

ASSEMBLY, No. 2836

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 10, 2010

Sponsored by:

Assemblyman PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

SYNOPSIS

The “Residential Mortgage Satisfaction Act.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning satisfaction of residential mortgages and
2 amending and supplementing P.L.1999, c.40.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.1999, c.40 (C.46:18-11.5) is amended to
8 read as follows:

9 1. As used in this act:

10 “Good faith” means honesty in fact and the observance of
11 reasonable commercial standards of fair dealing.

12 "Mortgage" means a residential mortgage, security interest or the
13 like, in which the security is a residential property such as a house,
14 real property or condominium, which is occupied, or is to be
15 occupied, by the **[debtor]** mortgagor, who is a natural person, or a
16 member of the **[debtor's]** mortgagor's immediate family, as that
17 person's residence. The provisions of sections 2 and 3 of P.L.1999,
18 c.40 (C.46:18-11.6 and C.46:18-11.7) and sections 5 through 8 of
19 P.L. , c. (C.) (pending before the Legislature as this bill)
20 shall apply to all residential mortgages wherever made, which have
21 as their security a residence in the State of New Jersey, provided
22 that the real property which is the subject of the mortgage shall not
23 have more than four dwelling units, one of which shall be, or is
24 planned to be, occupied by the **[debtor]** mortgagor or a member of
25 the **[debtor's]** mortgagor's immediate family as the **[debtor's]**
26 mortgagor's or family member's residence at the time the loan is
27 originated.

28 “Mortgage holder” means a person that holds or is the
29 beneficiary of a mortgage or that is authorized to receive payments
30 on behalf of a person that holds a mortgage.

31 “Mortgagor” means a borrower obligated to repay a loan secured
32 by a mortgage.

33 “Pay-off amount” means all amounts necessary to satisfy a
34 mortgage, or, if the pay-off letter so provides, the amounts
35 necessary to release a portion of the property from the mortgage.

36 "Pay-off letter" means a written document prepared by the
37 mortgage holder or servicer of the mortgage being paid, which is
38 dated not more than 60 days prior to the date the mortgage is paid,
39 and which contains a **[statement of all the sums due to satisfy the**
40 **mortgage debt]** pay-off amount, including, but not limited to,
41 interest accrued to the date the statement is prepared and a means of
42 calculating per diem interest accruing thereafter.

43 (cf: P.L.1999, c.40, s.1)

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 2. Section 2 of P.L.1999, c.40 (C.46:18-11.6) is amended to
2 read as follows:

3 2. a. A person which is entitled to receive payment of a
4 mortgage duly recorded or registered in this State pursuant to a
5 written agreement, whether or not recorded, entered into with the
6 **【holder or owner of the】** mortgage holder may execute a discharge,
7 satisfaction-piece, release, subordination or postponement on behalf
8 of the mortgage holder **【or owner thereof】**, which instrument shall
9 be accepted for recording by the county clerk or register of deeds
10 and mortgages, so long as:

11 (1) it meets the requirements of **【section 2 of P.L.1991, c.308**
12 **(C.46:15-1.1)】** R.S.46:15-1.1; and

13 (2) it contains the following wording in the body thereof:
14 "_____ is authorized to execute this instrument pursuant
15 to the terms of a written agreement dated _____, between
16 _____, as **【owner or holder of the】** mortgage holder,
17 and _____, as servicer thereof."

18 b. A person which is the **【owner or】** mortgage holder of a
19 mortgage duly recorded or registered in this State for which a prior
20 assignment thereof is unrecorded, may execute a discharge,
21 satisfaction-piece, release, subordination or postponement thereof,
22 which instrument shall be accepted for recording by the county
23 clerk or register of deeds and mortgages, so long as:

24 (1) it meets the requirements of **【section 2 of P.L.1991, c.308**
25 **(C.46:15-1.1)】** R.S.46:15-1.1; and

26 (2) it contains wording in the body of the instrument setting
27 forth the particulars concerning all assignments of the mortgage,
28 whether or not recorded.

