8-7

John – Rep Stroebel's office

by phone

1) change "4 business days" to "7 business days" for sec. cred. to issue payoff start after notice

2) require 2 persons to sign affidavit of satisfaction

2 employees authorized by sat. agent to sign

(title ins. co.)

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB–0127/1
PJK:eev:jf

2013 BILL

AN ACT *to repeal* 706.05 (9) and (10); *to amend* 77.25 (13), 422.306 (4) and 428.104 (1); and *to create* 708.15 of the statutes; **relating to:** mortgage satisfaction and an exception to the real estate transfer fee.

Analysis by the Legislative Reference Bureau

Under current law, the holder of any type of mortgage is required to record a satisfaction of mortgage within 30 days after the mortgagor completes full performance of the conditions of the mortgage. However, if the mortgage is fully performed and the mortgage holder receives by certified mail a written request from the mortgagor for a full satisfaction, the mortgage holder must record a satisfaction of mortgage within seven days or is liable to the mortgagor for actual damages plus penalty damages of $100 for each day that the violation remains uncorrected, up to $2,000 in penalty damages. This bill repeals those provisions and replaces them with mortgage satisfaction provisions that are similar to the Uniform Residential Mortgage Satisfaction Act (URMSA), except that, with the exception of affidavits of satisfaction, the new provisions apply to all mortgages, not just mortgages on residential property.

Under the bill, a creditor who has a security interest in real property must record a satisfaction of the security instrument (mortgage) within 30 days after the secured creditor receives full payment of the secured obligation or payment as provided in a payoff statement provided by the creditor to the landowner or other person authorized to request a payoff statement. If the creditor does not do so within the required time, the creditor is liable to the landowner for $500, plus any actual damages and reasonable attorney fees and court costs, but no punitive damages.

The bill provides another mortgage satisfaction option for mortgages on residential real property: recording an affidavit of satisfaction of a security instrument. Under this option, upon or at any time after full performance or payment as provided in a payoff statement by the residential property owner, a satisfaction agent authorized by the owner may give the secured creditor notice that the satisfaction agent may record an affidavit of satisfaction of the security instrument. Under the bill, only a title insurance company acting directly or through an authorized agent may act as a satisfaction agent. The bill specifies the information that must be contained in the notice that is sent to the secured creditor, such as that the satisfaction agent has reasonable grounds to believe that the property is residential real property and that the secured creditor has received full payment or payment as provided in a payoff statement. After providing the notice, the satisfaction agent may submit the affidavit of satisfaction to the register of deeds for recording if the secured creditor authorizes the satisfaction agent to do so or if the secured creditor does not, within 30 days after receiving the notice, record a satisfaction. The satisfaction agent may not record the affidavit of satisfaction, however, if the agent receives notice from the secured creditor that the security instrument has been assigned, in which case the satisfaction agent must provide the notice to record an affidavit of satisfaction to the assignee, or that the secured obligation has not been satisfied, unless the satisfaction agent has reasonable grounds to believe that a person paid an understated payoff amount on which the person reasonably and detrimentally relied. An affidavit of satisfaction that complies with the requirements in the bill is entitled to be recorded in the office of the register of deeds, and a recorded affidavit of satisfaction constitutes a satisfaction of the security instrument described in the affidavit. The bill contains penalties against a satisfaction agent who records an affidavit of satisfaction erroneously or with knowledge that the statements in the affidavit are false, and authorizes a satisfaction agent to charge fees for providing the notice and preparing and executing the affidavit.

The bill sets out the right of a settlement agent or a person who is obligated under a security instrument to request a payoff statement from the secured creditor. The person or settlement agent, or his or her authorized agent, may give notice to the secured creditor requesting a payoff statement for a specified payoff date that is not more than 30 days from the date the notice is given. The secured creditor must issue a payoff statement within four business days after the effective date of a notice that contains the information specified in the bill, or within a reasonable longer time if the property that is subject to the security interest is not residential property, and may not charge the person for the first payoff statement the person requests in any two–month period. The bill specifies the information that the payoff statement must contain, and provides for penalties against a secured creditor for not sending a timely payoff statement that substantially complies with the content requirements in the bill. If the payoff amount in a payoff statement is understated, the secured creditor may send a corrected payoff statement, but the secured creditor is prohibited from denying the accuracy of the payoff amount as against any person who reasonably and detrimentally relies on the understated amount. If the secured creditor receives

seven

payment as provided in an understated payoff statement, the secured creditor must still record a satisfaction of the mortgage within 30 days but may recover from the obligated party any amount that was incorrectly not included in the payoff statement.

