



2005 ASSEMBLY BILL 1100

March 9, 2006 - Introduced by Representative CULLEN, cosponsored by Senator RISSER. Referred to Committee on Financial Institutions.

1 **AN ACT to repeal** 706.05 (8) to (10) (c); **to renumber** 706.05 (10) (d); and **to**
2 **create** 706.054 of the statutes; **relating to:** the Uniform Residential Mortgage
3 Satisfaction Act.

Analysis by the Legislative Reference Bureau

Under current law, generally a mortgage-holder (mortgagee) must execute and record a full satisfaction of a mortgage within 30 days after the date on which the mortgagor completes full performance of the terms of the mortgage. A mortgagee must record a mortgage satisfaction within seven days after the mortgagor completes full performance and the mortgagee receives by certified mail a written request from the mortgagor for a full satisfaction. A mortgagee who fails to respond to this written request is liable to the mortgagor for damages of \$100 for each day that the violation remains uncorrected, up to a total of \$2,000, plus actual damages resulting from the violation.

This bill repeals these provisions and replaces them with the Uniform Residential Mortgage Satisfaction Act (URMSA), whose most significant provisions include the following:

1) A requirement that once the mortgagee has received full payment of a mortgage loan, the mortgagor has 30 days to prepare and submit for recording a satisfaction document. No notification to the mortgagee is necessary to trigger this 30-day period. If the mortgagee fails to submit the satisfaction document within this period, the mortgagee is generally liable for any actual damages proximately caused by its failure. URMSA also specifies the minimal amount of information necessary for a satisfaction to be recorded.

ASSEMBLY BILL 1100

2) URMSA imposes an affirmative duty on a mortgagee to provide a payoff statement within 10 days of a proper request, specifies the minimal content for a payoff-statement, and clarifies the persons that may request a payoff statement. URMSA also provides that a mortgagee that issues a payoff statement that contains an erroneous payoff amount may not enforce a mortgage against a person who has reasonably and detrimentally relied upon the erroneous payoff amount.

3) URMSA allows a satisfaction agent to prepare and record on behalf of the mortgagor an affidavit of satisfaction for a residential mortgage but only after first giving notice to the mortgagee and giving the mortgagee 30 days to record a satisfaction or object that the secured obligation remains unsatisfied. If the mortgagee raises a timely objection, this option is not available, but if the mortgagee fails to raise a timely objection, the satisfaction agent may generally record an affidavit of satisfaction, which constitutes a satisfaction of the mortgage.

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

1 **SECTION 1.** 706.05 (8) to (10) (c) of the statutes are repealed.

2 **SECTION 2.** 706.05 (10) (d) of the statutes is renumbered 706.05 (10m).

3 **SECTION 3.** 706.054 of the statutes is created to read:

4 **706.054 Uniform Residential Mortgage Satisfaction Act. (1)**

5 DEFINITIONS. In this section:

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

11 (b) "Day" means calendar day.

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

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

ASSEMBLY BILL 1100

1 (e) "Entitled person" means a person liable for payment or performance of the
2 obligation secured by the real property described in a security instrument, or the
3 landowner.

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

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

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

11 (i) "Payoff amount" means the sum necessary to satisfy a secured obligation.

12 (j) "Payoff statement" means a document containing the information specified
13 in sub. (4) (d).

14 (k) "Recording data" means the volume and page that indicate where a
15 document is recorded in the office of the register of deeds.

16 (L) "Residential real property" means real property located in this state which
17 is used primarily for personal, family, or household purposes and is improved by one
18 to 4 dwelling units.

19 (m) "Satisfaction agent" means a title insurance company or an attorney who
20 is licensed to practice in this state and in good standing.

21 (n) "Secured creditor" means a person that holds or is the beneficiary of a
22 security interest or that is authorized both to receive payments on behalf of a person
23 that holds a security interest and to record a satisfaction of the security instrument
24 upon receiving full performance of the secured obligation. The term does not include
25 a trustee under a security instrument.

ASSEMBLY BILL 1100**SECTION 3**

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

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

7 (q) “Security interest” means an interest in residential real property created
8 by a security instrument.

