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FOR DISCUSSION ONLY

UNIFORM MORTGAGE SATISFACTION ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM LAWS

MEETING IN ITS ONE-HUNDRED-AND-TWELFTH YEAR
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UNIFORM MORTGAGE SATISFACTION ACT

WITH PREFATORY NOTE AND PRELIMINARY COMMENTS

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM LAWS

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DRAFTING COMMITTEE ON UNIFORM MORTGAGE SATISFACTION ACT

EDWARD F. LOWRY, JR., 4200 N. 82nd St., Suite 2001, Scottsdale, AZ 85251, *Chair*
ROBERT L. MCCURLEY, JR., Alabama Law Institute, P.O. Box 861425, Tuscaloosa, AL
35486
NEAL OSSEN, 21 Oak St., Suite 201, Hartford, CT 06106
ELWAINE F. POMEROY, 1415 SW Topeka Blvd., Topeka, KS 66612-1818
REGINA R. QUINN, Jackson State University, P.O. Box 17239, Jackson, MS 39217-0239
PATRICK A. RANDOLPH, University of Missouri - Kansas City, School of Law, 500 E. 52 St.,
Kansas City, MO 64110
LANI LIU EWART, Suite 1800, Alii Pl., 1099 Alakea St., Honolulu, HI 96813, *Enactment Plan
Coordinator*
R. WILSON FREYERMUTH, University of Missouri-Columbia School of Law, 215 Hulston
Hall, Columbia, MO 65211, *Reporter*

EX OFFICIO

K. KING BURNETT, P.O. Box 910, Salisbury, MD 21803-0910, *President*
CARL H. LISMAN, 84 Pine St., P.O. Box 728, Burlington, VT 05402, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

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

EXECUTIVE DIRECTOR

WILLIAM H. HENNING, University of Missouri-Columbia, School of Law, 313 Hulston Hall,
Columbia, MO 65211, *Executive Director*
FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Road, Norman,
OK 73019, *Executive Director Emeritus*
WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, *Executive Director Emeritus*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
312/915-0195
www.nccusl.org

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1 **UNIFORM MORTGAGE SATISFACTION ACT**

2 **Prefatory Note**

3 Complete payment of a mortgage loan typically extinguishes the lien of the mortgage.
4 Because no evidence of that extinguishment automatically appears on the public land records,
5 however, the continued presence of the mortgage on the records creates a practical problem for
6 the owner of the land described in the mortgage. For example, if the owner has contracted to sell
7 the home to a buyer, the mortgagor cannot establish marketable title — and thus cannot compel
8 the buyer to perform the contract — unless it can “clear” the existing mortgage document from
9 the records. Likewise, even if the owner/mortgagor is merely refinancing its existing mortgage
10 obligation with another lender, the mortgagor must be able to clear the existing mortgage from
11 the public records in order to assure the new mortgage lender of its expected priority.
12

13 Traditionally, the mortgagor cleared its title by having the mortgagee execute and record a
14 document evidencing satisfaction of the mortgage, or by having the mortgagee make a marginal
15 notation on the page of the public records containing the mortgage evidencing its satisfaction.
16 Decades ago, it was somewhat plausible to expect that title clearance could occur roughly
17 contemporaneously with a sale or refinancing of mortgaged land. Historically, local thrift
18 institutions held mortgage loans in their portfolios until maturity or prepayment. Thus, when
19 making full payment, a mortgagor could simply go to the office where the mortgagee had
20 originated the loan and obtain the necessary documentation almost immediately, at least where
21 the mortgagee maintained the original loan documents on-site. Even if the mortgagee maintained
22 the documents in a nearby depository, the mortgagee could typically have the documents
23 available at closing if it had sufficient advance notice of the closing of a sale or refinancing
24 transaction.
25

26 Today, changes in the financial services industry have complicated the payoff, discharge, and
27 release of mortgage instruments. Most originating mortgage lenders no longer retain mortgage
28 loans in their portfolio, as local thrift institutions traditionally did. Instead, most originating
29 lenders transfer mortgage loans on the secondary market, thereby facilitating the eventual
30 securitization of mortgage loans and the issuance of mortgage-backed securities. When the
31 originating lender sells a mortgage loan, it will no longer retain the original loan documents
32 (unless the originating lender retains loan servicing responsibilities). Instead, the originating
33 lender will transfer the loan documents to the new assignee or to a loan servicer (the party who
34 collects loan payments from mortgagors on behalf of the party holding the mortgage debt). This
35 location may be hundreds or thousands of miles from the mortgagor and the mortgaged land.
36 Under such circumstances, it is not feasible to expect that the holder of a mortgage can produce
37 recordable satisfaction documentation contemporaneously with the closing of a sale or
38 refinancing by the mortgagor. The geographical and bureaucratic separation of the mortgagor
39 and the loan documents creates a practical “gap” between the closing and the clearance of record
40 title — even when all parties are acting in good faith and there is no question about the location
41 of the loan documents.

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

16
17 At present, solving these practical problems forces the parties to incur additional transaction
18 costs. Most frequently, parties use title insurance to address these title-clearance risks. Consider
19 a typical transaction in which Seller, who owns a home subject to a mortgage in favor of Bank
20 One, has contracted to sell a home to Buyer, with the closing to occur on June 1. Buyer plans to
21 complete the purchase using the proceeds of a mortgage loan from Bank Two, and Seller expects
22 to use the sale proceeds to satisfy the mortgage loan to Bank One. Once the Bank One mortgage
23 is paid off, Bank Two would have its expected priority for its mortgage lien. But until the Bank
24 One mortgage is paid off and extinguished, Bank Two bears a risk that full payment of the Bank
25 One mortgage will not occur, either because someone associated with the transaction
26 misappropriated the funds or because of a dispute about the outstanding balance of the Bank One
27 mortgage. Thus, as a condition of its obligation to make a mortgage loan to Buyer, Bank Two
28 will insist upon a lender's title insurance policy that insures both the validity and priority of its
29 mortgage against the home. In this way, Bank Two shifts to the title insurer the potential priority
30 risk that Bank Two faces because Bank One has not yet released its mortgage of record.

31
32 Likewise, the Buyer in this transaction faces a similar risk with respect to the satisfaction of
33 the Seller's mortgage. For example, if a closing agent misappropriated the closing proceeds and
34 did not use them to satisfy the Bank One mortgage, Bank One will refuse to release its mortgage,
35 and the Buyer's title would thereafter be subject to the liens of both the Bank One and Bank Two
36 mortgages. As a result, a prudent Buyer should also obtain an owner's policy of title insurance
37 that provides affirmative coverage against the risk that the Bank One mortgage is not legally
38 satisfied. Unfortunately, not all buyers obtain an owner's policy of title insurance, and even
39 those who do may not appreciate the risks sufficiently to ask for and obtain affirmative coverage
40 against the nonrelease of the seller's mortgage.

