

1 HB382
2 136891-1
3 By Representatives Long, Henry, Baughn, Roberts, Sessions,
4 Fincher, McClurkin, Ison, Wallace, Hubbard (J), Lee, Gaston,
5 Ball, Shiver and Rich
6 RFD: Financial Services
7 First Read: 21-FEB-12

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8 SYNOPSIS: This bill would adopt the Alabama Uniform
9 Residential Mortgage Satisfaction Act.

10 This bill would provide a method for a
11 landowner or other entitled person to request a
12 payoff statement pursuant to a notification that
13 may be transmitted to a secured creditor by first
14 class mail, facsimile, or email.

15 This bill would require a secured creditor,
16 upon notification, to comply with the request for a
17 payoff statement within a certain period of time or
18 be liable for damages.

19 This bill would require secured creditors to
20 record mortgage satisfactions within 30 days of the
21 day the mortgage is paid or be liable for damages.

22 This bill would provide damages in certain
23 circumstances for failing to comply.

24 This bill would provide a self-help title
25 clearing remedy for a person entitled to the
26 recording of a mortgage satisfaction pursuant to

1 the use of an Affidavit of Satisfaction and a
2 Satisfaction Agent.

3 This bill would also provide for the use of
4 a Document of Rescission by a secured creditor to
5 rescind an erroneous recording of a mortgage
6 satisfaction and limit potential liability.

7
8 A BILL

9 TO BE ENTITLED

10 AN ACT

11
12 To adopt the Alabama Residential Mortgage
13 Satisfaction Act as a new Chapter 10B, Title 35, Code of
14 Alabama 1975, to provide a uniform method for clearing
15 residential land titles for subsequent transactions; to
16 provide a method for a landowner or other entitled person to
17 request a payoff statement pursuant to a notification
18 transmitted to a secured creditor; to require a secured
19 creditor, upon notification, to comply with the request for a
20 payoff statement within a certain period of time; to require
21 secured creditors to record mortgage satisfactions within a
22 certain period of time of the payment date; to provide
23 penalties for violations; to provide a self-help title
24 clearing remedy pursuant to the use of an Affidavit of
25 Satisfaction and a Satisfaction Agent; to provide for the use
26 of a Document of Rescission by a secured creditor to rescind
27 an erroneous recording of a mortgage; and to amend Sections

1 35-10-26 and 35-10-30, Code of Alabama 1975, to conform those
2 code sections to the new chapter.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Chapter 10B is added to Title 35 of the
5 Code of Alabama 1975, to read as follows:

6 CHAPTER 10B. THE ALABAMA RESIDENTIAL MORTGAGE
7 SATISFACTION ACT

8 ARTICLE 1

9 DEFINITIONS AND GENERAL PROVISIONS

10 Section 35-10B-101. Short title.

11 This chapter may be cited as the Alabama Residential
12 Mortgage Satisfaction Act.

13 Section 35-10B-102. Definitions.

14 For purposes of this chapter, the following terms
15 shall have the following meanings:

16 (1) ADDRESS FOR GIVING A NOTIFICATION. For the
17 purpose of a particular type of notification, the most recent
18 address provided in a document relating to the secured
19 obligation by the intended recipient of the notification to
20 the person giving the notification, unless the person giving
21 the notification knows of a more recent or accurate address of
22 the person then owning the mortgage, or agent of the owner for
23 purposes of recording the satisfaction of the mortgage, in
24 which case the term means that address.

25 (2) DAY. Calendar day.

1 (3) DOCUMENT. Information that is inscribed on a
2 tangible medium or that is stored in an electronic or other
3 medium and is retrievable in perceivable form.

4 (4) ELECTRONIC. Relating to technology having
5 electrical, digital, magnetic, wireless, optical,
6 electromagnetic, or similar capabilities.

7 (5) ENTITLED PERSON. A person liable for payment or
8 performance of the obligation secured by the real property
9 described in a security instrument, or the landowner.

10 (6) GOOD FAITH. Honesty in fact in the conduct
11 concerned.

12 (7) LANDOWNER. A person that, before foreclosure,
13 has the right of redemption in the real property described in
14 a security instrument. The term does not include a person that
15 holds only a lien on the real property.

16 (8) NOTIFICATION. A document containing information
17 required under this chapter and signed by the person required
18 to provide the information.

19 (9) PAYOFF AMOUNT. The sum necessary to satisfy a
20 secured obligation.

