

Lomberti
Redfern
Delaney

SSB-1142
Commerce

Succeeded by
SENATE FILE SB/HF 335
BY (PROPOSED COMMITTEE ON
COMMERCE BILL BY CHAIRPERSON
JENSEN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the transfer of real estate, the filing of a
2 release of mortgage, and providing a remedy.

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

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1 Section 1. NEW SECTION. 16.92 REAL ESTATE TRANSFER --
2 MORTGAGE RELEASE CERTIFICATE.

3 1. DEFINITIONS. As used in this section, unless the
4 context otherwise requires:

5 a. "Division" means the title guaranty division in the
6 Iowa finance authority.

7 b. "Mortgage" means a mortgage or mortgage lien on an
8 interest in real property in this state given to secure a loan
9 in an original principal amount of five hundred thousand
10 dollars or less.

11 c. "Mortgagee" means the grantee of a mortgage. If a
12 mortgage has been assigned of record, the mortgagee is the
13 last person to whom the mortgage is assigned of record.

14 d. "Mortgage servicer" means the mortgagee or a person
15 other than the mortgagee to whom a mortgagor or the
16 mortgagor's successor in interest is instructed by the
17 mortgagee to send payments on a loan secured by the mortgage.
18 A person transmitting a payoff statement for a mortgage is the
19 mortgage servicer for purposes of such mortgage.

20 e. "Mortgagor" means the grantor of a mortgage.

21 f. "Payoff statement" means a written statement furnished
22 by the mortgage servicer which sets forth all of the
23 following:

24 (1) The unpaid balance of the loan secured by a mortgage,
25 including principal, interest, and any other charges properly
26 due under or secured by the mortgage, or the amount required
27 to be paid in order to release or partially release the
28 mortgage.

29 (2) Interest on a per-day basis for an amount set forth
30 pursuant to subparagraph (1).

31 (3) The address where payment is to be sent or other
32 specific instructions for making a payment.

33 (4) The legal description of the property to be released
34 from the mortgage, and the legal description of the property
35 that will continue to be subject to the mortgage if, after

1 payment of the unpaid balance of the loan secured by the
2 mortgage, the mortgage continues to secure any unpaid
3 obligation due the mortgagee or any unfunded commitment by the
4 mortgagor to the mortgagee.

5 g. "Real estate lender or closer" means a person licensed
6 to regularly lend moneys to be secured by a mortgage on real
7 property in this state, a licensed real estate broker, or a
8 licensed attorney.

9 2. EXECUTION OF CERTIFICATE OF RELEASE. A duly authorized
10 officer or employee of the division may execute and record a
11 certificate of release in the real property records of each
12 county in which a mortgage is recorded as provided in this
13 section if all of the following are satisfied:

14 a. The real estate lender or closer has certified in
15 writing to the division all of the following:

16 (1) That the payoff statement satisfies one of the
17 following:

18 (a) The statement does not indicate that the mortgage
19 continues to secure an unpaid obligation due the mortgagee or
20 an unfunded commitment by the mortgagor to the mortgagee.

21 (b) The statement contains the legal description of the
22 property to be released from the mortgage and the legal
23 description of the property that will continue to be subject
24 to the mortgage.

25 (2) That payment was made in accordance with the payoff
26 statement, including a statement as to the date the payment
27 was received by the mortgagee or mortgage servicer, as
28 evidenced by one or more of the following in the records of
29 the real estate lender or closer or its agent:

30 (a) A bank check, certified check, escrow account check,
31 real estate broker trust account check, or attorney trust
32 account check that was negotiated by the mortgagee or mortgage
33 servicer.

34 (b) Other documentary evidence of payment to the mortgagee
35 or mortgage servicer.

1 (3) That more than thirty days have elapsed since the date
2 the payment was sent.

3 b. The division determines that an effective satisfaction
4 or release of the mortgage has not been executed and recorded
5 within thirty days after the date payment was sent or
6 otherwise made in accordance with a payoff statement.

7 c. The division, at least thirty days prior to executing
8 the certificate of release, sends by certified mail, to the
9 last known address of the mortgage servicer, written notice of
10 its intention to execute and record a certificate of release
11 pursuant to this section after expiration of the thirty-day
12 period following the sending of such notice, including
13 instructions to notify the division of any reason why the
14 certificate of release should not be executed and recorded.
15 If, prior to executing and recording the certificate of
16 release, the division receives written notification setting
17 forth a reason satisfactory to the division containing a
18 reason why the certificate of release should not be executed
19 and recorded by the division, the division shall not execute
20 and record the certificate of release.