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

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

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

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

This lack of uniformity is unfortunate, as it encourages national mortgage lenders to treat otherwise similarly-situated mortgagors differently. Perhaps not surprisingly, national mortgage lenders act to "prioritize" the process of providing satisfactions on a state-by-state basis, depending upon a state's grace period and applicable sanctions for noncompliance. As a result, national mortgage lenders tend to provide services first to customers in states with the most punitive statutes. In turn, this may prompt states to engage in a "race to the bottom" to increase civil penalties, in order to ensure preferential treatment of their own citizens — eight states have increased their civil penalty within the past decade.

The Act attempts to ensure that mortgagees and their servicers have an appropriate incentive to act promptly to clear a landowner's title. At the same time, however, the Act recognizes that given the structure of today's mortgage market, conscientious mortgagees and their servicers need a realistic period of time to record a satisfaction of a mortgage. Further, the Act takes the view that the lender should not face liability without first receiving notice and an opportunity to cure its failure. As a result, the Act provides that a mortgage lender must record a satisfaction of the mortgage within 30 days after receiving payment of the obligations secured by that mortgage.

1 After that 30-day period expires, the owner of the mortgaged land may make written demand
2 upon the mortgagee. If the mortgagee still fails to record a satisfaction within an additional 30
3 days, the Act then permits the owner of the mortgaged land to recover both a civil penalty and
4 any actual damages incurred as a result of the mortgagee's failure. As a result, in all cases a
5 mortgagee would have a minimum of 60 days before it could face liability under the Act.
6

7 **The Payoff Statement**

8

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

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

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

35 Unfortunately, reliance upon estoppel theory is unpredictable because estoppel doctrine
36 typically protects only reasonable reliance, and it is not always clear whether reliance upon a
37 payoff statement is reasonable. In a few cases, doubt about the reasonableness of reliance may
38 result from the magnitude of the error in a payoff statement. If a mistake in a payoff statement is
39 so large that a reasonable person in the buyer's position would question the statement's accuracy,
40 payment of the mistaken amount will not permit the buyer to raise an estoppel against the
41 mortgagee (whose mortgage will remain effective until the mortgage obligation is fully satisfied).
42 More commonly, doubt about the reasonableness of reliance may result from language in the
43 payoff statement that expressly qualifies the statement's reliability. For example, the payoff

1 statement may state that it can be relied upon only by the mortgagor and not third parties, or it
2 may state that it is subject to being corrected by the mortgagee for a specified period of time
3 (which may extend beyond the scheduled closing date of a sale or refinancing transaction). Such
4 express qualifications upon the reliability of a payoff statement may call into question the extent
5 to which third parties may authoritatively rely upon such statements.
6

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

15 **“Self-Help” Satisfaction**

16

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

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

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

1 The Act adopts a “self-help” satisfaction procedure, but limits its use to mortgages covering
2 residential real property. Under the Act, a “closing agent” (defined to include either a licensed
3 attorney or a licensed title insurer) may prepare and record the necessary affidavit of satisfaction,
4 but only after first giving notification to the mortgagee and giving the mortgagee 30 days to
5 either record a satisfaction or raise an objection. In the event that the mortgagee raises a timely
6 objection, the self-help procedure is unavailable. In the event that the mortgagee fails to raise a
7 timely objection, the closing agent may record an affidavit of satisfaction, which affidavit
8 constitutes a satisfaction of the mortgage.
9

10 **Authorized Satisfaction by a Closing Agent**

11
12 Theoretically, one could eliminate the “time gap” in obtaining a recorded satisfaction of a
13 mortgage by authorizing the closing agent to record a satisfaction of the mortgage on behalf of
14 the mortgagee. At least two practical problems arise, however. First, no agreement or other
15 document typically used in real estate transactions presently authorizes a closing agent to act on
16 the mortgagee’s behalf to clear the mortgage of record. Second, under current state statutes
17 governing real estate transactions, any such authorization would have to be in form sufficient to
18 constitute a power of attorney.
19

20 The Joint Editorial Board for Real Property Acts has recently proposed that the issuance of a
21 payoff statement should, as a matter of law, authorize a closing agent to record a satisfaction of
22 the mortgage on the mortgagee’s behalf, if that closing agent facilitates payment to the mortgagee
23 of the amount specified in that statement. Similar legislation was introduced in the Illinois
24 legislature in 2003.
25

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

38 By permitting the lender to elect whether to issue a standard payoff statement or a satisfaction
39 statement, the Act permits the parties to any particular sale or refinancing transaction to allocate
40 responsibility for title clearance in whatever manner they choose — either leaving that burden
41 with the original mortgagee (with whom it rests under current law) or shifting it to the closing
42 agent.
43

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

1 obligations secured by a security interest, containing at a minimum the information specified in
2 Section 201(c).

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

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

8 (11) “Purchaser” means a person who takes by purchase.

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

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

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

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

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 an interest in real
2 property to secure payment or performance of an obligation. Such an agreement is a security
3 instrument even if it also creates or provides for a security interest in personal property.

4 (17) “Security interest” means an interest in real property created by a security instrument
5 that secures payment or performance of an obligation.

6 (18) “Sign” means to execute or adopt a tangible symbol with the present intent to
7 authenticate a document.

8 Preliminary Comments

9
10 *Introductory comment to definitions.* Under American law and customary practice, there are
11 a variety of different documents — such as the mortgage, the deed of trust, the deed to secure
12 debt (to name but a few) — by which parties may use an interest in real property as security for
13 debts and obligations. Many existing state laws governing the satisfaction of these documents
14 use the traditional terms “mortgage,” “mortgagor,” and “mortgagee.” The Act does not use these
15 terms, so as to dispel any notion that the Act’s coverage is limited only to a “mortgage.” Instead,
16 the Act uses terms that have no common law or statutory roots tying them to any particular form.
17 Instead of terms such as “mortgage” or “deed of trust,” the Act substitutes the general term
18 “security instrument.” In place of “mortgagee” or “beneficiary,” the Act uses “secured creditor.”
19 The interest in real property that conveyed to the secured creditor is defined as a “security
20 interest” rather than as a “lien” or as “title.” Thus, for purposes of the Act it is irrelevant whether
21 a state follows the “lien theory” or “title theory” of mortgage law.
22

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

25
26 1. “Address for notification.” The Act requires a landowner to give notification to a secured
27 creditor before the landowner can recover a civil penalty and/or actual damages from the secured
28 creditor on account of the secured creditor’s failure to record a satisfaction in a timely manner.
29 Section 202(d). Likewise, before a closing agent may execute and record an affidavit of
30 satisfaction when the secured creditor has failed to record a satisfaction in a timely manner, the
31 closing agent must give the secured creditor notification and a 30-day grace period in which to
32 fulfill its obligation to record that satisfaction or otherwise object to the recording of a
33 satisfaction. Section 301. In each case, notification shall be given to the secured creditor at the
34 address identified in the most recent document provided by the secured creditor to the person
35 giving that notification. In the typical case, this document will be a payoff statement delivered by
36 the secured creditor at the request of the landowner or a closing agent.

