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HOUSE BILL 145

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Elias Barela

FOR THE

COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO REAL PROPERTY; ENACTING THE UNIFORM RESIDENTIAL
MORTGAGE SATISFACTION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

ARTICLE 1

DEFINITIONS AND GENERAL PROVISIONS

Section 101. SHORT TITLE.--This act may be cited as the
"Uniform Residential Mortgage Satisfaction Act".

Section 102. DEFINITIONS.--As used in the Uniform
Residential Mortgage Satisfaction Act:

A. "address for giving a notification" means, for
the purpose of a particular type of notification, the most
recent address provided in a document by the intended recipient
of the notification to the person giving the notification,
unless the person giving the notification knows of a more

1 accurate address, in which case the term means that address;

2 B. "day" means a calendar day;

3 C. "document" means information that is inscribed
4 on a tangible medium or that is stored in an electronic or
5 other medium and is retrievable in perceivable form;

6 D. "electronic" means relating to technology having
7 electrical, digital, magnetic, wireless, optical,
8 electromagnetic or similar capabilities;

9 E. "entitled person" means a person liable for
10 payment or performance of the obligation secured by the real
11 property described in a security instrument or the landowner;

12 F. "good faith" means honesty in fact and the
13 observance of reasonable commercial standards of fair dealing;

14 G. "landowner" means a person that, before
15 foreclosure, has the right of redemption in the real property
16 described in a security instrument. "Landowner" does not
17 include a person that holds only a lien on the real property;

18 H. "notification" means a document containing
19 information required pursuant to the Uniform Residential
20 Mortgage Satisfaction Act and signed by the person required to
21 provide the information;

22 I. "payoff amount" means the sum necessary to
23 satisfy a secured obligation;

24 J. "payoff statement" means a document containing
25 the information specified in Subsection D of Section 201 of the

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1 Uniform Residential Mortgage Satisfaction Act;

2 K. "person" means an individual, corporation,
3 business trust, estate, trust, partnership, limited liability
4 company, association, joint venture, public corporation,
5 government or governmental subdivision, agency or
6 instrumentality, or any other legal or commercial entity;

7 L. "recording data" means the date, book and page
8 number and document number that indicate where a document is
9 recorded in the office of the county clerk in the county or
10 counties designated in Section 14-9-1 NMSA 1978;

11 M. "residential real property" means real property
12 located in this state that is used primarily for personal,
13 family or household purposes and is improved by one to four
14 dwelling units;

15 N. "secured creditor" means a person that holds or
16 is the beneficiary of a security interest or that is authorized
17 both to receive payments on behalf of a person that holds a
18 security interest and to record a satisfaction of the security
19 instrument upon receiving full performance of the secured
20 obligation. "Secured creditor" does not include a trustee
21 pursuant to a security instrument;

22 O. "secured obligation" means an obligation the
23 payment or performance of which is secured by a security
24 interest;

25 P. "security instrument" means an agreement,

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1 however denominated, that creates or provides for an interest
2 in residential real property to secure payment or performance
3 of an obligation, whether or not it also creates or provides
4 for a lien on personal property;

5 Q. "security interest" means an interest in
6 residential real property created by a security instrument;

7 R. "sign" means, with present intent to
8 authenticate or adopt a document:

9 (1) to execute or adopt a tangible symbol; or

10 (2) to attach to or logically associate with
11 the document an electronic sound, symbol or process;

12 S. "state" means a state of the United States, the
13 District of Columbia, Puerto Rico, the United States Virgin
14 Islands or any territory or insular possession subject to the
15 jurisdiction of the United States; and

16 T. "submit for recording" means to deliver, with
17 required fees, a document sufficient to be recorded pursuant to
18 the Uniform Residential Mortgage Satisfaction Act, to the
19 office of the county clerk in the county or counties designated
20 in Section 14-9-1 NMSA 1978.

