STATE OF ALABAMA

ALABAMA LAW INSTITUTE

REVISED 2008

ALABAMA UNIFORM RESIDENTIAL MORTGAGE SATISFACTION ACT with Commentary

November 1, 2008

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PREFACE

The Alabama Law Institute presents to the Bench and Bar of Alabama, for consideration and constructive criticism, the following proposed act. As "the official advisory law revision, law reform and legal research agency of the State of Alabama" the Institute will be recommending this proposed act to the Alabama Legislature.

The disastrous housing market has lead to record foreclosures. Low interest rates and sub-prime lending on new and existing home sales created a booming real estate market resulting in record high refinancing. During a time of record mortgage sales and foreclosures, the process of clearing title for residential real estate mortgages when a mortgage is to be paid off or has been fully paid but not satisfied, has been complicated by the failure of the mortgagee to render timely payoff statements and mortgage satisfactions. In many instances the original lender is no longer in business and the mortgage has been sold to another party but the assignment has not been recorded or has become lost. The proliferation of the secondary mortgage market over the last decade has brought this problem to the forefront.

In frustration, some states have gone so far as to provide that a mortgagee who fails to timely satisfy a mortgage must pay a penalty of $25,000, or half the amount of the mortgage. Alabama's penalty of only $200 for non-satisfaction of a mortgage is seldom invoked.

In 2004, the National Conference of Commission on Uniform State Laws addressed this problem in two ways. First, it provides that the mortgagee must give a timely payoff statement subject to a penalty for the failure to provide the statement. Second, it provides a self-help, title clearing remedy for a person entitled to a recorded mortgage satisfaction.

The act provides penalties for the failure to provide a payoff statement and satisfaction statement. These penalties are similar to the U.C.C. penalties for the failure to provide payoff and termination statements for personal property now in effect in Alabama and the remaining 49 states.

A secured lender that neglects to file a mortgage satisfaction within the thirty day period after receiving full payment and satisfaction of the mortgage is subject to a $500 penalty. If the mortgage is not satisfied after 30 days, a 30 day written demand can be given to the mortgagee. If the mortgage is still not satisfied after these 60 days, the mortgagor may recover attorney fees necessary to obtain the satisfaction. In the absence of a response from the secured creditor, a "satisfaction agent," which may be a title insurance company or licensed attorney, can follow a specified procedure and record an affidavit of satisfaction on a specific form. Thus, providing a satisfaction on the record of the paid mortgage.

Changes from the Uniform Act are underlined. We have added "Alabama Comments" when appropriate.

This revision is a result of a study by the Alabama Law Institute's Real Property Committee which includes representatives from the real estate bar, banking attorneys, title companies and general practitioners.

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ARTICLE 1

DEFINITIONS AND GENERAL PROVISIONS

SECTION 35-10B-101. SHORT TITLE. This chapter may be cited as the Alabama Uniform Residential Mortgage Satisfaction Act.

Alabama Comment

This act is derived from the National Conference of Commissioners on Uniform State Laws (NCCUSL) Uniform Residential Mortgage Satisfaction Act and may be cited as the Alabama Uniform Residential Mortgage Satisfaction Act.

SECTION 35-10B-102. DEFINITIONS. For purposes of this chapter, the following terms shall have the following meanings:

(1) ADDRESS FOR GIVING A NOTIFICATION. For the purpose of a particular type of notification, the most recent address provided in a document <u>relating to the secured obligation</u> 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.

(2) DAY. Calendar day.

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

retrievable in perceivable form.

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

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

(6) GOOD FAITH. Honesty in fact ~~and the observance of reasonable commercial standards of fair dealing~~ in the conduct concerned.

(7) LANDOWNER. 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.

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

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

(10) PAYOFF STATEMENT. A document containing the

information specified in Section 35-10B-201(d).

(11) PERSON. 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.

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

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

(14) SECURED CREDITOR. 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.

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

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

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

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

a. To execute or adopt a tangible symbol.

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

(19) STATE. 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.

(20) SUBMIT FOR RECORDING. To deliver, with required fees and taxes, a document sufficient to be recorded under

this chapter, to the judge of probate of the county in which the property is located.

Alabama Comment

(1) *Address for giving a notification*. The Uniform Act's version of this act does not specify the type of document that must be used as the source of a recently provided address for the intended recipient of the notification. Alabama specifies that in order for an address to be presumed a proper "Address for giving notification" by virtue of its having been provided by the intended recipient, it must have been provided by the intended recipient in a document relating to the secured obligation.

(6) *Good Faith*. Alabama retains the definition of "good faith" used in the revised Uniform Commercial Code adopted in Alabama.

(12) *Recording data*. The purpose of providing this "Recording data" is to allow parties to clearly identify and communicate regarding specific documents. In Alabama, the relevant documents are cataloged by book and page numbers or instrument/document number in the offices of the judges of probate. Thus, it is appropriate for documents to be referenced by their recording data consisting of this information.

(20) *Submit for recording*. A document sufficient to be recorded under this act must be delivered, with the required fees and taxes, to the judge of probate of the county in which the property is located in order for the document to be correctly submitted for the purposes of this act.

Comment

Introductory comment to definitions. Under American law and customary practice, there are a variety of different documents — such as the mortgage, the deed of trust, the deed to secure debt (to name but a few) — by which parties may use an interest in real property as security for debts and obligations. Many existing state laws governing the satisfaction of these documents use the traditional terms “mortgage,” “mortgagor,” and “mortgagee.” The Act does not use these terms, so as to dispel any notion that the Act’s coverage is limited only to a “mortgage.” Instead, the Act uses terms that have no common law or statutory roots tying them to any particular form. Instead of terms such as “mortgage” or “deed of trust,” the Act substitutes the general term “security instrument.” In place of “mortgagee” or “beneficiary,” the Act uses “secured creditor.” The secured creditor’s interest in real property is defined as a “security interest” rather than as a “lien” or as “title.” Thus, for purposes of the Act it is irrelevant whether a state follows the “lien theory” or “title theory” of mortgage law.

The Act does not seek to define “real property,” but leaves the parameters of that term to other state law.

1. “Address for notification.” Whenever the Act requires a person to give notification to another person — *e.g.*, when a landowner must give notification and opportunity to cure under Section 203(c) to a secured creditor who has failed to record a timely satisfaction — the notification is given at the intended recipient’s address for notification. This address is the most recent address, for the purpose for which a particular type of notification is given, as provided in a document by the intended recipient of the notification to the person giving the notification. This definition reflects the business practices of mortgage lenders, who sometimes specify different addresses for notification depending upon the purpose of the notification. For example, a lender may require that requests for payoff statements be directed to one address (*e.g.*, the address of the lender’s loan servicer), while other requests for information or general legal notices might be directed to a different address. Subsection (1) thus recognizes that the proper address for notification may vary depending upon the purpose of the particular notification.

If a person giving a notification knows of a more accurate address for the intended recipient, then the person must give the notification at that address. The term “knows” reflects actual knowledge; a notifier has no duty to investigate to ascertain whether the intended recipient has a more recent or accurate address than the address provided by the recipient. *Cf.* U.C.C. § 1-202(b).

2. "Day." The definition of "day" is identical to that used in Section 102(3) of the Uniform Nonjudicial Foreclosure Act. Days must be counted to determine the expiration of the various grace periods prescribed by the Act. All days including Saturdays, Sundays, and holidays are counted. Nevertheless, Section 103(c) provides that if the final day for giving a required notification would fall on a Saturday, Sunday, or legal holiday, that notification may properly be given on the next weekday that is not a legal holiday.

3. "Document." The definition of "document" refers to information on a tangible or electronic medium. The term is media-neutral and is consistent with the definition of the term "record" as used in the Uniform Commercial Code and the Uniform Electronic Transactions Act.

In selecting the term "document" as used in this Act, an explicit decision was made not to use the term "record." In real estate law and practice, the term "record" has a distinct meaning relating to the process of storing real estate information rather than the information itself (*e.g.*, a person can *record* a document by submitting it to the *recorder*). If this Act used the term "record" to refer to information, it could result in confusion and misinterpretation.

This Act defines the term "document" in a slightly broader fashion than the Uniform Electronic Recordation Act, which also requires that a document must be "eligible to be recorded in the land records maintained by the [recorder]." UERA § 2(1)(B). The narrower definition is sensible under the UERA, which focuses only upon issues relating to the recording conveyances. As this Act addresses not only instruments in recordable form (such as a satisfaction document) but also notifications that would not be created in recordable form, the broader definition is appropriate.

4. "Electronic." This definition is identical to the one contained in the Uniform Electronic Transactions Act. UETA § 2(5).

5. “Entitled person.” Section 201 of the Act permits an “entitled person” to request a payoff statement specifying the payment necessary to satisfy the lien of a security interest. The term “entitled person” includes both the landowner at the time of a payoff statement request and any person liable on the secured obligation (including the original obligor, an assuming grantee, or any guarantor).

6. “Good faith.” This definition uses the standard definition of good faith expressed in the Uniform Commercial Code. U.C.C. § 1-201(b)(20). Generally, the Act imposes liability (both for statutory and actual damages) upon a secured creditor that fails to record a satisfaction within a timely period following notice and opportunity to cure. Sections 203(b), (c). However, a secured creditor is not liable if it has established a reasonable procedure for recording satisfactions of security instruments, has complied with that procedure in good faith, and was unable to record because of circumstances beyond its control. Section 205.

7. “Landowner.” Under the “title theory” of mortgages, a mortgagee holds legal title to the mortgaged premises. By contrast, under the “lien theory” of mortgages followed in the majority of American jurisdictions, the mortgagee (or “secured creditor” under the Act) holds only a security interest in the mortgaged premises. The Act defines the term “landowner” to mean the owner of the right to redeem the real property described in the security instrument prior to foreclosure. The Act defines the term in this fashion so as to make it irrelevant whether a particular state adopting the Act follows title theory or lien theory.

The Act uses the term “landowner” to mean the person who holds the right to redeem the possessory interest in the real property prior to foreclosure. A person that holds only a lien upon real property is not a “landowner” within the meaning of this Act, even if that person may have a right to redeem its lien interest prior to foreclosure.

The identity of the “landowner” may vary in this Act depending upon context. For example, suppose that Bank holds a mortgage on Blackacre, a parcel of real property owned by Heinsz. Heinsz has entered into a contract to sell Blackacre to Bailey. For the purpose of obtaining a payoff statement with respect to the balance of the mortgage obligation, Heinsz is the "landowner" within the meaning of the Act, even though Heinsz seeks the payoff statement in anticipation of a sale of the real property to Bailey. By contrast, assume that Heinsz has now performed the contract of sale by deeding the real property to Bailey. If Bank fails to record a timely satisfaction of its mortgage as required by this Act, Bailey is now the "landowner" for the purpose of giving notification to the Bank of its failure, or for the purpose of recovering damages on account of Bank's failure.

8. "Notification." In several places, the Act requires one person to give "notification" to another. Such a notification must be in the form of a "document" (Section 102(3)), must contain the information required by the specific provision of the Act, and must be "signed" (Section 102(18)) by the person required to provide the notification.

9. "Payoff amount" and "payoff statement." Most mortgage loans are paid off prior to maturity, either upon a transfer of the mortgaged land or upon a refinancing by the landowner. Upon request in these situations, the mortgage lender customarily issues a payoff statement specifying a "payoff amount," or the payment necessary to satisfy the outstanding balance of the mortgage loan. Under the Act, the secured creditor must issue a payoff statement substantially complying with Section 201(a) within 10 days after receiving a request from an "entitled person" as defined in Section 102(5).

10. "Person" includes both natural persons (individuals) and all forms of legally recognized public and private organizations. *Cf.* U.C.C. § 1-201(b)(27).

11. "Recording data." This definition is similar to that used in Section 102(15) of the Uniform Nonjudicial Foreclosure Act, and refers to the customary way of identifying the precise place where a document is recorded in the jurisdiction. Some jurisdictions

customarily refer to book and page number, some to a document number, and others to other types of designations.

12. "Residential real property." This Act applies only to the satisfaction of security instruments covering real property that is used primarily for personal, family, or household purposes and is improved by one to four dwelling units. This effectively limits the provisions of the Act to the consumer mortgage context. Any mortgage that qualifies as a "federally related mortgage" and is intended or eligible to be sold on the secondary market would be a security instrument covering residential real property as defined in this Act.

13. "Secured creditor" means a person that holds a security interest in residential real property. The term includes a person who is servicing the debt evidenced by a security instrument, but only if that person is also authorized by the secured creditor to record a satisfaction of the security instrument upon receiving full payment or performance of the secured obligation.

