

Senate Study Bill 1248 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON SODDERS)

A BILL FOR

1 An Act relating to requirements for timely filing of releases
2 or satisfactions of mortgages.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 535B.11, subsection 5, Code 2015, is
2 amended by striking the subsection.

3 Sec. 2. Section 655.1, Code 2015, is amended to read as
4 follows:

5 **655.1 Written instrument acknowledging satisfaction.**

6 1. When the amount due on a mortgage is paid off, the
7 mortgagee, the mortgagee's personal representative or assignee,
8 the mortgage servicer, or those legally acting for the
9 mortgagee, and in case of payment of a school fund mortgage,
10 the county auditor, ~~must~~ shall, within thirty days of payment
11 in full, acknowledge satisfaction thereof by execution of
12 an a proper instrument of satisfaction which is in writing,
13 referring refers to the mortgage, and is duly acknowledged
14 and recorded. For purposes of this section, an instrument of
15 satisfaction executed by a person other than the mortgagee,
16 if the mortgagee is an individual, or other than a qualified
17 officer of the mortgagee, if the mortgagee is an entity, is not
18 proper if the authority of the person executing the instrument
19 does not appear of record in relation to the mortgage or the
20 property that is the subject of the mortgage in the county
21 where the mortgage is recorded.

22 2. For purposes of this chapter, "mortgage servicer" means
23 a person, other than the mortgagee, to whom the mortgagee
24 instructs the mortgagor or mortgagor's successor in interest to
25 send payments on a loan secured by the mortgage.

26 Sec. 3. NEW SECTION. **655.2 Written demand for satisfaction.**

27 1. At any time after payment in full of the mortgage, the
28 owner of the property subject to the mortgage, or the owner's
29 legal representative or agent, may personally serve upon the
30 current record holder of the mortgage a demand for the record
31 holder to record a proper instrument of satisfaction of the
32 record holder's interest in the mortgage. The demand must
33 include a description of the mortgage to be satisfied, and
34 include any specific requirements necessary for the mortgage to
35 be satisfied.

1 2. In addition to any other manner permitted by law for
2 personal service, the demand may be served as follows:

3 a. By certified mail, return receipt requested, on a natural
4 person who is a resident in the state or on the Iowa registered
5 agent of a person authorized to do business in Iowa.

6 b. In the manner provided in section 490.1510, subsection
7 3, on a person who is a nonresident and does not have a current
8 certificate of authority to transact business in Iowa.

9 c. A notice of intent to execute and record a certificate of
10 release sent to the mortgagee or mortgage servicer by the title
11 guaranty division of the Iowa finance authority under section
12 16.92.

13 3. If notice is served under subsection 2, paragraph "a" or
14 "b", the notice is effective at the earliest of the date the
15 record holder receives the certified mail, the date shown on
16 the return receipt, if signed on behalf of the record holder,
17 and five days after its deposit in the United States mail, as
18 evidenced by the postmark, if mailed postpaid and correctly
19 addressed. If notice is served under subsection 2, paragraph
20 "c", notice is effective under any of the circumstances
21 described in section 16.92, subsection 3, paragraph "d".

22 Sec. 4. Section 655.3, Code 2015, is amended to read as
23 follows:

24 **655.3 Penalty for failure to discharge.**

25 1. If a mortgagee, ~~or~~ a mortgagee's personal representative
26 or assignee, or mortgage servicer, upon full performance of
27 the conditions of the mortgage, fails to discharge record the
28 satisfaction of such mortgage within in accordance with section
29 655.1 by the later of ten days after service of a notice is
30 effective under section 655.2 or thirty days after a request
31 for discharge payment in full of the mortgage, the mortgagee is
32 liable to the mortgagor and the mortgagor's heirs or assigns,
33 for a damage award that is an amount equal to the greater of
34 the sum of all actual damages caused by such the failure,
35 including reasonable attorney fees and expert witness fees,

1 if any, to obtain such discharge, reasonable attorney fees to
2 collect the amounts due the mortgagor or the mortgagor's heirs,
3 assigns, or grantees under this section, and court costs or the
4 minimum damage award, as defined in subsection 2, in effect at
5 the commencement of an action to collect such damages, plus
6 court costs. A claim for ~~such damages~~ a damage award may be
7 asserted in an action for discharge of the mortgage. ~~If the~~
8 ~~defendant is not a resident of this state, such action may~~
9 ~~be maintained upon the expiration of thirty days after the~~
10 ~~conditions of the mortgage have been performed, without such~~
11 ~~previous request or tender.~~

12 2. a. The minimum damage award for the period beginning
13 July 1, 2015, and ending June 30, 2020, is seven hundred
14 dollars.