1 The Act also requires the secured creditor to give a timely notification to the closing agent if
2 there is a dispute about whether the secured obligations have been satisfied and the secured
3 creditor wishes to prevent the closing agent from recording an affidavit of satisfaction. Section
4 301. In such a case, the secured party shall give notification to the closing agent at the address
5 identified in the closing agent’s prior notification of its intention to execute and record an
6 affidavit of satisfaction (unless the closing agent shall have subsequently notified the secured
7 creditor to use a different address).
8

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

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

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

29 4. “Document.” Any notification required by the Act must be in the form of a “document,”
30 *i.e.*, a tangible medium (ordinarily paper) inscribed with the necessary information and signed by
31 the person giving that notification. The Act does not expressly authorize electronic notices. In
32 some cases other law, such as the Uniform Electronic Transactions Act or the Electronic
33 Signatures in Global Commerce Act, may classify information stored in electronic form as a
34 document, or may authorize the giving of notices in electronic form. Such other law may apply
35 to documents created and notices given pursuant to the Act.
36

37 5. “Good faith.” This definition is identical to the definition contained in Article 9 of the
38 Uniform Commercial Code. Generally, the Act imposes liability (both for a civil penalty and any
39 actual damages suffered by the landowner) upon a secured creditor who fails to record a
40 satisfaction within a timely period following notice and opportunity to cure. Section 203(a).
41 However, a secured creditor is not liable if it has established a reasonable procedure for recording
42 satisfactions of security instruments, has complied with that procedure in good faith, and was
43 unable to record because of the action or inaction of another person beyond its control. Section

1 203(b).
2

3 6. “Landowner.” The term “landowner” refers to the owner of the real property described in
4 the security instrument. Under the Act, it is the landowner who is entitled to recover actual
5 damages and a statutory penalty (Section 203(a)) in the event that the secured creditor fails to
6 record a satisfaction within a timely period following notice and opportunity to cure.
7

8 7. “Notification.” The Act requires notification to the secured creditor in two instances.
9 First, before the landowner can recover a civil penalty and actual damages from the secured
10 creditor on account of the secured creditor’s failure to record a satisfaction in a timely manner,
11 the landowner must give the secured creditor notification and a 30-day grace period in which to
12 fulfill its obligation to record that satisfaction. Section 202(d). Second, before a closing agent
13 may execute and record an affidavit of satisfaction when the secured creditor has failed to record
14 a satisfaction in a timely manner, the closing agent must give the secured creditor notification
15 and a 30-day grace period in which to fulfill its obligation to record that satisfaction or otherwise
16 object to the recording of a satisfaction. Section 301. In each case, notification shall be given to
17 the secured creditor in the manner specified in Section 103.
18

19 The Act also requires the secured creditor to give a timely notification to the closing agent if
20 there is a dispute about whether the secured obligations have been satisfied and the secured
21 creditor wishes to prevent the closing agent from recording an affidavit of satisfaction. Section
22 301. In such a case, the secured party shall give notification to the closing agent at the address
23 identified in the closing agent’s prior notification of its intention to execute and record an
24 affidavit of satisfaction (unless the closing agent shall have subsequently notified the secured
25 creditor to use a different address).
26

27 8. “Payoff statement.” Most mortgage loans are paid off prior to maturity, either upon a
28 transfer of the mortgaged land or upon a refinancing by the landowner. In these situations, the
29 mortgage lender customarily issues a payoff statement, specifying the payment needed to satisfy
30 the outstanding balance of the mortgage loan.
31

32 Under the Act, the secured creditor must issue a payoff statement complying with Section
33 201(c) within 15 days after receiving a request from an “entitled person” as defined in Section
34 201(a). Unless and until the secured creditor corrects or updates the information contained in the
35 payoff statement, the recipient may rely upon the payoff statement for the purpose of determining
36 the amount that must be paid in order to obtain a recorded satisfaction of the security instrument.
37 Upon receipt of that amount, the secured creditor is thereafter obligated to record a satisfaction of
38 the security instrument within the period specified in Section 202.
39

40 Under the Act, the secured creditor must also execute a timely satisfaction of the security
41 instrument following full performance of the secured obligations, regardless of whether the
42 secured creditor issued a payoff statement. Thus, the secured creditor has the same obligation
43 regardless of whether the obligation was satisfied at its maturity or prior to its originally

1 scheduled maturity (*i.e.*, in conjunction with a transfer or refinancing).
2

3 9. “Person” includes both natural persons (individuals) and all forms of legally recognized
4 public and private organizations.
5

6 10. “Purchase” means to acquire an interest in real property by virtue of a voluntary
7 transaction, and includes taking by sale, gift, or mortgage. See U.C.C. Section 1-201(32).
8

9 11. “Purchaser” means one who takes an interest in real property by purchase, and includes
10 both a buyer and a mortgagee. See U.C.C. Section 1-201(33).
11

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

23 13. “Recording data.” This definition is similar to that used in Section 102(15) of the
24 Uniform Nonjudicial Foreclosure Act, and refers to the customary way of identifying the precise
25 place where a document is recorded in the jurisdiction. Some jurisdictions customarily refer to
26 book and page number, some to a document number, and others to other types of designations.
27

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

37 The second aspect of the definition relates to improvements on the real property.
38 “Residential real property” must either be improved with one to four dwelling units at the time
39 the security instrument is entered into, or the owner must intend at that time to so improve it in
40 the future. Therefore, a vacation home or other “second home” qualifies as residential real
41 property, because there is no requirement that a dwelling unit on the premises be the primary
42 residence of the owner (only that the primary use be residential). The limitation on the number
43 of dwelling units excludes larger apartment buildings.

1 The provisions of Article 2 of the Act, which require the secured creditor to record a
2 satisfaction of the security instrument following full performance of the secured obligations,
3 apply to all security instruments, whether arising from residential or commercial transactions.
4 However, the provisions of Article 3 (which permit a closing agent to record an affidavit of
5 satisfaction where the secured creditor has failed to satisfy its obligations under Article 2) and
6 Article 4 (which permit a closing agent to record a certificate of satisfaction where the secured
7 creditor has issued a satisfaction statement so authorizing) apply only to security instruments that
8 create security interests in 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. Section 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. “Sign.” This definition is identical to that contained in Section 107(6) of the Uniform
37 Nonjudicial Foreclosure Act.
38

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

40 (a) A person gives notification by:

- 1 (1) handing it to the recipient;
- 2 (2) if the recipient’s address for notification is an office, leaving it at the office with
3 an individual in charge or, if no one is in charge, leaving it in a conspicuous place in the office;
- 4 (3) if the recipient’s address for notification is a dwelling, leaving it at the dwelling
5 with an individual of suitable age and discretion residing therein; or
- 6 (4) depositing it with the United States Postal Service or a commercially reasonable
7 delivery service, properly addressed to the recipient’s address for notification, with costs of
8 delivery paid.

9 (b) If a person giving a notification pursuant to this [act] and the recipient have agreed to
10 limit the methods for giving notification otherwise permitted by subsection (a), notification must
11 be given by an agreed method.

12 (c) If a notification is not given in accordance with subsection (a) or (b) but is received
13 by the recipient within the time it would have been received if properly given, it is treated as
14 having been properly given as of the time of receipt.

15 **Preliminary Comments**

16
17 This section provides for minimum methods of giving any notification required by the Act.
18 A person may also give notice through additional methods not specified in the Act, provided that
19 the requirements of this section are also satisfied.

