

**ASSEMBLY, No. 3862**

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**STATE OF NEW JERSEY**

**213th LEGISLATURE**

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INTRODUCED MARCH 10, 2009

**Sponsored by:**

**Assemblywoman L. GRACE SPENCER**

**District 29 (Essex and Union)**

**Assemblyman GARY S. SCHAER**

**District 36 (Bergen, Essex and Passaic)**

**SYNOPSIS**

The “Residential Mortgage Satisfaction Act.”

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning satisfaction of residential mortgages and  
2 amending and supplementing P.L.1999, c.40.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. Section 1 of P.L.1999, c.40 (C.46:18-11.5) is amended to read  
8 as follows:

9 1. As used in this act:

10 "Good faith" means honesty in fact and the observance of  
11 reasonable commercial standards of fair dealing.

12 "Mortgage" means a residential mortgage, security interest or the  
13 like, in which the security is a residential property such as a house,  
14 real property or condominium, which is occupied, or is to be  
15 occupied, by the **[debtor]** mortgagor, who is a natural person, or a  
16 member of the **[debtor's]** mortgagor's immediate family, as that  
17 person's residence. The provisions of sections 2 and 3 of P.L.1999,  
18 c.40 (C.46:18-11.6 and C.46:18-11.7) and sections 5 through 8 of  
19 P.L. , c. (C. ) (pending before the Legislature as this bill)  
20 shall apply to all residential mortgages wherever made, which have  
21 as their security a residence in the State of New Jersey, provided  
22 that the real property which is the subject of the mortgage shall not  
23 have more than four dwelling units, one of which shall be, or is  
24 planned to be, occupied by the **[debtor]** mortgagor or a member of  
25 the **[debtor's]** mortgagor's immediate family as the **[debtor's]**  
26 mortgagor's or family member's residence at the time the loan is  
27 originated.

28 "Mortgage holder" means a person that holds or is the  
29 beneficiary of a mortgage or that is authorized to receive payments  
30 on behalf of a person that holds a mortgage.

31 "Mortgagor" means a borrower obligated to repay a loan secured  
32 by a mortgage.

33 "Pay-off amount" means all amounts necessary to satisfy a  
34 mortgage, or, if the pay-off letter so provides, the amounts  
35 necessary to release a portion of the property from the mortgage.

36 "Pay-off letter" means a written document prepared by the  
37 mortgage holder or servicer of the mortgage being paid, which is  
38 dated not more than 60 days prior to the date the mortgage is paid,  
39 and which contains a **[statement of all the sums due to satisfy the**  
40 **mortgage debt]** pay-off amount, including, but not limited to,  
41 interest accrued to the date the statement is prepared and a means of  
42 calculating per diem interest accruing thereafter.

43 (cf: P.L.1999, c.40, s.1)

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1       2. Section 2 of P.L.1999, c.40 (C.46:18-11.6) is amended to read  
2 as follows:

3       2. a. A person which is entitled to receive payment of a mortgage  
4 duly recorded or registered in this State pursuant to a written  
5 agreement, whether or not recorded, entered into with the [holder  
6 or owner of the] mortgage holder may execute a discharge,  
7 satisfaction-piece, release, subordination or postponement on behalf  
8 of the mortgage holder [or owner thereof], which instrument shall  
9 be accepted for recording by the county clerk or register of deeds  
10 and mortgages, so long as:

11       (1) it meets the requirements of [section 2 of P.L.1991, c.308  
12 (C.46:15-1.1)] R.S.46:15-1.1; and

13       (2) it contains the following wording in the body thereof:  
14 "\_\_\_\_\_ is authorized to execute this instrument pursuant  
15 to the terms of a written agreement dated \_\_\_\_\_, between  
16 \_\_\_\_\_, as [owner or holder of the] mortgage holder,  
17 and \_\_\_\_\_, as servicer thereof."