15 b. For each subsequent five-year period, if the consumer
16 price index for all urban consumers published by the United
17 States bureau of labor statistics in June of the most recently
18 ended five-year period has increased over the consumer price
19 index for all urban consumers in June of the fifth year of the
20 five-year period immediately preceding the most recently ended
21 five-year period, the minimum damage award amount will increase
22 by the same ratio that the consumer price index increased
23 over those time periods. If the consumer price index did not
24 increase over those time periods, the minimum damage award
25 amount will remain the same as for the most recently ended
26 five-year period.

27 c. If the United States bureau of labor statistics ceases
28 to publish the consumer price index for all urban consumers,
29 the calculation in paragraph "b" shall be based on the increase
30 in inflation over the most recently ended five-year period,
31 as measured by a nationally recognized index of changes in
32 inflation selected by the state treasurer and published in the
33 Iowa administrative bulletin.

34

EXPLANATION

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The inclusion of this explanation does not constitute agreement with

1 the explanation's substance by the members of the general assembly.

2 This bill relates to requirements of written instruments
3 of release or satisfaction of mortgages and the penalties for
4 failure of mortgagees or mortgage servicers to timely deliver
5 releases of mortgages.

6 The bill strikes Code section 535B.11, subsection 5.
7 Code section 535B.11, subsection 5, requires a licensee or
8 other mortgagee who services mortgages on residential real
9 estate to execute and deliver a release after payoff and
10 within 45 days after receipt of payment. If the licensee or
11 mortgagee fails to do so within 15 days, the mortgagor may
12 notify the superintendent of the division of banking of the
13 department of commerce. If the licensee or mortgagee fails
14 to make the release and deliver it to the superintendent, the
15 superintendent may assess a penalty not to exceed \$50 for each
16 day of delinquency after the 15 days.

17 Under current Code section 655.1, when the amount due on a
18 mortgage is paid off, the mortgagee or the mortgagee's personal
19 representative must acknowledge satisfaction by execution of
20 an instrument, which is duly recorded. The bill requires that
21 such an instrument of satisfaction must be recorded within
22 30 days after receipt of payment in full and extends the
23 requirement to a mortgage servicer. The bill defines "mortgage
24 servicer" as a person, other than the mortgagee, to whom the
25 mortgagee instructs the mortgagor or mortgagor's successor in
26 interest to send payments on a loan secured by the mortgage.
27 The bill provides if the mortgagee is an entity, the authority
28 of the person executing the instrument of satisfaction must
29 appear of record in relation to the mortgage or the property in
30 the county where the mortgage is recorded.

31 The bill also provides that after payment of the mortgage in
32 full, the owner of the property may serve the current record
33 holder of the mortgage and demand the recording of a proper
34 instrument of satisfaction. If the record holder of the
35 mortgage fails to record the written instrument of satisfaction

1 by the later of 10 days after the mortgagor has served notice
2 of a demand for the recordation of the written instrument of
3 satisfaction and 30 days after payment in full, the mortgagee
4 is liable. Damages are the greater of (a) all actual damages
5 caused by the failure to record the written instrument of
6 satisfaction, including reasonable attorney fees and expert
7 witness fees necessary to obtain the discharge, reasonable
8 attorney fees to collect the damages, and court costs and (b)
9 a minimum damage award plus court costs. The minimum damage
10 award amount from July 1, 2015, to June 30, 2020, is \$700. The
11 bill provides for a calculation of the minimum damage award
12 amount for each five-year period after the initial five-year
13 period. For each subsequent five-year period, if the consumer
14 price index for all urban consumers has increased in the
15 five-year period, the minimum damage award amount will increase
16 by the same ratio that the consumer price index increased. If
17 the consumer price index did not increase, the minimum damage
18 award amount will remain the same as for the most recently
19 ended five-year period.