In addition to the security instrument satisfaction provisions, the bill specifies acceptable methods for and the effective dates of providing notice under the bill. The bill also provides for the recording of a document of rescission, which rescinds an erroneously recorded satisfaction or affidavit of satisfaction, keeping the security instrument in force.

Under current law, a real estate transfer fee must be paid when an ownership interest in real property is transferred. Current law contains various exceptions to the payment of the real estate transfer fee, however, including when real property valued at or under $100 is transferred. The bill changes this real property value amount for the exception to $1,000 or less.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 77.25 (13) of the statutes is amended to read:

2 77.25 **(13)** Of real estate having a value of ~~$100~~ $1,000 or less.

3 **SECTION 2.** 422.306 (4) of the statutes is amended to read:

4 422.306 **(4)** ~~Within~~ Except as provided in s. 708.15, within 45 days after
5 payment by the customer of all sums for which the customer is obligated under a
6 consumer credit transaction other than one pursuant to an open–end credit plan, the
7 creditor shall give or forward to the customer instruments which acknowledge
8 payment in full, and release of any security interest when there is no outstanding
9 secured obligation, and furnish to the customer or the customer's designee evidence
10 of the release or assignment to such designee of any recorded lien on real estate and
11 termination of any filed financing statement which perfected such security interest.

12 **SECTION 3.** 428.104 (1) of the statutes is amended to read:

428.104 **(1)** Any time a payment is made in cash, or any other time the method of payment does not itself provide evidence of payment, the creditor shall furnish the customer, without request, a written receipt, evidencing such payment. The customer shall be entitled upon request, free of charge, to an annual statement of account showing receipts and disbursements. ~~Upon~~ Subject to s. 708.15, upon payment in full of the customer's obligation, the creditor shall release any mortgage by either recording the necessary instrument and forwarding the same to the customer, or by forwarding a satisfaction of such debt to the purchaser of the real property subject to such satisfied mortgage, or the creditor of such purchaser.

SECTION 4. 706.05 (9) and (10) of the statutes are repealed.

SECTION 5. 708.15 of the statutes is created to read:

708.15 Mortgage satisfaction. (1) DEFINITIONS. In this section:

(a) "Address for giving a notification" means, for the purpose of a particular type of notification, the most recent address provided in a document by the intended recipient of the notification to the person giving the notification, unless the person giving the notification knows of a more accurate address, in which case the term means that address.

(b) "Day" means calendar day.

(c) "Document" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(d) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(e) "Entitled person" means any of the following:

1. A person liable for payment or performance of the obligation secured by the real property described in a security instrument.

1 2. The landowner.

2 3. The settlement agent.

3 (f) "Good faith" means honesty in fact and the observance of reasonable
4 commercial standards of fair dealing.

5 (g) "Landowner" or "owner" means a person that, before foreclosure, has the
6 right of redemption in the real property described in a security instrument. The term
7 does not include a person that holds only a lien on the real property.

8 (h) "Notification" means a document containing information required under
9 this section and signed by the person required to provide the information.

10 (i) "Payoff amount" means the sum necessary to satisfy a secured obligation,
11 as set forth in a payoff statement by the secured creditor.

12 (j) "Payoff statement" means a document containing the information specified
13 in sub. (3) (d).

14 (k) "Person" means an individual, corporation, business trust, estate, trust,
15 partnership, limited liability company, association, joint venture, public corporation,
16 government, or governmental subdivision, agency, or instrumentality, or any other
17 legal or commercial entity.

18 (L) "Recording data" means the date, document number, volume and page
19 number, if any, that indicate where a document is recorded in the office of the register
20 of deeds under s. 59.43.

21 (m) "Residential real property" means real property located in this state that
22 is used primarily for personal, family, or household purposes and is improved by one
23 to 4 dwelling units.

