

Mortgage Satisfaction Act Imposes New Regulations and Penalty Provisions

AUTHOR: ATTORNEY KEVIN D. TROST ^{1,2}

PUBLICATION DATE: MAY 5, 2014

The Wisconsin Legislature's passage of the Mortgage Satisfaction Act instituted new requirements for mortgage creditors to follow in the provision of payoff statements and recording of mortgage satisfactions. It also imposed a variety of new penalties upon lenders who fail to comply with these new requirements. However, the sting of the penalties is tempered by a safe harbor provision that insulates those lenders who adopt processes and procedures for ensuring compliance with the new requirements. Accordingly, it is imperative mortgage lenders in Wisconsin adopt reasonable procedures for ensuring compliance with the new statute to avoid potential liability.

Payoff Statements

The new statute, Wis. Stat. § 708.15, addresses both the timing and content of mortgage payoff statements. Once a mortgage creditor receives a written request notification for a payoff statement from a borrower or other person entitled to receive such a statement, it must issue a payoff statement within seven business days. Wis. Stat. § 708.15(3)(c). If the mortgage lender does not send a timely payoff statement, it is liable to pay a penalty of \$500 plus any actual damages caused to the requester of the statement. If the penalty and damages are not paid within 30 days of the mortgage creditor receiving a demand for payment, the mortgage creditor may also be liable for attorneys' fees and costs.

The content of the payoff statement is also strictly regulated. Wis. Stat. § 708.15(3)(d). The mortgage creditor must identify on the payoff statement the date on which it was prepared and the payoff amount as of that date. The statement must also include sufficient information for the requester to calculate the payoff amount as of the requested payoff date, if different from the date of the payoff statement. The mortgage creditor must further specify the address or location where a payoff payment must be made, as well as the deadline for making such a payment. Significantly, the mortgage creditor is prohibited from stating the payoff amount is subject to change before the payoff date or otherwise qualifying payoff amount.

If a mortgage creditor discovers an error in its payoff statement, it may issue a corrected payoff statement. Wis. Stat. § 708.15(4). However, it must accept a payoff based on the original statement where a borrower reasonably and detrimentally relies upon the original payoff statement and does not have a reasonable opportunity to act upon the corrected payoff statement. This provision provides an incentive for the mortgage creditor to be certain of the accuracy of its figures in the original statement. Nevertheless, the mortgage creditor retains the explicit right to pursue recovery of any understated amount which was errantly not included in the original payoff statement.

Satisfactions

The new statute institutes a timeframe in which a mortgage creditor must submit a satisfaction for recording upon receipt of a payoff payment. Wis. Stat. § 708.15(5). This provision was prompted by concerns that developed out of the failure and sale of banks during the previous few years. In some cases, homeowners of failed banks claimed their payoffs went unnoticed and satisfactions of their mortgages were never recorded. Accordingly, the Wisconsin Legislature has imposed a requirement that a secured creditor submit a mortgage satisfaction for recording within 30 days of receiving full

payment of the amount stated on a payoff statement. The failure to submit a satisfaction for recording will subject the mortgage creditor to pay a penalty of \$500, actual damages caused by the failure to submit a satisfaction, and any resulting attorneys' fees and costs.

Additionally, the Legislature has empowered an effected title insurance company, deemed a satisfaction agent, to usurp the role of the mortgage lender in satisfying a residential mortgage under certain conditions. Wis. Stat. § 708.15(8). After following certain procedures and serving a notification upon the mortgage lender, the title insurance company may record an affidavit of satisfaction for a residential mortgage where it reasonably believes the mortgage lender has received full payment of performance and failed to timely record a satisfaction of the residential mortgage.

Safe Harbor

While the Legislature enacted a variety of penalties to encourage mortgage creditor compliance, it also created a safe harbor for mortgage creditors who attempt in good faith to comply with the new regulations. Wis. Stat. § 708.15(7). Mortgage creditors who can demonstrate they have established reasonable procedures to achieve compliance with the obligations of these new statutory requirements may be immune from liability from the penalties, fees, and costs imposed by the statute. Specifically, the mortgage creditor must establish it has reasonable procedures to ensure statutory compliance, has complied in good faith with those procedures, and was simply unable to comply with the obligation because of circumstances beyond its control.

In sum, the Wisconsin Legislature has more strictly regulated the timing and content of mortgage payoff statements and the recording of mortgage satisfactions. Secured creditors should be mindful of the new requirements and institute policies and procedures for complying with the new law. If a lender takes these steps, it will be well

positioned to avoid legal challenges or seek the protection of the statutory safe harbor provisions to escape the statute's penalties and sanctions.

These articles, legal alerts, and videos are for informational purposes only. We are not providing legal advice or creating an attorney/client relationship with this information. Furthermore, the law is constantly changing and these materials may no longer be current. Please consult legal counsel regarding your specific legal situation.

1. Current law firm: Trost, LLC, www.trostllc.com 2. Written while at Axley Brynelson, LLP