

D R A F T

FOR DISCUSSION ONLY

# UNIFORM MORTGAGE SATISFACTION ACT

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NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM LAWS

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**For Drafting Committee Meeting May 14-16, 2004**

# UNIFORM MORTGAGE SATISFACTION ACT

*WITH PREFATORY NOTE AND PRELIMINARY COMMENTS*

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ON UNIFORM LAWS

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April 8, 2004

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# UNIFORM MORTGAGE SATISFACTION ACT

## Prefatory Note

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

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

Today, changes in the lending, title insurance, and closing services industries have complicated the payoff, discharge, and release of mortgage instruments. Most originating mortgage lenders no longer retain mortgage loans in their portfolio, as local thrift institutions traditionally did. Instead, most originating lenders transfer mortgage loans on the secondary market, thereby facilitating the eventual securitization of mortgage loans and the issuance of mortgage-backed securities. When the originating lender sells a mortgage loan, it will typically transfer the loan documents to the new assignee or to a loan servicer (the party who collects loan payments from mortgagors on behalf of the party holding the mortgage debt); this assignee or servicer may be located hundreds or thousands of miles from the mortgagor and the mortgaged land. In addition, the title insurance industry has experienced significant consolidation, with the emergence of large national title insurance companies that rely upon independent agents or other intermediaries to perform a wide variety of functions related to the closing of real estate transactions.

This separation of mortgagor, mortgagee, title insurer, and closing agent has greatly

1 influenced customary practices regarding real estate closings, including the preparation and  
2 delivery of mortgage satisfaction documents for recording. Today, mortgagees typically do not  
3 produce a recordable satisfaction contemporaneously with the closing of a sale or refinancing.  
4 The geographical separation of the mortgagor, mortgagee, title insurer, and closing agent has  
5 contributed to an unfamiliarity or lack of trust among the persons handling a sale or refinancing  
6 transaction — making it less likely that the mortgagee would execute and deliver a release in  
7 anticipation of expected closing. Further, this geographical separation can result in delays in  
8 communication that may serve to extend the practical “gap” between the closing and the  
9 clearance of record title. This “gap” — which exists even when all persons in the transaction are  
10 acting in good faith — can sometimes be further exacerbated by poor practices or a failure to  
11 follow proper procedures.

12  
13 Furthermore, obtaining the necessary satisfaction documentation is often complicated by a  
14 mortgagor’s uncertainty about the identity or location of the mortgagee. Over the past two  
15 decades, lenders have routinely merged or consolidated operations; similar consolidation has  
16 occurred among title insurers. By virtue of merger or consolidation, a residential mortgage  
17 previously held by a local lender in State A may now be held by a regional or national lender  
18 based in State B. Further, if the loan is serviced by a third party, the mortgagor may be unaware  
19 of the identity or location of the current holder of the mortgage. Moreover, transfer of mortgage  
20 servicing sometimes occurs. If the respective holders of a mortgage loan have transferred  
21 servicing responsibilities one or more times during a loan’s term, this may increase the difficulty  
22 in determining whether the appropriate person has already taken the steps necessary to prepare  
23 and record a satisfaction (which may result in unnecessary duplication of satisfaction requests).  
24 Finally, there is some concern that some mortgage lenders or closing agents, after having already  
25 been paid or having completed the disbursement functions related to a closing, may feel a  
26 diminished compunction to act quickly to provide prompt service (*i.e.*, preparing and recording a  
27 satisfaction) for a now-“former” customer. These problems create additional “bureaucratic”  
28 delay for the mortgagor seeking a satisfaction and a clear record title.

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

1 Likewise, the Buyer in this transaction faces a similar risk with respect to the satisfaction of  
2 Lender One's mortgage. For example, if a closing agent misappropriates the closing proceeds  
3 and does not use them to satisfy Lender One's mortgage, Lender One will not release its lien, and  
4 the Buyer's title will thereafter be subject to the liens of both mortgages. As a result, a prudent  
5 Buyer should also obtain an owner's policy of title insurance that provides affirmative coverage  
6 against the risk that the Lender One mortgage is not legally satisfied. Unfortunately, not all  
7 buyers obtain an owner's policy of title insurance, or appreciate the risks sufficiently to  
8 appreciate the need for title insurance protection against this risk.  
9

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

11  
12  
13 At present, all 50 states have promulgated legislation that ostensibly requires a mortgagee to  
14 act promptly to provide title-clearing documentation following repayment of the mortgage debt.  
15 Because even the most conscientious mortgagee will have some delay in responding to  
16 mortgagor requests, existing state statutes typically allow a "grace period" in which to record a  
17 satisfaction. Unfortunately, existing state laws vary widely from state to state. Many impose  
18 time deadlines (in some cases as few as 7-10 days) that push the bounds of practicality as applied  
19 to the modern mortgage loan. Others permit grace periods (such as 90 days) that far exceed the  
20 time during which a reasonably conscientious mortgagee could act to record a satisfaction.  
21

22 In addition, all 50 states permit an injured party to recover actual loss caused by the  
23 mortgagee's failure to record a timely satisfaction, and most (but not all) states go further and  
24 impose a statutory civil penalty upon a noncompliant mortgagee. Theoretically, these sanctions  
25 should provide an economic incentive for the mortgagee to act promptly. Unfortunately, state  
26 laws vary dramatically, ranging from a proverbial "slap on the wrist" that provides no real  
27 economic incentive to the mortgagee (*e.g.*, fines as low as \$10 to \$25) to a draconian penalty that  
28 would bestow a significant windfall upon the typical aggrieved party (*e.g.*, in South Carolina, a  
29 penalty equal to the lower of one-half of the mortgage debt or \$25,000).  
30

31 State laws also differ substantially with respect to whether formal notification constitutes a  
32 precondition to the mortgagee's liability for actual damages and/or statutory damages. In some  
33 states, the mortgagee is liable only if it failed to record a timely satisfaction following a formal  
34 demand by the owner of the mortgaged land. In others, the mortgagor need not make any  
35 demand in order to trigger the mortgagee's potential liability.  
36

37 This lack of uniformity is unfortunate, as it encourages national mortgage lenders to treat  
38 otherwise similarly-situated mortgagors differently. Perhaps not surprisingly, some national  
39 mortgage lenders act to "prioritize" the process of providing satisfactions on a state-by-state  
40 basis, depending upon a state's grace period and applicable sanctions for noncompliance. As a  
41 result, these lenders tend to provide services first to customers in states with the most punitive  
42 statutes. In turn, this may prompt states to engage in a "race to the bottom" to increase the  
43 minimum sanction, in order to ensure preferential treatment of their own citizens. In fact, since

1 1989, at least eleven states have increased their minimum statutory damage for untimely  
2 satisfactions; no states have reduced it during that same period.

3  
4 Another important area of state nonuniformity concerns the content and filing requirements  
5 for mortgage satisfaction documents. A national mortgage lender may have to generate  
6 satisfaction documents to comply with hundreds of different state and local requirements, both as  
7 to content and technical requirements. This nonuniformity provides a stark contrast to Article 9  
8 of the Uniform Commercial Code, under which there exists a simple standard national form for a  
9 termination statement. Furthermore, many state mortgage satisfaction laws require the  
10 mortgagee to recite a great deal of information in the satisfaction document (such as, for  
11 example, a legal description of the mortgaged land) that is otherwise not practically necessary in  
12 order for a satisfaction document to serve a title-clearing function. Thus, post-closing delays in  
13 recording satisfactions often occur because a mortgagee has executed a satisfaction document  
14 and submitted it for recording on a timely basis, only to have the recorder of deeds reject the  
15 document for noncompliance with content or technical requirements that do not actually advance  
16 the notice function served by the recording system.

17  
18 The Act attempts to ensure that mortgagees and their servicers have an appropriate incentive  
19 to act promptly to issue the appropriate documents needed to assist a landowner in clearing title  
20 to mortgaged real estate. At the same time, however, the Act recognizes that given the structure  
21 of today's mortgage market, conscientious mortgagees and their servicers need a realistic period  
22 of time to confirm the full payment of the mortgage debt (*e.g.*, clearance of payoff funds), to  
23 prepare a sufficient satisfaction, and to submit it to the appropriate recorder's office.

24  
25 The Act takes the view that a mortgage lender should not face liability for failure to record a  
26 timely satisfaction without first receiving notice and an opportunity to cure its failure (or to  
27 demonstrate its attempted compliance and agree to issue a duplicate satisfaction or authorize an  
28 appropriate person to do so). As a result, the Act provides that if a satisfaction of a mortgage  
29 does not appear of record within 30 days after the mortgagee has received payment of the secured  
30 obligation, the owner of the mortgaged land may make written demand upon the mortgagee. If  
31 the mortgagee fails to respond to that demand by either issuing a satisfaction or authorizing an  
32 appropriate person to do so within an additional 30 days thereafter, the Act permits the owner of  
33 the mortgaged land to recover statutory damages in addition to any actual loss incurred as a result  
34 of the mortgagee's failure.