21 3. CONTENTS. A certificate of release executed under this
22 section must contain substantially the information set forth
23 as follows:

24 a. The name of the mortgagor; the name of the original
25 mortgagee, and, if applicable, the mortgage servicer; the date
26 of the mortgage; the date of recording, including the volume
27 and page or other applicable recording information in the real
28 property records where the mortgage is recorded, and the same
29 information for the last recorded assignment of the mortgage.

30 b. A statement that the original mortgage principal was in
31 an amount of five hundred thousand dollars or less.

32 c. A statement that the person executing the certificate
33 of release is a duly authorized officer or employee of the
34 division.

35 d. A statement indicating one of the following:

1 (1) That the mortgage servicer provided a payoff statement
2 that was used to make payment, and that does not indicate that
3 the mortgage continues to secure any unpaid obligation due the
4 mortgagee or any unfunded commitment by the mortgagor to the
5 mortgagee.

6 (2) A statement that the certificate is a partial release
7 of the mortgage, the legal description of the property that
8 will be released from the mortgage, and the legal description
9 of the property that will continue to be subject to the
10 mortgage.

11 e. A statement that payment was made in accordance with
12 the payoff statement, and the date the payment was received by
13 the mortgagee or mortgage servicer, as evidenced by one or
14 more of the following in the records of the real estate lender
15 or closer or its agent:

16 (1) A bank check, certified check, escrow account check,
17 real estate broker trust account check, or attorney trust
18 account check that was negotiated by the mortgagee or mortgage
19 servicer.

20 (2) Other documentary evidence of payment to the mortgagee
21 or mortgage servicer.

22 f. A statement that more than thirty days have elapsed
23 since the date payment in accordance with the payoff statement
24 was sent.

25 g. A statement that the division has sent the thirty-day
26 notice required under subsection 2, paragraph "c", and that
27 thirty days have elapsed since the date the notice was sent.

28 h. A statement that the division has not received written
29 notification of any reason why the certificate of release
30 should not be executed and recorded after the expiration of
31 the thirty-day notice period under subsection 2, paragraph
32 "c".

33 4. EXECUTION. A certificate of release under this section
34 shall be executed and acknowledged in the same manner as
35 required by law for the execution of a deed.

1 5. EFFECT.

2 a. For purposes of a release or partial release of the
3 mortgage, a certificate of release executed under this section
4 that contains the information and statements required under
5 subsection 3 is prima facie evidence of the facts contained in
6 such release or partial release, is entitled to be recorded
7 with the county recorder where the mortgage is recorded,
8 operates as a release or partial release of the mortgage
9 described in the certificate of release, and may be relied
10 upon by any person who owns or subsequently acquires an
11 interest in the property released from the mortgage. The
12 county recorder shall rely upon the certificate of release to
13 release the mortgage.

14 b. Recording of a wrongful or erroneous certificate of
15 release by the division shall not relieve the mortgagor, or
16 the mortgagor's successors or assigns on the debt, from
17 personal liability on the loan or on other obligations secured
18 by the mortgage.

19 c. In addition to any other remedy provided by law, if the
20 division wrongfully or erroneously records a certificate of
21 release under this section, the division is liable to the
22 mortgagee and mortgage servicer for actual damages sustained
23 due to the recording of the certificate of release.

24 d. Upon payment of a claim relating to the recording of a
25 certificate of release, the division is subrogated to the
26 rights of the claimant against all persons relating to the
27 claim.

28 6. RECORDING. If a mortgage is recorded in more than one
29 county and a certificate of release or partial release is
30 recorded in one of them, a certified copy of the certificate
31 of release may be recorded in another county with the same
32 effect as the original. In all cases, the certificate of
33 release or partial release shall be entered and indexed in the
34 manner that a satisfaction of mortgage is entered and indexed.

35 7. FEE. The division may charge a reasonable fee for

1 services provided under this section.

2 8. PRIOR MORTGAGES. If the real estate lender or closer
3 has notified the division that a mortgage has been paid in
4 full by someone other than the real estate lender or closer,
5 or was paid by the real estate lender or closer under a
6 previous transaction, and a release has not been filed of
7 record, is defective, or is not from the appropriate person,
8 the division may execute and record a certificate of release
9 without certification by the real estate lender or closer that
10 payment was made pursuant to a payoff statement and the date
11 payment was received by the mortgagee. A certificate of
12 release filed pursuant to this subsection is subject to the
13 requirements of subsection 2, paragraph "c".

