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3 HOUSE FINANCIAL SERVICES COMMITTEE SUBSTITUTE FOR HB218
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8 SYNOPSIS: Under existing law, secured creditors are
9 only required to submit for recording the
10 satisfaction of any residential mortgages. Other
11 mortgages, including mortgages securing commercial
12 agricultural properties, are excluded from the
13 satisfaction reporting requirements of the Alabama
14 Residential Mortgage Satisfaction Act and a
15 satisfaction is only recorded upon a written
16 request of a mortgagor or a creditor of the
17 mortgagor.

18 This bill would expand the act to require
19 recordation of satisfaction to include mortgages
20 securing commercial agricultural properties and
21 would rename that act the "Alabama Residential and
22 Agricultural Mortgage Satisfaction Act."

23 This bill would also make conforming
24 changes.
25

26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 To expand the Alabama Residential Mortgage
4 Satisfaction Act; to amend Sections 35-10-90, 35-10-91,
5 35-10-92, 35-10-94, and 35-10-96, Code of Alabama 1975, to
6 include commercial agricultural mortgages; to rename the act
7 accordingly; to amend Sections 35-10-26 and 35-10-30, Code of
8 Alabama 1975, to make conforming changes; and to repeal
9 Section 35-10-27, Code of Alabama 1975.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Sections 35-10-90, 35-10-91, 35-10-92,
12 35-10-94, 35-10-96, 35-10-26, and 35-10-30, Code of Alabama
13 1975, are amended to read as follows:

14 "§35-10-90.

15 "(a) This article shall be known as the Alabama
16 Residential and Agricultural Mortgage Satisfaction Act. This
17 article applies only to (i) mortgages securing residential
18 real property located in this state which is used primarily
19 for personal, family, or household purposes and is improved by
20 one to four dwelling units, or (ii) mortgages securing
21 commercial agricultural property. Without limitation, this
22 article does not apply to mortgages on non-agricultural
23 commercial or other types of property. This article also does
24 not apply to mortgages on other types of property or to a
25 security interest exclusively in one or more fixtures as
26 defined in Title 7, Article 9A.

1 "(b) For purposes of this article, the following
2 terms shall have the following meanings:

3 "(1) COMMERCIAL AGRICULTURAL PROPERTY. Real property
4 located in this state that is used primarily for the growing
5 of plants, trees, or animals primarily for a for-profit
6 business and not for recreational purposes.

7 "~~(1)~~ (2) ENTITLED PERSON. The person or persons
8 liable for payment or performance of the obligation secured by
9 the real property described in a security instrument.

10 "~~(2)~~ (3) EQUITY LINE SECURITY INSTRUMENT. A security
11 instrument securing, in whole or in part, indebtedness created
12 under a line of credit, a revolving or open-end credit
13 agreement, or a credit agreement that provides for future
14 advances. The credit agreement may be referred to in this
15 article as an "equity line" or an "equity line of credit."

16 "~~(3)~~ (4) RESIDENTIAL REAL PROPERTY or REAL PROPERTY.
17 Real property located in this state which is used primarily
18 for personal, family, or household purposes and is improved by
19 one to four dwelling units.

20 "~~(4)~~ (5) SECURED CREDITOR. At any particular time,
21 the person that currently holds or is the beneficiary of a
22 security interest or that is authorized both to receive
23 payments on behalf of a person that currently holds a security
24 interest and to record a satisfaction of the security
25 instrument upon receiving full performance of the secured
26 obligation. The term does not include a trustee under a
27 security instrument.

1 "~~(5)~~ (6) SECURITY INSTRUMENT. A mortgage or other
2 agreement that creates or provides for an interest in
3 residential real property or commercial agricultural property
4 to secure payment or performance of an obligation.

5 "~~(6)~~ (7) SECURITY INTEREST. An interest in
6 residential real property or commercial agricultural property
7 created by a security instrument. For purposes of this
8 article, a security interest exclusively in one or more
9 fixtures, as defined in Title 7, Article 9A, does not
10 constitute an interest in residential real property or
11 commercial agricultural property.

12 "~~(7)~~ (8) SUBMIT FOR RECORDING. To deliver, with
13 required fees and taxes, a document, sufficient to be
14 recorded, to the judge of probate of the county in which the
15 property is located. For purposes of this article, without
16 limitation, mailing, delivering, or sending by overnight or
17 other delivery service a satisfaction of mortgage or other
18 document to be submitted for recording to the address of the
19 office for recording satisfactions of mortgages or other
20 documents, as applicable, is sufficient to constitute
21 submission for recording.