20
21 Generally speaking, notices required by the Act may be transmitted by personal service,
22 registered or certified mail, regular mail, or commercial delivery services. Proper dispatch, not
23 receipt, satisfies the obligation to give notification. For example, if notice is given by mailing
24 with the U.S. Postal Service, the time of deposit of the notice with the postal system is the time
25 notice is “given.”

26
27 Often, customary practice in real estate transfer or refinancing transaction will involve
28 notification by facsimile transmission. For example, a secured creditor may provide a payoff
29 statement by facsimile transmission (often at the specific request of the landowner or closing

1 agent). Under the Act, facsimile transmission of a required notification will be treated as having
2 been given as of the time the recipient receives such transmission.
3

4
5 **SECTION 104. DAY OF PERFORMANCE.** If this [act] or a notification given pursuant
6 to this [act] requires performance on or by a certain day and that day is a Saturday, Sunday, or
7 legal holiday, the performance is sufficient if done on the next day that is not a Saturday, Sunday,
8 or legal holiday.

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

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ARTICLE 2

SECURED CREDITOR TO RECORD SATISFACTION; LIABILITY FOR FAILURE

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SECTION 201. PAYOFF STATEMENT.

(a) In this section, “entitled person” means a landowner and any other person liable for performance of the obligation secured by a security instrument.

(b) An entitled person may give the secured creditor a notification requesting a payoff statement from the secured creditor. The notification must identify the payoff date for which the payoff statement is requested, 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 secured creditor must deliver the statement; and

15 (3) sufficient information to enable the secured creditor to identify the obligation and
16 the real property encumbered by the lien of the security instrument. An entitled person may give
17 the secured creditor a notification requesting a payoff statement from the secured creditor.

18 (c) Within 15 days after a secured creditor receives a notification complying with
19 subsection (b), the secured creditor shall issue a payoff statement and give it to the entitled
20 person in the manner prescribed in Section 103 for giving notification. The payoff statement
21 must provide the following information:

22 (1) the amount required to satisfy in full all obligations secured by the security
23 instrument as of the specified payoff date;

24 (2) the designated per diem interest amount;

- 1 (3) the payment cutoff time, if any;
- 2 (4) the place where payment must be made, and
- 3 (5) any limitation as to the authorized method of payment.

4 (d) An entitled person may rely upon a payoff statement to determine the amount that
5 must be paid to the secured creditor to obtain a recorded satisfaction of the security instrument, if
6 the entitled person acts in good faith and does not know or have reason to know that the amount
7 is incorrect. Upon receipt of timely payment of that amount, the secured creditor must record a
8 satisfaction of the security instrument. Any sums due to a secured creditor which the secured
9 creditor fails to include in a payoff statement may be recovered by the secured creditor as an
10 unsecured obligation from any person liable for repayment of the obligation.

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

17 (f) If a secured creditor fails without reasonable cause to deliver a timely payoff
18 statement when required to do so by this section, the creditor is liable to the entitled person for
19 the actual loss caused by the failure, reasonable attorney's fees and costs, and a civil penalty of
20 \$500.

21 (g) An entitled person is entitled to request one payoff statement without charge during
22 any six-month period. A secured creditor may impose a charge not exceeding \$25 for each

1 additional request for a payoff statement during a six-month period. In addition, a secured
2 creditor may impose a reasonable fee for expedited delivery of a payoff statement if the entitled
3 person requests expedited delivery. A secured creditor may include in a payoff statement any
4 fees imposed under this subsection.

5 **Preliminary Comments**

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

11
12 Under the Act, the secured creditor must issue a payoff statement complying with subsection
13 (c) within 15 days after receiving a request from an “entitled person” as defined in subsection (a).
14 This affirmative obligation is consistent with the duty articulated in Restatement of Property
15 (Third) — Mortgages § 1.6, as well as U.C.C. Section 9-210, which places a similar obligation
16 upon the secured creditor holding a security interest in personal property.

17
18 2. If the secured creditor fails to issue a timely payoff statement, without reasonable cause,
19 subsection (f) provides a minimum statutory damage recovery for the entitled person. This
20 subsection is patterned on U.C.C. Section 9-210(f) and ensures that the secured creditor’s
21 nondelivery of a payoff statement will generally result in liability regardless of any injury that
22 may have resulted. In addition, the entitled person may recover any loss actually resulting from
23 the secured creditor’s failure, subject to ordinary rules of pleading and proof.

24
25 3. Unless and until the secured creditor corrects or updates the information contained in the
26 payoff statement, the recipient may rely upon the payoff statement for the purpose of determining
27 the amount that must be paid in order to obtain a recorded satisfaction of the security instrument.
28 Upon receipt of that amount, the secured creditor must record a timely satisfaction of the security
29 instrument in accordance with Section 202.

30
31 If the entitled person knows or has reason to know that the amount specified in the payoff
32 statement is incorrect, however, the entitled person may not take advantage of the mistake in
33 order to compel the secured creditor to record a satisfaction. For example, suppose that Bank
34 holds a mortgage on Owner’s home that secures repayment of a loan with an outstanding balance
35 of \$100,000, and Bank issues a payoff statement indicating that the balance due is \$10,000. A
36 payment of \$10,000 by Owner would not obligate Bank to record a satisfaction of the mortgage.
37 The Act leaves to judicial resolution the question of when a mistake is of sufficient magnitude
38 that the entitled person has reason to know of the mistake.

1 4. Because mortgage loans may vary significantly in their terms and conditions, the Act does
2 not specify any particular form that a payoff statement must take in order to satisfy this section.
3 Instead, subsection (c) provides certain information that the secured creditor must include in
4 order to comply with its obligation to deliver a payoff statement. The secured creditor may
5 include other information, but any such information included cannot defeat the ability of the
6 entitled person to rely upon the payoff statement as provided in subsection (d).

7
8 5. The secured creditor may discover after issuing a payoff statement that the statement
9 contains an error. Subsection (e) permits the secured creditor to issue a corrected payoff
10 statement that supersedes the erroneous statement. It is possible, however, that the entitled party
11 will have made (and the secured creditor will have accepted) payment pursuant to the erroneous
12 statement before the secured creditor issues a corrected statement. In such a case, subsection (e)
13 makes clear that the secured creditor must record a satisfaction, unless the entitled party knew or
14 should have known that the original statement was erroneous. Subsection (d) also makes clear,
15 however, that the secured creditor's obligation to record in this case has no effect upon the
16 enforceability of the underlying obligation.

17
18 For example, suppose that Bank holds a mortgage on Owner's home, and Owner requests a
19 payoff statement in conjunction with a sale of the home to Buyer. Bank issues a payoff statement
20 that reflects an outstanding principal and interest balance of \$100,000. In fact, Owner has also
21 incurred \$150 of late charges pursuant to the mortgage, but Bank failed to reflect those late
22 charges on the payoff statement. Owner makes and Bank accepts payment in accordance with
23 the payoff statement before Bank issues a corrected payoff statement. In these circumstances,
24 Bank must record a satisfaction of the mortgage, but Bank may still recover the \$150 in late
25 charges from Owner as an unsecured obligation.