18       b. A person which is the [owner or] mortgage holder of a  
19 mortgage duly recorded or registered in this State for which a prior  
20 assignment thereof is unrecorded, may execute a discharge,  
21 satisfaction-piece, release, subordination or postponement thereof,  
22 which instrument shall be accepted for recording by the county  
23 clerk or register of deeds and mortgages, so long as:

24       (1) it meets the requirements of [section 2 of P.L.1991, c.308  
25 (C.46:15-1.1)] R.S.46:15-1.1; and

26       (2) it contains wording in the body of the instrument setting  
27 forth the particulars concerning all assignments of the mortgage,  
28 whether or not recorded.

29       c. Upon payment of the appropriate fees therefor, the county  
30 clerk or register of deeds and mortgages shall cause a marginal  
31 notation to be made upon the record of a mortgage which is  
32 specifically described in an instrument submitted in accordance  
33 with subsection a. or b. of this section.

34 (cf: P.L.1999, c.40, s.2)

35

36       3. Section 3 of P.L.1999, c.40 (C.46:18-11.7) is amended to read  
37 as follows:

38       3. a. An attorney-at-law of this State or a person duly licensed as  
39 an insurance producer pursuant to the ["New Jersey Insurance  
40 Producer Licensing Act," P.L.1987, c.293 (C.17:22A-1 et seq.)]  
41 "New Jersey Insurance Producer Licensing Act of 2001," P.L.2003  
42 c.210 (C.17:22A-26 et seq.), in the line of title insurance who has  
43 caused payment in full to be made of a mortgage duly recorded or  
44 registered in this State, which mortgage has not been timely  
45 canceled in accordance with section 1 of P.L.1975, c.137 (C.46:18-  
46 11.2), may submit for recording a discharge or satisfaction-piece,  
47 executed as agent or attorney-in-fact for [the owner or holder of]

1 the mortgage holder, by virtue of this section, provided the  
2 discharge or satisfaction-piece is accompanied by an affidavit  
3 setting forth the circumstances of payment, which discharge or  
4 satisfaction-piece and affidavit shall be accepted for recording by  
5 the county clerk or register of deeds and mortgages, so long as the  
6 affidavit is substantially in the form set forth below:

7  
8 AFFIDAVIT OF PAYMENT TO DISCHARGE MORTGAGE  
9 PURSUANT TO SECTION 3 OF P.L.1999, c.40  
10 (C.46:18-11.7)

11  
12 State of New Jersey  
13 County of \_\_\_\_\_, ss. :

14  
15 The undersigned, being duly sworn upon the undersigned's oath,  
16 avers as follows:

17  
18 1. I am: (a) an attorney-at-law duly admitted to practice before  
19 the Courts of this State; or (b) duly licensed as an insurance  
20 producer in the line of title insurance.

21  
22 2. On \_\_\_\_\_, \_\_\_\_\_, I caused to be sent to  
23 \_\_\_\_\_, located at  
24 \_\_\_\_\_(the address designated for receipt of  
25 payment in the pay-off letter, or if no address is designated, the  
26 address given on the letterhead of the pay-off letter), the sum of  
27 \$\_\_\_\_\_, in full payment of a certain mortgage dated \_\_\_\_\_,  
28 \_\_\_\_\_, in the face amount of \$ \_\_\_\_\_, between  
29 \_\_\_\_\_ (mortgagor) and \_\_\_\_\_  
30 (mortgagee), which mortgage was recorded on \_\_\_\_\_, \_\_\_\_\_ in  
31 the Office of the County Clerk/Register of Deeds of the County of  
32 \_\_\_\_\_ in Mortgage Book \_\_\_\_\_, page \_\_\_\_\_ (and  
33 which mortgage was subsequently assigned to \_\_\_\_\_ by  
34 assignment of mortgage dated \_\_\_\_\_, \_\_\_\_\_, in  
35 Assignment of Mortgage Book \_\_\_\_\_, page\_\_\_\_\_).