21 (10) PAYOFF STATEMENT. A document containing the
22 information specified in Section 35-10B-201(d).

23 (11) PERSON. An individual, corporation, business
24 trust, estate, trust, partnership, limited liability company,
25 association, joint venture, public corporation, government, or
26 governmental subdivision, agency, or instrumentality, or any
27 other legal or commercial entity.

1 (12) RECORDING DATA. The date and book and page
2 number or instrument/document number that indicate where a
3 document is recorded in the office of the judge of probate.

4 (13) RESIDENTIAL REAL PROPERTY. Real property
5 located in this state which is used primarily for personal,
6 family, or household purposes and is improved by one to four
7 dwelling units.

8 (14) SECURED CREDITOR. A person that holds or is the
9 beneficiary of a security interest or that is authorized both
10 to receive payments on behalf of a person that holds a
11 security interest and to record a satisfaction of the security
12 instrument upon receiving full performance of the secured
13 obligation. The term does not include a trustee under a
14 security instrument.

15 (15) SECURED OBLIGATION. An obligation the payment
16 or performance of which is secured by a security interest.

17 (16) SECURITY INSTRUMENT. An agreement, however
18 denominated, that creates or provides for an interest in
19 residential real property to secure payment or performance of
20 an obligation, whether or not it also creates or provides for
21 a lien on personal property.

22 (17) SECURITY INTEREST. An interest in residential
23 real property created by a security instrument.

24 (18) SIGN. With present intent to authenticate or
25 adopt a document, to do either of the following:

26 a. To execute or adopt a tangible symbol.

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

3 (19) STATE. A state of the United States, the
4 District of Columbia, Puerto Rico, the United States Virgin
5 Islands, or any territory or insular possession subject to the
6 jurisdiction of the United States.

7 (20) SUBMIT FOR RECORDING. To deliver, with required
8 fees and taxes, a document sufficient to be recorded under
9 this chapter, to the judge of probate of the county in which
10 the property is located.

11 Section 35-10B-103. Notification: Manner of giving
12 and effective date.

13 (a) A person gives a notification by any of the
14 following methods:

15 (1) Depositing it with the United States Postal
16 Service by certified mail, return receipt requested, or with a
17 commercially reasonable delivery service with cost of delivery
18 provided, properly addressed to the recipient's address for
19 giving a notification.

20 (2) Sending it by facsimile transmission, electronic
21 mail, or other electronic transmission to the recipient's
22 address for giving a notification, but only if the recipient
23 agreed to receive notification in that manner.

24 (3) Causing it to be received at the address for
25 giving a notification within the time that it would have been
26 received if given pursuant to subdivision (1).

27 (b) A notification is effective:

1 (1) The day after it is deposited with a
2 commercially reasonable delivery service for overnight
3 delivery.

4 (2) The day it is given, if given pursuant to
5 subsection (a) (2).

6 (3) The day it is received, if given by a method
7 other than as provided in subsection (a) (2).

8 Section 35-10B-104. Document of rescission: Effect;
9 liability for wrongful recording.

10 (a) In this section, "document of rescission" means
11 a document stating that an identified satisfaction or
12 affidavit of satisfaction of a security instrument was
13 recorded erroneously, the secured obligation remains
14 unsatisfied, and the security instrument remains in force.

15 (b) If ownership of the property has not been
16 transferred, a person who records a satisfaction or affidavit
17 of satisfaction of a security instrument in error may execute
18 and record a document of rescission. Upon recording, the
19 document rescinds an erroneously recorded satisfaction or
20 affidavit.

21 (c) A recorded document of rescission has no effect
22 on the rights of a person that:

23 (1) Acquired an interest in the real property
24 described in a security instrument after the recording of the
25 satisfaction or affidavit of satisfaction of the security
26 instrument and before the recording of the document of
27 rescission; and

1 (2) Would otherwise have priority over or take free
2 of the lien created by the security instrument under Article
3 3, Chapter 4, of this title.

4 (d) A person that erroneously or wrongfully records
5 a document of rescission is liable to any person injured
6 thereby for the actual damages caused by the recording.

7 ARTICLE 2

8 SECURED CREDITOR TO RECORD SATISFACTION; LIABILITY
9 FOR FAILURE

10 Section 35-10B-201. Payoff statement: Request and
11 content.

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

18 (1) The entitled person's name.

