

1 SB170
2 115503-2
3 By Senators Marsh and Little (T)
4 RFD: Judiciary
5 First Read: 12-JAN-10

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8 SYNOPSIS: This bill would adopt the Alabama Uniform
9 Residential Mortgage Satisfaction Act.

10 This bill would provide a method for a
11 landowner or other entitled person to request a
12 payoff statement pursuant to a notification that
13 may be transmitted to a secured creditor by first
14 class mail, facsimile, or email.

15 This bill would require a secured creditor,
16 upon notification, to comply with the request for a
17 payoff statement within 30 days or be liable for
18 damages.

19 This bill would require secured creditors to
20 record mortgage satisfactions within 30 days of the
21 day the mortgage is paid or be liable for damages.

22 This bill would limit damages to actual
23 damages plus \$500 and attorneys' fees in certain
24 circumstances.

25 This bill would provide a self-help title
26 clearing remedy for a person entitled to the
27 recording of a mortgage satisfaction pursuant to

1 the use of an Affidavit of Satisfaction and a
2 Satisfaction Agent.

3 This bill would also provide for the use of
4 a Document of Rescission by a secured creditor to
5 rescind an erroneous recording of a mortgage
6 satisfaction and limit potential liability.

7
8 A BILL
9 TO BE ENTITLED
10 AN ACT

11
12 To adopt the Alabama Uniform Residential Mortgage
13 Satisfaction Act as a new Chapter 10B, Title 35, Code of
14 Alabama 1975, to provide a uniform method for clearing
15 residential land titles for subsequent transactions; to
16 provide a method for a landowner or other entitled person to
17 request a payoff statement pursuant to a notification
18 transmitted to a secured creditor; to require a secured
19 creditor, upon notification, to comply with the request for a
20 payoff statement within 30 days; to secured creditors to
21 record mortgage satisfactions within 30 days of the payment
22 date; to provide penalties for violations; to provide a
23 self-help title clearing remedy pursuant to the use of an
24 Affidavit of Satisfaction and a Satisfaction Agent; to provide
25 for the use of a Document of Rescission by a secured creditor
26 to rescind an erroneous recording of a mortgage; and to amend

1 Sections 35-10-26 and 35-10-30, Code of Alabama 1975, to
2 conform those code sections to the new chapter.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Chapter 10B is added to Title 35 of the
5 Code of Alabama 1975, to read as follows:

6 CHAPTER 10B. THE ALABAMA UNIFORM RESIDENTIAL
7 MORTGAGE SATISFACTION ACT

8 ARTICLE 1

9 DEFINITIONS AND GENERAL PROVISIONS

10 Section 35-10B-101. Short title.

11 This chapter may be cited as the Alabama Uniform
12 Residential Mortgage Satisfaction Act.

13 Section 35-10B-102. Definitions.

14 For purposes of this chapter, the following terms
15 shall have the following meanings:

16 (1) ADDRESS FOR GIVING A NOTIFICATION. For the
17 purpose of a particular type of notification, the most recent
18 address provided in a document relating to the secured
19 obligation by the intended recipient of the notification to
20 the person giving the notification, unless the person giving
21 the notification knows of a more accurate address, in which
22 case the term means that address.

23 (2) DAY. Calendar day.

24 (3) DOCUMENT. Information that is inscribed on a
25 tangible medium or that is stored in an electronic or other
26 medium and is retrievable in perceivable form.

1 (4) ELECTRONIC. Relating to technology having
2 electrical, digital, magnetic, wireless, optical,
3 electromagnetic, or similar capabilities.

4 (5) ENTITLED PERSON. A person liable for payment or
5 performance of the obligation secured by the real property
6 described in a security instrument, or the landowner.

7 (6) GOOD FAITH. Honesty in fact in the conduct
8 concerned.

9 (7) LANDOWNER. A person that, before foreclosure,
10 has the right of redemption in the real property described in
11 a security instrument. The term does not include a person that
12 holds only a lien on the real property.