21 Section 103. NOTIFICATION--MANNER OF GIVING--EFFECTIVE
22 DATE.--

23 A. A person gives a notification by:

24 (1) depositing it with the United States
25 postal service with first-class postage paid or with a

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1 commercially reasonable delivery service with cost of delivery
2 provided, properly addressed to the recipient's address for
3 giving a notification;

4 (2) sending it by facsimile transmission,
5 electronic mail or other electronic transmission to the
6 recipient's address for giving a notification, but only if the
7 recipient agreed to receive notification in that manner; or

8 (3) causing it to be received at the address
9 for giving a notification within the time that it would have
10 been received if given pursuant to Paragraph (1) of this
11 subsection.

12 B. A notification is effective:

13 (1) the day after it is deposited with a
14 commercially reasonable delivery service for overnight
15 delivery;

16 (2) three days after it is deposited with the
17 United States postal service, first-class mail with postage
18 prepaid, or with a commercially reasonable delivery service for
19 delivery other than by overnight delivery;

20 (3) the day it is given, if given pursuant to
21 Paragraph (2) of Subsection A of this section; or

22 (4) the day it is received, if given by a
23 method other than as provided in Paragraph (1) or (2) of
24 Subsection A of this section.

25 C. If the Uniform Residential Mortgage Satisfaction

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1 Act or a notification given pursuant to that act requires
2 performance on or by a certain day and that day is a Saturday,
3 Sunday or legal holiday pursuant to the laws of New Mexico or
4 the United States, the performance is sufficient if performed
5 on the next day that is not a Saturday, Sunday or legal
6 holiday.

7 Section 104. DOCUMENT OF RESCISSION--EFFECT--LIABILITY
8 FOR WRONGFUL RECORDING.--

9 A. As used in this section, "document of
10 rescission" means a document stating that an identified
11 satisfaction of a security instrument or affidavit of
12 satisfaction of a security instrument was recorded erroneously,
13 the secured obligation remains unsatisfied and the security
14 instrument remains in force.

15 B. If a person records a satisfaction of a security
16 instrument or affidavit of satisfaction of a security
17 instrument in error, the person may execute and record a
18 document of rescission. Upon recording, the document rescinds
19 an erroneously recorded satisfaction or affidavit.

20 C. A recorded document of rescission has no effect
21 on the rights of a person that:

22 (1) acquired an interest in the real property
23 described in a security instrument after the recording of the
24 satisfaction of the security instrument or affidavit of
25 satisfaction of the security instrument and before the

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1 recording of the document of rescission; and

2 (2) would otherwise have priority over or take
3 free of the lien created by the security instrument pursuant to
4 Section 14-9-2 NMSA 1978.

5 D. A person that erroneously or wrongfully records
6 a document of rescission is liable to any person injured
7 thereby for:

8 (1) the actual damages caused by the
9 recording; and

10 (2) reasonable attorney fees and costs.

11 ARTICLE 2

12 SECURED CREDITOR TO RECORD SATISFACTION; LIABILITY FOR FAILURE

13 Section 201. PAYOFF STATEMENT--REQUEST AND CONTENT.--

14 A. An entitled person, or an agent authorized by an
15 entitled person to request a payoff statement, may give to the
16 secured creditor a notification requesting a payoff statement
17 for a specified payoff date not more than thirty days after the
18 notification is given. The notification shall contain:

19 (1) the entitled person's name;

20 (2) if given by a person other than an
21 entitled person, the name of the person giving the notification
22 and a statement that the person is an authorized agent of the
23 entitled person;

24 (3) a direction whether the statement is to be
25 sent to the entitled person or that person's authorized agent;

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1 (4) the address to which the creditor shall
2 send the statement; and

3 (5) sufficient information to enable the
4 creditor to identify the secured obligation and the real
5 property encumbered by the security interest.

6 B. If a notification pursuant to Subsection A of
7 this section directs the secured creditor to send the payoff
8 statement to a person identified as an authorized agent of the
9 entitled person, the secured creditor shall send the statement
10 to the agent, unless the secured creditor knows that the
11 entitled person has not authorized the request.