The term does not include the trustee under a deed of trust or any other security instrument that denominates a "trustee." In many deed of trust states, the beneficiary signs and records a satisfaction of the deed of trust following full payment of the underlying obligation, and the trustee's signature is unnecessary. In some states, however, either law or custom provide that the trustee must sign a satisfaction document. In these states, a secured creditor that has received full payment must contact the trustee, direct the trustee to prepare and record a satisfaction document, and monitor to ensure the trustee's compliance. Such a process creates additional delay and inefficiency that serves no useful purpose. As the involvement of a trustee under a deed of trust serves no useful protective role for the landowner once the beneficiary has received full payment of the debt, omitting the trustee as a party to a satisfaction document reflects sound policy and practice. As a result, the Act makes clear that a "secured creditor" is the person authorized to prepare and record a satisfaction of a deed of trust, not the trustee.

14. “Secured obligation” covers all obligations the performance of which are reducible to monetary terms and secured by a security interest.

15. “Security instrument.” This definition is similar to that used in Section 102(19) of the Uniform Nonjudicial Foreclosure Act, and recognizes that the title given to a document by its parties is not dispositive of whether the document is a security instrument. Instead, the key issue is whether the document creates a security interest.

For purposes of the Act, a “security instrument” must cover real property, although it may additionally cover personal property. A secured creditor’s compliance with the Act (*e.g.*, by recording a timely satisfaction of a security instrument following full performance of the secured obligations) may not fully discharge the secured creditor’s legal obligations with respect to a secured transaction that also covers personal property. In such a case, the secured creditor may also have to file a Uniform Commercial Code termination statement with respect to the personal property collateral. U.C.C. § 9-513.

The Act does not specifically address the extent to which its provisions apply to an installment land contract or contract for deed. In those states where existing statutory provisions or judicial decisions have equated a contract for deed and a mortgage, the contract for deed would constitute a “security instrument” and the provisions of this Act would apply. In other states, the Act leaves to judicial resolution the extent to which its provisions would apply to the installment contract vendor and vendee and their respective successors.

16. “Security interest.” Under the Act, a security interest arises in any transaction, regardless of its form, in which a person receives or retains an interest in residential real property for the purpose of securing an obligation owed to that person. Certain types of interests in land, such as judgment liens and mechanics liens, arise only by statute or operation of law, and these liens do not constitute “security interests” within the meaning of the Act. Accordingly, the

Act does not address the obligation of a judgment lien holder to record evidence of the satisfaction of that judgment lien.

17. "Sign." This definition is media-neutral and comparable to that contained in Uniform Commercial Code § 2-103(1)(p).

18. "State." This definition is the boilerplate definition of the term as used in uniform acts. *Cf.* U.C.C. § 1-201(b)(38).

19. "Submit for recording." The Act requires a secured creditor to submit for recording a sufficient satisfaction of the security instrument upon full payment of the secured obligation. Section 203(a). The Act also permits a "satisfaction agent" to submit for recording an affidavit of satisfaction if the secured creditor has failed to submit for recording a satisfaction in a timely fashion following notice and an opportunity to cure such failure. Section 303. To "submit for recording" means that the person has submitted a document that has complied with the appropriate legal requirements for the document submitted, along with required fees and taxes, to the appropriate recording official.

SECTION 35-10B-103. NOTIFICATION: MANNER OF GIVING AND EFFECTIVE DATE.

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

(1) Depositing it with the United States Postal Service with first-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, but only if the recipient agreed to receive notification in that manner.

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

(b) A notification is effective:

(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 United States Postal Service, first 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 pursuant to subsection (a)(2).

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

~~[(c) If this [act] or a notification given pursuant to this [act] 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.]~~

Alabama Comment

Subsection (c) is omitted since there is existing Alabama law that has substantially the same effect as subsection (c). *See*. Ala. Code 1975 § 1-1-4. *See also.* ARCP Rule 6(a).

Comment

1. *Methods of giving a notification under this Act*. Generally speaking, notices required by this Act may be transmitted by registered or certified mail, regular mail, or commercially reasonable delivery service. Proper dispatch, not receipt, satisfies the obligation to give notification. The person asserting that notification was given has the burden of proof that notification was given in accordance with the provisions of Section 103.

Subsection (a)(2) permits a person to give notification by electronic transmission under circumstances where the recipient has agreed to receive notification by that form of transmission. Customary practice in real estate transfer or refinancing transactions often involves notification by facsimile transmission. For example, a secured creditor may provide a payoff statement by facsimile transmission (often at the specific request of a landowner or closing agent). Subsection (a)(2) permits a person to give notification by facsimile transmission if the intended recipient has agreed (either in the loan documents or otherwise) to receive notification in this manner. For example, if a landowner requests that a secured creditor provide a payoff statement by facsimile transmission, this request will authorize the secured creditor to provide the notification by facsimile transmission even if the security instrument itself does not so provide. Likewise, if a secured creditor maintains a website indicating that requests for payoff statements may be directed to a particular fax number, or provides correspondence to a borrower indicating that requests for payoff statements may be directed to a particular fax number, the secured creditor has agreed to receive requests for payoff statements at that number by facsimile transmission.

The Act also permits a person to give notification by electronic mail, but only where the intended recipient has agreed to receive notification by electronic mail.

Subsection (a)(3) permits a person to give notification in any manner that would result in the notification being received within the time that the recipient would have received it if given by mail or commercially reasonable delivery service. This subsection would permit a person to give a notification by means of physical delivery to its intended recipient.

2. *Notification by method that provides proof of receipt required in certain circumstances*. Section 203(c) imposes potential liability for a statutory penalty and attorney's fees upon a secured creditor that has failed to record a timely satisfaction after receiving notification and an opportunity to cure its failure. Likewise, Article 3 authorizes a "satisfaction agent" to prepare and record an affidavit of satisfaction if the secured creditor has failed to record a timely satisfaction after notice and an opportunity to cure its failure. In these two cases, Sections 203(c) and 302(b) require that notification to the secured creditor must not only be given in a manner authorized by Section 103, but also in a manner that provides proof of receipt. This would include, *inter alia*, certified mail (return receipt requested), Federal Express, or another form of commercially reasonable delivery that requires the recipient's signature.

3. *Effective date of notification*. The Act requires a landowner to give a secured creditor notification and a 30-day cure period before the landowner can recover a statutory penalty and attorney's fees for that creditor's failure to record a timely satisfaction. Section 203(c). Likewise, before a satisfaction agent may execute and record an affidavit of satisfaction when the secured creditor has failed to record a timely satisfaction, the satisfaction agent must give the secured creditor notification and a 30-day period in which to fulfill its obligation to record that satisfaction or otherwise object to the recording of a satisfaction. Section 302(a). To avoid uncertainty about the expiration of these grace/cure periods, the Act provides that

these periods shall commence upon the “effective date” of a notification. Subsection (b) specifies the effective date of a particular notification, determined by reference to the approximate delivery time for a particular manner of delivery.

SECTION 35-10B-104. DOCUMENT OF RESCISSION: EFFECT; LIABILITY FOR WRONGFUL RECORDING.

(a) In this section, "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) <u>If ownership of the property has not been transferred</u>, a person who records a satisfaction or affidavit of satisfaction of a security instrument in error 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 a person that:

(1) 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; and

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

(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's fees and costs.

Alabama Comment

Subsection (b) in the Alabama Uniform Residential Mortgage Satisfaction Act diverges from the Uniform Act's version in that Alabama only allows a person to execute and record a document of rescission regarding an erroneously recorded satisfaction or affidavit if ownership of the property has not been transferred. Under the Uniform Act's approach, a person who recorded a satisfaction or affidavit of satisfaction of a security instrument in error could execute and record a document of rescission regardless of whether ownership of the property had been transferred. When a mortgage has been satisfied on record by mistake, a court may order the cancellation expunged from the record and the mortgage reinstated when such relief will not prejudice the rights of third parties. Taylor v. Jones, 280 Ala. 329 194 So. 2d 80 (1967).

Subsection (c)(2) references Ala. Code Article 3 Chapter 4 of Title 35. Specifically, Ala. Code 1975 §§ 35-4-64, 35-4-90 provides that cancellation of the record of mortgages, vendor's liens, judgments and other liens by the record owner of the same shall be valid as to purchasers of the real property affected by liens of such character. All conveyances of real property, deeds, etc. to secure any debts are inoperative and void as to purchasers for a valuable consideration, mortgagees and judgment creditors without notice, unless they were recorded before the accrual of the right of such purchasers, mortgagees or judgment creditors.

Comment

1. *Authorization to record rescission of satisfaction.* Section 104 permits a person that has erroneously recorded a satisfaction of a security instrument to prepare and record a "document of rescission" rescinding the satisfaction and reinstating the lien of the security interest. In this manner, the Act addresses the practical and logistical problems associated with the inadvertent or erroneous recording of a mortgage satisfaction.

For example, suppose that Bank receives a payoff of a loan secured by a mortgage on Parcel X. Unfortunately, in preparing correspondence relating to the satisfaction of the mortgage, Bank's employee mistakenly transposes digits in the mortgage loan number. As a result, Bank mistakenly transmits to the recording official a satisfaction of the mortgage on Parcel Y, on which there remains a substantial outstanding balance. Although Bank can request the owner of Parcel Y to sign a new mortgage, the owner of Parcel Y may not cooperate in this effort (even if the owner of Parcel Y is legally obligated to do so). Moreover, even if the owner of Parcel Y signed a new mortgage and Bank recorded it, the newly-recorded mortgage might not be effective as against a creditor that acquired a lien during the intervening period. Accordingly, subsection (a) would permit the Bank to record a document of rescission that reinstates its lien against Parcel Y.

2. *Effect of document of rescission on third parties*. Subsection (c) addresses the rights of a third party that acquires an interest in the real property following an erroneous satisfaction but before a document of rescission is recorded. The Act confirms that a document of rescission is ineffective against any person entitled to the protection of the state's recording act.

For example, in the hypothetical described in comment 1, suppose that following Bank's inadvertent satisfaction of the mortgage on Parcel Y, the owner of Parcel Y sold that parcel to English. English paid value and did not know or have reason to know that Bank's recorded satisfaction was erroneous. Subsection (c) confirms that in a jurisdiction with a pure notice recording statute, English would take Parcel Y free and clear of Bank's mortgage. Bank's subsequent attempt to rescind the erroneous satisfaction would be ineffective against English.

The Act leaves to the state's recording statute what classes of intervening persons may claim the protection of subsection (c). For example, recording acts in most states protect only reliance creditors (*e.g.*, buyers and mortgagees). In those states, a intervening judgment lien creditor or a donee would not be able to claim the protection of subsection (c). In a state that permits judgment lien creditors to obtain the protection of the recording act, however, subsection (c) would provide the intervening creditor with priority over the secured creditor's reinstated lien..

3. *Damages for erroneous or wrongful rescission*. Subsection (d) authorizes a person injured by the erroneous or wrongful recording of a document of rescission to recover damages caused by the rescission, along with reasonable attorney's fees and court costs. The exercise of this remedy is subject to the normal rules of pleading and proof.

This subsection authorizes a remedy for the injured person regardless of whether the rescission was wrongful or merely erroneous. For example, suppose that in the hypothetical described in comment 1, Bank inadvertently recorded a satisfaction document on Parcel Y. The owner of Parcel Y then sold that parcel to English, who paid value and did not know or have reason to know that Bank's recorded satisfaction was erroneous. Bank then prepares and records a document of rescission. If Bank does not know of the transfer to English, the recording is erroneous; if Bank knows of the transfer to English, the recording is wrongful. Either way, however, the recording of the document of rescission creates an unwarranted cloud on English's title. Thus, subsection (d) permits English to recover any damages suffered due to the recording of the document of rescission.

4. *Punitive damages for wrongful rescission*. In the exceptional case in which a person intentionally and wrongfully records a satisfaction document, the recording of the rescission effectively constitutes a slander of the landowner's title. As was true at common law, under this Act a court would retain the discretion to award punitive damages in such a case. However, where a person records a satisfaction document erroneously (with negligence), punitive damages are inappropriate.

5. *Rescission by satisfaction agent*. Under Article 3 of this Act, a "satisfaction agent" may file an affidavit of satisfaction if a secured creditor fails to record a timely satisfaction after notice and an opportunity to cure that failure. Under Section 306(a), a recorded affidavit of satisfaction constitutes a "satisfaction" for purposes of this Act. For clarity's sake, Section 104 makes clear that a satisfaction agent that erroneously recorded an affidavit of satisfaction could, in appropriate cases, record a document rescinding the affidavit of satisfaction under this section.

