

1 SB170
2 119652-3
3 By Senators Marsh and Little (T)
4 RFD: Judiciary
5 First Read: 12-JAN-10

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

4 CHAPTER 10B. THE ALABAMA RESIDENTIAL MORTGAGE
5 SATISFACTION ACT

6 ARTICLE 1

7 DEFINITIONS AND GENERAL PROVISIONS

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

9 This chapter may be cited as the Alabama Residential
10 Mortgage Satisfaction Act.

11 Section 35-10B-102. Definitions.

12 For purposes of this chapter, the following terms
13 shall have the following meanings:

14 (1) ADDRESS FOR GIVING A NOTIFICATION. For the
15 purpose of a particular type of notification, the most recent
16 address provided in a document relating to the secured
17 obligation by the intended recipient of the notification to
18 the person giving the notification, unless the person giving
19 the notification knows of a more recent or accurate address of
20 the person then owning the mortgage, or agent of the owner for
21 purposes of recording the satisfaction of the mortgage, in
22 which 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 by certified mail, return receipt requested, or with a
13 commercially reasonable delivery service with cost of delivery
14 provided, properly addressed to the recipient's address for
15 giving a 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) The day it is given, if given pursuant to
2 subsection (a) (2).

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

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

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

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

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

20 (1) Acquired an interest in the real property
21 described in a security instrument after the recording of the
22 satisfaction or affidavit of satisfaction of the security
23 instrument and before the recording of the document of
24 rescission; and

25 (2) Would otherwise have priority over or take free
26 of the lien created by the security instrument under Article
27 3, Chapter 4, of this title.

1 (d) A person that erroneously or wrongfully records
2 a document of rescission is liable to any person injured
3 thereby for the actual damages caused by the recording.

4 ARTICLE 2

5 SECURED CREDITOR TO RECORD SATISFACTION; LIABILITY
6 FOR FAILURE

7 Section 35-10B-201. Payoff statement: Request and
8 content.

9 (a) An entitled person, or an agent authorized by an
10 entitled person to request a payoff statement, may give to the
11 secured creditor a notification requesting a payoff statement
12 for a specified payoff date not more than 30 days after the
13 notification is given. The notification must contain all of
14 the following:

15 (1) The entitled person's name.

16 (2) If given by a person other than an entitled
17 person, the name of the person giving the notification and a
18 statement that the person is an authorized agent of the
19 entitled person.

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

22 (4) The address to which the creditor must send the
23 statement.

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

1 (6) If the secured obligation contains a commitment
2 or agreement by the mortgagee to make advances, secure
3 obligations, or otherwise give value under any agreement,
4 including, without limitation, agreements providing for future
5 advances, open end, revolving, or other lines of credit, or
6 letters of credit, a statement that the entitled person
7 intends to close the commitment or agreement of credit and is
8 requesting the secured creditor not to extend any additional
9 amounts for a period of 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.

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

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

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

7 (2) The information reasonably necessary to
8 calculate the payoff amount as of the requested payoff date,
9 including the per diem interest amount.

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

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

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

24 (g) A secured creditor may charge a fee of
25 twenty-five dollars (\$25) for each additional payoff statement
26 requested during a one-year period; however, a secured
27 creditor may not charge a fee for providing an updated payoff

1 amount under subsection (f) or a corrected payoff statement
2 under Section 35-10B-202(a).

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

8 (i) Except as otherwise provided in Section
9 35-10B-205, if a secured creditor to which a notification has
10 been given pursuant to subsection (a) does not send a timely
11 payoff statement that substantially complies with subsection
12 (d), the creditor is liable to the entitled person for any
13 actual damages and an additional five hundred dollars (\$500)
14 as statutory damages where the creditor fails to act without
15 reasonable cause.

16 Section 35-10B-202. Erroneous payoff statement:
17 Correction; effect.

18 (a) If a secured creditor determines that the payoff
19 statement it provided was erroneous, the creditor may send a
20 corrected payoff statement. If the entitled person or the
21 person's authorized agent receives and has a reasonable
22 opportunity to act upon a corrected payoff statement before
23 making payment, the corrected statement supersedes an earlier
24 statement.

25 (b) A secured creditor that sends a payoff statement
26 containing an understated payoff amount or other erroneous
27 terms may not deny the accuracy of the payoff amount as

1 against any person that reasonably and detrimentally relies
2 upon the understated payoff amount or other erroneous terms.