36  
37 3. Said payment was made by check or electronic wire transfer,  
38 in accordance with a pay-off letter received from \_\_\_\_\_,  
39 dated \_\_\_\_\_, \_\_\_\_\_; and I have received advice that (a) the check  
40 has been negotiated and canceled on \_\_\_\_\_, \_\_\_\_\_; or (b) the  
41 wire transfer was received and credited to the recipient's account on  
42 \_\_\_\_\_, \_\_\_\_\_.

43  
44 4. On \_\_\_\_\_, \_\_\_\_\_, at least 30 days' notice having elapsed  
45 since the date the payment was received, I caused a notice to be sent  
46 to \_\_\_\_\_, located at \_\_\_\_\_(the address  
47 designated for receipt of payment in the pay-off letter, or if no  
48 address is designated, the address given on the letter head of the

1 pay-off letter), by registered or certified mail, return receipt  
2 requested, pursuant to section 2 of P.L.1975, c.137 (C.46:18-11.3).

3  
4 5. On \_\_\_\_\_, \_\_\_\_\_, at least 30 days having elapsed since  
5 the date the notice as set forth in paragraph 4 of this affidavit was  
6 received, I caused a notice to be sent to \_\_\_\_\_, located at  
7 \_\_\_\_\_(the address designated for receipt of payment in  
8 the pay-off letter, or if no address is designated, the address given  
9 on the letterhead of the pay-off letter), by registered or certified  
10 mail, return receipt requested, of my intention to cause the  
11 mortgage to be discharged by affidavit pursuant to section 3 of  
12 P.L.1999, c.40 (C.46:18-11.7), if the mortgage remains uncanceled  
13 15 days after the notice is received.

14  
15 6. At least 15 days have now elapsed since the notice described  
16 in paragraph 5 of this affidavit was received. To the best of my  
17 knowledge and belief, no letter or other written communication has  
18 been received from \_\_\_\_\_, to the effect that it denies or  
19 disputes that the mortgage has been paid in full and ought to be  
20 discharged of record at this time.

21  
22 7. Wherefore, the undersigned directs the county clerk or  
23 register of deeds of the County of \_\_\_\_\_ to cause to be  
24 recorded the discharge or satisfaction-piece accompanying this  
25 affidavit, and further directs the county clerk or register of deeds to  
26 cause a marginal notation of discharge to be made upon the record  
27 of the mortgage described in paragraph 2 of this affidavit.

28  
29 \_\_\_\_\_  
30 Sworn and subscribed before me  
31 this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

32 b. Upon payment of the appropriate fees therefor, the county  
33 clerk or register of deeds and mortgages shall cause the marginal  
34 notation "Discharge recorded in Book \_\_\_\_\_, Page \_\_\_\_\_" to be  
35 made upon the record of any mortgage which is specifically  
36 described in the affidavit.  
37 (cf: P.L.1999, c.40, s.3)

38  
39 4. (New section) This act shall be known and may be cited as the  
40 "Residential Mortgage Satisfaction Act."

41  
42 5. (New section) a. A mortgagor, or an agent authorized by a  
43 mortgagor to request a pay-off letter, may give to a mortgage holder  
44 a notice to request a pay-off letter for a specified pay-off date. The  
45 notice shall contain:

46 (1) the mortgagor's name;

1 (2) if given by a person other than a mortgagor, the name of the  
2 person giving notice and a statement that the person is an  
3 authorized agent of the mortgagor;

4 (3) a direction as to whether the pay-off letter is to be sent to the  
5 mortgagor or to that person's authorized agent;

6 (4) the address to which the mortgage holder shall send the pay-  
7 off letter; and

8 (5) sufficient information to enable the mortgage holder to  
9 identify the mortgage and the real property encumbered by it.

