

By: Representative Baker

To: Judiciary A

HOUSE BILL NO. 1261

1 AN ACT AUTHORIZING A TITLE INSURANCE COMPANY TO EXECUTE AND
2 RECORD CERTAIN RECORDS; REQUIRING AFFIDAVIT CONTENTS; PROVIDING
3 THAT CERTAIN AFFIDAVITS WILL OPERATE AS A RELEASE FOR CERTAIN
4 MORTGAGES; REQUIRING COUNTY CLERK TO INDEX AFFIDAVIT; PROVIDING
5 PENALTIES; AND FOR RELATED PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 **SECTION 1.** (1) As used in this section:

8 (a) "Mortgage" means a contract lien on an interest in
9 real property.

10 (b) "Mortgagee" means:

11 (i) The grantee of a mortgage;

12 (ii) If a mortgage has been assigned of record,
13 the last person or entity to whom the mortgage has been assigned
14 of record; or

15 (iii) If a mortgage is serviced by a mortgage
16 servicer, the mortgage servicer.

17 (c) "Mortgage servicer" means the last person or entity
18 to whom a mortgagor has been instructed by a mortgagee to send
19 payments for the loan secured by a mortgage. A person or entity



20 transmitting a payoff statement is considered the mortgage
21 servicer for the mortgage described in the payoff statement.

22 (d) "Mortgagor" means the grantor of a mortgage.

23 (e) "Payoff statement" means a statement of the amount
24 of:

25 (i) the unpaid balance of a loan secured by a
26 mortgage, including principal, interest, and other charges
27 properly assessed under the loan documentation of the mortgage;
28 and

29 (ii) Interest on a per diem basis for the unpaid
30 balance.

31 (f) "Title insurance company" means a corporation or
32 other business entity authorized and licensed to transact business
33 of insuring titles to interests in real property in this state.

34 (2) This section applies only to a mortgage on property
35 consisting exclusively of a one- to four-family residence,
36 including a residential unit in a condominium regime.

37 (3) If a mortgagee fails to execute and deliver a release of
38 mortgage to the mortgagor or designated agent of the mortgagor
39 within sixty (60) days after the date of receipt of payment of the
40 mortgage by the mortgagee in accordance with a payoff statement
41 furnished by the mortgagee or its mortgage servicer, an authorized
42 officer of a title insurance company or a duly appointed agent of
43 the title insurance company, on behalf of the mortgagor or a
44 transferee of the mortgagor who acquired title to the property



45 described in the mortgage, may execute and record an affidavit in
46 the real property records of each county in which the mortgage was
47 recorded. The written approval of the title insurance company
48 shall appear on the affidavit if executed by an agent.

49 (4) An affidavit executed under this section shall state
50 that:

51 (a) The affiant is an authorized officer or a duly
52 appointed agent of a title insurance company;

53 (b) The affidavit is made on behalf of the mortgagor or
54 a transferee of the mortgagor who acquired title to the property
55 described in the mortgage;

56 (c) The mortgagee provided a payoff statement with
57 respect to the loan secured by the mortgage;

58 (d) The affiant has ascertained that the mortgagee has
59 received payment of the loan secured by the mortgage in accordance
60 with the payoff statement, as evidenced by:

61 (i) A bank check, certified check, cashier's
62 check, escrow account check from the title company or title
63 insurance agent or attorney trust account check that has been
64 negotiated by the mortgagee;

65 (ii) Wire transfer; or

66 (iii) Another documentary evidence of the receipt
67 of payment by the mortgagee.

68 (e) More than sixty (60) days have elapsed since the
69 date payment was received by the mortgagee;



70 (f) The title insurance company or its duly appointed
71 agent has given the mortgagee at least fifteen (15) days' notice
72 in writing by certified mail, return receipt requested, of its
73 intention to execute and record an affidavit in accordance with
74 this section, with a copy of the proposed affidavit attached to
75 the written notice; and

76 (g) The mortgagee has not responded in writing to the
77 notification at least fifteen (15) days before the affidavit is
78 recorded.

79 (5) The affidavit must include the names of the mortgagor
80 and the mortgagee, the date of the mortgage, the legal description
81 of the property, and the book and page or clerk's document number
82 of the real property records where the mortgage and/or
83 modification is recorded, together with similar information for a
84 recorded assignment of the mortgage.

85 (6) The affiant shall attach to the affidavit a photostatic
86 copy, certified by the affiant as a true copy of the original
87 document, of:

88 (a) The documentary evidence that payment has been
89 received by the mortgagee, including the endorsement of the
90 mortgagee of a negotiated check if paid by check or proof of a
91 wire transfer if paid by wire. The bank account number and
92 routing number on the check or proof of wire transfer may be
93 redacted by the filer; and

94 (b) The payoff statement.



95 (7) An affidavit that is executed and recorded as provided
96 by this section shall operate as a release of the mortgage
97 described in the affidavit.

98 (8) The county clerk shall index the affidavit against the
99 real property described in the mortgage and the affidavit.

100 (9) A person who knowingly causes an affidavit with false
101 information to be executed and recorded under this section is
102 guilty of perjury and shall be punished as provided by law.

103 **SECTION 2.** This act shall take effect and be in force from
104 and after July 1, 2016.

