



2013 SENATE BILL 290

1 **AN ACT** *to repeal* 706.05 (9) and (10); *to amend* 77.25 (13), 422.306 (4) and
2 428.104 (1); and *to create* 708.15 of the statutes; **relating to:** mortgage
3 satisfaction and an exception to the real estate transfer fee.

Analysis by the Legislative Reference Bureau

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

4 **SECTION 1.** 77.25 (13) of the statutes is amended to read:
5 77.25 (13) Of real estate having a value of \$100 \$1,000 or less.
6 **SECTION 2.** 422.306 (4) of the statutes is amended to read:
7 422.306 (4) ~~Within~~ Except as provided in s. 708.15, within 45 days after
8 payment by the customer of all sums for which the customer is obligated under a
9 consumer credit transaction other than one pursuant to an open-end credit plan, the
10 creditor shall give or forward to the customer instruments which acknowledge

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1 payment in full, and release of any security interest when there is no outstanding
2 secured obligation, and furnish to the customer or the customer's designee evidence
3 of the release or assignment to such designee of any recorded lien on real estate and
4 termination of any filed financing statement which perfected such security interest.

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

6 428.104 (1) Any time a payment is made in cash, or any other time the method
7 of payment does not itself provide evidence of payment, the creditor shall furnish the
8 customer, without request, a written receipt, evidencing such payment. The
9 customer shall be entitled upon request, free of charge, to an annual statement of
10 account showing receipts and disbursements. ~~Upon~~ Subject to s. 708.15, upon
11 payment in full of the customer's obligation, the creditor shall release any mortgage
12 by either recording the necessary instrument and forwarding the same to the
13 customer, or by forwarding a satisfaction of such debt to the purchaser of the real
14 property subject to such satisfied mortgage, or the creditor of such purchaser.

15 **SECTION 4.** 706.05 (9) and (10) of the statutes are repealed.

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

17 **708.15 Mortgage satisfaction. (1) DEFINITIONS.** In this section:

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

23 (b) "Day" means calendar day.

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

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

3 (e) “Entitled person” means any of the following:

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

6 2. The landowner.

7 3. The settlement agent.

8 (f) “Good faith” means honesty in fact and the observance of reasonable
9 commercial standards of fair dealing.

10 (g) “Landowner” or “owner” means a person that, before foreclosure, has the
11 right of redemption in the real property described in a security instrument. The term
12 does not include a person that holds only a lien on the real property.

13 (h) “Notification” means a document containing information required under
14 this section and signed by the person required to provide the information.

15 (i) “Payoff amount” means the sum necessary to satisfy a secured obligation,
16 as set forth in a payoff statement by the secured creditor.

17 (j) “Payoff statement” means a document containing the information specified
18 in sub. (3) (d).

19 (k) “Person” means an individual, corporation, business trust, estate, trust,
20 partnership, limited liability company, association, joint venture, public corporation,
21 government, or governmental subdivision, agency, or instrumentality, or any other
22 legal or commercial entity.

23 (L) “Recording data” means the date, document number, volume and page
24 number, if any, that indicate where a document is recorded in the office of the register
25 of deeds under s. 59.43.

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1 (m) “Residential real property” means real property located in this state that
2 is used primarily for personal, family, or household purposes and is improved by one
3 to 4 dwelling units.

4 (n) “Secured creditor” means a person that holds or is the beneficiary of a
5 security interest or that is authorized both to receive payments on behalf of a person
6 that holds a security interest and to record a satisfaction of the security instrument
7 upon receiving full performance of the secured obligation. The term does not include
8 a trustee under a security instrument.

9 (o) “Secured obligation” means an obligation the payment or performance of
10 which is secured by a security interest.

11 (p) “Security instrument” means an agreement, however denominated, that
12 creates or provides for an interest in real property to secure payment or performance
13 of an obligation, whether or not it also creates or provides for a lien on personal
14 property.

15 (q) “Security interest” means an interest in real property created by a security
16 instrument.

17 (r) “Settlement agent” means the person responsible for the preparation of the
18 settlement statement for the conveyance of real property.

19 (s) “Sign” means, with present intent to authenticate or adopt a document, any
20 of the following:

21 1. To execute or adopt a tangible symbol.