ARTICLE 2

SECURED CREDITOR TO RECORD SATISFACTION;

LIABILITY FOR FAILURE

SECTION 35-10B-201. 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 <u>all of the following</u>:

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

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

(5) Sufficient information to enable the creditor to

identify the secured obligation and the real property encumbered by the security interest.

<u>(6) A statement that the entitled person intends to close the equity line of credit and is requesting the secured creditor not to extend any additional amounts for a period of 30 days from receipt of the notice.</u>

(b) If a notification under subsection (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) Within ~~10~~ <u>14</u> days after the effective date of a notification that complies with subsection (a), the secured creditor shall issue a payoff statement and send it as directed pursuant to subsection (a)(3) in the manner prescribed in Section 35-10B-103 for giving a notification. 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 subsection (a). If the person to whom the notification is given once held an interest in the secured obligation but has since assigned that interest, that person need not send a payoff statement but shall 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.

(d) If a secured obligation cannot be prepaid, a statement of that fact is sufficient, otherwise 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, including 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.

(3) The payment cutoff time, if any, the address or place where payment 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 section not included in the payoff amount.

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

(g) <u>For any security instrument executed prior to the effective date of this chapter, the secured creditor may charge for payoff charges as provided in the instrument; however</u>, a secured creditor must provide, upon request, one payoff statement without charge during any ~~six-month~~ <u>one year period, unless the instrument provides otherwise. For any security instrument executed after the effective date of this chapter, a secured creditor shall provide, upon request, one payoff statement without charge during any</u> ~~six-month~~ <u>one year period</u>. A secured creditor may charge a fee of twenty-five dollars ($25) for each additional payoff statement requested during that ~~six month~~ <u>one year period</u>; however, a secured creditor may not charge a fee for providing an updated payoff amount under subsection (f) or a corrected payoff statement under Section 35-10B-202(a).

(h) ~~Unless the security instrument provides otherwise,~~ A secured creditor is not required to send a payoff statement by means other than first class mail, <u>facsimile, or electronic mail</u>. If the creditor agrees to send a statement by another means, it may charge a reasonable fee for complying with the requested manner of delivery.

(i) Except as otherwise provided in Section35-10B-205, if a secured creditor to which a notification has been given pursuant to subsection (a) does not send a timely payoff statement that substantially complies with subsection (d), the creditor is liable to the entitled person for any actual damages <u>and an additional $500 as statutory damages where the creditor fails to act without reasonable cause</u>. ~~caused by the failure plus five hundred dollars ($500), but not punitive damages.~~ ~~A creditor that does not pay the damages provided in this subsection within 30 days after receipt of a notification demanding payment may also be liable for reasonable attorney's fees and costs~~.

Alabama Comment

(a)(6) *Equity line of credit.* To obtain a payoff statement on a security interest, one is not required to close a line of credit secured solely by a U.C.C. filing. This section describes the process by which an entitled person, or their authorized agent, can request a payoff statement from a creditor holding a real property mortgage. Such a request is made through a notification conforming to the prescribed standards. Alabama adds an extra requirement when the payoff statement requested is for an equity line of credit on real estate. In giving notification to the creditor when the mortgagor has an equity line of credit account, the entitled party or its authorized agent must also include a statement that the entitled person intends to close the equity line of credit.

(c) The period of time set forth in subsection (c) for providing a payoff statement was increased from 10 to 14 days to be consistent with U.C.C. Section 7-9A-210.

(d) *Prepayment prohibited.* Although not provided in Article 9 of the U. C. C. in Alabama, if a creditor receives notification requesting a payoff statement for an account that cannot be prepaid, a statement of the fact that the obligation cannot be prepaid is a sufficient response on the part of the creditor.

(g) *Payoff statement charges.* Creditors may charge for the service of generating a payoff statement. For security instruments executed prior to the effective date of this Act, a creditor may charge for payoff charges as provided in the instrument; however if the instrument is silent as to charges the mortgagee must provide a payoff statement without charge. But, if the security interest was executed after the effective date of this Act, a secured creditor must provide one payoff statement without charge during any one year period. A secured creditor may charge a fee of $25 per additional payoff statement requested during a one year period. A creditor may not charge a fee for providing an update to a previously given payoff statement as discussed in sub-part (f) or a corrected payoff statement under Section 202(a).

(h) *Method of sending a payoff statement.* The Uniform Act states that the security instrument can provide the method by which a payoff statement can be transmitted. Alabama omits this statement and simply says that a creditor cannot be required to send a payoff statement by means other than first-class mail, fax or email.

However, the creditor may agree to transmit the statement by some other means and the secured party may charge a reasonable fee for doing so.

(i) Subsection (i) was amended in the Alabama version so that it would be consistent with the law already adopted for secured transactions in the U.C.C. contained at 7-9A-210 and 7-9A-625.

7-9-625 (f) *Statutory damages: Noncompliance with Section 7-9A-210.* A debtor or consumer obligor may recover damages under subsection (b) and, in addition, $500 in each case from a person that, without reasonable cause, fails to comply with a request under 7-9A-210.

Comment

1. *Payoff statements; scope of obligation.* Most residential mortgage loans are paid off prior to maturity, either upon a transfer of the mortgaged land or upon a refinancing by the landowner. In these situations, the mortgage lender customarily issues a payoff statement, specifying the amount of the payment needed to satisfy the balance of the mortgage loan. Sections 201 and 202 address the nature and scope of the mortgage lender's obligation to issue a payoff statement, the contents and effect of such a statement, and the consequences of the lender's failure to issue a statement.

The payoff statement must include the "payoff amount," which is defined in Section 102(9) as the sum necessary to satisfy the secured obligation. By definition, the "security interest" that secures the "secured obligation" must create an interest in "residential real property" as defined in this Act. *See* Sections 102(13), (15), (17). Thus, the obligation to issue a payoff statement under this Act applies only to loans secured by "residential real property."

Under subsection (c), the secured creditor must issue a payoff statement within 10 days after the effective date of a notification requesting a payoff statement. A creditor that receives a notification requesting a payoff statement but that never held an interest in the secured obligation has no duty to respond to the request. *Cf*. U.C.C. § 9-625(f). A creditor that once held an interest in the secured obligation but has since assigned that interest need not send a payoff statement, but must provide the entitled person or the authorized agent with the name and address of the assignee.

2. *Persons entitled to payoff statement.* The Act permits an "entitled person" to obtain a payoff statement, either acting directly

or through an authorized agent. An “entitled person” means the landowner or a person liable for payment or performance of the secured obligation (such as a guarantor, or a predecessor in title who was the original mortgagor). As discussed in the comments to Section 102, the identity of the “landowner” (who qualifies as an “entitled person”) under the Act is contextual. In this context, the “entitled person” is the person who owns the mortgaged real property at the time of the request for a payoff statement. If a payoff statement is being requested in conjunction with an upcoming sale or transfer of the mortgaged land, the “landowner” would be the seller/transferor, not the buyer/transferee.

Consistent with the principles of agency law, an entitled person under this section may act through any authorized agent acting on the entitled person’s behalf. For example, if Seller has contracted to sell mortgaged land to Buyer, and Seller has authorized Attorney to represent her in the transaction, Attorney may properly request a payoff statement on Seller’s behalf. Likewise, if Buyer’s attorney, title insurer or settlement agent will be handling the closing and disbursement of funds, Seller may authorize Buyer or Buyer’s agent to request a payoff statement under this section (even though Buyer’s attorney, title insurer, or settlement agent would not constitute the Seller’s agent for other purposes).

3. *Payoff statements and junior lienholders*. In the context of a default under a senior mortgage, a junior lienholder may wish to obtain payoff information regarding the senior mortgage in order to evaluate what steps the junior lienholder should take to protect its interest in the mortgaged land. Under the Act, a junior lienholder would not typically be an “entitled person” (as a junior lienholder is not typically liable on the secured obligation). Nevertheless, a junior lienholder would have the right to obtain a payoff statement as an agent of the landowner if the landowner has so authorized, either in the loan documents evidencing the junior lien or otherwise.

4. *Privacy concerns*. Potential privacy concerns arise with respect to the disclosure of financial information such as the outstanding balance of a mortgage loan. Subsection (a) attempts to address potential privacy concerns by requiring that a person

requesting a payoff statement provide sufficient information to enable the secured creditor to identify the secured obligation and the mortgaged real property. A payoff statement request should be sufficient to satisfy this requirement if it includes the loan number or some other identifier assigned by the secured creditor.

Privacy concerns are of greater significance if the secured creditor discloses financial information to someone other than the obligor. Nevertheless, agents commonly facilitate closing transactions involving the sale or refinancing of real property, and regularly seek payoff statements in connection with such closings. In the overwhelming majority of cases, the person facilitating the closing is in fact authorized by the entitled person to request a payoff statement. As a result, it would be inefficient for the Act to require the entitled person, in every case, to provide the mortgage lender with a document expressly authorizing the closing agent to request a payoff statement. Instead, subsection (a)(2) requires that if a notification requesting a payoff statement is given by a person other than an entitled person, the notification must identify the requester and state that the requester is an authorized agent of the entitled person. Subsection (b) then requires the secured creditor to provide the payoff statement to the identified person, unless the creditor knows that the entitled person did not authorize the request.

5. *Payoff statement: request*. An entitled person may request a payoff statement by giving a notification containing such a request in the manner specified by Section 103. The notification must identify the proposed payoff date, which cannot be more than 30 days following the date of the notification. The notification must provide the information required by subsection (a). However, the secured creditor's delivery of a payoff statement precludes a later claim by the creditor that the notification failed to comply with subsection (a). Section 201(c).

6. *Payoff statement: form*. Because mortgage loans may vary significantly in their terms and conditions, the Act does not specify a particular form that a payoff statement must take to satisfy this section. Instead, subsection (d) provides certain information that the secured creditor must include in order to comply with its obligation

to deliver a payoff statement. The payoff statement must enable the entitled person to ascertain how the secured creditor calculated the payoff amount. Accordingly, the Act requires that the payoff statement must reflect, *by type*, each item, fee or charge that comprises the balance of the secured obligation. For example, if the borrower had incurred several individual late payment charges, the secured creditor could group those charges together under a heading entitled "Late Charges." However, the secured creditor could not aggregate late payment charges, default interest, and a prepayment fee and list them as "miscellaneous fees and charges."

The payoff statement must also include any specified payment cutoff time (*i.e.*, the time after which the borrower will accrue another day's interest on the secured obligation) and any permitted limitations upon the authorized method of payment, as well as the appropriate address or place for payment.

7. *Payoff statement: disclaimers as to accuracy of payoff amount*. The secured creditor may include in a payoff statement information beyond that specified in subsection (d). However, such additional information cannot include disclaimers or other language intended to defeat the ability of the entitled person to rely generally upon the accuracy of the payoff amount.

On the typical mortgage loan, it is possible (if not likely) that the balance of the secured obligation may change between the date that a secured creditor issues a payoff statement and the proposed payoff date. Such a change could occur for a variety of reasons: *e.g.*, the applicable interest rate changed (if the mortgage note bears a variable rate or includes a provision for default interest); the borrower had made a previous payment that had been posted to the borrower's account but was subsequently returned for insufficient funds; the loan is a home equity loan and the borrower makes an additional draw on the line of credit following the payoff statement request; the lender had to advance additional funds to protect its security. Subsection (f) does permit the secured creditor to issue a payoff statement providing that the balance may be subject to change prior to the payoff date, but only if the payoff statement provides sufficient information to permit the entitled person to obtain a reliable updated payoff amount on the payoff date or the immediately preceding business day (*e.g.*, by telephone, facsimile transmission, or electronic mail).

8. *Payoff statement: fees and charges*. Subsection (g) provides that a secured creditor must provide one payoff statement without charge during any six-month period, but permits the secured creditor to impose a fee for issuing an additional payoff statement during that six-month period. The secured creditor cannot impose a fee for sending a corrected payoff statement or for updating a qualified payoff statement issued under subsection (f). Under subsection (a), a payoff statement would become ineffective 30 days after it was issued. After that time, the secured creditor would have no obligation to provide a free updated payoff amount under subsection (g).

Subsection (h) provides that a secured creditor may not be required to send a payoff statement by means other than first-class mail (unless the security instrument so requires). If the entitled person requests an expedited manner of delivery and the secured creditor agrees (*e.g.*, by overnight commercial delivery service or facsimile transmission), the creditor may charge a reasonable fee for complying with the requested manner of delivery.

