

1 HB218  
2 198876-3  
3 By Representative Pringle  
4 RFD: Financial Services  
5 First Read: 19-MAR-19

1 ENGROSSED

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4 A BILL  
5 TO BE ENTITLED  
6 AN ACT  
7

8 To expand the Alabama Residential Mortgage  
9 Satisfaction Act; to amend Sections 35-10-90, 35-10-91,  
10 35-10-92, 35-10-94, and 35-10-96, Code of Alabama 1975, to  
11 include commercial agricultural mortgages; to rename the act  
12 accordingly; to amend Sections 35-10-26 and 35-10-30, Code of  
13 Alabama 1975, to make conforming changes; and to repeal  
14 Section 35-10-27, Code of Alabama 1975.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 35-10-90, 35-10-91, 35-10-92,  
17 35-10-94, 35-10-96, 35-10-26, and 35-10-30, Code of Alabama  
18 1975, are amended to read as follows:

19 "§35-10-90.

20 "(a) This article shall be known as the Alabama  
21 Residential and Agricultural Mortgage Satisfaction Act. This  
22 article applies only to (i) mortgages securing residential  
23 real property located in this state which is used primarily  
24 for personal, family, or household purposes and is improved by  
25 one to four dwelling units, or (ii) mortgages securing  
26 commercial agricultural property. Without limitation, this  
27 article does not apply to mortgages on non-agricultural

1 commercial or other types of property. This article also does  
2 not apply to mortgages on other types of property or to a  
3 security interest exclusively in one or more fixtures as  
4 defined in Title 7, Article 9A.

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

7 "(1) COMMERCIAL AGRICULTURAL PROPERTY. Real property  
8 located in this state that is used primarily for the growing  
9 of plants, trees, or animals primarily for a for-profit  
10 business and not for recreational purposes.

11 "~~(1)~~ (2) ENTITLED PERSON. The person or persons  
12 liable for payment or performance of the obligation secured by  
13 the real property described in a security instrument.

14 "~~(2)~~ (3) EQUITY LINE SECURITY INSTRUMENT. A security  
15 instrument securing, in whole or in part, indebtedness created  
16 under a line of credit, a revolving or open-end credit  
17 agreement, or a credit agreement that provides for future  
18 advances. The credit agreement may be referred to in this  
19 article as an "equity line" or an "equity line of credit."

20 "~~(3)~~ (4) RESIDENTIAL REAL PROPERTY or REAL PROPERTY.  
21 Real property located in this state which is used primarily  
22 for personal, family, or household purposes and is improved by  
23 one to four dwelling units.

24 "~~(4)~~ (5) SECURED CREDITOR. At any particular time,  
25 the person that currently holds or is the beneficiary of a  
26 security interest or that is authorized both to receive  
27 payments on behalf of a person that currently holds a security

1 interest and to record a satisfaction of the security  
2 instrument upon receiving full performance of the secured  
3 obligation. The term does not include a trustee under a  
4 security instrument.

5 "~~(5)~~ (6) SECURITY INSTRUMENT. A mortgage or other  
6 agreement that creates or provides for an interest in  
7 residential real property or commercial agricultural property  
8 to secure payment or performance of an obligation.

9 "~~(6)~~ (7) SECURITY INTEREST. An interest in  
10 residential real property or commercial agricultural property  
11 created by a security instrument. For purposes of this  
12 article, a security interest exclusively in one or more  
13 fixtures, as defined in Title 7, Article 9A, does not  
14 constitute an interest in residential real property or  
15 commercial agricultural property.

16 "~~(7)~~ (8) SUBMIT FOR RECORDING. To deliver, with  
17 required fees and taxes, a document, sufficient to be  
18 recorded, to the judge of probate of the county in which the  
19 property is located. For purposes of this article, without  
20 limitation, mailing, delivering, or sending by overnight or  
21 other delivery service a satisfaction of mortgage or other  
22 document to be submitted for recording to the address of the  
23 office for recording satisfactions of mortgages or other  
24 documents, as applicable, is sufficient to constitute  
25 submission for recording.

