

1 AN ACT concerning mortgages.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Mortgage Act is amended by changing
5 Section 2 as follows:

6 (765 ILCS 905/2) (from Ch. 95, par. 52)

7 Sec. 2. Every mortgagee of real property, his assignee
8 of record, or other legal representative, having received
9 full satisfaction and payment of all such sum or sums of
10 money as are really due to him from the mortgagor, and every
11 trustee, or his successor in trust, in a deed of trust in the
12 nature of a mortgage, the notes, bonds or other indebtedness
13 secured thereby having been fully paid before September 7,
14 1973, shall, at the request of the mortgagor, or grantor in a
15 deed of trust in the nature of a mortgage, his heirs, legal
16 representatives or assigns, in case such mortgage or trust
17 deed has been recorded or registered, make, execute and
18 deliver to the mortgagor or grantor in a deed of trust in the
19 nature of a mortgage, his heirs, legal representatives or
20 assigns, an instrument in writing executed in conformity with
21 the provisions of this section releasing such mortgage or
22 deed of trust in the nature of a mortgage, which release
23 shall be entitled to be recorded or registered and the
24 recorder or registrar upon receipt of such a release and the
25 payment of the recording fee therefor shall record or
26 register the same.

27 Mortgages of real property and deeds of trust in the
28 nature of a mortgage shall be released of record only in the
29 manner provided herein or as provided in the Mortgage
30 Certificate of Release Act; however, nothing contained in
31 this Act shall in any manner affect the validity of any

1 release of a mortgage or deed of trust made prior to January
2 1, 1952 on the margin of the record.

3 Except in the case of a mortgage that is required to be
4 released under the Mortgage Certificate of Release Act, every
5 mortgagee of real property, his assignee of record, or other
6 legal representative, having received full satisfaction and
7 payment of all such sum or sums of money as are really due to
8 him from the mortgagor, and every trustee, or his successor
9 in trust, in a deed of trust in the nature of a mortgage, the
10 notes, bonds or other indebtedness secured thereby having
11 been fully paid after September 7, 1973, shall make, execute
12 and deliver to the mortgagor or grantor in a deed of trust in
13 the nature of a mortgage, his heirs, legal representatives or
14 assigns, an instrument in writing releasing such mortgage or
15 deed of trust in the nature of a mortgage or shall deliver
16 that release to the recorder or registrar for recording or
17 registering. If the release is delivered to the mortgagor or
18 grantor, it must have imprinted on its face in bold letters
19 at least 1/4 inch in height the following: "FOR THE
20 PROTECTION OF THE OWNER, THIS RELEASE SHALL BE FILED WITH THE
21 RECORDER OR THE REGISTRAR OF TITLES IN WHOSE OFFICE THE
22 MORTGAGE OR DEED OF TRUST WAS FILED". The recorder, or
23 registrar, upon receipt of such a release and the payment of
24 the recording or registration fee, shall record or register
25 the release. A certificate of release issued and recorded by
26 a title insurance company or its duly appointed agent
27 pursuant to the Mortgage Certificate of Release Act shall
28 satisfy the requirements of this Section 2.

29 (Source: P.A. 92-765, eff. 8-6-02.)

30 Section 10. The Mortgage Certificate of Release Act is
31 amended by changing Sections 5, 10, 15, 20, 35, 40, and 50
32 and by adding Sections 10.1 and 70 as follows:

1 (765 ILCS 935/5)

2 (Section scheduled to be repealed on January 1, 2004)

3 Sec. 5. Definitions. As used in this Act:

4 "Hold-harmless agreement" means a letter whereby a title
5 insurance company, as defined in the Title Insurance Act,
6 agrees to indemnify another title insurance company preparing
7 to insure a present transaction that the indemnifying title
8 insurance company has previously insured over without taking
9 an exception to its title insurance policy for matters
10 remaining of record, such as a previously paid but unreleased
11 mortgage. A model form of a hold-harmless agreement is set
12 forth in Section 70 of this Act.

13 "Mortgage" means a mortgage or mortgage lien on an
14 interest in one-to-four family residential real property in
15 this State given to secure a loan in the original principal
16 amount of less than \$500,000. Trust deeds are not included.

17 "Mortgagee" means either: (i) the grantee of a mortgage;
18 or (ii) if a mortgage has been assigned of record, the last
19 person to whom the mortgage has been assigned of record.

20 "Mortgage servicer" means the last person to whom a
21 mortgagor or the mortgagor's successor in interest has been
22 instructed by a mortgagee to send payments on a loan secured
23 by a mortgage. A person transmitting a payoff statement is
24 the mortgage servicer for the mortgage described in the
25 payoff statement.