26
27
28 **SECTION 202. SECURED CREDITOR TO RECORD SATISFACTION.**

29 (a) A secured creditor shall record a satisfaction of a security instrument within 30 days
30 after the creditor receives full performance of the obligations secured by the security instrument
31 or becomes required to record a satisfaction under Section 201(d). If a security instrument
32 secures an open-end line of credit or future advances, the 30-day period commences only if the
33 secured creditor has received a notification requesting the creditor to terminate the line of credit
34 or containing a statement sufficient to terminate the future effectiveness of the future advance
35 provisions in the security instrument.

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

2 (1) it is:

3 (A) signed by the secured creditor and acknowledged as required by law for a
4 conveyance of an interest in real property;

5 (B) contains language indicating the secured creditor's intention to terminate the
6 effectiveness of the security interest; and

7 (C) identifies the security instrument, the original parties to the instrument, the
8 county and state of recording, and the recording data for the security instrument; or

9 (2) it is in a form legally sufficient to constitute a satisfaction under law of this state
10 other than this [act].

11 (c) The following form, when completed by the secured creditor, is sufficient to satisfy
12 the requirements of subsection (b):

13 “ _____
14 (Date of Satisfaction)

15 **SATISFACTION**

16 Title of Security Instrument: _____

17 Original Parties to Security Instrument: _____

18 _____

19 County and State of Recording: _____

20 Recording Data for Security Instrument: _____

21 The undersigned releases the lien on the real property identified in the above-
22 described Security Instrument.

1 Name of Secured Creditor: _____

2 _____

3 (Signature of Secured Creditor)

4

5 _____

6 (Notarization)

7

8

(d) If, following the expiration of the period described in subsection (a), the secured

9

creditor has not recorded a satisfaction of the security instrument, the landowner may give to the

10

creditor a notification demanding that the creditor record a satisfaction of the security instrument

11

no later than 30 days following the date of the notification.

12

Preliminary Comments

13

1. Subsection (a) provides that the secured creditor has an affirmative obligation to record a satisfaction of a security instrument within 30 days after receiving full payment and/or performance of the obligations secured by that security instrument.

16

17

2. While section 203 imposes upon a secured creditor who fails to record a timely satisfaction of a security instrument both a civil penalty and liability for actual loss resulting from such failure, subsection (d) requires the landowner to provide the secured creditor with notice and an additional 30-day grace period in which to record a satisfaction before the landowner may enforce such liability against the secured creditor.

22

23

3. Subsection (d) does not prevent the landowner from communicating with the secured creditor, at any time, regarding the status of the obligation or whether the secured creditor has recorded a satisfaction of the security instrument. Subsection (d) provides only that the landowner may not send a notification sufficient to trigger the additional 30-day grace period (and the secured creditor's potential liability under Section 203) until more than 30 days have elapsed following full payment or performance of the secured obligations.

29

30

4. State laws currently provide a variety of mechanisms by which a secured creditor may comply with the obligation to satisfy a security instrument. For example, some states continue to permit the secured creditor to instruct the recording officer to enter a notation of satisfaction in the margin of the records. Subsection (b) permits the secured creditor to comply with its obligation to record a satisfaction by any means sufficient to do so under the law of the jurisdiction.

36

37

Unfortunately, state laws vary widely as to the content needed for a sufficient instrument of

1 satisfaction. This variation needlessly increases the cost for national lenders to comply with the
2 obligation to record mortgage satisfactions. Accordingly, subsection (c) contains a form
3 satisfaction document that, if completed by the secured creditor and submitted to the recording
4 officer with the appropriate recording fee, will be sufficient to comply with the secured creditor's
5 obligation to record a satisfaction.
6
7

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

9 (a) Except as otherwise provided in subsection (b), a secured creditor who must record a
10 satisfaction of a security instrument and fails to do so within the period specified in section
11 202(d) is liable to the landowner for:

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

14 ***ALTERNATIVE A***

15 (2) a civil penalty of \$1,000.

16 ***ALTERNATIVE B***

17 (2) a civil penalty of \$100 per day for each day following the expiration of the period
18 specified in section 202(d) until the secured creditor records a satisfaction of the security
19 instrument.

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

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

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

24 (3) was unable to record a satisfaction of the security instrument within the period
25 specified in section 202(d) because of the action or inaction of a person beyond its direct control.

Preliminary Comments

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

7
8 2. Subsection (a)(2) provides a civil penalty of \$1,000 for the secured creditor's failure to
9 comply with the requirements of the Act, which the landowner may recover in addition to any
10 damages recoverable under subsection (a)(1). This provision is patterned in part upon U.C.C.
11 Section 9-625(e)(4), which provides for a minimum statutory damage recovery whenever an
12 Article 9 secured party fails to provide a termination statement within a timely manner. Unlike
13 U.C.C. Section 9-625(e)(4), however, which applies only in consumer-goods transactions, the
14 provisions of this Section apply to all security instruments covering real property.

15
16 [Alternative Comment 2. Subsection (a)(2) provides a civil penalty for the secured creditor's
17 failure to comply with the requirements of the Act, which the landowner may recover in addition
18 to any damages recoverable under subsection (a)(1). This provision is somewhat similar to
19 U.C.C. Section 9-625(e)(4), which provides for a minimum statutory damage recovery whenever
20 an Article 9 secured party fails to provide a termination statement within a timely manner.
21 Unlike U.C.C. Section 9-625(e)(4), however, which applies only in consumer-goods transactions,
22 the provisions of this Section apply to all security instruments covering real property. Moreover,
23 subsection (a)(2) calculates this civil penalty on a per-day basis, so that the penalty will increase
24 for each day that the secured creditor fails to fulfill its obligation to record a timely satisfaction.]

25
26 3. Subsection (b) provides a secured creditor with a defense to liability if the secured
27 creditor has established reasonable procedures to ensure the timely recordation of satisfactions
28 and has complied with those procedures in good faith, but where recordation does not occur
29 because of the action or inaction of a third party beyond the control of the secured creditor. The
30 Act does not specify what procedures are "reasonable," but leaves the question to judicial
31 resolution.

