

CHAPTER 1003

H.B. No. 1144

AN ACT

relating to title insurance company affidavits as releases of certain liens; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Chapter 12, Property Code, is amended by adding Section 12.017 to read as follows:

Sec. 12.017. TITLE INSURANCE COMPANY AFFIDAVIT AS RELEASE OF LIEN; CIVIL PENALTY. (a) In this section:

(1) "Mortgage" means a deed of trust or other contract lien on an interest in real property.

(2) "Mortgagee" means:

(A) the grantee of a mortgage;

(B) if a mortgage has been assigned of record, the last person to whom the mortgage has been assigned of record; or

(C) if a mortgage is serviced by a mortgage servicer, the mortgage servicer.

(3) "Mortgage servicer" means the last person to whom a mortgagor has been instructed by a mortgagee to send payments for the loan secured by a mortgage. A person transmitting a payoff statement is considered the mortgage servicer for the mortgage described in the payoff statement.

(4) "Mortgagor" means the grantor of a mortgage.

(5) "Payoff statement" means a statement of the amount of:

(A) the unpaid balance of a loan secured by a mortgage, including principal, interest, and other charges properly assessed under the loan documentation of the mortgage; and

(B) interest on a per diem basis for the unpaid balance.

(6) "Title insurance company" means a corporation or other business entity authorized and licensed to transact the business of insuring titles to interests in real property in this state.

(b) This section applies only to a mortgage on property consisting exclusively of a one-to-four-family residence, including a residential unit in a condominium regime.

(c) If a mortgagee fails to execute and deliver a release of mortgage to the mortgagor or the mortgagor's designated agent within 60 days after the date of receipt of payment of the mortgage by the mortgagee in accordance with a payoff statement furnished by the mortgagee or its mortgage servicer, an authorized officer of a title insurance company may, on behalf of the mortgagor or a transferee of the mortgagor who acquired title to the property described in the mortgage, execute an affidavit that complies with the requirements of this section and record the affidavit in the real property records of each county in which the mortgage was recorded.

(d) An affidavit executed under this section must state that:

(1) the affiant is an authorized officer of a title insurance company;

(2) the affidavit is made on behalf of the mortgagor or a transferee of the mortgagor who acquired title to the property described in the mortgage;

(3) the mortgagee provided a payoff statement with respect to the loan secured by the mortgage;

(4) the affiant has ascertained that the mortgagee has received payment of the loan secured by the mortgage in accordance with the payoff statement, as evidenced by:

(A) a bank check, certified check, escrow account check from the title company or title insurance agent, or attorney trust account check that has been negotiated by the mortgagee; or

(B) another documentary evidence of the receipt of payment by the mortgagee;

(5) more than 60 days have elapsed since the date payment was received by the mortgagee;

(6) the title insurance company or its agent has given the mortgagee at least 15 days' notice in writing of its intention to execute and record an affidavit in accordance with this section, with a copy of the proposed affidavit attached to the written notice; and

(7) the mortgagee has not responded in writing to the notification, or a request for additional payment made by the mortgagee has been complied with at least 15 days before the date of the affidavit.

(e) The affidavit must include the names of the mortgagor and the mortgagee, the date of the mortgage, and the volume and page or clerk's file number of the real property records where the mortgage is recorded, together with similar information for a recorded assignment of the mortgage.

(f) The affiant must attach to the affidavit a photostatic copy, certified as a true copy of the original document, of:

(1) the documentary evidence that payment has been received by the mortgagee, including the mortgagee's endorsement of a negotiated check if paid by check; and

(2) the payoff statement.

(g) An affidavit that is executed and recorded as provided by this section operates as a release of the mortgage described in the affidavit.

(h) The county clerk shall index the affidavit in the names of the original mortgagee and the last assignee of the mortgage appearing of record as the grantors and in the name of the mortgagor as grantee.

(i) A person who knowingly causes an affidavit with false information to be executed and recorded under this section is liable for the penalties for filing a false affidavit, including the penalties for commission of offenses under Section 37.02 of the Penal Code, and to a party injured by the affidavit for actual damages or \$5,000, whichever is greater. The attorney general may sue to collect the penalty. If the attorney general or an injured party bringing suit substantially prevails in an action under this subsection, the court may award reasonable attorney's fees and court costs to the prevailing party.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 15, 1993, by a non-record vote; passed by the Senate on May 24, 1993: Yeas 31, Nays 0.

Approved June 19, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.