13 (8) NOTIFICATION. A document containing information
14 required under this chapter and signed by the person required
15 to provide the information.

16 (9) PAYOFF AMOUNT. The sum necessary to satisfy a
17 secured obligation.

18 (10) PAYOFF STATEMENT. A document containing the
19 information specified in Section 35-10B-201(d).

20 (11) PERSON. An individual, corporation, business
21 trust, estate, trust, partnership, limited liability company,
22 association, joint venture, public corporation, government, or
23 governmental subdivision, agency, or instrumentality, or any
24 other legal or commercial entity.

25 (12) RECORDING DATA. The date and book and page
26 number or instrument/document number that indicate where a
27 document is recorded in the office of the judge of probate.

1 (13) RESIDENTIAL REAL PROPERTY. Real property
2 located in this state which is used primarily for personal,
3 family, or household purposes and is improved by one to four
4 dwelling units.

5 (14) SECURED CREDITOR. A person that holds or is the
6 beneficiary of a security interest or that is authorized both
7 to receive payments on behalf of a person that holds a
8 security interest and to record a satisfaction of the security
9 instrument upon receiving full performance of the secured
10 obligation. The term does not include a trustee under a
11 security instrument.

12 (15) SECURED OBLIGATION. An obligation the payment
13 or performance of which is secured by a security interest.

14 (16) SECURITY INSTRUMENT. An agreement, however
15 denominated, that creates or provides for an interest in
16 residential real property to secure payment or performance of
17 an obligation, whether or not it also creates or provides for
18 a lien on personal property.

19 (17) SECURITY INTEREST. An interest in residential
20 real property created by a security instrument.

21 (18) SIGN. With present intent to authenticate or
22 adopt a document, to do either of the following:

23 a. To execute or adopt a tangible symbol.

24 b. To attach to or logically associate with the
25 document an electronic sound, symbol, or process.

26 (19) STATE. A state of the United States, the
27 District of Columbia, Puerto Rico, the United States Virgin

1 Islands, or any territory or insular possession subject to the
2 jurisdiction of the United States.

3 (20) SUBMIT FOR RECORDING. To deliver, with required
4 fees and taxes, a document sufficient to be recorded under
5 this chapter, to the judge of probate of the county in which
6 the property is located.

7 Section 35-10B-103. Notification: Manner of giving
8 and effective date.

9 (a) A person gives a notification by any of the
10 following methods:

11 (1) Depositing it with the United States Postal
12 Service with first-class postage paid or with a commercially
13 reasonable delivery service with cost of delivery provided,
14 properly addressed to the recipient's address for giving a
15 notification.

16 (2) Sending it by facsimile transmission, electronic
17 mail, or other electronic transmission to the recipient's
18 address for giving a notification, but only if the recipient
19 agreed to receive notification in that manner.

20 (3) Causing it to be received at the address for
21 giving a notification within the time that it would have been
22 received if given pursuant to subdivision (1).

23 (b) A notification is effective:

24 (1) The day after it is deposited with a
25 commercially reasonable delivery service for overnight
26 delivery.

1 (2) Three days after it is deposited with the United
2 States Postal Service, first class mail with postage prepaid,
3 or with a commercially reasonable delivery service for
4 delivery other than by overnight delivery.

5 (3) The day it is given, if given pursuant to
6 subsection (a) (2).

7 (4) The day it is received, if given by a method
8 other than as provided in subsection (a) (1) or (2).

9 Section 35-10B-104. Document of rescission: Effect;
10 liability for wrongful recording.

11 (a) In this section, "document of rescission" means
12 a document stating that an identified satisfaction or
13 affidavit of satisfaction of a security instrument was
14 recorded erroneously, the secured obligation remains
15 unsatisfied, and the security instrument remains in force.