9 (r) “Sign” means, with present intent to authenticate or adopt a document, to
10 execute or adopt a tangible symbol or to attach to or logically associate with the
11 document an electronic sound, symbol, or process.

12 (s) “State” means a state of the United States, the District of Columbia, Puerto
13 Rico, the United States Virgin Islands, or any territory or insular possession subject
14 to the jurisdiction of the United States.

15 (t) “Submit for recording” means to deliver, with required fees and taxes, a
16 document sufficient to be recorded under this section, to the appropriate office of the
17 register of deeds.

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

20 1. Depositing it with the United States Postal Service with 1st class postage
21 paid or with a commercially reasonable delivery service with cost of delivery
22 provided, properly addressed to the recipient’s address for giving a notification.

23 2. Sending it by facsimile transmission, electronic mail, or other electronic
24 transmission to the recipient’s address for giving a notification, but only if the
25 recipient agreed to receive notification in that manner.

ASSEMBLY BILL 1100

1 3. Causing it to be received at the address for giving a notification within the
2 time that it would have been received if given pursuant to subd. 1.

3 (b) A notification is effective:

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

6 2. Three days after it is deposited with the United States Postal Service, 1st
7 class mail with postage prepaid, or with a commercially reasonable delivery service
8 for delivery other than by overnight delivery.

9 3. The day it is given, if given pursuant to par. (a) 2.

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

12 (c) If this section or a notification given pursuant to this section requires
13 performance on or by a certain day and that day is a Saturday, Sunday, or legal
14 holiday under the laws of this state or the United States, the performance is
15 sufficient if performed on the next day that is not a Saturday, Sunday, or legal
16 holiday.

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

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

ASSEMBLY BILL 1100**SECTION 3**

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

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 under this chapter.

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's fees and costs.

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

16 1. The entitled person's name.

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

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

22 4. The address to which the creditor must send the statement.

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

ASSEMBLY BILL 1100

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

5 (c) Within 10 days after the effective date of a notification that complies with
6 par. (a), the secured creditor shall issue a payoff statement and send it as directed
7 under sub. (2) (a). A secured creditor that sends a payoff statement to the entitled
8 person or the authorized agent may not claim that the notification did not satisfy par.
9 (a). If the person to whom the notification is given once held an interest in the secured
10 obligation but has since assigned that interest, the person need not send a payoff
11 statement but shall give a notification of the assignment to the person to whom the
12 payoff statement otherwise would have been sent, providing the name and address
13 of the assignee.

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

15 1. The date on which it was prepared and the payoff amount as of that date,
16 including the amount by type of each fee, charge, or other sum included within the
17 payoff amount.

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

20 3. The payment cutoff time, if any, the address or place where payment must
21 be made, and any limitation as to the authorized method of payment.

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

24 (f) A secured creditor may not qualify a payoff amount or state that it is subject
25 to change before the payoff date unless the payoff statement provides information

ASSEMBLY BILL 1100**SECTION 3**

1 sufficient to permit the entitled person or the person's authorized agent to request
2 an updated payoff amount at no charge and to obtain that updated payoff amount
3 during the secured creditor's normal business hours on the payoff date or the
4 immediately preceding business day.

5 (g) A secured creditor must provide upon request one payoff statement without
6 charge during any 6-month period. A secured creditor may charge a fee not more
7 than \$25 for each additional payoff statement requested during that 6-month
8 period. However, a secured creditor may not charge a fee for providing an updated
9 payoff amount under par. (f) or a corrected payoff statement under sub. (5) (a).

10 (h) Unless the security instrument provides otherwise, a secured creditor is not
11 required to send a payoff statement by means other than 1st class mail. If the
12 creditor agrees to send a statement by another means, it may charge a reasonable
13 fee for complying with the requested manner of delivery.

14 (i) Except as otherwise provided in sub. (8), if a secured creditor to which a
15 notification has been given pursuant to par. (a) does not send a timely payoff
16 statement that substantially complies with par. (d), the creditor is liable to the
17 entitled person for any actual damages caused by the failure plus \$500, but not
18 punitive damages. A creditor that does not pay the damages provided in this
19 subsection within 30 days after receipt of a notification demanding payment may
20 also be liable for reasonable attorney's fees and costs.