Subsection (e) permits the secured creditor to include in the payoff statement any permissible fees for issuance or expedited delivery of a payoff statement. Whether liability for such fees is secured by a security interest is determined by the terms of the security instrument and law other than this Act. If the security instrument provides that the security interest secures repayment of the fees and such a provision is enforceable under other law, then the fees would be part of the payoff amount. If the security instrument does not provide that the security interest secures repayment of the fees, subsection (e) still permits the secured creditor to list the fees on the payoff statement, even though the fees would not be part of the payoff amount.

9. *Secured creditor's liability for failure to deliver payoff statement*. If a secured creditor fails to send a timely payoff statement, subsection (i) provides that the creditor is liable to the entitled person for any actual damages caused by its failure, plus the

additional sum of [$500]. This subsection is patterned on U.C.C. Section 9-210(f) and ensures that the secured creditor's nondelivery of a payoff statement will generally result in liability regardless of any injury that may have resulted. Thus, the entitled person may collect the penalty of [$500] even if it suffers no actual damages due to the secured creditor's failure. The Act makes clear that the [$500] minimum statutory damages provides the Act's exclusive punitive sanction for failure to provide a timely payoff statement; a court may not impose punitive damages against a secured creditor for its failure to provide a timely payoff statement under subsection (c).

In the event that a secured creditor fails to provide a timely payoff statement, the entitled person may give a notification demanding payment of its actual damages (*e.g.*, additional interest accruing on the loan due to the delay) and the statutory penalty. If the creditor pays such sums within 30 days after receipt of the notification, then the creditor is not liable for attorney's fees and court costs incurred by the entitled person in enforcing the creditor's obligations under this section. However, if the creditor does not pay such sums within 30 days after receipt of the notification, subsection (i) authorizes the entitled person to collect reasonable attorney's fees and costs.

Section 205 provides that if the secured creditor has established a reasonable procedure for complying with its obligation to issue payoff statements, has complied with that procedure in good faith, and was unable to satisfy its obligation because of circumstances beyond its control, the secured creditor is not liable despite its noncompliance with this section.

A payoff statement must be in "substantial compliance" with the requirements of subsection (d); a minor error in a payoff statement does not mean that the creditor has failed to provide a payoff statement so as to trigger liability under subsection (i). The Act leaves to judicial resolution whether a particular payoff statement substantially complies with Section 201(d).

SECTION 35-10B-202. ERRONEOUS PAYOFF

STATEMENT: CORRECTION; EFFECT.

(a) If a secured creditor determines that the payoff statement it provided ~~in a payoff statement~~ was ~~understated~~ erroneous, the 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) A secured creditor that sends a payoff statement containing an understated payoff amount or other erroneous terms may not deny the accuracy of the payoff amount as against any person that reasonably and detrimentally relies upon the understated payoff amount or other erroneous terms.

(c) This chapter does not do either 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 chapter.

Alabama Comment

(a) *Erroneous Payoff Statement.* Instead of referring to an incorrect payoff statement as an "understated" payoff statement, Alabama refers to it as an "erroneous" payoff statement. A corrected payoff statement will supersede an earlier statement if the entitled person or their authorized agent receives and has a reasonable opportunity to act upon the corrected statement before making payment. However, if a creditor gives a payoff statement that is understated or otherwise erroneous, they may not deny the accuracy of the payoff amount against any person who reasonably and detrimentally relies upon the understated or otherwise erroneous amount that has been provided by the creditor.

Comment

1. *Corrected payoff statements*. A secured creditor sometimes issues a payoff statement, but later discovers that it understated the payoff amount. In this situation, subsection (a) permits the secured creditor to issue a corrected payoff statement. If the entitled person or its authorized agent receives and has a reasonable opportunity to act upon the corrected payoff statement before making payment, then the corrected statement supersedes the erroneous statement. *Cf.* U.C.C. Section 4-403 (stop payment order is effective after it is received by a bank and bank has reasonable opportunity to act upon it). The Act leaves to judicial resolution whether a secured creditor has provided
a corrected payoff statement within a reasonable time to permit the entitled person or its authorized agent to act upon it.

2. *Reasonable reliance upon erroneous payoff amount*. Generally speaking, the secured creditor must submit for recording a satisfaction of a security instrument after it receives full payment or performance of the obligation secured by the lien of that instrument. *See* Section 203(a). If the secured creditor erroneously understates the payoff amount and does not correct it, however, this error may mislead a buyer or refinancing lender to complete a sale or refinancing transaction. A buyer, a buyer's mortgage lender, or a refinancing lender may pay or advance the amount stated in the payoff statement in reliance upon its accuracy. Subsection (b) makes

clear a secured creditor may not enforce the security instrument against a person who reasonably and detrimentally relied upon the accuracy of the payoff amount.

In some cases, a secured creditor may attempt to defeat third party reliance by qualifying the accuracy of the payoff amount. Under Section 201(f), however, a secured creditor cannot qualify the accuracy of a payoff amount unless the payoff statement provides information sufficient to permit the entitled person or its authorized agent to obtain an updated payoff amount at no charge during the creditor's normal business hours on the payoff date or the immediately preceding business day. In this way, the Act permits a secured creditor to qualify the reliability of an initial payoff statement, but only by providing the entitled person with the means of obtaining an updated and reliable payoff amount just prior to closing. As a result, an entitled person that receives a statement containing a qualified payoff amount cannot rely upon the accuracy of that amount if the entitled person proceeds to closing without first confirming the updated payoff amount.

3. *Act affects validity of mortgage rather than debt*. Section 202(b) only addresses the validity of the mortgage as against persons that reasonably relied upon an understated payoff amount. The Act is meant to have no effect upon the liability of any person on the underlying obligation. As subsection (c) makes clear, the extent of that liability is a function of law other than this Act. Thus, even if subsection (b) precludes a secured creditor from enforcing its security instrument after a purchaser has reasonably and detrimentally relied upon an understated payoff amount, the secured creditor can still recover the balance of the secured obligation from any person liable for that obligation under the terms of the loan documents and applicable law other than this Act.

4. *Overstated payoff amounts*. The provisions of Section 202 are directed primarily at the problem of understated payoff amounts and the reliance that such understatements can produce. On occasion, however, a secured creditor may overstate the necessary payoff amount. While this Act governs the secured creditor's obligation to record a satisfaction document, it does not govern the potential

liability of the creditor for demanding or collecting an excessive payoff amount. Existing law in each state already addresses this situation, and the Act leaves resolution of this issue to that body of law.

Under Section 203(a), the secured creditor's responsibility to submit a satisfaction document for recording is triggered by the full payment or performance of the secured obligation. Thus, if the entitled person tenders payment of the overstated payoff amount, the secured creditor has received more than full payment and Section 203(a) obligates the secured creditor to submit a satisfaction document for recording within 30 days. If applicable state law requires the secured creditor to refund the overpayment to the payor (as state law typically does), then the payor may recover the overpayment from the secured creditor pursuant to that applicable law. Likewise, if the secured creditor knew that the payoff amount was overstated and accepted full payment of that amount without disclosure to the payor, and applicable state law treats such conduct as an unfair or deceptive trade practice, the payor could pursue its remedies under that law.

In some cases, the applicable documents governing a mortgage loan may contain a provision purporting to excuse the secured creditor from refunding overpayments below a *de minimis* threshold. The enforceability of such a provision is left to applicable law other than this Act.

5. *Illustrations.* The application of this subsection is demonstrated by the following illustrations:

> *Illustration 1*. Heinsz owned Blackacre, a home subject to a recourse mortgage held by First Bank. Heinsz contracted to sell Blackacre to Waldman for $100,000, with a closing scheduled for May 1. On April 10, Heinsz obtained a payoff statement from First Bank indicating that Heinsz owed an outstanding balance of $80,000. The statement qualified the accuracy of the payoff amount, but contained instructions to permit Heinsz to obtain an updated payoff amount via First Bank's website on the payoff date. On May 1, Heinsz

obtained an updated payoff amount of $80,450 from the First Bank website, and communicated the updated payoff amount to Waldman. Waldman completed the purchase, and the settlement agent handling the closing paid $80,450 to First Bank pursuant to the updated payoff amount. In fact, the updated payoff amount was inaccurate. The correct balance was $80,800, and reflected an additional $350 properly advanced by First Bank to cure an insurance escrow shortage and maintain casualty insurance on Blackacre. Waldman did not know or have reason to know of the error. Under subsection (b), First Bank cannot enforce the mortgage against Waldman. Subject to any defenses that Heinsz could raise under law other than this Act, however, First Bank could recover the $350 from Heinsz.

Illustration 2. Same as Illustration 1, except Heinsz did not obtain an updated payoff amount on May 1. As a result, Waldman completed the purchase, and the settlement agent handling the closing paid $80,000 to First Bank pursuant to the April 10 payoff statement. First Bank is not precluded from denying the accuracy of the payoff amount as against Waldman, and can enforce the mortgage against Waldman if it does not receive payment of the additional $800 due on the mortgage loan.

Illustration 3. Heinsz owned Blackacre, a home subject to a recourse mortgage held by First Bank. Heinsz sought to refinance the mortgage through Security Bank. On April 10, Heinsz obtained a payoff statement from First Bank indicating that Heinsz owed an outstanding balance of $80,000. The statement qualified the accuracy of the payoff amount, but contained instructions to permit Heinsz to obtain an updated payoff amount via First Bank's website on the payoff date. On May 1, Heinsz obtained an updated payoff amount of $80,450 from the First Bank website and communicated the updated payoff amount to Security Bank. That same day, Heinsz completed the refinancing transaction, with Security Bank taking a new mortgage on Blackacre and paying $80,450 to First Bank pursuant to the updated payoff amount. In fact, the updated payoff amount was inaccurate. The correct balance was $80,800, and reflected an additional $350 properly advanced by First Bank to cure an insurance escrow shortage and maintain casualty insurance on Blackacre. Security Bank did not know or have reason to know of the error. First Bank cannot deny the accuracy the accuracy of the payoff amount as against Security Bank. Subject to any defenses that Heinsz could raise under law other than this Act, however, First Bank could recover the $350 from Heinsz. Moreover, if Heinsz knew or had reason to know of the escrow shortage (for example, if he had received a demand to cure the escrow shortage), Heinsz's reliance upon the understated payoff amount would not be reasonable and First Bank could enforce its mortgage lien against Heinsz. In such a situation, Section 202(b) effectively subordinates First Bank's mortgage to the new mortgage held by Security Bank.

Illustration 4. Heinsz owned Blackacre, a home subject to a home-equity line of credit held by First Bank. Heinsz contracted to sell Blackacre to Waldman for $100,000, with a closing scheduled for May 1. On April 10, Heinsz obtained a payoff statement from First Bank indicating that Heinsz owed an outstanding balance of $10,000. The statement qualified the accuracy of the payoff amount, but contained instructions to permit Heinsz to obtain an updated payoff amount via First Bank's website on the payoff date. On May 1, Heinsz obtained an updated payoff amount of $10,150 from the First Bank website. Waldman completed the purchase, the settlement agent handling the closing paid $10,150 to First Bank pursuant to the updated payoff amount, and ABC Title Insurance Co. issued an owner's policy of title insurance insuring Waldman's fee simple title. In fact, the updated payoff amount was inaccurate; it did not reflect a $250 advance obtained by Heinsz on the credit line on April 29. Neither Waldman nor ABC Title Insurance Co. knew or had reason to know of the $250 advance. First Bank cannot enforce the mortgage against Waldman. Subject to any defenses that Heinsz could raise under law other than this

Act, however, First Bank could recover the $250 from Heinsz.

Illustration 5. Heinsz owned Blackacre, a home subject to a mortgage held by First Bank. Heinsz contracted to sell Blackacre to Waldman for $100,000, with a closing scheduled for May 1. On the scheduled closing day, Heinsz obtained an updated payoff amount of $80,450 from the First Bank website, and communicated the updated payoff amount to Waldman. Waldman completed the purchase, and the settlement agent handling the closing issued a check for $80,450 to First Bank pursuant to the updated payoff amount. Subsequent to closing, the check to First Bank was dishonored, and Waldman discovered that the settlement agent had misappropriated the closing proceeds. First Bank can enforce the mortgage against Waldman. The mortgage debt was not satisfied, the payoff amount provided by First Bank was accurate, and Waldman was in a position to insist that the settlement agent provide good funds to First Bank.