3 (c) This chapter does not do either of the
4 following:

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

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

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

13 (a) A secured creditor shall submit for recording a
14 satisfaction of a security instrument within 30 days after the
15 creditor receives full payment or performance of the secured
16 obligation. If a security instrument secures a line of credit
17 or future advances, the secured obligation is fully performed
18 only if, included with the full payment, the secured creditor
19 has received a notification requesting the creditor to
20 terminate the line of credit or containing a statement
21 sufficient to terminate the effectiveness of the provision for
22 future advances in the security instrument.

23 (b) Except as otherwise provided in Section
24 35-10B-205, a secured creditor that is required to submit a
25 satisfaction of a security instrument for recording and does
26 not do so by the end of the period specified in subsection (a)
27 is liable to the landowner for any damages caused by the

1 failure to comply with this act. Loss caused by a failure to
2 comply may include loss resulting from the landowner's
3 inability to obtain, or increased costs of, alternative
4 financing or loss of sale.

5 (c) Except as otherwise provided in subsection (e)
6 and in Section 35-10B-205, a secured creditor that is required
7 to submit a satisfaction of a security instrument for
8 recording and does not do so by the end of the period
9 specified in subsection (a) may also be liable to the
10 landowner for two hundred dollars (\$200) in addition to any
11 damages recoverable under subsection (b).

12 (d) The landowner may recover actual damages
13 recoverable in subsection (b) if the mortgage has not been
14 satisfied within the initial 30-day period after the creditor
15 receives full payment as required in subsection (a), when both
16 of the following occur:

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

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

23 (e) Subsection (c) does not apply if the secured
24 creditor received full payment or performance of the secured
25 obligation before the effective date of this chapter.

1 (f) All actions for recovery of the penalties
2 mentioned in this chapter shall be brought in the county where
3 the security instrument is recorded.

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

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

7 (1) Identifies the security instrument, the original
8 parties to the security instrument, the recording data for the
9 security instrument, and the office in which the security
10 instrument is recorded.

11 (2) States that the person signing the satisfaction
12 is the secured creditor or its authorized agent to execute the
13 release.

14 (3) Contains language terminating the effectiveness
15 of the security instrument.

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

19 (b) The judge of probate shall accept for recording
20 a satisfaction of a security instrument, unless any of the
21 following occur:

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

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

26 (3) The document is not signed by the secured
27 creditor or their authorized agent and acknowledged as

1 required by law for a conveyance of an interest in real
2 property.

3 Section 35-10B-205. Limitation of secured creditor's
4 liability.

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

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

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

11 (3) Fails to comply with its obligations either
12 because of circumstances beyond its control or as a result of
13 a bona fide error, notwithstanding maintenance of reasonable
14 procedures of compliance.

15 ARTICLE 3

16 SATISFACTION BY AFFIDAVIT

17 Section 35-10B-301. Non-application of Article 3 of
18 this Act.

19 This article applies only to security agreements on
20 residential real estate. This act does not apply to equity
21 line security agreements unless the mortgagee has executed a
22 statement that the equity line of credit is no longer
23 applicable.

24 Section 35-10B-302. Definition; eligibility to serve
25 as satisfaction agent; regulation of satisfaction agents.

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

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

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

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

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

11 Section 35-10B-303. Affidavit of satisfaction:
12 Notification to secured creditor.

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

21 (1) The identity and mailing address of the
22 satisfaction agent.

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

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

3 a. That the real property described in the security
4 instrument is residential real property or, at the time the
5 security interest was made, was residential real 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 or 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 landowner 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 the effective
17 date of the notification, any of the following occur:

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

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

23 c. The satisfaction agent receives from the secured
24 creditor a notification stating that the secured creditor has
25 assigned the security instrument and identifying the name and
26 address of the assignee.

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

8 Section 35-10B-304. Affidavit of satisfaction:
9 Authorization to submit for recording.

10 (a) Subject to subsections (b) and (c), a
11 satisfaction agent may sign and submit for recording an
12 affidavit of satisfaction of a security instrument complying
13 with Section 35-10B-305 if either of the following occur:

14 (1) There does not appear of record a satisfaction
15 of a security instrument within 30 days after the effective
16 date of a notification complying with Section 35-10B-303(a).

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

19 (b) A satisfaction agent may not sign and submit for
20 recording an affidavit of satisfaction of a security
21 instrument if it has received a notification under Section
22 35-10B-303(a)(5)b. stating that the secured obligation remains
23 unsatisfied.

