

FIRST REGULAR SESSION

HOUSE BILL NO. 309

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE JOHNSON (47).

Read 1st time January 29, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0422L.011

AN ACT

To amend chapter 443, RSMo, by adding thereto one new section relating to certificate of release of security instruments as to title insurance companies and title insurance agents.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 443, RSMo, is amended by adding thereto one new section, to be known as section 443.061, to read as follows:

443.061. 1. This section applies only to security instruments in the original principal amount of less than one million dollars.

2. As used in this section, the following terms mean:

(1) "Mortgagee", either:

(a) The grantee of a security instrument; or

(b) If a security instrument has been assigned of record, the last person to whom the security instrument has been assigned of record;

(2) "Mortgagor", the grantor of a security instrument;

(3) "Notice of intention to file a certificate of release", a statement from a title insurance company or title insurance agent to the person to whom payment of the loan secured by the security instrument was made in accordance with the payoff statement of the intention to record a certificate of release;

(4) "Payoff statement", a statement for the amount of:

(a) The unpaid balance of a loan secured by a security instrument, including principal, interest, and any other charges due under or secured by the security instrument; and

(b) Interest on a per-day basis for the unpaid balance;

(5) "Record", to deliver the certificate of release for recording with the recorder

19 of deeds;

20 (6) "Servicer", the last person to whom a mortgagor or the mortgagor's successor
21 in interest has been instructed by a mortgagee to send payments on a loan secured by a
22 security instrument. A person transmitting a payoff statement is the servicer for the
23 security instrument described in the payoff statement;

24 (7) "Title insurance agent", a person licensed by the Missouri department of
25 insurance and appointed by a title insurance company in the state of Missouri;

26 (8) "Title insurance company", a company licensed by the Missouri department of
27 insurance to issue title insurance in the state of Missouri.

28 3. (1) The notice of intention to file a certificate of release shall state that if the title
29 insurance company or title insurance agent does not receive from the mortgagee or servicer
30 or its successor in interest either a release or a written objection to the issuance of a
31 certificate of release pursuant to subdivision (3) of this subsection, a certificate of release
32 may be delivered for recording to the recorder of deeds of each county or city not within
33 a county in which the security instrument is recorded. A notice of intention to file a
34 certificate of release should be in a form and include content that substantially complies
35 with subsection 15 of this section. The notice of intention shall include a copy of the closing
36 statement or HUD-1 form and the payoff check or a copy of it, or a copy of the wire
37 transfer order.

38 (2) The notice of intention to file a certificate of release shall be sent by certified
39 mail, return receipt requested, with postage prepaid, or by another service providing
40 receipted delivery, no sooner than the day of closing. The notice shall be delivered to the
41 location identified in the payoff statement or as otherwise directed in writing by the
42 mortgagee or servicer or its successor in interest. Such notice may be sent with the
43 payment and need not be sent separately.

44 (3) Within ninety days after receipt of the notice of intention to file a certificate of
45 release, the mortgagee or servicer or its successor in interest may issue a release or may
46 object in writing to the issuance of a certificate of release, and by doing so shall prevent the
47 title insurance company or title insurance agent from executing and recording a certificate
48 of release pursuant to this section. Any written objection submitted by the mortgagee or
49 servicer or its successor in interest shall state the reason for which the release or certificate
50 of release should not be issued. The written objection shall be sent to the title insurance
51 company or title insurance agent by certified mail, return receipt requested, with postage
52 prepaid, or by another service providing receipted delivery. A title insurance company or
53 title insurance agent shall not cause a certificate of release to be recorded pursuant to this
54 subsection if the title insurance company or title insurance agent receives a written

55 objection from the mortgagee or servicer or its successor in interest.

56 **4. An officer or duly appointed agent of a title insurance company may, on behalf**
57 **of a mortgagor or a person who has acquired from a mortgagor title to all or part of the**
58 **property described in the security instrument, execute a certificate of release that complies**
59 **with the requirements of this section and record the certificate of release with the recorder**
60 **of deeds of each county or city not within a county in which the security instrument is**
61 **recorded, provided that payment of the loan secured by the security instrument was made**
62 **in accordance with a written payoff statement furnished by the mortgagee or the servicer,**
63 **that a satisfaction or release of the security instrument has not previously been recorded,**
64 **and that a notice of intention to file a certificate of release was sent in accordance with**
65 **subsection 3 of this section.**

66 **5. A certificate of release executed under this section shall contain substantially all**
67 **of the following:**

68 **(1) The name of the mortgagor, the name of the original mortgagee, and, if**
69 **applicable, the servicer at the date of the security instrument, the date of recording, and**
70 **the volume and page or document number or other official recording designation in the**
71 **real property records where the security instrument is recorded, together with similar**
72 **information for the last recorded assignment of the security instrument;**

73 **(2) A statement that the security instrument was paid in accordance with the**
74 **written payoff statement received from the mortgagee or servicer and there is no objection**
75 **from the mortgagee or servicer or its successor in interest;**