Illustration 6. Heinsz owned Blackacre, a home subject to a recourse mortgage held by First Bank. Heinsz contracted to sell Blackacre to Waldman for $100,000, with a closing scheduled for May 1. On April 10, Heinsz obtained a payoff statement from First Bank indicating that Heinsz owed an outstanding balance of $80,000. The statement qualified the accuracy of the payoff amount, but contained instructions to permit Heinsz to obtain an updated payoff amount via First Bank's website on the payoff date. On May 1, Heinsz obtained an updated payoff amount of $78,500 from the First Bank website, and communicated the updated payoff amount to Waldman. The updated payoff amount reflected an intermediate prepayment by check by Heinsz; First Bank had posted the payment to Heinsz's account on April 29, but the check had not yet cleared through normal banking channels. In reliance on the updated payoff amount, Waldman completed the purchase, and the settlement agent handling the closing paid $78,500 to First Bank pursuant to the updated payoff amount. On May 3, Heinsz's prepayment check was returned for insufficient funds. First Bank cannot enforce the mortgage against Waldman, unless the updated payoff information reasonably alerted Waldman as to the fact that Heinsz had made a prepayment by check that had not yet fully cleared through normal banking channels. Subject to any defenses that Heinsz could raise under law other than this Act, however, First Bank could recover the balance of the mortgage debt from Heinsz.

Illustration 7. Heinsz owned Blackacre, a home subject to a recourse mortgage held by First Bank. Heinsz contracted to sell Blackacre to Waldman for $100,000, with a closing scheduled for May 1. On April 30, Heinsz obtained a updated payoff statement from First Bank indicating that Heinsz owed an outstanding balance of $80,000. In fact, this payoff amount was inaccurate; Heinsz owed only $78,000. Heinsz ascertained the mistake and tendered payment of $78,000. First Bank collected this payment but refused to submit a satisfaction document for recording until Heinsz paid an additional $2,000. Under Section 203(a), First Bank is obligated to submit a satisfaction document for recording, and faces potential liability under this Act if it fails to do so. *See* Sections 203(b), (c). Whether First Bank has any liability to Heinsz for demanding an excessive payoff amount is governed by applicable law other than this Act.

SECTION 35-10B-203. 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 creditor receives full payment or performance of the secured obligation. If a security instrument secures a line of credit or future advances, the secured obligation is fully performed only if included with the full payment, the secured creditor has received a notification requesting the creditor to terminate the line of credit or containing a statement sufficient to terminate the effectiveness of the provision for future advances in the security instrument.

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

(c) Except as otherwise provided in subsection ~~(d)~~ (e) and in Section 35-10B-205, a secured creditor that is required to submit a satisfaction of a security instrument for recording and does not do so by the end of the period specified in subsection (a) ~~is also~~ may also be liable to the landowner in addition to any damages recoverable under subsection (b) for five hundred dollars ($500). ~~and any~~

~~reasonable attorneys' fees and court costs incurred if, after the expiration of the period specified in subsection (a):~~

<u>(d) The landowner may recover in addition to subsection (c) any reasonable attorney's fees and court costs incurred in obtaining a satisfaction if the mortgage has not been satisfied within the initial 30 day period after the creditor receives full payment as required in subsection (a), when both of the following occur:</u>

(1) the landowner gives the creditor a notification by any method authorized by Section 35-10B-103 that provides proof of receipt, demanding that the creditor submit a satisfaction for recording; and

(2) The creditor does not submit a satisfaction for recording within 30 days after receipt of the notification <u>in section (d) (1).</u>

~~(d)~~ <u>(e)</u>Subsection (c) does not apply if the secured creditor received full payment or performance of the secured obligation before the effective date of this chapter.

~~(e)~~ <u>(f)All actions for recovery of the penalties mentioned in this chapter shall be brought in the county where the security instrument is recorded.</u>

Alabama Comment

(b) *Failure to record satisfaction after a request*. Ala. Code § 35-10-30 provides a penalty of $200 for failure to enter a satisfaction within 30 days after a request is made. However, this Act requires that satisfaction be recorded upon full payment or performance of a secured obligation. Thus, it is not necessary for a request for a satisfaction to be made in order for a satisfaction to be sent and recorded. This is the same process as provided in U.C.C. § 7-9A-513(b)(1) and U.C.C. § 7-9A-625(b) and (e). The U.C.C. permits the termination filing to be reduced from one month to 20 days when a demand is given by the debtor.

> 7-9A-513(b) *Time for compliance with subsection (a).* To comply with subsection (a), a secured party shall cause the secured party of record to file the termination statement:
>
> (1) within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or
>
> (2) if earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

Subsection (b) is also amended to make clear that damages may be sought for failing to comply with this act and that such damages include those associated with a landowner not being able to obtain financing or having to obtain financing at an increased cost, as well as a landowner's inability to complete a sale due with clear title. These damages are consistent with those allowed under the UCC at 7-9A-625.

> 7-9A-625(b) *Damages for noncompliance.* Subject to subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure

> to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) *Damages.* Alabama has kept the $200 penalty for non-satisfaction after demand for nonresidential mortgage and amended Ala. Code Section 35-10-30 for residential mortgages to be covered by this act. The $500 penalty for noncompliance is the same as noncompliance for failure to issue a U.C.C. termination statement.

> 7-9A-625(e) *Statutory damages: Noncompliance with specified provisions.* In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover $500 in each case from a person that:
>
> (4) fails to cause the secured party of record to file or send a termination statement as required by Section 7-9A-513(a) or (c).

(d) Subsection (d) was added to provide for attorney fees and court costs necessary to obtain a satisfaction only if the creditor has failed to act in the initial thirty day period after receiving full payoff of the mortgage and further failed to act within a second 30 day period following written notice from the landowner that the mortgage has not been satisfied. The act does not provide for the debtor to recover as a minimum the return of all interest plus 10% as does the UCC § 7-9A-625(c)(2). This act does provide that before attorney's fees are allowed, the creditor who has not satisfied the mortgage within 30 days after receiving full payment must be given an additional 30 days written notice to satisfy. Attorney's fees are allowed only when the creditor has not satisfied the mortgage before the expiration of the second 30 days.

(f) This act adds the requirement that enforcement of the penalties in the act be brought where the land is located to prevent forum shopping.

Comment

1. *Obligation to record satisfaction upon full performance*. Subsection (a) provides that the secured creditor has an affirmative obligation to submit for recording a satisfaction of a security instrument within 30 days after full payment or performance of the secured obligation. If the secured creditor fails to satisfy this obligation, subsection (b) renders the creditor liable for actual damages caused by its failure, but not punitive damages other than the statutory penalty authorized by subsection (c). The exercise of this remedy is subject to the normal rules of pleading and proof.

2. *Liability for statutory penalty and attorney's fees*. Subsection (c) authorizes statutory damages of $500, and reimbursement of reasonable attorney's fees, against a secured creditor that fails to comply with the obligation to record a timely satisfaction of a security instrument. The landowner may recover this sum in addition to any actual damages recoverable under subsection (b). This provision is conceptually similar to U.C.C. Section 9-625(e)(4), which provides for a minimum statutory damage recovery whenever an Article 9 secured party fails to provide a termination statement in a timely manner. Potential liability for statutory damages and attorney's fees (in addition to any actual damages) should provide secured creditors with appropriate incentives to take steps to record satisfactions in a timely manner.

The landowner may not recover statutory damages and attorney's fees under subsection (c) unless the landowner first gives notification to the secured creditor, by a method authorized by Section 103 that also provides proof of receipt, demanding that the secured creditor submit a satisfaction document for recording within 30 days of the notification. The requirement for proof of receipt serves to ensure that the notification will be given in a manner that will serve to alert the secured creditor's administrative staff as to the potential legal significance of the notification, thereby facilitating the creditor's ability to respond promptly to the notification. If the landowner fails to provide this notification, the landowner may still recover damages for any actual loss caused by the secured creditor's failure to record a timely satisfaction, but cannot collect statutory damages or attorney's fees.

The landowner may not give the notification required by subsection (c) until after the 30-day period set forth in subsection (a) has expired. Any such notification given to the secured creditor contemporaneous with a payoff, or within the first 30 days following payment of the secured obligation, is ineffective. Effectively, this means that a secured creditor cannot be held liable for statutory damages and attorney's fees without having had a minimum of 60 days in which to record a satisfaction.

3. *Payoffs prior to effective date of this Act*. Under subsection (d), the secured creditor is not liable for statutory damages or attorney's fees under this Act if the secured obligation was satisfied prior to the effective date of this Act. Liability for statutory damages and attorney's fees under this Act is limited to situations where payoff occurred following the effective date of this Act.

At present, existing mortgage satisfaction statutes in many states impose penalties upon lenders who fail to record timely satisfactions. These statutes would continue to apply to a lender that received full payment of a mortgage obligation prior to the effective date of this Act but failed to record a timely satisfaction.

4. *Servicer's liability as "secured creditor."* In many cases, secured creditors will delegate responsibility for servicing mortgage loans, including the responsibility to record satisfactions of security instruments. In these cases, the Act treats the servicer as a "secured creditor," and the landowner thus could hold the servicer liable under the terms of the Act. Such delegations of authority do not automatically relieve the delegating secured creditor of its obligations under the Act.

5. *Disputes over whether full performance received*. Under the Act, the secured creditor must submit a satisfaction for recording if it has received full payment or performance of the secured obligation. The mere existence of a dispute over the balance of the secured obligation does not by itself toll the applicable 30-day grace

periods established by this section. If the secured creditor does not submit a satisfaction for recording within 30 days, the secured creditor bears the risk that a court might later conclude that the landowner did in fact tender full payment of the secured obligation and that the secured creditor should have recorded a satisfaction. *See* Section 202, Comment 5, Illustration 7.

6. *Fees for preparing and recording satisfaction*. This Act leaves undisturbed any existing laws with respect to the secured creditor's ability to charge a fee for the preparation and recording of a satisfaction. Statutes in some states authorize the lender to charge a specified or reasonable fee to cover expenses of preparation and recording, while statutes in other states obligate the lender to provide the satisfaction without charge.

7. *Landowner entitled to damages*. Under the Act, the "landowner" is the person entitled to collect actual and/or statutory damages in the event that a secured creditor fails to record a timely satisfaction. In this context, this means the landowner at the time of the secured creditor's failure to record a timely satisfaction. For example, suppose that Heinsz owns Blackacre, a home that is subject to a mortgage held by First Bank. Heinsz sells the home to Waldman. At the closing, Heinsz pays to First Bank the amount necessary to satisfy the balance of the mortgage debt, but First Bank fails to record a satisfaction within the 30 days following closing. For purposes of First Bank's liability under this section, Waldman is the landowner.

In some limited circumstances, a person other than the landowner could have standing to pursue a claim for damages under this section. For example, in the above hypothetical, if at closing Waldman assigned to Heinsz any claim against First Bank based upon First Bank's failure to record a timely satisfaction, then Heinsz may assert Waldman's status as a landowner under this Act. Likewise, if Heinsz paid damages to Waldman to settle a deed warranty claim arising because of First Bank's failure to record a timely satisfaction, Heinsz would be subrogated to Waldman's status as the landowner for the purpose of recovering damages from First Bank as permitted by this section.

SECTION 35-10B-204. FORM AND EFFECT OF SATISFACTION.

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

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

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

~~(3) Contains a legal description of the real property identified in the security instrument, but only if a legal description is necessary for a satisfaction to be properly indexed;~~

~~(4)~~ (3) Contains language terminating the effectiveness of the security instrument.

~~(5)~~(4) Is signed by the secured creditor or the secured creditor's authorized agent and acknowledged as required by law for a conveyance of an interest in real property.

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

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

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

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

Alabama Comment

(a)(2) *Person signing the satisfaction.* A satisfaction of a security instrument must state that the person signing the satisfaction is the secured creditor. Alabama provides that if an authorized agent signs the satisfaction, the satisfaction must state that the agent is signing as agent for the secured creditor and has authority to execute the release.

(a)(3) *Legal description.* In Alabama, it is not necessary for a legal description of the real property identified in the security instrument to be included in the satisfaction document. Alabama omits the Uniform Act's (a)(3) and renumbers accordingly.

(b) *Appropriate governmental office for recording satisfaction.* Unless any of the three exceptions provided in (b) are present, satisfactions in Alabama shall be accepted by the judge of probate for the county in which the property is located.

Comment

1. *Alternative methods of evidencing satisfaction*. The Act is not intended to provide the sole mechanism for effecting the satisfaction of a security instrument. For example, in some states, a secured creditor can present to the recording officer an affidavit that instructs the officer to enter a notation of satisfaction in the margin of the record on the page on which the security instrument appears in the record. Unless a state chooses to repeal a statutory provision authorizing another method of effecting a satisfaction, a secured creditor could satisfy its obligation to satisfy the security instrument by complying with that statute.

