

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

**SPONSOR** Alcon **ORIGINAL DATE** 02/15/11  
**LAST UPDATED** 03/11/11 **HB** 141/aHBIC

**SHORT TITLE** Uniform Residential Mortgage Satisfaction Act **SB** \_\_\_\_\_

**ANALYST** Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	NFI	NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)  
Regulation & Licensing Department (RLD)

### SUMMARY

#### Synopsis of HBIC Amendment

The House Business and Industry Committee Amendment to House Bill 141 revises the language in the sections requiring county clerks to accept for recording a satisfaction of a security instrument and an affidavit of satisfaction of a security instrument to state those duties in the affirmative, so that county clerks shall accept such a satisfaction or an affidavit if: 1) the applicable recording fee is tendered; 2) the satisfaction or affidavit is submitted by a method or in a medium that is authorized; and 3) the satisfaction or affidavit is properly signed and acknowledged.

#### Synopsis of Original Bill

House Bill 141 enacts a uniform law that provides a comprehensive framework to govern the payoff and release of mortgage loans secured by residential real property. It provides rules for:

- recordation of a satisfaction of a security instrument (including a mortgage);
- liability of secured creditor for erroneously or wrongfully recording a security instrument;

- requesting and responding to a request for a payoff statement;
- liability of a secured creditor for not sending a timely payoff statement;
- liability of a secured creditor for not submitting a satisfaction of a security instrument for recording;
- form and effect of a satisfaction of a secured instrument;
- limitation on a secured creditor's liability; and
- eligibility of lawyers and title insurance companies to provide an affidavit of satisfaction of a security instrument, proper recordation, content, form and effect of affidavit, and liability of affiant for certain acts or omissions.

The bill contains a delayed effective date of January 1, 2012.

## **FISCAL IMPLICATIONS**

No fiscal impact on state funds is anticipated.

## **SIGNIFICANT ISSUES**

The AGO provides this background information on HB 141:

HB 141, the Uniform Residential Mortgage Satisfaction Act, is a uniform law drafted by the National Conference of Commissioners on Uniform State Laws. The Conference makes this statement about the Act:

Many states continue to have mortgage satisfaction laws created when mortgage lending was essentially a "local" transaction, even though today the secondary market and securitization have transformed residential mortgage lending into a national practice. The fundamental purpose of this Act is to create a realistic framework within which responsible mortgage lenders can satisfy their responsibility to record timely releases, while also protecting the reasonable expectations of mortgage borrowers (especially in cases where a mortgage lender fails to comply with its responsibility).

The Commission explains the reasons supporting the Act, which is designed to address a complicated issue:

The securitization of mortgage obligations has vastly complicated the process of clearing title for residential real estate when a mortgage is fully paid. The lender who provides the purchase money to the landowner is almost never the entity which holds the mortgage at the time it is paid off. This is an artifact of the secondary mortgage market that has developed over time.

When a mortgage is paid off, the mortgagee (referred as secured creditor in HB 141) generally owes the landowner two things. First, a document called a payoff statement that provides the landowner proof that the mortgage amount has been paid off. Second, the secured creditor is also obligated to record a statement that establishes the mortgage is satisfied in the land records. The statement makes it clear to subsequent purchasers and their secured creditors that the title is clear of the mortgage obligation. In this era of remote secured creditors, the timely transmittal of payoff statements and recording of mortgage satisfactions has

become more problematic. There is a cost to the landowner, particularly if the landowner has paid off the mortgage in order to sell the real estate to another person. If the landowner's secured creditor is tardy in providing a payoff statement or recording a mortgage satisfaction, the sale cannot go forward.

The law of most states addresses this problem in different ways. This means the cost of compliance by secured creditors rises in what is clearly an interstate, national market for mortgage money: they must be prepared to meet different requirements in each and every state. A uniform act is an appropriate remedy for the dual problem of transactional costs due to tardy payoff statements and satisfactions, and costs of compliance for secured creditors due to the large differences in state law.

### **TECHNICAL ISSUES**

The AGO calls attention to an apparent or potential conflict between Subsections 202(B) and (C)(1) (page 11):

The person most likely to reasonably rely to his/her detriment on an understated payoff amount is the borrower. Subsection B provides that the creditor may not deny the accuracy of the payoff amount under those circumstances. However, Subsection C(1) appears to take away that protection as to a borrower by permitting the creditor to otherwise collect the correct amount due. If a borrower is intended to be exempted from the operation of Subsection B, the text should so state. If not, it is not clear how the effect of Subsection C(1) is consistent with Subsection B.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Current law (NMSA 1978, § 48-7-4.1) permits but does not require a title insurer to record a satisfaction and release of mortgage when a creditor fails to do so. If this bill is not enacted, landowners with title insurance may be able to address a creditor's failure, but those that do not have title insurance may have no option other than filing a lawsuit against the current creditor—once that party is determined—seeking such satisfaction and release.

MD/bym:mew