14 9. APPLICATION. This section applies only to a mortgage
15 in an original principal amount of five hundred thousand
16 dollars or less.

17 Sec. 2. NEW SECTION. 655.3 PENALTY FOR FAILURE TO
18 DISCHARGE.

19 If a mortgagee, or a mortgagee's personal representative or
20 assignee, upon full performance of the conditions of the
21 mortgage, fails to discharge such mortgage within thirty days
22 after a request for discharge and after tender of the
23 mortgagee's reasonable charges for such discharge, the
24 mortgagee is liable to the mortgagor and the mortgagor's heirs
25 or assigns, for all actual damages caused by such failure,
26 including reasonable attorney fees. A claim for such damages
27 may be asserted in an action for discharge of the mortgage.
28 If the defendant is not a resident of this state, such action
29 may be maintained upon the expiration of thirty days after the
30 conditions of the mortgage have been performed, without such
31 previous request or tender.

32 Sec. 3. Section 655.2, Code 1999, is repealed.

33 EXPLANATION

34 This bill creates new Code section 16.92 and provides that
35 a duly authorized officer or employee of the title guaranty

1 division in the Iowa finance authority may execute and record
2 a certificate of release in each county in which a mortgage is
3 recorded. The certificate of release may be filed by the
4 division if the real estate lender or closer certifies in
5 writing that the payoff statement either does not indicate
6 that the mortgage continues to secure an unpaid obligation due
7 the mortgagee or an unfunded commitment by the mortgagor to
8 the mortgagee, or contains the legal description of the
9 property to be released from the mortgage and the legal
10 description of the property that will continue to be subject
11 to the mortgage, that the payment was made in accordance with
12 the payoff statement, and that more than 30 days have elapsed
13 since the date the payment was sent; the division determines
14 that an effective satisfaction or release of the mortgage has
15 not been executed and recorded within 30 days after the date
16 payment was sent or otherwise made in accordance with a payoff
17 statement; and the division, at least 30 days prior to
18 executing the certificate of release, sends by certified mail,
19 to the last known address of the mortgage servicer, written
20 notice of its intention to execute and record a certificate of
21 release, including instructions to notify the division of any
22 reason why the certificate of release should not be executed
23 and recorded. The bill provides that if, prior to executing
24 and recording the certificate of release, the division
25 receives written notification setting forth a reason
26 satisfactory to the division why the certificate of release
27 should not be executed and recorded by the division, the
28 division shall not execute and record the certificate of
29 release.

30 The bill provides that a certificate of release filed by
31 the division is to be executed and acknowledged in the same
32 manner as required by law for the execution of a deed. The
33 bill provides that the recording of a wrongful or erroneous
34 certificate of release by the division does not relieve the
35 mortgagor, or the mortgagor's successors or assigns on the

1 debt, from personal liability on the loan or on other
 2 obligations secured by the mortgage. Also, in addition to any
 3 other remedy provided by law, if the division wrongfully or
 4 erroneously records a certificate of release, the division is
 5 liable to the mortgagee and mortgage servicer for actual
 6 damages sustained due to the recording of the certificate of
 7 release.

8 The bill provides that new Code section 16.92 applies only
 9 to a mortgage in an original principal amount of \$500,000 or
 10 less.

11 The bill also repeals Code section 655.2, which provides a
 12 penalty for a mortgagee, mortgagee's representative or
 13 assignee, who fails to release a mortgage within 30 days after
 14 being requested in writing after the mortgage has been
 15 satisfied in full. Such person shall forfeit to the mortgagor
 16 or any grantee of the property who has paid the mortgage, the
 17 sum of \$100 plus reasonable attorney fees incurred by the
 18 mortgagor or grantee in securing the release of the mortgage.
 19 New Code section 655.3 provides that if a mortgagee, or a
 20 mortgagee's personal representative or assignee, upon full
 21 performance of the conditions of the mortgage, fails to
 22 discharge such mortgage within 30 days after a request for
 23 discharge and after tender of the mortgagee's reasonable
 24 charges for such discharge, the mortgagee is liable to the
 25 mortgagor and the mortgagor's heirs or assigns, for all actual
 26 damages caused by such failure, including reasonable attorney
 27 fees.