19 (2) If given by a person other than an entitled
20 person, the name of the person giving the notification and a
21 statement that the person is an authorized agent of the
22 entitled person.

23 (3) Direction as to whether the statement is to be
24 sent to the entitled person or that person's authorized agent.

25 (4) The address to which the creditor must send the
26 statement.

1 (5) Sufficient information to enable the creditor to
2 identify the secured obligation and the real property
3 encumbered by the security interest.

4 (6) If the secured obligation contains a commitment
5 or agreement by the mortgagee to make advances, secure
6 obligations, or otherwise give value under any agreement,
7 including, without limitation, agreements providing for future
8 advances, open end, revolving, or other lines of credit, or
9 letters of credit, a statement that the entitled person
10 intends to close the commitment or agreement of credit and is
11 requesting the secured creditor not to extend any additional
12 amounts for a period of 30 days from receipt of the notice.

13 (b) If a notification under subsection (a) directs
14 the secured creditor to send the payoff statement to a person
15 identified as an authorized agent of the entitled person, the
16 secured creditor must send the statement to the agent.

17 (c) Within 14 days after the effective date of a
18 notification that complies with subsection (a), the secured
19 creditor shall issue a payoff statement and send it as
20 directed pursuant to subsection (a)(3) in the manner
21 prescribed in Section 35-10B-103 for giving a notification. A
22 secured creditor that sends a payoff statement to the entitled
23 person or the authorized agent may not claim that the
24 notification did not satisfy subsection (a). If the person to
25 whom the notification is given once held an interest in the
26 secured obligation but has since assigned that interest, that
27 person need not send a payoff statement but shall give a

1 notification of the assignment to the person to whom the
2 payoff statement otherwise would have been sent, providing the
3 name and address of the assignee.

4 (d) If a secured obligation cannot be prepaid, a
5 statement of that fact is sufficient, otherwise a payoff
6 statement must contain all of the following:

7 (1) The date on which it was prepared and the payoff
8 amount as of that date, including the amount by type of each
9 fee, charge, or other sum included within the payoff amount.

10 (2) The information reasonably necessary to
11 calculate the payoff amount as of the requested payoff date,
12 including the per diem interest amount.

13 (3) The payment cutoff time, if any, the address or
14 place where payment must be made, and any limitation as to the
15 authorized method of payment.

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

19 (f) A secured creditor may not qualify a payoff
20 amount or state that it is subject to change before the payoff
21 date unless the payoff statement provides information
22 sufficient to permit the entitled person or the person's
23 authorized agent to request an updated payoff amount at no
24 charge and to obtain that updated payoff amount during the
25 secured creditor's normal business hours on the payoff date or
26 the immediately preceding business day.

1 (g) A secured creditor may charge a fee of
2 twenty-five dollars (\$25) for each additional payoff statement
3 requested during a one-year period; however, a secured
4 creditor may not charge a fee for providing an updated payoff
5 amount under subsection (f) or a corrected payoff statement
6 under Section 35-10B-202(a).

7 (h) A secured creditor is not required to send a
8 payoff statement by means other than first class mail,
9 facsimile, or electronic mail. If the creditor agrees to send
10 a statement by another means, it may charge a reasonable fee
11 for complying with the requested manner of delivery.

12 (i) Except as otherwise provided in Section
13 35-10B-205, if a secured creditor to which a notification has
14 been given pursuant to subsection (a) does not send a timely
15 payoff statement that substantially complies with subsection
16 (d), the creditor is liable to the entitled person for any
17 actual damages and an additional five hundred dollars (\$500)
18 as statutory damages where the creditor fails to act without
19 reasonable cause.

20 Section 35-10B-202. Erroneous payoff statement:
21 Correction; effect.

22 (a) If a secured creditor determines that the payoff
23 statement it provided was erroneous, the creditor may send a
24 corrected payoff statement. If the entitled person or the
25 person's authorized agent receives and has a reasonable
26 opportunity to act upon a corrected payoff statement before

1 making payment, the corrected statement supersedes an earlier
2 statement.

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

8 (c) This chapter does not do either of the
9 following:

10 (1) Affect the right of a secured creditor to
11 recover any sum that it did not include in a payoff amount
12 from any person liable for payment of the secured obligation.

13 (2) Limit any claim or defense that a person liable
14 for payment of a secured obligation may have under law other
15 than this chapter.