76 **(3) A statement that the person executing the certificate of release is an officer or**
77 **a duly appointed agent of a title insurance company authorized and licensed to transact**
78 **the business of insuring titles to interests in real property in this state;**

79 **(4) A statement that the certificate of release is made on behalf of the mortgagor**
80 **or a person who acquired title from the mortgagor to all or a part of the property**
81 **described in the security instrument; and**

82 **(5) A statement that the mortgagee or servicer provided a written payoff statement.**

83 **6. A certificate of release authorized by subsection 4 of this section shall be executed**
84 **and acknowledged as required by law, as in the case of a deed, and may be executed by an**
85 **officer or a duly appointed agent of a title insurance company. The agent shall be a**
86 **currently registered title insurance agent of the title insurance company.**

87 **7. (1) The appointment of a title insurance agent shall be executed and**
88 **acknowledged as required by law, as in the case of a deed, and shall state all of the**
89 **following:**

90 **(a) The identity of the title insurance company as the principal;**

91 **(b) The identity of the person authorized to act as title insurance agent to execute**
92 **and record certificates of release provided for in this section on behalf of the title insurance**
93 **company;**

94 **(c) That the title insurance agent has the full authority to execute and record**
95 **certificates of release provided for in this section on behalf of the title insurance company;**

96 **(d) The term of appointment of the title insurance agent, if any; and**

97 **(e) That the title insurance agent has consented to and accepts the terms of the**
98 **appointment.**

99 **(2) The delegation to a title insurance agent by a title insurance company shall not**
100 **relieve the title insurance company of any liability for actual damages as provided in**
101 **subsection 9 of this section.**

102 **(3) A title insurance company may create an instrument, executed by an officer of**
103 **that company and acknowledged in the same manner as a deed, appointing one or more**
104 **title insurance agents authorized to issue certificates of release under this section. Such**
105 **instrument shall designate the county or counties, or city not within a county, in which it**
106 **is to be effective and shall be recorded with the recorder of deeds in each of those**
107 **jurisdictions, either as an original instrument or by recording a copy certified by the**
108 **recorder of deeds of one of them. A separate appointment of title insurance agent shall not**
109 **be necessary for each certificate of release. The appointment of an agent may be**
110 **rerecorded where necessary to establish authority of the agent, but the authority shall**
111 **continue until a revocation of appointment is recorded in the office of the recorder of deeds**
112 **where the appointment of title insurance agent was recorded or on the date, if any, in the**
113 **recorded appointment document.**

114 **8. For purposes of releasing the lien of the security instrument, a certificate of**
115 **release containing the information and statements provided for in subsection 5 of this**
116 **section and executed as provided in subsection 6 of this section is prima facie evidence of**
117 **the facts contained therein, and upon being recorded with the recorder of deeds, shall**
118 **constitute a release of the lien of the security instrument described in the certificate of**
119 **release. The title insurance company or title insurance agent recording the certificate of**
120 **release may use the recording fee collected for the recording of a release or satisfaction of**
121 **the security instrument to effect the recording of the certificate of release.**

122 **9. Recording of a wrongful or erroneous certificate of release by a title insurance**
123 **company or its title insurance agent shall not relieve the mortgagor or the mortgagor's**
124 **successors or assignees from any personal liability on the loan or other obligations secured**
125 **by the security instrument. In addition to any other remedy provided by law, a title**
126 **insurance company executing or recording a certificate of release under this section that**

127 has actual knowledge that the information and statements contained therein are false is
128 liable to the mortgagee for actual damages sustained due to the recording of the certificate
129 of release. The prevailing party in any action or proceeding seeking actual damages due
130 to the recording of a certificate of release shall be entitled to the recovery of reasonable
131 attorney's fees and costs incurred in that action or proceeding.

132 10. If a security instrument is recorded in more than one county or city not within
133 a county and a certificate of release is recorded in one of them, a certified copy of the
134 certificate of release may be recorded in another county with the same effect as the
135 original. In all cases, the certificate of release shall be entered and indexed where
136 satisfactions or releases of security instruments are entered and indexed.

137 11. This section shall be deemed retroactive to apply to security instruments which
138 were satisfied before the effective date of this section if the title insurance company or title
139 insurance agent effecting the satisfaction complies after August 28, 2003, with all
140 requirements of this section.

141 12. A certificate of release in substantially the following form complies with this
142 section:

143 "CERTIFICATE OF RELEASE

144 Date: Title Order No.:

- 145 1. Name of mortgagor(s):
- 146 2. Name of original mortgagee:
- 147 3. Name of servicer (if any):
- 148 4. Name of last assignee of security instrument of record (if any):
- 149 5. Security instrument recording: Vol.: Page: or Document
150 No.:
- 151 6. Last assignment recording (if any): Vol.: Page: or Document
152 No.:

153 7. The above-referenced security instrument has been paid in accordance with the
154 payoff statement received from, and there is no objection from the mortgagee or
155 servicer or its successor in interest to the recording of this certificate of release.

