

Senate Study Bill 1142

Bill Text

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1 1 Section 1. NEW SECTION. 16.92 REAL ESTATE TRANSFER
1 2 MORTGAGE RELEASE CERTIFICATE.
1 3 1. DEFINITIONS. As used in this section, unless the
1 4 context otherwise requires:
1 5 a. "Division" means the title guaranty division in the
1 6 Iowa finance authority.
1 7 b. "Mortgage" means a mortgage or mortgage lien on an
1 8 interest in real property in this state given to secure a loan
1 9 in an original principal amount of five hundred thousand
1 10 dollars or less.
1 11 c. "Mortgagee" means the grantee of a mortgage. If a
1 12 mortgage has been assigned of record, the mortgagee is the
1 13 last person to whom the mortgage is assigned of record.
1 14 d. "Mortgage servicer" means the mortgagee or a person
1 15 other than the mortgagee to whom a mortgagor or the
1 16 mortgagor's successor in interest is instructed by the
1 17 mortgagee to send payments on a loan secured by the mortgage.
1 18 A person transmitting a payoff statement for a mortgage is the
1 19 mortgage servicer for purposes of such mortgage.
1 20 e. "Mortgagor" means the grantor of a mortgage.
1 21 f. "Payoff statement" means a written statement furnished
1 22 by the mortgage servicer which sets forth all of the
1 23 following:
1 24 (1) The unpaid balance of the loan secured by a mortgage,
1 25 including principal, interest, and any other charges properly
1 26 due under or secured by the mortgage, or the amount required
1 27 to be paid in order to release or partially release the
1 28 mortgage.
1 29 (2) Interest on a per-day basis for an amount set forth
1 30 pursuant to subparagraph (1).
1 31 (3) The address where payment is to be sent or other
1 32 specific instructions for making a payment.
1 33 (4) The legal description of the property to be released
1 34 from the mortgage, and the legal description of the property
1 35 that will continue to be subject to the mortgage if, after
2 1 payment of the unpaid balance of the loan secured by the
2 2 mortgage, the mortgage continues to secure any unpaid
2 3 obligation due the mortgagee or any unfunded commitment by the
2 4 mortgagor to the mortgagee.
2 5 g. "Real estate lender or closer" means a person licensed
2 6 to regularly lend moneys to be secured by a mortgage on real
2 7 property in this state, a licensed real estate broker, or a
2 8 licensed attorney.
2 9 2. EXECUTION OF CERTIFICATE OF RELEASE. A duly authorized
2 10 officer or employee of the division may execute and record a
2 11 certificate of release in the real property records of each
2 12 county in which a mortgage is recorded as provided in this
2 13 section if all of the following are satisfied:
2 14 a. The real estate lender or closer has certified in
2 15 writing to the division all of the following:
2 16 (1) That the payoff statement satisfies one of the
2 17 following:
2 18 (a) The statement does not indicate that the mortgage
2 19 continues to secure an unpaid obligation due the mortgagee or
2 20 an unfunded commitment by the mortgagor to the mortgagee.
2 21 (b) The statement contains the legal description of the

2 22 property to be released from the mortgage and the legal
2 23 description of the property that will continue to be subject
2 24 to the mortgage.

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

2 30 (a) A bank check, certified check, escrow account check,
2 31 real estate broker trust account check, or attorney trust
2 32 account check that was negotiated by the mortgagee or mortgage
2 33 servicer.

2 34 (b) Other documentary evidence of payment to the mortgagee
2 35 or mortgage servicer.

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

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

3 7 c. The division, at least thirty days prior to executing
3 8 the certificate of release, sends by certified mail, to the
3 9 last known address of the mortgage servicer, written notice of
3 10 its intention to execute and record a certificate of release
3 11 pursuant to this section after expiration of the thirty-day
3 12 period following the sending of such notice, including
3 13 instructions to notify the division of any reason why the
3 14 certificate of release should not be executed and recorded.
3 15 If, prior to executing and recording the certificate of
3 16 release, the division receives written notification setting
3 17 forth a reason satisfactory to the division containing a
3 18 reason why the certificate of release should not be executed
3 19 and recorded by the division, the division shall not execute
3 20 and record the certificate of release.

