

1 **SENATE FLOOR VERSION**

2 February 24, 2015

3 **AS AMENDED**

4 SENATE BILL NO. 443

5 By: Newberry

6 [ title insurance - execution of affidavit - release  
7 of certain mortgage - violation - fees and costs -  
8 remedies - codification - effective date ]  
9

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

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

14 A. As used in this section:

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

17 2. "Mortgagee" means:

18 a. the grantee of a mortgage,

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

22 c. if a mortgage is serviced by a mortgage servicer, the  
23 mortgage servicer;  
24

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

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

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

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

12           b. interest on a per diem basis for the unpaid balance;  
13                and

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

17           B. This section applies only to a mortgage on property  
18 consisting exclusively of a one- to four-family residence, including  
19 a residential unit in a condominium regime.

20           C. If a mortgagee fails to execute and deliver a release of  
21 mortgage to the mortgagor or designated agent of the mortgagor  
22 within sixty (60) days after the date of receipt of payment of the  
23 mortgage by the mortgagee in accordance with a payoff statement  
24 furnished by the mortgagee or its mortgage servicer, an authorized

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

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

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

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

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

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

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

23 b. wire transfer, or  
24

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

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

5 6. The title insurance company or its duly appointed agent has  
6 given the mortgagee at least fifteen (15) days' notice in writing by  
7 certified mail, return receipt requested, of its intention to  
8 execute and record an affidavit in accordance with this section,  
9 with a copy of the proposed affidavit attached to the written  
10 notice; and

11 7. The mortgagee has not responded in writing to the  
12 notification at least fifteen (15) days before the affidavit is  
13 recorded.

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

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

23 1. The documentary evidence that payment has been received by  
24 the mortgagee, including the endorsement of the mortgagee of a

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

4 2. The payoff statement.

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

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

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

20 J. Nothing provided for in this section shall preclude the  
21 mortgagor from availing itself of the remedies provided for in  
22 Section 15 of Title 46 of the Oklahoma Statutes which provides for  
23 penalties against the mortgagee for failure to release a mortgage  
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1 pursuant to the payment in full and request for release on behalf of  
2 the mortgagor.

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

4 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY  
5 February 24, 2015 - DO PASS AS AMENDED  
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