

CHAPTER 9
MORTGAGES OF REAL PROPERTY

SUBCHAPTER 1

GENERAL PROVISIONS

§501. Forms

Mortgages of real estate include those made in the usual form, in which the condition is set forth in the deed, and those made by a conveyance appearing on its face to be absolute, with a separate instrument of defeasance executed at the same time or as part of the same transaction.

§501-A. "Power of sale"

The following "power" is known as "The Statutory Power of Sale" and may be included in any mortgage or incorporated by reference in any mortgage granted by a corporation, partnership, including a limited partnership or a limited liability partnership, limited liability company or trustee of a trust and, if included in the mortgage, the mortgage may be foreclosed pursuant to Title 14, chapter 713, subchapter 3. The power of sale may not be used to foreclose a mortgage deed granted by a trustee of a trust if at the time the mortgage deed is given the real estate is used exclusively for residential purposes, the real estate has 4 or fewer residential units and one of the units is the principal residence of the owner of at least 1/2 of the beneficial interest in the trust. If the mortgage deed contains a statement that at the time the mortgage deed is given the real estate encumbered by the mortgage deed is not used exclusively for residential purposes, that the real estate has more than 4 residential units or that none of the residential units is the principal residence of the owner of at least 1/2 of the beneficial interest in the trust, the statement conclusively establishes these facts and the mortgage deed may be foreclosed by the power of sale. [PL 2015, c. 147, §7 (AMD).]

POWER

Upon any default in the performance or the observance of the foregoing or other condition, the mortgagee or the mortgagee's executors, administrators, successors or assigns, or the agent or attorney of the mortgagee or the mortgagee's executors, administrators, successors or assigns, may sell the mortgaged premises or such portion thereof as may remain subject to the mortgage in case of any partial release thereof, either as a whole or in parcels, together with all improvements that may be thereon, by a public sale in the county where the real estate then subject to the mortgage is situated, or, if more than one parcel is then subject thereto, then in the county where one of said parcels is situated, or at such place as may be designated for the purpose in the mortgage, first complying with the terms of the mortgage and the statutes relating to the foreclosure of mortgage by the exercise of a power of sale, and the mortgagee or the mortgagee's executors, administrators, successors or assigns or the agent or attorney of the mortgagee or the mortgagee's executors, administrators, successors or assigns may convey the same by proper deed or deeds to the purchaser or purchasers absolutely and in fee simple; and such sale forever bars the mortgagor and all persons claiming under it from all right and interest in the mortgaged premises, whether at law or in equity. [PL 2015, c. 147, §7 (AMD).]

SECTION HISTORY

PL 1967, c. 424, §4 (NEW). PL 1991, c. 134, §3 (AMD). PL 1991, c. 768, §§3,4 (AMD). PL 1993, c. 277, §§3,4 (AMD). PL 1993, c. 277, §5 (AFF). PL 1995, c. 106, §2 (AMD). PL 2015, c. 147, §7 (AMD).

§502. Entry by mortgagee

A mortgagee, or person claiming under him, may enter on the premises or recover possession thereof, before or after breach of condition, when there is no agreement to the contrary. In such case, if the mortgage is afterwards redeemed, the amount of the clear rents and profits from the time of taking possession shall be accounted for and deducted from the sum due on the mortgage.

§503. Property insurance

No person or financial institution making a residential mortgage loan for one to 4 residential units may, as a condition of the mortgage or as a term of the mortgage deed, require that the mortgagor carry property insurance on the property which is the subject of the mortgage in excess of the replacement cost of any buildings or appurtenances subject to the mortgage. [PL 1985, c. 182 (NEW).]

SECTION HISTORY

PL 1985, c. 182 (NEW).

§504. Interest on residential mortgage escrow accounts

1. Loan provisions required. A mortgage deed resulting from a mortgage loan must contain provisions for payment of interest on the escrow balance in accordance with Title 9-B, section 429 if:

A. The mortgage is on owner-occupied residential property of not more than 4 units; and [PL 1991, c. 118, §1 (NEW).]

B. The loan or note requires payments into a mandatory escrow account. [PL 1991, c. 118, §1 (NEW).]

[PL 1991, c. 118, §1 (NEW).]