29 c. Upon payment of the appropriate fees therefor, the county
30 clerk or register of deeds and mortgages shall cause a marginal
31 notation to be made upon the record of a mortgage which is
32 specifically described in an instrument submitted in accordance
33 with subsection a. or b. of this section.

34 (cf: P.L.1999, c.40, s.2)

35
36 3. Section 3 of P.L.1999, c.40 (C.46:18-11.7) is amended to
37 read as follows:

38 3. a. An attorney-at-law of this State or a person duly licensed
39 as an insurance producer pursuant to the **【"New Jersey Insurance**
40 **Producer Licensing Act," P.L.1987, c.293 (C.17:22A-1 et seq.)】**
41 **“New Jersey Insurance Producer Licensing Act of 2001,” P.L.2001**
42 **c.210 (C.17:22A-26 et seq.)**, in the line of title insurance who has
43 caused payment in full to be made of a mortgage duly recorded or
44 registered in this State, which mortgage has not been timely
45 canceled in accordance with section 1 of P.L.1975, c.137 (C.46:18-
46 11.2), may submit for recording a discharge or satisfaction-piece,
47 executed as agent or attorney-in-fact for **【the owner or holder of】**

1 the mortgage holder, by virtue of this section, provided the
2 discharge or satisfaction-piece is accompanied by an affidavit
3 setting forth the circumstances of payment, which discharge or
4 satisfaction-piece and affidavit shall be accepted for recording by
5 the county clerk or register of deeds and mortgages, so long as the
6 affidavit is substantially in the form set forth below:

7
8 AFFIDAVIT OF PAYMENT TO DISCHARGE MORTGAGE
9 PURSUANT TO SECTION 3 OF P.L.1999, c.40
10 (C.46:18-11.7)

11
12 State of New Jersey
13 County of _____, ss. :

14
15 The undersigned, being duly sworn upon the undersigned's oath,
16 avers as follows:

17
18 1. I am: (a) an attorney-at-law duly admitted to practice before
19 the Courts of this State; or (b) duly licensed as an insurance
20 producer in the line of title insurance.

21
22 2. On _____, _____, I caused to be sent to
23 _____, located at
24 _____(the address designated for receipt of
25 payment in the pay-off letter, or if no address is designated, the
26 address given on the letterhead of the pay-off letter), the sum of
27 \$_____, in full payment of a certain mortgage dated _____,
28 _____, in the face amount of \$ _____, between
29 _____ (mortgagor) and _____
30 (mortgagee), which mortgage was recorded on _____, _____ in
31 the Office of the County Clerk/Register of Deeds of the County of
32 _____ in Mortgage Book _____, page _____ (and
33 which mortgage was subsequently assigned to _____ by
34 assignment of mortgage dated _____, _____, in
35 Assignment of Mortgage Book _____, page_____).

36
37 3. Said payment was made by check or electronic wire transfer,
38 in accordance with a pay-off letter received from _____,
39 dated _____, _____; and I have received advice that (a) the check
40 has been negotiated and canceled on _____, _____; or (b) the
41 wire transfer was received and credited to the recipient's account on
42 _____, _____.

43
44 4. On _____, _____, at least 30 days' notice having elapsed
45 since the date the payment was received, I caused a notice to be sent
46 to _____, located at _____(the address
47 designated for receipt of payment in the pay-off letter, or if no
48 address is designated, the address given on the letter head of the

1 pay-off letter), by registered or certified mail, return receipt
2 requested, pursuant to section 2 of P.L.1975, c.137 (C.46:18-11.3).

3
4 5. On _____, _____, at least 30 days having elapsed since
5 the date the notice as set forth in paragraph 4 of this affidavit was
6 received, I caused a notice to be sent to _____, located at
7 _____(the address designated for receipt of payment in
8 the pay-off letter, or if no address is designated, the address given
9 on the letterhead of the pay-off letter), by registered or certified
10 mail, return receipt requested, of my intention to cause the
11 mortgage to be discharged by affidavit pursuant to section 3 of
12 P.L.1999, c.40 (C.46:18-11.7), if the mortgage remains uncanceled
13 15 days after the notice is received.