22 "~~(8)~~ (9) TITLE INSURANCE COMPANY. An organization
23 authorized to conduct the business of insuring titles to real
24 property in this state and licensed by the Department of
25 Insurance as defined in subdivision (9) of Section 27-25-3.

26 "§35-10-91.

1 "(a) A person liable for payment or performance of
2 the obligation secured by the residential real property
3 described in a security instrument who makes proper notice
4 pursuant to this section shall be entitled to receive a payoff
5 statement.

6 "(b) Proper notice must contain all of the
7 following:

8 "(1) The entitled person's name.

9 "(2) If given by a person other than an entitled
10 person, the name of the person giving the notification and a
11 statement, if required by the secured party evidence, that the
12 person is an authorized agent of the entitled person.

13 "(3) The address to which the secured creditor must
14 send the statement.

15 "(4) The account number assigned by the secured
16 creditor or other sufficient information to enable the
17 creditor to identify the secured obligation and the real
18 property encumbered by the security interest.

19 "(5) If the secured obligation is an equity line, a
20 statement that the entitled person requests the secured
21 creditor to close the equity line upon receipt of full payment
22 of the equity line on the payoff date specified in the
23 notification and authorizes the secured creditor, at the
24 secured creditor's sole discretion and upon notification to
25 the entitled person or to the entitled person's authorized
26 agent, to suspend the extension of any additional amounts
27 under the equity line for a period of time prior to the payoff

1 date as designated by the secured creditor. Any payoff
2 statement on an equity line may qualify the payoff amount as
3 being subject to change.

4 "(c) Within 14 days after the receipt of a
5 notification that complies with subsection (b), the secured
6 creditor shall issue a payoff statement. A secured creditor
7 may take reasonable measures to verify the identity of any
8 person acting on behalf of the entitled person and to obtain
9 the entitled person's authorization to release information to
10 that person before the 14-day time period begins. If a secured
11 obligation cannot be prepaid, a statement of that fact is
12 sufficient; otherwise, a payoff statement must contain, in
13 substance and with no particular phrasing required, the
14 following:

15 "(1) The date on which it was prepared and the
16 payoff amount as of that date, including the amount of unpaid
17 principal, interest and fees, or other charges included within
18 the payoff amount.

19 "(2) The information reasonably necessary to
20 calculate the payoff amount as of the requested payoff date,
21 including the per diem interest amount or any prepayment
22 penalty which may apply. This subdivision does not apply to
23 equity line security instruments.

24 "(3) The payment cutoff time, if any, the address or
25 place where payment must be made, and any limitation as to the
26 authorized method of payment.

1 "(d) A secured creditor may qualify a payoff amount
2 or state that it is subject to change before the payoff date
3 and provide in the payoff statement information sufficient to
4 permit the entitled person or the person's authorized agent to
5 request an updated payoff amount and to obtain that updated
6 payoff amount during the secured creditor's normal business
7 hours on the stated payoff date or the immediately preceding
8 business day.

9 "(e) A secured creditor is not required to send a
10 payoff statement by means other than first class mail,
11 facsimile, or electronic mail.

12 "(f) If a secured creditor determines that the
13 payoff statement it provided was erroneous, the creditor may
14 send a corrected payoff statement. If the entitled person or
15 the person's authorized agent receives and has a reasonable
16 opportunity to act upon a corrected payoff statement before
17 making payment, the corrected statement supersedes an earlier
18 statement. This article does not affect the right of a secured
19 creditor to recover any sum that it did not include in a
20 payoff amount from any person or entity liable for payment of
21 the secured obligation, including, without limitation, the
22 entitled person who requested the payoff statement.

23 "(g) This section does not preclude, nor does it
24 apply to, other methods of obtaining payoff information such
25 as telephone calls, electronically, or other methods.

26 "(h) This section does not apply to a person liable
27 for payment or performance of the obligation secured by the

1 commercial agricultural property described in a security
2 instrument.

3 "§35-10-92.

4 "(a) A secured creditor shall submit for recording a
5 satisfaction of a security instrument within 30 days after the
6 creditor receives full payment and performance of the secured
7 obligation, and the secured creditor has no obligation to make
8 advances, incur obligations, or otherwise give value under any
9 agreement. Equity line security instruments are fully paid and
10 performed only if, in addition to full payment and
11 performance, the equity line previously has been closed
12 pursuant to the request of the entitled person or the entitled
13 person's authorized agent or otherwise closed as provided by
14 law and all secured obligations have been paid in full.