16 (b) If ownership of the property has not been
17 transferred, a person who records a satisfaction or affidavit
18 of satisfaction of a security instrument in error may execute
19 and record a document of rescission. Upon recording, the
20 document rescinds an erroneously recorded satisfaction or
21 affidavit.

22 (c) A recorded document of rescission has no effect
23 on the rights of a person that:

24 (1) Acquired an interest in the real property
25 described in a security instrument after the recording of the
26 satisfaction or affidavit of satisfaction of the security

1 instrument and before the recording of the document of
2 rescission; and

3 (2) Would otherwise have priority over or take free
4 of the lien created by the security instrument under Article
5 3, Chapter 4, of this title.

6 (d) A person that erroneously or wrongfully records
7 a document of rescission is liable to any person injured
8 thereby for the actual damages caused by the recording and
9 reasonable attorney's fees and costs.

10 ARTICLE 2

11 SECURED CREDITOR TO RECORD SATISFACTION; LIABILITY
12 FOR FAILURE

13 Section 35-10B-201. Payoff statement: Request and
14 content.

15 (a) An entitled person, or an agent authorized by an
16 entitled person to request a payoff statement, may give to the
17 secured creditor a notification requesting a payoff statement
18 for a specified payoff date not more than 30 days after the
19 notification is given. The notification must contain all of
20 the following:

21 (1) The entitled person's name.

22 (2) If given by a person other than an entitled
23 person, the name of the person giving the notification and a
24 statement that the person is an authorized agent of the
25 entitled person.

26 (3) Direction as to whether the statement is to be
27 sent to the entitled person or that person's authorized agent.

1 (4) The address to which the creditor must send the
2 statement.

3 (5) Sufficient information to enable the creditor to
4 identify the secured obligation and the real property
5 encumbered by the security interest.

6 (6) A statement that the entitled person intends to
7 close the equity line of credit and is requesting the secured
8 creditor not to extend any additional amounts for a period of
9 30 days from receipt of the notice.

10 (b) If a notification under subsection (a) directs
11 the secured creditor to send the payoff statement to a person
12 identified as an authorized agent of the entitled person, the
13 secured creditor must send the statement to the agent, unless
14 the secured creditor knows that the entitled person has not
15 authorized the request.

16 (c) Within 14 days after the effective date of a
17 notification that complies with subsection (a), the secured
18 creditor shall issue a payoff statement and send it as
19 directed pursuant to subsection (a)(3) in the manner
20 prescribed in Section 35-10B-103 for giving a notification. A
21 secured creditor that sends a payoff statement to the entitled
22 person or the authorized agent may not claim that the
23 notification did not satisfy subsection (a). If the person to
24 whom the notification is given once held an interest in the
25 secured obligation but has since assigned that interest, that
26 person need not send a payoff statement but shall give a
27 notification of the assignment to the person to whom the

1 payoff statement otherwise would have been sent, providing the
2 name and address of the assignee.

3 (d) If a secured obligation cannot be prepaid, a
4 statement of that fact is sufficient, otherwise a payoff
5 statement must contain all of the following:

6 (1) The date on which it was prepared and the payoff
7 amount as of that date, including the amount by type of each
8 fee, charge, or other sum included within 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.

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

15 (e) A payoff statement may contain the amount of any
16 fees authorized under this section not included in the payoff
17 amount.

18 (f) A secured creditor may not qualify a payoff
19 amount or state that it is subject to change before the payoff
20 date unless the payoff statement provides information
21 sufficient to permit the entitled person or the person's
22 authorized agent to request an updated payoff amount at no
23 charge and to obtain that updated payoff amount during the
24 secured creditor's normal business hours on the payoff date or
25 the immediately preceding business day.