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Substituted for HF 589
4/6/99 (P. 1052)

FILED MAR 8 1999

SENATE FILE **335**
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1142)
(COMPANION TO LSB 1409HV)

Passed Senate, Date ^(P. 592) 3/15/99 Passed House, Date ^(P. 1052) 4/6/99
Vote: Ayes 46 Nays 0 Vote: Ayes 99 Nays 0
Approved April 23, 1999

A BILL FOR

1 An Act relating to the transfer of real estate, the filing of a
2 release of mortgage, and providing a remedy.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SF 335

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1 Section 1. NEW SECTION. 16.92 REAL ESTATE TRANSFER --
2 MORTGAGE RELEASE CERTIFICATE.

3 1. DEFINITIONS. As used in this section, unless the
4 context otherwise requires:

5 a. "Division" means the title guaranty division in the
6 Iowa finance authority.

7 b. "Mortgage" means a mortgage or mortgage lien on an
8 interest in real property in this state given to secure a loan
9 in an original principal amount of five hundred thousand
10 dollars or less.

11 c. "Mortgagee" means the grantee of a mortgage. If a
12 mortgage has been assigned of record, the mortgagee is the
13 last person to whom the mortgage is assigned of record.

14 d. "Mortgage servicer" means the mortgagee or a person
15 other than the mortgagee to whom a mortgagor or the
16 mortgagor's successor in interest is instructed by the
17 mortgagee to send payments on a loan secured by the mortgage.
18 A person transmitting a payoff statement for a mortgage is the
19 mortgage servicer for purposes of such mortgage.

20 e. "Mortgagor" means the grantor of a mortgage.

21 f. "Payoff statement" means a written statement furnished
22 by the mortgage servicer which sets forth all of the
23 following:

24 (1) The unpaid balance of the loan secured by a mortgage,
25 including principal, interest, and any other charges properly
26 due under or secured by the mortgage, or the amount required
27 to be paid in order to release or partially release the
28 mortgage.

29 (2) Interest on a per-day basis for an amount set forth
30 pursuant to subparagraph (1).

31 (3) The address where payment is to be sent or other
32 specific instructions for making a payment.

33 (4) If after payment of the unpaid balance of the loan
34 secured by the mortgage, the mortgage continues to secure any
35 unpaid obligation due the mortgagee or any unfunded commitment

1 by the mortgagor to the mortgagee, the legal description of
2 the property that will continue to be subject to the mortgage,
3 and the legal description of the property that will be
4 released from the mortgage.

5 g. "Real estate lender or closer" means a person licensed
6 to regularly lend moneys to be secured by a mortgage on real
7 property in this state, a licensed real estate broker, or a
8 licensed attorney.

9 2. EXECUTION OF CERTIFICATE OF RELEASE. A duly authorized
10 officer or employee of the division may execute and record a
11 certificate of release in the real property records of each
12 county in which a mortgage is recorded as provided in this
13 section if all of the following are satisfied:

14 a. The real estate lender or closer has certified in
15 writing to the division all of the following:

16 (1) That the payoff statement satisfies one of the
17 following:

18 (a) The statement does not indicate that the mortgage
19 continues to secure an unpaid obligation due the mortgagee or
20 an unfunded commitment by the mortgagor to the mortgagee.

21 (b) The statement contains the legal description of the
22 property to be released from the mortgage and the legal
23 description of the property that will continue to be subject
24 to the mortgage.

25 (2) That payment was made in accordance with the payoff
26 statement, including a statement as to the date the payment
27 was received by the mortgagee or mortgage servicer, as
28 evidenced by one or more of the following in the records of
29 the real estate lender or closer or its agent:

30 (a) A bank check, certified check, escrow account check,
31 real estate broker trust account check, or attorney trust
32 account check that was negotiated by the mortgagee or mortgage
33 servicer.

34 (b) Other documentary evidence of payment to the mortgagee
35 or mortgage servicer.

1 (3) That more than thirty days have elapsed since the date
2 the payment was sent.

3 b. The division determines that an effective satisfaction
4 or release of the mortgage has not been executed and recorded
5 within thirty days after the date payment was sent or
6 otherwise made in accordance with a payoff statement.

7 c. The division, at least thirty days prior to executing
8 the certificate of release, sends by certified mail, to the
9 last known address of the mortgage servicer, written notice of
10 its intention to execute and record a certificate of release
11 pursuant to this section after expiration of the thirty-day
12 period following the sending of such notice, including
13 instructions to notify the division of any reason why the
14 certificate of release should not be executed and recorded.
15 If, prior to executing and recording the certificate of
16 release, the division receives written notification setting
17 forth a reason satisfactory to the division why the
18 certificate of release should not be executed and recorded by
19 the division, the division shall not execute and record the
20 certificate of release.