15 "(b) Notwithstanding anything to the contrary in
16 this article, any notification demanding satisfaction of the
17 security instrument must be sent to the secured creditor's
18 address by a method that also provides proof of receipt by the
19 secured creditor.

20 "(c) A secured creditor that is required to submit a
21 satisfaction of a security instrument for recording and does
22 not do so by the end of the period specified in subsection (a)
23 is liable to the mortgagors for five hundred dollars (\$500) if
24 following the expiration of the time period in subsection (a)
25 the mortgagors make a written request to the secured creditor
26 to record a satisfaction and the secured creditor fails to do
27 so within 21 days after receipt of the written request. The

1 written request must be signed by the mortgagors and by all
2 other persons who have a right to require the mortgage to
3 extend value or signed by an authorized agent of these
4 persons.

5 "(d) A secured creditor that is required to submit a
6 satisfaction of a security instrument for recording and does
7 not do so by the end of the period specified in subsection (c)
8 is not liable to the mortgagors other than for the penalty set
9 forth in subsection (c) and any actual economic damages
10 directly caused by the failure to comply with this section.

11 "(e) A secured creditor is not liable under this
12 article if it does the following:

13 "(1) Establishes a reasonable procedure to achieve
14 compliance with its obligations under this article.

15 "(2) Complies with that procedure in good faith as
16 defined in Section 7-9A-102(43).

17 "(3) Fails to comply with its obligations either
18 because of circumstances beyond its reasonable control or as a
19 result of a bona fide error, notwithstanding maintenance of
20 reasonable procedures of compliance.

21 "(f) (1) Subsections (a), (b), (c), and (d) do not
22 apply if the secured creditor receives full payment or
23 performance of the secured obligation relating to residential
24 property before March 1, 2013.

25 "(2) Subsections (a), (b), (c), and (d) do not apply
26 if the secured creditor receives full payment or performance
27 of the secured obligation relating to commercial agricultural

1 property before the effective date of the act adding this
2 amendatory language.

3 "§35-10-94.

4 "(a) If a secured creditor has not submitted for
5 recording a satisfaction of a security instrument within the
6 time set forth in Section 35-10-92 after full and complete
7 payment of all indebtedness secured by the security
8 instrument, a satisfaction agent acting for and with authority
9 from the mortgagors may give the secured creditor a
10 notification that the satisfaction agent intends to submit for
11 recording an affidavit of satisfaction of the security
12 instrument. The notification must include all of the
13 following:

14 "(1) The identity and mailing address of the
15 satisfaction agent.

16 "(2) Identification of the security instrument for
17 which a recorded satisfaction is sought, including the names
18 of the original parties to, and the recording data for, the
19 security instrument.

20 "(3) A statement that the satisfaction agent has
21 determined all of the following:

22 "a. ~~That~~ Whether the real property described in the
23 security instrument ~~is~~ was, at the time the security interest
24 was made, residential real property or, ~~at the time the~~
25 ~~security interest was made,~~ ~~was residential real~~ commercial
26 agricultural property.

1 "b. That the person to which the notification is
2 being given is the secured creditor.

3 "c. That the secured creditor has received full
4 payment and performance of the secured obligation.

5 "(4) A statement that a satisfaction of the security
6 instrument does not appear of record in the chain of title.

7 "(5) A statement that the satisfaction agent, acting
8 with the authorization of the mortgagors of the real property
9 described in the security instrument, intends to sign and
10 submit for recording an affidavit of satisfaction of the
11 security instrument unless, within 30 days after receipt of
12 the notification by the secured creditor, any of the following
13 occurs:

14 "a. The secured creditor submits a satisfaction of
15 the security instrument for recording.

16 "b. The satisfaction agent receives from the secured
17 creditor a notification stating that the secured obligation
18 remains unsatisfied.

19 "c. The satisfaction agent receives from the secured
20 creditor a notification stating that the secured creditor has
21 assigned the security instrument or otherwise does not claim
22 an interest in the security instrument. In this event, the
23 satisfaction agent will use all reasonable efforts to
24 determine the name and address of, and notify, the secured
25 creditor then owning the securing instrument.

26 "(b) A notification to the secured creditor under
27 subsection (a) must be sent by a method that provides proof of

1 receipt by the secured creditor for giving a notification for
2 the purpose of requesting a payoff statement or, if the
3 satisfaction agent cannot ascertain that address, to the
4 secured creditor's address for notification for any other
5 purpose.

6 "§35-10-96.