35  
36 Furthermore, in order to minimize the potential for satisfaction documents to be rejected  
37 because they lack content that is otherwise unimportant, the Act provides a form of satisfaction  
38 document that contains only the minimal information necessary for a satisfaction to be  
39 appropriately indexed (and thereby serve to satisfy the notice function of the recording system).  
40 The Act requires that a recording officer cannot reject a submitted satisfaction because it lacks  
41 information beyond that specified by the Act's simple form.

## The Payoff Statement

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

A mortgagor typically does not have difficulty obtaining a prompt payoff statement from a conscientious mortgage lender or its servicer. Nevertheless, state statutes do vary somewhat with respect to whether the lender has an affirmative duty to provide a payoff statement, the time period in which the lender must respond to such a request (periods range from 5 days in some states to up to 10 or more in others), the persons entitled to make such a request, the form or content of a payoff statement, and the consequences for a mortgage lender that fails to respond in a timely manner. With the increasing development of the national mortgage market, the Act attempts to promote uniformity by providing that a mortgagee has an affirmative duty to provide a payoff statement within 10 days of a proper request. The Act specifies minimal content for a payoff statement to assure that the recipient can use the statement to determine the amount of each type of fee or charge that comprised the payoff amount. The Act also seeks to clarify the persons that may request a payoff statement as well as the mortgagee’s ability to charge a fee for the issuance or delivery of a payoff statement.

*Reliability.* If a payoff statement is accurate, payment of the stated amount legally satisfies the mortgage debt — which in turn triggers the mortgagee’s obligation to issue a satisfaction of the mortgage. If the payoff statement is incorrect, however, the effect of the mortgagor’s payment is less clear. As a matter of law, the mortgagor generally must satisfy the full balance of the secured obligation in order to extinguish the mortgage. If the amount specified in the payoff statement was too low, the mortgagor’s payment would not satisfy the entire mortgage obligation.

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



1 Consistent with this well-established principle, the Act provides that a mortgagee that sends a  
2 payoff statement that contains an erroneous payoff amount is precluded from denying the  
3 accuracy of the payoff amount as against any person who has reasonably and detrimentally relied  
4 upon the erroneous payoff amount.  
5

6 In some circumstances, doubt about the reasonableness of a person's reliance on a payoff  
7 statement may result from language in the payoff statement that attempts to qualify the  
8 statement's reliability. For example, a payoff statement may state that it is subject to being  
9 corrected by the mortgagee for a specified period of time (which may extend beyond the  
10 scheduled closing date of a sale or refinancing transaction). The Act provides that a mortgage  
11 lender may not qualify the accuracy of a payoff amount or state that it is subject to change before  
12 the payoff date unless the payoff statement provides information sufficient to permit the recipient  
13 to request and obtain, at no charge, an updated payoff amount during normal business hours on  
14 the payoff date or the immediately preceding business day. If the mortgage lender issues an  
15 updated payoff amount which turns out to be incorrect, the lender is estopped from enforcing the  
16 mortgage against a third person who reasonably and detrimentally relies upon the accuracy of the  
17 updated payoff amount.  
18

### 19 **"Self-Help" Satisfaction**

20

21 While each state has enacted legislation obligating mortgage lenders to record timely  
22 mortgage satisfactions, not all states have provided effective remedial mechanisms to permit the  
23 owner of the land to clear its title if the mortgagee has failed to respond to a proper request.  
24 When title to real estate remains clouded by an unsatisfied mortgage, all states expressly or  
25 implicitly authorize the aggrieved party to bring a judicial action against the mortgagee to obtain  
26 an order or declaration quieting title. Unfortunately, this remedy can be cumbersome and time-  
27 consuming, given the procedural delays and docket congestion attendant to civil litigation in  
28 many jurisdictions.  
29

30 An increasing number of states have enacted statutes authorizing a nonjudicial or "self-help"  
31 satisfaction procedure. Under these state procedures, certain parties that facilitated the closing of  
32 a sale or refinancing transaction can take steps to clear the title if, for whatever reason, a  
33 satisfaction document does not appear of record in a timely fashion. Typically, these statutes  
34 authorize the designated agent to execute and record an affidavit demonstrating that the  
35 mortgagee has received payment of the balance of the obligations as specified in a payoff  
36 statement, but that no satisfaction appears of record. Under these statutes, the designated agent  
37 cannot record this affidavit without first giving the mortgagee notice and an opportunity to  
38 respond (either by recording a satisfaction if the secured obligation has been paid or, if not, by  
39 objecting that the secured obligation remains unsatisfied). The recording of this affidavit then  
40 constitutes the statutory equivalent of a satisfaction of the mortgage.  
41

42 Slightly more than one-half of the states have adopted a "self-help" procedure, but state  
43 statutes vary widely in both scope and specifics. For example, some statutes limit the availability

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

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

19 Second, the structure of the existing “self-help” statutes renders them of little value in the  
20 more problematic case in which the mortgage was paid off at a previous date. For example:  
21

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

1 Ann. tit. 27, § 464a(a). Where the secured creditor who received payment is now defunct and  
2 a closing agent cannot unmistakably identify the financial institution that succeeded to the  
3 rights of the defunct secured creditor, compliance with such stringent affidavit requirements  
4 becomes impossible.  
5

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

19 In the event that a satisfaction agent wrongly records an affidavit of satisfaction, the  
20 satisfaction agent is liable to the mortgagee for the actual loss caused by the recording of the  
21 affidavit. For this reason, the Act limits the class of “satisfaction agents” to licensed attorneys  
22 and title insurers, against who an injured mortgagee would have a reasonable prospect of  
23 recovery in the event an affidavit of satisfaction was improper. Nevertheless, if the satisfaction  
24 agent records a satisfaction in reasonable reliance upon evidence of payment of the payoff  
25 amount as specified in a reliable payoff statement, the mortgagee would be estopped to recover  
26 from the satisfaction agent under the Act.  
27  
28

1                                   **UNIFORM MORTGAGE SATISFACTION ACT**

2                                                           **ARTICLE 1**

3                                   **DEFINITIONS AND GENERAL PROVISIONS**

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

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

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

13                   (2) “Day” means calendar day.

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

16                   (4) “Entitled person” means the landowner or other person liable for payment or  
17 performance of the obligation secured by the real property described in a security instrument.

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

20                   (6) “Landowner” means a person that owns the right of redemption prior to sale in the  
21 real property described in a security instrument.

22                   (7) “Notification” means a document containing information required under this [act]

1 and signed by the person required to provide the information.

2 (8) "Organization" means a person other than an individual.

3 (9) "Payoff amount" means the sum necessary in order to satisfy a secured obligation.

4 (10) "Payoff statement" means a document containing the information specified in  
5 Section 201(c).

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

9 (12) "Recording data" means the date and [book and page number] [document number]  
10 that indicate where a document is recorded in the appropriate governmental office under [the  
11 recording act of this state].

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

15 (14) "Secured obligation" means an obligation the payment or performance of which is  
16 secured by a security interest.

17 (15) "Security instrument" means an agreement, however denominated, that creates or  
18 provides for a security interest and whether or not it also creates or provides for a lien on  
19 personal property.

20 (16) "Security interest" means an interest in real property located in this state, created by  
21 a security instrument, securing payment or performance of an obligation.

22 (17) "Sign" means, with present intent to adopt or accept a document:

1 (A) to execute or adopt a tangible symbol; or

2 (B) to attach to or logically associate with the document an electronic sound,  
3 symbol, or process.

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

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

## 10 Preliminary Comments

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

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

27  
28 1. “Address for notification.” Whenever the Act requires a person to give notification to  
29 another person — *e.g.*, when a landowner must give notification and opportunity to cure to a  
30 secured creditor who has failed to record a timely satisfaction under Section 203(b) — the  
31 notification is given at the intended recipient’s address for notification. This address is the most  
32 recent address, for the purpose for which notification is given, as provided in a document by the  
33 intended recipient of the notification to the person giving the notification. This definition reflects  
34 the business practices of mortgage lenders, who sometimes specify different addresses for

1 notification depending upon the purpose of the notification. For example, a lender may require  
2 that requests for payoff statements be directed to one address (e.g., the address of the lender's  
3 loan servicer), while other requests for information or general legal notices might be directed to a  
4 different address. Subsection (1) thus recognizes that the proper address for notification may  
5 vary depending upon the purpose of the particular notification.  
6

7 In any event, if the person giving the notification has reason to know of a more accurate  
8 address, then the term means that address.  
9

10 2. "Day." The definition of "day" is identical to that used in Section 102(3) of the Uniform  
11 Nonjudicial Foreclosure Act. Days must be counted to determine the expiration of the various  
12 grace periods prescribed by the Act. All days including Saturdays, Sundays, and holidays are  
13 counted. Nevertheless, Section 104 provides that if the final day for giving a required notification  
14 would fall on a Saturday, Sunday, or legal holiday, that notification may properly be given on the  
15 next weekday that is not a legal holiday.  
16

17 3. "Document." The definition of "document" is media-neutral and is consistent with the  
18 definition of the term "record" as used in Section 2(7) of the proposed Uniform Real Property  
19 Electronic Recordation Act. Because this Act uses the term "record" in its customary fashion  
20 under real estate law — *i.e.*, as a verb to describe the act of filing an instrument of conveyance  
21 with the recorder's office — the Act does not use the term "record" as a noun, and instead uses  
22 the term "document."  
23

