

SUBJECT: Mortgage Payoff & Satisfaction Laws

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INTRODUCTION

This release applies to all credit unions, both state and federal. It describes Section 708.15 to the Wisconsin Statutes, which cover payoff requests, payoff statements, and satisfactions related to mortgages recorded in this state.

EXECUTIVE SUMMARY

Section 708.15 of the Wisconsin Statutes covers state law on payoff requests, payoff statements, and satisfactions related to mortgages recorded in this state. Except for the material on affidavits of satisfaction, this law applies to all real estate mortgages, including commercial mortgages and consumer mortgages on residential property. It also describes other state and federal laws related to mortgage payoff requests and payoff statements.

A payoff statement may be requested from a secured creditor, for a payoff date no more than 30 days from when the notice is given. The request must include certain information, such as the name of the person entitled to the payoff statement, which may be a borrower or cosigner on a mortgage loan, the landowner, or a settlement agent.

Creditors generally have seven days to provide the payoff statement (longer for commercial loans). Their payoff statement must include certain information, such as the date on which it was prepared and the payoff amount (the amount necessary to satisfy the mortgage) on that date, and the information needed to calculate the payoff amount as of the requested payoff date, including the per diem interest amount (if applicable).

Creditors must provide upon request one free payoff statement during any two-month period, but they can charge up to \$25 for each additional payoff statement requested during that two-month period. They cannot charge additional fees for payoff statements, including expedited processing fees, fax fees, etc.

If a creditor fails to send a timely payoff statement, it can be liable for \$500, plus any actual (but not punitive) damages. If it receives a demand for these damages but does not pay them, it can then also be liable for reasonable attorney fees and court costs. The law protects a creditor from liability in certain circumstances.

It is critical for credit unions to provide accurate payoff statements, because they are required to honor them. If a payoff statement understates the payoff amount, for whatever reason, and if the creditor is paid that amount, it must record a satisfaction of the mortgage anyway. The borrower(s) in this situation would still be liable for any unpaid loan amounts, but with the mortgage now satisfied, that debt would be unsecured. If a creditor discovers that the payoff amount in a payoff statement has been understated, it can send a corrected payoff statement; however, this is only effective if the person entitled to the payoff statement has a reasonable amount of time to act on the corrected statement.

This release cross-references several other ii releases that explain how other state and federal laws regulate payoff requests and payoff statements.

A creditor with a security interest in real property must record a satisfaction of mortgage within 30 days after the loan is paid (or after the creditor is paid the amount that the creditor set out in a payoff statement). If the creditor does not satisfy the mortgage in time, it can be liable to the landowner for \$500, plus any actual (but not punitive) damages, plus reasonable attorney fees and court costs.

The statutes provide a mechanism to help consumers where a mortgage lender no longer exists or it has failed to record a satisfaction of mortgage, leaving a cloud on the property's title: Title insurance companies can record an "affidavit of satisfaction of a security instrument" against residential real estate – meaning a 1- to 4-family residence used primarily for personal, family or household purposes. The affidavit of satisfaction cannot be used for commercial loans. They must provide advance notice before recording the affidavit. The affidavit has the same effect as if the creditor had recorded a satisfaction of mortgage.

COVERAGE

Section 708.15 of the Wisconsin Statutes covers state law on mortgage payoff requests, payoff statement, and mortgage satisfactions in this state. Except for the material on affidavits of satisfaction, this law applies to all real estate mortgages recorded in Wisconsin, including commercial mortgages and consumer mortgages on residential property.

Based largely on the Uniform Residential Mortgage Satisfaction Act (URMSA), the law applies to existing Wisconsin mortgages, not just mortgage loans originated after the law took effect (on Dec. 14, 2013).