26 (g) For any security instrument executed prior to
27 the effective date of this chapter, the secured creditor may

1 charge for payoff charges as provided in the instrument;
2 however, a secured creditor must provide, upon request, one
3 payoff statement without charge during any one year period,
4 unless the instrument provides otherwise. For any security
5 instrument executed after the effective date of this chapter,
6 a secured creditor shall provide, upon request, one payoff
7 statement without charge during any one year period. A secured
8 creditor may charge a fee of twenty-five dollars (\$25) for
9 each additional payoff statement requested during that one
10 year period; however, a secured creditor may not charge a fee
11 for providing an updated payoff amount under subsection (f) or
12 a corrected payoff statement under Section 35-10B-202(a).

13 (h) A secured creditor is not required to send a
14 payoff statement by means other than first class mail,
15 facsimile, or electronic mail. If the creditor agrees to send
16 a statement by another means, it may charge a reasonable fee
17 for complying with the requested manner of delivery.

18 (i) Except as otherwise provided in Section
19 35-10B-205, if a secured creditor to which a notification has
20 been given pursuant to subsection (a) does not send a timely
21 payoff statement that substantially complies with subsection
22 (d), the creditor is liable to the entitled person for any
23 actual damages and an additional five hundred dollars (\$500)
24 as statutory damages where the creditor fails to act without
25 reasonable cause.

26 Section 35-10B-202. Erroneous payoff statement:
27 Correction; effect.

1 (a) If a secured creditor determines that the payoff
2 statement it provided was erroneous, the creditor may send a
3 corrected payoff statement. If the entitled person or the
4 person's authorized agent receives and has a reasonable
5 opportunity to act upon a corrected payoff statement before
6 making payment, the corrected statement supersedes an earlier
7 statement.

8 (b) A secured creditor that sends a payoff statement
9 containing an understated payoff amount or other erroneous
10 terms may not deny the accuracy of the payoff amount as
11 against any person that reasonably and detrimentally relies
12 upon the understated payoff amount or other erroneous terms.

13 (c) This chapter does not do either of the
14 following:

15 (1) Affect the right of a secured creditor to
16 recover any sum that it did not include in a payoff amount
17 from any person liable for payment of the secured obligation.

18 (2) Limit any claim or defense that a person liable
19 for payment of a secured obligation may have under law other
20 than this chapter.

21 Section 35-10B-203. Secured creditor to submit
22 satisfaction for recording; liability for failure.

23 (a) A secured creditor shall submit for recording a
24 satisfaction of a security instrument within 30 days after the
25 creditor receives full payment or performance of the secured
26 obligation. If a security instrument secures a line of credit
27 or future advances, the secured obligation is fully performed

1 only if, included with the full payment, the secured creditor
2 has received a notification requesting the creditor to
3 terminate the line of credit or containing a statement
4 sufficient to terminate the effectiveness of the provision for
5 future advances in the security instrument.

6 (b) Except as otherwise provided in Section
7 35-10B-205, a secured creditor that is required to submit a
8 satisfaction of a security instrument for recording and does
9 not do so by the end of the period specified in subsection (a)
10 is liable to the landowner for any damages caused by the
11 failure to comply with this act. Loss caused by a failure to
12 comply may include loss resulting from the landowner's
13 inability to obtain, or increased costs of, alternative
14 financing or loss of sale.

15 (c) Except as otherwise provided in subsection (d)
16 and in Section 35-10B-205, a secured creditor that is required
17 to submit a satisfaction of a security instrument for
18 recording and does not do so by the end of the period
19 specified in subsection (a) may also be liable to the
20 landowner for five hundred dollars (\$500) in addition to any
21 damages recoverable under subsection (b).

22 (d) The landowner may recover, in addition to the
23 damages recoverable in subsection (c), any reasonable
24 attorney's fees and court costs incurred in obtaining a
25 satisfaction if the mortgage has not been satisfied within the
26 initial 30-day period after the creditor receives full payment

1 as required in paragraph (a), when both of the following
2 occur:

3 (1) The landowner gives the creditor a notification,
4 by any method authorized by Section 35-10B-103 that provides
5 proof of receipt, demanding that the creditor submit a
6 satisfaction for recording.