16 Section 35-10B-203. Secured creditor to submit
17 satisfaction for recording; liability for failure.

18 (a) A secured creditor shall submit for recording a
19 satisfaction of a security instrument within 30 days after the
20 creditor receives full payment or performance of the secured
21 obligation. If a security instrument secures a line of credit
22 or future advances, the secured obligation is fully performed
23 only if, included with the full payment, the secured creditor
24 has received a notification requesting the creditor to
25 terminate the line of credit or containing a statement
26 sufficient to terminate the effectiveness of the provision for
27 future advances in the security instrument.

1 (b) Except as otherwise provided in Section
2 35-10B-205, a secured creditor that is required to submit a
3 satisfaction of a security instrument for recording and does
4 not do so by the end of the period specified in subsection (a)
5 is liable to the landowner for any damages caused by the
6 failure to comply with this act. Loss caused by a failure to
7 comply may include loss resulting from the landowner's
8 inability to obtain, or increased costs of, alternative
9 financing or loss of sale.

10 (c) Except as otherwise provided in subsection (e)
11 and in Section 35-10B-205, a secured creditor that is required
12 to submit a satisfaction of a security instrument for
13 recording and does not do so by the end of the period
14 specified in subsection (a) may also be liable to the
15 landowner for two hundred dollars (\$200) in addition to any
16 damages recoverable under subsection (b).

17 (d) The landowner may recover actual damages
18 recoverable in subsection (b) if the mortgage has not been
19 satisfied within the initial 30-day period after the creditor
20 receives full payment as required in subsection (a), when both
21 of the following occur:

22 (1) The landowner gives the creditor a notification,
23 by any method authorized by Section 35-10B-103 that provides
24 proof of receipt, demanding that the creditor submit a
25 satisfaction for recording.

26 (2) The creditor does not submit a satisfaction for
27 recording within 30 days after receipt of the notification.

1 (e) Subsection (c) does not apply if the secured
2 creditor received full payment or performance of the secured
3 obligation before the effective date of this chapter.

4 (f) All actions for recovery of the penalties
5 mentioned in this chapter shall be brought in the county where
6 the security instrument is recorded.

7 Section 35-10B-204. Form and effect of satisfaction.

8 (a) A document is a satisfaction of a security
9 instrument if it does all of the following:

10 (1) Identifies the security instrument, the original
11 parties to the security instrument, the recording data for the
12 security instrument, and the office in which the security
13 instrument is recorded.

14 (2) States that the person signing the satisfaction
15 is the secured creditor or its authorized agent to execute the
16 release.

17 (3) Contains language terminating the effectiveness
18 of the security instrument.

19 (4) Is signed by the secured creditor or its
20 authorized agent and acknowledged as required by law for a
21 conveyance of an interest in real property.

22 (b) The judge of probate shall accept for recording
23 a satisfaction of a security instrument, unless any of the
24 following occur:

25 (1) An amount equal to or greater than the
26 applicable recording fees and taxes is not tendered.

1 (2) The document is submitted by a method or in a
2 medium not authorized by the judge of probate.

3 (3) The document is not signed by the secured
4 creditor or their authorized agent and acknowledged as
5 required by law for a conveyance of an interest in real
6 property.

7 Section 35-10B-205. Limitation of secured creditor's
8 liability.

9 Absent negligence, wantonness, recklessness, or
10 deliberate misconduct, a secured creditor is not liable under
11 this chapter if it does all of the following:

12 (1) Established a reasonable procedure to achieve
13 compliance with its obligations under this chapter.

14 (2) Complied with that procedure in good faith.

15 (3) Fails to comply with its obligations either
16 because of circumstances beyond its control or as a result of
17 a bona fide error, notwithstanding maintenance of reasonable
18 procedures of compliance.

19 ARTICLE 3

20 SATISFACTION BY AFFIDAVIT

21 Section 35-10B-301. Non-application of Article 3 of
22 this Act.

23 This article applies only to security agreements on
24 residential real estate. This act does not apply to equity
25 line security agreements unless the mortgagee has executed a
26 statement that the equity line of credit is no longer
27 applicable.

1 Section 35-10B-302. Definition; eligibility to serve
2 as satisfaction agent; regulation of satisfaction agents.

3 (a) In this article, "title insurance company" means
4 an organization authorized to conduct the business of insuring
5 titles to real property in this state.

6 (b) Either of the following may serve as a
7 satisfaction agent under this article:

8 (1) A title insurer as defined in Section 27-25-3.

9 (2) An attorney licensed to practice law in this
10 state and in good standing.