10 b. An attorney-at-law of this State or a person duly licensed as an  
11 insurance producer pursuant to the "New Jersey Insurance Producer  
12 Licensing Act of 2001," P.L.2003 c.210 (C.17:22A-26 et seq.) in  
13 the line of title insurance, may include, with a notice to request a  
14 pay-off letter, sent by registered or certified mail, return receipt  
15 requested, a notice of intent to submit for recording an affidavit of  
16 payment to discharge mortgage pursuant to section 8 of this act.

17  
18 6. (New section) a. Within seven days after receiving a notice to  
19 request a pay-off letter that complies with section 5 of this act, the  
20 mortgage holder shall issue a pay-off letter without charge and send  
21 it to the mortgagor, except that if the notice to request a pay-off  
22 letter directs the mortgage holder to send the pay-off letter to a  
23 person identified as an authorized agent of the mortgagor, the  
24 mortgage holder shall send the pay-off letter to the agent.

25 b. Unless the mortgage terms provide otherwise, a mortgage  
26 holder shall not be required to send a pay-off letter by means other  
27 than first class mail. If the mortgage holder agrees to send a pay-off  
28 letter by another means, it may charge a reasonable fee for the  
29 actual cost of complying with the requested manner of delivery.

30 c. If the person to whom the notice to request a pay-off letter is  
31 given once held an interest in the mortgage but has since transferred  
32 that interest and is no longer the mortgage holder, the person shall  
33 not be obligated to send a pay-off letter but, within seven days of  
34 receipt of a notice to request a pay-off letter, shall send written  
35 notice of the transfer to the person requesting the pay-off letter,  
36 which notice shall contain the name and address of the transferee.

37 d. If a mortgage holder to whom notice to request a pay-off letter  
38 has been given fails to send a timely pay-off letter pursuant to  
39 subsection a. of this section, or a person who has an obligation to  
40 give notice of a transfer of interest fails to give notice pursuant to  
41 subsection c. of this section, the mortgage holder or person shall be  
42 liable to the mortgagor for any actual damages caused by the  
43 failure, or a penalty of \$500, whichever is greater, and reasonable  
44 attorney's fees and costs of suit, provided, however, that a mortgage  
45 holder or person shall not be liable under this section if the  
46 mortgage holder or person:

47 (1) established reasonable procedures to fulfill its obligations  
48 under this section;

1 (2) complied with those procedures in good faith; and

2 (3) failed to fulfill an obligation solely due to circumstances  
3 beyond its control.

4  
5 7. (New section) a. Except as provided in subsection b. of this  
6 section, if a mortgage holder determines that the pay-off amount it  
7 provided in a pay-off letter was understated, the mortgage holder  
8 may send a corrected pay-off letter in the same manner that the  
9 original pay-off letter was sent. If the mortgagor or the mortgagor's  
10 authorized agent receives and has a reasonable opportunity to act  
11 upon a corrected pay-off letter before making payment of the pay-  
12 off amount, the corrected pay-off letter shall supersede an earlier  
13 pay-off letter and the pay-off amount in the corrected pay-off letter  
14 shall be deemed to be the amount necessary to satisfy the mortgage.

15 b. A mortgage holder that sends a pay-off letter containing an  
16 understated pay-off amount shall not deny the accuracy of the pay-  
17 off amount as against any person that reasonably and detrimentally  
18 relies upon the understated pay-off amount.