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

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1 (t) “State” means a state of the United States, the District of Columbia, Puerto
2 Rico, the United States Virgin Islands, or any territory or insular possession subject
3 to the jurisdiction of the United States.

4 (u) “Submit for recording” means to deliver, with required fees and taxes, a
5 document sufficient to be recorded under this section, to the office of the register of
6 deeds under s. 59.43.

7 (v) “Title insurance company” means an organization authorized to conduct the
8 business of insuring titles to real property in this state.

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

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

14 2. Sending it by facsimile transmission, electronic mail, or other electronic
15 transmission to the recipient’s address for giving a notification.

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

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

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

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

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

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

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

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

12 1. The entitled person's name.

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

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

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

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

23 (b) If a notification under par. (a) directs the secured creditor to send the payoff
24 statement to a person identified as an authorized agent of the entitled person, the

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1 secured creditor must send the statement to the agent, unless the secured creditor
2 knows that the entitled person has not authorized the request.

3 (c) 1. Except as provided in subd. 2., within 7 business days after the effective
4 date of a notification that complies with par. (a) or, if the security interest encumbers
5 real property that is not residential real property, within a reasonable longer time
6 after the effective date of such a notification, the secured creditor shall issue a payoff
7 statement and send it as directed under par. (a) 3. in the manner prescribed in sub.
8 (2) for giving a notification.

9 2. If the person to whom the notification is given once held an interest in the
10 secured obligation but has since assigned that interest, the person need not send a
11 payoff statement but shall, within 7 business days after the effective date of the
12 notification, give a notification of the assignment to the person to whom the payoff
13 statement otherwise would have been sent, providing the name and address of the
14 assignee.

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

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

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

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

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

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

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

8 (g) A secured creditor must provide upon request one payoff statement without
9 charge during any 2-month period. A secured creditor may charge a fee of \$25 for
10 each additional payoff statement requested during that 2-month period. However,
11 a secured creditor may not charge a fee for providing a corrected payoff statement
12 under sub. (4) (a).

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

20 (4) UNDERSTATED PAYOFF STATEMENT: CORRECTION; EFFECT. (a) If a secured
21 creditor determines that the payoff amount it provided in a payoff statement was
22 understated, the secured creditor may send a corrected payoff statement. If the
23 entitled person or the person's authorized agent receives and has a reasonable
24 opportunity to act upon a corrected payoff statement before making payment, the
25 corrected statement supersedes an earlier statement.

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

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

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

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

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

22 (b) Except as otherwise provided in sub. (7), a secured creditor that is required
23 to submit a satisfaction of a security instrument for recording and that does not do
24 so by the end of the period specified in par. (a) is liable to the landowner for \$500, plus

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1 any actual damages caused by the failure, but not punitive damages, and any
2 reasonable attorney fees and court costs incurred.

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

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

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

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

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

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

19 (8) SATISFACTION AGENT; NOTIFICATION TO CREDITOR OF AFFIDAVIT OF SATISFACTION.

20 (a) Only a title insurance company, acting directly or through an authorized agent,
21 may serve as a satisfaction agent under this section. An affidavit of satisfaction
22 under this section is valid only for security instruments recorded against residential
23 real property.

24 (b) Upon, or at any time after, full payment or performance of the secured
25 obligation or payment as provided in a payoff statement under sub. (3) or a corrected

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1 payoff statement under sub. (4), a satisfaction agent acting for and with authority
2 from the landowner may give the secured creditor a notification that the satisfaction
3 agent may submit for recording an affidavit of satisfaction of the security instrument
4 against residential real property. The notification must include all of the following:

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

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

8 3. A statement that the satisfaction agent has reasonable grounds to believe
9 all of the following:

10 a. That the real property described in the security instrument is residential
11 real property.

12 b. That the person to which the notification is being given is the secured
13 creditor.

14 c. That the secured creditor has received full payment or performance of the
15 secured obligation or payment as provided in a payoff statement under sub. (3) or a
16 corrected payoff statement under sub. (4).

17 4. A statement that the satisfaction agent may sign and submit for recording
18 an affidavit of satisfaction of the security instrument unless, within 30 days after the
19 effective date of the notification, any of the following occurs:

20 a. The secured creditor submits a satisfaction of the security instrument for
21 recording.