PAYOFF REQUESTS & STATEMENTS

A settlement agent (meaning a person preparing a settlement statement), borrower or landowner can notify a secured creditor, requesting a payoff statement for a payoff date no more than 30 days from when the notice is given. Creditors generally have seven days to provide the payoff statement (longer for commercial loans). Federal Truth in Lending regulations generally require an accurate payoff statement to be provided within a reasonable time, but in no case more than seven business days for open or closed-end consumer credit transactions secured by a dwelling. The federal rule applies even if the dwelling is not real estate under federal law. For HOEPA loans the federal limit is five business days.

Who may request a payoff

Two parties can request a payoff statement:

- An “entitled person.” The statutes define “entitled person” to mean, basically, the debtor, the landowner, or a “settlement agent.” That term – “settlement agent” – is defined as “the person responsible for the preparation of the settlement statement for the conveyance of real property.” Thus, the party preparing a settlement statement for a mortgage closing is an “entitled person” and can request a payoff statement from the existing mortgage creditor.
- An agent authorized by an “entitled person.” Any “entitled person” described in the previous paragraph can authorize an agent to act on his/her/its behalf to request a payoff. As explained below, the request must state that the part is, indeed, authorized. The statutes don’t require it to provide a copy of that authorization to the mortgage creditor.

Timing, content and delivery of the payoff request

The payoff request can be sent:

- By 1st class mail, in which case it is effective three days after it is mailed;
- By delivery service, in which case it is effective three days after it is deposited with the delivery service, or the day after it is deposited with an overnight delivery service;
- By fax or email, in which case, it is effective the day it is received; or
- By "causing it to be received" at the creditor's address, in which case, it is effective the day it is received.

Payoff request notices must be sent to a creditor's "address for giving a notification." That term means the most recent address provided in a document from the creditor to the person giving the notice (or a more accurate address, if the person giving the notice knows of one).

A payoff request must show:

- The name of the person entitled to the payoff statement, which may be a borrower or cosigner on a mortgage loan, the landowner, or a settlement agent.
- If the notice is given by someone else, a statement that the person is an authorized agent of the person entitled to the statement.
- Directions on who the payoff statement must be sent to.
- The address, fax number or email address the payoff statement must be sent to.
- Enough information so the creditor can identify the loan and the mortgaged property.

Timing and content of creditor's payoff statement

If the property securing the loan is 1- to 4-family residential real estate used for personal, family or household purposes, the lender must issue a payoff statement within seven business days of the "effective date" of the notice. The previous subsection of this release ("Timing, content and delivery of the payoff statement") describes the timing rules that determine the date a request is "effective." Otherwise, the lender must issue the payoff statement within a "reasonable longer time," which is not defined.

A creditor does not need to send a payoff statement if it has assigned its mortgage, but it has seven days to notify the person who asked for the payoff statement of the name and address of the assignee.

The payoff statement must be sent to the address, fax number or email address specified in the payoff request.

A payoff statement must show:

- The date on which it was prepared and the payoff amount on that date. ("Payoff amount" means the amount necessary to satisfy the mortgage.) If the person entitled to the statement (or the person's agent) specifically asks for it, the payoff statement must also itemize the amounts for each fee, charge or other sum included in the payoff amount.
- The information needed to calculate the payoff amount as of the requested payoff date, including the per diem interest amount (if applicable).
- The payment cutoff time (if any), the address or place where payment must be made (including electronic payment, if available) and any limits on the authorized method of payment.

A secured creditor generally cannot qualify a payoff amount or state that the payoff amount is subject to change before the payoff date. However, a secured creditor may qualify a payoff amount, state that the payoff amount is not practicably determinable, or state that the payoff amount is subject to change before the payoff date if:

- The security instrument secures non-residential real property; and
- The payoff statement provides instructions for how to obtain an updated payoff amount at no charge.

No payoff fees

The payoff statement can include any fees "authorized under this subsection" that are not included in the payoff amount. The law only authorizes one fee: It says that creditors must provide upon request one free payoff statement during any two-month period but that they can charge up to \$25 for each additional payoff statement requested during that two-month period.

As a result of this provision, lenders cannot charge additional fees for payoff statements, including expedited processing fees, fax fees, etc.

