

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE ENROLLED ACT No. 1636

AN ACT to amend the Indiana Code concerning consumer credit.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 32-8-15.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

Chapter 15.5. Mortgage Release by Title Insurance Company

Sec. 1. As used in this chapter, "mortgage" means a mortgage or mortgage lien on an interest in real property in Indiana given to secure a loan in the original principal amount of not more than one million dollars (\$1,000,000).

Sec. 2. As used in this chapter, "mortgagee" means:

- (1) the grantee of a mortgage; or**
- (2) if a mortgage has been assigned of record, the last person to whom the mortgage has been assigned of record.**

Sec. 3. As used in this chapter, "mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage. A person transmitting a payoff statement is the mortgage service for the mortgage described in the payoff statement.

Sec. 4. As used in this chapter, "mortgagor" means the grantor of a mortgage.

Sec. 5. As used in this chapter, "payoff statement" means a statement of the amount of:

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- (1) the unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage; and
- (2) interest on a per day basis for the unpaid balance.

Sec. 6. As used in this chapter, "person" means an individual, a corporation, or any other legal entity.

Sec. 7. As used in this chapter, "record" means to record with the county recorder.

Sec. 8. As used in this chapter, "title insurance company" means a corporation or other business entity authorized and licensed to transact the business of insuring titles to interests in real property in Indiana under IC 27.

Sec. 9. An officer or duly appointed agent of a title insurance company may, on behalf of a mortgagor or a person who acquired from the mortgagor a lien against all or part of the property described in a mortgage, execute a certificate of release that complies with the requirements of this chapter and record the certificate of release in the real property records of each county in which the mortgage is recorded if:

- (1) a satisfaction or release of the mortgage has not been executed and recorded within sixty (60) days after the date payment in full of the loan secured by the mortgage was sent in accordance with a payoff statement furnished by the mortgagee or the mortgage servicer; and
- (2) the title insurance company, an officer of the title insurance company, or an agent of the title insurance company, has sent to the last known address of the mortgagee or the mortgage servicer, at least thirty (30) days before executing the certificate of release, written notice of its intention to execute and record a certificate of release in accordance with this section after the expiration of the sixty (60) day period.

Sec. 10. A certificate of release executed under this chapter must contain substantially all of the following:

- (1) The name of the mortgagor, the name of the original mortgagee and, if applicable, the name of the mortgage service, the date of the mortgage, the date of recording of the mortgage, and the volume and page or instrument number for the mortgage in the real property records where the mortgage is recorded, together with similar information for the last recorded assignment of the mortgage.
- (2) A statement that the mortgage was in the original

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principal amount of not more than one million dollars (\$1,000,000).

(3) A statement that the person executing the certificate of release is an officer or a duly appointed agent of a title insurance company authorized and licensed to transact the business of insuring titles to interests in real property in Indiana under IC 27.

(4) A statement that the certificate of release is made on behalf of the mortgagor or a person who acquired a lien from the mortgagor against all or part of the property described in the mortgage.

(5) A statement that the mortgagee or mortgage service provided a payoff statement that was used to make payment in full of the unpaid balance of the loan secured by the mortgage.

(6) A statement that payment in full of the unpaid balance of the loan secured by the mortgage was made in accordance with the written or verbal payoff statement, and received by the mortgagee or mortgage servicer, as evidenced in the records of the title insurance company or its agents by:

(A) a bank check;

(B) a certified check;

(C) an escrow account check from the title company or title insurance agent;

(D) an attorney trust account check that has been negotiated by the mortgagee or mortgage servicer; or

(E) any other documentary evidence of payment to the mortgagee or mortgage servicer.

(7) A statement indicating that more than sixty (60) days have elapsed since the date payment in full was sent.

(8) A statement that after the expiration of the sixty (60) day period in section 9 of this chapter, the title insurance company, its officers, or its agent sent to the last known address of the mortgagee or mortgage servicer, at least thirty (30) days before executing the certificate of release, notice in writing of its intention to execute and record a certificate of release as required under this section, with an unexecuted copy of the proposed certificate of release attached to the written notice.

