

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

HOUSE BILL NO. 1194
(Representative Klemin)
(Senator Trenbeath)

AN ACT to create and enact a new section to chapter 35-03 of the North Dakota Century Code, relating to a certificate of release for a mortgage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 35-03 of the North Dakota Century Code is created and enacted as follows:

Certificate of release - Contents - Execution - Recordation.

1. As used in this section, unless the context otherwise requires:
 - a. "Mortgage" means a mortgage or mortgage lien governed by the Short-term Mortgage Redemption Act as provided in chapter 32-19.1 covering an interest in real property in this state given to secure a loan in the original principal amount of five hundred thousand dollars or less.
 - b. "Mortgagee" means the grantee of a mortgage or if a mortgage has been assigned of record, the last person to whom the mortgage has been assigned of record.
 - c. "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage. A person transmitting a payoff statement is the mortgage servicer for the mortgage described in the payment statement.
 - d. "Mortgagor" means the grantor of a mortgage.
 - e. "Payoff statement" means a statement of the amount of the unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage and interest on a per day basis for the unpaid balance.
 - f. "Record" means to record with the register of deeds.
 - g. "Title insurance company" means a corporation or other business entity authorized and licensed to transact the business of insuring titles to interests in real property in this state in accordance with chapter 26.1-20.
2. An officer or duly appointed agent of a title insurance company may execute, on behalf of a mortgagor or a person who acquired from the mortgagor title to all or a part of the property described in a mortgage, a certificate of release that complies with the requirements of this section and record the certificate of release in the real property records of each county in which the mortgage is recorded if a satisfaction or release of the mortgage has not been executed and recorded after the date payment in full of the loan secured by the mortgage was sent in accordance with a payoff statement furnished by the mortgagee or the mortgage servicer.
3. A certificate of release executed under this section must contain substantially all of the following:
 - a. The name of the mortgagor, the name of the original mortgagee, and, if applicable, the mortgage servicer, the date of the mortgage, the date of recording, and volume

and page or document number in the real property records where the mortgage is recorded, together with similar information for the last recorded assignment of the mortgage;

- b. A statement that the mortgage was in the original principal amount of five hundred thousand dollars or less;
 - c. A statement that the person executing the certificate of release is an officer or a duly appointed agent of a title insurance company authorized and licensed to transact the business of insuring titles to interests in real property in this state;
 - d. A statement that the certificate of release is made on behalf of the mortgagor or a person who acquired title from the mortgagor to all or a part of the property described in the mortgage;
 - e. A statement that the mortgagee or mortgage servicer provided a payoff statement which was used to make payment in full of the unpaid balance of the loan secured by the mortgage; and
 - f. A statement that payment in full of the unpaid balance of the loan secured by the mortgage was made in accordance with the written or verbal payoff statement.
4. A certificate of release authorized by this section must be executed and acknowledged as required by law in the case of a deed and may be executed by a duly appointed agent of a title insurance company. The delegation to an agent by a title insurance company does not relieve the title insurance company of any liability for damages caused by its agent for the wrongful or erroneous execution of a certificate of release. The appointment of agent must be executed and acknowledged as required by law in the case of a deed and must state the title insurance company as the grantor, the identity of the person authorized to act as agent to execute and record certificates of release provided for in this section on behalf of the title insurance company, that the agent has the full authority to execute and record certificates of release provided for in this section on behalf of the title insurance company, the term of appointment of the agent, and that the agent has consented to and accepts the terms of the appointment. A single appointment of agent may be recorded in each county in each register of deeds office. A separate appointment of agent may not be necessary for each certificate of release. The appointment of agent may be rerecorded when necessary to establish authority of the agent. The authority continues until a revocation of appointment is recorded with the register of deeds where the appointment of agent was recorded.
 5. For purposes of releasing the mortgage, a certificate of release containing the information and statements provided for in this section and executed as provided in this section is prima facie evidence of the facts contained in the certificate, is entitled to be recorded with the register of deeds, and operates as a release of the mortgage described in the certificate. The register of deeds shall rely upon the certificate to release the mortgage. Recording of a wrongful or erroneous certificate of release by a title insurance company or its agent does not relieve the mortgagor, or the mortgagor's successors or assigns, from any personal liability on the loan or other obligations secured by the mortgage. In addition to any other remedy provided by law, a title insurance company wrongfully or erroneously recording a certificate of release under this section is liable to the mortgagee for actual damage sustained due to the recording of the certificate of release.
 6. If a mortgage is recorded in more than one county and a certificate of release is recorded in one of them, a certified copy of the certificate of release may be recorded in another county with the same effect as the original. In all cases, the certificate of release shall be entered and indexed as satisfactions of mortgage are entered and indexed.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1194.

House Vote: Yeas 96 Nays 0 Absent 2

Senate Vote: Yeas 46 Nays 0 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,

at _____ o'clock _____ M.

Secretary of State