19  
20 8. (New section) a. An attorney-at-law of this State or a person  
21 duly licensed as an insurance producer pursuant to the "New Jersey  
22 Insurance Producer Licensing Act of 2001," P.L.2003 c.210  
23 (C.17:22A-26 et seq.), in the line of title insurance who has  
24 submitted to a mortgage holder along with a request for a pay-off  
25 letter, a notice of intent to submit an affidavit of payment to  
26 discharge mortgage, and who has caused payment in full to be made  
27 of a mortgage duly recorded or registered in this State in accordance  
28 with the terms of the pay-off letter, may submit for recording a  
29 discharge or satisfaction-piece, executed as agent or attorney-in-fact  
30 for the mortgage holder, by virtue of this section, provided the  
31 discharge or satisfaction piece is accompanied by an affidavit  
32 setting forth the circumstances of payment, which discharge or  
33 satisfaction piece and affidavit shall be accepted for recording by  
34 the county clerk or register of deeds and mortgages, so long as the  
35 affidavit is substantially in the form set forth below:

36  
37 AFFIDAVIT OF PAYMENT TO DISCHARGE  
38 MORTGAGE PURSUANT TO SECTION OF P.L. , c.  
39 (C. ) (pending before the Legislature as this bill)

40  
41 State of New Jersey  
42 County of \_\_\_\_\_, ss.;

43  
44 The undersigned, being duly sworn upon the undersigned's oath,  
45 avers as follows:

1 1. I am: (a) an attorney-at-law duly admitted to practice before  
2 the Courts of this State; or (b) duly licensed as an insurance  
3 producer in the line of title insurance.

4  
5 2. With respect to a certain mortgage dated \_\_\_\_\_ in the face  
6 amount of \$\_\_\_\_\_, between \_\_\_\_\_(mortgagor) and  
7 \_\_\_\_\_(mortgagee), which mortgage was recorded on  
8 \_\_\_\_\_, \_\_\_\_\_, in the Office of the County  
9 Clerk/Register of Deeds, of the County of \_\_\_\_\_in  
10 Mortgage Book\_\_\_\_\_, page\_\_\_\_\_(and which mortgage was  
11 subsequently assigned to \_\_\_\_\_by assignment of  
12 mortgage dated \_\_\_\_\_, \_\_\_\_\_, in assignment of  
13 Mortgage Book\_\_\_\_\_, page\_\_\_\_\_), on  
14 \_\_\_\_\_, \_\_\_\_\_, I caused to be sent to \_\_\_\_\_,  
15 located at \_\_\_\_\_, by registered or certified mail,  
16 return receipt requested, a request for a pay-off letter and a notice of  
17 intent to submit an affidavit of payment to discharge mortgage.

18 3. On\_\_\_\_\_, \_\_\_\_\_, I caused to be sent to  
19 \_\_\_\_\_, located at \_\_\_\_\_, (the  
20 address designated for receipt of payment in the pay-off letter, or if  
21 no address is designated, the address given on the letterhead of the  
22 pay-off letter), the sum of \$\_\_\_\_\_, in full payment of the mortgage  
23 described in paragraph 2 of this affidavit.

24  
25 4. Said payment was made by check or electronic wire transfer,  
26 in accordance with a pay-off letter received from \_\_\_\_\_,  
27 dated \_\_\_\_\_, \_\_\_\_\_; and I have received advice that (a)  
28 the check has been negotiated and canceled on  
29 \_\_\_\_\_, \_\_\_\_\_; or (b) the wire transfer was received  
30 and credited to the recipient's account on \_\_\_\_\_,  
31 \_\_\_\_\_.

32  
33 5. Wherefore, the undersigned directs the county clerk or  
34 register of deeds of the County of \_\_\_\_\_ to cause to be  
35 recorded the discharge or satisfaction-piece accompanying this  
36 affidavit, and further directs the county clerk or register of deeds to  
37 cause a marginal notation of discharge to be made upon the record  
38 of the mortgage described in paragraph 2 of this affidavit.

39  
40 \_\_\_\_\_  
41  
42 Sworn and subscribed before me

43 This \_\_\_\_\_day of \_\_\_\_\_, \_\_\_\_\_.

44 b. Upon payment of the appropriate fees therefor, the county  
45 clerk or register of deeds and mortgages shall cause the marginal  
46 notation "Discharge recorded in Book \_\_\_\_\_, Page \_\_\_\_\_" to be  
47 made upon the record of any mortgage which is specifically  
48 described in the affidavit.



