~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 20, 2014

**H. 3134**

Introduced by Reps. Nanney and Taylor

S. Printed 5/20/14--S.

Read the first time March 5, 2014.

**THE COMMITTEE ON BANKING AND INSURANCE**

To whom was referred a Bill (H. 3134) to amend Section 29‑3‑330, as amended, Code of Laws of South Carolina, 1976, relating to methods of entering a satisfaction of mortgage in the public records, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

ROBERT W. HAYES, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 29‑3‑330, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO METHODS OF ENTERING A SATISFACTION OF MORTGAGE IN THE PUBLIC RECORDS, SO AS TO PROVIDE THAT The mortgagee of record, the owner or holder of the debt instrument secured by the mortgage, the trustee or beneficiary of a deed of trust, or the legal representative or attorney‑in‑fact of any of those parties may execute a mortgage satisfaction or deed of trust release, AND TO PROVIDE A PROCEDURE AND FORM FOR USE IN THIS EXECUTION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 29‑3‑330 of the 1976 Code, as last amended by Act 19 of 2011, is further amended to read:

“Section 29‑3‑330. (A) In this section these words shall have the following meaning:

(1) ‘Mortgage’ means a lien against real property that is granted to secure the payment of money; a deed of trust MUST BE given the same meaning as a ‘mortgage’.

(2) ‘Register’ means the official, including the register of deeds, register of mense conveyances or clerk of court charged with the recording and indexing duties in Chapter 5, Title 30.

(3) ‘Release’ means an instrument releasing all real property encumbered from the lien of the mortgage.

(4) ‘Satisfaction’ means a discharge signed by the mortgagee of record, the trustee of a deed of trust, or by an agent or officer, legal representative, or attorney‑in‑fact under a written instrument duly recorded, of either of the foregoing indicating that the property subject to the security instrument is released.

(5) ‘Security instrument’ means any mortgage, deed of trust, or other written instrument securing the payment of money and being a lien upon real property.

(B) ~~Any mortgage, deed of trust, or other written instrument securing the payment of money and being a lien upon real property may be cancelled, discharged, and~~ A security instrument may be satisfied or released by any of the following methods:

(~~a~~1) The mortgagee ~~or other person being~~ of record, the owner or holder of the mortgage, ~~as appears by the record of the instrument or any assignment of the instrument~~ the trustee of a deed of trust, or the legal representative, agent or officer, or attorney‑in‑fact, under a written instrument duly recorded~~, of the holder of the instrument~~ of any of the foregoing, may exhibit the security instrument to the ~~officer or his deputy~~ register who has charge of the recording of the security instrument and then in the presence of the ~~officer or his deputy~~ register write across the face of the record of the security instrument the words ‘The debt secured is paid in full and the lien of this instrument is satisfied’, ‘The lien of this instrument has been released’, or words of like meaning and date the notation and sign it~~, the~~. The signature ~~to~~ must be witnessed by the ~~officer or his deputy;~~ register.

(~~b~~2) The satisfaction ~~of the mortgage, deed of trust, or other instrument securing the payment of money and being a lien upon real property~~ or release of the security instrument may be written upon or attached to the original security instrument and executed by any person above named in the presence of ~~one or more~~ two witnesses and acknowledged, in which event the satisfaction or release must be recorded across the face of the record of the original instrument~~; or~~.

(3) The mortgagee of record, the trustee of a deed of trust, or an agent or officer, legal representative, or attorney‑in‑fact, under a written instrument duly recorded, of either of the foregoing, may execute a satisfaction or release of a mortgage or deed of trust. Any person executing such satisfaction or release which is false is guilty of perjury and subject to Section 16‑9‑10 and MUST BE liable for damages that any person may sustain as a result of the false affidavit, including reasonable attorney’s fees incurred in connection with the recovery of such damages. This satisfaction or release must be signed in the presence of two witnesses, acknowledged, and must be in substantially the same form as follows:

‘STATE OF SOUTH CAROLINA MORTGAGE/DEED OF TRUST SATISFACTION

PURSUANT TO SECTION 29‑3‑330(B)(3) OF THE SOUTH CAROLINA CODE OF LAWS, 1976

The undersigned being the mortgagee of record, the trustee of a deed of trust, or the legal representative, agent or officer, or attorney‑in‑fact of the mortgagee of record or the trustee of the trust, under a written agreement duly recorded, of either of the foregoing, certifies:

The debt secured by the mortgage/deed of trust recorded in the office of the Clerk of Court or Register of Deeds of \_\_\_\_\_\_\_\_\_\_\_\_ County in book \_\_\_\_\_\_ at page \_\_\_\_\_\_ is:

[ ] paid in full and the lien or the foregoing instrument has been released; or

[ ] the lien of the foregoing instrument has been released.

The Clerk of Court or Register of Deeds may enter this cancellation into record.

Under penalties of perjury, I declare that I have examined this affidavit this \_\_\_day of \_\_\_\_\_\_\_\_ and, to the best of my knowledge and belief, it is true, correct, and complete.

WITNESS my/our hand this \_\_\_ day of \_\_\_\_, 20 \_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Witness Signature)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Witness Signature)

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_

This instrument was acknowledged before me this (date) by (name of officer/authorized signer, title of officer/authorized signer), of (name of corporation/entity acknowledging), a (type of entity and state or place of incorporation/formation), on behalf of the corporation/entity.

