 record a satisfaction of the security instrument in the name of the secured party. If the secured
4 creditor issues a satisfaction statement and contemporaneously or subsequently accepts full
5 payment as identified in that satisfaction statement, then the closing agent can execute and record
6 a certificate of satisfaction of the security instrument (Section 402) which, upon recording, shall
7 operate as a satisfaction of the security instrument (Section 403).
8

9 The secured creditor need not issue a satisfaction statement, even if the landowner or its
10 closing agent so requests, unless the security instrument by its terms obligates the secured
11 creditor to do so. Instead, the secured creditor may simply issue a traditional payoff statement
12 (Section 102(8)), with the secured creditor remaining responsible to record a satisfaction
13 following full performance. However, by executing a satisfaction statement, the secured creditor
14 can shift to the closing agent the practical burden and legal responsibility associated with
15 recording a satisfaction of the security instrument. If the secured creditor accepts full payment of
16 the secured obligations as identified in that satisfaction statement, then the secured creditor
17 cannot later be held liable under Section 203 if the closing agent thereafter fails to satisfy the
18 mortgage in a timely fashion.
19
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21 **SECTION 402. CERTIFICATE OF SATISFACTION.**

22 (a) A certificate of satisfaction must:

23 (1) identify the original parties to the security instrument, the landowner, the secured
24 creditor, the record holder of the security instrument if different from the secured creditor, and
25 the recording data for the security instrument;

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

30 (3) state that the secured creditor provided a satisfaction statement that authorized the
31 person executing the certificate to execute and record a satisfaction of the security instrument
32 following payment of the sums identified in the satisfaction statement;

(4) state that the person executing the certificate has satisfactory evidence that the secured creditor has received payment of the sums 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 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 satisfaction 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:

Current Record Holder of Security Instrument, if other than Secured Creditor:

1 certificate.

2 (b) Recording of a certificate of satisfaction does not extinguish or otherwise affect the
3 liability of any person liable for repayment of the secured obligations.

4 Preliminary Comments

5
6 1. In most states, other state statutes specify the form and content necessary for a document
7 to constitute a sufficient satisfaction. Subsection (a) makes clear that the recording officer must
8 accept for recording any certificate of satisfaction that complies with the provisions of Section
9 402. Subsection (a) also makes clear that the certificate of satisfaction has the same legal effect
10 as a recorded satisfaction, even if the certificate would not satisfy other state law provisions
11 governing the form and content necessary for a satisfaction piece.

12
13 2. Subsection (b) provides that the certificate of satisfaction affects only the effectiveness of
14 the security instrument described in it, and not the enforceability of the secured obligations. If
15 the closing agent executes and records a certificate of satisfaction even though the secured
16 obligations have not in fact been fully performed, the Act does not preclude the secured creditor
17 from enforcing the secured obligations against anyone personally liable for those obligations.
18 Whether the obligations have in fact been fully performed is governed by law other than this Act.

19
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21 **SECTION 404. LIABILITY OF CLOSING AGENT.** A closing agent that erroneously
22 records a certificate of satisfaction is liable to the secured creditor for any loss sustained due to
23 the recording of the certificate, including reasonable attorneys' fees and court costs. If a closing
24 agent records a certificate of satisfaction knowing that statements contained in the certificate are
25 false, the closing agent is liable to the secured creditor for treble the loss sustained due to the
26 recording of the certificate, including reasonable attorneys' fees and court costs[, and is subject to
27 other applicable sanctions for such conduct under [cite statutes for perjury or similar criminal
28 offense]].

29 Preliminary Comments

30
31 1. If a closing agent wrongly executes and records a certificate of satisfaction, the secured
32 creditor may effectively lose the ability to enforce the security instrument as a means to facilitate

1 its collection of the remaining balance of the obligation. In such a case, Section 404 permits the
2 affected secured creditor to recover damages from the closing agent, subject to the usual rules of
3 pleading and proof. To the extent the landowner's equity in the real estate exceeded the
4 remaining unpaid balance of the obligation, the affected secured creditor would be able to
5 recover (at a minimum) the remaining unpaid balance of the obligation.
6

7 2. In the event that the closing agent executes and records a certificate of satisfaction
8 knowing that the statements contained in it are false, this section permits the secured creditor to
9 recover treble its actual damages. Moreover, under the criminal law of some states, the filing of
10 a knowingly false affidavit or certification may constitute perjury or a distinct criminal offense.
11 This section makes clear that the Act does not constrain the ability of public officials to prosecute
12 such conduct under criminal law.

1 **ARTICLE 5**

2
3 **MISCELLANEOUS PROVISIONS**

4
5
6 **SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
7 applying and construing this [act], consideration must be given to the need to promote uniformity
8 of the law with respect to its subject matter among states that enact it.

9
10 **SECTION 502. EFFECTIVE DATE.** This [act] takes effect on _____.

11
12 **SECTION 503. REPEALS.** The following acts are repealed: [List statutes to be
13 specifically repealed.]