12 C. Within ten days after the effective date of a
13 notification that complies with Subsection A of this section,
14 the secured creditor shall issue a payoff statement and send it
15 as directed pursuant to Paragraph (3) of Subsection A of this
16 section in the manner prescribed in Section 103 of the Uniform
17 Residential Mortgage Satisfaction Act for giving a
18 notification. A secured creditor that sends a payoff statement
19 to the entitled person or the authorized agent shall not claim
20 that the notification did not satisfy Subsection A of this
21 section. If the person to whom the notification is given once
22 held an interest in the secured obligation but has since
23 assigned that interest, the person need not send a payoff
24 statement but shall give a notification of the assignment to
25 the person to whom the payoff statement otherwise would have

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1 been sent, providing the name and address of the assignee.

2 D. A payoff statement shall contain:

3 (1) the date on which it was prepared and the
4 payoff amount as of that date, including the amount by type of
5 each fee, charge or other sum included within the payoff
6 amount;

7 (2) the information reasonably necessary to
8 calculate the payoff amount as of the requested payoff date,
9 including the per diem interest amount; and

10 (3) the payment cutoff time, if any, the
11 address or place where payment shall be made and any limitation
12 as to the authorized method of payment.

13 E. A payoff statement may contain the amount of any
14 fees authorized pursuant to this section not included in the
15 payoff amount.

16 F. A secured creditor may not qualify a payoff
17 amount or state that it is subject to change before the payoff
18 date unless the payoff statement provides information
19 sufficient to permit the entitled person or the person's
20 authorized agent to request an updated payoff amount at no
21 charge and to obtain that updated payoff amount during the
22 secured creditor's normal business hours on the payoff date or
23 the immediately preceding business day.

24 G. A secured creditor shall provide upon request
25 one payoff statement without charge during any six-month

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1 period. A secured creditor may charge a fee of twenty-five
2 dollars (\$25.00) for each additional payoff statement requested
3 during that six-month period. However, a secured creditor
4 shall not charge a fee for providing an updated payoff amount
5 pursuant to Subsection F of this section or a corrected payoff
6 statement pursuant to Subsection A of Section 202 of the
7 Uniform Residential Mortgage Satisfaction Act.

8 H. Unless the security instrument provides
9 otherwise, a secured creditor is not required to send a payoff
10 statement by means other than first-class mail. If the
11 creditor agrees to send a statement by another means, it may
12 charge a reasonable fee for complying with the requested manner
13 of delivery.

14 I. Except as otherwise provided in Section 205 of
15 the Uniform Residential Mortgage Satisfaction Act, if a secured
16 creditor to which a notification has been given pursuant to
17 Subsection A of this section does not send a timely payoff
18 statement that substantially complies with Subsection D of this
19 section, the creditor is liable to the entitled person for any
20 actual damages caused by the failure plus five hundred dollars
21 (\$500), but not punitive damages. A creditor that does not pay
22 the damages provided in this subsection within thirty days
23 after receipt of a notification demanding payment may also be
24 liable for reasonable attorney fees and costs.

25 Section 202. UNDERSTATED PAYOFF STATEMENT--CORRECTION--

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1 EFFECT.--

2 A. If a secured creditor determines that the payoff
3 amount it provided in a payoff statement was understated, the
4 creditor may send a corrected payoff statement. If the
5 entitled person or the person's authorized agent receives and
6 has a reasonable opportunity to act upon a corrected payoff
7 statement before making payment, the corrected statement
8 supersedes an earlier statement.

9 B. A secured creditor that sends a payoff statement
10 containing an understated payoff amount shall not deny the
11 accuracy of the payoff amount as against any person that
12 reasonably and detrimentally relies upon the understated payoff
13 amount.

14 C. The Uniform Residential Mortgage Satisfaction
15 Act does not:

16 (1) affect the right of a secured creditor to
17 recover any sum that it did not include in a payoff amount from
18 any person liable for payment of the secured obligation; or

19 (2) limit any claim or defense that a person
20 liable for payment of a secured obligation may have pursuant to
21 any law other than the Uniform Residential Mortgage
22 Satisfaction Act.

