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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

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

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

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

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

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

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

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

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

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

(4) The original date of the mortgage;

(5) The original amount of the mortgage;

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

to:

a. The property address and/or lot number;

b. Subdivision name, if any; and

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.

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

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

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

STATE OF DELAWARE )  
 ) SS.

NEW CASTLE COUNTY )

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

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

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

STATE OF DELAWARE )  
 ) SS.

NEW CASTLE COUNTY )

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

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

(2) The full name and address of the original mortgagee is \_\_\_\_\_;

(3) The name of the original mortgagor(s) is (are) \_\_\_\_\_;

(4) The original date of the mortgage is \_\_\_\_\_;

(5) The original amount of the mortgage is \_\_\_\_\_;

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

a. The property address and/or lot number is \_\_\_\_\_;

b. Subdivision name, if any, \_\_\_\_\_; and

c. The county tax parcel number assigned to such property is \_\_\_\_\_;

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

to \_\_\_\_\_ on \_\_\_\_\_ at Book/Volume \_\_\_\_\_ and Page No. \_\_\_\_\_

to \_\_\_\_\_ on \_\_\_\_\_ at Book/Volume \_\_\_\_\_ and Page No. \_\_\_\_\_

to \_\_\_\_\_ on \_\_\_\_\_ at Book/Volume \_\_\_\_\_ and Page No. \_\_\_\_\_

to \_\_\_\_\_ on \_\_\_\_\_ at Book/Volume \_\_\_\_\_ and Page No. \_\_\_\_\_

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

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

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

(11) The date on which the debt was partially paid is \_\_\_\_\_;

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

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

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

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

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

(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