26 "~~(8)~~ (9) TITLE INSURANCE COMPANY. An organization  
27 authorized to conduct the business of insuring titles to real

1 property in this state and licensed by the Department of  
2 Insurance as defined in subdivision (9) of Section 27-25-3.

3 "§35-10-91.

4 "(a) A person liable for payment or performance of  
5 the obligation secured by the residential real property  
6 described in a security instrument who makes proper notice  
7 pursuant to this section shall be entitled to receive a payoff  
8 statement.

9 "(b) Proper notice must contain all of the  
10 following:

11 "(1) The entitled person's name.

12 "(2) If given by a person other than an entitled  
13 person, the name of the person giving the notification and a  
14 statement, if required by the secured party evidence, that the  
15 person is an authorized agent of the entitled person.

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

18 "(4) The account number assigned by the secured  
19 creditor or other sufficient information to enable the  
20 creditor to identify the secured obligation and the real  
21 property encumbered by the security interest.

22 "(5) If the secured obligation is an equity line, a  
23 statement that the entitled person requests the secured  
24 creditor to close the equity line upon receipt of full payment  
25 of the equity line on the payoff date specified in the  
26 notification and authorizes the secured creditor, at the  
27 secured creditor's sole discretion and upon notification to

1 the entitled person or to the entitled person's authorized  
2 agent, to suspend the extension of any additional amounts  
3 under the equity line for a period of time prior to the payoff  
4 date as designated by the secured creditor. Any payoff  
5 statement on an equity line may qualify the payoff amount as  
6 being subject to change.

7 "(c) Within 14 days after the receipt of a  
8 notification that complies with subsection (b), the secured  
9 creditor shall issue a payoff statement. A secured creditor  
10 may take reasonable measures to verify the identity of any  
11 person acting on behalf of the entitled person and to obtain  
12 the entitled person's authorization to release information to  
13 that person before the 14-day time period begins. If a secured  
14 obligation cannot be prepaid, a statement of that fact is  
15 sufficient; otherwise, a payoff statement must contain, in  
16 substance and with no particular phrasing required, the  
17 following:

18 "(1) The date on which it was prepared and the  
19 payoff amount as of that date, including the amount of unpaid  
20 principal, interest and fees, or other charges included within  
21 the payoff amount.

22 "(2) The information reasonably necessary to  
23 calculate the payoff amount as of the requested payoff date,  
24 including the per diem interest amount or any prepayment  
25 penalty which may apply. This subdivision does not apply to  
26 equity line security instruments.

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

4           "(d) A secured creditor may qualify a payoff amount  
5 or state that it is subject to change before the payoff date  
6 and provide in the payoff statement information sufficient to  
7 permit the entitled person or the person's authorized agent to  
8 request an updated payoff amount and to obtain that updated  
9 payoff amount during the secured creditor's normal business  
10 hours on the stated payoff date or the immediately preceding  
11 business day.

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

15           "(f) If a secured creditor determines that the  
16 payoff statement it provided was erroneous, the creditor may  
17 send a corrected payoff statement. If the entitled person or  
18 the person's authorized agent receives and has a reasonable  
19 opportunity to act upon a corrected payoff statement before  
20 making payment, the corrected statement supersedes an earlier  
21 statement. This article does not affect the right of a secured  
22 creditor to recover any sum that it did not include in a  
23 payoff amount from any person or entity liable for payment of  
24 the secured obligation, including, without limitation, the  
25 entitled person who requested the payoff statement.

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

4           "(h) This section does not apply to a person liable  
5 for payment or performance of the obligation secured by the  
6 commercial agricultural property described in a security  
7 instrument.

8           "§35-10-92.

9           "(a) A secured creditor shall submit for recording a  
10 satisfaction of a security instrument within 30 days after the  
11 creditor receives full payment and performance of the secured  
12 obligation, and the secured creditor has no obligation to make  
13 advances, incur obligations, or otherwise give value under any  
14 agreement. Equity line security instruments are fully paid and  
15 performed only if, in addition to full payment and  
16 performance, the equity line previously has been closed  
17 pursuant to the request of the entitled person or the entitled  
18 person's authorized agent or otherwise closed as provided by  
19 law and all secured obligations have been paid in full.