7 (2) The creditor does not submit a satisfaction for
8 recording within 30 days after receipt of the notification.

9 (d) Subsection (c) does not apply if the secured
10 creditor received full payment or performance of the secured
11 obligation before the effective date of this chapter.

12 (e) All actions for recovery of the penalties
13 mentioned in this chapter shall be brought in the county where
14 the security instrument is recorded.

15 Section 35-10B-204. Form and effect of satisfaction.

16 (a) A document is a satisfaction of a security
17 instrument if it does all of the following:

18 (1) Identifies the security instrument, the original
19 parties to the security instrument, the recording data for the
20 security instrument, and the office in which the security
21 instrument is recorded.

22 (2) States that the person signing the satisfaction
23 is the secured creditor or its authorized agent to execute the
24 release.

25 (3) Contains language terminating the effectiveness
26 of the security instrument.

1 (4) Is signed by the secured creditor or its
2 authorized agent and acknowledged as required by law for a
3 conveyance of an interest in real property.

4 (b) The judge of probate shall accept for recording
5 a satisfaction of a security instrument, unless any of the
6 following occur:

7 (1) An amount equal to or greater than the
8 applicable recording fees and taxes is not tendered.

9 (2) The document is submitted by a method or in a
10 medium not authorized by the judge of probate.

11 (3) The document is not signed by the secured
12 creditor or their authorized agent and acknowledged as
13 required by law for a conveyance of an interest in real
14 property.

15 Section 35-10B-205. Limitation of secured creditor's
16 liability.

17 Absent negligence, wantonness, recklessness, or
18 deliberate misconduct, a secured creditor is not liable under
19 this chapter if it does all of the following:

20 (1) Established a reasonable procedure to achieve
21 compliance with its obligations under this chapter.

22 (2) Complied with that procedure in good faith.

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

27 ARTICLE 3

1 SATISFACTION BY AFFIDAVIT

2 Section 35-10B-301. Definition; eligibility to serve
3 as satisfaction agent; regulation of satisfaction agents.

4 (a) In this article, "title insurance company" means
5 an organization authorized to conduct the business of insuring
6 titles to real property in this state.

7 (b) Either of the following may serve as a
8 satisfaction agent under this article:

9 (1) A title insurer as defined in Section 27-25-3.

10 (2) An attorney licensed to practice law in this
11 state and in good standing.

12 (c) This chapter does not require a person to agree
13 to serve as a satisfaction agent.

14 Section 35-10B-302. Affidavit of satisfaction:
15 Notification to secured creditor.

16 (a) If a secured creditor has not submitted for
17 recording a satisfaction of a security instrument within the
18 period specified in Section 35-10B-203(a), a satisfaction
19 agent acting for and with authority from the landowner may
20 give the secured creditor a notification that the satisfaction
21 agent intends to submit for recording an affidavit of
22 satisfaction of the security instrument. The notification must
23 include all of the following:

24 (1) The identity and mailing address of the
25 satisfaction agent.

26 (2) Identification of the security instrument for
27 which a recorded satisfaction is sought, including the names

1 of the original parties to, and the recording data for, the
2 security instrument.

3 (3) A statement that the satisfaction agent has
4 reasonable grounds to believe all of the following:

5 a. That the real property described in the security
6 instrument is residential real property or, at the time the
7 security interest was made, was residential real property.

8 b. That the person to which the notification is
9 being given is the secured creditor.

10 c. That the secured creditor has received full
11 payment or performance of the secured obligation.

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

14 (5) A statement that the satisfaction agent, acting
15 with the authorization of the landowner of the real property
16 described in the security instrument, intends to sign and
17 submit for recording an affidavit of satisfaction of the
18 security instrument unless, within 30 days after the effective
19 date of the notification, any of the following occur:

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

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

25 c. The satisfaction agent receives from the secured
26 creditor a notification stating that the secured creditor has

1 assigned the security instrument and identifying the name and
2 address of the assignee.