7 "An affidavit of satisfaction of a security
8 instrument must do all of the following:

9 "(1) Identify the original parties to the security
10 instrument, the secured creditor, and the recording data for
11 the security instrument.

12 "(2) State the basis upon which the person signing
13 the affidavit is a satisfaction agent including, without
14 limitation, that the person signing the affidavit is
15 authorized to sign on behalf of, and to bind, the insurance
16 company acting as satisfaction agent.

17 "(3) State that the person signing the affidavit has
18 determined ~~that~~ whether the real property described in the
19 security instrument ~~is residential real property or was,~~ at
20 the time the security instrument was made, residential real
21 property or commercial agricultural property ~~at the time the~~
22 ~~security instrument was made.~~

23 "(4) State that the person signing the affidavit
24 determined that the secured creditor has received full payment
25 or performance of the secured obligation and, if the security
26 instrument is an equity line security instrument, that the
27 equity line has been closed.

1 "(5) State that the person signing the affidavit,
2 acting with the authority of the owner of the real property
3 described in the security instrument, gave notification to the
4 secured creditor of its intention to sign and submit for
5 recording an affidavit of satisfaction.

6 "(6) Describe the method by which the person signing
7 the affidavit gave notification in compliance with this
8 article.

9 "(7) State either of the following:

10 "a. That more than 30 days have elapsed since the
11 receipt of notification by the secured party, no satisfaction
12 has been recorded, and the satisfaction agent has not received
13 a notification that the secured obligation remains unsatisfied
14 or received information that the secured obligation has been
15 assigned.

16 "b. That the secured creditor authorized the person
17 signing the affidavit to sign and record an affidavit of
18 satisfaction.

19 "(8) Be sworn or affirmed, signed, and acknowledged
20 as required by law for a conveyance of an interest in real
21 property.

22 "§35-10-26.

23 "The payment or satisfaction of the real property
24 mortgage debt divests the title passing by the mortgage.

25 "Payment or satisfaction of the real property mortgage debt"
26 shall not occur until there is no outstanding indebtedness or
27 other obligation secured by the mortgage, and no commitment or

1 agreement by the mortgagee to make advances, incur obligations
2 or otherwise give value (collectively referred to as "extend
3 value"), under any agreement, including, without limitation,
4 agreements providing for future advances, open end, revolving
5 or other lines of credit, or letters of credit. Except as
6 otherwise specifically provided to the contrary in the Alabama
7 Residential and Agricultural Mortgage Satisfaction Act, upon
8 the written request to satisfy a mortgage signed by the
9 mortgagors and by all other persons who have a right to
10 require the mortgagee to extend value or signed by other
11 authorized representatives on behalf of the mortgagors and
12 such other persons, which notice shall actually be served upon
13 the mortgagee, and provided there is no outstanding obligation
14 secured by the mortgage at that time, the mortgagee shall file
15 a properly executed and notarized satisfaction of the mortgage
16 or otherwise cause the mortgage to be satisfied in accordance
17 with other applicable provisions of law. From and after such
18 written request for mortgage satisfaction, neither the
19 mortgagors nor any other person who signed such request, or on
20 whose behalf such request was signed, shall have the right to
21 request or demand that the mortgagee extend value under the
22 mortgage or other agreements and the mortgagee shall be
23 released from all obligations and commitments to extend value
24 thereunder."

25 "§35-10-30.

26 "(a) If, for 30 days after such request, the
27 mortgagee or assignee or transferee, trustee or cestui que

1 trust, fails to make any entry required by this article he or
2 she forfeits to the party making the request two hundred
3 dollars (\$200) unless there is pending, or there is
4 instituted, an action within that time, in which the fact of
5 partial payment or satisfaction is or may be contested. In
6 construing this article, ~~the~~ this right of action ~~given herein~~
7 shall be considered as a personal right, and shall not be lost
8 or waived by a sale of the property covered by the mortgage or
9 deed of trust before a demand was made for the satisfaction to
10 be entered upon the record.

11 "(b) All actions for the recovery of the penalties
12 ~~mentioned~~ provided in this article shall be brought in the
13 county where ~~such~~ the mortgage or other instrument is
14 recorded.

15 "(c) This section does not apply to satisfactions of
16 ~~residential~~ mortgages which are governed by the Alabama
17 Residential and Agricultural Mortgage Satisfaction Act."

18 Section 2. Section 35-10-27, Code of Alabama 1975,
19 relating to entry of full payment or satisfaction in records,
20 is repealed.

21 Section 3. This act shall become effective on the
22 first day of the third month following its passage and
23 approval by the Governor, or its otherwise becoming law.