

3-11-93 Commerce

FILED MAR 17 1993 3-18-93 DO PASS

3-22-93 Motion to R/ by Priske
4-1-93 House - Commerce
4-1-93 Motion to R/ by Welsh

SENATE FILE 286

BY GRONSTAL

Passed Senate, Date ^(p.765) 3-22-93 Passed House, Date _____
 Vote: Ayes 49 Nays _____ Vote: Ayes _____ Nays _____
 Approved _____

A BILL FOR

1 An Act relating to the release of a mortgage, availability of an
2 abstract of title, and increasing a penalty.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SP 286

1 Section 1. Section 535B.11, subsection 5, Code 1993, is
2 amended to read as follows:

3 5. a. Execute and deliver a release after payoff and
4 within forty-five days after receipt of correct payment. If
5 the licensee or mortgagee fails to execute and deliver a
6 release of lien to the mortgagor or the mortgagor's designated
7 representative, the mortgagor or the mortgagor's designated
8 representative may notify do one of the following:

9 b. Notify in writing the administrator and any other
10 official to whom the mortgagee is primarily subject. The
11 administrator shall promptly ~~mail~~ send by certified mail to
12 the licensee or mortgagee a notice stating that the licensee
13 or mortgagee must both release the mortgage and deliver the
14 release to the administrator within fifteen days of receipt of
15 ~~said~~ the notice or face a penalty as provided in this section.
16 If the licensee or mortgagee fails to make the release and
17 deliver it to the administrator, the administrator may assess
18 a penalty not to exceed fifty one hundred dollars for each day
19 of delinquency after the fifteen days. The administrator may
20 waive the penalty if the administrator finds the failure was
21 not intentional and resulted from bona fide error
22 notwithstanding the maintenance of procedures reasonably
23 adapted to avoid error.

24 c. Provide notice by restricted certified mail to the
25 licensee or mortgagee stating that the licensee or mortgagee
26 must release the mortgage and deliver the release to the
27 mortgagor or the mortgagor's designated representative within
28 fifteen days of receipt of the notice or the mortgagor or the
29 mortgagor's designated representative shall cause an affidavit
30 of release to be filed as provided for in this section. If
31 the licensee or mortgagee fails to make the release and
32 deliver it to the mortgagor or the mortgagor's designated
33 representative within the fifteen days, the mortgagor or the
34 mortgagor's designated representative may cause to be recorded
35 an affidavit in the following form, to which is attached a

1 true copy of the notice mailed by restricted certified mail to
2 the licensee or mortgagee, a true copy of the licensee or
3 mortgagee's statement of funds required for payoff, and a true
4 copy of the check with which payoff was made:

5 State of)
6) ss:
7 County of)

8 I, the undersigned, having been duly sworn on oath, do
9 depose and state that on the day of, 19.., I
10 did cause the attached certified notice to be mailed by
11 certified mail to (licensee or
12 mortgagee), demanding that the licensee or mortgagee make and
13 deliver a release for the mortgage dated, 19..,
14 and filed in book, page, of the county
15 records, that more than fifteen days has passed since the
16 licensee or mortgagee received the notice, and that the
17 licensee or mortgagee has failed to make or deliver a release
18 for the mortgage. I further depose and state that the
19 attached notice mailed by restricted certified mail,
20 mortgagee's payoff statement evidencing funds due to the
21 licensee or mortgagee, and check evidencing payment of such
22 funds are true and accurate copies of the original documents
23 evidencing the correct payment in full of the mortgage. I
24 further depose and state that I am causing this affidavit to
25 be filed for the purpose of removing any possible cloud of
26 title on this property caused by the failure of the licensee
27 or mortgagee to release the mortgage.

28 Dated this day of, 19..
29
30 (Mortgagor or mortgagor's
31 designated representative)

32 This instrument was acknowledged before me on
33 by
34 (date) (name(s) of person(s)
35

1 _____ (signature of notarial officer)
2 (Seal, if any)
3 _____ Title (and Rank)
4 _____ [My commission expires:]

5 Upon the filing of the affidavit in the county in which the
6 property is located, the mortgage is deemed to be released
7 from the described property and the release shall be entered
8 by the recorder as provided in chapter 558.

9 Sec. 2. Section 535B.11, subsection 6, Code 1993, is
10 amended to read as follows:

11 6. a. When a final title opinion, title guaranty, or
12 title insurance is completed in connection with the making of
13 a mortgage loan on or after July 1, 1993, the licensee or
14 mortgagee shall immediately make the abstract of title
15 available to the mortgagor by delivery of the abstract to the
16 mortgagor or by sending notice to the mortgagor that the
17 abstract can be obtained from the licensee or mortgagee at
18 such person's normal place of business or at the office of
19 such person's attorney or closing agent within the county
20 where the property is located within normal business hours.
21 In no event shall the licensee or mortgagee cause the abstract
22 to be removed from the state.

23 b. If a person in connection with a first mortgage loan
24 made before July 1, 1993, has possession of an abstract of
25 title and fails to deliver the abstract to the borrower within
26 twenty calendar days of the borrower's request made by
27 restricted certified mail return-receipt-requested in
28 connection with a proposed sale or refinancing of the
29 property, then the borrower may authorize the preparation of a
30 new abstract of title to the property and the person failing
31 to deliver the original abstract shall pay to the borrower the
32 reasonable costs of preparation. If the borrower brings an
33 action against the person failing to deliver to recover such
34 payment and in the action recovers the payment, then the
35 borrower shall is also be entitled to recover attorney fees

1 and court costs incurred in the action. If the borrower
2 causes the first mortgage loan to be paid in full, and the
3 person fails to pay the reasonable costs of preparation, the
4 borrower may deduct the reasonable costs of preparation from
5 the payment in full of the mortgage by attaching the receipt
6 evidencing payment for preparation and a copy of the notice
7 mailed by restricted certified mail. The licensee or
8 mortgagee shall release the mortgage as a result of the
9 borrower's actions as provided in this section if the mortgage
10 is otherwise paid in full.

11 EXPLANATION

12 This bill increases the penalty which may be assessed by
13 the administrator against a licensee or mortgagee for failure
14 to release a mortgage after notice from \$50 to \$100. The bill
15 permits a mortgagor or the mortgagor's designated
16 representative to release a mortgage by filing an affidavit
17 evidencing a certified demand to release the mortgage and
18 copies of the payoff statement and check for payment in full.
19 The bill also requires a lender to return the abstract of
20 title to the borrower after final title work is completed for
21 loans made on or after July 1, 1993, and for loans made prior
22 to July 1, 1993, it allows the borrower to deduct the cost of
23 preparation of a new abstract from the loan payoff amount.

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