2. *Minimum content for satisfaction document*. Subsection (a) is intended to foster uniformity by specifying minimal standard information for a recorded satisfaction. This should facilitate the development of standard satisfaction forms in states adopting the Act. Under the Act, a satisfaction document must identify the security instrument, the original parties to that instrument, and the recording data and office in which it was recorded. The satisfaction document must also contain language terminating the instrument's effectiveness, as well as a statement that the person signing the document is the secured creditor. If a legal description is necessary for the recording officer to properly index a satisfaction document, then the document must contain a legal description of the real property covered by the security instrument; otherwise, the satisfaction document need not contain a legal description. Thus, if a particular county uses tract indexing, the satisfaction document must include a tract description; by contrast, in a county that uses grantor-grantee indexing, a legal description is unnecessary for proper indexing and may be omitted. Finally, the satisfaction document must be signed by the secured creditor and acknowledged as required by law for an effective conveyance of an interest in real property.

Once recorded, a document complying with subsection (a) operates as a satisfaction in favor of persons entitled to the benefit of the state's recording act. A document that does not substantially comply with subsection (a) does not constitute a satisfaction under this Act.

3. *Grounds for rejection by recorder*. A frequent cause of delay in recording a mortgage satisfaction is the recorder's rejection of a satisfaction document tendered by the secured creditor or its agent. Such a rejection is appropriate if a satisfaction lacks the necessary formalities for a recordable document (such as a proper acknowledgment), if the satisfaction is not tendered with the appropriate recording fee, or if the satisfaction document is submitted in a form or medium not authorized by the recording office.

In some cases, however, recorders reject satisfaction documents because they lack information that is practically unnecessary for a satisfaction to serve the notice function required of the recording system. For example, some recorders will reject a satisfaction that does not include a legal description of the affected real property. However, if a satisfaction contains the recording data for the security instrument being released, the satisfaction need not contain a legal description of the real estate unless that description is necessary for indexing the document. In a county that uses grantor-grantee indexing, rejection of a satisfaction document for lack of a legal description serves no useful purpose.

Subsection (b) thus limits the discretion of the recorder in rejecting a satisfaction document. If such a document is submitted to the recorder in a manner that meets the recorder's technical recording formalities, along with the appropriate filing fee, the recorder may not reject the satisfaction document. Thus, a recorder in a county that has not yet authorized electronic recording may properly reject a satisfaction document submitted electronically. Likewise, a recorder in a county that requires recordable documents to be submitted on 8-1/2" by 11" paper with 1" margins may properly reject a satisfaction that is submitted on legal-size paper, or with insufficient margins. Obviously, a recorder may properly reject a satisfaction that contains no acknowledgment or an acknowledgment that fails to comply with state law other than this Act. However, the recorder may not reject a satisfaction document because it fails to contain information that is not required by subsection (a). Thus, for example, a recorder may not reject a satisfaction because it fails to indicate the name of the attorney who drafted it, or because it does not contain a legal description of the real property if that description is unnecessary to ensure proper indexing of the document.

Subsection (b) addresses a particular problem that results in some jurisdictions where a mortgagee attempts to record a satisfaction of a mortgage that it holds via one or more unrecorded assignments. In some jurisdictions, recording officers refuse to accept a satisfaction for recording if the secured creditor is not an original party to the security instrument, unless the satisfaction document recites the chain of recorded assignments by which the secured creditor claims an interest in the real property. Under subsection (b), the recorder may not reject a satisfaction document, even if it does not recite the chain of recorded assignments by which the secured creditor acquired its interest. This provision is critical to advance the Act's objective of providing a landowner with an efficient title-clearing mechanism. In many cases, it would be either prohibitively expensive or time-consuming for the secured creditor to locate and record the complete chain of intermediate assignments of the security instrument. In other cases, intermediate assignments have been lost or intermediate assignors are defunct, making it practically impossible to reconstruct a complete record chain of assignments.

SECTION 35-10B-205. LIMITATION OF SECURED CREDITOR'S LIABILITY.

A secured creditor is not liable under this chapter if it <u>has done all of the following</u>:

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

(2) Complied with that procedure in good faith.

(3) ~~Was unable~~ <u>Failed</u> to comply with its obligations <u>either</u> because of circumstances beyond its control <u>or as a result of a bona fide error, notwithstanding maintenance of reasonable procedures of compliance.</u>

Alabama Comment

In order for a secured creditor to take advantage of this safe harbor it must: (1) have established a reasonable procedure to achieve compliance with its obligations; (2) complied with these procedures in good faith; and (3) fail to comply with its obligations because of circumstances beyond its control or as a result of a bonafide error notwithstanding the maintenance of reasonable procedures of compliance.

Alabama departs from the Uniform Act's version in that Alabama substitutes "fails" for "was unable" and specifies that the failure must be the result of a bonafide error that occurred in spite of the maintenance of a reasonable procedure to achieve compliance with its obligations.

Comment

The Act imposes potential liability on a secured creditor that fails to provide a payoff statement in a timely manner [Section 201(i)] or to submit for recording a timely satisfaction [Section 203(b), (c)]. In some circumstances, however, a secured creditor's failure to comply with these obligations may be due to circumstances legitimately beyond its control. Thus, Section 205 provides a secured creditor with a defense to liability if the creditor has established reasonable procedures to achieve timely compliance with its obligations under this Act and has complied with those procedures in good faith, but cannot comply because of circumstances beyond the control of the secured creditor.

The Act does not exhaustively specify what procedures are "reasonable" or what circumstances are beyond the control of the secured creditor, but leaves the question to judicial resolution. The application of Section 205 is demonstrated by the following illustrations:

> *Illustration 1*. Heinsz owns Blackacre, a home subject to a mortgage in favor of First Bank. Upon receiving full payment of the mortgage debt, First Bank follows its standard procedures for preparing and recording a satisfaction, and within 20 days deposits with Federal Express a satisfaction document that is in proper form, accompanied by the appropriate fee, and addressed to the appropriate recording officer. Federal Express fails to deliver the document to the recording official before the expiration of the 30-day period in section 203(a) due to a traffic accident that resulted in the destruction of the document. If First Bank can demonstrate that it had timely deposited the satisfaction document to the recorder's proper address, and if First Bank acts to submit for recording a new satisfaction document within a reasonable time upon being notified that the first satisfaction document was never recorded, First Bank is not liable to Heinsz.

> *Illustration 2*. Heinsz owns Blackacre, a home subject to a mortgage in favor of First Bank. Upon receiving full payment of the mortgage debt, First Bank follows its standard procedures for preparing and recording a satisfaction, and deposits with the United States Postal Service a satisfaction document that is in proper form and addressed to the appropriate recording officer. The document is accompanied by an amount that was sufficient to satisfy the necessary recording fees and taxes as of the time First Bank deposited the document into the mail. While the document is in transit, however, the applicable recording fee increases; as a result, the recording officer rejects the document because it is not accompanied by the sufficient recording fee. If First Bank can demonstrate that it did not know or have reason to know of the pending recording fee change at the time it deposited the satisfaction document into the mail, and if First Bank acted within a reasonable time to tender the correct recording fee upon learning of the rejection, First Bank is not liable to

Heinsz. By contrast, if First Bank knew or had reason to know of the pending recording fee change, First Bank is liable to Heinsz as provided in Section 203.

Illustration 3. Heinsz owns Blackacre, a home subject to a mortgage in favor of First Bank. Upon receiving full payment of the mortgage debt, First Bank follows its standard procedures for preparing and recording a satisfaction, and deposits with the United States Postal Service a satisfaction document that is in proper form, accompanied by the appropriate fee, and addressed to the appropriate recording officer. The postal service fails to deliver the document to the recording official before the expiration of the 30-day period in section 203(a), however, because the document was routed through a post office facility that was shut down indefinitely due to the presence of mail contaminated by anthrax. If First Bank can demonstrate that it had timely deposited the satisfaction document to the recorder's proper address, First Bank is not liable to Heinsz.

Illustration 4. Heinsz owns Blackacre, a home subject to a mortgage in favor of First Bank. Heinsz makes full payment of the mortgage debt to First Bank at a time when prevailing mortgage interest rates are low and First Bank is experiencing high refinancing volume. First Bank does not maintain a sufficient administrative staff to handle such a volume of satisfactions, and First Bank neither hires additional staff nor retains an outside contractor to facilitate its compliance with its obligations under this Act. As a result, First Bank does not submit a satisfaction of Heinsz's mortgage within the 30-day period specified in Section 203(a). Because the size of its administrative staff is within its control, First Bank has liability to Heinsz as provided in Section 203(b).

Illustration 5. First Bank makes a loan to Heinsz, secured by a mortgage on Heinsz's home Blackacre. Upon closing the mortgage loan, First Bank sends the mortgage to the appropriate recording officer accompanied by the appropriate recording fee. Four months later, Heinsz pays off the mortgage debt in full in conjunction with a refinancing. However, because of an approximately eight-month backlog at the recording office, the recording officer still had not recorded First Bank's mortgage as of the time of the payoff. As a result, First Bank lacks the recording data necessary to prepare the satisfaction document, and more than 30 days passes before the recorder finally records the mortgage and returns a copy to First Bank. If First Bank can demonstrate that it has established reasonable procedures to comply with its obligation to record timely mortgage satisfactions, and if First Bank acts promptly to record a satisfaction document once it finally receives the appropriate recording data, First Bank is not liable to Heinsz.

ARTICLE 3

SATISFACTION BY AFFIDAVIT

SECTION 35-10B-301. DEFINITION; ELIGIBILITY TO SERVE AS SATISFACTION AGENT; REGULATION OF SATISFACTION AGENTS.

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

(b) <u>Either of the</u> following may serve as a satisfaction agent under this article:

(1) A title ~~insurance company, acting directly or through an agent authorized to sign and submit for recording an affidavit of satisfaction; or~~ insurer as defined in Section 27-25-3.

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

~~[(c) The [name of statewide governmental agency] may establish registration, bonding, and other standards for conducting business as a satisfaction agent.]~~

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

Alabama Comments

"Title Insurance Agent" and "Title Insurer" are defined in Ala. Code § 27-25-3(7) and (9).

(a) *Title insurer or insurer*. A title insurer or insurer, under Ala. Code 1975 § 37-25-3 (9), is a company organized under the laws of this state or licensed in this state for the purpose of transacting as insurer the business of title insurance, as defined in Section 27-5-10. Also included is any foreign or alien title insurer licensed to be engaged in this state in the business of title insurance, as defined in Section 27-5-10.

(b) *Satisfaction agents.* Under this article, only a title insurance company, as defined by the Alabama Code, or an attorney, licensed to practice law in this state and in good standing, may serve as satisfaction agents. No person is required to agree to serve as a satisfaction agent by this act. Alabama omits the section of this article providing for a statewide governmental agency to establish registration, bonding, and other standards for conducting business as a satisfaction agent.

(c) Subsection (c) was added to make clear no one is required to be a satisfaction agent.

Comment

1. *Identifying a "satisfaction agent."* Article 3 provides a "self-help" procedure that allows a landowner to take steps to satisfy a security instrument in cases where the secured creditor has failed to fulfill its obligation to record a timely satisfaction. This Article creates a process that, if complied with, permits a landowner to have a "satisfaction agent" submit for recording an affidavit of satisfaction of a security instrument. Under Section 306, this affidavit of satisfaction constitutes a legal satisfaction of the security instrument.

In the event that the satisfaction agent wrongfully records an affidavit of satisfaction, Section 307 provides that the satisfaction agent is liable to the secured creditor for damages caused by the wrongful recording. As a result, the Act provides that a "satisfaction agent" must be either a title insurance company (acting directly or through an agent authorized to execute affidavits of satisfaction) or a licensed attorney in good standing. This limitation increases the likelihood that affidavits of satisfaction will be recorded only by persons who have the financial responsibility necessary to compensate a secured creditor that suffers a loss caused by the wrongful recording of an affidavit of satisfaction.

Because the satisfaction agent acts in this instance pursuant to the authority of the Act, it is irrelevant whether the satisfaction agent is named as a party in the security instrument.

2. *Scope*. The provisions of this Act are limited to security instruments covering "residential real property," meaning real property that is used primarily for personal, family, or household purposes and is improved by one to four dwelling units. This limitation effectively limits the "self-help satisfaction" provisions of

Article 3 to the consumer mortgage context. An owner of nonresidential real property who is unable to obtain a timely satisfaction of its mortgage and wishes to clear title must do so by bringing a quiet title action.

SECTION 35-10B-302. AFFIDAVIT OF SATISFACTION: NOTIFICATION TO SECURED CREDITOR.

(a) If a secured creditor has not submitted for recording a satisfaction of a security instrument within the period specified in Section 35-10B-203(a), a satisfaction agent acting for and with authority from the landowner may give the secured creditor a notification that the satisfaction agent intends to submit for recording an affidavit of satisfaction of the security instrument. 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, and the recording data for, 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 or, at the time the security interest was made, was 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.