24 4. "Entitled person." Section 201 of the Act permits an "entitled person" to request a payoff  
25 statement specifying the payment necessary to satisfy the lien of a security instrument. The term  
26 "entitled person" includes both the landowner at the time of the payoff statement request and any  
27 person liable on the secured obligation (including the original obligor, an assuming grantee, or  
28 any guarantor).  
29

30 5. "Good faith." This definition is identical to the definition contained in the Uniform  
31 Commercial Code. Generally, the Act imposes liability (both for statutory and actual damages)  
32 upon a secured creditor who fails to record a satisfaction within a timely period following notice  
33 and opportunity to cure. Section 206(a). However, a secured creditor is not liable if it has  
34 established a reasonable procedure for recording satisfactions of security instruments, has  
35 complied with that procedure in good faith, and was unable to record because of circumstances  
36 beyond its control. Section 206(b).  
37

38 6. "Landowner." Under the "title theory" of mortgages, a mortgagee holds legal title to the  
39 mortgaged premises. By contrast, under the "lien theory" of mortgages followed in the majority  
40 of American jurisdictions, the mortgagee (or "secured creditor" under the Act) holds only a  
41 security interest in the mortgaged premises. The Act defines the term "landowner" to mean the  
42 owner of the right to redeem the real property described in the security instrument prior to sale.  
43 The Act defines the term in this fashion so as to make it irrelevant whether a particular state

1 adopting the Act follows title theory or lien theory. Furthermore, this definition of “landowner”  
2 makes it irrelevant whether a particular jurisdiction uses the deed of trust rather than the  
3 mortgage. Even though the trustee under a deed of trust may technically hold legal title to the  
4 premises, the beneficiary under that deed of trust holds the equitable right of redemption and thus  
5 would be the “landowner” within the meaning of the Act.  
6

7 The identity of the “landowner” may vary in this Act depending upon context. For example,  
8 suppose that Bank holds a mortgage on Blackacre, a parcel of real property owned by X. X has  
9 entered into a contract to sell Blackacre to Y. For the purpose of obtaining a payoff statement  
10 with respect to the balance of the mortgage obligation, X is the “landowner” within the meaning  
11 of the Act, even though X seeks the payoff statement in anticipation of a sale of the real property  
12 to Y. By contrast, assume that X has now performed the contract of sale by deeding the real  
13 property to Y. If Bank fails to record a timely satisfaction of its mortgage as required by this Act,  
14 Y is now the “landowner” for the purpose of giving notification to the Bank of its failure, or for  
15 the purpose of recovering any damages on account of Bank’s failure.  
16

17 7. “Notification.” In several places, the Act requires one person to give “notification” to  
18 another. Such a notification must be in the form of a “document” (Section 102(3)), must contain  
19 the information required by the specific provision of the Act, and must be “signed” (Section  
20 102(15)) by the person required to provide the notification.  
21

22 8. “Organization.” This is the boilerplate definition of the term as used in uniform acts.  
23

24 9. “Payoff amount” and “payoff statement.” Most mortgage loans are paid off prior to  
25 maturity, either upon a transfer of the mortgaged land or upon a refinancing by the landowner. In  
26 these situations, the mortgage lender customarily issues a payoff statement specifying a payoff  
27 amount, or the payment necessary to satisfy the outstanding balance of the mortgage loan. Under  
28 the Act, the secured creditor must issue a payoff statement complying with Section 202(a) within  
29 10 days after receiving a request from an “entitled person” as defined in Section 201.  
30

31 10. “Person” includes both natural persons (individuals) and all forms of legally recognized  
32 public and private organizations.  
33

34 11. “Recording data.” This definition is similar to that used in Section 102(15) of the  
35 Uniform Nonjudicial Foreclosure Act, and refers to the customary way of identifying the precise  
36 place where a document is recorded in the jurisdiction. Some jurisdictions customarily refer to  
37 book and page number, some to a document number, and others to other types of designations.  
38

39 12. “Secured creditor” means a person that holds a security interest. The term includes a  
40 person who is servicing the debt evidenced by a security instrument, if that person is also  
41 authorized by the secured creditor to record a satisfaction of the security instrument upon  
42 receiving full payment or performance of the secured obligation.  
43



1       13. “Security instrument.” This definition is identical to that used in Section 102(19) of the  
2 Uniform Nonjudicial Foreclosure Act, and recognizes that the title given to a document by its  
3 parties is not dispositive of whether the document is a security instrument. Instead, the key issue  
4 is whether the document creates a security interest.  
5

6       For purposes of the Act, a “security instrument” must cover real property, although it may  
7 additionally cover personal property. A secured creditor’s compliance with the Act (*e.g.*, by  
8 recording a timely satisfaction of a security instrument following full performance of the secured  
9 obligations) may not fully discharge the secured creditor’s legal obligations with respect to a  
10 secured transaction that also covers personal property. In such a case, the secured creditor may  
11 also have to file a Uniform Commercial Code termination statement with respect to the personal  
12 property collateral. U.C.C. § 9-513.  
13

14       The Act does not specifically address the extent to which its provisions apply to an  
15 installment land contract or contract for deed. In those states where existing statutory provisions  
16 or judicial decisions have equated a contract for deed and a mortgage, the contract for deed  
17 would constitute a “security instrument” and the provisions of this Act would apply. In other  
18 states, the Act leaves to judicial resolution the extent to which its provisions would apply to the  
19 installment contract vendor and vendee and their respective successors.  
20

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

29       15. “Secured obligation.” The term “secured obligation” covers all obligations the  
30 performance of which are reducible to monetary terms and secured by a security interest.  
31

32       16. “Sign.” This definition is media-neutral and comparable to that contained in Uniform  
33 Commercial Code § 2-103(1)(p).  
34

35       17. “State.” This definition is the boilerplate definition of the term as used in uniform acts.  
36

37       18. “Submit for recording.” The Act requires a secured creditor to submit for recording a  
38 sufficient satisfaction of the security instrument upon full payment of the secured obligation.  
39 Section 203. The Act also permits a “satisfaction agent” to submit for recording an affidavit of  
40 satisfaction if the secured creditor has failed to submit for recording a satisfaction in a timely  
41 fashion following notice and an opportunity to cure such failure. Section 303. To “submit for  
42 recording” means that the person has submitted a document that has complied with the  
43 appropriate legal requirements for the document submitted, along with required fees and taxes, to

1 the appropriate recording official.  
2

3 **SECTION 103. MANNER OF GIVING A NOTIFICATION; EFFECTIVE DATE.**

4 (a) A person gives a notification by:

5 (1) depositing it in the mail or with any commercially reasonable delivery service,  
6 properly addressed to the recipient's address for notification, with postage or cost of delivery  
7 provided for;

8 (2) sending it by facsimile transmission or electronic mail to the recipient's address  
9 for notification, but only if the recipient agreed to receive notification in that manner; or

10 (3) causing it to be received within the time that it would have been received if  
11 properly given under paragraph (1).

12 (b) A notification is effective:

13 (1) the day after the day it is deposited with a commercially reasonable delivery  
14 service for overnight delivery;

15 (2) three days after the day it is deposited with the United States Postal Service, first-  
16 class mail with postage prepaid, or with a commercially reasonable delivery service for delivery  
17 other than by overnight delivery;

18 (3) the day the notification is given, if given under subsection (a)(2); or

19 (4) the day it is received, if given by a method other than as provided in subsection  
20 (a)(1) or (a)(2).

21 **Preliminary Comments**  
22

23 1. This section specifies the methods for giving any notification required by the Act.  
24 Generally speaking, notices required by the Act may be transmitted by registered or certified

1 mail, regular mail, or commercial delivery services. Proper dispatch, not receipt, satisfies the  
2 obligation to give notification.  
3

4 Often, customary practice in real estate transfer or refinancing transactions will involve  
5 notification by facsimile transmission. For example, a secured creditor may provide a payoff  
6 statement by facsimile transmission (often at the specific request of the landowner or closing  
7 agent). Subsection (a)(2) permits a person to give notification by facsimile transmission if the  
8 intended recipient has agreed (either in the loan documents or otherwise) to receive notification  
9 in this manner. For example, if the landowner requests that the secured creditor provide a payoff  
10 statement by facsimile transmission, this request will authorize the secured creditor to provide  
11 the notification by facsimile transmission even if the security instrument itself does not so  
12 provide. Likewise, if a secured creditor maintains a website indicating that requests for payoff  
13 statements may be directed to a particular fax number, or provides correspondence to a borrower  
14 indicating that requests for payoff statements may be directed to a particular fax number, the  
15 secured creditor has agreed to receive requests for payoff statements by facsimile transmission.  
16

17 The Act also permits a person to give notification by electronic mail, but again only where  
18 the intended recipient had agreed to receive notification by electronic mail.  
19

20 Subsection (a)(3) also permits a person to give notification in any manner that would result in  
21 the notification being received within the time that the recipient would have received it if the  
22 notification had been given by mail or commercial delivery service. This subsection would  
23 permit a person to give a notification by means of physical delivery to its intended recipient.  
24