2. Applicability. The requirements of this section apply to any residential mortgage deed dated on or after January 1, 1992.

[PL 1991, c. 118, §1 (NEW).]

SECTION HISTORY

PL 1991, c. 118, §1 (NEW).

§505. Open-end mortgages

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Contingent obligations" means obligations that become fixed or certain at some time after the recording of a mortgage securing those obligations, such as obligations under a guarantee. Contingent obligations have priority from the date of recording of the mortgage, in the full amount of the contingent obligation identified in the mortgage, if the maximum amount of the contingent obligation secured by the mortgage is stated in the mortgage. [PL 1993, c. 229, §3 (NEW).]

B. "Future advances" means debts or obligations secured by a mortgage that arise subsequent to the execution and recording of the mortgage; except that the term does not include protective advances or contingent obligations. The term "future advances" includes only those advances made to or for the account of debtors designated in the mortgage. Future advances have priority as provided in this section. [PL 1993, c. 229, §3 (NEW).]

C. "Protective advances" means advances made by a mortgagee that are necessary to protect the mortgagee's security interest, to collect amounts due to the mortgagee or represent interest earned on an obligation secured by the mortgage. Protective advances have priority from the date of recording of a mortgage. [PL 1993, c. 229, §3 (NEW).]

[PL 1993, c. 229, §3 (NEW).]

2. Authorization. An interest in real property that may be conveyed as security for a debt or other obligation may be mortgaged to secure future advances up to a total amount outstanding from time to

time as stated in the mortgage instrument. Future advances secured by such a mortgage instrument have priority over persons who, subsequent to the recording of the mortgage, acquire any rights in or liens upon the mortgaged real estate, in accordance with subsection 5, only if the mortgage instrument states that it secures future advances and specifies the total amount of debts or obligations, including future advances, that it may secure from time to time.

[PL 1993, c. 229, §3 (NEW).]

3. Applicability limited. This section may not be construed to affect or otherwise change existing law that allows mortgages to secure existing debts or obligations, debts or obligations created simultaneously with the execution of the mortgage, contingent obligations, protective advances, accrued interest and other debts or obligations that may be secured by a mortgage under existing law, but if such a mortgage states no or nominal consideration and does not expressly provide for future advances, the mortgage does not afford security for any advances made subsequent to the execution of the mortgage, other than protective advances.

[PL 1993, c. 229, §3 (NEW).]

4. Validity; requirements. A mortgage securing future advances remains valid and retains its priority even if no funds have been advanced or all future advances have been repaid as long as an agreement regarding future advances remains in effect. Upon termination of the agreement regarding future advances and repayment of all amounts secured by the mortgage, the mortgage must be discharged.

[PL 1993, c. 229, §3 (NEW).]

5. Priority. Future advances secured by a mortgage have priority over the rights of all persons who, subsequent to the recording of such a mortgage, acquire any rights in or liens upon the mortgaged real estate to the extent that the aggregate amount of all debts or obligations secured at any one time, including future advances but excluding protective advances, does not exceed the total amount stated in the mortgage, subject to the following.

A. The mortgagor or a successor in interest may file in the same recording office in which the original mortgage is filed and send to the mortgagee by registered mail, return receipt requested, a written notice limiting the amount of future advances, other than advances made pursuant to a commitment as defined in Title 11, section 9-1102, subsection (68), secured by that mortgage to not less than the amount actually advanced as of the end of the 3rd business day following the delivery of the notice. [PL 1999, c. 699, Pt. D, §21 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]

B. A person who, subsequent to the recording of such a mortgage, acquires any rights in or liens upon the mortgaged real estate and has perfected those rights by all required filings or recordings may send to the mortgagee by registered mail, return receipt requested, a written notice stating that future advances made by the mortgagee after the end of the 3rd business day following receipt of the notice are junior to that person's rights in or liens upon the mortgaged real estate, except that the written notice does not affect the priority of advances made pursuant to a real property construction or improvement financing agreement as defined in the United States Internal Revenue Code of 1986, Section 6323(c) and any amendments as of December 31, 1991. [PL 1993, c. 229, §3 (NEW).]