20           "(b) Notwithstanding anything to the contrary in  
21 this article, any notification demanding satisfaction of the  
22 security instrument must be sent to the secured creditor's  
23 address by a method that also provides proof of receipt by the  
24 secured creditor.

25           "(c) A secured creditor that is required to submit a  
26 satisfaction of a security instrument for recording and does  
27 not do so by the end of the period specified in subsection (a)



1 is liable to the mortgagors for five hundred dollars (\$500) if  
2 following the expiration of the time period in subsection (a)  
3 the mortgagors make a written request to the secured creditor  
4 to record a satisfaction and the secured creditor fails to do  
5 so within 21 days after receipt of the written request. The  
6 written request must be signed by the mortgagors and by all  
7 other persons who have a right to require the mortgage to  
8 extend value or signed by an authorized agent of these  
9 persons.

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

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

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

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

22 "(3) Fails to comply with its obligations either  
23 because of circumstances beyond its reasonable control or as a  
24 result of a bona fide error, notwithstanding maintenance of  
25 reasonable procedures of compliance.

26 "(f) (1) Subsections (a), (b), (c), and (d) do not  
27 apply if the secured creditor receives full payment or

1 performance of the secured obligation relating to residential  
2 property before March 1, 2013.

3 "(2) Subsections (a), (b), (c), and (d) do not apply  
4 if the secured creditor receives full payment or performance  
5 of the secured obligation relating to commercial agricultural  
6 property before the effective date of the act adding this  
7 amendatory language.

8 "§35-10-94.

9 "(a) If a secured creditor has not submitted for  
10 recording a satisfaction of a security instrument within the  
11 time set forth in Section 35-10-92 after full and complete  
12 payment of all indebtedness secured by the security  
13 instrument, a satisfaction agent acting for and with authority  
14 from the mortgagors may give the secured creditor a  
15 notification that the satisfaction agent intends to submit for  
16 recording an affidavit of satisfaction of the security  
17 instrument. The notification must include all of the  
18 following:

19 "(1) The identity and mailing address of the  
20 satisfaction agent.

21 "(2) Identification of the security instrument for  
22 which a recorded satisfaction is sought, including the names  
23 of the original parties to, and the recording data for, the  
24 security instrument.

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

1            "a. ~~That~~ Whether the real property described in the  
2 security instrument ~~is~~ was, at the time the security interest  
3 was made, residential real property or, ~~at the time the~~  
4 ~~security interest was made,~~ was residential real commercial  
5 agricultural property.

6            "b. That the person to which the notification is  
7 being given is the secured creditor.

8            "c. That the secured creditor has received full  
9 payment and performance of the secured obligation.

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

12           " (5) A statement that the satisfaction agent, acting  
13 with the authorization of the mortgagors of the real property  
14 described in the security instrument, intends to sign and  
15 submit for recording an affidavit of satisfaction of the  
16 security instrument unless, within 30 days after receipt of  
17 the notification by the secured creditor, any of the following  
18 occurs:

19           "a. The secured creditor submits a satisfaction of  
20 the security instrument for recording.

21           "b. The satisfaction agent receives from the secured  
22 creditor a notification stating that the secured obligation  
23 remains unsatisfied.

24           "c. The satisfaction agent receives from the secured  
25 creditor a notification stating that the secured creditor has  
26 assigned the security instrument or otherwise does not claim  
27 an interest in the security instrument. In this event, the

1 satisfaction agent will use all reasonable efforts to  
2 determine the name and address of, and notify, the secured  
3 creditor then owning the securing instrument.

4 "(b) A notification to the secured creditor under  
5 subsection (a) must be sent by a method that provides proof of  
6 receipt by the secured creditor for giving a notification for  
7 the purpose of requesting a payoff statement or, if the  
8 satisfaction agent cannot ascertain that address, to the  
9 secured creditor's address for notification for any other  
10 purpose.

11 "§35-10-96.

12 "An affidavit of satisfaction of a security  
13 instrument must do all of the following:

14 "(1) Identify the original parties to the security  
15 instrument, the secured creditor, and the recording data for  
16 the security instrument.