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

3 24 a. The name of the mortgagor; the name of the original
3 25 mortgagee, and, if applicable, the mortgage servicer; the date
3 26 of the mortgage; the date of recording, including the volume
3 27 and page or other applicable recording information in the real
3 28 property records where the mortgage is recorded, and the same
3 29 information for the last recorded assignment of the mortgage.

3 30 b. A statement that the original mortgage principal was in
3 31 an amount of five hundred thousand dollars or less.

3 32 c. A statement that the person executing the certificate
3 33 of release is a duly authorized officer or employee of the
3 34 division.

3 35 d. A statement indicating one of the following:

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

4 6 (2) A statement that the certificate is a partial release
4 7 of the mortgage, the legal description of the property that
4 8 will be released from the mortgage, and the legal description
4 9 of the property that will continue to be subject to the
4 10 mortgage.

4 11 e. A statement that payment was made in accordance with
4 12 the payoff statement, and the date the payment was received by
4 13 the mortgagee or mortgage servicer, as evidenced by one or
4 14 more of the following in the records of the real estate lender
4 15 or closer or its agent:

4 16 (1) A bank check, certified check, escrow account check,
4 17 real estate broker trust account check, or attorney trust
4 18 account check that was negotiated by the mortgagee or mortgage

4 19 servicer.

4 20 (2) Other documentary evidence of payment to the mortgagee
4 21 or mortgage servicer.

4 22 f. A statement that more than thirty days have elapsed
4 23 since the date payment in accordance with the payoff statement
4 24 was sent.

4 25 g. A statement that the division has sent the thirty-day
4 26 notice required under subsection 2, paragraph "c", and that
4 27 thirty days have elapsed since the date the notice was sent.

4 28 h. A statement that the division has not received written
4 29 notification of any reason why the certificate of release
4 30 should not be executed and recorded after the expiration of
4 31 the thirty-day notice period under subsection 2, paragraph
4 32 "c".

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

5 1 5. EFFECT.

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

5 14 b. Recording of a wrongful or erroneous certificate of
5 15 release by the division shall not relieve the mortgagor, or
5 16 the mortgagor's successors or assigns on the debt, from
5 17 personal liability on the loan or on other obligations secured
5 18 by the mortgage.

5 19 c. In addition to any other remedy provided by law, if the
5 20 division wrongfully or erroneously records a certificate of
5 21 release under this section, the division is liable to the
5 22 mortgagee and mortgage servicer for actual damages sustained
5 23 due to the recording of the certificate of release.

5 24 d. Upon payment of a claim relating to the recording of a
5 25 certificate of release, the division is subrogated to the
5 26 rights of the claimant against all persons relating to the
5 27 claim.

5 28 6. RECORDING. If a mortgage is recorded in more than one
5 29 county and a certificate of release or partial release is
5 30 recorded in one of them, a certified copy of the certificate
5 31 of release may be recorded in another county with the same
5 32 effect as the original. In all cases, the certificate of
5 33 release or partial release shall be entered and indexed in the
5 34 manner that a satisfaction of mortgage is entered and indexed.

5 35 7. FEE. The division may charge a reasonable fee for
6 1 services provided under this section.

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

6 14 9. APPLICATION. This section applies only to a mortgage
6 15 in an original principal amount of five hundred thousand

6 16 dollars or less.

6 17 Sec. 2. NEW SECTION. 655.3 PENALTY FOR FAILURE TO
6 18 DISCHARGE.