3 (b) A notification under subsection (a) must be sent
4 by a method authorized by Section 35-10B-103 that provides
5 proof of receipt to the secured creditor's address for giving
6 a notification for the purpose of requesting a payoff
7 statement or, if the satisfaction agent cannot ascertain that
8 address, to the secured creditor's address for notification
9 for any other purpose.

10 Section 35-10B-303. Affidavit of satisfaction:
11 Authorization to submit for recording.

12 (a) Subject to subsections (b) and (c), a
13 satisfaction agent may sign and submit for recording an
14 affidavit of satisfaction of a security instrument complying
15 with Section 35-10B-304 if either of the following occur:

16 (1) There does not appear of record a satisfaction
17 of a security instrument within 30 days after the effective
18 date of a notification complying with Section 35-10B-302(a).

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

21 (b) A satisfaction agent may not sign and submit for
22 recording an affidavit of satisfaction of a security
23 instrument if it has received a notification under Section
24 35-10B-302(a)(5)b. stating that the secured obligation remains
25 unsatisfied.

26 (c) If a satisfaction agent receives a notification
27 under Section 35-10B-302(a)(5)c. stating that the security

1 instrument has been assigned, the satisfaction agent may not
2 submit for recording an affidavit of satisfaction of the
3 security instrument without doing both of the following:

4 (1) Giving a notification of intent to submit for
5 recording an affidavit of satisfaction to the identified
6 assignee at the identified address.

7 (2) Complying with Section 35-10B-302 with respect
8 to the identified assignee.

9 Section 35-10B-304. Affidavit of satisfaction:
10 Content.

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

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

16 (2) State the basis upon which the person signing
17 the affidavit is a satisfaction agent.

18 (3) State that the person signing the affidavit has
19 reasonable grounds to believe that the real property described
20 in the security instrument is residential real property or was
21 residential real property at the time the security instrument
22 was made.

23 (4) State that the person signing the affidavit has
24 reasonable grounds to believe that the secured creditor has
25 received full payment or performance of the secured
26 obligation.

1 (5) State that the person signing the affidavit,
2 acting with the authority of the owner of the real property
3 described in the security instrument, gave notification to the
4 secured creditor of its intention to sign and submit for
5 recording an affidavit of satisfaction.

6 (6) Describe the method by which the person signing
7 the affidavit gave notification in compliance with this
8 chapter.

9 (7) State either of the following:

10 a. That more than 30 days have elapsed since the
11 effective date of that notification, no satisfaction has been
12 recorded, and the satisfaction agent has not received a
13 notification that the secured obligation remains unsatisfied.

14 b. That the secured creditor authorized the person
15 signing the affidavit to sign and record an affidavit of
16 satisfaction.

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

20 Section 35-10B-305. Affidavit of satisfaction: Form.

21 No particular phrasing of an affidavit of
22 satisfaction is required. The following form of affidavit,
23 when properly completed, is sufficient to satisfy the
24 requirements of Section 35-10B-304:

25 "Prepared by _____ State of Alabama

26 "Address _____ County of _____

27 " _____

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" _____
"(Date of Affidavit)
"
"Source of Title:
"Mortgagor _____
"Mortgagee _____
"Mortgage Recorded: Book _____ Page _____
"Instrument/Document No. _____

"AFFIDAVIT OF SATISFACTION

"Before me _____ a notary public in and for
the county and state, personally appeared _____,
whose name is signed to this Affidavit of Satisfaction and who
is known to me, and who being by me first duly sworn deposes
and pays as follows:

"1. I am: [check appropriate line]

"_____ An officer or an authorized agent of
_____ [Name of title insurance company] (the
"Company"), which is authorized to transact the business of
insuring titles to interests in real property in this state,
and I have been authorized by the Company to sign and submit
for recording an affidavit of satisfaction.

"_____ An attorney licensed to practice law in this
state and in good standing.