26 "Mortgagor" means the grantor of a mortgage.

27 ~~"Notice-of-intention-to-file-certificate-of-release"~~
28 ~~means-a-statement-from-a-title-insurance-company-or-title~~
29 ~~insurance-agent-to-the-person-to-whom-payment-of-the-loan~~
30 ~~secured-by-the-mortgage-was-made-in-accordance-with-the~~
31 ~~payoff-statement-of-the-intention-to-record-a-certificate-of~~
32 ~~release.~~

33 "Payoff statement" means a statement for the amount of
34 the (i) unpaid balance of a loan secured by a mortgage,

1 including principal, interest, and any other charges due
2 under or secured by the mortgage; and (ii) interest on a per
3 day basis for the unpaid balance.

4 "Record" means to deliver the certificate of release for
5 recording with the county recorder.

6 "Title insurance agent" has the same meaning ascribed to
7 it as in Section 3 of the Title Insurance Act.

8 "Title insurance company" has the same meaning ascribed
9 to it as in Section 3 of the Title Insurance Act.

10 (Source: P.A. 92-765, eff. 8-6-02.)

11 (765 ILCS 935/10)

12 (Section scheduled to be repealed on January 1, 2004)

13 Sec. 10. Mortgage presently being paid off. Receipt of
14 payment pursuant to the lender's written payoff statement
15 shall constitute authority to record a certificate of
16 release. ~~Content-and-delivery-of-notice-of-intention-to-file~~
17 ~~certificate-of-release. (a)-The-Notice-of-intention-to-file-a~~
18 ~~certificate--of--release--shall state--that--if--the---title~~
19 ~~insurance--company--or-title-insurance-agent-does-not-receive~~
20 ~~from-the-mortgagee-or-mortgage-servicer-or-its--successor--in~~
21 ~~interest--either--a--release--or--a--written-objection-to-the~~
22 ~~issuance-of-a-certificate-of-release-pursuant--to--subsection~~
23 ~~(e)--of--this-Section,~~ A certificate of release shall may be
24 delivered for recording to the recorder of each county in
25 which the mortgage is recorded, together with the other
26 documents from the new transaction, including a deed or new
27 mortgage, or both by the title insurance company or its duly
28 appointed agent. ~~A-notice-of-intention-to-file-a--certificate~~
29 ~~of--release--should--be--in--a--form-and-include-content-that~~
30 ~~substantially-complies-with--Section--65--of--this--Act.--The~~
31 ~~notice--of--intention--shall--include--a--copy-of-the-closing~~
32 ~~statement-or-HUD-1-form-and-the-payoff-check-or-a-copy-of-it,~~
33 ~~or-a-copy-of-the-wire-transfer-order.~~

1 (b) The notice of intention to file a certificate of
2 release shall be sent by certified mail, return receipt
3 requested, with postage prepaid, or by another service
4 providing receipted delivery, no sooner than the day of
5 closing and no later than 30 days after receipt of payment.
6 The notice shall be delivered to the location identified in
7 the payoff statement or as otherwise directed in writing by
8 the mortgagee or mortgage servicer or its successor in
9 interest. The notice may be sent with the payment, and need
10 not be sent separately.

11 (c) Within 90 days after receipt of the notice of
12 intention to file a certificate of release, the mortgagee or
13 mortgage servicer or its successor in interest may issue a
14 release or may object in writing to the issuance of a
15 certificate of release, and by doing so shall prevent the
16 title insurance company or title insurance agent from
17 executing and recording a certificate of release pursuant to
18 this Act. Any written objection submitted by the mortgagee or
19 mortgage servicer or its successor in interest shall state
20 the reason for which the release or certificate of release
21 should not be issued. The written objection shall be sent to
22 the title insurance company or title insurance agent by
23 certified mail, return receipt requested, with postage
24 prepaid, or by another service providing receipted delivery.
25 A title insurance company or title insurance agent shall not
26 cause a certificate of release to be recorded pursuant to
27 this Section if the title insurance company or title
28 insurance agent receives a written objection from the
29 mortgagee or mortgage servicer or its successor in interest.

30 (Source: P.A. 92-765, eff. 8-6-02.)

