

CHAPTER 85

REAL ESTATE TRANSFERS — MORTGAGE RELEASE CERTIFICATE

S.F. 445

AN ACT relating to the transfer of real estate and the filing of a mortgage release certificate, providing for a fee and making remedies applicable, and including effective date provisions.

Be It Enacted by the General Assembly of the State of Iowa:

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

16.92 Real estate transfer — mortgage release certificate.

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

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

b. “*Closing agent*” means a closing agent subject to the licensing requirements of chapter 535B.

c. “*Division*” means the title guaranty division in the Iowa finance authority, the director of the division, or a designee of the director.

d. “*Division board*” means the board of directors of the title guaranty division of the Iowa finance authority.

e. “*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 equal to or less than the maximum principal amount as determined by the division board and adopted by the Iowa finance authority pursuant to chapter 17A.

f. “*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 a mortgage servicer for purposes of such mortgage and this chapter.

g. “*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.

h. “*Mortgagor*” means the grantor of a mortgage.

i. “*Participating abstractor*” means an abstractor participating in the title guaranty program.

j. “*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) The address where payment is to be sent or other specific instructions for making a payment.

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

2. *Application.* The division may execute and record a certificate of release on behalf of the division 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 applicant submits all of the following in writing to the division:

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

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

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

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

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

(1) More than thirty days have elapsed since the date the payment was sent.

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

3. *Notice.*

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

(1) The mortgage has not been released.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The name of the mortgagor.

b. The name of the original mortgagee.

c. The date of the mortgage.

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

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

5. *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.

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

7. *Effect.*

a. For purposes of a release or partial release of a mortgage, a certificate of release executed under this section that contains the information and statements required under subsection 4 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 through an act of negligence 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.

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

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

Approved May 1, 2013