21 **(5) UNDERSTATED PAYOFF STATEMENT; CORRECTION; EFFECT.** (a) If a secured
22 creditor determines that the payoff amount it provided in a payoff statement was
23 understated, the creditor may send a corrected payoff statement. If the entitled
24 person or the person's authorized agent receives and has a reasonable opportunity

ASSEMBLY BILL 1100

1 to act upon a corrected payoff statement before making payment, the corrected
2 statement supersedes an earlier statement.

3 (b) A secured creditor that sends a payoff statement containing an understated
4 payoff amount may not deny the accuracy of the payoff amount as against any person
5 that reasonably and detrimentally relies upon the understated payoff amount.

6 (c) This section does not affect the right of a secured creditor to recover any sum
7 that it did not include in a payoff amount from any person liable for payment of the
8 secured obligation or limit any claim or defense that a person liable for payment of
9 a secured obligation may have under law other than this section.

10 **(6) 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 creditor receives full payment or performance
13 of the secured obligation. If a security instrument secures a line of credit or future
14 advances, the secured obligation is fully performed only if, in addition to full
15 payment, the secured creditor has received a notification requesting the creditor to
16 terminate the line of credit or containing a statement sufficient to terminate the
17 effectiveness of the provision for future advances in the security instrument.

18 (b) Except as otherwise provided in sub. (8), a secured creditor that is required
19 to submit a satisfaction of a security instrument for recording and does not do so by
20 the end of the period specified in par. (a) is liable to the landowner for any actual
21 damages caused by the failure, but not punitive damages.

22 (c) Except as otherwise provided in par. (d) and in sub. (8), a secured creditor
23 that is required to submit a satisfaction of a security instrument for recording and
24 does not do so by the end of the period specified in par. (a) is also liable to the
25 landowner for \$500 and any reasonable attorney's fees and court costs incurred if,

ASSEMBLY BILL 1100**SECTION 3**

1 after the expiration of the period specified in par. (a), the landowner gives the creditor
2 a notification, by any method authorized under sub. (2) that provides proof of receipt,
3 demanding that the creditor submit a satisfaction for recording and the creditor does
4 not submit a satisfaction for recording within 30 days after receipt of the notification.

5 (d) Paragraph (c) does not apply if the secured creditor received full payment
6 or performance of the secured obligation before the effective date of this section ...
7 [revisor inserts date].

8 **(7) FORM AND EFFECT OF SATISFACTION.** (a) A document is a satisfaction of a
9 security instrument if all of the following are true:

10 1. It identifies the security instrument, the original parties to the security
11 instrument, the recording data for the security instrument, and the office in which
12 the security instrument is recorded.

13 2. It states that the person signing the satisfaction is the secured creditor.

14 3. It contains a legal description of the real property identified in the security
15 instrument, but only if a legal description is necessary for a satisfaction to be
16 properly indexed.

17 4. It contains language terminating the effectiveness of the security
18 instrument.

19 5. It is signed by the secured creditor and authenticated as required by s. 706.06
20 or 706.07 for a conveyance of an interest in real property.

21 (b) The appropriate office of the register of deeds shall accept for recording a
22 satisfaction of a security instrument, unless an amount equal to or greater than the
23 applicable recording fees and taxes is not tendered, the document is submitted by a
24 method or in a medium not authorized by the office of the register of deeds or this

ASSEMBLY BILL 1100

1 chapter, or the document is not signed by the secured creditor and acknowledged as
2 required under this chapter for a conveyance of an interest in real property.

3 (8) LIMITATION OF SECURED CREDITOR'S LIABILITY. A secured creditor is not liable
4 under this section if it has established a reasonable procedure to achieve compliance
5 with its obligations under this section, has complied with that procedure in good
6 faith, and was unable to comply with its obligations because of circumstances beyond
7 its control.