14
15 6. At least 15 days have now elapsed since the notice described
16 in paragraph 5 of this affidavit was received. To the best of my
17 knowledge and belief, no letter or other written communication has
18 been received from _____, to the effect that it denies or
19 disputes that the mortgage has been paid in full and ought to be
20 discharged of record at this time.

21
22 7. Wherefore, the undersigned directs the county clerk or
23 register of deeds of the County of _____ to cause to be
24 recorded the discharge or satisfaction-piece accompanying this
25 affidavit, and further directs the county clerk or register of deeds to
26 cause a marginal notation of discharge to be made upon the record
27 of the mortgage described in paragraph 2 of this affidavit.

28
29 _____
30 Sworn and subscribed before me
31 this _____ day of _____, _____.

32 b. Upon payment of the appropriate fees therefor, the county
33 clerk or register of deeds and mortgages shall cause the marginal
34 notation "Discharge recorded in Book _____, Page _____" to be
35 made upon the record of any mortgage which is specifically
36 described in the affidavit.
37 (cf: P.L.1999, c.40, s.3)

38
39 4. (New section) This act shall be known and may be cited as
40 the "Residential Mortgage Satisfaction Act."

41
42 5. (New section) a. A mortgagor, or an agent authorized by a
43 mortgagor to request a pay-off letter, may give to a mortgage holder
44 a notice to request a pay-off letter for a specified pay-off date. The
45 notice shall contain:

46 (1) the mortgagor's name;

1 (2) if given by a person other than a mortgagor, the name of the
2 person giving notice and a statement that the person is an
3 authorized agent of the mortgagor;

4 (3) a direction as to whether the pay-off letter is to be sent to the
5 mortgagor or to that person's authorized agent;

6 (4) the address to which the mortgage holder shall send the pay-
7 off letter; and

8 (5) sufficient information to enable the mortgage holder to
9 identify the mortgage and the real property encumbered by it.

10 b. An attorney-at-law of this State or a person duly licensed as
11 an insurance producer pursuant to the "New Jersey Insurance
12 Producer Licensing Act of 2001," P.L.2001 c.210 (C.17:22A-26 et
13 seq.) in the line of title insurance, may include, with a notice to
14 request a pay-off letter, sent by registered or certified mail, return
15 receipt requested, a notice of intent to submit for recording an
16 affidavit of payment to discharge mortgage pursuant to section 8 of
17 this act.

18

19 6. (New section) a. Within seven days after receiving a notice
20 to request a pay-off letter that complies with section 5 of this act,
21 the mortgage holder shall issue a pay-off letter without charge and
22 send it to the mortgagor, except that if the notice to request a pay-
23 off letter directs the mortgage holder to send the pay-off letter to a
24 person identified as an authorized agent of the mortgagor, the
25 mortgage holder shall send the pay-off letter to the agent.

26 b. Unless the mortgage terms provide otherwise, a mortgage
27 holder shall not be required to send a pay-off letter by means other
28 than first class mail. If the mortgage holder agrees to send a pay-off
29 letter by another means, it may charge a reasonable fee for the
30 actual cost of complying with the requested manner of delivery.

31 c. If the person to whom the notice to request a pay-off letter is
32 given once held an interest in the mortgage but has since transferred
33 that interest and is no longer the mortgage holder, the person shall
34 not be obligated to send a pay-off letter but, within seven days of
35 receipt of a notice to request a pay-off letter, shall send written
36 notice of the transfer to the person requesting the pay-off letter,
37 which notice shall contain the name and address of the transferee.

38 d. If a mortgage holder to whom notice to request a pay-off
39 letter has been given fails to send a timely pay-off letter pursuant to
40 subsection a. of this section, or a person who has an obligation to
41 give notice of a transfer of interest fails to give notice pursuant to
42 subsection c. of this section, the mortgage holder or person shall be
43 liable to the mortgagor for any actual damages caused by the
44 failure, or a penalty of \$500, whichever is greater, and reasonable
45 attorney's fees and costs of suit, provided, however, that a mortgage
46 holder or person shall not be liable under this section if the
47 mortgage holder or person:

1 (1) established reasonable procedures to fulfill its obligations
2 under this section;

3 (2) complied with those procedures in good faith; and

4 (3) failed to fulfill an obligation solely due to circumstances
5 beyond its control.