25 The person asserting that notification was given has the burden of proof that notification was  
26 given in accordance with the provisions of Section 103.  
27

28 2. The Act requires a landowner to give a secured creditor notification and a 30-day cure  
29 period before the landowner can recover statutory and/or actual damages from the secured  
30 creditor that fails to record a satisfaction in a timely manner. Sections 203(b), 205(a). Likewise,  
31 before a closing agent may execute and record an affidavit of satisfaction when the secured  
32 creditor has failed to record a satisfaction in a timely manner, the closing agent must give the  
33 secured creditor notification and a 30-day period in which to fulfill its obligation to record that  
34 satisfaction or otherwise object to the recording of a satisfaction. Section 302(a). To avoid  
35 uncertainty about the expiration of these grace/cure periods, the Act provides that these periods  
36 shall commence upon the “effective date” of a notification. Subsection (b) specifies the effective  
37 date of a particular notification, determined by reference to the approximate delivery time for a  
38 particular manner of delivery.  
39  
40

41 **SECTION 104. DAY OF PERFORMANCE.** If this [act] or a notification given pursuant  
42 to this [act] requires performance on or by a certain day and that day is a Saturday, Sunday, or

1        legal holiday under the laws of this state or the United States, the performance is sufficient if  
2        performed on the next day that is not a Saturday, Sunday, or legal holiday.

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

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**SECTION 201. PAYOFF STATEMENT: REQUEST AND CONTENT.**

- (1) the entitled person's name;
- (2) the name of the entitled person's authorized agent, if the notification requests that the statement be sent to the agent;
- (3) the address to which the creditor must send the statement; and
- (4) sufficient information to enable the creditor to identify the secured obligation and the real property encumbered by the security interest.

(b) If the notification under subsection (a) directs the secured creditor to send the payoff statement to an authorized agent of the entitled person, the secured creditor may presume that the agent is so authorized and must send the statement to the agent, unless the secured creditor has reason to know that the entitled person has not authorized the request.

(c) Within 10 days after the effective date of a notification that complies with subsection (a), the secured creditor shall issue a payoff statement and send it to the entitled person or the authorized agent in the manner prescribed in Section 103 for giving a notification. Sending a payoff statement to the entitled person or the authorized agent precludes a claim that the notification failed to satisfy the requirements of subsection (a). The payoff statement must

1 contain:

2 (1) the day on which it was prepared and the payoff amount as of that day, including  
3 an amount by type of each fee, charge, or other sum included within the payoff amount;

4 (2) the information reasonably necessary to calculate the payoff amount as of the  
5 requested payoff date, including the per diem interest amount; and

6 (3) the payment cutoff time, if any; the address or place where payment must be  
7 made; and any limitation as to the authorized method of payment.

8 (d) A secured creditor may not qualify a payoff amount or state that it is subject to  
9 change before the payoff date unless the payoff statement provides information sufficient to  
10 permit the entitled person or that person's authorized agent to request an updated payoff amount  
11 at no charge, and to obtain that updated payoff amount during the secured creditor's normal  
12 business hours on the payoff date or the immediately preceding business day.

13 (e) An entitled person may request one payoff statement without charge during any six-  
14 month period. A secured creditor may charge a fee of [\$25] for each additional request for a  
15 payoff statement during that six-month period. However, a secured creditor may not charge any  
16 fee for providing or delivering an updated payoff amount under subsection (d) or a corrected  
17 payoff statement under Section 202(a).

18 (f) If the entitled person requests that the secured creditor send the payoff statement by  
19 means other than first-class mail, the secured creditor may charge a reasonable fee for the  
20 requested manner of delivery.

21 (g) A secured creditor may include in a payoff statement any fees authorized under this  
22 section.

(h) If a secured creditor fails to send a timely payoff statement when required to do so by this section, the creditor is liable to the entitled person for the actual loss caused by the failure, reasonable attorney's fees and costs, and the additional sum of [\$500]. A recipient of a notification under Section 201(a) that does not claim any interest in the secured obligation has no duty to send a payoff statement.

### **Preliminary Comments**

1. Most mortgage loans are paid off prior to maturity, either upon a transfer of the mortgaged land or upon a refinancing by the landowner. In these situations, the mortgage lender customarily issues a payoff statement, specifying the payment needed to satisfy the outstanding balance of the mortgage loan. Sections 201 and 202 address the nature and scope of the mortgage lender's obligation to issue a payoff statement, the contents and effect of such a statement, and the consequences of the mortgage lender's failure to issue such a statement.

2. As discussed in the comments to Section 102, the identity of the terms "landowner" and "entitled person" under the Act is contextual. In this context, the "entitled person" is the party who owns the mortgaged land at the time of the request for a payoff statement. If a payoff statement is being requested in conjunction with an upcoming sale or transfer of the mortgaged land, the "landowner" would be the seller/transferor, not the buyer/transferee.

3. Consistent with the principles of agency law, an entitled person under this section may act through any authorized agent acting on the entitled person's behalf. For example, if Seller has contracted to sell mortgaged land to Buyer, and Seller has authorized Attorney to represent her in the transaction, Attorney may properly request a payoff statement on Seller's behalf. Likewise, if Buyer's attorney, title insurer or settlement agent will be handling the closing and disbursement of funds, Seller may authorize Buyer or Buyer's agent to request a payoff statement under this section (even though Buyer's attorney, title insurer, or settlement agent would not constitute the Seller's agent for other purposes).

Potential concerns arise with respect to the privacy of financial information, such as the outstanding balance of a mortgage loan, where the secured creditor is disclosing that information to someone other than the obligor. Subsection (b) seeks to provide some comfort for the secured creditor, allowing the secured creditor to presume that the requesting person is authorized to make the request on behalf of the entitled person, absent reasonable grounds to believe that the request is unauthorized.

4. The Act permits a landowner or a person liable for payment or performance of the secured obligation (such as a guarantor, or a predecessor in title who was the original mortgagor)

1 to obtain a payoff statement, either acting directly or through an authorized agent. In some  
2 circumstances, there may be other persons who want to obtain payoff information. For example,  
3 in the context of a default under a senior mortgage, a junior lienholder may wish to obtain payoff  
4 information regarding the senior mortgage in order to evaluate what steps the junior lienholder  
5 should take to protect its interest in the mortgaged land. Under the Act, the junior lienholder  
6 would have the right to obtain a payoff statement as an agent of the landowner if the landowner  
7 has so authorized, either in the loan documents evidencing the junior lien or otherwise.  
8

9 5. An entitled person may request a payoff statement by giving a notification containing  
10 such a request in the manner specified by Section 103. The notification must identify the  
11 proposed payoff date, which cannot be more than 30 days following the date of the notification.  
12 The notification must provide the information required by subsection (a); however, as subsection  
13 (c) makes clear, the secured creditor's delivery of a payoff statement precludes any later claim by  
14 the creditor that the notification failed to comply with subsection (a).  
15

16 6. Because mortgage loans may vary significantly in their terms and conditions, the Act does  
17 not specify a particular form that a payoff statement must take in order to satisfy this section.  
18 Instead, subsection (c) provides certain information that the secured creditor must include in  
19 order to comply with its obligation to deliver a payoff statement. The payoff statement must  
20 enable the entitled person to ascertain how the secured creditor calculated the payoff amount.  
21 Accordingly, the Act requires that the payoff statement must reflect, *by type*, each item, fee or  
22 charge that comprises the balance of the secured obligation. For example, if the borrower had  
23 incurred several individual late payment charges, the secured creditor could group those charges  
24 together under a heading entitled "Late Charges." The payoff statement must also include any  
25 specified payment cutoff time (*i.e.*, the time after which the borrower will accrue another day's  
26 interest on the secured obligation) and any limitations upon the authorized method of payment, as  
27 well as the appropriate address or place for payment.  
28

29 The secured creditor may include other information beyond that specified in subsection (c),  
30 but that additional information cannot include disclaimers or other language intended to defeat  
31 the ability of the entitled person to rely generally upon the accuracy of the payoff amount. Of  
32 course, it is possible (if not likely) that the balance of the secured obligation may change between  
33 the date that a secured creditor issues a payoff statement and the proposed payoff date. Such a  
34 change could occur for a variety of reasons — *e.g.*, because of a change in the applicable interest  
35 rate (either because the mortgage note bears a variable rate or includes a provision for default  
36 interest), because the lender had to advance additional funds to protect its security, or because the  
37 lender incurred other costs for which the obligor bears responsibility under the terms of the loan  
38 documents. Subsection (d) does permit the secured creditor to issue a payoff statement providing  
39 that the balance may be subject to change prior to the payoff date, but only if the payoff statement  
40 provides sufficient information to permit the entitled person to obtain a reliable updated payoff  
41 amount on the payoff date or the immediately preceding business day (*e.g.*, by telephone,  
42 facsimile transmission, or electronic mail).  
43



1           7. If the secured creditor fails to issue a timely payoff statement, subsection (h) permits the  
2 entitled person to recover any loss caused by the secured creditor's failure, subject to ordinary  
3 rules of pleading and proof. In addition, subsection (h) provides a minimum statutory damage  
4 recovery for the entitled person. This subsection is patterned on U.C.C. Section 9-210(f) and  
5 ensures that the secured creditor's nondelivery of a payoff statement will generally result in  
6 liability regardless of any injury that may have resulted.