11 (c) This chapter does not require a person to agree
12 to serve as a satisfaction agent.

13 Section 35-10B-303. Affidavit of satisfaction:
14 Notification to secured creditor.

15 (a) If a secured creditor has not submitted for
16 recording a satisfaction of a security instrument within the
17 period specified in Section 35-10B-203(a), a satisfaction
18 agent acting for and with authority from the landowner may
19 give the secured creditor a notification that the satisfaction
20 agent intends to submit for recording an affidavit of
21 satisfaction of the security instrument. The notification must
22 include all of the following:

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

25 (2) Identification of the security instrument for
26 which a recorded satisfaction is sought, including the names

1 of the original parties to, and the recording data for, the
2 security instrument.

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

5 a. That the real property described in the security
6 instrument is residential real property or, at the time the
7 security interest was made, was residential real property.

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

10 c. That the secured creditor has received full
11 payment or performance of the secured obligation.

12 (4) A statement that a satisfaction of the security
13 instrument does not appear of record in the chain of title.

14 (5) A statement that the satisfaction agent, acting
15 with the authorization of the landowner of the real property
16 described in the security instrument, intends to sign and
17 submit for recording an affidavit of satisfaction of the
18 security instrument unless, within 30 days after the effective
19 date of the notification, any of the following occur:

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

22 b. The satisfaction agent receives from the secured
23 creditor a notification stating that the secured obligation
24 remains unsatisfied.

25 c. The satisfaction agent receives from the secured
26 creditor a notification stating that the secured creditor has

1 assigned the security instrument and identifying the name and
2 address of the assignee.

3 (b) A notification under subsection (a) must be sent
4 by a method authorized by Section 35-10B-103 that provides
5 proof of receipt to the secured creditor's address for giving
6 a notification for the purpose of requesting a payoff
7 statement or, if the satisfaction agent cannot ascertain that
8 address, to the secured creditor's address for notification
9 for any other purpose.

10 Section 35-10B-304. Affidavit of satisfaction:
11 Authorization to submit for recording.

12 (a) Subject to subsections (b) and (c), a
13 satisfaction agent may sign and submit for recording an
14 affidavit of satisfaction of a security instrument complying
15 with Section 35-10B-305 if either of the following occur:

16 (1) There does not appear of record a satisfaction
17 of a security instrument within 30 days after the effective
18 date of a notification complying with Section 35-10B-303(a).

19 (2) The secured creditor authorizes the satisfaction
20 agent to do so.

21 (b) A satisfaction agent may not sign and submit for
22 recording an affidavit of satisfaction of a security
23 instrument if it has received a notification under Section
24 35-10B-303(a)(5)b. stating that the secured obligation remains
25 unsatisfied.

26 (c) If a satisfaction agent receives a notification
27 under Section 35-10B-303(a)(5)c. stating that the security

1 instrument has been assigned, the satisfaction agent may not
2 submit for recording an affidavit of satisfaction of the
3 security instrument without doing both of the following:

4 (1) Giving a notification of intent to submit for
5 recording an affidavit of satisfaction to the identified
6 assignee at the identified address.

7 (2) Complying with Section 35-10B-303 with respect
8 to the identified assignee.

9 Section 35-10B-305. Affidavit of satisfaction:
10 Content.

11 An affidavit of satisfaction of a security
12 instrument must do all of the following:

13 (1) Identify the original parties to the security
14 instrument, the secured creditor, and the recording data for
15 the security instrument.

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

18 (3) State that the person signing the affidavit has
19 reasonable grounds to believe that the real property described
20 in the security instrument is residential real property or was
21 residential real property at the time the security instrument
22 was made.

23 (4) State that the person signing the affidavit has
24 reasonable grounds to believe that the secured creditor has
25 received full payment or performance of the secured
26 obligation.

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

6 (6) Describe the method by which the person signing
7 the affidavit gave notification in compliance with this
8 chapter.

9 (7) State either of the following:

10 a. That more than 30 days have elapsed since the
11 effective date of that notification, no satisfaction has been
12 recorded, and the satisfaction agent has not received a
13 notification that the secured obligation remains unsatisfied.

14 b. That the secured creditor authorized the person
15 signing the affidavit to sign and record an affidavit of
16 satisfaction.

17 (8) Be sworn or affirmed, signed, and acknowledged
18 as required by law for a conveyance of an interest in real
19 property.