21 3. CONTENTS. A certificate of release executed under this
22 section must contain substantially the information set forth
23 as follows:

24 a. The name of the mortgagor; the name of the original
25 mortgagee, and, if applicable, the mortgage servicer; the date
26 of the mortgage; the date of recording, including the volume
27 and page or other applicable recording information in the real
28 property records where the mortgage is recorded, and the same
29 information for the last recorded assignment of the mortgage.

30 b. A statement that the original mortgage principal was in
31 an amount of five hundred thousand dollars or less.

32 c. A statement that the person executing the certificate
33 of release is a duly authorized officer or employee of the
34 division.

35 d. A statement indicating one of the following:

1 (1) That the mortgage servicer provided a payoff statement
2 that was used to make payment, and that does not indicate that
3 the mortgage continues to secure any unpaid obligation due the
4 mortgagee or any unfunded commitment by the mortgagor to the
5 mortgagee.

6 (2) A statement that the certificate is a partial release
7 of the mortgage, the legal description of the property that
8 will be released from the mortgage, and the legal description
9 of the property that will continue to be subject to the
10 mortgage.

11 e. A statement that payment was made in accordance with
12 the payoff statement, and the date the payment was received by
13 the mortgagee or mortgage servicer, as evidenced by one or
14 more of the following in the records of the real estate lender
15 or closer or its agent:

16 (1) A bank check, certified check, escrow account check,
17 real estate broker trust account check, or attorney trust
18 account check that was negotiated by the mortgagee or mortgage
19 servicer.

20 (2) Other documentary evidence of payment to the mortgagee
21 or mortgage servicer.

22 f. A statement that more than thirty days have elapsed
23 since the date payment in accordance with the payoff statement
24 was sent.

25 g. A statement that the division has sent the thirty-day
26 notice required under subsection 2, paragraph "c", and that
27 thirty days have elapsed since the date the notice was sent.

28 h. A statement that the division has not received written
29 notification of any reason satisfactory to the division why
30 the certificate of release should not be executed and recorded
31 after the expiration of the thirty-day notice period under
32 subsection 2, paragraph "c".

33 4. EXECUTION. A certificate of release under this section
34 shall be executed and acknowledged in the same manner as
35 required by law for the execution of a deed.

1 5. EFFECT.

2 a. For purposes of a release or partial release of the
3 mortgage, a certificate of release executed under this section
4 that contains the information and statements required under
5 subsection 3 is prima facie evidence of the facts contained in
6 such release or partial release, is entitled to be recorded
7 with the county recorder where the mortgage is recorded,
8 operates as a release or partial release of the mortgage
9 described in the certificate of release, and may be relied
10 upon by any person who owns or subsequently acquires an
11 interest in the property released from the mortgage. The
12 county recorder shall rely upon the certificate of release to
13 release the mortgage.

14 b. Recording of a wrongful or erroneous certificate of
15 release by the division shall not relieve the mortgagor, or
16 the mortgagor's successors or assigns on the debt, from
17 personal liability on the loan or on other obligations secured
18 by the mortgage.

19 c. In addition to any other remedy provided by law, if the
20 division wrongfully or erroneously records a certificate of
21 release under this section, the division is liable to the
22 mortgagee and mortgage servicer for actual damages sustained
23 due to the recording of the certificate of release.

24 d. Upon payment of a claim relating to the recording of a
25 certificate of release, the division is subrogated to the
26 rights of the claimant against all persons relating to the
27 claim.

28 6. RECORDING. If a mortgage is recorded in more than one
29 county and a certificate of release or partial release is
30 recorded in one of them, a certified copy of the certificate
31 of release may be recorded in another county with the same
32 effect as the original. In all cases, the certificate of
33 release or partial release shall be entered and indexed in the
34 manner that a satisfaction of mortgage is entered and indexed.

35 7. PRIOR MORTGAGES. If the real estate lender or closer

1 has notified the division that a mortgage has been paid in
2 full by someone other than the real estate lender or closer,
3 or was paid by the real estate lender or closer under a
4 previous transaction, and an effective release has not been
5 filed of record, the division may execute and record a
6 certificate of release without certification by the real
7 estate lender or closer that payment was made pursuant to a
8 payoff statement and the date payment was received by the
9 mortgagee. A certificate of release filed pursuant to this
10 subsection is subject to the requirements of subsection 2,
11 paragraph "c".