23 Section 203. SECURED CREDITOR TO SUBMIT SATISFACTION FOR
24 RECORDING--LIABILITY FOR FAILURE.--

25 A. A secured creditor shall submit for recording a
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1 satisfaction of a security instrument within thirty days after
2 the creditor receives full payment or performance of the
3 secured obligation. If a security instrument secures a line of
4 credit or future advances, the secured obligation is fully
5 performed only if, in addition to full payment, the secured
6 creditor has received a notification requesting the creditor to
7 terminate the line of credit or containing a statement
8 sufficient to terminate the effectiveness of the provision for
9 future advances in the security instrument.

10 B. Except as otherwise provided in Section 205 of
11 the Uniform Residential Mortgage Satisfaction Act, a secured
12 creditor that is required to submit a satisfaction of a
13 security instrument for recording and does not do so by the end
14 of the period specified in Subsection A of this section is
15 liable to the landowner for any actual damages caused by the
16 failure, but not punitive damages.

17 C. Except as otherwise provided in Subsection D of
18 this section and in Section 205 of the Uniform Residential
19 Mortgage Satisfaction Act, a secured creditor that is required
20 to submit a satisfaction of a security instrument for recording
21 and does not do so by the end of the period specified in
22 Subsection A of this section is also liable to the landowner
23 for five hundred dollars (\$500) and any reasonable attorney
24 fees and court costs incurred if, after the expiration of the
25 period specified in Subsection A of this section:

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1 (1) the landowner gives the creditor a
2 notification, by any method authorized by Section 103 of the
3 Uniform Residential Mortgage Satisfaction Act that provides
4 proof of receipt, demanding that the creditor submit a
5 satisfaction for recording; and

6 (2) the creditor does not submit a
7 satisfaction for recording within thirty days after receipt of
8 the notification.

9 D. Subsection C of this section does not apply if
10 the secured creditor received full payment or performance of
11 the secured obligation before the effective date of the Uniform
12 Residential Mortgage Satisfaction Act.

13 Section 204. FORM AND EFFECT OF SATISFACTION.--

14 A. A document is a satisfaction of a security
15 instrument if it:

16 (1) identifies the security instrument, the
17 original parties to the security instrument, the recording data
18 for the security instrument and the office in which the
19 security instrument is recorded;

20 (2) states that the person signing the
21 satisfaction is the secured creditor;

22 (3) contains a legal description of the real
23 property identified in the security instrument, but only if a
24 legal description is necessary for a satisfaction to be
25 properly indexed;

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1 (4) contains language terminating the
2 effectiveness of the security instrument; and

3 (5) is signed by the secured creditor and
4 acknowledged as required by law for a conveyance of an interest
5 in real property.

6 B. The county clerk shall accept for recording a
7 satisfaction of a security instrument, unless:

8 (1) an amount equal to or greater than the
9 applicable recording fees is not tendered;

10 (2) the document is submitted by a method or
11 in a medium not authorized by the county clerk for paper
12 documents or for electronic documents pursuant to the Uniform
13 Electronic Real Property Recording Act; or

14 (3) the document is not signed by the secured
15 creditor and acknowledged as required by law for a conveyance
16 of an interest in real property.

17 Section 205. LIMITATION OF SECURED CREDITOR'S
18 LIABILITY.--A secured creditor is not liable pursuant to the
19 Uniform Residential Mortgage Satisfaction Act if it:

20 A. established a reasonable procedure to achieve
21 compliance with its obligations pursuant to the Uniform
22 Residential Mortgage Satisfaction Act;

23 B. complied with that procedure in good faith; and

24 C. was unable to comply with its obligations
25 because of circumstances beyond its control.

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ARTICLE 3

SATISFACTION BY AFFIDAVIT

Section 301. DEFINITION--ELIGIBILITY TO SERVE AS
SATISFACTION AGENT.--

A. As used in this article:

(1) "satisfaction agent" means a person who acts for and with the authority of a landowner to sign and submit for recording an affidavit of satisfaction pursuant to this article; and

(2) "title insurance company" means an organization authorized to conduct the business of insuring titles to real property in this state.

B. Only the following may serve as a satisfaction agent pursuant to this article:

(1) a title insurance company, acting directly or through an agent authorized to act as a satisfaction agent; or

(2) an attorney licensed to practice law in New Mexico and in good standing.