156 8. The person executing this certificate of release is an officer or duly appointed
157 agent of a title insurance company authorized and licensed to transact the business of
158 insuring titles to interests in real property in this State pursuant to section 443.061, RSMo.

159 9. This certificate of release is made on behalf of the mortgagor or a person who
160 acquired title from the mortgagor to all or part of the property described in the security
161 instrument.

162 10. The mortgagee or servicer provided a payoff statement.

163 **11. The property described in the security instrument is as follows:**

164 **Common Address:**

165 **(Name of title insurance company)**

166 **By:**

167 **(Name of officer or name of agent)**

168 **Address:**

169 **Telephone No.:**

170 **State of Missouri)**

171 **) ss**

172 **County of)**

173

174 **This instrument was acknowledged before me on (date) by (name of person)**

175 **as (officer for/agent of) (title insurance company).**

176 **.....**

177

178 **Notary Public**

179

180 **My commission expires on"**

181 **13. A title insurance company shall use the following form for the appointment of**
182 **its title insurance agents for the purpose of executing certificates of release pursuant to this**
183 **section:**

184 **"APPOINTMENT OF TITLE INSURANCE AGENT OR AGENTS FOR ISSUANCE OF**
185 **CERTIFICATES OF RELEASE**

186

187 **..... (name of title insurance company) appoints (name of title insurance agent**
188 **or agents) to act as its agent or agents for the purpose of executing and delivering for**
189 **recording certificates of release as provided by section 443.061, RSMo. This appointment**
190 **shall commence on (date) and (select one) continue until revoked as provided by that**
191 **section/terminate on (date).**

192

193 **The agent or agents appointed has/have consented to and accept the terms of this**
194 **appointment.**

195

196 **Dated this (date).**

197 **By:**

198

199 (title insurance company)
 200 (signature)
 201 (typed/printed name and title)
 202 (address)
 203 (telephone number)

204
 205 **State of Missouri)**
 206)ss
 207 **County of**)

209 **This instrument was acknowledged before me on** (date) **by** (name of person)
 210 **as** officer for (title insurance company).

211

213 **Notary Public**

215 **My commission expires on**"

216 **14. A title insurance company shall use the following form for the purpose of**
 217 **revoking the appointment of its title insurance agent's authorization for executing**
 218 **certificates of release pursuant to this section:**

219 **"REVOCATION OF APPOINTMENT OF TITLE INSURANCE**
 220 **AGENT OR AGENTS FOR**
 221 **ISSUANCE OF CERTIFICATES OF RELEASE**

223 (name of title insurance company) **revokes the appointment of** (name of title
 224 **insurance agent or agents) to act as its agent for the purpose of executing and delivering**
 225 **for recording certificates of release as provided by the section 443.061, RSMo. This**
 226 **revocation shall be effective upon the recording in each county, or on** (date), **if**
 227 **subsequent to recording. A copy of this revocation has been delivered to the named title**
 228 **insurance agent or agents by certified U.S. mail, return receipt requested, at the following**
 229 **address or addresses:**

231 (name of title insurance agent)
 232 (address)

233 **Dated this** (date).

234 **By:**

235 (title insurance company)
 236 (signature)
 237 (typed/printed name and title)
 238 (address)
 239 (telephone number)

240
 241 **State of Missouri)**
 242)ss
 243 **County of**)

244
 245 **This instrument was acknowledged before me on (date) by (name of person)**
 246 **as officer for (title insurance company).**
 247

248
 249 **Notary Public**

250
 251 **My commission expires on"**

252 **15. A notice of intention to file certificate of release shall be in the following form:**
 253 **"NOTICE OF INTENTION TO FILE CERTIFICATE OF RELEASE**

254
 255 **(Name of title insurance company or title insurance agent), authorized to issue certificates**
 256 **of release, having participated in the real estate closing resulting in the funding of the**
 257 **payoff of the security instrument originally recorded as Document No., or Book**
 258 **..... at Page or other filing made to (name of original mortgagee) hereby**
 259 **gives this notice of intention to file a certificate of release. If, within ninety days from the**
 260 **receipt of this notice by you, we have not received a release or satisfaction of the security**
 261 **instrument or an objection to the issuance of a certificate of release, we may record a**
 262 **certificate of release of this security instrument with the office of the recorder of deeds.**

263
 264 **Enclosed is a copy of the closing statement or HUD-1 form and the payoff check or a copy**
 265 **of it, or copy of the wire transfer order.**

266
 267 **Dated: (Insert date)**

268
 269 **By: (Title Insurance Company or Title Insurance Agent as authorized agent of title**
 270 **insurance company)**

271 **By: (Name of officer of title insurance company or authorized title insurance agent)**

272

273 **(signed)"**

274

275 **Use of a form substantially similar to this form complies with this section.**