20 Section 35-10B-306. Affidavit of satisfaction: Form.

21 No particular phrasing of an affidavit of
22 satisfaction is required. The following form of affidavit,
23 when properly completed, is sufficient to satisfy the
24 requirements of Section 35-10B-305:

25 "Prepared by _____ State of Alabama

26 "Address _____ County of _____

27 " _____

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" _____
"(Date of Affidavit)
"
"Source of Title:
"Mortgagor _____
"Mortgagee _____
"Mortgage Recorded: Book _____ Page _____
"Instrument/Document No. _____

"AFFIDAVIT OF SATISFACTION

"Before me _____ a notary public in and for
the county and state, personally appeared _____,
whose name is signed to this Affidavit of Satisfaction and who
is known to me, and who being by me first duly sworn deposes
and pays as follows:

"1. I am: [check appropriate line]

"_____ An officer or an authorized agent of
_____ [Name of title insurance company] (the
"Company"), which is authorized to transact the business of
insuring titles to interests in real property in this state,
and I have been authorized by the Company to sign and submit
for recording an affidavit of satisfaction.

"_____ An attorney licensed to practice law in this
state and in good standing.

"2. I am signing this Affidavit of Satisfaction to
evidence full payment or performance of the obligations
secured by real property covered by the following security

1 instrument (the "security instrument") currently held by
2 _____ (the "secured creditor"):

3 "Title of security instrument:

4 "Original parties to security instrument:

5 "County and state of recording:

6 "Recording data for security instrument:

7 "3. I have reasonable grounds to believe that:

8 "a. The secured creditor has received full payment
9 or performance of the balance of the obligations secured by
10 the security instrument; and

11 "b. The real property described in the security
12 instrument constitutes residential real property or was
13 residential real property at the time the security interest
14 was made.

15 "4. With the authorization of the landowner of the
16 real property described in the security instrument, I gave
17 notification to the secured creditor by _____
18 [method authorized by Section 35-10B-103 that provides proof
19 of receipt] that I would sign and record an affidavit of
20 satisfaction of the security instrument if, within 30 days
21 after the effective date of the notification, the secured
22 creditor did not submit a satisfaction of the security
23 interest for recording or give notification that the secured
24 obligation remains unsatisfied.

25 "5. [check appropriate line]

26 "_____ (a) The 30-day period identified in
27 paragraph 4 has elapsed, (b) The secured creditor has not

1 recorded a satisfaction, (c) I have not received notification
2 that the secured obligation remains unsatisfied, and (d) I
3 have not received notification that the secured obligation had
4 been assigned.

5 "_____ The secured creditor responded to the
6 notification in paragraph 4 by authorizing me to execute and
7 record this affidavit of satisfaction.

8 "_____

9 "(Signature of Satisfaction Agent)

10 "I, _____, a notary public, in
11 and for said county in said state, hereby certify that
12 _____, whose name as _____
13 corporation, is signed to the foregoing conveyance, and who is
14 known to me, acknowledged before me on this day that, being
15 informed of the contents of the affidavit of Satisfaction of
16 Mortgage, as such officer and with full authority, executed
17 the same voluntarily for and as the act of said corporation.

18 "Given under my hand this the _____ day of
19 _____, 2____ .

20 "_____

21 "Notary Public"

22 Section 35-10B-307. Affidavit of satisfaction:
23 Effect.

24 (a) Upon recording, an affidavit substantially
25 complying with the requirements of Section 35-10B-304
26 constitutes a termination of the security interest described
27 in the affidavit.

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

5 (c) The office of the judge of probate may not
6 refuse to accept for recording an affidavit of satisfaction of
7 a security instrument unless any of the following occur:

8 (1) An amount equal to or greater than the
9 applicable recording fees and taxes is not tendered.

10 (2) The affidavit is submitted by a method or in a
11 medium not authorized by the judge of probate.

12 (3) The affidavit is not signed by the satisfaction
13 agent and acknowledged as required by Section 35-10B-305(a).

14 Section 35-10B-308. Liability of satisfaction agent.

15 (a) Except as otherwise provided in subsection (b),
16 a satisfaction agent or any other person who executes an
17 affidavit of satisfaction of a security instrument erroneously
18 or with knowledge that the statements contained in the
19 affidavit are false is liable to the secured creditor for any
20 damages caused by the recording and reasonable attorney's fees
21 and costs.