24 (n) "Secured creditor" means a person that holds or is the beneficiary of a
25 security interest or that is authorized both to receive payments on behalf of a person

1 that holds a security interest and to record a satisfaction of the security instrument
2 upon receiving full performance of the secured obligation. The term does not include
3 a trustee under a security instrument.

4 (o) "Secured obligation" means an obligation the payment or performance of
5 which is secured by a security interest.

6 (p) "Security instrument" means an agreement, however denominated, that
7 creates or provides for an interest in real property to secure payment or performance
8 of an obligation, whether or not it also creates or provides for a lien on personal
9 property.

10 (q) "Security interest" means an interest in real property created by a security
11 instrument.

12 (r) "Settlement agent" means the person responsible for the preparation of the
13 settlement statement for the conveyance of real property.

14 (s) "Sign" means, with present intent to authenticate or adopt a document, any
15 of the following:

16 1. To execute or adopt a tangible symbol.

17 2. To attach to or logically associate with the document an electronic sound,
18 symbol, or process.

19 (t) "State" means a state of the United States, the District of Columbia, Puerto
20 Rico, the United States Virgin Islands, or any territory or insular possession subject
21 to the jurisdiction of the United States.

22 (u) "Submit for recording" means to deliver, with required fees and taxes, a
23 document sufficient to be recorded under this section, to the office of the register of
24 deeds under s. 59.43.

1 (v) "Title insurance company" means an organization authorized to conduct the
2 business of insuring titles to real property in this state.

3 **(2)** NOTIFICATION: MANNER OF GIVING AND EFFECTIVE DATE. (a) A person gives a
4 notification by doing any of the following:

5 1. Depositing it with the U.S. Postal Service with 1st class postage paid or with
6 a commercially reasonable delivery service with cost of delivery provided, properly
7 addressed to the recipient's address for giving a notification.

8 2. Sending it by facsimile transmission, electronic mail, or other electronic
9 transmission to the recipient's address for giving a notification.

10 3. Causing it to be received at the address for giving a notification within the
11 time that it would have been received if given in the manner provided in subd. 1.

12 (b) A notification is effective at any of the following times:

13 1. The day after it is deposited with a commercially reasonable delivery service
14 for overnight delivery.

15 2. Three days after it is deposited with the U.S. Postal Service, with 1st class
16 mail with postage prepaid, or with a commercially reasonable delivery service for
17 delivery other than by overnight delivery.

18 3. The day it is given, if given as provided in par. (a) 2.

19 4. The day it is received, if given by a method other than as provided in par. (a)
20 1. or 2.

21 (c) If this section or a notification given under this section requires performance
22 on or by a certain day and that day is a Saturday, Sunday, or legal holiday under the
23 laws of this state or the United States, the performance is sufficient if performed on
24 the next day that is not a Saturday, Sunday, or legal holiday.

(3) PAYOFF STATEMENT: REQUEST AND CONTENT. (a) An entitled person, or an agent authorized by an entitled person to request a payoff statement, may give to the secured creditor a notification requesting a payoff statement for a specified payoff date not more than 30 days after the notification is given. The notification must contain all of the following:

1. The entitled person's name.

2. If given by a person other than an entitled person, the name of the person giving the notification and a statement that the person is an authorized agent of the entitled person.

3. A direction whether the statement is to be sent to the entitled person or that person's authorized agent.

4. The address, facsimile transmission number, or electronic mail or other electronic transmission address to which the secured creditor must send the statement.

5. Sufficient information to enable the secured creditor to identify the secured obligation and the real property encumbered by the security interest.

(b) If a notification under par. (a) directs the secured creditor to send the payoff statement to a person identified as an authorized agent of the entitled person, the secured creditor must send the statement to the agent, unless the secured creditor knows that the entitled person has not authorized the request.

(c) 1. Except as provided in subd. 2., within 4 business days after the effective date of a notification that complies with par. (a) or, if the security interest encumbers real property that is not residential real property, within a reasonable longer time after the effective date of such a notification, the secured creditor shall issue a payoff

statement and send it as directed under par. (a) 3. in the manner prescribed in sub. (2) for giving a notification.

