

State of Wisconsin



2013 Senate Bill 290

Date of enactment: **December 12, 2013**
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2013 WISCONSIN ACT 66

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.

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

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

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

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

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

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SECTION 4. 706.05 (9) and (10) of the statutes are repealed.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, electro-magnetic, or similar capabilities.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

- (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.
 2. The landowner.
 3. The settlement agent.
- (f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (g) "Landowner" or "owner" means a person that, before foreclosure, has the right of redemption in the real property described in a security instrument. The term does not include a person that holds only a lien on the real property.
- (h) "Notification" means a document containing information required under this section and signed by the person required to provide the information.
- (i) "Payoff amount" means the sum necessary to satisfy a secured obligation, as set forth in a payoff statement by the secured creditor.
- (j) "Payoff statement" means a document containing the information specified in sub. (3) (d).
- (k) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (L) "Recording data" means the date, document number, volume and page number, if any, that indicate where a document is recorded in the office of the register of deeds under s. 59.43.
- (m) "Residential real property" means real property located in this state that is used primarily for personal, family, or household purposes and is improved by one to 4 dwelling units.
- (n) "Secured creditor" means a person that holds or is the beneficiary of a security interest or that is authorized both to receive payments on behalf of a person that holds a security interest and to record a satisfaction of the security instrument upon receiving full performance of the secured obligation. The term does not include a trustee under a security instrument.
- (o) "Secured obligation" means an obligation the payment or performance of which is secured by a security interest.
- (p) "Security instrument" means an agreement, however denominated, that creates or provides for an interest in real property to secure payment or performance of an obligation, whether or not it also creates or provides for a lien on personal property.
- (q) "Security interest" means an interest in real property created by a security instrument.
- (r) "Settlement agent" means the person responsible for the preparation of the settlement statement for the conveyance of real property.

- (s) "Sign" means, with present intent to authenticate or adopt a document, any of the following:
1. To execute or adopt a tangible symbol.
 2. To attach to or logically associate with the document an electronic sound, symbol, or process.
- (t) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (u) "Submit for recording" means to deliver, with required fees and taxes, a document sufficient to be recorded under this section, to the office of the register of deeds under s. 59.43.
- (v) "Title insurance company" means an organization authorized to conduct the business of insuring titles to real property in this state.
- (2) NOTIFICATION: MANNER OF GIVING AND EFFECTIVE DATE.** (a) A person gives a notification by doing any of the following:
1. Depositing it with the U.S. Postal Service with 1st class postage paid or with a commercially reasonable delivery service with cost of delivery provided, properly addressed to the recipient's address for giving a notification.
 2. Sending it by facsimile transmission, electronic mail, or other electronic transmission to the recipient's address for giving a notification.
 3. Causing it to be received at the address for giving a notification within the time that it would have been received if given in the manner provided in subd. 1.
- (b) A notification is effective at any of the following times:
1. The day after it is deposited with a commercially reasonable delivery service for overnight delivery.
 2. Three days after it is deposited with the U.S. Postal Service, with 1st class mail with postage prepaid, or with a commercially reasonable delivery service for delivery other than by overnight delivery.
 3. The day it is given, if given as provided in par. (a) 2.
 4. The day it is received, if given by a method other than as provided in par. (a) 1. or 2.
- (c) If this section or a notification given under this section requires performance on or by a certain day and that day is a Saturday, Sunday, or legal holiday under the laws of this state or the United States, the performance is sufficient if performed on 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 7 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 7 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.

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

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

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

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

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

1. Affect the right of a secured creditor to recover any sum that it did not include in a payoff amount from any person liable for payment of the secured obligation.
2. Limit any claim or defense that a person liable for payment of a secured obligation may have under law other than this section.

(5) SECURED CREDITOR TO SUBMIT SATISFACTION FOR RECORDING; LIABILITY FOR FAILURE. (a) A secured creditor shall submit for recording a satisfaction of a security instrument within 30 days after the secured creditor receives 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), whichever is applicable. If a security instrument secures a line of credit or future advances, the secured obligation is fully performed only if, in addition to 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), the secured creditor has received a notification requesting the secured creditor to terminate the line of credit or contain-

ing a statement sufficient to terminate the effectiveness of the provision for future advances in the security instrument.

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

(c) Paragraph (b) applies to a secured creditor that receives 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) on or after the effective date of this paragraph ... [LRB inserts date]. Section 706.05 (9) and (10), 2011 stats., applies to a secured creditor that received partial or full payment or performance of the secured obligation before the effective date of this paragraph [LRB inserts date].

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

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

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

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

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

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

(b) Upon, or at any time after, 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), a satisfaction agent acting for and with authority from the landowner may give the secured creditor a notification that the satisfaction agent may submit for recording an affidavit of satisfaction of the security instrument against residential real property. The notification must include all of the following:

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

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

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

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

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

c. That the secured creditor has received 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).

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

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

b. The satisfaction agent receives from the secured creditor a notification stating that the secured obligation remains unsatisfied, except that the satisfaction agent may submit for recording an affidavit of satisfaction even if the satisfaction agent receives a notification that the secured obligation remains unsatisfied if the satisfaction agent has reasonable grounds to believe that the person who paid the payoff amount reasonably and detrimentally relied upon an understated payoff amount.

c. The satisfaction agent receives from the secured creditor a notification stating that the secured creditor has assigned the security instrument and 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. (am), (b), 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.

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

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

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

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

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

(d) A satisfaction agent may submit for recording an affidavit of satisfaction that complies with this section even if 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) was made before the effective date of this paragraph [LRB inserts date].

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

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

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

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

(c) State that the persons signing the affidavit have reasonable grounds to believe that the real property

described in the security instrument is residential real property.

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

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).

(e) State that the entity on whose behalf the affidavit is signed, 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.

(f) State either of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 6. Initial applicability.

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

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

(3) **AFFIDAVIT OF SATISFACTION.**

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

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

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