

1 **SENATE FLOOR VERSION**

2 March 31, 2015

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 1119

6 By: Russ of the House

7 and

8 Newberry of the Senate

9 **[title insurance - affidavit contents - codification**
10 **- effective date]**

11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 1. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 5008 of Title 36, unless there
14 is created a duplication in numbering, reads as follows:

15 A. As used in this section:

16 1. "Mortgage" means a contract lien on an interest in real
17 property;

18 2. "Mortgagee" means:

19 a. the grantee of a mortgage,

20 b. if a mortgage has been assigned of record, the last
21 person or entity to whom the mortgage has been
22 assigned of record, or
23

1 c. if a mortgage is serviced by a mortgage servicer, the
2 mortgage servicer;

3 3. "Mortgage servicer" means the last person or entity to whom
4 a mortgagor has been instructed by a mortgagee to send payments for
5 the loan secured by a mortgage. A person or entity transmitting a
6 payoff statement is considered the mortgage servicer for the
7 mortgage described in the payoff statement;

8 4. "Mortgagor" means the grantor of a mortgage;

9 5. "Payoff statement" means a statement of the amount of:

10 a. the unpaid balance of a loan secured by a mortgage,
11 including principal, interest and other charges
12 properly assessed under the loan documentation of the
13 mortgage, and

14 b. interest on a per diem basis for the unpaid balance;
15 and

16 6. "Title insurance company" means a corporation or other
17 business entity authorized and licensed to transact business of
18 insuring titles to interests in real property in this state.

19 B. This section applies only to a mortgage on property
20 consisting exclusively of a one-, two-, three- or four-family
21 residence, including a residential unit in a condominium regime.

22 C. If a mortgagee fails to execute and deliver a release of
23 mortgage to the mortgagor or designated agent of the mortgagor
24 within sixty (60) days after the date of receipt of payment of the

1 mortgage by the mortgagee in accordance with a payoff statement
2 furnished by the mortgagee or its mortgage servicer, an authorized
3 officer of a title insurance company or a duly appointed agent of
4 the title insurance company, on behalf of the mortgagor or a
5 transferee of the mortgagor who acquired title to the property
6 described in the mortgage, may execute and record an affidavit in
7 the real property records of each county in which the mortgage was
8 recorded. The written approval of the title insurance company shall
9 appear on the affidavit if executed by an agent.

10 D. An affidavit executed under this section shall state that:

11 1. The affiant is an authorized officer or a duly appointed
12 agent of a title insurance company;

13 2. The affidavit is made on behalf of the mortgagor or a
14 transferee of the mortgagor who acquired title to the property
15 described in the mortgage;

16 3. The mortgagee provided a payoff statement with respect to
17 the loan secured by the mortgage;

18 4. The affiant has ascertained that the mortgagee has received
19 payment of the loan secured by the mortgage in accordance with the
20 payoff statement, as evidenced by:

21 a. a bank check, certified check, cashier's check, escrow
22 account check from the title company or title
23 insurance agent, or attorney trust account check that
24 has been negotiated by the mortgagee, or

1 b. wire transfer, or

2 c. another documentary evidence of the receipt of payment
3 by the mortgagee;

4 5. More than sixty (60) days have elapsed since the date
5 payment was received by the mortgagee; and

6 6. The title insurance company or its duly appointed agent has
7 given the mortgagee at least a fifteen-day notice sent in writing by
8 certified mail, return receipt requested, of its intention to
9 execute and record an affidavit in accordance with this section with
10 a copy of the proposed affidavit attached to the written notice; and
11 the mortgagee has not responded in writing to the notification at
12 least fifteen (15) days before the affidavit is recorded.

13 E. The affidavit must include the names of the mortgagor and
14 the mortgagee, the date of the mortgage, the legal description of
15 the property, and the book and page or clerk's document number of
16 the real property records in which the mortgage or modification is
17 recorded, together with similar information for a recorded
18 assignment of the mortgage.

19 F. The affiant shall attach to the affidavit a photostatic
20 copy, certified by the affiant as a true copy of the original
21 document, of:

22 1. The documentary evidence that payment has been received by
23 the mortgagee, including the endorsement by the mortgagee of a
24 negotiated check, if paid by check, or proof of a wire transfer, if

1 paid by wire. The bank account number and routing number on the
2 check or proof of wire transfer may be redacted by the filer; and

3 2. The payoff statement.

4 G. An affidavit that is executed and recorded as provided by
5 this section shall operate as a release of the mortgage described in
6 the affidavit.

7 H. The county clerk shall index the affidavit against the real
8 property described in the mortgage and the affidavit.

9 I. A person who knowingly causes an affidavit with false
10 information to be executed and recorded under this section is liable
11 for the penalties for filing a false affidavit, including the
12 penalties for commission of offenses pursuant to appropriate
13 sections of the penal code, and to a party injured by the affidavit
14 for actual damages of Five Thousand Dollars (\$5,000.00), whichever
15 is greater. The Attorney General may sue to collect the penalty.
16 If the Attorney General or an injured party bringing suit
17 substantially prevails in an action under this subsection, the court
18 may award reasonable attorney fees and court costs to the prevailing
19 party.

20 J. Nothing provided for in this section shall preclude the
21 mortgagor from availing himself or herself of the remedies provided
22 for in Section 15 of Title 46 of the Oklahoma Statutes which
23 provides for penalties against the mortgagee for failure to release
24

1 a mortgage pursuant to the payment in full and request for release
2 on behalf of the mortgagor.

3 SECTION 2. This act shall become effective November 1, 2015.

4 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
5 March 31, 2015 - DO PASS AS AMENDED
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