6

7 7. (New section) a. Except as provided in subsection b. of this
8 section, if a mortgage holder determines that the pay-off amount it
9 provided in a pay-off letter was understated, the mortgage holder
10 may send a corrected pay-off letter in the same manner that the
11 original pay-off letter was sent. If the mortgagor or the mortgagor's
12 authorized agent receives and has a reasonable opportunity to act
13 upon a corrected pay-off letter before making payment of the pay-
14 off amount, the corrected pay-off letter shall supersede an earlier
15 pay-off letter and the pay-off amount in the corrected pay-off letter
16 shall be deemed to be the amount necessary to satisfy the mortgage.

17 b. A mortgage holder that sends a pay-off letter containing an
18 understated pay-off amount shall not deny the accuracy of the pay-
19 off amount as against any person that reasonably and detrimentally
20 relies upon the understated pay-off amount.

21

22 8. (New section) a. An attorney-at-law of this State or a person
23 duly licensed as an insurance producer pursuant to the "New Jersey
24 Insurance Producer Licensing Act of 2001," P.L.2001 c.210
25 (C.17:22A-26 et seq.), in the line of title insurance who has
26 submitted to a mortgage holder along with a request for a pay-off
27 letter, a notice of intent to submit an affidavit of payment to
28 discharge mortgage, and who has caused payment in full to be made
29 of a mortgage duly recorded or registered in this State in accordance
30 with the terms of the pay-off letter, may submit for recording a
31 discharge or satisfaction-piece, executed as agent or attorney-in-fact
32 for the mortgage holder, by virtue of this section, provided the
33 discharge or satisfaction piece is accompanied by an affidavit
34 setting forth the circumstances of payment, which discharge or
35 satisfaction piece and affidavit shall be accepted for recording by
36 the county clerk or register of deeds and mortgages, so long as the
37 affidavit is substantially in the form set forth below:

1 AFFIDAVIT OF PAYMENT TO DISCHARGE MORTGAGE
2 PURSUANT TO SECTION OF P.L. , c. (C.) (pending
3 before the Legislature as this bill)

4
5 State of New Jersey
6 County of _____, ss.;

7
8 The undersigned, being duly sworn upon the undersigned's oath,
9 avers as follows:

10
11 1. I am: (a) an attorney-at-law duly admitted to practice before
12 the Courts of this State; or (b) duly licensed as an insurance
13 producer in the line of title insurance.

14
15 2. With respect to a certain mortgage dated_____ in the face
16 amount of \$_____, between ____ (mortgagor) and
17 _____ (mortgagee), which mortgage was recorded on
18 _____, _____, in the Office of the County
19 Clerk/Register of Deeds, of the County of _____ in
20 Mortgage Book_____, page____ (and which mortgage was
21 subsequently assigned to _____ by assignment of
22 mortgage dated _____, _____, in assignment of
23 Mortgage Book_____, page____), on
24 _____, _____, I caused to be sent to _____,
25 located at _____, by registered or certified mail,
26 return receipt requested, a request for a pay-off letter and a notice of
27 intent to submit an affidavit of payment to discharge mortgage.

28
29 3. On_____, _____, I caused to be sent to
30 _____, located at _____, (the
31 address designated for receipt of payment in the pay-off letter, or if
32 no address is designated, the address given on the letterhead of the
33 pay-off letter), the sum of \$_____, in full payment of the mortgage
34 described in paragraph 2 of this affidavit.

35
36 4. Said payment was made by check or electronic wire
37 transfer, in accordance with a pay-off letter received from
38 _____, dated _____, _____; and I have
39 received advice that (a) the check has been negotiated and canceled
40 on _____, _____; or (b) the wire transfer was received
41 and credited to the recipient's account on _____,
42 _____.

43
44 5. Wherefore, the undersigned directs the county clerk or
45 register of deeds of the County of _____ to cause to be
46 recorded the discharge or satisfaction-piece accompanying this
47 affidavit, and further directs the county clerk or register of deeds to

1 cause a marginal notation of discharge to be made upon the record
2 of the mortgage described in paragraph 2 of this affidavit.

