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DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 52

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO THE SATISFACTION AND PARTIAL
RELEASE OF MORTGAGES.

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

1 Section 1. Amend § 2120, Title 25 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows and redesignating accordingly:

3 § 2120 Authorization to satisfy mortgage.

4 (a) An attorney authorized to practice law in the State who has paid in full or caused to be paid in full a debt owed
5 by any debtor to any creditor holding a mortgage securing such debt and encumbering a property owned by the debtor, or a
6 retired Delaware attorney who, while an active member of the Bar of the Delaware Supreme Court, paid in full or caused to
7 be paid in full a debt owed by any debtor to any creditor holding a mortgage securing such debt and encumbering a
8 property owned by the debtor, after review and approval of the retired attorney's relevant records by an active member of
9 the Bar of the Delaware Supreme Court, may, at any time after the expiration of 60 days after such debt has been paid in
10 full, and after giving a minimum of 15 days' notice to said creditor, record with the recorder of deeds in the county in which
11 such property is located, an affidavit and request which shall contain the following information:

12 (10) If the fully paid creditor or mortgage loan servicer is other than the last mortgagee of record on the date of
13 full payment, a statement by the attorney or retired attorney whose signature appears on the affidavit that:

14 a. The attorney or retired attorney was provided with a written payoff statement by the creditor or
15 mortgage loan servicer;

16 b. The attorney or retired attorney relied upon the written payoff statement; and

17 c. The attorney or retired attorney made payment or caused payment to be made of the outstanding debt
18 to the creditor or mortgage loan servicer;

19 (11) If the mortgage secured a home equity or other consumer open line of credit, affiant attorney or retired
20 attorney, where requested in writing by the mortgagee, shall, also in writing, instruct said mortgagee to close, effective

21 upon the date and time of receipt of the mortgage "payoff figure," the open line of credit and that no additional funds are to
22 be advanced under the open line of credit;

23 (14) That the affiant attorney or retired attorney has fully paid or has caused to be fully paid the debt to the
24 creditor or to the mortgage loan servicer and retains evidence of that payment;

25 (16) That the attorney or retired attorney requests the recorder of deeds in the county in which such property is
26 located to indicate in the property records of that county that such mortgage is fully paid and satisfied;

27 (17) That the attorney or retired attorney whose signature appears on said affidavit has personally reviewed all of
28 the information and each of the facts contained in said affidavit and request; and

29 (18) That the information contained in said affidavit and request is true and correct to the best of the attorney's or
30 retired attorney's knowledge.

31 (b) An attorney authorized to practice law in the State who has paid in partial satisfaction or caused to be paid in
32 partial satisfaction a debt owed by any debtor to any creditor holding a mortgage securing such debt and encumbering a
33 property owned by the debtor, or a retired Delaware attorney who while an active member of the Bar of the Delaware
34 Supreme Court paid in partial satisfaction or caused to be paid in partial satisfaction a debt owed by any debtor to any
35 creditor holding a mortgage securing such debt and encumbering a property owned by the debtor, after review and approval
36 of the retired attorney's relevant records by an active member of the Bar of the Delaware Supreme Court, may, at any time
37 after the expiration of 60 days after such debt has been partially paid, and after giving a minimum of 15 days' notice to said
38 creditor, record with the recorder of deeds in the county in which such property is located, an affidavit and request which
39 shall contain the following information:

40 (1) The mortgage record, volume and page of the mortgage proposed to be marked partially released;

41 (2) The full name and address of the original mortgagee;

42 (3) The name of the original mortgagor or mortgagors;

43 (4) The original date of the mortgage;

44 (5) The original amount of the mortgage;

45 (6) A satisfactory description of the property which is to be released from the mortgage, including, but not limited

46 to:

47 a. The property address and/or lot number;

48 b. Subdivision name, if any; and

49 c. The tax parcel number assigned to such property;

50 (7) The name of each entity to whom the mortgage was subsequently assigned, together with the dates and
51 recording information of said assignments;

52 (8) The full name and address of the last mortgagee in interest which appears of record on the mortgage;

53 (9) The full name and address of the creditor or mortgage loan servicer who was partially paid;

54 (10) If the partially paid creditor or mortgage loan servicer is other than the last mortgagee of record on the date
55 of partial payment, a statement by the attorney or retired attorney whose signature appears on the affidavit that:

56 a. The attorney or retired attorney was provided with a written partial release statement by the creditor or
57 mortgage loan servicer;

58 b. The attorney or retired attorney relied upon the written partial release statement; and

59 c. The attorney or retired attorney made partial payment or caused partial payment to be made of the
60 outstanding debt to the creditor or mortgage loan servicer;

61 (11) The date on which the debt was partially paid;

62 (12) That at least 60 days have elapsed since the debt was partially paid;

63 (13) That the affiant attorney or retired attorney has partially paid or has caused to be partially paid the debt to the
64 creditor or to the mortgage loan servicer and retains evidence of that payment;

65 (14) That after a minimum of 15 days' notice, by certified mail, return receipts requested, the mortgagee of record
66 at the time of the partial payment described in the affidavit, has failed to accomplish partial release of the mortgage in the
67 mortgage record, volume and page in which such mortgage appears in the public records;

68 (15) That the attorney or retired attorney requests the recorder of deeds in the county in which such property is
69 located to indicate in the property records of that county that such mortgage is partially released;

70 (16) That the attorney or retired attorney whose signature appears on said affidavit has personally reviewed all of
71 the information and each of the facts contained in said affidavit and request; and

72 (17) That the information contained in said affidavit and request is true and correct to the best of the attorney's or
73 retired attorney's knowledge.