Section 302. AFFIDAVIT OF SATISFACTION--NOTIFICATION TO SECURED CREDITOR.--

A. If a secured creditor has not submitted for recording a satisfaction of a security instrument within the period specified in Subsection A of Section 203 of the Uniform Residential Mortgage Satisfaction Act, a satisfaction agent may

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1 give the secured creditor a notification that the satisfaction
2 agent intends to submit for recording an affidavit of
3 satisfaction of the security instrument. The notification
4 shall include:

5 (1) the identity and mailing address of the
6 satisfaction agent;

7 (2) identification of the security instrument
8 for which a recorded satisfaction is sought, including the
9 names of the original parties to, and the recording data for,
10 the security instrument;

11 (3) a statement that the satisfaction agent
12 has reasonable grounds to believe that:

13 (a) the real property described in the
14 security instrument is residential real property;

15 (b) the person to which the notification
16 is being given is the secured creditor; and

17 (c) the secured creditor has received
18 full payment or performance of the secured obligation;

19 (4) a statement that a satisfaction of the
20 security instrument does not appear of record; and

21 (5) a statement that the satisfaction agent,
22 acting with the authorization of the owner of the real property
23 described in the security instrument, intends to sign and
24 submit for recording an affidavit of satisfaction of the
25 security instrument unless, within thirty days after the

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1 effective date of the notification:

2 (a) the secured creditor submits a
3 satisfaction of the security instrument for recording;

4 (b) the satisfaction agent receives from
5 the secured creditor a notification stating that the secured
6 obligation remains unsatisfied; or

7 (c) the satisfaction agent receives from
8 the secured creditor a notification stating that the secured
9 creditor has assigned the security instrument and identifying
10 the name and address of the assignee.

11 B. A notification pursuant to Subsection A of this
12 section shall be sent by a method authorized by Section 103 of
13 the Uniform Residential Mortgage Satisfaction Act that provides
14 proof of receipt to the secured creditor's address for giving a
15 notification for the purpose of requesting a payoff statement
16 or, if the satisfaction agent cannot ascertain that address, to
17 the secured creditor's address for notification for any other
18 purpose.

19 C. The Uniform Residential Mortgage Satisfaction
20 Act does not require a person to agree to serve as a
21 satisfaction agent. Any such agreement shall be in a record
22 signed by the satisfaction agent or its authorized agent in
23 order to be enforceable.

24 Section 303. AFFIDAVIT OF SATISFACTION--AUTHORIZATION TO
25 SUBMIT FOR RECORDING.--

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1 A. Subject to Subsections B and C of this section,
2 a satisfaction agent may sign and submit for recording an
3 affidavit of satisfaction of a security instrument complying
4 with Section 304 of the Uniform Residential Mortgage
5 Satisfaction Act if:

6 (1) the secured creditor has not, to the
7 knowledge of the satisfaction agent, submitted for recording a
8 satisfaction of a security instrument within thirty days after
9 the effective date of a notification complying with Subsection
10 A of Section 302 of the Uniform Residential Mortgage
11 Satisfaction Act; or

12 (2) the secured creditor authorizes the
13 satisfaction agent to do so.

14 B. A satisfaction agent shall not sign and submit
15 for recording an affidavit of satisfaction of a security
16 instrument if it has received a notification pursuant to
17 Subparagraph (b) of Paragraph (5) of Subsection A of Section
18 302 of the Uniform Residential Mortgage Satisfaction Act
19 stating that the secured obligation remains unsatisfied.

20 C. If a satisfaction agent receives a notification
21 pursuant to Subparagraph (c) of Paragraph (5) of Subsection A
22 of Section 302 of the Uniform Residential Mortgage Satisfaction
23 Act stating that the security instrument has been assigned, the
24 satisfaction agent shall not submit for recording an affidavit
25 of satisfaction of the security instrument without:

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1 (1) giving a notification of intent to submit
2 for recording an affidavit of satisfaction to the identified
3 assignee at the identified address; and

4 (2) complying with Section 302 of the Uniform
5 Residential Mortgage Satisfaction Act with respect to the
6 identified assignee.

