

As Passed by the House

130th General Assembly

Regular Session

2013-2014

Sub. H. B. No. 201

Representative Butler

**Cosponsors: Representatives Adams, J., Terhar, Thompson, Hayes,
Adams, R., Amstutz, Anielski, Beck, Bishoff, Blair, Blessing, Boyce, Budish,
Burkley, Conditt, Green, Hood, Huffman, Letson, Milkovich, Perales,
Retherford, Strahorn, Sykes, Winburn Speaker Batchelder**

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A B I L L

To amend section 5301.36 and to enact section 1
5301.234 of the Revised Code to make changes 2
relative to mortgage subrogation and entries of 3
satisfaction. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 5301.36 be amended and section 5
5301.234 of the Revised Code be enacted to read as follows: 6

Sec. 5301.234. (A) A mortgage encumbering real property 7
granted to secure funds that are used to satisfy a prior mortgage 8
or lien on the real property shall be subrogated to the priority 9
of the prior mortgage or lien that was satisfied, to the extent of 10
the amount satisfied, if both of the following apply: 11

(1) The parties to the mortgage granted to secure funds that 12
are used to satisfy a prior mortgage or lien intend that mortgage 13
to have the priority of the satisfied mortgage or lien. 14

(2) At the time the holder of a subordinate mortgage or lien 15

received its interest, the holder expected the interest to be 16
junior to the satisfied mortgage or lien. 17

(B) A mortgagee seeking to be subrogated pursuant to division 18
(A) of this section shall not be denied subrogation for the 19
priority of the satisfied mortgage or lien for any of the 20
following reasons: 21

(1) The mortgagee is engaged in the business of lending. 22

(2) The mortgagee had actual knowledge or constructive notice 23
of a mortgage or lien over which the mortgagee would gain priority 24
through subrogation. 25

(3) The mortgagee committed a mistake or was negligent or a 26
third party committed a mistake or was negligent. 27

(4) The lien for which the mortgagee seeks to be subrogated 28
was released. 29

(5) The mortgagee obtained a title insurance policy. 30

(C) Notwithstanding the application of division (A) of this 31
section, the holder of a subordinate mortgage or lien shall retain 32
the same subordinate position that the holder would have had if 33
the prior mortgage or lien had not been satisfied. 34

Sec. 5301.36. (A) Except in a county in which the county 35
recorder has elected to require that all satisfactions of 36
mortgages be recorded by separate instrument as allowed under 37
section 5301.28 of the Revised Code, when recording a mortgage, 38
county recorders shall leave space on the margin of the record for 39
the entry of satisfaction, and record therein the satisfaction 40
made on the mortgage, or permit the owner of the claim secured by 41
the mortgage to enter such satisfaction. Such record shall have 42
the same effect as the record of a release of the mortgage. 43

(B) Within ninety days from the date of the satisfaction of a 44
~~residential~~ mortgage, the mortgagee shall record a release of the 45

mortgage evidencing the fact of ~~the~~ its satisfaction in the 46
appropriate county recorder's office and pay any fees required for 47
the recording. The mortgagee may, by contract with the mortgagor, 48
recover the cost of the fees required for the recording of the 49
satisfaction by the county recorder. 50

(C) If the mortgagee fails to comply with division (B) of 51
this section, the mortgagor of the unrecorded satisfaction and the 52
current owner of the real property to which the mortgage pertains 53
may recover, in a civil action, damages of two hundred fifty 54
dollars. This division does not preclude or affect any other legal 55
remedies or damages that may be available to the mortgagor. 56

(D)(1) If upon the expiration of the ninety-day period 57
described in division (B) of this section, the satisfaction of 58
mortgage remains unrecorded, the current owner of the real 59
property shall provide the mortgagee written notice, in accordance 60
with the Rules of Civil Procedure, of the failure to enter the 61
release of the mortgage of record. The notice shall be in 62
substantially the following form: 63

"OHIO LAW REQUIRES A MORTGAGEE, WHETHER THE ORIGINAL MORTGAGEE OR 64
ANY SUCCESSOR TO THE INTEREST OF THE ORIGINAL MORTGAGEE, TO RECORD 65
A RELEASE OF A MORTGAGE EVIDENCING ITS SATISFACTION IN THE 66
APPROPRIATE COUNTY RECORDER'S OFFICE AND TO PAY ANY FEES REQUIRED 67
FOR THE RECORDING WITHIN A CERTAIN TIME PERIOD. (Name of 68
mortgagor)'S MORTGAGE LOAN, (loan number or other loan 69
identification), FOR PROPERTY LOCATED AT (property address), WAS 70
SATISFIED ON (date of satisfaction). IT APPEARS YOU HAVE YET TO 71
RECORD A RELEASE OF THIS MORTGAGE. FAILURE TO RECORD THE RELEASE 72
WITHIN 15 DAYS OF RECEIVING THIS NOTICE MAY RESULT IN A CIVIL 73
ACTION FILED AGAINST YOU TO RECOVER REASONABLE ATTORNEYS' FEES AND 74
COSTS INCURRED IN SUCH AN ACTION OR OTHERWISE TO OBTAIN THE 75
RECORDING, PLUS DAMAGES OF \$100 FOR EACH DAY OF NONCOMPLIANCE NOT 76
TO EXCEED \$5,000 IN TOTAL DAMAGES." 77