32
33 Subsection (b) may be implicated where a secured creditor takes appropriate steps to record a
34 timely satisfaction but where recording does not occur because of transmittal problems beyond
35 the secured creditor's control. For example, suppose that First Bank holds a deed of trust on
36 Owner's land. Owner obtains a refinancing loan through Second Bank and uses the proceeds of
37 this loan to pay off the balance of the debt to First Bank. When First Bank fails to record a
38 satisfaction of the deed of trust within 30 days following the payoff, Owner gives notification to
39 First Bank in accordance with Section 202(d). Upon receiving this notification, First Bank
40 promptly executes a satisfaction and transmits it to the recorder of deeds for recording, via U.S.
41 mail. Because of error caused by a faulty postal zip code scanner, delivery of the package to the
42 recorder's office is delayed. By the time the package arrives at the recorder's office and the
43 satisfaction is recorded, the additional 30-day grace period has expired so that the recording is

1 untimely. Assuming that First Bank can demonstrate that its conduct complied with its own
2 reasonable internal procedures, Owner may not recover from First Bank.
3

4 Depending upon other state law, subsection (b) might be implicated where a secured creditor
5 takes appropriate steps to record a timely satisfaction but where recording does not occur because
6 the recording official wrongfully rejects the document. In most states, First Bank would be
7 protected from liability in this instance because its presentation of a correct satisfaction would
8 constitute a sufficient “recording” despite the recording official’s rejection — thereby fulfilling
9 its obligation to record a satisfaction. Even if not, First Bank could avoid liability by
10 demonstrating that it had complied with its own reasonable procedures and that it had no control
11 over the recorder’s wrongful rejection.
12

13 4. In many cases, secured creditors will delegate responsibility for servicing mortgage loans,
14 including the responsibility to record satisfactions of security instruments. In these cases, the Act
15 treats the servicer as a “secured creditor,” and the landowner thus could hold the servicer liable
16 under the terms of the Act. Such delegations of authority do not automatically relieve the
17 delegating secured creditor of its obligations under the Act. Nevertheless, a delegating secured
18 creditor may be able to plead and prove its compliance with reasonable procedures as a defense
19 to liability, where the secured creditor had issued timely directions to its servicer to record a
20 satisfaction and the servicer failed to do so.
21

22 5. Section 203(a) imposes liability upon a secured creditor only if the creditor has failed to
23 record a satisfaction in a timely fashion following full performance of the secured obligations. In
24 the event that a landowner tendered less than full performance, the secured creditor has no
25 obligation to the landowner to record a satisfaction of the security instrument, and a notification
26 demanding that the secured creditor execute and record a satisfaction will not commence the
27 running of the additional 30-day grace period specified in Section 202(d). However, in such a
28 circumstance, the mere existence of a dispute does not automatically toll the 30-day grace period;
29 the secured creditor bears the risk that a court later concludes that the landowner did in fact
30 tender full performance.
31

32 For example, suppose that Owner tenders to First Bank what Owner believes to be full
33 performance of a debt secured by a deed of trust. When First Bank does not record a satisfaction
34 of the deed of trust within 30 days of this payment, Owner gives notification to First Bank
35 pursuant to Section 202(d) demanding that First Bank record a timely satisfaction. First Bank
36 responds that it is not obligated to record a satisfaction because Owner’s final payment did not
37 satisfy the full balance of the debt. After an additional 30 days has elapsed, Owner sues First
38 Bank, and the court concludes that the Owner in fact tendered an amount appropriate to satisfy
39 the balance of the debt. In this example, the court should impose upon First Bank liability for
40 both the \$1,000 civil penalty and any actual loss Owner suffered on account of First Bank’s
41 failure to record the satisfaction on a timely basis.
42
43

1 jurisdiction's recording act. Thus, in the above example, suppose that after Bank had recorded
2 the satisfaction with respect to Parcel Y, the owner of Parcel Y sold that parcel to Buyer for
3 value, and that Buyer neither knew nor had reason to know that Bank's recorded satisfaction was
4 erroneous. In a jurisdiction with a notice recording statute, Buyer would take Parcel Y free and
5 clear of Bank's mortgage, even if the Bank attempts to reinstate its lien by rescinding the
6 erroneous satisfaction. Subsection (a) confirms this result.

7
8 Accordingly, a secured creditor should take extreme care in recording a rescission of
9 satisfaction where third parties have acquired intervening interests. In the above example, if the
10 Bank recorded a rescission of the satisfaction, the Bank's conduct would be wrongful and would
11 subject the Bank to liability under subsection (b).

12
13 Generally speaking, subsection (a) will operate to protect the priority of claims of third
14 parties who relied upon an erroneously recorded satisfaction, such as buyers and mortgagees.
15 Most state recording statutes do not protect involuntary or nonreliance creditors, such as the
16 holders of judgment liens. In these states, under subsection (a), the rescission of an erroneously
17 recorded satisfaction would reinstate the lien created by the security instrument, and this
18 reinstated lien would take priority over the claim of an intervening judgment lien creditor.
19 However, in those jurisdictions where the recording act protects judgment lien creditors, an
20 intervening judgment lien will have priority over the secured creditor's reinstated lien.

21
22 2. Subsection (b) authorizes a person injured by the secured creditor's wrongful rescission
23 of satisfaction a security instrument to recover damages in the amount of the loss caused by the
24 secured creditor's conduct. The exercise of this remedy is subject to the normal rules of pleading
25 and proof. In addition, subsection (b) provides a civil penalty of \$1,000 for the secured creditor's
26 wrongful rescission of a satisfaction, which an injured person may recover in addition to any
27 actual damages.

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ARTICLE 3

SATISFACTION OF SECURITY INSTRUMENT BY AFFIDAVIT

**SECTION 301. AUTHORIZATION TO RECORD AFFIDAVIT OF SATISFACTION
FOR RESIDENTIAL REAL PROPERTY.**

(a) If a secured creditor has not recorded a satisfaction of a security instrument that creates a security interest in residential real property within the period specified in section 202(a), 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. This notification must include the following information:

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

(2) the 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 payment of the balance of the obligations secured by the security instrument as reflected in a payoff statement or has otherwise received full performance of the obligations secured by the security instrument;

(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

1 satisfaction unless the secured creditor, within 30 days following the date of the notification,
2 either records a satisfaction of the security instrument or gives to the closing agent a notification
3 stating that the secured creditor is not obligated to record a satisfaction of that security
4 instrument.

5 (c) The following form of notification, when completed, satisfies the requirements of
6 subsection (a):

7 “(Date of Notification)

8 _____

9

10 **NOTIFICATION OF INTENT TO EXECUTE AND RECORD**
11 **AFFIDAVIT OF SATISFACTION**
12

13

14 _____
(Name and Address of Secured Creditor)

15

Notification is hereby given to you as follows:

16

1. This notification concerns the security instrument described as follows:

17

Title of Security Instrument: _____

18

Original Parties to Security Instrument: _____

19

20

County and State of Recording: _____

21

Recording Data for Security Instrument: _____

22

2. The undersigned possesses satisfactory evidence that you have received

23

payment of the balance of the obligations secured by the security instrument

1 described above (the “security instrument”), as specified in a payoff statement, or
2 otherwise have received full performance of the obligations secured by the
3 security instrument.

4 3. To the knowledge of the undersigned, you have not yet recorded a satisfaction
5 of the security instrument.

6 4. The undersigned will execute and record an affidavit of satisfaction of the
7 security instrument unless, within 30 days from the date this notification is given,
8 either you have recorded a satisfaction of the security instrument or the
9 undersigned has received a notification stating that you are not obligated to record
10 a satisfaction of the security instrument.

11

12 _____
13 (Signature of closing agent)

14

15 _____”
16 (Mailing address of closing agent)

17

18 (d) If, within 30 days after the closing agent gives a notification complying with
19 subsection (b), the secured creditor fails to record a satisfaction of the security instrument and the
20 closing agent has not received notification that the secured creditor is not obligated to record a
21 satisfaction of the security instrument, the closing agent may execute an affidavit of satisfaction
22 complying with the requirements of Section 302 and record the affidavit in the real property
23 records of the county where the real property described in the security instrument is located.

