

1 92ND GENERAL ASSEMBLY
2 FIRST CONFERENCE COMMITTEE REPORT
3 ON HOUSE BILL 2207

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6 To the President of the Senate and the Speaker of the
7 House of Representatives:

8 We, the conference committee appointed to consider the
9 differences between the houses in relation to Senate
10 Amendments Nos. 1 and 2 to House Bill 2207, recommend the
11 following:

- 12 1. that the Senate recede from Senate Amendments Nos. 1
- 13 and 2; and
- 14 2. that House Bill 2207 be amended by replacing
- 15 everything after the enacting clause with the following:

16 "Section 1. Short Title. This Act may be cited as the
17 Mortgage Certificate of Release Act.

18 Section 5. Definitions. As used in this Act:

19 "Mortgage" means a mortgage or mortgage lien on an
20 interest in one-to-four family residential real property in
21 this State given to secure a loan in the original principal
22 amount of less than \$500,000. Trust deeds are not included.

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

26 "Mortgage servicer" means the last person to whom a
27 mortgagor or the mortgagor's successor in interest has been
28 instructed by a mortgagee to send payments on a loan secured
29 by a mortgage. A person transmitting a payoff statement is
30 the mortgage servicer for the mortgage described in the
31 payoff statement.

32 "Mortgagor" means the grantor of a mortgage.

1 "Notice of intention to file certificate of release"
2 means a statement from a title insurance company or title
3 insurance agent to the person to whom payment of the loan
4 secured by the mortgage was made in accordance with the
5 payoff statement of the intention to record a certificate of
6 release.

7 "Payoff statement" means a statement for the amount of
8 the (i) unpaid balance of a loan secured by a mortgage,
9 including principal, interest, and any other charges due
10 under or secured by the mortgage; and (ii) interest on a per
11 day basis for the unpaid balance.

12 "Record" means to deliver the certificate of release for
13 recording with the county recorder.

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

16 "Title insurance company" has the same meaning ascribed
17 to it as in Section 3 of the Title Insurance Act.

18 Section 10. Content and delivery of notice of intention
19 to file certificate of release.

20 (a) The notice of intention to file a certificate of
21 release shall state that if the title insurance company or
22 title insurance agent does not receive from the mortgagee or
23 mortgage servicer or its successor in interest either a
24 release or a written objection to the issuance of a
25 certificate of release pursuant to subsection (c) of this
26 Section, a certificate of release may be delivered for
27 recording to the recorder of each county in which the
28 mortgage is recorded. A notice of intention to file a
29 certificate of release should be in a form and include
30 content that substantially complies with Section 65 of this
31 Act. The notice of intention shall include a copy of the
32 closing statement or HUD-1 form and the payoff check or a
33 copy of it, or a copy of the wire transfer order.

34 (b) The notice of intention to file a certificate of

1 release shall be sent by certified mail, return receipt
2 requested, with postage prepaid, or by another service
3 providing receipted delivery, no sooner than the day of
4 closing and no later than 30 days after receipt of payment.
5 The notice shall be delivered to the location identified in
6 the payoff statement or as otherwise directed in writing by
7 the mortgagee or mortgage servicer or its successor in
8 interest. The notice may be sent with the payment, and need
9 not be sent separately.

10 (c) Within 90 days after receipt of the notice of
11 intention to file a certificate of release, the mortgagee or
12 mortgage servicer or its successor in interest may issue a
13 release or may object in writing to the issuance of a
14 certificate of release, and by doing so shall prevent the
15 title insurance company or title insurance agent from
16 executing and recording a certificate of release pursuant to
17 this Act. Any written objection submitted by the mortgagee or
18 mortgage servicer or its successor in interest shall state
19 the reason for which the release or certificate of release
20 should not be issued. The written objection shall be sent to
21 the title insurance company or title insurance agent by
22 certified mail, return receipt requested, with postage
23 prepaid, or by another service providing receipted delivery.
24 A title insurance company or title insurance agent shall not
25 cause a certificate of release to be recorded pursuant to
26 this Section if the title insurance company or title
27 insurance agent receives a written objection from the
28 mortgagee or mortgage servicer or its successor in interest.

29 Section 15. Certificate of release. An officer or duly
30 appointed agent of a title insurance company may, on behalf
31 of a mortgagor or a person who has acquired from a mortgagor
32 title to all or part of the property described in the
33 mortgage, execute a certificate of release that complies with
34 the requirements of this Act and record the certificate of

1 release with the recorder of each county in which the
2 mortgage is recorded, provided that payment of the loan
3 secured by the mortgage was made in accordance with a written
4 payoff statement furnished by the mortgagee or the mortgage
5 servicer, that a satisfaction or release of the mortgage has
6 not previously been recorded, and that a notice of intention
7 to file a certificate of release was sent in accordance with
8 Section 10.