(4) A statement that a satisfaction of the security instrument does not appear of record <u>in the chain of title</u>.

(5) A statement that the satisfaction agent, acting with the authorization of the <u>land</u>owner of the real property described in the security instrument, intends to sign and submit for recording an affidavit of satisfaction of the security instrument unless, within 30 days after the effective date of the notification, <u>any of the following occur</u>:

(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.

(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.

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

~~(c) This [act] does not require a person to agree to serve as a satisfaction agent.~~

Alabama Comment

(a) *Affidavit of Satisfaction.* If a secured creditor has not submitted a satisfaction for recording within the specified time periods in 35-10A-203(a), notification may be given to the secured creditor that the satisfaction agent intends to submit for recording an affidavit of satisfaction of the security instrument. The notification must conform to the standards set out in subsection (a) of this section.

(a)(3)(A) *Residential Real Property.* The Uniform Act requires that there be a statement that the satisfaction agent has reasonable grounds to believe that the real property described in the security instrument is residential real property. Alabama adds that the satisfaction agent may make a statement that at the time the security interest was made, the real property was residential real property.

(a)(4) *No satisfaction of record appears in chain of title.* The

Uniform Act provides there must be a statement that a satisfaction of the security instrument does not appear of record. Alabama adds after "record" the further statement "in the chain of title".

(c) *No requirement to serve as a satisfaction agent.* Alabama omits this portion of this section. Instead, this statement was added to the preceding section, 35-10B-302.

Comment

1. *Identifying a "satisfaction agent."* Article 3 provides a "self-help" procedure that allows a landowner to take steps to satisfy a security instrument in cases where the secured creditor has failed to fulfill its obligation to record a timely satisfaction. This Article creates a process that, if complied with, permits a landowner to have a "satisfaction agent" submit for recording an affidavit of satisfaction of a security instrument. Under Section 306, this affidavit of satisfaction constitutes a legal satisfaction of the security instrument.

In the event that the satisfaction agent wrongfully records an affidavit of satisfaction, Section 307 provides that the satisfaction agent is liable to the secured creditor for damages caused by the wrongful recording. As a result, the Act provides that a "satisfaction agent" must be either a title insurance company (acting directly or through an agent authorized to execute affidavits of satisfaction) or a licensed attorney in good standing. This limitation increases the likelihood that affidavits of satisfaction will be recorded only by persons who have the financial responsibility necessary to compensate a secured creditor that suffers a loss caused by the wrongful recording of an affidavit of satisfaction. However, because of the potential concern that satisfaction agents be of sufficient financial responsibility, an appropriate state agency may wish to establish registration, bonding, or other standards for conducting business as a satisfaction agent.

Because the satisfaction agent acts in this instance pursuant to the authority of the Act, it is irrelevant whether the satisfaction agent is named as a party in the security instrument.

2. *Scope*. The provisions of this Act are limited to security instruments covering "residential real property," meaning real property that is used primarily for personal, family, or household purposes and is improved by one to four dwelling units. This limitation effectively limits the "self-help satisfaction" provisions of Article 3 to the consumer mortgage context. An owner of nonresidential real property who is unable to obtain a timely satisfaction of its mortgage and wishes to clear title must do so by bringing a quiet title action.

SECTION 35-10B-303. AFFIDAVIT OF SATISFACTION: AUTHORIZATION TO SUBMIT FOR RECORDING.

(a) Subject to subsections (b) and (c), a satisfaction agent may sign and submit for recording an affidavit of satisfaction of a security instrument complying with Section 35-10B-304 if either of the following occur:

(1) ~~The secured creditor has not, to the knowledge of the satisfaction agent, submitted for recording~~ There does not appear of record a satisfaction of a security instrument within 30 days after the effective date of a notification complying with Section 35-10B-302(a).

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

(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 Section 35-10B-302(a)(5)b. stating that the secured obligation remains unsatisfied.

(c) If a satisfaction agent receives a notification under Section 35-10B-302(a)(5)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 Section 35-10B-302 with respect to the identified assignee.

Alabama Comment

(a) *Affidavit of satisfaction*. Under certain circumstances, it is permissible for a satisfaction agent to sign and submit for recording an affidavit of satisfaction of a security instrument. These circumstances are listed above, and the only change Alabama makes from the Uniform Act's version is that Alabama omits the provision dealing with the satisfaction agent's knowledge of whether the secured creditor has submitted a satisfaction for recording. Instead, Alabama only requires that no satisfaction of the security instrument appear of record.

Before a line of credit is satisfied under this Act, one must comply with § 35-10B-201.

Comment

1. *Authority to record affidavit of satisfaction*. A satisfaction agent may sign and submit for recording an affidavit of satisfaction in two circumstances: (1) under subsection (a)(1), if the agent properly gave notification under Section 302(a) and the secured creditor failed to reply within 30 days after the effective date of the notification; and (2) under subsection (a)(2), if the secured creditor authorizes it to do so. If, within the 30-day period following the satisfaction agent's notification, the secured creditor gives a notification to the satisfaction agent objecting that the secured obligation remains unsatisfied, the satisfaction agent has no authority to proceed under this Article and may not submit for recording an affidavit of satisfaction.

Although a secured creditor's objection may prevent the satisfaction agent from using Article 3's "self-help" satisfaction procedure, it does not shield that secured creditor from potential liability under Section 203 if the secured creditor has in fact received full payment of the secured obligation. If subsequent litigation established that the secured creditor was legally obligated to record a satisfaction (*i.e.*, because it had received and accepted full payment of the secured obligation), but failed to do so in a timely manner, the secured creditor will have violated its obligations under the Act and the landowner may recover damages as provided in Section 203.

2. *Notified creditor has assigned security interest*. In some cases, a satisfaction agent may give a notification under Section 302(a) and receive a response indicating that the security interest has

been assigned. If the response identifies the name and address of the assignee, the satisfaction agent cannot use the provisions of Article 3 without giving the identified assignee a notification as required by Section 302(a) and an additional 30-day grace period in which to record a satisfaction.

SECTION 35-10B-304. AFFIDAVIT OF SATISFACTION: CONTENT.

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

(1) Identify the original parties to the security instrument, the secured creditor, and 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;~~

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

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

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

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

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

(7) State either of the following:

(A) That more than 30 days have elapsed since the effective date of that notification, ~~and the person signing the affidavit has no knowledge that the secured creditor has submitted a satisfaction for recording and~~ no satisfaction has been recorded, and the satisfaction agent has not received a notification that the secured obligation remains unsatisfied.

(B) That the secured creditor authorized the person signing the affidavit to sign and record an affidavit of satisfaction.

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

Alabama Comment

(1) *Legal description.* An affidavit of satisfaction of a security instrument must contain various elements. In Alabama it is not necessary that the affidavit of satisfaction contain a legal description of the real property identified in the security instrument.

(3) *Residential property.* The Affidavit must state the property is residential real property or was residential property at the time of the execution of the mortgage.

(7)(a) *Statement of elapsed time.* The affidavit must state: (1) that more than 30 days have elapsed since the effective date of the notification: (2) that no satisfaction has been recorded, and that no notification that the secured obligation remains unsatisfied has been received. Alabama differs from the Uniform Act. Instead of requiring the person signing the affidavit to state he has "no knowledge that the secured creditor has submitted a satisfaction for recording," Alabama substitutes the requirement that "no satisfaction has been recorded."

(8) *Sworn or affirmed.* In addition to the affidavit being signed and acknowledged as required by law for a conveyance of an interest in real property, Alabama also requires that the affidavit be sworn or affirmed.

Comment

Affidavit of satisfaction: contents. Section 304 sets forth the information necessary for a sufficient affidavit of satisfaction. An affidavit that does not contain the information required by subsection (a) does not operate as a satisfaction of the security instrument under Section 306, even if it is accepted for recording.

Section 304 provides that an affidavit of satisfaction need not include a legal description of the real property covered by the security instrument, unless a real property description is necessary for proper indexing (such as in a jurisdiction that uses tract indexing). In a jurisdiction that uses grantor-grantee indexing, a legal description is not necessary for proper indexing and may be omitted.

SECTION 35-10B-305. AFFIDAVIT OF SATISFACTION: FORM.

No particular phrasing of an affidavit of satisfaction is required. The following form of affidavit, when properly completed, is sufficient to satisfy the requirements of Section 35-10B-304:

Prepared by ___________________ State of Alabama
Address ______________________ County of________________
_____________________________ ________________________
(Date of Affidavit)

____
Source of Title:
Mortgagor____________________________
Mortgagee____________________________
Mortgage Recorded: Book_____ Page______
Instrument/Document No.________

AFFIDAVIT OF SATISFACTION

~~The undersigned hereby states as follows~~:

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 box]

☐ an officer or ~~a duly appointed~~ 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 instrument (the “security instrument”) currently held by ______________ (the “secured creditor”):

Title of security instrument:

Original parties to security instrument:

County and state of recording:

Recording data for security instrument:

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

3. I have reasonable grounds to believe that:

a. the secured creditor has received full payment or performance of the balance of the obligations secured by the security instrument; and

b. the real property described in the security instrument constitutes residential real property or was residential real property at the time the security interest was made.

4. With the authorization of the landowner of the real property described in the security instrument, I gave notification to the secured creditor by ____ [method authorized by Section 103 that provides proof of receipt] ____ that I would sign and record an affidavit of satisfaction of the security instrument if, within 30 days after the effective date of the notification, the secured creditor did not submit a satisfaction of the security interest for recording or give notification that the secured obligation remains unsatisfied.

5. [check appropriate box]

☐ (a) The 30-day period identified in paragraph 4 has elapsed, ~~I have no knowledge that~~

(b) the secured creditor has not recorded ~~submitted~~ a satisfaction, ~~for recording~~, and

(c) I have not received notification that the secured obligation remains unsatisfied, and

(d) I have not received notification the secured obligation had been assigned

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

____

(Signature of Satisfaction Agent)

I, ..., a Notary Public, in and for said County in said State, hereby certify that . . . ., whose name as . . . . corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the affidavit of Satisfaction of Mortgage, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the . . . . .day of . . . . , 20. . . . . .

____

Notary Public

Alabama Comment

Alabama amended the "Affidavit of Satisfaction" to reflect the changes in this act from that in the Uniform Act.

Comment

Section 305 provides a safe-harbor form that, when properly completed, satisfies the requirements of Section 304.

SECTION 35-10B-306. AFFIDAVIT OF SATISFACTION: EFFECT

(a) Upon recording, an affidavit substantially complying with the requirements of Section 35-10B-304 constitutes ~~a satisfaction of the security instrument~~ <u>a termination of the security interest</u> described in the affidavit.

(b) 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~~ <u>underlying</u> obligation.

(c) The office of the judge of probate may not refuse to accept for recording an affidavit of satisfaction of a security instrument unless <u>any of the following occur</u>:

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

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

(3) The affidavit is not signed by the satisfaction agent and acknowledged as required by ~~law for a conveyance of an interest in real property~~ Section 35-10B-304.

Alabama Comment

(a) *Effect of recording affidavit of satisfaction*. The Uniform Act's version of this Act states that, upon recording, an affidavit substantially complying with the requirements of Section 35-10B-304 will constitute a satisfaction of the security instrument described in the affidavit. Alabama has changed this language somewhat, and instead of the recorded affidavit constituting a satisfaction of a security instrument, it constitutes a termination of the security interest described in the affidavit.

(c) *Refusal to accept for recording an affidavit of satisfaction*. The appropriate office in which to submit an affidavit of satisfaction for recording in Alabama is the Office of the Judge of Probate for the county where the real property described in the security instrument is found in §35-4-50. The Office of the Judge of Probate may not refuse to accept the affidavit unless: (1) the appropriate recording fees and taxes were not tendered; (2) the method or medium of the submission is not authorized by the judge of probate; or (3) the affidavit is not signed by the satisfaction agent and acknowledged as required in §35-10B-304.

Comment

1. *Effect of recording affidavit of satisfaction.* Upon recording, an affidavit that complies with Section 304 operates as a satisfaction of the security instrument in favor of persons entitled to the benefit of the state's recording act. This ensures that the affidavit of satisfaction fulfills the Act's necessary "title-clearing" function, especially with respect to the problem caused by unrecorded mortgage assignments.