For purposes of this subsection, an advance made pursuant to a credit card or a negotiable instrument drawn against a credit account secured by a mortgage is deemed to have been made on the earlier of the date on the negotiable instrument or credit card voucher and the date the debtor received value in exchange for the negotiable instrument or credit card voucher.

[PL 1999, c. 699, Pt. D, §21 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]

6. Amount of future advances in excess of mortgage amount. Until repaid, the amount by which a future advance causes the aggregate amount of all debts or obligations secured at any one time,

exclusive of protective advances, to exceed the total amount stated in the mortgage does not have priority over persons who, subsequent to the recording of the mortgage, acquire any rights in or liens upon the mortgaged real estate. The mortgagee may credit repayments first to amounts exceeding the total amount of secured debts or obligations stated in the mortgage.

[PL 1993, c. 229, §3 (NEW).]

7. Application. This section applies to mortgages that are recorded on or after January 1, 1994. [PL 1993, c. 229, §3 (NEW).]

SECTION HISTORY

PL 1993, c. 229, §3 (NEW). PL 1999, c. 699, §D21 (AMD). PL 1999, c. 699, §D30 (AFF).

§506. Undocumented mortgage agreements

In a residential mortgage loan closing, a buyer, seller or settlement agent may not knowingly be a party to a financial or other arrangement not reflected in the loan settlement statement if the effect of that arrangement is to substantially overstate the contract sales price. Any violation of this section constitutes a violation of the Maine Unfair Trade Practices Act. [PL 2005, c. 161, §1 (NEW).]

REVISOR'S NOTE: §506. Disclosure regarding private mortgage insurance (As enacted by PL 2005, c. 211, §1 is REALLOCATED TO TITLE 33, SECTION 507)

SECTION HISTORY

RR 2005, c. 1, §16 (RAL). PL 2005, c. 161, §1 (NEW). PL 2005, c. 211, §1 (NEW).

§507. Disclosure regarding private mortgage insurance

(REALLOCATED FROM TITLE 33, SECTION 506)

With respect to a mortgage loan on residential real property for which the processor or underwriter of that loan also engages in the business of private mortgage insurance, a supervised lender, as defined in Title 9-A, section 1-301, subsection 39, or a loan broker, as defined in Title 9-A, section 10-102, shall disclose to the loan applicant at the time of application the fact that the processor or underwriter is also in the business of private mortgage insurance. Failure to provide the disclosure required by this section does not annul, alter or affect the validity or enforceability of the mortgage loan. [PL 2011, c. 691, Pt. A, §38 (AMD).]

SECTION HISTORY

RR 2005, c. 1, §16 (RAL). PL 2011, c. 691, Pt. A, §38 (AMD).

§508. Nominee mortgagees

1. Authority presumed. A person or entity that is named as nominee to hold a mortgage for another person or entity, in an instrument creating or assigning the mortgage, is presumed to have the authority to execute an assignment, partial release, discharge or other instrument that affects the title to the mortgaged property unless the person or entity on whose behalf the nominee is named:

A. Explicitly negates such authority within the instrument in which the nominee is named; or [PL 2015, c. 289, §1 (NEW).]

B. Executes a separate instrument that explicitly negates such authority and that is recorded in the registry of deeds within the county or district in which the mortgaged property is located. [PL 2015, c. 289, §1 (NEW).]

[PL 2015, c. 289, §1 (NEW).]

2. Instrument valid. An assignment, partial release, discharge or other instrument affecting the title to mortgaged property or any interest in the property that is otherwise valid and that is executed by a nominee mortgagee with authority as provided in subsection 1 is valid even if the assignment, partial

release, discharge or other instrument does not state the authority of the nominee mortgagee to take the action.

[PL 2015, c. 289, §1 (NEW).]

3. Statement not a limitation of authority. A statement in an instrument described in this section to the effect that, for purposes of recording, the nominee mortgagee is the mortgagee of record, or any statement of similar meaning, may not be considered to be a limitation upon the authority of the nominee mortgagee.