Liability

If a creditor fails to send a timely payoff statement that complies with the law, it can be liable for \$500, plus any actual (but not punitive) damages. If it receives a demand for these damages but does not pay them, it can then also be liable for reasonable attorney fees and court costs.

However, § 708.15(7) protects a creditor from liability if:

- It established a reasonable procedure to comply with these requirements;
- It complied with that procedure in good faith; and
- It was unable to meet its obligations because of circumstances beyond its control.

Understated payoff amounts

It is critical for credit unions to provide accurate payoff statements, because they are required to honor them.

If a creditor discovers that the payoff amount in a payoff statement has been understated, it can send a corrected payoff statement; however, this is only effective if the person entitled to the payoff statement has a reasonable amount of time to act on the corrected statement. For example, it may not be reasonable to send a corrected payoff statement right before a borrower is to close on the sale of mortgaged property.

Under § 708.15(4)(b), if a payoff statement understates the payoff amount, for whatever reason, and if the creditor is paid that amount, it must record a satisfaction of the mortgage anyway. The borrower(s) in this situation would still be liable for any unpaid loan amounts, but with the mortgage now satisfied, that debt would be unsecured.

Other payoff statement laws

A number of other state and federal laws affect when and how credit unions must reply to payoff requests or other information requests:

Mortgage servicing rules under the Consumer Financial Protection Bureau's Reg. Z generally require mortgage loan servicers to provide payoff statements promptly. For details, see The League's *ii Release No. B075*.

Reg. Z §1026.36 prohibits certain practices in connection with consumer credit transactions secured by the consumer's dwelling (which does not necessarily have to be attached to real estate). For such loans, a creditor, assignee or servicer must provide an accurate statement of the total outstanding balance that would be required to pay the consumer's obligation in full as of a specified date. It applies to open or closed-end credit, secured by a dwelling – not just real estate and not just principal dwellings. For example, the rule applies to a mobile home loan even if it is not real estate under state law.

The Reg. Z payoff statement must be sent within a reasonable time, but in no case more than seven business days, after receiving a written request from the consumer or any person acting on behalf of the consumer. For a high-cost mortgage subject to the HOEPA rules, a payoff statement must be provided by a creditor or servicer within five business days after receiving a request for such statement by a consumer or a person authorized by the consumer to obtain such statement.

The creditor, assignee or servicer may:

- provide the payoff statement within a reasonable time that is longer than seven days of such a request when necessary because a loan is in bankruptcy or foreclosure, because the loan is a reverse mortgage or shared appreciation mortgage, or because of natural disasters or other similar circumstances;
- specify reasonable requirements for making payoff requests, such as requiring requests to be directed to a mailing address, email address, or fax number specified by the creditor, assignee or servicer or any other reasonable requirement or method (If the consumer does not follow these requirements, a longer timeframe for responding to the request would be reasonable.); and
- take reasonable measures to verify the identity of any person acting on behalf of the consumer and to obtain the consumer's authorization to release information to any such person before the "reasonable time" period begins to run.

The scopes and nuances of the Reg. Z and Wisconsin rules are different, so be sure your procedures meet the compliance requirements of each that may apply.

- Truth in Lending regulations (Reg. Z) bar a lender from charging for payoff statements on high-cost mortgage loans under HOEPA (the Homeowners Equity Protection Act). See *ii Release No. B062*.
- The Wisconsin Consumer Act gives borrowers certain rights, including a right to an accounting. State regulators have told The League that a fee is not allowed for providing a payoff statement if the Consumer Act applies to the loan.
- Wis. Stats. § 138.052(7s) requires servicers of first lien residential mortgage loans (including mobile home loans) to "respond to a borrower's inquiry within 15 days after receiving the inquiry." (See The League's *ii Release No. B047*.)

SATISFACTION OF MORTGAGE

A creditor with a security interest in real property must record a satisfaction of mortgage within 30 days after it receives full payment or performance of the loan (or after the creditor is paid the amount that the creditor set out in a payoff statement or corrected payoff statement).