74 ~~(b)~~(c) The recorder of deeds, or a duly appointed deputy, in the county in which the debtor's property encumbered
75 by such mortgage is located shall be authorized to cause said mortgage to be satisfied or the relevant portion of the pledged
76 property to be released from said mortgage, as the case may be, upon receipt of such an affidavit and request by the
77 attorney or retired attorney fully or partially paying such debt.

78 ~~(e)~~(d) The recorder of deed's office may charge a fee for accepting and recording the affidavit and satisfying or
79 partially releasing the mortgage.

80 (~~d~~)(e) This section shall, in no way, limit the authority of the recorder of deeds to otherwise satisfy or partially
81 release mortgages as provided by law.

82 (~~e~~)(f) The following or substantially consistent revisions by the recorder of deeds shall be a sufficient form of
83 mortgage satisfaction affidavit pursuant to this section:

84 AFFIDAVIT CERTIFYING MORTGAGE PAYOFF AND REQUEST FOR MORTGAGE SATISFACTION
85 PURSUANT TO 25 DEL. C. § 2120

86 STATE OF DELAWARE)

87) SS.

88 NEW CASTLE COUNTY)

89 I, the undersigned, an attorney authorized to practice law in the State of Delaware, or an attorney who has retired
90 from the practice of law in the State of Delaware and after review and approval of my relevant records by an active member
91 of the Delaware Bar, after having first been duly sworn, depose and say as follows:

92 (g) The following or substantially consistent revisions by the recorder of deeds shall be a sufficient form of
93 mortgage partial release affidavit pursuant to this section:

94 AFFIDAVIT CERTIFYING MORTGAGE PARTIAL PAYOFF AND REQUEST FOR MORTGAGE PARTIAL
95 RELEASE PURSUANT TO 25 DEL. C. § 2120

96 STATE OF DELAWARE _____)

97 _____) SS.

98 NEW CASTLE COUNTY _____)

99 I, the undersigned, an attorney authorized to practice law in the State of Delaware, or an attorney who has retired
100 from the practice of law in the State of Delaware and after review and approval of my relevant records by an active member
101 of the Delaware Bar, after having first been duly sworn, depose and say as follows:

102 (1) The mortgage proposed to be marked partially paid and partially released appears in Mortgage Record _____,
103 Volume _____, Page _____;

104 (2) The full name and address of the original mortgagee is _____;

105 (3) The name of the original mortgagor(s) is (are) _____;

106 (4) The original date of the mortgage is _____;

107 (5) The original amount of the mortgage is _____;

108 (6) A satisfactory description of the property to be released from the mortgage, including, but not limited to the
109 following is:

110 a. The property address and/or lot number is _____;

111 b. Subdivision name, if any, _____; and

112 c. The county tax parcel number assigned to such property is _____;

113 (7) After the original mortgage was recorded, the mortgage was subsequently assigned of record to each of the
114 following entities on the date and at the book and page there noted:

115 to ___ on ___ at Book/Volume ___ and Page No. ___

116 to ___ on ___ at Book/Volume ___ and Page No. ___

117 to ___ on ___ at Book/Volume ___ and Page No. ___

118 to ___ on ___ at Book/Volume ___ and Page No. ___

119 (8) The full name and address of the last mortgagee in interest on the mortgage is _____;

120 (9) The full name and address of the creditor or mortgage loan servicer who was partially paid is
121 _____;

122 (10) _____, who is the creditor or mortgage loan servicer that was partially paid is other than
123 _____, the last mortgagee in interest which appeared of record on the date of said payment. I did, however,
124 obtain a written partial release statement from the creditor or mortgage loan servicer on account of said mortgage, and, in
125 accordance with and in reliance on the partial release statement, I made partial payment or caused partial payment to be
126 made of the outstanding debt to the creditor or mortgage loan servicer;

127 (11) The date on which the debt was partially paid is _____;

128 (12) At least 4 months have elapsed since the debt was partially paid and the amount of the debt so paid is not in
129 dispute;

130 (13) I partially paid or caused to be partially paid such debt to the creditor or mortgage loan servicer and I retain
131 evidence of that payment;

132 (14) After a minimum of 15 days' notice by me, by certified mail, return receipt requested, the last mortgagee in
133 interest has failed to take appropriate steps to accomplish partial release of the mortgage in the mortgage record, volume
134 and page where such mortgage appears in the public records;

135 (15) I request the Recorder of Deeds in _____ County to indicate in the record of said County that such
136 mortgage is partially paid and a portion of the pledged property is released;

137 (16) I have personally reviewed all of the information and each of the facts contained in this affidavit and request;
138 and

139 (17) The information contained in this affidavit and request is true and correct to the best of my knowledge.

140 ~~(f)~~(g) An affidavit given in ~~the form~~ either of the forms above shall be notarized by a notary public.

141 (h) For purposes of this section, a “retired attorney” or a “retired Delaware attorney” shall mean an inactive,
142 judicial, retired or emeritus member of the Bar of the Delaware Supreme Court as provided in Delaware Supreme Court
143 Rule 69.

SYNOPSIS

This Act will allow a retired Delaware attorney to satisfy a mortgage that the attorney paid off while in practice. Currently only attorneys still in active practice are permitted to satisfy mortgages under Section 2120. This limitation can leave no practicable way to satisfy a mortgage for which the lender fails to record a satisfaction as required by State law if the attorney who paid off the mortgage subsequently retires. This Act will also expand the scope of Section 2120 to include partial releases of a mortgage where a Delaware attorney made a partial payment to release a portion of the mortgaged property.

Author: Senator Bushweller