

1 HB218  
2 195982-1  
3 By Representative Pringle  
4 RFD: Financial Services  
5 First Read: 19-MAR-19

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8 SYNOPSIS: Under existing law, secured creditors are  
9 only required to submit for recording the  
10 satisfaction of any residential mortgages.  
11 Non-residential mortgages, including commercial  
12 mortgages, are excluded from the satisfaction  
13 reporting requirements of the Alabama Residential  
14 Mortgage Satisfaction Act and a satisfaction is  
15 only recorded upon a written request of a mortgagor  
16 or a creditor of the mortgagor.

17 This bill would expand that act requiring  
18 recordation of satisfaction to include  
19 non-residential mortgages, and would rename that  
20 act the "Alabama Mortgage Satisfaction Act."

21 This bill would also make conforming changes  
22 in the Code.  
23

24 A BILL  
25 TO BE ENTITLED  
26 AN ACT  
27

1           To expand the Alabama Residential Mortgage  
2           Satisfaction Act to include non-residential mortgages and to  
3           rename that act accordingly; and to amend Sections 35-10-26  
4           and 35-10-30 to make conforming changes.

5           BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6           Section 1. Sections 35-10-90, 35-10-91, 35-10-92,  
7           35-10-94, 35-10-96, 35-10-26, and 35-10-30 of the Code of  
8           Alabama 1975 are amended to read as follows:

9           "§35-10-90.

10          "(a) This article shall be known as the Alabama  
11          ~~Residential~~ Mortgage Satisfaction Act. ~~This article applies~~  
12          ~~only to mortgages securing residential real property located~~  
13          ~~in this state which is used primarily for personal, family, or~~  
14          ~~household purposes and is improved by one to four dwelling~~  
15          ~~units. Without limitation, this article does not apply to~~  
16          ~~mortgages on commercial or other types of property. This~~  
17          article ~~also~~ does not apply to a security interest exclusively  
18          in one or more fixtures as defined in Title 7, Article 9A.

19          "(b) For purposes of this article, the following  
20          terms shall have the following meanings:

21          "~~(1) ENTITLED PERSON. The person or persons liable~~  
22          ~~for payment or performance of the obligation secured by the~~  
23          ~~real property described in a security instrument.~~

24          "~~(2)~~ (1) EQUITY LINE SECURITY INSTRUMENT. A security  
25          instrument securing, in whole or in part, indebtedness created  
26          under a line of credit, a revolving or open-end credit  
27          agreement, or a credit agreement that provides for future

1 advances. The credit agreement may be referred to in this  
2 article as an "equity line" or an "equity line of credit."

3 "(2) MORTGAGOR. The person, persons, or entity  
4 liable for payment or performance of the obligation secured by  
5 the real property described in a security instrument.

6 "(3) ~~RESIDENTIAL REAL PROPERTY~~ or REAL PROPERTY.  
7 ~~Real~~ Any real property located in this state. "Real property"  
8 ~~which includes both residential and non-residential~~  
9 ~~property is used primarily for personal, family, or household~~  
10 ~~purposes and is improved by one to four dwelling units.~~

11 "(4) SECURED CREDITOR. At any particular time, the  
12 person that currently holds or is the beneficiary of a  
13 security interest or that is authorized both to receive  
14 payments on behalf of a person that currently holds a security  
15 interest and to record a satisfaction of the security  
16 instrument upon receiving full performance of the secured  
17 obligation. The term does not include a trustee under a  
18 security instrument.

19 "(5) SECURITY INSTRUMENT. A mortgage or other  
20 agreement that creates or provides for an interest in  
21 ~~residential~~ real property to secure payment or performance of  
22 an obligation.

23 "(6) SECURITY INTEREST. An interest in ~~residential~~  
24 real property created by a security instrument. For purposes  
25 of this article, a security interest exclusively in one or  
26 more fixtures, as defined in Title 7, Article 9A, does not  
27 constitute an interest in ~~residential~~ real property.

1           "(7) SUBMIT FOR RECORDING. To deliver, with required  
2 fees and taxes, a document, sufficient to be recorded, to the  
3 judge of probate of the county in which the property is  
4 located. For purposes of this article, without limitation,  
5 mailing, delivering, or sending by overnight or other delivery  
6 service a satisfaction of mortgage or other document to be  
7 submitted for recording to the address of the office for  
8 recording satisfactions of mortgages or other documents, as  
9 applicable, is sufficient to constitute submission for  
10 recording.

11           "(8) TITLE INSURANCE COMPANY. An organization  
12 authorized to conduct the business of insuring titles to real  
13 property in this state and licensed by the Department of  
14 Insurance as defined in subdivision (9) of Section 27-25-3.

15           "§35-10-91.