7  
8           Section 206 provides that if the secured creditor has established a reasonable procedure for  
9 complying with its obligation to issue payoff statements, has complied with that procedure in  
10 good faith, and was unable to satisfy its obligation because of circumstances beyond its control,  
11 the secured creditor is not liable despite its noncompliance with this section.

12  
13           In some cases, an entitled person may direct a request for a payoff statement to a creditor that  
14 claims no interest in the secured obligations. Subsection (e) makes clear that such a creditor has  
15 no duty to deliver a payoff statement.

16  
17           8. Subsection (e) provides that the entitled person may receive one payoff statement without  
18 charge during any six-month period, but permits the secured creditor to impose a fee for issuing  
19 an additional payoff statement during that six-month period. Subsection (e) does clarify,  
20 however, that the secured creditor cannot impose any fee for sending a corrected payoff  
21 statement or for updating a qualified payoff statement issued under subsection (d).

22  
23           Under subsection (a), a payoff statement would become ineffective 30 days after it was  
24 issued. After that time, the entitled person could not compel the secured creditor to provide a  
25 free updated payoff amount under subsection (e).

26  
27           Subsection (f) does allow the secured creditor to impose a reasonable fee if the entitled  
28 person requests expedited delivery of a payoff statement (*i.e.*, delivery by means other than first-  
29 class United States mail). Subsection (g) permits the secured creditor to include in the payoff  
30 statement any permissible fees for issuance or expedited delivery of a payoff statement.

## 31 32           **SECTION 202. PAYOFF STATEMENT: EFFECT.**

33           (a) If a secured creditor determines that the payoff amount it provided in a payoff  
34 statement was inaccurate when provided or has become inaccurate, the creditor may send a  
35 corrected payoff statement. If the entitled person or that person's authorized agent receives a  
36 corrected payoff statement before making payment, the corrected statement supersedes an earlier  
37 statement.

1 (b) A secured creditor who sends a payoff statement containing an erroneous payoff  
2 amount is precluded from denying the accuracy of the payoff amount as against any person who  
3 has reasonably and detrimentally relied upon the erroneous payoff amount.

4 (c) Nothing in this Act precludes a secured creditor from recovering any sum that it  
5 failed to include in the payoff amount from any person liable for payment of the secured  
6 obligation.

### 7 Preliminary Comments

8  
9  
10 1. The secured creditor may discover, after issuing a payoff statement, that it erroneously  
11 understated the outstanding balance of the secured obligations. Subsection (a) permits the  
12 secured creditor to issue a corrected payoff statement that supersedes the erroneous statement.  
13

14 2. Generally speaking, the secured creditor must submit for recording a satisfaction of a  
15 security instrument only after full payment or performance of the obligation secured by the lien  
16 of that instrument. Section 203(a). If the secured creditor erroneously understates the payoff  
17 amount and does not correct it, however, this error may mislead a buyer or refinancing lender to  
18 complete a sale or refinancing transaction. Such a buyer or refinancing lender may pay or  
19 advance the amount stated in the payoff statement in reliance upon its accuracy.  
20

21 In these circumstances, the Act does not require the secured creditor to submit for recording a  
22 satisfaction if the secured obligation remains unsatisfied. Nevertheless, subsection (b) makes  
23 clear that courts may exercise their equitable authority to preclude the secured creditor from  
24 enforcing the security instrument against a person who reasonably and detrimentally relied upon  
25 its accuracy. Even if the secured creditor is precluded from enforcing the security instrument,  
26 however, subsection (c) makes clear that the secured creditor can still recover the balance of the  
27 secured obligation from any person liable for that obligation under law other than this Act.  
28

29 3. Sometimes, the secured creditor may erroneously overstate the necessary payoff amount.  
30 When such an error occurs, the secured creditor does not face liability under this section for  
31 issuing a payoff statement containing an erroneous payoff amount. However, if the entitled  
32 person tenders payment of the correct balance of the secured obligation, then the Act obligates  
33 the secured creditor to submit for recording a satisfaction within 30 days.  
34

## 35 SECTION 203. SECURED CREDITOR TO SUBMIT SATISFACTION FOR

1       **RECORDING.**

2           (a) A secured creditor shall submit for recording a satisfaction of a security instrument  
3       within 30 days after the creditor receives full payment or performance of the secured obligation.  
4       If a security instrument secures a line of credit or future advances, the secured creditor must  
5       submit for recording a satisfaction of the security instrument only if the secured creditor has also  
6       received a notification requesting the creditor to terminate the line of credit or containing a  
7       statement sufficient to terminate the effectiveness of the provision for future advances in the  
8       security instrument.

9           (b) If a secured creditor has not submitted for recording a satisfaction within the period  
10       specified in subsection (a), the landowner may give to the creditor a notification demanding that  
11       the creditor submit for recording a satisfaction of the security instrument no later than 30 days  
12       after the effective date of the notification.

13                               **Preliminary Comment**

14       Subsection (a) provides that the secured creditor has an affirmative obligation to submit for  
15       recording a satisfaction of a security instrument within 30 days after full payment or performance  
16       of the secured obligation.

17  
18       Although the Act imposes both statutory and actual damages upon a secured creditor who  
19       fails to submit for recording a timely satisfaction of a security instrument, subsection (b) requires  
20       the landowner to provide the secured creditor with notice and opportunity to cure before the  
21       landowner may recover damages from the secured creditor. If the secured creditor has not  
22       submitted for recording a satisfaction of the security instrument within 30 days after payment of  
23       the secured obligation, the landowner may give a notification to the secured creditor demanding  
24       that the secured creditor submit for recording a satisfaction of the security instrument within 30  
25       days of the notification. The landowner must give this notice in a manner specified in Section  
26       103, and may give this notice either directly or through its authorized agent.  
27

28                               **SECTION 204. FORM AND EFFECT OF SATISFACTION.**

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

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

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

7 (3) contains a legal description of the real property identified in the security  
8 instrument, but only if a legal description is necessary for a satisfaction to be properly indexed;

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

10 (5) is signed by the secured creditor and acknowledged as required by law for a  
11 conveyance of an interest in real property.

12 (b) Upon recording, a document complying with subsection (a) shall be effective to  
13 constitute a satisfaction of the security instrument.

14 (c) The [appropriate governmental office under the recording act of this state] must  
15 accept for recording a document that contains the information specified in subsection (a), unless:

16 (1) an amount equal to or greater than the applicable recording fee is not tendered; or

17 (2) the document is submitted by a method or a medium unauthorized by the  
18 [appropriate governmental office under the recording act of this state].

### 19 Preliminary Comments

20 1. The Act is not intended to provide the sole mechanism for effecting the satisfaction of a  
21 mortgage. For example, if another state statute permits a secured creditor to present an affidavit  
22 that instructs the recording officer to enter a notation of satisfaction in the margin of the record  
23 where the security instrument itself appears in the record, the secured creditor could satisfy its  
24 obligation under this Act by complying with that statute.

1           2. Subsection (a) is intended to foster uniformity by specifying minimal standard  
2 information for recorded satisfactions. This should facilitate the development of standard  
3 satisfaction forms in states adopting the Act. Under the Act, a satisfaction document must  
4 identify the security instrument, the original parties to that instrument, and the recording data and  
5 office in which it was recorded. The satisfaction document must also contain language  
6 terminating the instrument's effectiveness, as well as a recital that the secured creditor is the  
7 holder of the security interest created by the security instrument. The satisfaction document must  
8 contain a legal description of the real property covered by the security instrument, but only if a  
9 legal description is necessary for the recording officer to properly index the satisfaction  
10 document. Thus, if a particular county uses tract indexing, the satisfaction document must  
11 include a tract description; by contrast, in a county that uses grantor-grantee indexing, a legal  
12 description is unnecessary for proper indexing and need not be included. Finally, the satisfaction  
13 document must be signed by the secured creditor and acknowledged as required by law for an  
14 effective conveyance of an interest in real property. Upon recording, a document complying with  
15 subsection (a) operates as a satisfaction in favor of persons entitled to the benefit of the state's  
16 recording act.

17  
18           3. A frequent cause of delay in recording a mortgage satisfaction is the recorder's rejection  
19 of a satisfaction document tendered by the secured creditor or its agent. Such a rejection is  
20 appropriate if a satisfaction lacks the necessary formalities for a recordable document (such as a  
21 proper acknowledgment), if the satisfaction is not tendered with the appropriate recording fee, or  
22 if the satisfaction document is submitted in a form or medium not authorized by the recording  
23 office. In some cases, however, recorders reject satisfaction documents because they do not  
24 include information that is not practically necessary for a satisfaction to serve the notice function  
25 required of the recording system. For example, some recorders will reject a satisfaction that does  
26 not include a legal description of the affected real property. However, if a satisfaction contains  
27 the recording data for the security instrument being released, the satisfaction need not contain a  
28 legal description of the real estate unless that description is necessary for indexing the document.  
29 In a county that uses grantor-grantee indexing, rejection of a satisfaction document for lack of a  
30 legal description serves no useful purpose.