Signature of Notary \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public, State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name of Notary \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’

This notary acknowledgment form does not preclude the use of any other form of acknowledgment permitted by South Carolina law. The filing of this satisfaction shall satisfy or release the lien of the mortgage or deed of trust. Upon presentation, the register shall record this satisfaction or release pursuant to Section 29‑3‑330(B)(3) and mark the mortgage or deed of trust satisfied or released of record.

~~(c)(i)~~ ~~In case the original mortgage, deed of trust, or other instrument securing the payment of money and being a lien upon real property has been lost or destroyed it may be satisfied, either by the owner and holder of the instrument in person or his personal representative or duly authorized attorney‑in‑fact, by an instrument in writing duly executed in the presence of two witnesses and acknowledged pursuant to the Uniform Recognition of Acknowledgments Act in Chapter 3, Title 26, and in addition the person executing the satisfaction shall make an affidavit that he or the person he represents is at the time of the satisfaction a bona fide owner and holder of the mortgage, deed of trust, or other instrument securing the payment of money and being a lien upon real property and that has not been assigned, hypothecated, or otherwise disposed of. The affidavit must be recorded along with the satisfaction. The maker of any affidavit which is false is guilty of perjury and punished as by law provided for the punishment of perjury.~~

~~(ii)~~ ~~The signature of the owner or holder of the instrument which has been lost or destroyed to which this section applies may be proved in the manner provided above or in the alternative may also be acknowledged by the owner or holder of the instrument in the presence of two witnesses, taken before an officer competent to administer an oath. The form of the acknowledgement must be as provided in Section 30‑5‑30(C) and if the acknowledgement is taken outside this State, it may be taken in the manner provided in Section 30‑5‑30(B).~~

(~~d~~4) If the ~~mortgage, deed of trust, or other written~~ security instrument was recorded in counterparts, the original ~~of the~~ security instrument need not be presented and the satisfaction or release of it may be evidenced by an instrument of satisfaction~~,~~ or release, ~~or discharge,~~ which may be executed in counterparts, ~~executed~~ by the mortgagee, the holder of the mortgage, the legal representative, agent or officer, or the attorney‑in‑fact under a written instrument duly recorded. Upon presentation of the instrument of satisfaction~~,~~ or release, ~~or discharge,~~ or a counterpart of it, the ~~officer or his deputy having charge of the recording of instruments~~ register shall record the same.

(~~e~~5) Any licensed attorney admitted to practice in the State of South Carolina who can provide proof of payment of funds by evidence of payment made payable to the mortgagee, holder of record, servicer, or other party entitled to receive payment may record, or cause to be recorded, an affidavit, in writing, duly executed in the presence of two witnesses and acknowledged pursuant to the Uniform Recognition of Acknowledgments Act in Chapter 3, Title 26, which states that full payment of the balance or payoff amount of the ~~mortgage or other instrument securing the payment of money and being a lien upon real property~~ security instrument has been made and that evidence of payment from the mortgagee, assignee, or servicer exists. This affidavit, duly recorded in the appropriate county, shall serve as notice of satisfaction of the mortgage and release of the lien upon the real property. The filing of the affidavit ~~shall~~ must be sufficient to satisfy~~,~~ or release~~, or discharge~~ the lien. Upon presentation of the instrument of satisfaction~~,~~ or release, ~~or discharge,~~ the ~~officer or his deputy having charge of the recording of instruments shall~~ register must record the same. This section may not be construed to require an attorney to record an affidavit pursuant to this item or to create liability for failure to file such affidavit. The licensed attorney signing any such instrument which is false is guilty of perjury and subject to Section 16‑9‑10 and shall be liable for damages that any person may sustain as a result of the false affidavit, including reasonable attorney’s fees incurred in connection with the recovery of such damages. The affidavit referred to in this item shall be as follows:

‘STATE OF SOUTH CAROLINA MORTGAGE LIEN

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_ SATISFACTION AFFIDAVIT

PURSUANT TO ~~Section~~ SECTION 29‑3‑330

OF SC CODE OF LAWS

FOR BOOK \_\_\_\_ PAGE \_\_\_\_\_

The undersigned on oath, being first duly sworn, hereby certifies as follows:

1. The undersigned is a licensed attorney admitted to practice in the State of South Carolina.

2. That with respect to the mortgage or deed of trust given by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_ and recorded in the offices of the Clerk of Court or Register of Deeds in book \_\_\_\_\_\_\_\_\_ at page \_\_\_\_\_\_\_\_:

a. [ ] That the undersigned was given written payoff information and made such payoff and is in possession of a canceled check or other evidence of payment to the mortgagee, holder of record, or representative servicer;

b. [ ] That the undersigned was given written payoff information and made such payoff by wire transfer or other electronic means to the mortgagee, holder of record, or representative servicer and has confirmation from the undersigned’s bank of the transfer to the account provided by the mortgagee, holder of record, or representative servicer.

Under penalties of perjury, I declare that I have examined this affidavit this \_\_\_ day of \_\_\_\_ and, to the best of my knowledge and belief, it is true, correct, and complete.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Witness) (Signature)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Witness) (Name‑‑Please Print)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Attorney’s S.C. Bar number)

STATE OF SOUTH CAROLINA ACKNOWLEDGEMENT

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_ by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’

Upon presentation to the office of the Register of Deeds, the register is directed to record pursuant to Section 29‑3‑330(~~e~~B)(3) and mark the mortgage or deed of trust satisfied or released of record.”

SECTION 2. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