17 "(2) State the basis upon which the person signing  
18 the affidavit is a satisfaction agent including, without  
19 limitation, that the person signing the affidavit is  
20 authorized to sign on behalf of, and to bind, the insurance  
21 company acting as satisfaction agent.

22 "(3) State that the person signing the affidavit has  
23 determined ~~that~~ whether the real property described in the  
24 security instrument ~~is residential real property or was,~~ at  
25 the time the security instrument was made, residential real  
26 property or commercial agricultural property ~~at the time the~~  
27 ~~security instrument was made.~~

1           "(4) State that the person signing the affidavit  
2 determined that the secured creditor has received full payment  
3 or performance of the secured obligation and, if the security  
4 instrument is an equity line security instrument, that the  
5 equity line has been closed.

6           "(5) State that the person signing the affidavit,  
7 acting with the authority of the owner of the real property  
8 described in the security instrument, gave notification to the  
9 secured creditor of its intention to sign and submit for  
10 recording an affidavit of satisfaction.

11           "(6) Describe the method by which the person signing  
12 the affidavit gave notification in compliance with this  
13 article.

14           "(7) State either of the following:

15           "a. That more than 30 days have elapsed since the  
16 receipt of notification by the secured party, no satisfaction  
17 has been recorded, and the satisfaction agent has not received  
18 a notification that the secured obligation remains unsatisfied  
19 or received information that the secured obligation has been  
20 assigned.

21           "b. That the secured creditor authorized the person  
22 signing the affidavit to sign and record an affidavit of  
23 satisfaction.

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

27           "§35-10-26.

1           "The payment or satisfaction of the real property  
2 mortgage debt divests the title passing by the mortgage.  
3 "Payment or satisfaction of the real property mortgage debt"  
4 shall not occur until there is no outstanding indebtedness or  
5 other obligation secured by the mortgage, and no commitment or  
6 agreement by the mortgagee to make advances, incur obligations  
7 or otherwise give value (collectively referred to as "extend  
8 value"), under any agreement, including, without limitation,  
9 agreements providing for future advances, open end, revolving  
10 or other lines of credit, or letters of credit. Except as  
11 otherwise specifically provided to the contrary in the Alabama  
12 Residential and Agricultural Mortgage Satisfaction Act, upon  
13 the written request to satisfy a mortgage signed by the  
14 mortgagors and by all other persons who have a right to  
15 require the mortgagee to extend value or signed by other  
16 authorized representatives on behalf of the mortgagors and  
17 such other persons, which notice shall actually be served upon  
18 the mortgagee, and provided there is no outstanding obligation  
19 secured by the mortgage at that time, the mortgagee shall file  
20 a properly executed and notarized satisfaction of the mortgage  
21 or otherwise cause the mortgage to be satisfied in accordance  
22 with other applicable provisions of law. From and after such  
23 written request for mortgage satisfaction, neither the  
24 mortgagors nor any other person who signed such request, or on  
25 whose behalf such request was signed, shall have the right to  
26 request or demand that the mortgagee extend value under the  
27 mortgage or other agreements and the mortgagee shall be

1 released from all obligations and commitments to extend value  
2 thereunder."

3 "§35-10-30.

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

16 "(b) All actions for the recovery of the penalties  
17 ~~mentioned~~ provided in this article shall be brought in the  
18 county where ~~such~~ the mortgage or other instrument is  
19 recorded.

20 "(c) This section does not apply to satisfactions of  
21 ~~residential~~ mortgages which are governed by the Alabama  
22 Residential and Agricultural Mortgage Satisfaction Act."

23 Section 2. Section 35-10-27, Code of Alabama 1975,  
24 relating to entry of full payment or satisfaction in records,  
25 is repealed.

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



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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Financial Ser-  
vices..... 19-MAR-19

Read for the second time and placed  
on the calendar with 1 substitute  
and..... 11-APR-19

Read for the third time and passed  
as amended..... 23-MAY-19

Yeas 102, Nays 0, Abstains 0

Jeff Woodard  
Clerk