8 (9) AFFIDAVIT OF SATISFACTION; NOTIFICATION TO SECURED CREDITOR. (a) If a
9 secured creditor has not submitted for recording a satisfaction of a security
10 instrument within the period specified in sub. (6) (a), a satisfaction agent acting for
11 and with authority from the landowner may give the secured creditor a notification
12 that the satisfaction agent intends to submit for recording an affidavit of satisfaction
13 of the security instrument. The notification shall include all of the following:

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

15 2. Identification of the security instrument for which a recorded satisfaction is
16 sought, including the names of the original parties to, and the recording data for, the
17 security instrument.

18 3. A statement that the satisfaction agent has reasonable grounds to believe
19 that the real property described in the security instrument is residential real
20 property, the person to which the notification is being given is the secured creditor,
21 and the secured creditor has received full payment or performance of the secured
22 obligation.

23 4. A statement that a satisfaction of the security instrument does not appear
24 of record.

ASSEMBLY BILL 1100**SECTION 3**

1 5. A statement that the satisfaction agent, acting with the authorization of the
2 owner of the real property described in the security instrument, intends to sign and
3 submit for recording an affidavit of satisfaction of the security instrument unless,
4 within 30 days after the effective date of the notification the secured creditor submits
5 a satisfaction of the security instrument for recording, the satisfaction agent receives
6 from the secured creditor a notification stating that the secured obligation remains
7 unsatisfied, or the satisfaction agent receives from the secured creditor a notification
8 stating that the secured creditor has assigned the security instrument and
9 identifying the name and address of the assignee.

10 (b) A notification under par. (a) shall be sent by a method authorized by sub.
11 (2) that provides proof of receipt to the secured creditor's address for giving a
12 notification for the purpose of requesting a payoff statement or, if the satisfaction
13 agent cannot ascertain that address, to the secured creditor's address for notification
14 for any other purpose.

15 (c) This section does not require a person to agree to serve as a satisfaction
16 agent.

17 **(10) AFFIDAVIT OF SATISFACTION; AUTHORIZATION TO SUBMIT FOR RECORDING.** (a)
18 Subject to pars. (b) and (c), a satisfaction agent may sign and submit for recording
19 an affidavit of satisfaction of a security instrument complying with sub. (10) if the
20 secured creditor has not, to the knowledge of the satisfaction agent, submitted for
21 recording a satisfaction of a security instrument within 30 days after the effective
22 date of a notification complying with sub. (9) (a) or the secured creditor authorizes
23 the satisfaction agent to do so.

ASSEMBLY BILL 1100

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

3 (a) 5. stating that the secured obligation remains unsatisfied.

4 (c) If a satisfaction agent receives a notification under sub. (9) (a) 5. stating that
5 the security instrument has been assigned, the satisfaction agent may not submit for
6 recording an affidavit of satisfaction of the security instrument without giving a
7 notification of intent to submit for recording an affidavit of satisfaction to the
8 identified assignee at the identified address and complying with sub. (9) with respect
9 to the identified assignee.

10 **(11) AFFIDAVIT OF SATISFACTION; CONTENT.** An affidavit of satisfaction of a
11 security instrument shall do all of the following:

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

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

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

21 (d) State that the person signing the affidavit has reasonable grounds to believe
22 that the secured creditor has received full payment or performance of the secured
23 obligation.

24 (e) State that the person signing the affidavit, acting with the authority of the
25 owner of the real property described in the security instrument, gave notification to

ASSEMBLY BILL 1100**SECTION 3**

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

3 (f) Describe the method by which the person signing the affidavit gave
4 notification in compliance with this section.

5 (g) State that more than 30 days have elapsed since the effective date of that
6 notification, and the person signing the affidavit has no knowledge that the secured
7 creditor has submitted a satisfaction for recording and has not received a notification
8 that the secured obligation remains unsatisfied, or the secured creditor authorized
9 the person signing the affidavit to sign and record an affidavit of satisfaction.

10 (h) Be signed and acknowledged as required by law for a conveyance of an
11 interest in real property.