1       9. This act shall take effect on the 90<sup>th</sup> day following enactment.

2

3

4

#### STATEMENT

5

6       This bill, entitled the “Residential Mortgage Satisfaction Act,”  
7 places certain requirements on mortgage holders to issue pay-off  
8 letters to facilitate the payment of residential property mortgages and  
9 provides an additional process to discharge them of record.

10       The bill specifies the contents of a notice of a request by a  
11 mortgagor or the mortgagor’s authorized agent to obtain a mortgage  
12 pay-off letter and requires the mortgage holder to respond to the  
13 notice by providing a pay-off letter at no charge within seven days  
14 after receiving the notice.

15       The bill also provides that if the person to whom the notice to  
16 request a pay-off letter is given once held an interest in the  
17 mortgage but has since transferred that interest and is no longer the  
18 mortgage holder, the person shall not be obligated to send a pay-off  
19 letter but, within seven days of receipt of a notice to request a pay-  
20 off letter, shall send written notice of the transfer to the person  
21 requesting the pay-off letter.

22       The bill also provides that if a mortgage holder to whom notice  
23 to request a pay-off letter has been given fails to send a timely pay-  
24 off letter, or if a person who has an obligation to give notice of a  
25 transfer of mortgage interest fails to timely give the required notice,  
26 the mortgage holder or person shall be liable to the mortgagor for  
27 any actual damages caused by the failure, or a penalty of \$500,  
28 whichever is greater, and reasonable attorney’s fees and costs of  
29 suit, provided, however, that a mortgage holder or person shall not  
30 be liable if the mortgage holder or person: (1) established  
31 reasonable procedures to fulfill its obligations; (2) complied with  
32 those procedures in good faith; and (3) failed to fulfill an obligation  
33 solely due to circumstances beyond its control.

34       In addition, the bill provides what is commonly known as a “one-  
35 touch” method of discharging a mortgage, as a more efficient  
36 alternative to the current method of discharging a mortgage that is  
37 being prepaid. Currently, in situations in which a mortgagor pays all  
38 amounts due on a mortgage in accordance with a pay-off letter  
39 issued by the mortgage holder, the mortgagor must wait for the  
40 mortgage holder to provide an executed satisfaction of mortgage  
41 document, before recording a satisfaction of mortgage to discharge  
42 the mortgage of record. Under the one-touch method provided by  
43 this bill, an attorney-at-law of this State, or a person duly licensed  
44 as an insurance producer pursuant to the “New Jersey Insurance  
45 Producer Licensing Act of 2001,” P.L.2003 c.210 (C.17:22A-26 et  
46 seq.) in the line of title insurance (hereinafter referred to as “title  
47 agent”), may include, with a notice to request a pay-off letter from a  
48 mortgage holder, sent by registered or certified mail, return receipt

1 requested, a notice of intent to submit for recording an affidavit of  
2 payment to discharge a mortgage. Further, the bill allows the  
3 attorney or title agent, without any further action by the mortgage  
4 holder, to discharge the mortgage of record by recording the  
5 affidavit, provided it is substantially in the form set forth in the bill,  
6 along with a satisfaction of mortgage. The affidavit form set forth in  
7 the bill requires a statement that the attorney or title agent made full  
8 payment of the pay-off amount due on the mortgage in accordance  
9 with the pay-off letter provided by the mortgage holder, and that  
10 confirmation of payment was received. Thus, in a typical title or  
11 mortgage closing, during which an existing mortgage is being  
12 prepaid, the attorney or title agent handling the closing on behalf of  
13 the mortgagor, may utilize the one-touch method at the closing to  
14 pay off the existing mortgage and discharge it of record.

15 The bill also makes certain technical changes to ensure  
16 consistent use of terminology in the statutes that govern mortgage  
17 pay-off letters and mortgage satisfactions.