

CHAPTER 192
FORMERLY
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:

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

§ 2120 Authorization to satisfy mortgage.

(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 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 full or caused to be paid in full 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 paid in full, 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:

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

- a. The attorney or retired attorney was provided with a written payoff statement by the creditor or mortgage loan servicer;
- b. The attorney or retired attorney relied upon the written payoff statement; and
- c. The attorney or retired attorney made payment or caused payment to be made of the outstanding debt to the creditor or mortgage loan servicer;

(11) If the mortgage secured a home equity or other consumer open line of credit, affiant attorney or retired 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;

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

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

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

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

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

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

c. The attorney or retired attorney 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;

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

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

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.

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

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

Approved September 29, 2017