31  
32           Subsection (c) thus limits the discretion of the recorder in rejecting a satisfaction document  
33 that contains the necessary information specified in subsection (a). If such a document is  
34 submitted to the recorder in a manner that meets the recorder's technical recording formalities,  
35 along with the appropriate filing fee, the recorder may not reject the satisfaction document.  
36 Thus, a recorder in a county that has not yet authorized electronic recording may properly reject a  
37 satisfaction document submitted electronically. Likewise, a recorder in a county that requires  
38 recordable documents to be submitted on 8-1/2 by 11 paper, with 1-inch margins may properly  
39 reject a satisfaction that is submitted on legal-size paper, or with insufficient margins.  
40 Obviously, a recorder may properly reject a satisfaction that contains no acknowledgment or an  
41 acknowledgment that fails to comply with state law other than this Act. However, the recorder  
42 may not reject a satisfaction document because it fails to contain information that is not  
43 contained in subsection (a). Thus, for example, a recorder may not reject a satisfaction because

1 it fails to indicate the name of the attorney who drafted it.

2  
3 Subsection (c) addresses a particular problem that results in some jurisdictions where a  
4 mortgagee attempts to record a satisfaction of a mortgage that it holds via one or more  
5 unrecorded assignments. In some jurisdictions, recording officers refuse to accept a satisfaction  
6 for recording if the secured creditor is not an original party to the security instrument, unless the  
7 satisfaction document recites the chain of recorded assignments by which the secured creditor  
8 claims an interest in the real property. Under subsection (c), if a satisfaction document complies  
9 with subsection (a) — and thus contains the recital that the secured creditor is the present holder  
10 of the security interest created by the security instrument — the recorder may not reject the  
11 document, even if it does not recite the chain of recorded assignments by which the secured  
12 creditor acquired its interest. This provision is critical to advance the Act’s objective of  
13 providing a landowner with an efficient title-clearing mechanism. In many cases, it would be  
14 either prohibitively expensive or time-consuming for the secured creditor to locate and record the  
15 complete chain of intermediate assignments of the security instrument. In other cases,  
16 intermediate assignments have been lost or intermediate assignors are defunct, making it  
17 practically impossible to reconstruct a complete record chain of assignments.  
18

19 **SECTION 205. LIABILITY OF SECURED CREDITOR FOR FAILURE TO**  
20 **SUBMIT SATISFACTION FOR RECORDING.**

21 (a) Except as otherwise provided in subsection (b), a secured creditor that is required to  
22 submit for recording a satisfaction of a security instrument and fails to do so by the end of the  
23 period specified in Section 203(b) is liable to the landowner for:

24 (1) the actual loss caused by the failure and reasonable attorney’s fees and court  
25 costs; and

26 (2) the additional sum of [\$500].

27 (b) Subsection (a)(2) does not apply if the secured obligation was satisfied prior to the  
28 effective date of this [act].

29 **Preliminary Comments**  
30

31 1. Subsection (a)(1) sets forth the basic remedy for the secured creditor’s failure to comply  
32 with the requirements of the Act: a damage recovery in the amount of the loss caused by the

1 secured creditor's noncompliance. The exercise of this remedy is subject to the normal rules of  
2 pleading and proof.

3  
4 2. Subsection (a)(2) provides statutory damages of \$500 for the secured creditor's failure to  
5 comply with the requirements of the Act, which the landowner may recover in addition to any  
6 damages recoverable under subsection (a)(1). This provision is conceptually similar to U.C.C.  
7 Section 9-625(e)(4), which provides for a minimum statutory damage recovery whenever an  
8 Article 9 secured party fails to provide a termination statement within a timely manner. Under  
9 subsection (c), this statutory penalty does not apply where the secured obligation was satisfied  
10 prior to the effective date of this Act.

11  
12 3. In many cases, secured creditors will delegate responsibility for servicing mortgage loans,  
13 including the responsibility to record satisfactions of security instruments. In these cases, the Act  
14 treats the servicer as a "secured creditor," and the landowner thus could hold the servicer liable  
15 under the terms of the Act. Such delegations of authority do not automatically relieve the  
16 delegating secured creditor of its obligations under the Act. Nevertheless, a delegating secured  
17 creditor may be able to plead and prove its compliance with reasonable procedures as a defense  
18 to liability under Section 206, if the secured creditor had issued timely directions to its servicer to  
19 submit for recording a satisfaction and the servicer failed to do so.

20  
21 4. Under the Act, the secured creditor must submit for recording a satisfaction only if it has  
22 received full payment or performance of the secured obligation. The mere existence of a dispute  
23 over the balance of the secured obligations does not by itself toll the 30-day grace period. If the  
24 secured creditor does not submit for recording a satisfaction within 30 days after receiving  
25 notification under Section 203(b), the secured creditor bears the risk that a court might later  
26 conclude that the landowner did in fact tender full payment of the secured obligation.

## 27 28 **SECTION 206. LIMITATION OF SECURED CREDITOR'S LIABILITY.**

29 Notwithstanding Sections 201(h) and 205(a), a secured creditor is not liable under this [act] if it:

- 30 (1) had established a reasonable procedure to achieve compliance with its obligations  
31 under this [act];  
32 (2) complied with this procedure in good faith; and  
33 (3) was unable to comply with its obligations because of circumstances beyond its  
34 control.

## 35 **Preliminary Comment**

1 The Act imposes potential liability on a secured creditor that fails to provide a payoff  
2 statement in a timely manner, Section 201(h), or to submit for recording a timely satisfaction,  
3 Section 205(a). In some circumstances, however, a secured creditor's failure to comply with  
4 these obligations may be due to circumstances legitimately beyond the control of the secured  
5 creditor. Thus, Section 206 provides a secured creditor with a defense to liability if the secured  
6 creditor has established reasonable procedures to achieve timely compliance with its obligations  
7 under this Act and has complied with those procedures in good faith, but where compliance does  
8 not occur because of circumstances beyond the control of the secured creditor. The Act does not  
9 specify what procedures are "reasonable" or what circumstances are beyond the control of the  
10 secured creditor, but leaves the question to judicial resolution.

11  
12 For example, Section 206 may be implicated if a secured creditor takes appropriate steps to  
13 submit for recording a timely satisfaction, but the recording official rejects the document because  
14 a recent increase in the required recording fee means that the satisfaction is not accompanied by  
15 the required recording fee. If the secured creditor can demonstrate that it had timely sent the  
16 satisfaction to the recorder with the previously-required filing fee and did not then have  
17 knowledge of the fee increase, the secured creditor should not be liable to the landowner given  
18 the secured creditor's good faith effort to satisfy its obligation.  
19

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

22 (a) If a person has recorded a satisfaction of a security instrument in error, the person  
23 may execute and record a document rescinding the erroneous satisfaction. The rescinding  
24 document must state that the satisfaction was erroneously recorded, the secured obligation  
25 remains unsatisfied, and the security instrument remains in force. Upon recording, the document  
26 rescinds an erroneously recorded satisfaction.

27 (b) A recorded document of rescission under subsection (a) has no effect on the rights of  
28 any person that acquired an interest in the real property described in the security instrument after  
29 the recording of the satisfaction but before the recording of the document of rescission and that  
30 would otherwise have priority over or take free of the lien created by the security instrument  
31 under [the recording act of this state].



1 (c) A person that wrongfully records a document of rescission under subsection (a) is  
2 liable to any person injured thereby for the actual loss caused by the wrongful recording and  
3 reasonable attorney's fees and court costs.

#### 4 Preliminary Comments

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

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

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

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

36  
37 3. Subsection (c) authorizes a person injured by the wrongful recording of a document of  
38 rescission to recover damages in the amount of the loss caused by the secured creditor's conduct,  
39 along with reasonable attorney's fees and court costs. The exercise of this remedy is subject to  
40 the normal rules of pleading and proof.