22 b. The satisfaction agent receives from the secured creditor a notification
23 stating that the secured obligation remains unsatisfied, except that the satisfaction
24 agent may submit for recording an affidavit of satisfaction even if the satisfaction
25 agent receives a notification that the secured obligation remains unsatisfied if the

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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. The satisfaction agent receives from the secured creditor a notification
5 stating that the secured creditor has assigned the security instrument and
6 identifying the name and address of the assignee.

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

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

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

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

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

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

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

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

9 (b) A satisfaction agent may not sign and submit for recording an affidavit of
10 satisfaction of a security instrument if it has received a notification under sub. (8)

11 (b) 4. b. stating that the secured obligation remains unsatisfied, unless the
12 satisfaction agent has reasonable grounds to believe that the person who paid the
13 payoff amount reasonably and detrimentally relied upon an understated payoff
14 amount.

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

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

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

22 (d) A satisfaction agent may submit for recording an affidavit of satisfaction
23 that complies with this section even if full payment or performance of the secured
24 obligation or payment as provided in a payoff statement under sub. (3) or a corrected

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1 payoff statement under sub. (4) was made before the effective date of this paragraph
2 [LRB inserts date].

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

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

9 (a) Identify the original parties to the security instrument, the secured creditor,
10 the recording data for the security instrument, and, if necessary for proper indexing
11 of the affidavit, a legal description of the real property identified in the security
12 instrument.

13 (b) State the basis upon which the entity on whose behalf the affidavit is signed
14 is a satisfaction agent.

15 (c) State that the persons signing the affidavit have reasonable grounds to
16 believe that the real property described in the security instrument is residential real
17 property.

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

20 1. Full payment or performance of the secured obligation.

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

23 (e) State that the entity on whose behalf the affidavit is signed, acting with the
24 authority of the owner of the real property described in the security instrument, gave

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1 notification to the secured creditor of its authorization to sign and submit for
2 recording an affidavit of satisfaction.

3 (f) State either of the following:

4 1. That the secured creditor authorized the entity on whose behalf the affidavit
5 is signed to sign and record an affidavit of satisfaction.

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

10 a. The persons signing the affidavit have not received a notification that the
11 secured obligation remains unsatisfied.

12 b. The persons signing the affidavit have received a notification that the
13 secured obligation remains unsatisfied, but the persons signing the affidavit have
14 reasonable grounds to believe that the person who paid the payoff amount
15 reasonably and detrimentally relied upon an understated payoff amount.

16 (g) Be signed by the satisfaction agent, as provided in par. (am), and contain
17 a form of authentication authorized by s. 706.06 or 706.07.

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

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

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

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

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

- 12 1. A court from awarding punitive damages on account of the conduct.
- 13 2. The secured creditor from proceeding against the satisfaction agent under
14 the law of this state other than this section.
- 15 3. The enforcement of any criminal statute prohibiting the conduct.

16 **(13) DOCUMENT OF RESCISSION: EFFECT; LIABILITY FOR WRONGFUL RECORDING.** (a)
17 In this subsection, “document of rescission” means a document stating that an
18 identified satisfaction or affidavit of satisfaction of a security instrument was
19 recorded erroneously, the secured obligation remains unsatisfied, and the security
20 instrument remains in force.

21 (b) If a person records a satisfaction or affidavit of satisfaction of a security
22 instrument in error, the person may execute and record a document of rescission.
23 Upon recording, the document rescinds an erroneously recorded satisfaction or
24 affidavit.

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1 (c) A recorded document of rescission has no effect on the rights of any of the
2 following persons:

3 1. A person that acquired an interest in the real property described in a security
4 instrument after the recording of the satisfaction or affidavit of satisfaction of the
5 security instrument and before the recording of the document of rescission.

6 2. A person that would otherwise have priority over or take free of the lien
7 created by the security instrument.

8 (d) A person that erroneously or wrongfully records a document of rescission
9 is liable to any person injured thereby for the actual damages caused by the recording
10 and reasonable attorney fees and costs.

11 (14) RIGHT OF ACTION NOT AFFECTED. Nothing in this section affects a person's
12 right to bring an action under s. 847.09.

13 **SECTION 6. Initial applicability.**

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

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

19 (3) AFFIDAVIT OF SATISFACTION.

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

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