2. If the person to whom the notification is given once held an interest in the secured obligation but has since assigned that interest, the person need not send a payoff statement but shall, within 4 business days after the effective date of the notification, give a notification of the assignment to the person to whom the payoff statement otherwise would have been sent, providing the name and address of the assignee.

3. A secured creditor that sends a payoff statement to the entitled person or the authorized agent may not claim that the notification did not satisfy par. (a).

(d) A payoff statement must contain all of the following:

1. The date on which it was prepared and the payoff amount as of that date. If the entitled person or the person's authorized agent specifically requests it, the payoff statement shall include the amount by type of each fee, charge, or other sum included within the payoff amount.

2. The information reasonably necessary to calculate the payoff amount as of the requested payoff date, including the per diem interest amount, if applicable.

3. The payment cutoff time, if any, the address or place where payment, including payment by electronic transmission, if available, must be made, and any limitation as to the authorized method of payment.

(e) A payoff statement may contain the amount of any fees authorized under this subsection not included in the payoff amount.

(f) A secured creditor may not qualify a payoff amount or state that the payoff amount is subject to change before the payoff date.

1 (g) A secured creditor must provide upon request one payoff statement without
2 charge during any 2–month period. A secured creditor may charge a fee of $25 for
3 each additional payoff statement requested during that 2–month period. However,
4 a secured creditor may not charge a fee for providing a corrected payoff statement
5 under sub. (4) (a).

6 (h) Except as otherwise provided in sub. (7), if a secured creditor to which a
7 notification has been given under par. (a) does not send a timely payoff statement
8 that substantially complies with par. (d), the secured creditor is liable to the entitled
9 person for any actual damages caused by the failure plus $500, but not punitive
10 damages. A secured creditor that does not pay the damages provided in this
11 paragraph within 30 days after receipt of a notification demanding payment may
12 also be liable for reasonable attorney fees and costs.

13 **(4)** UNDERSTATED PAYOFF STATEMENT: CORRECTION; EFFECT. (a) If a secured
14 creditor determines that the payoff amount it provided in a payoff statement was
15 understated, the secured creditor may send a corrected payoff statement. If the
16 entitled person or the person's authorized agent receives and has a reasonable
17 opportunity to act upon a corrected payoff statement before making payment, the
18 corrected statement supersedes an earlier statement.

19 (b) Subject to par. (c) 1., a secured creditor that sends a payoff statement
20 containing an understated payoff amount may not deny the accuracy of the payoff
21 amount as against any person that reasonably and detrimentally relies upon the
22 understated payoff amount.

23 (c) This section does not do any of the following:

24 1. Affect the right of a secured creditor to recover any sum that it did not include
25 in a payoff amount from any person liable for payment of the secured obligation.

1 2. Limit any claim or defense that a person liable for payment of a secured
2 obligation may have under law other than this section.

3 **(5)** SECURED CREDITOR TO SUBMIT SATISFACTION FOR RECORDING; LIABILITY FOR
4 FAILURE. (a) A secured creditor shall submit for recording a satisfaction of a security
5 instrument within 30 days after the secured creditor receives full payment or
6 performance of the secured obligation or payment as provided in a payoff statement
7 under sub. (3) or a corrected payoff statement under sub. (4), whichever is applicable.
8 If a security instrument secures a line of credit or future advances, the secured
9 obligation is fully performed only if, in addition to full payment or performance of the
10 secured obligation or payment as provided in a payoff statement under sub. (3) or a
11 corrected payoff statement under sub. (4), the secured creditor has received a
12 notification requesting the secured creditor to terminate the line of credit or
13 containing a statement sufficient to terminate the effectiveness of the provision for
14 future advances in the security instrument.

15 (b) Except as otherwise provided in sub. (7), a secured creditor that is required
16 to submit a satisfaction of a security instrument for recording and that does not do
17 so by the end of the period specified in par. (a) is liable to the landowner for $500, plus
18 any actual damages caused by the failure, but not punitive damages, and any
19 reasonable attorney fees and court costs incurred.

20 (c) Paragraph (b) applies to a secured creditor that receives full payment or
21 performance of the secured obligation or payment as provided in a payoff statement
22 under sub. (3) or a corrected payoff statement under sub. (4) on or after the effective
23 date of this paragraph .... [LRB inserts date]. Section 706.05 (9) and (10), 2011 stats.,
24 applies to a secured creditor that received partial or full payment or performance of

1 the secured obligation before the effective date of this paragraph .... [LRB inserts
2 date].