(9) A statement that neither the title insurance company nor its officers or agent have received notification in writing of any reason why the certificate of release should not be

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executed and recorded after the expiration of the thirty (30) day notice period in section 9 of this chapter.

Sec. 11. A certificate of release authorized by this chapter shall be executed and acknowledged in the same manner as required by law in Indiana for the execution and acknowledgment of a deed.

Sec. 12. (a) A title insurance company may authorize a duly appointed agent of the title insurance company to execute certificates of release in accordance with the requirements of this chapter by recording a notice of authorization in the office of the county recorder for each county in which the duly appointed agent is authorized to execute and record certificates of release on behalf of the title insurance company stating the following:

(1) The name of the title insurance company that is authorizing a duly appointed agent to execute certificates of release on behalf of the title insurance company.

(2) The identity of the person who is a duly appointed agent of the title insurance company and who is authorized to execute and record certificates of release in accordance with the requirements of this chapter on behalf of the title insurance company.

(3) That the duly appointed agent has full authority to execute and record certificates of release in accordance with the requirements of this chapter on behalf of the title insurance company.

(b) The notice of authorization shall be executed and acknowledged in the same manner as required by law in Indiana for the execution and acknowledgment of a deed.

(c) A single notice of authorization recorded in the office of a county recorder in accordance with the requirements of this section constitutes the authority of the duly appointed agent to execute and record certificates of release in that county on behalf of the title insurance company. A separate notice of authority is not required for each certificate of release recorded by a duly appointed agent.

(d) The authority granted to a duly appointed agent by a title insurance company in accordance with the requirements of this section continues until a revocation of the notice of authorization is recorded in the office of the county recorder for the county in which the notice of authorization was recorded.

(e) The delegation of authority to a duly appointed agent by a title insurance company in accordance with the requirements of this section does not relieve the title insurance company of any

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liability for damages caused by the duly appointed agent for the wrongful or erroneous execution and recording of a certificate of release.

Sec. 13. A creditor or mortgage servicer may not withhold the release of a mortgage if the written mortgage payoff statement misstates the amount of the payoff and the written payoff is relied upon in good faith by an independent closing agent without knowledge of the misstatement. It is not a misstatement if the written payoff statement is not accurate as a result of a change in circumstances occurring after the issuance of the payoff statement. The release of a mortgage does not affect the ability of the creditor or mortgage servicer to collect the full amount owed without regard to a misstatement in the written payoff statement and a release of the mortgage.

Sec. 14. The acceptance of a payment by a creditor or mortgage servicer of an amount that is not sufficient to pay the amount owed does not constitute a waiver, release, accord and satisfaction, or other impairment of the creditors or mortgage servicers rights notwithstanding any contrary instructions or restrictive endorsements.

Sec. 15. A certificate of release prepared, executed, and recorded in accordance with the requirements of this chapter constitutes a release of the mortgage described in that certificate of release, and the county recorder shall enter and index the certificate of release in the same manner that a release or satisfaction of mortgage is entered and indexed in the records of the county recorder.

Sec. 16. (a) The execution and recording of a wrongful or erroneous certificate of release by a title insurance company or a duly appointed agent with authority from a title insurance company does not relieve the mortgagor, or anyone succeeding to or assuming the interest of the mortgagor, from any liability for the debt or other obligations secured by the mortgage that is the subject of the wrongful or erroneous certificate of release.

(b) Additionally, a title insurance company or a duly appointed agent with authority from a title insurance company that wrongfully or erroneously executes and records a certificate of release is liable to the mortgagee, or the assignee of the mortgagee if the mortgage has been assigned, for actual damages sustained due to the recording of a wrongful or erroneous certificate of release.

Sec. 17. (a) This chapter applies to the release of a mortgage

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after June 30, 2001, and before July 1, 2002, regardless of when the mortgage was created or assigned.

(b) This chapter expires July 1, 2003.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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