1           4. Under Article 3 of this Act, a “satisfaction agent” may file an affidavit of satisfaction  
2 following the secured creditor’s failure to record a timely satisfaction in accordance with the  
3 provisions of Article 2. Under Section 305(a), a recorded affidavit of satisfaction constitutes a  
4 “satisfaction” for purposes of this Act. Accordingly, a satisfaction agent that recorded an  
5 affidavit of satisfaction in error could, in appropriate cases, record a document rescinding the  
6 affidavit of satisfaction under this section.  
7  
8

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**SECTION 301. DEFINITIONS.** In this Article:

(2) “Satisfaction agent” means

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

## Preliminary Comments

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

32

1 “self-help satisfaction” provisions of Article 3 to the consumer mortgage context. An owner of  
2 nonresidential real property who is unable to obtain a timely satisfaction of its mortgage and  
3 wishes to clear title must do so by bringing a quiet title action.  
4

5 **SECTION 302. AFFIDAVIT OF SATISFACTION: NOTIFICATION TO SECURED**  
6 **CREDITOR.**

7 (a) If a secured creditor has not submitted for recording a satisfaction of a security  
8 instrument creating a security interest in residential real property within the period specified in  
9 Section 203(a), a satisfaction agent acting for and with authority from the landowner may give  
10 the secured creditor notification that the satisfaction agent intends to submit for recording an  
11 affidavit of satisfaction of the security instrument. A notification satisfies the requirements of  
12 this section if it includes the following:

- 13 (1) the identity and mailing address of the satisfaction agent;
- 14 (2) identification of the security instrument for which a recorded satisfaction is  
15 sought, including the names of the original parties to, and the recording data for, the security  
16 instrument;
- 17 (3) a statement that the real property described in the security instrument is residential  
18 real property as defined in Section 301(1);
- 19 (4) a statement that the satisfaction agent has reasonable grounds to believe that the  
20 person to which the notification is being given is the secured creditor;
- 21 (5) a statement that the satisfaction agent possesses evidence that the secured creditor  
22 has received full payment or performance of the secured obligation;
- 23 (6) a statement that a satisfaction of the security instrument does not appear of

1 record;

2 (7) a statement that the satisfaction agent intends to execute and submit for recording  
3 an affidavit of satisfaction unless, within 30 days after the effective date of the notification, the  
4 secured creditor:

5 (A) submits for recording a satisfaction of the security instrument;

6 (B) gives a notification to the satisfaction agent stating that the secured obligation  
7 remains unsatisfied;

8 (C) gives a notification to the satisfaction agent stating that it has assigned the  
9 security instrument and identifying the name and mailing address of the assignee; or

10 (D) gives a notification to the satisfaction agent authorizing that agent to submit  
11 for recording an affidavit of satisfaction immediately.

12 (b) A satisfaction agent shall send a notification under subsection (a) by certified mail,  
13 return receipt requested, to the secured creditor's address for notification for the purpose of  
14 requesting a payoff statement or, if the satisfaction agent cannot identify that address, at the  
15 secured creditor's address for notification for any other purpose.

16 (c) Nothing in this [act] shall be construed to require a person to agree to serve as a  
17 satisfaction agent.

## 18 Preliminary Comments

19 1. Section 302 specifies the contents of the satisfaction agent's notification to the secured  
20 creditor. This provision is distinct from the separate notification requirement imposed upon the  
21 landowner by Section 203(b). Section 203(b) provides that if the secured creditor has not  
22 submitted for recording a satisfaction within 30 days of receiving full payment or performance of  
23 the secured obligation, the landowner may give the secured creditor notification of this failure —  
24 thereby triggering a 30-day grace period within which the secured creditor may submit for  
25 recording a satisfaction without incurring liability under Section 205. The notification in Section

1 203(b) thus serves as a prerequisite to triggering the secured creditor's liability for failure to  
2 submit for recording a timely satisfaction under Section 205.  
3

4 Because the notification required by Section 302 serves a different function than the  
5 notification required under Section 203(b), the landowner may not use one notification to satisfy  
6 both sections. However, the landowner could provide both notifications at the same time (*i.e.*, at  
7 any time after the 31<sup>st</sup> day following the point at which the secured creditor received full payment  
8 or performance of the secured obligation). Thus, the 30-day grace periods in Sections 203(b) and  
9 Section 302 may run contemporaneously.  
10

11 2. Subsection (a) merely states the minimum requirements for an acceptable notification  
12 under Article 3. It does not prevent the satisfaction agent from providing additional information  
13 (such as a street address for the mortgaged premises or the mortgage loan number) that might  
14 assist the secured creditor in identifying the security instrument or the secured obligation.  
15

16 3. A secured creditor that receives a notification under subsection (a) can respond in one of  
17 four ways: (1) by submitting for recording a satisfaction of the security instrument within the  
18 ensuing 30 days; (2) by authorizing the satisfaction agent to submit for recording an affidavit of  
19 satisfaction immediately; (3) by giving notification to the satisfaction agent that the secured  
20 obligation remains unsatisfied; or (4) by giving notification to the satisfaction agent that the  
21 secured obligation has been assigned and identifying the name and mailing address of the  
22 assignee. If the secured creditor fails to respond within the 30-day grace period, this Article  
23 permits the satisfaction agent to execute and submit for recording an affidavit of satisfaction as  
24 long as the satisfaction agent possesses evidence that the secured creditor has received full  
25 payment of the secured obligation.  
26

27 4. Subsection (b) provides that the satisfaction agent must give a notification under  
28 subsection (a) by certified mail, return receipt requested, to the secured creditor's address for  
29 notification for payoff statement requests. This requirement serves two important purposes.  
30 First, receiving the notification by certified mail alerts the secured creditor's administrative staff  
31 as to the potential legal significance of the notification, and facilitates the secured creditor's  
32 ability to respond promptly to the notification. Second, this requirement provides the satisfaction  
33 agent with demonstrable evidence of the satisfaction agent's attempt to notify the secured  
34 creditor.  
35

36 This provision seeks to establish a functional method for clearing title when the holder of a  
37 paid-off mortgage is defunct. If the satisfaction agent has evidence that a particular secured  
38 creditor received full payment of the secured obligation, and gives notification to that creditor at  
39 its address for payoff statement requests or, if that address is unavailable, at the creditor's address  
40 for notification for any other purpose, the satisfaction agent has complied with the requirements  
41 of Section 302(a) even if the notification is returned by the postal service as undeliverable. In  
42 that event, Section 303 would authorize the satisfaction agent to proceed to execute and submit  
43 for recording an affidavit of satisfaction.

5. This Act does not require a title insurance company or an attorney to agree to serve as a satisfaction agent. For example, if a landowner requests that a title insurance company serve as a satisfaction agent to assist in clearing the landowner's title under Article 3, and the title insurer cannot satisfy itself as to the accuracy of the statements required in the affidavit of satisfaction under Section 304, the title insurer may refuse to serve as a satisfaction agent.

**SECTION 303. AFFIDAVIT OF SATISFACTION: AUTHORIZATION TO SUBMIT  
FOR RECORDING.**

(a) Subject to subsections (b) and (c), a satisfaction agent may execute and submit for recording an affidavit of satisfaction complying with Section 304 if:

(1) the secured creditor fails to submit for recording a satisfaction of a security instrument within 30 days after the effective date of a notification complying with Section 302(a); or

(2) the secured creditor authorizes the satisfaction agent to do so.

(b) A satisfaction agent may not execute and submit for recording an affidavit of satisfaction if it has received a notification under Section 302(a)(7)(B) stating that the secured obligation remains unsatisfied.

(c) If a satisfaction agent receives a notification under Section 302(a)(7)(C) indicating an assignment of the security instrument, the satisfaction agent may not submit for recording an affidavit of satisfaction without complying with Section 302 with respect to the identified assignee.

## Preliminary Comments

1. Subsection (a) permits the satisfaction agent to execute and submit for recording an affidavit of satisfaction in two circumstances. Under subsection (a)(1), the satisfaction agent may submit for recording an affidavit of satisfaction if the agent properly gave notification under Section 302(a) and the secured creditor failed to reply within 30 days after the effective date of

1 the notification. Under subsection (a)(2), the satisfaction agent may also submit for recording an  
2 affidavit of satisfaction if the secured creditor authorizes it to do so.

3  
4 2. Subsection (b) reflects that a secured creditor may object to the recording of an affidavit  
5 of satisfaction by giving notification within the 30-day grace period indicating that the secured  
6 obligation remains unsatisfied. If the secured creditor so objects, the satisfaction agent may not  
7 submit for recording an affidavit of satisfaction.

8  
9 While the secured creditor's objection may prevent the satisfaction agent from using Article  
10 3's "self-help" satisfaction procedure, it does not shield the secured creditor from potential  
11 liability under Section 205. If subsequent litigation established that the secured creditor was  
12 legally obligated to record a satisfaction (*i.e.*, because it had received and accepted full payment  
13 of the secured obligation), but failed to do so within 30 days after the effective date of a  
14 notification complying with Section 203(b), the secured creditor will have violated its obligations  
15 under the Act and the landowner may recover statutory and actual damages under Section 205.

16  
17 3. In some cases, a satisfaction agent may give a notification under Section 302(a) and  
18 receive a response indicating that the security interest has been assigned. If the response  
19 identifies the name and address of the assignee, the satisfaction agent cannot submit for recording  
20 an affidavit of satisfaction under Article 3 without first giving the identified assignee a  
21 notification as required by Section 302(a) and an additional 30-day grace period in which to  
22 record a satisfaction.