16           "~~(a) A person liable for payment or performance of~~  
17 ~~the obligation secured by the real property described in a~~  
18 ~~security instrument~~ mortgagor who makes proper notice pursuant  
19 to this section shall be entitled to receive a payoff  
20 statement.

21           "(b) Proper notice must contain all of the  
22 following:

23           "(1) The ~~entitled person's~~ mortgagor's name.

24           "(2) If given by a person other than ~~an entitled~~  
25 ~~person~~ a mortgagor, the name of the person giving the  
26 notification and a statement, if required by the secured party

1 evidence, that the person is an authorized agent of the  
2 ~~entitled person~~ mortgagor.

3 "(3) The address to which the secured creditor must  
4 send the statement.

5 "(4) The account number assigned by the secured  
6 creditor or other sufficient information to enable the  
7 creditor to identify the secured obligation and the real  
8 property encumbered by the security interest.

9 "(5) If the secured obligation is an equity line, a  
10 statement that the ~~entitled person~~ mortgagor requests the  
11 secured creditor to close the equity line upon receipt of full  
12 payment of the equity line on the payoff date specified in the  
13 notification and authorizes the secured creditor, at the  
14 secured creditor's sole discretion and upon notification to  
15 the ~~entitled person~~ mortgagor or to the ~~entitled person's~~  
16 mortgagor's authorized agent, to suspend the extension of any  
17 additional amounts under the equity line for a period of time  
18 prior to the payoff date as designated by the secured  
19 creditor. Any payoff statement on an equity line may qualify  
20 the payoff amount as being subject to change.

21 "(c) Within 14 days after the receipt of a  
22 notification that complies with subsection (b), the secured  
23 creditor shall issue a payoff statement. A secured creditor  
24 may take reasonable measures to verify the identity of any  
25 person acting on behalf of the ~~entitled person~~ mortgagor and  
26 to obtain the entitled person's authorization to release  
27 information to that person before the 14-day time period

1 begins. If a secured obligation cannot be prepaid, a statement  
2 of that fact is sufficient; otherwise, a payoff statement must  
3 contain, in substance and with no particular phrasing  
4 required, the following:

5 "(1) The date on which it was prepared and the  
6 payoff amount as of that date, including the amount of unpaid  
7 principal, interest and fees, or other charges included within  
8 the payoff amount.

9 "(2) The information reasonably necessary to  
10 calculate the payoff amount as of the requested payoff date,  
11 including the per diem interest amount or any prepayment  
12 penalty which may apply. This subdivision does not apply to  
13 equity line security instruments.

14 "(3) The payment cutoff time, if any, the address or  
15 place where payment must be made, and any limitation as to the  
16 authorized method of payment.

17 "(d) A secured creditor may qualify a payoff amount  
18 or state that it is subject to change before the payoff date  
19 and provide in the payoff statement information sufficient to  
20 permit the ~~entitled person~~ mortgagor or the ~~person's~~  
21 mortgagor's authorized agent to request an updated payoff  
22 amount and to obtain that updated payoff amount during the  
23 secured creditor's normal business hours on the stated payoff  
24 date or the immediately preceding business day.

25 "(e) A secured creditor is not required to send a  
26 payoff statement by means other than first class mail,  
27 facsimile, or electronic mail.

1           "(f) If a secured creditor determines that the  
2       payoff statement it provided was erroneous, the creditor may  
3       send a corrected payoff statement. If the ~~entitled person~~  
4       mortgagor or the ~~person's~~ mortgagor's authorized agent  
5       receives and has a reasonable opportunity to act upon a  
6       corrected payoff statement before making payment, the  
7       corrected statement supersedes an earlier statement. This  
8       article does not affect the right of a secured creditor to  
9       recover any sum that it did not include in a payoff amount  
10      from any person or entity liable for payment of the secured  
11      obligation, including, without limitation, the ~~entitled person~~  
12      mortgagor who requested the payoff statement.

13           "(g) This section does not preclude, nor does it  
14      apply to, other methods of obtaining payoff information such  
15      as telephone calls, electronically, or other methods.

16           "§35-10-92.

17           "(a) A secured creditor shall submit for recording a  
18      satisfaction of a security instrument within 30 days after the  
19      creditor receives full payment and performance of the secured  
20      obligation, and the secured creditor has no obligation to make  
21      advances, incur obligations, or otherwise give value under any  
22      agreement. Equity line security instruments are fully paid and  
23      performed only if, in addition to full payment and  
24      performance, the equity line previously has been closed  
25      pursuant to the request of the ~~entitled person~~ mortgagor or  
26      the ~~entitled person's~~ mortgagor's authorized agent or



1 otherwise closed as provided by law and all secured  
2 obligations have been paid in full.