3 **(6)** FORM AND EFFECT OF SATISFACTION. A document is a satisfaction of a security
4 instrument if it satisfies s. 706.05 (8).

5 **(7)** LIMITATION OF SECURED CREDITOR'S LIABILITY. A secured creditor is not liable
6 under this section if all of the following apply:

7 (a) The secured creditor established a reasonable procedure to achieve
8 compliance with its obligations under this section.

9 (b) The secured creditor complied with that procedure in good faith.

10 (c) The secured creditor was unable to comply with its obligations because of
11 circumstances beyond its control.

12 **(8)** SATISFACTION AGENT; NOTIFICATION TO CREDITOR OF AFFIDAVIT OF SATISFACTION.
13 (a) Only a title insurance company, acting directly or through an authorized agent,
14 may serve as a satisfaction agent under this section. An affidavit of satisfaction
15 under this section is valid only for security instruments recorded against residential
16 real property.

17 (b) Upon, or at any time after, full payment or performance of the secured
18 obligation or payment as provided in a payoff statement under sub. (3) or a corrected
19 payoff statement under sub. (4), a satisfaction agent acting for and with authority
20 from the landowner may give the secured creditor a notification that the satisfaction
21 agent may submit for recording an affidavit of satisfaction of the security instrument
22 against residential real property. The notification must include all of the following:

23 1. The identity and mailing address of the satisfaction agent.

24 2. Identification of the security instrument for which a recorded satisfaction is
25 sought, including the names of the original parties to the security instrument.

1 3. A statement that the satisfaction agent has reasonable grounds to believe
2 all of the following:
3 a. That the real property described in the security instrument is residential
4 real property.
5 b. That the person to which the notification is being given is the secured
6 creditor.
7 c. That the secured creditor has received full payment or performance of the
8 secured obligation or payment as provided in a payoff statement under sub. (3) or a
9 corrected payoff statement under sub. (4).
10 4. A statement that the satisfaction agent may sign and submit for recording
11 an affidavit of satisfaction of the security instrument unless, within 30 days after the
12 effective date of the notification, any of the following occurs:
13 a. The secured creditor submits a satisfaction of the security instrument for
14 recording.
15 b. The satisfaction agent receives from the secured creditor a notification
16 stating that the secured obligation remains unsatisfied, except that the satisfaction
17 agent may submit for recording an affidavit of satisfaction even if the satisfaction
18 agent receives a notification that the secured obligation remains unsatisfied if the
19 satisfaction agent has reasonable grounds to believe that the person who paid the
20 payoff amount reasonably and detrimentally relied upon an understated payoff
21 amount.
22 c. The satisfaction agent receives from the secured creditor a notification
23 stating that the secured creditor has assigned the security instrument and
24 identifying the name and address of the assignee.

(c) 1. A notification under par. (b) may be sent by a method authorized by and to the address specified in sub. (2); alternatively, a notification under par. (b) may be sent by a method authorized in sub. (2) to the electronic or other address provided by the secured creditor on a payoff statement under sub. (3) (d) 3., if different from the address specified in sub. (2).

2. A notification under par. (b) may be sent along with a notification, if any, to terminate a line of credit or future advances as provided in sub. (5) (a).

(d) The satisfaction agent is presumed to be acting for, and with authority from, the entitled person if the satisfaction agent, directly or through an agent, assisted in completing full payment or performance of the secured obligation or payment as provided in a payoff statement under sub. (3) or a corrected payoff statement under sub. (4).

(e) Nothing in this section requires a person to agree to serve as a satisfaction agent.

(9) AUTHORIZATION TO SUBMIT AFFIDAVIT OF SATISFACTION FOR RECORDING; FEES. (a) Subject to pars. (b), (am), and (c), a satisfaction agent may sign and submit for recording an affidavit of satisfaction of a security instrument against residential real property that complies with sub. (10) if either of the following applies:

1. The secured creditor has not, to the knowledge of the satisfaction agent, submitted for recording a satisfaction of a security instrument within 30 days after the effective date of a notification complying with sub. (8) (b).