6 19 If a mortgagee, or a mortgagee's personal representative or
6 20 assignee, upon full performance of the conditions of the
6 21 mortgage, fails to discharge such mortgage within thirty days
6 22 after a request for discharge and after tender of the
6 23 mortgagee's reasonable charges for such discharge, the
6 24 mortgagee is liable to the mortgagor and the mortgagor's heirs
6 25 or assigns, for all actual damages caused by such failure,
6 26 including reasonable attorney fees. A claim for such damages
6 27 may be asserted in an action for discharge of the mortgage.
6 28 If the defendant is not a resident of this state, such action
6 29 may be maintained upon the expiration of thirty days after the
6 30 conditions of the mortgage have been performed, without such
6 31 previous request or tender.

6 32 Sec. 3. Section 655.2, Code 1999, is repealed.

6 33 EXPLANATION

6 34 This bill creates new Code section 16.92 and provides that
6 35 a duly authorized officer or employee of the title guaranty
7 1 division in the Iowa finance authority may execute and record
7 2 a certificate of release in each county in which a mortgage is
7 3 recorded. The certificate of release may be filed by the
7 4 division if the real estate lender or closer certifies in
7 5 writing that the payoff statement either does not indicate
7 6 that the mortgage continues to secure an unpaid obligation due
7 7 the mortgagee or an unfunded commitment by the mortgagor to
7 8 the mortgagee, or contains the legal description of the
7 9 property to be released from the mortgage and the legal
7 10 description of the property that will continue to be subject
7 11 to the mortgage, that the payment was made in accordance with
7 12 the payoff statement, and that more than 30 days have elapsed
7 13 since the date the payment was sent; the division determines
7 14 that an effective satisfaction or release of the mortgage has
7 15 not been executed and recorded within 30 days after the date
7 16 payment was sent or otherwise made in accordance with a payoff
7 17 statement; and the division, at least 30 days prior to
7 18 executing the certificate of release, sends by certified mail,
7 19 to the last known address of the mortgage servicer, written
7 20 notice of its intention to execute and record a certificate of
7 21 release, including instructions to notify the division of any
7 22 reason why the certificate of release should not be executed
7 23 and recorded. The bill provides that if, prior to executing
7 24 and recording the certificate of release, the division
7 25 receives written notification setting forth a reason
7 26 satisfactory to the division why the certificate of release
7 27 should not be executed and recorded by the division, the
7 28 division shall not execute and record the certificate of
7 29 release.

7 30 The bill provides that a certificate of release filed by
7 31 the division is to be executed and acknowledged in the same
7 32 manner as required by law for the execution of a deed. The
7 33 bill provides that the recording of a wrongful or erroneous
7 34 certificate of release by the division does not relieve the
7 35 mortgagor, or the mortgagor's successors or assigns on the
8 1 debt, from personal liability on the loan or on other
8 2 obligations secured by the mortgage. Also, in addition to any
8 3 other remedy provided by law, if the division wrongfully or
8 4 erroneously records a certificate of release, the division is
8 5 liable to the mortgagee and mortgage servicer for actual
8 6 damages sustained due to the recording of the certificate of
8 7 release.

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

8 11 The bill also repeals Code section 655.2, which provides a
8 12 penalty for a mortgagee, mortgagee's representative or

8 13 assignee, who fails to release a mortgage within 30 days after
8 14 being requested in writing after the mortgage has been
8 15 satisfied in full. Such person shall forfeit to the mortgagor
8 16 or any grantee of the property who has paid the mortgage, the
8 17 sum of \$100 plus reasonable attorney fees incurred by the
8 18 mortgagor or grantee in securing the release of the mortgage.
8 19 New Code section 655.3 provides that if a mortgagee, or a
8 20 mortgagee's personal representative or assignee, upon full
8 21 performance of the conditions of the mortgage, fails to
8 22 discharge such mortgage within 30 days after a request for
8 23 discharge and after tender of the mortgagee's reasonable
8 24 charges for such discharge, the mortgagee is liable to the
8 25 mortgagor and the mortgagor's heirs or assigns, for all actual
8 26 damages caused by such failure, including reasonable attorney
8 27 fees.
8 28 LSB 1409SC 78
8 29 mj/gg/8