#### 23 24 **SECTION 304. AFFIDAVIT OF SATISFACTION: FORM.**

25 (a) An affidavit of satisfaction must:

26 (1) identify the original parties to the security instrument, the secured creditor, the  
27 recording data for the security instrument, and if it is necessary for proper indexing of the  
28 affidavit, a legal description of the real property identified in the security instrument;

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

33 (3) state that the real property described in the security instrument is residential real



property as defined in Section 301(1);

(4) state that the person executing the affidavit possesses evidence that the secured creditor has received full payment or performance of the secured obligation;

(5) state that the person executing the affidavit gave notification under Section 302(a) to the secured creditor of its intention to execute and record an affidavit of satisfaction, and that either:

(a) more than 30 days have elapsed following the effective date of that notification, during which time the creditor has neither recorded a satisfaction of the security instrument nor given notification that the secured obligation remains unsatisfied; or

(b) the secured creditor authorized the person executing the affidavit to execute and record an affidavit of satisfaction; and

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

(b) No particular phrasing of an affidavit of satisfaction is required. The following form of affidavit, when properly completed, is sufficient to satisfy the requirements of subsection (a):

“

\_\_\_\_\_  
(Date of Affidavit)

### **AFFIDAVIT OF SATISFACTION**

The undersigned hereby states as follows:

1. I am [an officer or a duly appointed agent of           [Name of title insurance company]          ,  
which is authorized to transact the business of insuring titles to interests in real property] [an

1 attorney in good standing and licensed to practice law] in this state.

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

5 Title of Security Instrument:

6 Original Parties to Security Instrument:

7 County and State of Recording:

8 Recording Data for Security Instrument:

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

11 4. The real property described in the security instrument constitutes residential real property  
12 as defined in [Section 301(1) of the [act]].

13 5. On \_\_\_\_\_ [Date of Notification Under Section 302(a)] \_\_\_\_\_, I gave notification to the  
14 secured creditor under [Section 302(a) of this [act]] that I would execute and record an  
15 affidavit of satisfaction of the security instrument if, within 30 days of the effective date of that  
16 notification, the secured creditor did not record a satisfaction of the security interest or give  
17 notification that the secured obligation remains unsatisfied.

18 6. The 30-day period identified in paragraph 5 has elapsed, and the secured creditor has  
19 neither recorded a satisfaction of the security instrument nor given notification that the secured  
20 obligation remains unsatisfied. [[Alternative if Secured Creditor authorizes Satisfaction Agent  
21 to execute and record Affidavit of Satisfaction:] The secured creditor responded to the  
22 notification in paragraph 5 by authorizing me to execute and record this affidavit of

1 satisfaction.]

2  
3  
4 \_\_\_\_\_  
(Signature of Satisfaction Agent)

5  
6 \_\_\_\_\_”  
7 (Notarization)  
8

9  
10 **Preliminary Comments**

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

16  
17 2. Although subsection (b) provides that a particular phrasing is not required, it also  
18 specifies a safe-harbor form that, when properly completed, satisfies the requirements of  
19 subsection (a).  
20  
21

22 **SECTION 305. AFFIDAVIT OF SATISFACTION: EFFECT.**

23 (a) Upon recording, an affidavit complying with Section 304:

24 (1) constitutes a satisfaction of the security instrument described in the affidavit; and  
25 (2) is conclusive evidence of the facts contained in it in favor of a person that  
26 acquires an interest in the real property after the affidavit is recorded and that is entitled to  
27 protection under [the recording act of this state].

28 (b) The recording of an affidavit of satisfaction does not by itself extinguish any liability  
29 of any person for repayment of the secured obligation.

30 (c) The [appropriate governmental office under the recording act of this state] may not

1 refuse to accept for recording an affidavit of satisfaction that contains the information specified  
2 in Section 304(a), unless:

- 3 (1) an amount equal to or greater than the applicable recording fee is not tendered; or  
4 (2) the affidavit is submitted by a method or a medium unauthorized by the  
5 [appropriate governmental office under the recording act of this state].

### 6 **Preliminary Comments**

7  
8 1. Subsection (a) provides that an affidavit of satisfaction that complies with Section 304(a)  
9 constitutes a legally sufficient satisfaction of the security instrument upon recording.

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

20  
21 Subsection (c) addresses this problem by limiting the discretion of the recording officer to  
22 reject an affidavit of satisfaction because of its content. The recording officer may reject an  
23 affidavit if it lacks any of the information required in Section 304(a), if the appropriate filing fee  
24 is not tendered, or if the satisfaction agent submits the affidavit by a method or medium  
25 unauthorized by the recording office's rules. However, the recording officer may not refuse to  
26 accept an affidavit of satisfaction because the secured creditor is not the secured creditor of  
27 record, or because the affidavit does not identify the complete chain of mortgage assignments.

28  
29 3. Section 305(a)(2) ensures that the affidavit of satisfaction fulfills the necessary "title-  
30 clearing" function needed to address the problem caused by unrecorded mortgage assignments.  
31 Subsection (a)(2) provides that the affidavit of satisfaction is conclusive evidence of the facts  
32 contained in the affidavit as to any person that acquires an interest in the real property after  
33 recording of the affidavit, if that person is entitled to assert the benefit of the state's recording  
34 act.

35  
36 For example, suppose that Landowner believes it has satisfied a mortgage on its home by full  
37 payment to Creditor B (whom it reasonably believes to be the holder of the security instrument  
38 by means of an unrecorded assignment). On behalf of Landowner, Title Insurer provides timely

1 notification to Creditor B under Section 302. During the following 30 days, Creditor B neither  
2 submits for recording a satisfaction nor objects that the secured obligations remain unsatisfied.  
3 As a result, Title Insurer thus submits for recording an affidavit of satisfaction complying with  
4 Section 304 on behalf of Landowner. Shortly thereafter, Landowner sells the real property to  
5 Buyer, who purchases the land for value and without knowledge or reason to know that Creditor  
6 A (the actual holder of the security instrument) claims that it has not received full performance of  
7 the secured obligation. Section 305(a)(2) provides that the affidavit of satisfaction is conclusive  
8 evidence of satisfaction in favor of Buyer, and thus Creditor A cannot enforce the lien of the  
9 security instrument against Buyer.

10  
11 Section 305(a)'s conclusive presumption that the affidavit of satisfaction is valid works only  
12 in favor of parties entitled to the benefit of the state's recording act. In most states, this does not  
13 include "non-reliance" third parties such as judgment lien creditors or donees. However, to the  
14 extent that a state's recording statute operates in favor of judgment lien creditor or donee, that  
15 judgment lien creditor or donee could likewise claim the benefit of Section 305(a).

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

## 26 27 28 **SECTION 306. LIABILITY OF SATISFACTION AGENT.**

29 (a) Subject to Section 202(b), a satisfaction agent that records an affidavit of satisfaction  
30 erroneously or with knowledge that the statements contained in the affidavit are false is liable to  
31 the secured creditor for the actual loss caused by the recording and reasonable attorney's fees and  
32 court costs. An affidavit of satisfaction is not erroneous if the satisfaction agent gave proper  
33 notification to the secured creditor under Section 302(a) and the secured creditor failed to  
34 respond in a timely manner to the notification by one of the methods specified in Section  
35 302(a)(7).

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

- 3 (1) limit a court from awarding punitive damages on account of such conduct;  
4 (2) limit the secured creditor from proceeding against the satisfaction agent under  
5 applicable law of this state other than this [act]; or  
6 (3) preclude the enforcement of any criminal statute prohibiting such conduct.

### 7 Preliminary Comments

8  
9 1. If a satisfaction agent erroneously executes and records an affidavit of satisfaction, the  
10 secured creditor may effectively lose the ability to enforce the security instrument as a means to  
11 facilitate its collection of the remaining balance of the obligation. In such a case, Section 306(a)  
12 permits the affected secured creditor to recover damages from the satisfaction agent, subject to  
13 the usual rules of pleading and proof.  
14

15 The satisfaction agent's liability under subsection (a), however, is subject to the provisions of  
16 Section 202(b). Article 3 permits a satisfaction agent to assist in clearing a security instrument  
17 from the landowner's title in cases in which the satisfaction agent possesses evidence that the  
18 secured creditor has received full payment of the secured obligation. In many cases, this  
19 evidence will consist of a cancelled check or wire confirmation evidencing the payment of the  
20 payoff amount as specified in a payoff statement provided by the secured creditor. Unless the  
21 satisfaction agent knows that the payoff amount was incorrect, the satisfaction agent may rely  
22 upon the accuracy of the payoff amount for the purpose of ascertaining whether it can proceed  
23 under Article 3. If the payoff amount was incorrect, it is incumbent upon the secured creditor,  
24 when given a notification under Section 302, to object to the recording of an affidavit of  
25 satisfaction on the ground that the secured obligation remains unsatisfied.  
26

27 The satisfaction agent's recording of an affidavit of satisfaction is also not erroneous — even  
28 if the secured obligation remains unsatisfied — if the satisfaction agent properly gave  
29 notification to the secured creditor under Section 302(a) of its intention to submit for recording  
30 an affidavit of satisfaction and the secured creditor fails to respond by giving notification to the  
31 satisfaction agent that the secured obligation remains unsatisfied.  
32

33 2. The availability of a self-help satisfaction remedy in Article 3 creates the risk that in some  
34 circumstances, a satisfaction agent may execute and record an affidavit of satisfaction with  
35 knowledge that the statements contained in that affidavit are false. In order to discourage such  
36 conduct, section 306(b) clarifies that in appropriate cases, a court may award punitive damages  
37 against such a satisfaction agent. Section 306(b) also preserves the applicability of other state

- 1 civil law (such as a statute proscribing unfair or deceptive trade practices) or criminal law (such
- 2 as perjury) against such conduct.

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