

**House File 578 - Introduced**

HOUSE FILE 578  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 80)

**A BILL FOR**

1 An Act relating to the transfer of real estate and the filing  
2 of a mortgage release certificate, providing for a fee and  
3 making remedies applicable, and including effective date  
4 provisions.

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

1 Section 1. Section 16.92, Code 2013, is amended by striking  
2 the section and inserting in lieu thereof the following:

3 **16.92 Real estate transfer — mortgage release certificate.**

4 1. *Definitions.* As used in this section, unless the context  
5 otherwise requires:

6 a. "*Applicant*" means a person authorized to regularly lend  
7 moneys to be secured by a mortgage on real property in this  
8 state, a licensed real estate broker, a licensed attorney, a  
9 participating abstractor, or a licensed closing agent.

10 b. "*Closing agent*" means a closing agent subject to the  
11 licensing requirements of chapter 535B.

12 c. "*Division*" means the title guaranty division in the Iowa  
13 finance authority, the director of the division, or a designee  
14 of the director.

15 d. "*Division board*" means the board of directors of the  
16 title guaranty division of the Iowa finance authority.

17 e. "*Mortgage*" means a mortgage or mortgage lien on an  
18 interest in real property in this state given to secure a loan  
19 in an original principal amount equal to or less than the  
20 maximum principal amount as determined by the division board  
21 and adopted by the Iowa finance authority pursuant to chapter  
22 17A.

23 f. "*Mortgage servicer*" means the mortgagee or a person  
24 other than the mortgagee to whom a mortgagor or the mortgagor's  
25 successor in interest is instructed by the mortgagee to  
26 send payments on a loan secured by the mortgage. A person  
27 transmitting a payoff statement for a mortgage is a mortgage  
28 servicer for purposes of such mortgage and this chapter.

29 g. "*Mortgagee*" means the grantee of a mortgage. If a  
30 mortgage has been assigned of record, the mortgagee is the last  
31 person to whom the mortgage is assigned of record.

32 h. "*Mortgagor*" means the grantor of a mortgage.

33 i. "*Participating abstractor*" means an abstractor  
34 participating in the title guaranty program.

35 j. "*Payoff statement*" means a written statement furnished by

1 the mortgage servicer which sets forth all of the following:

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

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

8 (3) The legal description, street address, or other  
9 description sufficient to identify the property that will be  
10 released from the mortgage.

11 2. *Application.* The division may execute and record a  
12 certificate of release on behalf of the division in the real  
13 property records of each county in which a mortgage is recorded  
14 as provided in this section if all of the following are  
15 satisfied:

16 a. The applicant submits all of the following in writing to  
17 the division:

18 (1) A payoff statement or other documentation of the amount  
19 due, acceptable to the division, as evidence that the mortgage  
20 does not continue to secure an unpaid obligation due the  
21 mortgagee or an unfunded commitment by the mortgagor to the  
22 mortgagee.

23 (2) Evidence that payment was made, including, if  
24 available, a statement as to the date the payment was received  
25 by the mortgagee or mortgage servicer, with supporting  
26 documentation, as evidenced by one or more of the following:

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

31 (b) Other documentary evidence, acceptable to the division,  
32 of payment to the mortgagee or mortgage servicer.

33 b. The applicant confirms in writing to the division all of  
34 the following:

35 (1) More than thirty days have elapsed since the date the

1 payment was sent.

2 (2) An effective satisfaction or release of the mortgage  
3 has not been executed and recorded within thirty days after the  
4 date of payment.

5 3. *Notice.*

6 a. Prior to the execution and filing of a certificate of  
7 release pursuant to this section, the division shall notify the  
8 mortgage servicer in writing of all of the following:

9 (1) The mortgage has not been released.

10 (2) The division's intention to execute and record  
11 a certificate of release pursuant to this section after  
12 expiration of the thirty-day period following the sending of  
13 the notice.

14 b. The notice shall include instructions to notify the  
15 division in writing within thirty days of the effective date of  
16 the notice of any reason why the certificate of release should  
17 not be executed and recorded.

18 c. For purposes of this section, notice may be served by any  
19 of the following methods:

20 (1) By certified mail or any commercial delivery service,  
21 properly addressed with postage or cost of delivery provided  
22 for.

23 (2) By facsimile transmission or electronic mail to an  
24 address provided by the mortgage servicer, but only if the  
25 mortgage servicer agrees to receive notice in that manner.

26 (3) By publication in a newspaper of general circulation  
27 published in each county where the mortgage is recorded once  
28 each week for three consecutive weeks after receiving an  
29 affidavit by the applicant that service in accordance with the  
30 provisions of subparagraph (1) or (2) cannot be made on the  
31 mortgage servicer.