"2. I am signing this Affidavit of Satisfaction to
evidence full payment or performance of the obligations
secured by real property covered by the following security

1 instrument (the "security instrument") currently held by
2 _____ (the "secured creditor"):

3 "Title of security instrument:

4 "Original parties to security instrument:

5 "County and state of recording:

6 "Recording data for security instrument:

7 "3. I have reasonable grounds to believe that:

8 "a. The secured creditor has received full payment
9 or performance of the balance of the obligations secured by
10 the security instrument; and

11 "b. The real property described in the security
12 instrument constitutes residential real property or was
13 residential real property at the time the security interest
14 was made.

15 "4. With the authorization of the landowner of the
16 real property described in the security instrument, I gave
17 notification to the secured creditor by _____
18 [method authorized by Section 35-10B-103 that provides proof
19 of receipt] that I would sign and record an affidavit of
20 satisfaction of the security instrument if, within 30 days
21 after the effective date of the notification, the secured
22 creditor did not submit a satisfaction of the security
23 interest for recording or give notification that the secured
24 obligation remains unsatisfied.

25 "5. [check appropriate line]

26 "_____ (a) The 30-day period identified in
27 paragraph 4 has elapsed, (b) The secured creditor has not

1 recorded a satisfaction, (c) I have not received notification
2 that the secured obligation remains unsatisfied, and (d) I
3 have not received notification that the secured obligation had
4 been assigned.

5 "_____ The secured creditor responded to the
6 notification in paragraph 4 by authorizing me to execute and
7 record this affidavit of satisfaction.

8 "_____

9 "(Signature of Satisfaction Agent)

10 "I, _____, a notary public, in
11 and for said county in said state, hereby certify that
12 _____, whose name as _____
13 corporation, is signed to the foregoing conveyance, and who is
14 known to me, acknowledged before me on this day that, being
15 informed of the contents of the affidavit of Satisfaction of
16 Mortgage, as such officer and with full authority, executed
17 the same voluntarily for and as the act of said corporation.

18 "Given under my hand this the _____ day of
19 _____, 2____ .

20 "_____

21 "Notary Public"

22 Section 35-10B-306. Affidavit of satisfaction:
23 Effect.

24 (a) Upon recording, an affidavit substantially
25 complying with the requirements of Section 35-10B-304
26 constitutes a termination of the security interest described
27 in the affidavit.

1 (b) The recording of an affidavit of satisfaction of
2 a security instrument does not by itself extinguish any
3 liability of a person for payment or performance of the
4 underlying obligation.

5 (c) The office of the judge of probate may not
6 refuse to accept for recording an affidavit of satisfaction of
7 a security instrument unless any of the following occur:

8 (1) An amount equal to or greater than the
9 applicable recording fees and taxes is not tendered.

10 (2) The affidavit is submitted by a method or in a
11 medium not authorized by the judge of probate.

12 (3) The affidavit is not signed by the satisfaction
13 agent and acknowledged as required by Section 35-10B-304(a).

14 Section 35-10B-307. Liability of satisfaction agent.

15 (a) Except as otherwise provided in subsection (b),
16 a satisfaction agent or any other person who executes an
17 affidavit of satisfaction of a security instrument erroneously
18 or with knowledge that the statements contained in the
19 affidavit are false is liable to the secured creditor for any
20 damages caused by the recording and reasonable attorney's fees
21 and costs.

22 (b) A satisfaction agent who executes an affidavit
23 of satisfaction of a security instrument erroneously is not
24 liable, absent negligence, wantonness, recklessness, or
25 deliberate misconduct, if the agent properly complied with
26 this chapter and the secured creditor did not respond in a

1 timely manner to the notification pursuant to Section 35-10B-302(a)(5).

2 (c) If a satisfaction agent or any other person who
3 executes an affidavit of satisfaction of a security instrument
4 with knowledge that the statements contained in the affidavit
5 are false, this section does not preclude any of the
6 following:

7 (1) A court from awarding punitive damages on
8 account of the conduct.