If a security instrument secures a line of credit or future advances, the loan is fully performed only if, in addition to full payment or performance, the creditor has received a notice asking it to "terminate the line of credit or containing a statement sufficient to terminate the effectiveness of the provision for future advances in the security instrument." (Wis. Stats. §708.15(5)(a).)

If the creditor does not satisfy the mortgage in time, it can be liable to the landowner for \$500, plus any actual (but not punitive) damages, plus reasonable attorney fees and court costs.

Related laws

- Wis. Stats. Ch. 428 imposes special requirements on certain loans primarily for a personal, family, household, or agricultural purpose. Its requirements apply only if the loan is secured by a first lien real estate mortgage or equivalent security interest and the amount financed is \$25,000 or less. It imposes its own mortgage satisfaction requirements, but they are subject to the requirements of Wis. Stats. §708.15, described in this release. Under §428.104: Upon payment in full of the member's obligation, the credit union must release any mortgage. This may be done either by recording the necessary instrument and forwarding the same to the member, or by forwarding a satisfaction of such debt to the purchaser of the real property, or the creditor of such purchaser.
- For closed-end loans subject to the Wisconsin Consumer Act, Wis. Stats. § 422.306(4) requires that the credit union must, within 45 days of payoff, give or forward to the customer instruments that acknowledge payment in full, and release of any security interest when there is no outstanding secured obligation. However, the shorter 30 day mortgage satisfaction time frame under Wis. Stats. 708.15 prevails.

The Consumer Act also requires the credit union to furnish to the customer or the customer's designee evidence of the release or assignment to such designee of any recorded lien on real estate and termination of any filed financing statements which perfected such security interest.

AFFIDAVIT OF SATISFACTION

The statutes provide a mechanism to help consumers where a mortgage lender no longer exists or it has failed to record a satisfaction of mortgage, leaving a cloud on the property's title: Title insurance companies can record an "affidavit of satisfaction of a security instrument" against residential real estate – meaning a 1- to 4-family residence used primarily for personal, family or household purposes. The affidavit of satisfaction cannot be used for commercial loans.

Notice from "satisfaction agent"

To start the process, a satisfaction agent – which must be a title insurance company – authorized by the property owner notifies the creditor that it may record an affidavit of satisfaction.

That notice must contain certain information, such as:

- The satisfaction agent's name and address;
- Information to identify the mortgage, including the names of the original parties to it; and

- A statement that the satisfaction agent has reasonable grounds to believe that the secured creditor has received full payment or performance of the loan (or payment as provided in a payoff statement).

If the mortgage secures a line of credit (i.e., a HELOC) or future advances, the notice can include a request to terminate the line of credit or to terminate the future advances clause.

Recording the affidavit

After the notice is provided, the satisfaction agent can submit the affidavit to the register of deeds for recording if:

- The creditor authorizes the satisfaction agent to record it; or
- The creditor has not recorded a satisfaction of mortgage within 30 days after it received the notice.

The satisfaction agent cannot record the affidavit of satisfaction, however, if the creditor notifies it that:

- The mortgage has been assigned, in which case the satisfaction agent must give the notice to the assignee; or
- The loan has not actually been satisfied (unless the satisfaction agent has reasonable grounds to believe that the person who paid the payoff amount reasonably relied on an understated payoff statement).

The affidavit must include certain information, and it must be signed by two employees of the title insurance company.

A recorded affidavit of satisfaction has the same effect as if the creditor had recorded a satisfaction of mortgage.

Liability

If a satisfaction agent records an affidavit "erroneously," it is not liable so long as it complied with the new law.

However, if the agent recorded the affidavit with knowledge that the statements in it were false, it can be liable to the creditor for actual damages plus the creditor's reasonable attorney fees and court costs.

Rescinding an affidavit or a satisfaction of mortgage

The new law also allows for the recording of a document of rescission, which rescinds a satisfaction of mortgage or an affidavit of satisfaction that was mistakenly recorded, keeping the security instrument in force.

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Legal Affairs Department

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