7 Section 304. AFFIDAVIT OF SATISFACTION--CONTENT.--An
8 affidavit of satisfaction of a security instrument shall:

9 A. identify the original parties to the security
10 instrument, the secured creditor, the recording data for the
11 security instrument, and, if necessary for proper indexing of
12 the affidavit, a legal description of the real property
13 identified in the security instrument;

14 B. state the basis upon which the person signing
15 the affidavit is a satisfaction agent;

16 C. state that the person signing the affidavit has
17 reasonable grounds to believe that the real property described
18 in the security instrument is residential real property;

19 D. state that the person signing the affidavit has
20 reasonable grounds to believe that the secured creditor has
21 received full payment or performance of the secured obligation;

22 E. state that the person signing the affidavit,
23 acting with the authority of the owner of the real property
24 described in the security instrument, gave notification to the
25 secured creditor of its intention to sign and submit for

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1 recording an affidavit of satisfaction;

2 F. describe the method by which the person signing
3 the affidavit gave notification in compliance with the Uniform
4 Residential Mortgage Satisfaction Act;

5 G. state that:

6 (1) more than thirty days have elapsed since
7 the effective date of that notification and the person signing
8 the affidavit has no knowledge that the secured creditor has
9 submitted a satisfaction for recording and has not received a
10 notification that the secured obligation remains unsatisfied;
11 or

12 (2) the secured creditor authorized the person
13 signing the affidavit to sign and record an affidavit of
14 satisfaction; and

15 H. be signed and acknowledged as required by law
16 for a conveyance of an interest in real property.

17 Section 305. AFFIDAVIT OF SATISFACTION--FORM.--No
18 particular phrasing of an affidavit of satisfaction is
19 required. The following form of affidavit, when properly
20 completed, is sufficient to satisfy the requirements of
21 Subsection A of Section 304 of the Uniform Residential Mortgage
22 Satisfaction Act:

23 _____
24 [Date of Affidavit]

25 AFFIDAVIT OF SATISFACTION

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1 The undersigned hereby states as follows:

2 1. I am: [check appropriate box]

3 an officer or a duly appointed agent of
4 _____ (the "Company"), which is
5 [Name of title insurance company]

6 authorized to transact the business of insuring titles to
7 interests in real property in this state, and I have been
8 authorized by the Company to sign and submit for recording an
9 affidavit of satisfaction.

10 an attorney licensed to practice law in this
11 state and in good standing.

12 2. I am signing this Affidavit of Satisfaction to
13 evidence full payment or performance of the obligations secured
14 by real property covered by the following security instrument
15 (the "security instrument") currently held by _____
16 (the "secured creditor"):

- 17 Title of security instrument: _____
- 18 Original parties to security instrument: _____
- 19 County and state of recording: _____
- 20 Recording data for security instrument: _____
- 21 Legal description, if necessary for proper indexing: _____

22 3. I have reasonable grounds to believe that:

23 A. the secured creditor has received full payment
24 or performance of the balance of the obligations secured by the
25 security instrument; and

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1 B. the real property described in the security
2 instrument constitutes residential real property.

3 4. With the authorization of the owner of the real
4 property described in the security instrument, I gave
5 notification to the secured creditor by _____
6 _____

7 [method authorized by Section 103 of the Uniform Residential
8 Mortgage Satisfaction Act that provides proof of receipt]
9 that I would sign and record an affidavit of satisfaction of
10 the security instrument if, within thirty days after the
11 effective date of the notification, the secured creditor did
12 not submit a satisfaction of the security interest for
13 recording or give notification that the secured obligation
14 remains unsatisfied.

15 5. [Check appropriate box]

16 The thirty-day period identified in Paragraph 4
17 has elapsed, I have no knowledge that the secured creditor has
18 submitted a satisfaction for recording, and I have not received
19 notification that the secured obligation remains unsatisfied.

20 The secured creditor responded to the
21 notification in Paragraph 4 of this affidavit by authorizing me
22 to execute and record this affidavit of satisfaction.