3 "(b) Notwithstanding anything to the contrary in  
4 this article, any notification demanding satisfaction of the  
5 security instrument must be sent to the secured creditor's  
6 address by a method that also provides proof of receipt by the  
7 secured creditor.

8 "(c) A secured creditor that is required to submit a  
9 satisfaction of a security instrument for recording and does  
10 not do so by the end of the period specified in subsection (a)  
11 is liable to the mortgagors for five hundred dollars (\$500) if  
12 following the expiration of the time period in subsection (a)  
13 the mortgagors make a written request to the secured creditor  
14 to record a satisfaction and the secured creditor fails to do  
15 so within 21 days after receipt of the written request. The  
16 written request must be signed by the mortgagors and by all  
17 other persons who have a right to require the mortgage to  
18 extend value or signed by an authorized agent of these  
19 persons.

20 "(d) A secured creditor that is required to submit a  
21 satisfaction of a security instrument for recording and does  
22 not do so by the end of the period specified in subsection (c)  
23 is not liable to the mortgagors other than for the penalty set  
24 forth in subsection (c) and any actual economic damages  
25 directly caused by the failure to comply with this section.

26 "(e) A secured creditor is not liable under this  
27 article if it does the following:

1           "(1) Establishes a reasonable procedure to achieve  
2 compliance with its obligations under this article.

3           "(2) Complies with that procedure in good faith as  
4 defined in Section 7-9A-102(43).

5           "(3) Fails to comply with its obligations either  
6 because of circumstances beyond its reasonable control or as a  
7 result of a bona fide error, notwithstanding maintenance of  
8 reasonable procedures of compliance.

9           "(f) (1) Subsections (a), (b), (c), and (d) do not  
10 apply if the secured creditor receives full payment or  
11 performance of the secured obligation relating to residential  
12 property before March 1, 2013.

13           "(2) Subsections (a), (b), (c), and (d) do not apply  
14 if the secured creditor receives full payment or performance  
15 of the secured obligation relating to nonr-residential  
16 property before the effective date of the act adding this  
17 amendatory language."

18           "§35-10-94.

19           "(a) If a secured creditor has not submitted for  
20 recording a satisfaction of a security instrument within the  
21 time set forth in Section 35-10-92 after full and complete  
22 payment of all indebtedness secured by the security  
23 instrument, a satisfaction agent acting for and with authority  
24 from the mortgagors may give the secured creditor a  
25 notification that the satisfaction agent intends to submit for  
26 recording an affidavit of satisfaction of the security

1 instrument. The notification must include all of the  
2 following:

3 "(1) The identity and mailing address of the  
4 satisfaction agent.

5 "(2) Identification of the security instrument for  
6 which a recorded satisfaction is sought, including the names  
7 of the original parties to, and the recording data for, the  
8 security instrument.

9 "(3) A statement that the satisfaction agent has  
10 determined all of the following:

11 "a. ~~That~~ Whether the real property described in the  
12 security instrument ~~is~~ was, at the time the security interest  
13 was made, residential real property or, ~~at the time the~~  
14 ~~security interest was made, was residential~~ non-residential  
15 real property.

16 "b. That the person to which the notification is  
17 being given is the secured creditor.

18 "c. That the secured creditor has received full  
19 payment and performance of the secured obligation.

20 "(4) A statement that a satisfaction of the security  
21 instrument does not appear of record in the chain of title.

22 "(5) A statement that the satisfaction agent, acting  
23 with the authorization of the mortgagors of the real property  
24 described in the security instrument, intends to sign and  
25 submit for recording an affidavit of satisfaction of the  
26 security instrument unless, within 30 days after receipt of

1 the notification by the secured creditor, any of the following  
2 occurs:

3 "a. The secured creditor submits a satisfaction of  
4 the security instrument for recording.

5 "b. The satisfaction agent receives from the secured  
6 creditor a notification stating that the secured obligation  
7 remains unsatisfied.

8 "c. The satisfaction agent receives from the secured  
9 creditor a notification stating that the secured creditor has  
10 assigned the security instrument or otherwise does not claim  
11 an interest in the security instrument. In this event, the  
12 satisfaction agent will use all reasonable efforts to  
13 determine the name and address of, and notify, the secured  
14 creditor then owning the securing instrument.

15 "(b) A notification to the secured creditor under  
16 subsection (a) must be sent by a method that provides proof of  
17 receipt by the secured creditor for giving a notification for  
18 the purpose of requesting a payoff statement or, if the  
19 satisfaction agent cannot ascertain that address, to the  
20 secured creditor's address for notification for any other  
21 purpose.

22 "§35-10-96.