31 (765 ILCS 935/10.1 new)

32 Sec. 10.1. Previously paid mortgages. A title insurance
33 company or its duly appointed title insurance agent may issue

1 a mortgage certificate of release pursuant to this Act for a
2 mortgage that appears in the chain of title prior to the
3 mortgage presently being paid. The title insurance company
4 must have proof of payment from its own prior files that it
5 paid the mortgage or mortgages pursuant to a payoff
6 statement. Where another title insurance company has paid off
7 an unreleased mortgage pursuant to a payoff statement, the
8 title insurance company or its duly appointed title insurance
9 agent in the current transaction may rely upon the
10 hold-harmless letter of that prior title insurance company to
11 issue a mortgage certificate of release. This grant of
12 authority is subject to the condition that the issuer of the
13 mortgage certificate of release does not have notice that the
14 lender opposes its release. A single mortgage certificate of
15 release may include more than one mortgage, including both
16 presently and previously paid mortgages.

17 (765 ILCS 935/15)

18 (Section scheduled to be repealed on January 1, 2004)

19 Sec. 15. Certificate of release. An officer or duly
20 appointed agent of a title insurance company may, on behalf
21 of a mortgagor or a person who has acquired from a mortgagor
22 title to all or part of the property described in the
23 mortgage, execute a certificate of release that complies with
24 the requirements of this Act and record the certificate of
25 release with the recorder of each county in which the
26 mortgage is recorded, provided that payment of the loan
27 secured by the mortgage was made in accordance with a written
28 payoff statement furnished by the mortgagee or the mortgage
29 servicer. The title insurance company or its duly appointed
30 agent shall not be required to search the public record for a
31 possible recorded satisfaction or release. 7---that---a
32 satisfaction--or--release--of--the--mortgage--has--not--previously
33 been--recorded,7--and--that--a--notice--of--intention--to--file--a

1 ~~certificate--of--release--was--sent--in--accordance--with--Section~~
2 ~~10.~~

3 (Source: P.A. 92-765, eff. 8-6-02.)

4 (765 ILCS 935/20)

5 (Section scheduled to be repealed on January 1, 2004)

6 Sec. 20. Contents of certificate of release. A
7 certificate of release executed under this Act must contain
8 substantially all of the following for each mortgage being
9 released:

10 (a) The name of the mortgagor, the name of the original
11 mortgagee, and, if applicable, the mortgage servicer at the
12 date of the mortgage, the date of recording, and the volume
13 and page or document number or other official recording
14 designation in the real property records where the mortgage
15 is recorded, ~~and together with similar information for the last~~
16 ~~recorded assignment of the mortgage.~~

17 (b) A statement that the mortgage was paid in accordance
18 with the written payoff statement ~~received from the mortgagee~~
19 ~~or mortgage servicer~~ and there is no objection from the
20 mortgagee or mortgage servicer or its successor in interest.
21 With respect to previously paid mortgages, the hold-harmless
22 letter from a title insurance company, as provided in Section
23 10.1 of this Act, shall satisfy this requirement.

24 (c) A statement that the person executing the
25 certificate of release is an officer or a duly appointed
26 agent of a title insurance company authorized and licensed to
27 transact the business of insuring titles to interests in real
28 property in this State pursuant to subsections (2) and (3) of
29 Section 3 of the Title Insurance Act.

30 (d) A statement that the certificate of release is made
31 on behalf of the mortgagor or a person who acquired title
32 from the mortgagor to all or a part of the property described
33 in the mortgage.

1 (e) A statement that the mortgagee or mortgage servicer
 2 provided a written payoff statement. The hold-harmless
 3 letter from a title insurance company, as provided in Section
 4 10.1 of this Act, shall satisfy this requirement with respect
 5 to previously paid mortgages.

6 (Source: P.A. 92-765, eff. 8-6-02.)

7 (765 ILCS 935/35)

8 (Section scheduled to be repealed on January 1, 2004)

9 Sec. 35. Effect of recording certificate of release. For
 10 purposes of releasing the lien of the mortgage, a certificate
 11 of release containing the information and statements provided
 12 for in Section 20 and executed as provided in Section 25 is
 13 prima facie evidence of the facts contained therein, and upon
 14 being recorded with the recorder, shall constitute a release
 15 of the lien of the mortgage described in the certificate of
 16 release. The title insurance company or title insurance agent
 17 recording the certificate of release may use the recording
 18 fee it may have collected for the recording of a release or
 19 satisfaction of the mortgage to effect the recording of the
 20 certificate of release.

21 (Source: P.A. 92-765, eff. 8-6-02.)