9 Section 20. Contents of certificate of release. A
10 certificate of release executed under this Act must contain
11 substantially all of the following:

12 (a) The name of the mortgagor, the name of the original
13 mortgagee, and, if applicable, the mortgage servicer at the
14 date of the mortgage, the date of recording, and the volume
15 and page or document number or other official recording
16 designation in the real property records where the mortgage
17 is recorded, together with similar information for the last
18 recorded assignment of the mortgage.

19 (b) A statement that the mortgage was paid in accordance
20 with the written payoff statement received from the mortgagee
21 or mortgage servicer and there is no objection from the
22 mortgagee or mortgage servicer or its successor in interest.

23 (c) A statement that the person executing the
24 certificate of release is an officer or a duly appointed
25 agent of a title insurance company authorized and licensed to
26 transact the business of insuring titles to interests in real
27 property in this State pursuant to subsections (2) and (3) of
28 Section 3 of the Title Insurance Act.

29 (d) A statement that the certificate of release is made
30 on behalf of the mortgagor or a person who acquired title
31 from the mortgagor to all or a part of the property described
32 in the mortgage.

33 (e) A statement that the mortgagee or mortgage servicer
34 provided a written payoff statement.

1 Section 25. Execution. A certificate of release
2 authorized by Section 15 must be executed and acknowledged as
3 required by law, as in the case of a deed, and may be
4 executed by an officer or a duly appointed agent of a title
5 insurance company. The agent must be a currently registered
6 title insurance agent of the title insurance company.

7 Section 30. Appointment of title insurance agent.

8 (a) The appointment of a title insurance agent must be
9 executed and acknowledged as required by law, as in the case
10 of a deed, and must state all of the following:

11 (1) the identity of the title insurance company as
12 the principal;

13 (2) the identity of the person, partnership, limited
14 partnership, limited liability company, limited liability
15 partnership, or corporation authorized to act as title
16 insurance agent to execute and record certificates of
17 release provided for in this Act on behalf of the title
18 insurance company;

19 (3) that the title insurance agent has the full
20 authority to execute and record certificates of release
21 provided for in this Act on behalf of the title insurance
22 company;

23 (4) the term of appointment of the title insurance
24 agent; and

25 (5) that the title insurance agent has consented to
26 and accepts the terms of the appointment.

27 (b) The delegation to a title insurance agent by a title
28 insurance company shall not relieve the title insurance
29 company of any liability for actual damages as provided in
30 Section 40.

31 (c) A title insurance company may create an instrument,
32 executed by an officer of that company and acknowledged in
33 the same manner as a deed, appointing one or more title
34 insurance agents authorized to issue certificates of release

1 under this Act. This instrument shall designate the county
2 or counties in which it is to be effective and shall be
3 recorded with the recorder in each each of those counties,
4 either as an original instrument or by recording a copy
5 certified by the recorder of one of the counties. A separate
6 appointment of title insurance agent shall not be necessary
7 for each certificate of release. The appointment of an agent
8 may be re-recorded where necessary to establish authority of
9 the agent, but the authority shall continue until a
10 revocation of appointment is recorded in the office of the
11 recorder where the appointment of title insurance agent was
12 recorded or on the date, if any, in the recorded appointment
13 document.

14 Section 35. Effect of recording certificate of release.
15 For purposes of releasing the lien of the mortgage, a
16 certificate of release containing the information and
17 statements provided for in Section 20 and executed as
18 provided in Section 25 is prima facie evidence of the facts
19 contained therein, and upon being recorded with the recorder,
20 shall constitute a release of the lien of the mortgage
21 described in the certificate of release. The title insurance
22 company or title insurance agent recording the certificate of
23 release may use the recording fee collected for the recording
24 of a release or satisfaction of the mortgage to effect the
25 recording of the certificate of release.

26 Section 40. Wrongful or erroneous certificate of
27 release. Recording of a wrongful or erroneous certificate
28 of release by a title insurance company or its title
29 insurance agent shall not relieve the mortgagor or the
30 mortgagor's successors or assignees from any personal
31 liability on the loan or other obligations secured by the
32 mortgage. In addition to any other remedy provided by law, a
33 title insurance company executing or recording a certificate

1 of release under this Act that has actual knowledge that the
 2 information and statements contained therein are false is
 3 liable to the mortgagee for actual damages sustained due to
 4 the recording of the certificate of release. The prevailing
 5 party in any action or proceeding seeking actual damages due
 6 to the recording of a certificate of release shall be
 7 entitled to the recovery of reasonable attorneys fees and
 8 costs incurred in that action or proceeding.