23 "An affidavit of satisfaction of a security  
24 instrument must do all of the following:

25 "(1) Identify the original parties to the security  
26 instrument, the secured creditor, and the recording data for  
27 the security instrument.

1           "(2) State the basis upon which the person signing  
2 the affidavit is a satisfaction agent including, without  
3 limitation, that the person signing the affidavit is  
4 authorized to sign on behalf of, and to bind, the insurance  
5 company acting as satisfaction agent.

6           "(3) State that the person signing the affidavit has  
7 determined ~~that whether~~ the real property described in the  
8 security instrument ~~is residential real property or was, at~~  
9 ~~the time the security instrument was made, residential real~~  
10 ~~property or non-residential real property at the time the~~  
11 ~~security instrument was made.~~

12           "(4) State that the person signing the affidavit  
13 determined that the secured creditor has received full payment  
14 or performance of the secured obligation and, if the security  
15 instrument is an equity line security instrument, that the  
16 equity line has been closed.

17           "(5) State that the person signing the affidavit,  
18 acting with the authority of the owner of the real property  
19 described in the security instrument, gave notification to the  
20 secured creditor of its intention to sign and submit for  
21 recording an affidavit of satisfaction.

22           "(6) Describe the method by which the person signing  
23 the affidavit gave notification in compliance with this  
24 article.

25           "(7) State either of the following:

26           "a. That more than 30 days have elapsed since the  
27 receipt of notification by the secured party, no satisfaction

1 has been recorded, and the satisfaction agent has not received  
2 a notification that the secured obligation remains unsatisfied  
3 or received information that the secured obligation has been  
4 assigned.

5 "b. That the secured creditor authorized the person  
6 signing the affidavit to sign and record an affidavit of  
7 satisfaction.

8 "(8) Be sworn or affirmed, signed, and acknowledged  
9 as required by law for a conveyance of an interest in real  
10 property.

11 "§35-10-26.

12 "The payment or satisfaction of the real property  
13 mortgage debt divests the title passing by the mortgage.

14 "Payment or satisfaction of the real property mortgage debt"  
15 shall not occur until there is no outstanding indebtedness or  
16 other obligation secured by the mortgage, and no commitment or  
17 agreement by the mortgagee to make advances, incur obligations  
18 or otherwise give value (collectively referred to as "extend  
19 value"), under any agreement, including, without limitation,  
20 agreements providing for future advances, open end, revolving  
21 or other lines of credit, or letters of credit. Except as  
22 otherwise specifically provided to the contrary in the Alabama  
23 ~~Residential~~ Mortgage Satisfaction Act, upon the written  
24 request to satisfy a mortgage signed by the mortgagors and by  
25 all other persons who have a right to require the mortgagee to  
26 extend value or signed by other authorized representatives on  
27 behalf of the mortgagors and such other persons, which notice

1 shall actually be served upon the mortgagee, and provided  
2 there is no outstanding obligation secured by the mortgage at  
3 that time, the mortgagee shall file a properly executed and  
4 notarized satisfaction of the mortgage or otherwise cause the  
5 mortgage to be satisfied in accordance with other applicable  
6 provisions of law. From and after such written request for  
7 mortgage satisfaction, neither the mortgagors nor any other  
8 person who signed such request, or on whose behalf such  
9 request was signed, shall have the right to request or demand  
10 that the mortgagee extend value under the mortgage or other  
11 agreements and the mortgagee shall be released from all  
12 obligations and commitments to extend value thereunder."

13 "§35-10-30.

14 "(a) If, for 30 days after such request, the  
15 ~~mortgagee~~ secured creditor or assignee or transferee, trustee  
16 or cestui que trust, fails to make any entry required by this  
17 article he or she forfeits to the party making the request two  
18 hundred dollars (\$200) unless there is pending, or there is  
19 instituted, an action within that time, in which the fact of  
20 partial payment or satisfaction is or may be contested. In  
21 construing this article, ~~the~~ this right of action ~~given herein~~  
22 shall be considered as a personal right, and shall not be lost  
23 or waived by a sale of the property covered by the mortgage or  
24 deed of trust before a demand was made for the satisfaction to  
25 be entered upon the record.

26 "(b) All actions for the recovery of the penalties  
27 ~~mentioned~~ provided in this article shall be brought in the

1 county where ~~such~~ the mortgage or other instrument is  
2 recorded.

3 "(c) This section does not apply to satisfactions of  
4 ~~residential~~ mortgages which are governed by the Alabama  
5 ~~Residential~~ Mortgage Satisfaction Act."

6 Section 2. Section 35-10-27 of the Code of Alabama  
7 1975 is repealed.

8 Section 3. This act shall become effective on the  
9 first day of the third month following its passage and  
10 approval by the Governor, or its otherwise becoming law.