24 (c) If a satisfaction agent receives a notification
25 under Section 35-10B-303(a)(5)c. stating that the security
26 instrument has been assigned, the satisfaction agent may not

1 submit for recording an affidavit of satisfaction of the
2 security instrument without doing both of the following:

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

6 (2) Complying with Section 35-10B-303 with respect
7 to the identified assignee.

8 Section 35-10B-305. Affidavit of satisfaction:
9 Content.

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

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

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

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

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

26 (5) State that the person signing the affidavit,
27 acting with the authority of the owner of the real property

1 described in the security instrument, gave notification to the
2 secured creditor of its intention to sign and submit for
3 recording an affidavit of satisfaction.

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

7 (7) State either of the following:

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

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

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

18 Section 35-10B-306. Affidavit of satisfaction: Form.

19 No particular phrasing of an affidavit of
20 satisfaction is required. The following form of affidavit,
21 when properly completed, is sufficient to satisfy the
22 requirements of Section 35-10B-305:

23 "Prepared by _____ State of Alabama

24 "Address _____ County of _____

25 " _____

26 " _____

27 "(Date of Affidavit)

1 " _____

2 "Source of Title:

3 "Mortgagor _____

4 "Mortgagee _____

5 "Mortgage Recorded: Book _____ Page _____

6 "Instrument/Document No. _____

7 "AFFIDAVIT OF SATISFACTION

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

13 "1. I am: [check appropriate line]

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

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

22 "2. I am signing this Affidavit of Satisfaction to
23 evidence full payment or performance of the obligations
24 secured by real property covered by the following security
25 instrument (the "security instrument") currently held by
26 _____ (the "secured creditor"):

27 "Title of security instrument:

1 "Original parties to security instrument:

2 "County and state of recording:

3 "Recording data for security instrument:

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

5 "a. The secured creditor has received full payment
6 or performance of the balance of the obligations secured by
7 the security instrument; and

8 "b. The real property described in the security
9 instrument constitutes residential real property or was
10 residential real property at the time the security interest
11 was made.

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

22 "5. [check appropriate line]

23 "_____ (a) The 30-day period identified in
24 paragraph 4 has elapsed, (b) The secured creditor has not
25 recorded a satisfaction, (c) I have not received notification
26 that the secured obligation remains unsatisfied, and (d) I

1 have not received notification that the secured obligation had
2 been assigned.

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

6 "_____

7 "(Signature of Satisfaction Agent)

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

16 "Given under my hand this the _____ day of
17 _____, 2____ .

18 "_____

19 "Notary Public"

20 Section 35-10B-307. Affidavit of satisfaction:
21 Effect.

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

26 (b) The recording of an affidavit of satisfaction of
27 a security instrument does not by itself extinguish any

1 liability of a person for payment or performance of the
2 underlying obligation.

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

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

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

10 (3) The affidavit is not signed by the satisfaction
11 agent and acknowledged as required by Section 35-10B-305(a).

12 Section 35-10B-308. Liability of satisfaction agent.

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

20 (b) A satisfaction agent who executes an affidavit
21 of satisfaction of a security instrument erroneously is not
22 liable, absent negligence, wantonness, recklessness, or
23 deliberate misconduct, if the agent properly complied with
24 this chapter and the secured creditor did not respond in a
25 timely manner to the notification pursuant to Section
26 35-10B-302(a) (5).

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

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

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

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

13 ARTICLE 4

14 MISCELLANEOUS PROVISIONS

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

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

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

23 This chapter modifies, limits, and supersedes
24 Chapter 1A, Title 8, the Alabama Electronic Transactions Act,
25 and the federal Electronic Signatures in Global and National
26 Commerce Act (15 U.S.C. § 7001 et seq.), but does not modify,
27 limit, or supersede Section 101(c) of that act (15 U.S.C. §

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

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

6 "§35-10-26.

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

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

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

8 "§35-10-30.

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

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

24 "(c) This section does not apply to satisfactions of
25 residential mortgages whose penalties for failure to satisfy a
26 mortgage are provided under Chapter 10B, the Alabama
27 Residential Mortgage Satisfaction Act."

1 Section 3. This act shall become effective January
2 1, 2011, following its passage and approval by the Governor,
3 or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate committee on Judiciary	12-JAN-10
Read for the second time and placed on the calen- dar	02-MAR-10
Read for the third time and passed as amended ...	09-MAR-10

Yeas 35
Nays 0

McDowell Lee
Secretary