22 (b) A satisfaction agent who executes an affidavit
23 of satisfaction of a security instrument erroneously is not
24 liable, absent negligence, wantonness, recklessness, or
25 deliberate misconduct, if the agent properly complied with
26 this chapter and the secured creditor did not respond in a

1 timely manner to the notification pursuant to Section 35-10B-302(a)(5).

2 (c) If a satisfaction agent or any other person who
3 executes an affidavit of satisfaction of a security instrument
4 with knowledge that the statements contained in the affidavit
5 are false, this section does not preclude any of the
6 following:

7 (1) A court from awarding punitive damages on
8 account of the conduct.

9 (2) The secured creditor from proceeding against the
10 satisfaction agent or any other person who executes a
11 satisfaction under law of this state other than this chapter.

12 (3) The enforcement of any criminal statute
13 prohibiting the conduct.

14 ARTICLE 4

15 MISCELLANEOUS PROVISIONS

16 Section 35-10B-401. Uniformity of application and
17 construction.

18 In applying and construing this uniform act,
19 consideration must be given to the need to promote uniformity
20 of the law with respect to its subject matter among states
21 that enact it.

22 Section 35-10B-402. Relation to Electronic
23 Signatures in Global and National Commerce Act.

24 This chapter modifies, limits, and supersedes
25 Chapter 1A, Title 8, the Alabama Electronic Transactions Act,
26 and the federal Electronic Signatures in Global and National
27 Commerce Act (15 U.S.C. § 7001 et seq.), but does not modify,

1 limit, or supersede Section 101(c) of that act (15 U.S.C. §
2 7001(c)), or authorize electronic delivery of any of the
3 notices described in Section 103(b) of that act (15 U.S.C. §
4 7003(b)).

5 Section 2. Sections 35-10-26 and 35-10-30 of the
6 Code of Alabama 1975, are amended to read as follows:

7 "§35-10-26.

8 "The payment or satisfaction of the real property
9 mortgage debt divests the title passing by the mortgage.

10 "Payment or satisfaction of the real property mortgage debt"
11 shall not occur until there is no outstanding indebtedness or
12 other obligation secured by the mortgage, and no commitment or
13 agreement by the mortgagee to make advances, incur obligations
14 or otherwise give value (collectively referred to as "extend
15 value"), under any agreement, including, without limitation,
16 agreements providing for future advances, open end, revolving
17 or other lines of credit, or letters of credit. Upon Except as
18 otherwise provided in Chapter 10B, the Alabama Residential
19 Mortgage Satisfaction Act, upon the written request to satisfy
20 a mortgage signed by the mortgagors and by all other persons
21 who have a right to require the mortgagee to extend value or
22 signed by other authorized representatives on behalf of the
23 mortgagors and such other persons, which notice shall actually
24 be served upon the mortgagee, and provided there is no
25 outstanding obligation secured by the mortgage at that time,
26 the mortgagee shall file a properly executed and notarized
27 satisfaction of the mortgage or otherwise cause the mortgage

1 to be satisfied in accordance with other applicable provisions
2 of law. From and after such written request for mortgage
3 satisfaction, neither the mortgagors nor any other person who
4 signed such request, or on whose behalf such request was
5 signed, shall have the right to request or demand that the
6 mortgagee extend value under the mortgage or other agreements
7 and the mortgagee shall be released from all obligations and
8 commitments to extend value thereunder.

9 "§35-10-30.

10 "(a) If, for 30 days after such request, the
11 mortgagee or assignee or transferee, trustee or cestui que
12 trust, fails to make any entry required by this article he
13 forfeits to the party making the request ~~\$200~~ two hundred
14 dollars (\$200) unless there is pending, or there is
15 instituted, an action within that time, in which the fact of
16 partial payment or satisfaction is or may be contested. In
17 construing this article, the right of action given herein
18 shall be considered as a personal right, and shall not be lost
19 or waived by a sale of the property covered by the mortgage or
20 deed of trust before a demand was made for the satisfaction to
21 be entered upon the record.

22 "(b) All actions for the recovery of the penalties
23 mentioned in this article shall be brought in the county where
24 such mortgage or other instrument is recorded.

25 "(c) This section does not apply to satisfactions of
26 residential mortgages, which are governed by Chapter 10B, the
27 Alabama Residential Mortgage Satisfaction Act."

1 Section 3. This act shall become effective January
2 1, 2013, following its passage and approval by the Governor,
3 or its otherwise become law.