3
4 _____

5
6 Sworn and subscribed before me

7 This _____ day of _____, _____.

8 b. Upon payment of the appropriate fees therefor, the county
9 clerk or register of deeds and mortgages shall cause the marginal
10 notation "Discharge recorded in Book _____, Page _____" to be
11 made upon the record of any mortgage which is specifically
12 described in the affidavit.

13
14 9. This act shall take effect on the 90th day following
15 enactment.

16
17
18 STATEMENT

19
20 This bill, entitled the "Residential Mortgage Satisfaction Act,"
21 places certain requirements on mortgage holders to issue pay-off
22 letters to facilitate the payment of residential property mortgages and
23 provides an additional process to discharge them of record.

24 The bill specifies the contents of a notice of a request by a
25 mortgagor or the mortgagor's authorized agent to obtain a mortgage
26 pay-off letter and requires the mortgage holder to respond to the
27 notice by providing a pay-off letter at no charge within seven days
28 after receiving the notice.

29 The bill also provides that if the person to whom the notice to
30 request a pay-off letter is given once held an interest in the
31 mortgage but has since transferred that interest and is no longer the
32 mortgage holder, the person shall not be obligated to send a pay-off
33 letter but, within seven days of receipt of a notice to request a pay-
34 off letter, shall send written notice of the transfer to the person
35 requesting the pay-off letter.

36 The bill also provides that if a mortgage holder to whom notice
37 to request a pay-off letter has been given fails to send a timely pay-
38 off letter, or if a person who has an obligation to give notice of a
39 transfer of mortgage interest fails to timely give the required notice,
40 the mortgage holder or person shall be liable to the mortgagor for
41 any actual damages caused by the failure, or a penalty of \$500,
42 whichever is greater, and reasonable attorney's fees and costs of
43 suit, provided, however, that a mortgage holder or person shall not
44 be liable if the mortgage holder or person: (1) established
45 reasonable procedures to fulfill its obligations; (2) complied with
46 those procedures in good faith; and (3) failed to fulfill an obligation
47 solely due to circumstances beyond its control.

1 In addition, the bill provides what is commonly known as a “one-
2 touch” method of discharging a mortgage, as a more efficient
3 alternative to the current method of discharging a mortgage that is
4 being prepaid. Currently, in situations in which a mortgagor pays all
5 amounts due on a mortgage in accordance with a pay-off letter
6 issued by the mortgage holder, the mortgagor must wait for the
7 mortgage holder to provide an executed satisfaction of mortgage
8 document, before recording a satisfaction of mortgage to discharge
9 the mortgage of record. Under the one-touch method provided by
10 this bill, an attorney-at-law of this State, or a person duly licensed
11 as an insurance producer pursuant to the “New Jersey Insurance
12 Producer Licensing Act of 2001,” P.L.2001 c.210 (C.17:22A-26 et
13 seq.) in the line of title insurance (hereinafter referred to as “title
14 agent”), may include, with a notice to request a pay-off letter from a
15 mortgage holder, sent by registered or certified mail, return receipt
16 requested, a notice of intent to submit for recording an affidavit of
17 payment to discharge a mortgage. Further, the bill allows the
18 attorney or title agent, without any further action by the mortgage
19 holder, to discharge the mortgage of record by recording the
20 affidavit, provided it is substantially in the form set forth in the bill,
21 along with a satisfaction of mortgage. The affidavit form set forth in
22 the bill requires a statement that the attorney or title agent made full
23 payment of the pay-off amount due on the mortgage in accordance
24 with the pay-off letter provided by the mortgage holder, and that
25 confirmation of payment was received. Thus, in a typical title or
26 mortgage closing, during which an existing mortgage is being
27 prepaid, the attorney or title agent handling the closing on behalf of
28 the mortgagor, may utilize the one-touch method at the closing to
29 pay off the existing mortgage and discharge it of record.

30 The bill also makes certain technical changes to ensure
31 consistent use of terminology in the statutes that govern mortgage
32 pay-off letters and mortgage satisfactions.