12 8. APPLICATION. This section applies only to a mortgage
13 in an original principal amount of five hundred thousand
14 dollars or less.

15 Sec. 2. NEW SECTION. 655.3 PENALTY FOR FAILURE TO
16 DISCHARGE.

17 If a mortgagee, or a mortgagee's personal representative or
18 assignee, upon full performance of the conditions of the
19 mortgage, fails to discharge such mortgage within thirty days
20 after a request for discharge, the mortgagee is liable to the
21 mortgagor and the mortgagor's heirs or assigns, for all actual
22 damages caused by such failure, including reasonable attorney
23 fees. A claim for such damages may be asserted in an action
24 for discharge of the mortgage. If the defendant is not a
25 resident of this state, such action may be maintained upon the
26 expiration of thirty days after the conditions of the mortgage
27 have been performed, without such previous request or tender.

28 Sec. 3. Section 655.2, Code 1999, is repealed.

29 EXPLANATION

30 This bill creates new Code section 16.92 and provides that
31 a duly authorized officer or employee of the title guaranty
32 division in the Iowa finance authority may execute and record
33 a certificate of release in each county in which a mortgage is
34 recorded. The certificate of release may be filed by the
35 division if the real estate lender or closer certifies in

1 writing that the payoff statement either does not indicate
2 that the mortgage continues to secure an unpaid obligation due
3 the mortgagee or an unfunded commitment by the mortgagor to
4 the mortgagee, or contains the legal description of the
5 property to be released from the mortgage and the legal
6 description of the property that will continue to be subject
7 to the mortgage, that the payment was made in accordance with
8 the payoff statement, and that more than 30 days have elapsed
9 since the date the payment was sent; the division determines
10 that an effective satisfaction or release of the mortgage has
11 not been executed and recorded within 30 days after the date
12 payment was sent or otherwise made in accordance with a payoff
13 statement; and the division, at least 30 days prior to
14 executing the certificate of release, sends by certified mail,
15 to the last known address of the mortgage servicer, written
16 notice of its intention to execute and record a certificate of
17 release, including instructions to notify the division of any
18 reason why the certificate of release should not be executed
19 and recorded. The bill provides that if, prior to executing
20 and recording the certificate of release, the division
21 receives written notification setting forth a reason
22 satisfactory to the division why the certificate of release
23 should not be executed and recorded by the division, the
24 division shall not execute and record the certificate of
25 release.

26 The bill provides that a certificate of release filed by
27 the division is to be executed and acknowledged in the same
28 manner as required by law for the execution of a deed. The
29 bill provides that the recording of a wrongful or erroneous
30 certificate of release by the division does not relieve the
31 mortgagor, or the mortgagor's successors or assigns on the
32 debt, from personal liability on the loan or on other
33 obligations secured by the mortgage. Also, in addition to any
34 other remedy provided by law, if the division wrongfully or
35 erroneously records a certificate of release, the division is

1 liable to the mortgagee and mortgage servicer for actual
2 damages sustained due to the recording of the certificate of
3 release.

4 The bill provides that new Code section 16.92 applies only
5 to a mortgage in an original principal amount of \$500,000 or
6 less.

7 The bill also repeals Code section 655.2, which provides a
8 penalty for a mortgagee, mortgagee's representative or
9 assignee, who fails to release a mortgage within 30 days after
10 being requested in writing after the mortgage has been
11 satisfied in full. Code section 655.2 also provides that such
12 person shall forfeit to the mortgagor or any grantee of the
13 property who has paid the mortgage, the sum of \$100 plus
14 reasonable attorney fees incurred by the mortgagor or grantee
15 in securing the release of the mortgage. New Code section
16 655.3 provides that if a mortgagee, or a mortgagee's personal
17 representative or assignee, upon full performance of the
18 conditions of the mortgage, fails to discharge such mortgage
19 within 30 days after a request for discharge, the mortgagee is
20 liable to the mortgagor and the mortgagor's heirs or assigns,
21 for all actual damages caused by such failure, including
22 reasonable attorney fees.