9 (2) The secured creditor from proceeding against the
10 satisfaction agent or any other person who executes a
11 satisfaction under law of this state other than this chapter.

12 (3) The enforcement of any criminal statute
13 prohibiting the conduct.

14 ARTICLE 4

15 MISCELLANEOUS PROVISIONS

16 Section 35-10B-401. Uniformity of application and
17 construction.

18 In applying and construing this uniform act,
19 consideration must be given to the need to promote uniformity
20 of the law with respect to its subject matter among states
21 that enact it.

22 Section 35-10B-402. Relation to Electronic
23 Signatures in Global and National Commerce Act.

24 This chapter modifies, limits, and supersedes
25 Chapter 1A, Title 8, the Alabama Electronic Transactions Act,
26 and the federal Electronic Signatures in Global and National
27 Commerce Act (15 U.S.C. § 7001 et seq.), but does not modify,

1 limit, or supersede Section 101(c) of that act (15 U.S.C. §
2 7001(c)), or authorize electronic delivery of any of the
3 notices described in Section 103(b) of that act (15 U.S.C. §
4 7003(b)).

5 Section 2. Sections 35-10-26 and 35-10-30 of the
6 Code of Alabama 1975, are amended to read as follows:

7 "§35-10-26.

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

10 "Payment or satisfaction of the real property mortgage debt"
11 shall not occur until there is no outstanding indebtedness or
12 other obligation secured by the mortgage, and no commitment or
13 agreement by the mortgagee to make advances, incur obligations
14 or otherwise give value (collectively referred to as "extend
15 value"), under any agreement, including, without limitation,
16 agreements providing for future advances, open end, revolving
17 or other lines of credit, or letters of credit. Upon Except as
18 otherwise provided in Chapter 10B, the Alabama Uniform
19 Residential Mortgage Satisfaction Act, upon the written
20 request to satisfy a mortgage signed by the mortgagors and by
21 all other persons who have a right to require the mortgagee to
22 extend value or signed by other authorized representatives on
23 behalf of the mortgagors and such other persons, which notice
24 shall actually be served upon the mortgagee, and provided
25 there is no outstanding obligation secured by the mortgage at
26 that time, the mortgagee shall file a properly executed and
27 notarized satisfaction of the mortgage or otherwise cause the

1 mortgage to be satisfied in accordance with other applicable
2 provisions of law. From and after such written request for
3 mortgage satisfaction, neither the mortgagors nor any other
4 person who signed such request, or on whose behalf such
5 request was signed, shall have the right to request or demand
6 that the mortgagee extend value under the mortgage or other
7 agreements and the mortgagee shall be released from all
8 obligations and commitments to extend value thereunder.

9 "§35-10-30.

10 "(a) If, for 30 days after such request, the
11 mortgagee or assignee or transferee, trustee or cestui que
12 trust, fails to make any entry required by this article he
13 forfeits to the party making the request ~~\$200.00~~ two hundred
14 dollars (\$200) unless there is pending, or there is
15 instituted, an action within that time, in which the fact of
16 partial payment or satisfaction is or may be contested. In
17 construing this article, the right of action given herein
18 shall be considered as a personal right, and shall not be lost
19 or waived by a sale of the property covered by the mortgage or
20 deed of trust before a demand was made for the satisfaction to
21 be entered upon the record.

22 "(b) All actions for the recovery of the penalties
23 mentioned in this article shall be brought in the county where
24 such mortgage or other instrument is recorded.

25 "(c) This section does not apply to satisfactions of
26 residential mortgages whose penalties for failure to satisfy a

1 mortgage are provided under Chapter 10B, the Alabama Uniform
2 Residential Mortgage Satisfaction Act."

3 Section 3. This act shall become effective January
4 1, 2011, following its passage and approval by the Governor,
5 or its otherwise becoming law.