

SENATE, No. 744

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

SYNOPSIS

Provides procedure to cancel mortgage of record by affidavit of entitled person under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning the cancellation of mortgages of record 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 "Entitled person" means a person liable for payment or
11 performance of the obligation secured by the real property
12 described in a mortgage, the landowner, or any person with a
13 recorded interest in the mortgage.

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

28 "Pay-off letter" means a written document prepared by the holder
29 or servicer of the mortgage being paid, which is dated not more than
30 60 days prior to the date the mortgage is paid, and which contains a
31 statement of all the sums due to satisfy the mortgage debt,
32 including, but not limited to, interest accrued to the date the
33 statement is prepared and a means of calculating per diem interest
34 accruing thereafter.

35 "Mortgagee" means the holder of the mortgage reflected in the
36 latest record filed with the county recording office. If the entity
37 that is recorded as the holder of the mortgage is no longer in
38 existence, "mortgagee" shall mean the entity that was authorized to
39 receive the latest payment on the mortgage.

40 (cf: P.L.2015, c.225, s.4)

41

42 2. (New section) a. An entitled person who has caused
43 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-

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 11.2), may submit for recording a discharge or satisfaction-piece,
2 provided the discharge or satisfaction-piece is accompanied by an
3 affidavit setting forth the circumstances of payment and that the
4 later of: (1) at least 31 years since the date of the mortgage; or (2) at
5 least one year since the maturity date of the mortgage, has elapsed.
6 The discharge or satisfaction-piece and affidavit shall be accepted
7 for recording by the county clerk or register of deeds and
8 mortgages, so long as the affidavit is substantially in the form set
9 forth below:

10
11 AFFIDAVIT OF PAYMENT TO DISCHARGE MORTGAGE
12 PURSUANT TO SECTION 2 OF P.L. _____, c.
13 (C. _____) (pending before the Legislature as this bill)

14
15 State of New Jersey
16 County of _____, ss. :

17
18 The undersigned entitled person, being duly sworn upon the
19 undersigned's oath, avers as follows:

20 1. On or about _____, _____, I caused to be sent
21 to _____, located at _____
22 (the address designated for receipt of payment by the mortgagee),
23 the final payment in full satisfaction of all payment terms of a
24 certain mortgage dated _____, _____, in the face amount of
25 \$_____, between _____ (mortgagor) and
26 _____ (mortgagee), which mortgage was recorded
27 on _____, _____ in the Office of the County Clerk/Register of
28 Deeds of the County of _____ in Mortgage Book
29 _____, page _____ (and which mortgage was subsequently
30 assigned to _____ by assignment of mortgage dated
31 _____, _____, in Assignment of Mortgage Book _____,
32 Page _____).

33
34 2. As to the mortgage described in paragraph 1 of this affidavit,
35 the later of: (1) at least 31 years since the date of the mortgage; or
36 (2) at least one year since the maturity date of the mortgage, has
37 elapsed. To the best of my knowledge and belief, no letter or other
38 written communication has been received from _____
39 (mortgagee), to the effect that it denies or disputes that the
40 mortgage has been paid in full as of the date of this affidavit and
41 ought to be discharged of record.

42
43 3. On _____, _____, at least 31 days prior to the date of this
44 affidavit, I caused a notice to be sent to _____, located at
45 _____ (the address designated for receipt of payment in
46 the pay-off letter, or if no address is designated, the address given
47 on the letterhead of the pay-off letter), by registered or certified
48 mail, return receipt requested, of my intention to cause the

1 mortgage to be discharged by affidavit pursuant to section 2 of
2 P.L. , c. (C.) (pending before the Legislature as this bill),
3 if the mortgage remains uncanceled 31 days after the notice is
4 received. I made all reasonable efforts and exercised due diligence
5 to identify or locate the correct mortgagee or servicer to send them
6 this notice of my intention to cause the mortgage to be discharged
7 by affidavit. A copy of the notice to the mortgagee is attached to
8 this affidavit.

9
10 4. At least 31 days have now elapsed since the notice described
11 in paragraph 3 of this affidavit was received. To the best of my
12 knowledge and belief, no letter or other written communication has
13 been received from _____, to the effect that it denies or
14 disputes that the mortgage has been paid in full and ought to be
15 discharged of record at this time.

16
17 5. Wherefore, the undersigned directs the county clerk or
18 register of deeds of the County of _____ to cause to be
19 recorded the discharge or satisfaction-piece accompanying this
20 affidavit, and further directs the county clerk or register of deeds to
21 cause a marginal notation of discharge to be made upon the record
22 of the mortgage described in paragraph 1 of this affidavit.

23
24 _____
25
26 Sworn and subscribed before me
27 this _____ day of _____, _____.

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

33 c. An entitled person who knowingly submits a false affidavit
34 under this section shall be guilty of a crime of the fourth degree.

35
36 3. This act shall take effect on the 90th day following
37 enactment.

38
39
40 STATEMENT

41
42 This bill provides an alternative to the current methods of
43 canceling residential mortgages of record upon satisfaction, in order
44 to provide relief to an entitled person, without requiring the expense
45 of a court proceeding. An entitled person is defined to mean a
46 person liable for payment or performance of the obligation secured
47 by the real property described in a mortgage, the landowner, or any
48 person with a recorded interest in the property.

1 The bill allows an entitled person to use this alternative method
2 in situations in which a mortgage has been paid in full, the
3 mortgagee has not submitted the mortgage to be canceled of record
4 as required pursuant to section 1 of P.L.1975, c.137 (C.46:18-11.2)
5 and the later of: (1) at least 31 years since the date of the mortgage;
6 or (2) at least one year since the maturity date of the mortgage, has
7 elapsed. Under these circumstances, the bill allows an entitled
8 person to submit for recording a discharge or satisfaction-piece,
9 provided that the discharge or satisfaction-piece is accompanied by
10 an affidavit setting forth these circumstances of payment. The
11 county clerk or register of deeds and mortgages must accept the
12 discharge or satisfaction-piece and affidavit for recording provided
13 that the affidavit is substantially in the form set forth in the bill.

14 The bill requires an entitled person to state in the affidavit the
15 time of final payment of the mortgage and that the later of at least
16 31 years since the date of the mortgage, or at least one year since
17 the maturity date of the mortgage, has elapsed. An entitled person is
18 also required to state that the entitled person sent, by certified mail,
19 a notice to the address designated for receipt of payment that the
20 entitled person intended to discharge the mortgage by affidavit and
21 that 31 days have elapsed since the date the notice was received,
22 and that an entitled person made all reasonable efforts and exercised
23 due diligence to identify and locate the correct mortgagee or
24 servicer to send them the notice of intention to discharge, and that
25 the entitled person has attached to the affidavit a copy of the notice.
26 Finally, an entitled person must state that no written communication
27 has been received from the mortgagee to dispute that the mortgage
28 has been paid in full.

29 The bill also provides that an entitled person who knowingly
30 submits a false affidavit is guilty of a crime of the fourth degree.