(2) Within fifteen days after delivery of the notice 78
described in division (D)(1) of this section, the mortgagee shall 79
record a release of the mortgage evidencing the fact of its 80
satisfaction in the appropriate county recorder's office and pay 81
any fees required for the recording. The mortgagee may, by 82
contract with the mortgagor or current owner of the real property, 83
recover the cost of the fees required for the recording of the 84
satisfaction by the county recorder. 85

(E) If the mortgagee fails to comply with division (D)(2) of 86
this section after receiving the notice in accordance with 87
division (D)(1) of this section, the current owner of the real 88
property may recover, in a civil action, reasonable attorneys' 89
fees and costs incurred in such an action or otherwise to obtain 90
the recording of a satisfaction of mortgage plus damages of one 91
hundred dollars for each day of noncompliance, not to exceed five 92
thousand dollars in total damages. 93

This division does not preclude or affect any other legal 94
remedies or damages that may be available to the current owner. 95

(F) A mortgagee that records a release of a mortgage 96
evidencing the fact of its satisfaction within the time periods 97
required by this section shall not be in violation of this 98
section, or subject to damages or fees, due to the failure of a 99
county recorder to timely process that release of mortgage. 100

(G) A current owner may combine the civil actions described 101
in divisions (C) and (E) of this section by bringing one action to 102
collect for both damages, or may bring separate actions. 103

(H) As used in this section, ~~"residential mortgage" means an~~ 104
~~obligation to pay a sum of money evidenced by a note and secured~~ 105
~~by a lien upon:~~ 106

(1) "Mortgagee" includes the original mortgagee or any 107
successor to or assignee of the original mortgagee. 108

~~(2) real property located within this state containing two or fewer residential units or on which two or fewer residential units are to be constructed and shall include such an "Satisfaction" means that the obligation on a residential condominium or cooperative unit secured by a mortgage has been paid in full and the underlying obligation terminated, with no opportunities for future advancements.~~

Section 2. That existing section 5301.36 of the Revised Code is hereby repealed.

Section 3. (A)(1) With respect to an unreleased commercial mortgage that has been satisfied more than ninety days prior to the effective date of this act, but not recorded, the mortgagee shall not be subject to a civil action or damages as described in division (C) of section 5301.36 of the Revised Code.

(2) The current owner of the real property to which such a mortgage pertains shall provide the mortgagee the written notice described in division (D)(1) of section 5301.36 of the Revised Code not sooner than on the effective date of this act and may recover damages in a civil action for failure to comply with division (D)(2) of that section pursuant to division (E) of that section.

(B)(1) With respect to an unreleased commercial mortgage that has been satisfied less than ninety days prior to the effective date of this act, but not recorded, the mortgagee shall not be subject to a civil action or damages as described in division (C) of section 5301.36 of the Revised Code.

(2) The current owner of the real property to which such a mortgage pertains shall provide the mortgagee the written notice described in division (D)(1) of section 5301.36 of the Revised Code not sooner than on the ninetieth day after the mortgage was satisfied and may recover damages in a civil action for failure to

comply with division (D)(2) of that section pursuant to division 140
(E) of that section. 141

(C)(1) With respect to an unreleased residential mortgage 142
that has been satisfied, but not recorded, prior to the effective 143
date of this act, the mortgagee shall be subject to a civil action 144
or damages as described in division (C) of section 5301.36 of the 145
Revised Code for failure to comply with division (B) of that 146
section. 147

(2) If such a mortgage was satisfied more than ninety days 148
prior to the effective date of this act, the current owner of the 149
real property to which the mortgage pertains shall provide the 150
mortgagee the written notice described in division (D)(1) of 151
section 5301.36 of the Revised Code not sooner than on the 152
effective date of this act and may recover damages in a civil 153
action for failure to comply with division (D)(2) of that section 154
pursuant to division (E) of that section. If such a mortgage was 155
satisfied less than ninety days prior to the effective date of the 156
act, the current owner shall provide the mortgagee the written 157
notice described in division (D)(1) of section 5301.36 of the 158
Revised Code not sooner than on the ninetieth day after the 159
mortgage was satisfied and may recover damages in a civil action 160
for failure to comply with division (D)(2) of that section 161
pursuant to division (E) of that section. 162

(D) As used in this section, "mortgagee" has the same meaning 163
as in section 5301.36 of the Revised Code, as amended by this act. 164