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SF 335

enate File 335, p. 2
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SENATE FILE 335

H-1257

1 Amend Senate File 335, as passed by the Senate, as
2 follows:
3 1. Page 6, by inserting after line 27 the
4 following:
5 "Sec. _____. The title guaranty division in the Iowa
6 finance authority shall reduce the rates charged for
7 an owner's guaranty, a lender's guaranty, and the
8 various endorsements that will be offered by the
9 division. The reduction in rates shall be by an
10 amount of no less than fifty percent based upon the
11 rates published by the division, and made available to
12 mortgage lenders, and in effect on March 22, 1999.
13 The reduction in rates shall be implemented by the
14 division on the effective date of this Act."
15 2. By renumbering as necessary.

By METCALF of Polk

H-1257 FILED MARCH 25, 1999

*Withdrawn
4-6-99
(p. 1052)*

AN ACT

RELATING TO THE TRANSFER OF REAL ESTATE, THE FILING OF A
RELEASE OF MORTGAGE, AND PROVIDING A REMEDY.

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

Section 1. NEW SECTION. 16.92 REAL ESTATE TRANSFER --
MORTGAGE RELEASE CERTIFICATE.

1. DEFINITIONS. As used in this section, unless the
context otherwise requires:

a. "Division" means the title guaranty division in the
Iowa finance authority.

b. "Mortgage" means a mortgage or mortgage lien on an
interest in real property in this state given to secure a loan
in an original principal amount of five hundred thousand
dollars or less.

c. "Mortgagee" means the grantee of a mortgage. If a
mortgage has been assigned of record, the mortgagee is the
last person to whom the mortgage is assigned of record.

d. "Mortgage servicer" means the mortgagee or a person
other than the mortgagee to whom a mortgagor or the
mortgagor's successor in interest is instructed by the
mortgagee to send payments on a loan secured by the mortgage.
A person transmitting a payoff statement for a mortgage is the
mortgage servicer for purposes of such mortgage.

e. "Mortgagor" means the grantor of a mortgage.

f. "Payoff statement" means a written statement furnished
by the mortgage servicer which sets forth all of the
following:

(1) The unpaid balance of the loan secured by a mortgage,
including principal, interest, and any other charges properly
due under or secured by the mortgage, or the amount required
to be paid in order to release or partially release the
mortgage.

(2) Interest on a per-day basis for an amount set forth
pursuant to subparagraph (1).

(3) The address where payment is to be sent or other
specific instructions for making a payment.

(4) If after payment of the unpaid balance of the loan
secured by the mortgage, the mortgage continues to secure any
unpaid obligation due the mortgagee or any unfunded commitment
by the mortgagor to the mortgagee, the legal description of
the property that will continue to be subject to the mortgage,
and the legal description of the property that will be
released from the mortgage.

g. "Real estate lender or closer" means a person licensed
to regularly lend moneys to be secured by a mortgage on real
property in this state, a licensed real estate broker, or a
licensed attorney.

2. EXECUTION OF CERTIFICATE OF RELEASE. A duly authorized
officer or employee of the division may execute and record a
certificate of release in the real property records of each
county in which a mortgage is recorded as provided in this
section if all of the following are satisfied:

a. The real estate lender or closer has certified in
writing to the division all of the following:

(1) That the payoff statement satisfies one of the
following:

(a) The statement does not indicate that the mortgage
continues to secure an unpaid obligation due the mortgagee or
an unfunded commitment by the mortgagor to the mortgagee.

(b) The statement contains the legal description of the
property to be released from the mortgage and the legal
description of the property that will continue to be subject
to the mortgage.

(2) That payment was made in accordance with the payoff statement, including a statement as to the date the payment was received by the mortgagee or mortgage servicer, as evidenced by one or more of the following in the records of the real estate lender or closer or its agent:

(a) A bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer.

(b) Other documentary evidence of payment to the mortgagee or mortgage servicer.

(3) That more than thirty days have elapsed since the date the payment was sent.

b. The division determines that an effective satisfaction or release of the mortgage has not been executed and recorded within thirty days after the date payment was sent or otherwise made in accordance with a payoff statement.

c. The division, at least thirty days prior to executing the certificate of release, sends by certified mail, to the last known address of the mortgage servicer, written notice of its intention to execute and record a certificate of release pursuant to this section after expiration of the thirty-day period following the sending of such notice, including instructions to notify the division of any reason why the certificate of release should not be executed and recorded. If, prior to executing and recording the certificate of release, the division receives written notification setting forth a reason satisfactory to the division why the certificate of release should not be executed and recorded by the division, the division shall not execute and record the certificate of release.