2. The secured creditor authorizes the satisfaction agent to do so.

Insert 14-22

(b) A satisfaction agent may not sign and submit for recording an affidavit of satisfaction of a security instrument if it has received a notification under sub. (8) (b) 4. b. stating that the secured obligation remains unsatisfied, unless the

1 satisfaction agent has reasonable grounds to believe that the person who paid the
2 payoff amount reasonably and detrimentally relied upon an understated payoff
3 amount.

4 (c) If a satisfaction agent receives a notification under sub. (8) (b) 4. c. stating
5 that the security instrument has been assigned, the satisfaction agent may not
6 submit for recording an affidavit of satisfaction of the security instrument without
7 doing both of the following:

8 1. Giving a notification of intent to submit for recording an affidavit of
9 satisfaction to the identified assignee at the identified address.

10 2. Complying with sub. (8) with respect to the identified assignee.

11 (d) A satisfaction agent may submit for recording an affidavit of satisfaction
12 that complies with this section even if full payment or performance of the secured
13 obligation or payment as provided in a payoff statement under sub. (3) or a corrected
14 payoff statement under sub. (4) was made before the effective date of this paragraph
15 .... [LRB inserts date].

16 (e) The satisfaction agent may charge a reasonable, one–time fee per real
17 property transaction for sending the notification under sub. (8) and preparing and
18 executing the affidavit of satisfaction. A fee charged by a satisfaction agent under
19 this paragraph that does not exceed $75 is conclusively presumed to be reasonable.

20 **(10)** CONTENT OF AFFIDAVIT OF SATISFACTION. An affidavit of satisfaction of a
21 security instrument against residential real property must do all of the following:

22 (a) Identify the original parties to the security instrument, the secured creditor,
23 the recording data for the security instrument, and, if necessary for proper indexing
24 of the affidavit, a legal description of the real property identified in the security
25 instrument.

entity on whose behalf

(b) State the basis upon which the person signing the affidavit is a satisfaction agent. is signed

(c) State that the person signing the affidavit has reasonable grounds to believe that the real property described in the security instrument is residential real property. A have

(d) State that the person signing the affidavit has reasonable grounds to believe that the secured creditor has received either of the following: A have

1. Full payment or performance of the secured obligation.

2. Payment as provided in a payoff statement under sub. (3) or a corrected payoff statement under sub. (4).

entity on whose behalf is signed

(e) State that the person signing the affidavit, acting with the authority of the owner of the real property described in the security instrument, gave notification to the secured creditor of its authorization to sign and submit for recording an affidavit of satisfaction.

entity on whose behalf

(f) State either of the following:

1. That the secured creditor authorized the person signing the affidavit to sign and record an affidavit of satisfaction. is signed

2. That more than 30 days have elapsed since the effective date of the notification, and the person signing the affidavit has no knowledge that the secured creditor has submitted a satisfaction of the security instrument for recording and either of the following apply: A have

a. The person signing the affidavit has not received a notification that the secured obligation remains unsatisfied. A have

b. The person signing the affidavit has received a notification that the secured obligation remains unsatisfied, but the person signing the affidavit has reasonable A have A have

1 grounds to believe that the person who paid the payoff amount reasonably and
2 detrimentally relied upon an understated payoff amount.

Insert 17-3

3 (g) Be signed by the satisfaction agent and contain a form of authentication
4 authorized by s. 706.06 or 706.07.

5 **(11)** EFFECT OF AFFIDAVIT OF SATISFACTION. (a) An affidavit of satisfaction of a
6 security instrument against residential real property that complies with the
7 requirements of sub. (10) shall be entitled to record in accordance with s. 706.05 in
8 the office of the register of deeds of the county in which the security instrument is
9 recorded.

10 (b) Upon recording, an affidavit substantially complying with the
11 requirements of sub. (10) constitutes a satisfaction of the security instrument
12 described in the affidavit.

13 (c) The recording of an affidavit of satisfaction of a security instrument does not
14 by itself extinguish any liability of a person for payment or performance of the
15 secured obligation.