32 (4) By otherwise causing the notice to be received by the  
33 mortgage servicer within the time it would have been received  
34 if notice had been served by certified mail or commercial  
35 delivery service.

1     *d.* For purposes of this section, notice is effective under  
2 any of the following circumstances:

3     (1) The day after the notice is deposited with a commercial  
4 delivery service for overnight delivery.

5     (2) Three days after the notice is deposited with the United  
6 States postal service, or with a commercial delivery service  
7 for delivery other than by overnight delivery.

8     (3) The day the notice is transmitted, if served pursuant to  
9 paragraph "c", subparagraph (2).

10    (4) On the last day of publication, if published pursuant to  
11 paragraph "c", subparagraph (3).

12    (5) The day the notice is received, if served by a method  
13 other than as provided in paragraph "c", subparagraph (1), (2),  
14 or (3).

15    *e.* If, prior to executing and recording the certificate of  
16 release, the division receives a written notification setting  
17 forth a reason that is satisfactory to the division as to why  
18 the certificate of release should not be executed, the division  
19 shall not execute and record the certificate of release.

20    4. *Contents.* A certificate of release executed under this  
21 section must contain substantially the information set forth  
22 as follows:

23    *a.* The name of the mortgagor.

24    *b.* The name of the original mortgagee.

25    *c.* The date of the mortgage.

26    *d.* The date of recording, including the volume and page or  
27 other applicable recording information in the real property  
28 records of each county where the mortgage is recorded.

29    *e.* A statement that the release was prepared in accordance  
30 with this section.

31    5. *Execution.* A certificate of release under this section  
32 shall be executed and acknowledged in the same manner as  
33 required by law for the execution of a deed.

34    6. *Recording.* The certificate of release or partial  
35 release shall be recorded in each county where the mortgage is

1 recorded.

2 7. *Effect.*

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

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

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

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

30 8. *Fee.* The division may charge a fee for services under  
31 this section.

32 Sec. 2. EFFECTIVE UPON ENACTMENT. This Act, being deemed of  
33 immediate importance, takes effect upon enactment.

34 EXPLANATION

35 This bill relates to the transfer of real estate and the

1 filing of a mortgage release certificate, providing for a fee,  
2 and making remedies applicable.

3 Code section 16.92 allows the title guaranty division  
4 (division) of the Iowa finance authority to execute and record  
5 a mortgage release certificate in each county (county recorder)  
6 in which a mortgage is recorded if such mortgage has been  
7 paid off but not released of record or has been incorrectly  
8 released.

9 The bill reorganizes, consolidates, and amends certain  
10 provisions in Code section 16.92 relating to the application  
11 process for a certificate of release, notice requirements  
12 the division must follow in notifying a mortgage servicer of  
13 the division's intention to execute and record a certificate  
14 of release upon the division's receipt of a mortgage release  
15 application, and execution requirements relating to the  
16 certificate of release. The bill specifies that a request for  
17 a mortgage release certificate may be made by an applicant,  
18 defined in the bill as a person authorized to regularly lend  
19 moneys to be secured by a mortgage on real property in this  
20 state, a licensed real estate broker, a licensed attorney, a  
21 participating abstractor, or a licensed closing agent. The  
22 applicant is required to submit certain evidence acceptable to  
23 the division and the applicant must confirm in writing that  
24 the mortgage has been paid off and that no release of the  
25 mortgage has occurred. The bill provides that the certificate  
26 of release executed by the division is only required to contain  
27 certain basic information about the mortgage and the execution  
28 of the certificate and also authorizes the division to charge a  
29 fee for services relating to the execution of the certificate  
30 of release.

31 Under Code section 16.92, for purposes of a release or  
32 partial release of a mortgage, a properly executed certificate  
33 of release is prima facie evidence of the facts contained in  
34 such release or partial release, is entitled to be recorded  
35 with the county recorder where the mortgage is recorded,

1 operates as a release or partial release of the mortgage  
2 described in the certificate of release, and may be relied upon  
3 by any person who owns or subsequently acquires an interest in  
4 the property released from the mortgage. The county recorder  
5 is required to rely upon the certificate of release to release  
6 the mortgage. In addition to any other remedy provided by  
7 law, if the division through an act of negligence wrongfully  
8 or erroneously records a certificate of release, the division  
9 is liable to the mortgagee and mortgage servicer for actual  
10 damages sustained due to the recording of the certificate of  
11 release.

12 The bill takes effect upon enactment.