For example, suppose that Heinsz owns Blackacre, a home that he acquired via a mortgage loan from XYZ Mortgage Co. XYZ Mortgage Co. subsequently transferred the mortgage to First Bank by means of an unrecorded assignment. Heinsz believes that he paid off the mortgage to First Bank two years ago; in reality, a small balance remains outstanding, and no satisfaction was ever recorded. Heinsz contracts to sell Blackacre to Waldman. Waldman objects to the continued presence of the mortgage in Heinsz's record chain of title. On behalf of Heinsz, ABC Title Insurance Company provides to First Bank a proper notification of its intention to sign and submit an affidavit of satisfaction for recording. During the following 30 days, First Bank neither submits a satisfaction for recording nor objects that the secured obligation remains unsatisfied. Accordingly, ABC Title Insurance Company signs and records an affidavit of satisfaction complying with Section 304. Based on this affidavit, Waldman completes the purchase of Blackacre, without knowledge or reason to know of the small balance outstanding. Section 306 provides that the affidavit constitutes a satisfaction in favor of Waldman, and First Bank cannot thereafter enforce the mortgage against Waldman.

2. *Noncompliant affidavits*. An affidavit that does not substantially comply with Section 304 does not constitute a satisfaction under this Act. For example, suppose that Heinsz owns Blackacre, a home that is subject to a recorded mortgage held by First Bank. Heinsz contracts to sell Blackacre to Waldman. When a dispute arises between Heinsz and First Bank as to whether Heinsz has made full payment of the mortgage debt, Waldman objects to the continued presence of the First Bank mortgage in Heinsz's record chain of title. Heinsz then forges and records an affidavit of

satisfaction purportedly signed by an authorized agent of ABC Title Insurance Company. Waldman, unaware of Heinsz's forgery, completes the purchase of Blackacre, believing the First Bank mortgage to have been satisfied. The forged affidavit does not comply with Section 304, has no legal effect, and does not operate as a satisfaction of the First Bank mortgage in favor of Waldman, even if Waldman is a good faith purchaser for value without notice of Heinsz's conduct.

3. *Grounds for rejection by recorder*. As discussed in Section 204, a recorder may appropriately reject a satisfaction document if it lacks the necessary formalities for a recordable document (such as a proper acknowledgment), if the satisfaction is not tendered with the appropriate recording fee, or if the satisfaction document is submitted in a form or medium not authorized by the recording office. However, the Act provides that recorders should not review and reject an affidavit of satisfaction based upon its substantive content or based upon the identity of the person who currently appears to be the record holder of the security instrument. Thus, in the example in comment 1 above, the Act would not authorize the recorder to reject the affidavit of satisfaction simply because the actual secured creditor (First Bank) holds the security interest by means of an unrecorded assignment.

Likewise, the recording officer may not refuse to accept an affidavit of satisfaction for recording because the affidavit does not recite the chain of assignments by which the present secured creditor acquired its interest. This provision is critical to advance the Act's objective of providing a landowner with an efficient title-clearing mechanism. In many cases, it would be either prohibitively expensive or time-consuming for the secured creditor to locate and record the complete chain of intermediate assignments of the security instrument. In other cases, intermediate assignments have been lost or intermediate assignors are defunct, making it practically impossible to reconstruct a complete record chain of assignments.

4. *Liability of obligor*. Recording of an affidavit of satisfaction under this Act has no effect upon the enforceability of the secured obligation itself. If a satisfaction agent executes and records

an affidavit of satisfaction even though the secured creditor has not received full payment or performance of the secured obligation, nothing in the Act precludes the secured creditor from enforcing the secured obligation against any person liable for the obligation. Whether the secured creditor has in fact received full payment or performance of the secured obligation is governed by law other than this Act. Likewise, the Act does not preclude the secured creditor from enforcing any other security it may hold to secure payment or performance of the obligation (*i.e.*, security other than the real property described in the security instrument).

SECTION 35-10B-307. LIABILITY OF SATISFACTION AGENT.

(a) Except as otherwise provided in subsection (b), a satisfaction agent ~~that records~~ or any other person who executes an affidavit of satisfaction of a security instrument erroneously or 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's fees and costs.

(b) A satisfaction agent ~~that records~~ who executes an affidavit of satisfaction of a security instrument erroneously is not liable if the agent properly complied with this chapter and the secured creditor did not respond in a timely manner to the notification pursuant to Section 35-10B-302(a)(5).

(c) If a satisfaction agent ~~records an~~ or any other person who

<u>executes</u> an affidavit of satisfaction of a security instrument with knowledge that the statements contained in the affidavit are false, this section does not preclude <u>any of the following</u>:

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

(2) The secured creditor from proceeding against the satisfaction agent <u>or any other person who executes a satisfaction</u> under the law of this state other than this chapter.

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

Alabama Comment

(a) *Liability arising from erroneous affidavits.* In Alabama, unless excused by subsection (b), a satisfaction agent or any other person who executes an affidavit of satisfaction erroneously or with knowledge that the statements in the affidavit are false is liable to the secured creditor for any actual damages caused by the recording as well as reasonable attorney's fees and costs. Alabama changes "that records" to "who executes" an affidavit of satisfaction. The Uniform Act's version only recognizes the liability of satisfaction agents; Alabama adds, "any other person."

(b) *Liability excused.* If a satisfaction agent executes an affidavit of satisfaction of a security instrument erroneously, after having otherwise properly complied with this Act, and the secured creditor has not responded in a timely manner, then that satisfaction agent is not liable.

(c) *Potential consequences*. As with the other subsections within this section, it is important to note that, in Alabama, liability is incurred not when the erroneous or false affidavit is recorded but instead when it is executed. This is a change from the Uniform Act's version of this Act. Although the Uniform Act's version of this Act provides that certain consequences are not precluded for satisfaction agents who execute affidavits of satisfaction of a security instrument with knowledge that the statements contained in the affidavit are false, Alabama extends this to apply not only to satisfaction agents but also to any other person who executes such a satisfaction.

Comment

1. *Liability of satisfaction agent: erroneous affidavit*. If a satisfaction agent erroneously executes and records an affidavit of satisfaction, the secured creditor may effectively lose the ability to enforce the security instrument as a means to facilitate its collection of the remaining balance of the obligation. For example, suppose that ABC Title Company is acting as a satisfaction agent on behalf of Heinsz, who owns Blackacre subject to a recorded mortgage held by First Bank. Because it has reasonable grounds to believe that First Bank had received full payment of the mortgage debt, ABC Title Company gives to First Bank a notification of its intention to record an affidavit of satisfaction. First Bank files a timely objection, as permitted under Section 302(a)(5)(B), because the secured obligation in fact remains unsatisfied. Because a filing clerk at ABC Title Company misfiled the objection, however, ABC Title Company believes that First Bank failed to respond to the notification. As a result, after 30 days have passed, ABC Title Company records an affidavit of satisfaction. ABC Title Company's affidavit of satisfaction is erroneous, and Section 307(a) would permit First Bank to recover actual damages it suffers as a result of the recording, subject to the usual rules of pleading and proof. However, where the satisfaction agent's conduct is merely negligent, the court may not award punitive damages against the satisfaction agent.

Subsection (b) is intended to make clear that if a satisfaction agent properly gave notification to the secured creditor under Section 302(a), and the secured creditor failed to respond by objecting that the secured obligation remains unsatisfied, a satisfaction agent that has otherwise properly complied with the requirements of this Act is not liable to the secured creditor even if the creditor in fact had not received full payment of the secured obligation.

2. *Liability of satisfaction agent: knowingly false statements*. The availability of a self-help satisfaction remedy in Article 3 creates the risk that in some circumstances, a satisfaction agent may execute and record an affidavit of satisfaction with knowledge that the statements contained in that affidavit are false. Subsection (a) authorizes the award of actual damages and reasonable attorney's fees in the event of such wrongful conduct by a satisfaction agent. In order to further discourage such conduct, subsection (c) clarifies that in appropriate cases, a court may award punitive damages against such a satisfaction agent. Section 307(c) also preserves the applicability of other state civil law (such as a statute proscribing unfair or deceptive trade practices) or criminal law (such as perjury) against such conduct.

ARTICLE 4

MISCELLANEOUS PROVISIONS

SECTION 35-10B-401. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

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

SECTION 35-10B-402. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

This chapter modifies, limits, and supersedes Chapter 1A, Title 8, the Alabama Electronic Transactions Act, and the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.), but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. § 7001(c)), or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. § 7003(b)).

SECTIONS 35-10-26 AND 35-10-30 OF THE CODE OF

ALABAMA 1975, ARE AMENDED TO READ AS FOLLOWS:

§35-10-26. The payment or satisfaction of the real property mortgage debt divests the title passing by the mortgage. Payment or satisfaction of the real property mortgage debt shall not occur until there is no outstanding indebtedness or other obligation secured by the mortgage, and no commitment or agreement by the mortgagee to make advances, incur obligations or otherwise give value (collectively referred to as "extend value"), under any agreement, including, without limitation, agreements providing for future advances, open end, revolving or other lines of credit, or letters of credit. ~~Upon~~ Except as otherwise provided in Chapter 10B, the Alabama Uniform Residential Mortgage Satisfaction Act, upon the written request to satisfy a mortgage signed by the mortgagors and by all other persons who have a right to require the mortgagee to extend value or signed by other authorized representatives on behalf of the mortgagors and such other persons, which notice shall actually be served upon the mortgagee, and provided there is no outstanding obligation secured by the mortgage at that time, the mortgagee shall file a properly executed and notarized satisfaction of the mortgage or otherwise cause the mortgage to be satisfied in accordance with other applicable provisions of law. From and after such written request for mortgage satisfaction, neither the mortgagors nor any other person who signed such request, or on whose behalf such request was signed, shall have the right to request or demand that the mortgagee extend value under the mortgage or other agreements and the mortgagee shall be released from all obligations and commitments to extend value thereunder.

§35-10-30. (a) If, for 30 days after such request, the mortgagee or assignee or transferee, trustee or cestui que trust, fails to make any entry required by this article he forfeits to the party making the request ~~$200.00~~ two hundred dollars ($200) unless there is pending, or there is instituted, an action within that time, in which the fact of partial payment or satisfaction is or may be contested. In construing this article, the right of action given herein shall be considered as a personal right, and shall not be lost or waived by a sale of the property covered by the mortgage or deed of trust before a demand was made for the satisfaction to be entered upon the record.

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

(c) This section does not apply to satisfactions of residential mortgages whose penalties for failure to satisfy a mortgage are provided under Chapter 10B, the Alabama Uniform Residential Mortgage Satisfaction Act.

EFFECTIVE DATE

This act shall become effective January 1, 2010, following its passage and approval by the Governor, or its otherwise becoming law.

APPENDIX

Section 7-9A-513 Termination statement.

(a) Consumer goods. A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) the debtor did not authorize the filing of the initial financing statement.

(b) Time for compliance with subsection (a). To comply with subsection (a), a secured party shall cause the secured party of record to file the termination statement:

(1) within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) if earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

(c) Other collateral. In cases not governed by subsection (a), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no

commitment to make an advance, incur an obligation, or otherwise give value;

(2) the financing statement covers accounts or chattel paper that have been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) the debtor did not authorize the filing of the initial financing statement.

(d) Effect of filing termination statement. Except as otherwise provided in Section 7-9A-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in Section 7-9A-510, for purposes of Sections 7-9A-519(g), 7-9A-522(a), and 7-9A-523(c), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.
(Act 2001-481, p. 647, §1.)

Section 7-9A-625 Remedies for secured party's failure to comply with article.

(a) Judicial orders concerning noncompliance. If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Damages for noncompliance. Subject to subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Persons entitled to recover damages; statutory damages in consumer-goods transaction. Except as otherwise provided in Section 7-9A-628:

(1) a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and

(2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price.

(d) Recovery when deficiency eliminated or reduced. A debtor whose deficiency is eliminated under Section 7-9A-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under Section 7-9A-626 may not otherwise recover under subsection (b) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(e) Statutory damages: Noncompliance with specified provisions. In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover $500 in each case from a person that:

(1) fails to comply with Section 7-9A-208;

(2) fails to comply with Section 7-9A-209;

(3) files a record that the person is not entitled to file under Section 7-9A-509(a);

(4) fails to cause the secured party of record to file or send a termination statement as required by Section 7-9A-513(a) or (c);

(5) fails to comply with Section 7-9A-616(b)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) fails to comply with Section 7-9A-616(b)(2).

(f) Statutory damages: Noncompliance with Section 7-9A-210. A debtor or consumer obligor may recover damages under subsection (b) and, in addition, $500 in each case from a person that, without reasonable cause, fails to comply with a request under Section 7-9A-210. A recipient of a request under Section 7-9A-210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) Limitation of security interest: Noncompliance with Section 7-9A-210. If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Section 7-9A-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.