23 _____
24 (Signature of Satisfaction Agent)

25 (Notarization).

1 Section 306. AFFIDAVIT OF SATISFACTION--EFFECT.--

2 A. Upon recording, an affidavit substantially
3 complying with the requirements of Section 304 of the Uniform
4 Residential Mortgage Satisfaction Act constitutes a
5 satisfaction of the security instrument described in the
6 affidavit.

7 B. The recording of an affidavit of satisfaction of
8 a security instrument does not by itself extinguish any
9 liability of a person for payment or performance of the secured
10 obligation.

11 C. A county clerk shall not refuse to accept for
12 recording an affidavit of satisfaction of a security instrument
13 unless:

14 (1) an amount equal to or greater than the
15 applicable recording fees is not tendered;

16 (2) the affidavit is submitted by a method or
17 in a medium not authorized by the county clerk for paper
18 documents or for electronic documents pursuant to the Uniform
19 Electronic Real Property Recording Act; or

20 (3) the affidavit is not signed by the
21 satisfaction agent and acknowledged as required by law for a
22 conveyance of an interest in real property.

23 Section 307. LIABILITY OF SATISFACTION AGENT.--

24 A. Except as otherwise provided in Subsection B of
25 this section, a satisfaction agent that records an affidavit of

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1 satisfaction of a security instrument erroneously or with
2 knowledge that the statements contained in the affidavit are
3 false is liable to the secured creditor for any actual damages
4 caused by the recording and reasonable attorney fees and costs.

5 B. A satisfaction agent that records an affidavit
6 of satisfaction of a security instrument erroneously is not
7 liable if the agent properly complied with the provisions of
8 this article and the secured creditor did not respond in a
9 timely manner to the notification pursuant to Paragraph (5) of
10 Subsection A of Section 302 of the Uniform Residential Mortgage
11 Satisfaction Act.

12 C. If a satisfaction agent records an affidavit of
13 satisfaction of a security instrument with knowledge that the
14 statements contained in the affidavit are false, this section
15 does not preclude:

16 (1) a court from awarding punitive damages on
17 account of the conduct;

18 (2) the secured creditor from proceeding
19 against the satisfaction agent pursuant to any law of New
20 Mexico other than the Uniform Residential Mortgage Satisfaction
21 Act; or

22 (3) the enforcement of any criminal statute
23 prohibiting the conduct.

24 ARTICLE 4

25 MISCELLANEOUS PROVISIONS

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1 Section 401. UNIFORMITY OF APPLICATION AND
2 CONSTRUCTION.--In applying and construing the Uniform
3 Residential Mortgage Satisfaction Act, consideration shall be
4 given to the need to promote uniformity of the law with respect
5 to its subject matter among states that enact it.

6 Section 402. RELATION TO FEDERAL ELECTRONIC SIGNATURES IN
7 GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform Residential
8 Mortgage Satisfaction Act modifies, limits and supersedes the
9 federal Electronic Signatures in Global and National Commerce
10 Act but does not modify, limit or supersede Section 101(c) of
11 that act or authorize electronic delivery of any of the notices
12 described in Section 103(b) of that act.

13 Section 403. RELATION TO OTHER LAWS.--

14 A. The provisions of the Uniform Residential
15 Mortgage Satisfaction Act are in addition to the provisions of
16 Section 48-7-4.1 NMSA 1978.

17 B. A satisfaction of a security interest or an
18 affidavit of satisfaction of a security interest recorded
19 pursuant to the provisions of the Uniform Residential Mortgage
20 Satisfaction Act is the equivalent of a release recorded
21 pursuant to the provisions of Section 48-7-4 NMSA 1978.

22 C. The Uniform Residential Mortgage Satisfaction
23 Act does not relieve a person from the obligation to record a
24 full satisfaction or release pursuant to the provisions of
25 Section 48-7-4 NMSA 1978 or the imposition of a penalty

.170378.2

underscoring material = new
~~[bracketed material] = delete~~

1 pursuant to the provisions of Section 48-7-5 NMSA 1978;
2 however, the landowner may elect to receive a penalty under
3 only one act.

4 Section 404. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2009.

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