22 (765 ILCS 935/40)

23 (Section scheduled to be repealed on January 1, 2004)

24 Sec. 40. Wrongful or erroneous certificate of release.
 25 Recording of a wrongful or erroneous certificate of release
 26 by a title insurance company or its title insurance agent
 27 shall not relieve the mortgagor or the mortgagor's successors
 28 or assignees from any personal liability on the loan or other
 29 obligations secured by the mortgage. In addition to any other
 30 remedy provided by law, a title insurance company executing
 31 or recording a certificate of release under this Act ~~that~~-has
 32 ~~actual--knowledge--that--the---information---and---statements~~

1 ~~contained--therein--are--false~~ is liable to the mortgagee for
 2 actual damages sustained due to the recording of the
 3 certificate of release. The prevailing party in any action
 4 or proceeding seeking actual damages due to the recording of
 5 a certificate of release shall be entitled to the recovery of
 6 reasonable attorneys fees and costs incurred in that action
 7 or proceeding.

8 (Source: P.A. 92-765, eff. 8-6-02.)

9 (765 ILCS 935/50)

10 (Section scheduled to be repealed on January 1, 2004)

11 Sec. 50. Form of certificate of release. A certificate
 12 of release, in substantially the following form, allowing for
 13 alterations to permit the inclusion of multiple mortgages,
 14 both presently and previously paid, complies with this Act.

15 CERTIFICATE OF RELEASE

16 Date:....Title Order No.:.....

17 1. Name of mortgagor(s):.....

18 2. Name of original mortgagee:.....

19 3. Name of mortgage servicer (if any):.....

20 ~~4. Name of last assignee of mortgage or record (if any):.....~~

21 4. 5. Mortgage recording: Vol.:.....Page:.....or Document
 22 No.:.....

23 ~~6. Last assignment recording (if any):~~

24 ~~Vol.:.....Page:.....or Document No.:.....~~

25 5. 7. The above referenced mortgage has been paid in
 26 accordance with the payoff statement ~~received from:.....~~ and
 27 there is no objection from the mortgagee or mortgage servicer
 28 or its successor in interest to the recording of this
 29 certificate of release.

30 6. 8. The person executing this certificate of release is an
 31 officer or duly appointed agent of a title insurance company
 32 authorized and licensed to transact the business of insuring
 33 titles to interests in real property in this State pursuant

1 to Section 30 of this Act.

2 7. 9- This certificate of release is made on behalf of the
3 mortgagor or a person who acquired title from the mortgagor
4 to all or part of the property described in the mortgage.

5 8. 10- The mortgagee or mortgage servicer provided a payoff
6 statement.

7 9. 11- The property described in the mortgage is as follows:

8 Permanent Index Number:.....

9 Common Address:.....

10 (Name of title insurance company)

11 By:.....

12 (Name of officer and title or name of agent and name of
13 officer / representative thereof)

14 Address:.....

15 Telephone No.:.....

16 State of Illinois)

17)

18 County of)

19 This instrument was acknowledged before me on(date) by
20(name of person) as(officer for / agent of)
21(title insurance company).

22

23 Notary Public

24 My commission expires on.....

25 (Source: P.A. 92-765, eff. 8-6-02.)

26 (765 ILCS 935/70 new)

27 Sec. 70. Form of hold-harmless agreement. A
28 hold-harmless agreement in substantially the following form,
29 allowing for alterations to reflect the facts of the
30 transaction and identity of the title insurance companies,
31 complies with this Act.

32 Hold-harmless Agreement

1 TO: (Presently insuring title insurance
2 company)

3 Re: Policy No.: (Previously insuring title insurance
4 company)

5 Policy amount: \$.....

6 Policy/Commitment No.: (Presently
7 insuring title insurance company)

8 You show as exception number(s) in your
9 above referenced commitment for title insurance dated
10, the following exception(s):

11 Mortgage dated, recorded as Document No.
12 made by (borrow) to
13 (lender) to secure an
14 indebtedness in the amount of \$.....

15 For and in consideration of your deleting said exception(s),
16 we agree to indemnify you against loss that you may sustain
17 as a result of said deletion. In no event may said indemnity
18 exceed the face amount of our policy as noted above.

19 In the event any claim is made against you as a result of
20 your deletion, you agree to notify us within 30 days of the
21 date the claim is made.

22 Any action you take with respect to the claim will not
23 obligate us under this letter unless the aforesaid notice has
24 been furnished us and we have adequate time to consider our
25 approval or disapproval of the action.

26

27 Title Insurance Company (Previously insuring)

1 (765 ILCS 935/65 rep.)

2 (765 ILCS 935/90 rep.)

3 Section 20. The Mortgage Certificate of Release Act is
4 amended by repealing Sections 65 and 90.

5 Section 99. Effective date. This Act takes effect
6 December 31, 2003.