[PL 2015, c. 289, §1 (NEW).]

4. Application. This section applies exclusively to any discharge or partial release issued prior to the effective date of this section, whether made by a nominee mortgagee or by a subsequent assignee; to discharges or partial releases issued on or subsequent to the effective date of this section, whether made by a nominee mortgagee or by a subsequent assignee; and to any assignment or other instrument affecting title to a mortgaged property that is the subject of a foreclosure judgment or other legal judgment affecting title to a mortgaged property for which, as of the effective date of this section, either the period for appeal has run with no appeal having been filed or all rights of appeal have been exhausted.

[PL 2015, c. 289, §1 (NEW).]

SECTION HISTORY

PL 2015, c. 289, §1 (NEW).

SUBCHAPTER 1-A

FUNDED SETTLEMENT ACT

§521. Short title

This subchapter may be known and cited as the "Funded Settlement Act". [PL 1999, c. 145, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 145, §1 (NEW).

§522. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1999, c. 145, §1 (NEW).]

1. Disbursement of loan funds. "Disbursement of loan funds" means the delivery of the loan funds by the lender to the settlement agent in one or more of the following forms:

- A. Cash; [PL 1999, c. 145, §1 (NEW).]
- B. Wired funds or electronic transfer; [PL 1999, c. 145, §1 (NEW).]
- C. Certified check; [PL 1999, c. 145, §1 (NEW).]
- D. Checks issued by a governmental entity or instrumentality; [PL 1999, c. 145, §1 (NEW).]
- E. Cashier's check, teller's check or any transfer of funds by check or otherwise that is finally collected and unconditionally available to the settlement agent; [PL 1999, c. 145, §1 (NEW).]
- F. Checks or other drafts drawn by a state-chartered or federally chartered financial institution; [PL 1999, c. 145, §1 (NEW).]

G. Checks or other drafts drawn by a state-chartered or federally chartered credit union; or [PL 1999, c. 145, §1 (NEW).]

H. Checks issued by an insurance company licensed and regulated by the Bureau of Insurance. [PL 1999, c. 145, §1 (NEW).]
[PL 1999, c. 145, §1 (NEW).]

2. Disbursement of settlement proceeds. "Disbursement of settlement proceeds" means the payment or sending of all proceeds of the transaction to the person or account designated to receive the proceeds.
[PL 1999, c. 145, §1 (NEW).]

3. Lender. "Lender" means a person regularly engaged in making loans secured by mortgages on real estate and to whom the debt is initially payable on the face of the loan documents. A person is regularly engaged in making such loans if the person made 5 or more loans subject to this subchapter in the preceding calendar year or has made 5 or more such loans in the then current calendar year.
[PL 1999, c. 145, §1 (NEW).]

4. Loan closing. "Loan closing" means that time agreed upon by the borrower and lender when the execution of the loan documents by the borrower and the receipt of those executed documents by the lender or settlement agent occur.
[PL 1999, c. 145, §1 (NEW).]

5. Loan documents. "Loan documents" means the note evidencing the debt due the lender, the mortgage securing the debt due to the lender and any other documents required by the lender to be executed by the borrower as a part of the transaction and includes any documents that may reasonably be required by the lender as a condition to disbursement of the settlement proceeds.
[PL 1999, c. 145, §1 (NEW).]

6. Loan funds. "Loan funds" means the proceeds of the loan to be disbursed by the lender to others at loan closing.
[PL 1999, c. 145, §1 (NEW).]

7. Settlement. "Settlement" means the time when the settlement agent has received the loan funds, loan documents and other documents and funds to carry out the terms of the contract between the parties and the settlement agent reasonably determines that all conditions for disbursement of the settlement proceeds as required by applicable law or such contracts have been satisfied. "Parties" as used in this subsection means the seller, purchaser, borrower, lender and the settlement agent.
[PL 1999, c. 145, §1 (NEW).]