9 Section 45. Recording. If a mortgage is recorded in
 10 more than one county and a certificate of release is recorded
 11 in one of them, a certified copy of the certificate of
 12 release may be recorded in another county with the same
 13 effect as the original. In all cases, the certificate of
 14 release shall be entered and indexed where satisfactions or
 15 releases of mortgage are entered and indexed.

16 Section 50. Form of certificate of release. A certificate
 17 of release in substantially the following form complies with
 18 this Act.

19 CERTIFICATE OF RELEASE

- 20 Date:.....Title Order No.:.....
- 21 1. Name of mortgagor(s):.....
- 22 2. Name of original mortgagee:.....
- 23 3. Name of mortgage servicer (if any):.....
- 24 4. Name of last assignee of mortgage or record (if any):.....
- 25 5. Mortgage recording: Vol.:.....Page:.....or Document
- 26 No.:.....
- 27 6. Last assignment recording (if any):
- 28 Vol.:.....Page:.....or Document No.:.....
- 29 7. The above referenced mortgage has been paid in accordance
- 30 with the payoff statement received from....., and there is no
- 31 objection from the mortgagee or mortgage servicer or its
- 32 successor in interest to the recording of this certificate of

1 release.

2 8. The person executing this certificate of release is an
3 officer or duly appointed agent of a title insurance company
4 authorized and licensed to transact the business of insuring
5 titles to interests in real property in this State pursuant
6 to Section 30 of this Act.

7 9. This certificate of release is made on behalf of the
8 mortgagor or a person who acquired title from the mortgagor
9 to all or part of the property described in the mortgage.

10 10. The mortgagee or mortgage servicer provided a payoff
11 statement.

12 11. The property described in the mortgage is as follows:

13 Permanent Index Number:.....

14 Common Address:.....

15 (Name of title insurance company)

16 By:.....

17 (Name of officer and title or name of agent and name of
18 officer / representative thereof)

19 Address:.....

20 Telephone No.:.....

21 State of Illinois)

22)

23 County of)

24 This instrument was acknowledged before me on(date) by
25(name of person) as(officer for / agent of)
26(title insurance company).

27

28 Notary Public

29 My commission expires on.....

30 Section 55. Form of appointment of title insurance agent
31 for issuance of certificates of release. A title insurance
32 company shall use the following form for the appointment of
33 its title insurance agents for the purpose of executing
34 certificates of release pursuant to this Act.

1 APPOINTMENT OF TITLE INSURANCE AGENT OR AGENTS FOR ISSUANCE OF
2 CERTIFICATES OF RELEASE

3 (name of title insurance company) appoints
4 (name of title insurance agent or agents) to act as its agent
5 or agents for the purpose of executing and delivering for
6 recording certificates of release as provided by the Mortgage
7 Certificate of Release Act. This appointment shall commence
8 on (date) and (select one) continue until revoked as
9 provided by that Act / terminate on (date). The agent
10 or agents appointed has/have consented to and accept the
11 terms of this appointment.

12 Dated this (date).

13 By:

14 (title insurance company)
15 (signature)
16 (typed / printed name & title)
17 (address)
18 (telephone number)

19 State of Illinois)
20)
21 County of)

22 This instrument was acknowledged before me on(date)
23 by(name of person) as(officer for / agent of)
24(title insurance company).
25

26 Notary Public

27 My commission expires on.....

28 Section 60. Form of revocation of appointment of title
29 insurance agent or agents for issuance of certificates of
30 release. A title insurance company shall use the following
31 form for the purpose of revoking the appointment of its title
32 insurance agent's authorization for executing certificates of
33 release pursuant to this Act.

34 REVOCATION OF APPOINTMENT OF TITLE INSURANCE

AGENT OR AGENTS FOR

ISSUANCE OF CERTIFICATES OF RELEASE

..... (name of title insurance company) revokes the appointment of (name of title insurance agent or agents) to act as its agent for the purpose of executing and delivering for recording certificates of release as provided by the Mortgage Certificate of Release Act. This Revocation shall be effective upon the recording in each county, or on (date), if subsequent to recording. A copy of this Revocation has been delivered to the named title insurance agent or agents by certified U. S. mail, return receipt requested, at the following address or addresses:

.....(name of title insurance agent)
(address)

Dated this (date).

By:

..... (title insurance company)
 (signature)
 (typed / printed name & title)
 (address)
 (telephone number)

State of Illinois)

)

County of)

This instrument was acknowledged before me on(date)

by(name of person) as(officer for / agent of)

.....(title insurance company).

.....

Notary Public

My commission expires on.....

Section 65. Form of notice of intention to file certificate of release. A notice of intention to file certificate of release shall be in the following form. Use of a form substantially similar to this form complies with

1 this Act.