1 **Preliminary Comments**

2
3 1. Article 3 of the Act establishes a procedure that allows a landowner who has made full
4 performance of its mortgage obligation to clear title via affidavit if the secured creditor has failed
5 to record a satisfaction in a timely fashion after notification and an opportunity to cure. The
6 provisions of Article 3, however, apply only to security instruments that create security interests
7 in residential real property.
8

9 2. Section 301 sets forth a timetable that should permit a diligent secured creditor sufficient
10 time in which to record a satisfaction and avoid the filing of an affidavit of satisfaction. If the
11 secured creditor has not recorded a satisfaction within 30 days following full performance of the
12 secured obligations, a closing agent (Section 102(2)) may give notification to the secured creditor
13 instructing the secured creditor to record a satisfaction of the security instrument or provide an
14 objection within the following 30 days. This notification triggers an additional 30-day grace
15 period in which the secured creditor can record a satisfaction before the closing agent can
16 execute and record an affidavit of satisfaction. Thus, in all instances the secured creditor has a
17 minimum of 60 days in which to record the satisfaction and avoid the filing of an affidavit of
18 satisfaction.
19

20 3. Subsection (4) provides that a closing agent may execute and record an affidavit of
21 satisfaction, so long as it complies with the requirements of Section 302, if the secured creditor
22 has neither recorded a satisfaction of the security instrument nor raised a timely objection to
23 satisfaction. Because the closing agent acts in this instance pursuant to the authority of the Act, it
24 is irrelevant whether the closing agent is named as a party in the security instrument or otherwise
25 has contractual authority to execute and record a satisfaction.
26

27 If the secured creditor properly objects to satisfaction within the 30-day period, the closing
28 agent may not execute and record an affidavit of satisfaction. However, while the secured
29 creditor's objection may prevent the closing agent from using the Act's self-help satisfaction
30 procedure, it does not necessarily shield the secured creditor from potential liability under
31 Section 203. If subsequent litigation establishes that the secured creditor had received full
32 performance and was therefore obligated to record a timely satisfaction, but failed to do so, the
33 secured creditor will have violated its obligations under Section 201 and the landowner may
34 recover a civil penalty and actual damages under Section 203.
35
36

37 **SECTION 302. AFFIDAVIT OF SATISFACTION.**

38 (a) An affidavit of satisfaction must:

39 (1) identify the original parties to the security instrument, the landowner, the secured
40 creditor, and the recording data for the security instrument;

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

5 (3) state that the secured creditor provided a payoff statement that identified the
6 balance needed to satisfy the obligations secured by the security instrument or that confirmed that
7 the balance of the obligations was zero;

8 (4) state that the secured creditor received payment of the balance specified in the
9 payoff statement;

10 (5) state that the person executing the affidavit gave notification to the secured
11 creditor of its intention to execute and record an affidavit of satisfaction;

12 (6) state that more than 30 days have elapsed since notification of intent to execute
13 and record a notice of satisfaction was given to the secured creditor, the secured creditor has not
14 recorded a satisfaction of the security instrument, and the person executing the affidavit has not
15 received a notification that the secured creditor is not obligated to record a satisfaction of the
16 security instrument; and

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

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

22 “ _____

1 (Date of Affidavit)

2

3

AFFIDAVIT OF SATISFACTION

4

The undersigned hereby states as follows:

5

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

6

authorized and licensed to transact the business of insuring titles to interests in

7

real property] [an attorney in good standing and licensed to practice law] in this

8

state.

9

2. I am executing this Affidavit of Satisfaction to evidence satisfaction of the

10

obligations secured by land covered by the following security instrument (the

11

“security instrument”), currently held by _____ (the “secured

12

creditor”):

13

Title of Security Instrument: _____

14

Original Parties to Security Instrument: _____

15

16

County and State of Recording: _____

17

Recording Data for Security Instrument: _____

18

3. I possess satisfactory evidence that the secured creditor has received payment

19

of the balance of the obligations secured by the security instrument, as specified in

20

a payoff statement.

21

4. On _____ [Date of Notification of Intent to Execute and Record Affidavit of

22

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.
3 More than 30 days have elapsed since that notification, and the secured creditor
4 has neither recorded a satisfaction of the security instrument nor given notification
5 that it is not obligated to record a satisfaction of the security instrument.

6

7

8 _____
(Signature of Closing Agent)

9

10

_____”

11

(Notarization)

12

13

Preliminary Comments

14

15

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

19

20

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

22

23

24

SECTION 303. EFFECT OF AFFIDAVIT OF SATISFACTION.

25

(a) An affidavit of satisfaction complying with section 302(a) is evidence of the facts
26 contained in it and must be recorded in the [recording office] in the county where the real

27

property described in the security instrument is located. A recorded affidavit operates as a

28

satisfaction of the security instrument described in the affidavit in favor of a good faith purchaser

29

for value of an interest in the real property described in the security instrument.

1 (b) Recording of an affidavit of satisfaction does not extinguish or otherwise affect the
2 liability of any person liable for repayment of the obligations secured by the security instrument.

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 in compliance 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 (a) establishes that the affidavit of satisfaction constitutes evidence of the
13 facts stated in the affidavit. If those facts are inaccurate, the secured creditor would be in a
14 position to enforce the security instrument despite the affidavit. However, if a good faith
15 purchaser for value has acquired an interest in the affected real property, subsection (a) makes
16 clear that in favor of such a purchaser, the affidavit is conclusive evidence of satisfaction of the
17 security instrument. Such a purchaser may include either a purchaser of a possessory estate in
18 the affected real estate, the purchaser's mortgage lender, or a refinancing lender.

19
20 3. Subsection (b) makes clear that the affidavit of satisfaction affects only the title to the
21 land described in the security instrument. The affidavit has no impact whatsoever on the status
22 of the obligation itself. Whether the obligation has in fact been fully performed is governed by
23 law other than this Act.

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

Preliminary Comments

1
2
3 1. If a closing agent wrongly executes and records an affidavit of satisfaction, the secured
4 creditor may effectively lose the ability to enforce the security instrument as a means to facilitate
5 its collection of the remaining balance of the obligation. In such a case, Section 304 permits the
6 affected secured creditor to recover damages from the closing agent, subject to the usual rules of
7 pleading and proof. To the extent the landowner's equity in the real estate exceeded the
8 remaining unpaid balance of the obligation, the affected secured creditor would be able to
9 recover (at a minimum) the remaining unpaid balance of the obligation.
10

11 2. Under the criminal law of some states, the filing of a knowingly false affidavit or
12 certification may constitute perjury or a distinct criminal offense. This section makes clear that
13 the Act does not constrain the ability of public officials to prosecute such conduct under criminal
14 law.

1 **ARTICLE 4**

2 **AUTHORIZED SATISFACTION BY CLOSING AGENT**

3 **SECTION 401. ISSUANCE AND EFFECT OF SATISFACTION STATEMENT FOR**
4 **RESIDENTIAL REAL PROPERTY.**

5
6
7
8 (a) In this Article, “satisfaction statement” means a payoff statement in which the
9 secured creditor authorizes a closing agent, on behalf of the landowner, to execute and record a
10 satisfaction of a security instrument that creates a security interest in residential real property
11 upon payment of the amount specified in that statement.