3. CONTENTS. A certificate of release executed under this section must contain substantially the information set forth as follows:

a. The name of the mortgagor; the name of the original mortgagee, and, if applicable, the mortgage servicer; the date of the mortgage; the date of recording, including the volume and page or other applicable recording information in the real property records where the mortgage is recorded, and the same information for the last recorded assignment of the mortgage.

b. A statement that the original mortgage principal was in an amount of five hundred thousand dollars or less.

c. A statement that the person executing the certificate of release is a duly authorized officer or employee of the division.

d. A statement indicating one of the following:

(1) That the mortgage servicer provided a payoff statement that was used to make payment, and that does not indicate that the mortgage continues to secure any unpaid obligation due the mortgagee or any unfunded commitment by the mortgagor to the mortgagee.

(2) A statement that the certificate is a partial release of the mortgage, the legal description of the property that will be released from the mortgage, and the legal description of the property that will continue to be subject to the mortgage.

e. A statement that payment was made in accordance with the payoff statement, and the date the payment was received by the mortgagee or mortgage servicer, as evidenced by one or more of the following in the records of the real estate lender or closer or its agent:

(1) A bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer.

(2) Other documentary evidence of payment to the mortgagee or mortgage servicer.

f. A statement that more than thirty days have elapsed since the date payment in accordance with the payoff statement was sent.

g. A statement that the division has sent the thirty-day notice required under subsection 2, paragraph "c", and that thirty days have elapsed since the date the notice was sent.

h. A statement that the division has not received written notification of any reason satisfactory to the division why the certificate of release should not be executed and recorded after the expiration of the thirty-day notice period under subsection 2, paragraph "c".

4. EXECUTION. A certificate of release under this section shall be executed and acknowledged in the same manner as required by law for the execution of a deed.

5. EFFECT.

a. For purposes of a release or partial release of the mortgage, a certificate of release executed under this section that contains the information and statements required under subsection 3 is prima facie evidence of the facts contained in such release or partial release, is entitled to be recorded with the county recorder where the mortgage is recorded, operates as a release or partial release of the mortgage described in the certificate of release, and may be relied upon by any person who owns or subsequently acquires an interest in the property released from the mortgage. The county recorder shall rely upon the certificate of release to release the mortgage.

b. Recording of a wrongful or erroneous certificate of release by the division shall not relieve the mortgagor, or the mortgagor's successors or assigns on the debt, from personal liability on the loan or on other obligations secured by the mortgage.

c. In addition to any other remedy provided by law, if the division wrongfully or erroneously records a certificate of release under this section, the division is liable to the mortgagee and mortgage servicer for actual damages sustained due to the recording of the certificate of release.

d. Upon payment of a claim relating to the recording of a certificate of release, the division is subrogated to the rights of the claimant against all persons relating to the claim.

6. RECORDING. If a mortgage is recorded in more than one county and a certificate of release or partial release is recorded in one of them, a certified copy of the certificate of release may be recorded in another county with the same effect as the original. In all cases, the certificate of release or partial release shall be entered and indexed in the manner that a satisfaction of mortgage is entered and indexed.

7. PRIOR MORTGAGES. If the real estate lender or closer has notified the division that a mortgage has been paid in full by someone other than the real estate lender or closer, or was paid by the real estate lender or closer under a previous transaction, and an effective release has not been filed of record, the division may execute and record a certificate of release without certification by the real estate lender or closer that payment was made pursuant to a payoff statement and the date payment was received by the mortgagee. A certificate of release filed pursuant to this subsection is subject to the requirements of subsection 2, paragraph "c".

8. APPLICATION. This section applies only to a mortgage in an original principal amount of five hundred thousand dollars or less.

Sec. 2. NEW SECTION. 655.3 PENALTY FOR FAILURE TO DISCHARGE.

If a mortgagee, or a mortgagee's personal representative or assignee, upon full performance of the conditions of the mortgage, fails to discharge such mortgage within thirty days after a request for discharge, the mortgagee is liable to the mortgagor and the mortgagor's heirs or assigns, for all actual damages caused by such failure, including reasonable attorney fees. A claim for such damages may be asserted in an action

Senate File 335, p. 7

for discharge of the mortgage. If the defendant is not a resident of this state, such action may be maintained upon the expiration of thirty days after the conditions of the mortgage have been performed, without such previous request or tender.

Sec. 3. Section 655.2, Code 1999, is repealed.

MARY E. KRAMER
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 335, Seventy-eighth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved April 23, 1999

THOMAS J. VILSACK
Governor