12 **(12) AFFIDAVIT OF SATISFACTION; FORM.** No particular phrasing of an affidavit of
13 satisfaction is required. The following form of affidavit, when properly completed,
14 is sufficient to satisfy the requirements of sub. (11):

15

16 (Date of Affidavit)

17 **AFFIDAVIT OF SATISFACTION**

18 The undersigned hereby states as follows:

19 1. I am: [check appropriate box]

20 an officer or a duly appointed agent of [Name of title insurance
21 company] (the “Company”), which is authorized to transact the business of
22 insuring titles to interests in real property in this state, and I have been
23 authorized by the Company to sign and submit for recording an affidavit of
24 satisfaction.

25 an attorney licensed to practice law in this state and in good standing.

ASSEMBLY BILL 1100

1 2. I am signing this Affidavit of Satisfaction to evidence full payment or
2 performance of the obligations secured by real property covered by the following
3 security instrument (the “security instrument”) currently held by (the “secured
4 creditor”):

5 Title of security instrument:

6 Original parties to security instrument:

7 County and state of recording:

8 Recording data for security instrument:

9 [Legal description, if necessary for proper indexing:]

10 3. I have reasonable grounds to believe that:

- 11 a. the secured creditor has received full payment or performance of the
12 balance of the obligations secured by the security instrument; and
13 b. the real property described in the security instrument constitutes
14 residential real property.

15 4. With the authorization of the owner of the real property described in the
16 security instrument, I gave notification to the secured creditor by [method
17 authorized by section 706.054 (2) of the Wisconsin Statutes that provides proof of
18 receipt] that I would sign and record an affidavit of satisfaction of the security
19 instrument if, within 30 days after the effective date of the notification, the secured
20 creditor did not submit a satisfaction of the security interest for recording or give
21 notification that the secured obligation remains unsatisfied.

22 5. [check appropriate box]

- 23 The 30-day period identified in paragraph 4. has elapsed, I have no
24 knowledge that the secured creditor has submitted a satisfaction for recording,

ASSEMBLY BILL 1100

SECTION 3

1 and I have not received notification that the secured obligation remains
2 unsatisfied.

3 The secured creditor responded to the notification in paragraph 4. by
4 authorizing me to execute and record this affidavit of satisfaction.

5

6 (Signature of Satisfaction Agent)

7

8 (Notarization)

9 **(13) AFFIDAVIT OF SATISFACTION; EFFECT.** (a) Upon recording, an affidavit
10 substantially complying with the requirements of sub. (11) constitutes a satisfaction
11 of the security instrument described in the affidavit.

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

15 (c) The appropriate office of the register of deeds may not refuse to accept for
16 recording an affidavit of satisfaction of a security instrument unless any of the
17 following are true:

18 1. An amount equal to or greater than the applicable recording fees and taxes
19 is not tendered.

20 2. The affidavit is submitted by a method or in a medium not authorized by the
21 office of the register of deeds.

22 3. The affidavit is not signed by the satisfaction agent and acknowledged as
23 required by law for a conveyance of an interest in real property.

24 **(14) LIABILITY OF SATISFACTION AGENT.** (a) Except as otherwise provided in par.
25 (b), a satisfaction agent that records an affidavit of satisfaction of a security

ASSEMBLY BILL 1100

1 instrument erroneously or with knowledge that the statements contained in the
2 affidavit are false is liable to the secured creditor for any actual damages caused by
3 the recording and reasonable attorney's fees and costs.

4 (b) A satisfaction agent that records an affidavit of satisfaction of a security
5 instrument erroneously is not liable if the agent properly complied with sub. (9) to
6 (12) and the secured creditor did not respond in a timely manner to the notification
7 pursuant to sub. (9) (a) 5.

8 (c) If a satisfaction agent records an affidavit of satisfaction of a security
9 instrument with knowledge that the statements contained in the affidavit are false,
10 this section does not preclude any of the following:

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

15 **(15) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.**
16 This section supersedes 15 USC 7001 et seq. but does not supersede 15 USC 7001(c)
17 or authorize electronic delivery of any of the notices described in 15 USC 7003(b).

18 **SECTION 4. Initial applicability.**

19 (1) This act first applies to mortgages that are fully satisfied on the effective
20 date of this subsection.

21 (END)