2 NOTICE OF INTENTION TO FILE CERTIFICATE OF RELEASE

3 (Name of title insurance company or title insurance
4 agent), authorized to issue certificates of release, having
5 participated in the real estate closing resulting in the
6 funding of the payoff of the mortgage originally recorded as
7 Document No. ..., or Book at page or other filing made to
8 (name of original mortgagor) hereby gives this notice of
9 intention to file certificate of release. If, within 90 days
10 from the receipt of this notice by you, we have not received
11 a release or satisfaction of the mortgage or an objection to
12 the issuance of a certificate of release, we may record a
13 certificate of release of this mortgage with the office of
14 the recorder.

15 Enclosed is a copy of the closing statement or HUD-1 form
16 and the payoff check or a copy of it, or copy of the wire
17 transfer order.

18 Dated: (Insert date)

19 By: (Title Insurance Company or Title Insurance Agent as
20 authorized agent of title insurance company)

21 By: (Name of officer of title insurance company or
22 authorized title insurance agent)

23 (signed) ...

24 Section 90. Repeal. This Act is repealed on January 1,
25 2004. A certificate of release executed during the period in
26 which this Act is in effect is valid and entitled to
27 recording. Any certificate of release of record is effective
28 as provided in Section 35 of this Act.

29 Section 95. The Mortgage Act is amended by changing
30 Section 2 as follows:

31 (765 ILCS 905/2) (from Ch. 95, par. 52)

1 Sec. 2. Every mortgagee of real property, his assignee
2 of record, or other legal representative, having received
3 full satisfaction and payment of all such sum or sums of
4 money as are really due to him from the mortgagor, and every
5 trustee, or his successor in trust, in a deed of trust in the
6 nature of a mortgage, the notes, bonds or other indebtedness
7 secured thereby having been fully paid before September 7,
8 1973, shall, at the request of the mortgagor, or grantor in a
9 deed of trust in the nature of a mortgage, his heirs, legal
10 representatives or assigns, in case such mortgage or trust
11 deed has been recorded or registered, make, execute and
12 deliver to the mortgagor or grantor in a deed of trust in the
13 nature of a mortgage, his heirs, legal representatives or
14 assigns, an instrument in writing executed in conformity with
15 the provisions of this section releasing such mortgage or
16 deed of trust in the nature of a mortgage, which release
17 shall be entitled to be recorded or registered and the
18 recorder or registrar upon receipt of such a release and the
19 payment of the recording fee therefor shall record or
20 register the same.

21 Mortgages of real property and deeds of trust in the
22 nature of a mortgage shall be released of record only in the
23 manner provided herein or as provided in the Mortgage
24 Certificate of Release Act; however, nothing contained in
25 this Act shall in any manner affect the validity of any
26 release of a mortgage or deed of trust made prior to January
27 1, 1952 on the margin of the record.

28 Every mortgagee of real property, his assignee of record,
29 or other legal representative, having received full
30 satisfaction and payment of all such sum or sums of money as
31 are really due to him from the mortgagor, and every trustee,
32 or his successor in trust, in a deed of trust in the nature
33 of a mortgage, the notes, bonds or other indebtedness secured
34 thereby having been fully paid after September 7, 1973, shall
35 make, execute and deliver to the mortgagor or grantor in a

1 deed of trust in the nature of a mortgage, his heirs, legal
 2 representatives or assigns, an instrument in writing
 3 releasing such mortgage or deed of trust in the nature of a
 4 mortgage or shall deliver that release to the recorder or
 5 registrar for recording or registering. If the release is
 6 delivered to the mortgagor or grantor, it must have imprinted
 7 on its face in bold letters at least 1/4 inch in height the
 8 following: "FOR THE PROTECTION OF THE OWNER, THIS RELEASE
 9 SHALL BE FILED WITH THE RECORDER OR THE REGISTRAR OF TITLES
 10 IN WHOSE OFFICE THE MORTGAGE OR DEED OF TRUST WAS FILED".
 11 The recorder, or registrar, upon receipt of such a release
 12 and the payment of the recording or registration fee, shall
 13 record or register the release.
 14 (Source: P.A. 83-358.)

15 Section 99. Effective date. This Act takes effect upon
 16 becoming law."

17 Submitted on April 10, 2002.

18 s/Sen. Thomas Walsh
 19 s/Sen. Carl Hawkinson
 20 s/Sen. Kirk Dillard
 21 Sen. John Cullerton
 22 s/Sen. Barack Obama

s/Rep. Robert Bugielski
s/Rep. Barbara Currie
Rep. Daniel Burke
s/Rep. Art Tenhouse
s/Rep. James Meyer

23 Committee for the Senate

Committee for the House