16 **(12)** LIABILITY OF SATISFACTION AGENT. (a) A satisfaction agent that records an
17 affidavit of satisfaction of a security instrument erroneously is not liable to the
18 secured creditor if the satisfaction agent properly complied with this section.

19 (b) A satisfaction agent that records an affidavit of satisfaction of a security
20 instrument with knowledge that the statements contained in the affidavit are false
21 is liable to the secured creditor for any actual damages caused by the recording and
22 reasonable attorney fees and costs. Nothing in this paragraph precludes any of the
23 following:

24 1. A court from awarding punitive damages on account of the conduct.

1 2. The secured creditor from proceeding against the satisfaction agent under
2 the law of this state other than this section.
3 3. The enforcement of any criminal statute prohibiting the conduct.
4 **(13)** DOCUMENT OF RESCISSION: EFFECT; LIABILITY FOR WRONGFUL RECORDING. (a)
5 In this subsection, "document of rescission" means a document stating that an
6 identified satisfaction or affidavit of satisfaction of a security instrument was
7 recorded erroneously, the secured obligation remains unsatisfied, and the security
8 instrument remains in force.
9 (b) If a person records a satisfaction or affidavit of satisfaction of a security
10 instrument in error, the person may execute and record a document of rescission.
11 Upon recording, the document rescinds an erroneously recorded satisfaction or
12 affidavit.
13 (c) A recorded document of rescission has no effect on the rights of any of the
14 following persons:
15 1. A person that acquired an interest in the real property described in a security
16 instrument after the recording of the satisfaction or affidavit of satisfaction of the
17 security instrument and before the recording of the document of rescission.
18 2. A person that would otherwise have priority over or take free of the lien
19 created by the security instrument.
20 (d) A person that erroneously or wrongfully records a document of rescission
21 is liable to any person injured thereby for the actual damages caused by the recording
22 and reasonable attorney fees and costs.
23 **(14)** RIGHT OF ACTION NOT AFFECTED. Nothing in this section affects a person's
24 right to bring an action under s. 847.09.
25 **SECTION 6. Initial applicability.**

1 (1) NOTIFICATION. The treatment of section 708.15 (2) of the statutes first
2 applies to notifications given on the effective date of this subsection.

3 (2) PAYOFF STATEMENT. The treatment of section 708.15 (3) and (4) of the statutes
4 first applies to notifications requesting payoff statements, and payoff statements
5 that are requested, on the effective date of this subsection.

6 (3) AFFIDAVIT OF SATISFACTION.

7 (a) The treatment of section 708.15 (8) of the statutes first applies to
8 notifications regarding affidavits of satisfaction that are given on the effective date
9 of this paragraph.

10 (b) The treatment of section 708.15 (9), (10), (11), and (12) of the statutes first
11 applies to affidavits of satisfaction that are recorded on the effective date of this
12 paragraph.

13 (4) DOCUMENT OF RESCISSION. The treatment of section 708.15 (13) of the
14 statutes first applies to documents of rescission that are recorded on the effective
15 date of this subsection.

16 **(END)**

D-note

INSERT 14–22

1 (am) An affidavit of satisfaction is signed by the satisfaction agent only if it is
2 signed by 2 persons who are employees of, and who have been authorized by, the title
3 insurance company to sign an affidavit of satisfaction on behalf of the title insurance
4 company acting as satisfaction agent.

(END OF INSERT 14–22)

INSERT 17–3

5 , as provided in par. (am),

(END OF INSERT 17–3)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–0127/4dn
PJK:...:...
Leev
r mis num

date

Please review the portion of the bill dealing with affidavits of satisfaction carefully, especially s. 708.15 (8), (9), and (10). I tried to modify the language to accommodate two signers who are employees of the title insurance company acting as satisfaction agent. You may wish to change some of the references as to which person or persons or entity is the appropriate actor in a given situation.

Also note that, in s. 708.15 (12), a satisfaction agent is liable to the secured creditor if the satisfaction agent records an affidavit of satisfaction with knowledge that the statements in the affidavit are false. I do not think this presents a problem, since the acts of the authorized employees will be imputed to the employer, but I just want to point this out.

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Now, of course, the employees of the satisfaction agent are making the statements.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–0127/4dn
PJK:eev:rs

August 15, 2013

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