

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   1st Session of the 55th Legislature (2015)

4 COMMITTEE SUBSTITUTE  
5 FOR ENGROSSED  
6 SENATE BILL NO. 443

By: Newberry of the Senate

and

Russ of the House

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10                                   COMMITTEE SUBSTITUTE

11           An Act relating to title insurance; defining terms;  
12           providing applicability; authorizing a title  
13           insurance company to execute and record certain  
14           records; requiring affidavit contents; providing that  
15           certain affidavits will operate as a release for  
16           certain mortgages; requiring county clerk to index  
17           affidavit; providing penalties; stating that certain  
18           remedies shall not be precluded; providing for  
19           codification; and providing an effective date.

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

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

24           A. As used in this section:

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

1 2. "Mortgagee" means:

2 a. the grantee of a mortgage,

3 b. if a mortgage has been assigned of record, the last  
4 person or entity to whom the mortgage has been  
5 assigned of record, or

6 c. if a mortgage is serviced by a mortgage servicer, the  
7 mortgage servicer;

8 3. "Mortgage servicer" means the last person or entity to whom  
9 a mortgagor has been instructed by a mortgagee to send payments for  
10 the loan secured by a mortgage. A person or entity transmitting a  
11 payoff statement is considered the mortgage servicer for the  
12 mortgage described in the payoff statement;

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

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

15 a. the unpaid balance of a loan secured by a mortgage,  
16 including principal, interest, and other charges  
17 properly assessed under the loan documentation of the  
18 mortgage, and

19 b. interest on a per diem basis for the unpaid balance;  
20 and

21 6. "Title insurance company" means a corporation or other  
22 business entity authorized and licensed to transact business of  
23 insuring titles to interests in real property in this state.  
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1 B. This section applies only to a mortgage on property  
2 consisting exclusively of a one- to four-family residence, including  
3 a residential unit in a condominium regime.

4 C. If a mortgagee fails to execute and deliver a release of  
5 mortgage to the mortgagor or designated agent of the mortgagor  
6 within sixty (60) days after the date of receipt of payment of the  
7 mortgage by the mortgagee in accordance with a payoff statement  
8 furnished by the mortgagee or its mortgage servicer, an authorized  
9 officer of a title insurance company or a duly appointed agent of  
10 the title insurance company, on behalf of the mortgagor or a  
11 transferee of the mortgagor who acquired title to the property  
12 described in the mortgage, may execute and record an affidavit in  
13 the real property records of each county in which the mortgage was  
14 recorded. The written approval of the title insurance company shall  
15 appear on the affidavit if executed by an agent.

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

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

19 2. The affidavit is made on behalf of the mortgagor or a  
20 transferee of the mortgagor who acquired title to the property  
21 described in the mortgage;

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

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

4 a. a bank check, certified check, cashier's check, escrow  
5 account check from the title company or title  
6 insurance agent or attorney trust account check that  
7 has been negotiated by the mortgagee,

8 b. wire transfer, or

9 c. another documentary evidence of the receipt of payment  
10 by the mortgagee;

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

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

19 7. The mortgagee has not responded in writing to the  
20 notification at least fifteen (15) days before the affidavit is  
21 recorded.

22 E. The affidavit must include the names of the mortgagor and  
23 the mortgagee, the date of the mortgage, the legal description of  
24 the property, and the book and page or clerk's document number of

1 the real property records where the mortgage and/or modification is  
2 recorded, together with similar information for a recorded  
3 assignment of the mortgage.

4 F. The affiant shall attach to the affidavit a photostatic  
5 copy, certified by the affiant as a true copy of the original  
6 document, of:

7 1. The documentary evidence that payment has been received by  
8 the mortgagee, including the endorsement of the mortgagee of a  
9 negotiated check if paid by check or proof of a wire transfer if  
10 paid by wire. The bank account number and routing number on the  
11 check or proof of wire transfer may be redacted by the filer; and

12 2. The payoff statement.

13 G. An affidavit that is executed and recorded as provided by  
14 this section shall operate as a release of the mortgage described in  
15 the affidavit.

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

18 I. A person who knowingly causes an affidavit with false  
19 information to be executed and recorded under this section is liable  
20 for the penalties for filing a false affidavit, including the  
21 penalties for commission of offenses pursuant to appropriate section  
22 of the penal code, and to a party injured by the affidavit for  
23 actual damages of Five Thousand Dollars (\$5,000.00), whichever is  
24 greater. The Attorney General may sue to collect the penalty. If

1 the Attorney General or an injured party bringing suit substantially  
2 prevails in an action under this subsection, the court may award  
3 reasonable attorney fees and court costs to the prevailing party.

4 J. Nothing provided for in this section shall preclude the  
5 mortgagor from availing itself of the remedies provided for in  
6 Section 15 of Title 46 of the Oklahoma Statutes which provides for  
7 penalties against the mortgagee for failure to release a mortgage  
8 pursuant to the payment in full and request for release on behalf of  
9 the mortgagor.

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

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12 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 03/30/2015 - DO  
13 PASS, As Amended.

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