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

15 (c) Notwithstanding law other than this [act] to the contrary, a secured creditor may
16 impose a fee of [\$20] for providing a satisfaction statement.

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

21 (e) A secured creditor’s acceptance of full performance pursuant to a satisfaction
22 statement is a defense to the secured creditor’s liability under Section 203.

23 **Preliminary Comments**

24
25 Article 2 of the Act presumptively places the burden upon a secured creditor to execute and
26 record a satisfaction of a security instrument following full payment or performance of the

1 secured obligations. As set forth in Section 203, a secured creditor who fails to execute and
2 record that satisfaction may be subject to a civil penalty of \$1,000, plus liability for any actual
3 loss sustained by the landowner as a consequence of the secured creditor’s failure.
4

5 Article 4 of the Act creates a mechanism — the “satisfaction statement” — by which the
6 secured creditor can depute the closing agent, upon full payment of the debt, to execute and
7 record a satisfaction of the security instrument in the name of the secured party. If the secured
8 creditor issues a satisfaction statement and contemporaneously or subsequently accepts full
9 payment as identified in that satisfaction statement, then the closing agent can execute and record
10 a certificate of satisfaction of the security instrument (Section 402) which, upon recording, shall
11 operate as a satisfaction of the security instrument (Section 403).
12

13 The secured creditor need not issue a satisfaction statement, even if the landowner or its
14 closing agent so requests, unless the security instrument by its terms obligates the secured
15 creditor to do so. Instead, the secured creditor may simply issue a traditional payoff statement
16 (Section 102(8), with the secured creditor remaining responsible to record a satisfaction
17 following full performance. However, by executing a satisfaction statement, the secured creditor
18 can shift to the closing agent the practical burden associated with recording a satisfaction of the
19 security instrument. If the secured creditor accepts full payment of the secured obligations as
20 identified in that satisfaction statement, then the secured creditor cannot later be held liable under
21 Section 203 if the closing agent thereafter fails to satisfy the mortgage in a timely fashion.
22
23

24 **SECTION 402. CERTIFICATE OF SATISFACTION.**

25 (a) A certificate of satisfaction must:

26 (1) identify the original parties to the security instrument, the landowner, the secured
27 creditor, and the recording data for the security instrument;

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

32 (3) state that the secured creditor provided a satisfaction statement that authorized the
33 person executing the certificate to execute and record a satisfaction of the security instrument

1 following payment of the sums identified in the satisfaction statement;

2 (4) state that the person executing the certificate has satisfactory evidence that the
3 secured creditor has received payment of the sums identified in the satisfaction statement; and

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

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

8 _____
9 (Date of Certificate)
10

11 **CERTIFICATE OF SATISFACTION**

12 The undersigned hereby states as follows:

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

17 2. I am executing this Certificate of Satisfaction to evidence satisfaction of the
18 obligations secured by land covered by the following security instrument (the
19 “Security Instrument”), presently held by _____ (the “Secured
20 Creditor”):

21 Title of Security Instrument: _____

22 Original Parties to Security Instrument: _____

23 _____

1 County and State of Recording: _____

2 Recording Data for Security Instrument: _____

3 3. I received from the Secured Creditor a satisfaction statement regarding the
4 obligations described in the Security Instrument. This statement authorized me to
5 execute and record a satisfaction of the Security Instrument following payment of
6 the balance of the obligation as specified in that satisfaction statement.

7 4. I possess satisfactory evidence that the Secured Creditor has received
8 payment of the amount specified in that satisfaction statement.

9

10 _____
11 (Signature of Closing Agent)

12

13 _____”
14 (Notarization)

15

16 Preliminary Comments

17

18 1. Subsection (a) sets forth the information necessary for a sufficient certificate of
19 satisfaction. A certificate that lacks any of the information required by subsection (a) does not
20 operate as a satisfaction of the security instrument under Section 403, even if it is accepted for
21 recording.

22

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

25

26

27 SECTION 403. EFFECT OF CERTIFICATE OF SATISFACTION.

28 (a) A certificate of satisfaction complying with Section 402 must be recorded in the

29 [recording office] in the county where the real property described in the security instrument is

1 located. A recorded certificate operates as a satisfaction of the security instrument described in
2 the certificate in favor of a good faith purchaser for value of the real property described in the
3 security instrument.

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

6 **Preliminary Comments**

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

14
15 2. Subsection (a) establishes that the certificate of satisfaction constitutes evidence of the
16 facts stated in the certificate. If those facts are inaccurate — in other words, if the obligor did not
17 make payment of the obligations in accordance with the terms of the satisfaction statement, or if
18 the secured creditor did not issue a satisfaction statement deputizing the closing agent to record a
19 certificate of satisfaction — then the secured creditor would be in a position to enforce the
20 security instrument despite the certificate. However, if a good faith purchaser for value has
21 acquired an interest in the affected real property, subsection (a) makes clear that in favor of such
22 a purchaser, the recorded certificate is conclusive evidence of satisfaction of the security
23 instrument. Such a purchaser may include either a purchaser of a possessory estate in the
24 affected real estate, the purchaser’s mortgage lender, or a refinancing lender.

25
26 3. Subsection (b) makes clear that the certificate of satisfaction affects only the title to the
27 land described in the security instrument. The certificate has no impact whatsoever on the status
28 of the obligation itself. Whether the obligation has in fact been fully performed is governed by
29 law other than this Act.

30
31
32 **SECTION 404. LIABILITY OF CLOSING AGENT.** [A closing agent that erroneously
33 records a certificate of satisfaction is liable to the secured creditor for any loss sustained due to
34 the recording of the certificate, including reasonable attorneys’ fees and court costs.] If a closing
35 agent records a certificate of satisfaction knowing that statements contained in the certificate are

1 false, the closing agent is liable to the secured creditor for treble the loss sustained due to the
2 recording of the certificate, including reasonable attorneys' fees and court costs, and is subject to
3 other applicable sanctions for such conduct under [cite statutes for perjury or similar criminal
4 offense].

5 **Preliminary Comments**

6
7 1. If a closing agent wrongly executes and records a certificate of satisfaction, the secured
8 creditor may effectively lose the ability to enforce the security instrument as a means to facilitate
9 its collection of the remaining balance of the obligation. In such a case, Section 404 permits the
10 affected secured creditor to recover damages from the closing agent, subject to the usual rules of
11 pleading and proof. To the extent the landowner's equity in the real estate exceeded the
12 remaining unpaid balance of the obligation, the affected secured creditor would be able to
13 recover (at a minimum) the remaining unpaid balance of the obligation.

14
15 2. Under the criminal law of some states, the filing of a knowingly false affidavit or
16 certification may constitute perjury or a distinct criminal offense. This section makes clear that
17 the Act does not constrain the ability of public officials to prosecute such conduct under criminal
18 law.

1
2
3
4
5
6

ARTICLE 5

MISCELLANEOUS PROVISIONS

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

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.]