8. Settlement agent. "Settlement agent" means the person responsible for conducting the settlement and disbursement of the settlement proceeds and includes an individual, corporation, partnership or other entity conducting the settlement and disbursement of loan proceeds. The lender may be the settlement agent.
[PL 1999, c. 145, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 145, §1 (NEW).

§523. Applicability

This subchapter applies to transactions: [PL 1999, c. 145, §1 (NEW).]

1. Purposes. That are incurred primarily for personal, family or household purposes;
[PL 1999, c. 145, §1 (NEW).]

2. Not open-end credit. That are not open-end credit as that term is defined in Title 9-A, section 1-301, subsection 26;

[PL 1999, c. 145, §1 (NEW).]

3. Not involving multiple advances. That do not contemplate multiple advances of funds as set forth in or required by the terms of the loan documents;

[PL 1999, c. 145, §1 (NEW).]

4. Location of lender or closing. When the lending office or branch from which the loan is made is located in this State or the loan closing occurs within this State; and

[PL 1999, c. 145, §1 (NEW).]

5. Secured by mortgages. That are secured by mortgages on real estate containing not more than 4 residential dwelling units.

[PL 1999, c. 145, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 145, §1 (NEW).

§524. Duty of lender

The lender shall cause, at or before loan closing, disbursement of loan funds to the settlement agent; however, in the case of any loan when a right of rescission applies and has not been exercised, the lender shall cause disbursement of loan funds to the settlement agent prior to noon of the first business day after the expiration of the rescission period required under the federal Truth-in-Lending Act, 15 United States Code, Section 1601, et seq. and the state truth-in-lending provisions, Title 9-A, Article 8-A, as applicable. [PL 2011, c. 427, Pt. D, §23 (AMD).]

SECTION HISTORY

PL 1999, c. 145, §1 (NEW). PL 2011, c. 427, Pt. D, §23 (AMD).

§525. Duty of settlement agent

The settlement agent shall cause recordation of any deed, mortgage or other documents required to be recorded and shall cause disbursement of settlement proceeds within 2 business days of settlement or, when any right of rescission applies pursuant to the federal Truth-in-Lending Act, 15 United States Code, Section 1601 et seq. or the state truth-in-lending provisions, Title 9-A, Article 8-A, as applicable, at the time that the settlement agent reasonably determines that such right of rescission has not been exercised. [PL 2011, c. 427, Pt. D, §24 (AMD).]

SECTION HISTORY

PL 1999, c. 145, §1 (NEW). PL 2011, c. 427, Pt. D, §24 (AMD).

§526. Penalty

1. Consumer remedies. A lender or settlement agent who violates any provision of this subchapter and causes actual damage to a consumer is subject to a civil action by the aggrieved consumer in which the consumer has the right to recover the greater of actual damages in an amount determined by the court or, except as provided in subsection 2, an amount determined by the court not less than \$250 nor more than \$1,000, plus costs of the action together with reasonable attorney's fees.

[PL 1999, c. 145, §1 (NEW).]

2. Bona fide error. Liability under subsection 1 is limited to actual damages, plus costs of the action together with reasonable attorney's fees, if the lender or settlement agent shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

[PL 1999, c. 145, §1 (NEW).]

3. Limitation of actions. An action may not be brought pursuant to this subchapter more than 2 years after the violation occurred.

[PL 1999, c. 145, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 145, §1 (NEW).

§527. Enforcement

With respect to lenders that are supervised financial organizations as that term is defined in Title 9-A, section 1-301, subsection 38-A, a violation of this subchapter is deemed an anticompetitive and deceptive practice and the Superintendent of Financial Institutions may take appropriate action to ensure compliance with this subchapter. With respect to all other supervised lenders, as that term is defined in Title 9-A, section 1-301, subsection 39, the Director of Consumer Credit Regulation may take such action. [PL 1999, c. 145, §1 (NEW); PL 2001, c. 44, §11 (AMD); PL 2001, c. 44, §14 (AFF).]

SECTION HISTORY

PL 1999, c. 145, §1 (NEW). PL 2001, c. 44, §11 (AMD). PL 2001, c. 44, §14 (AFF).

§528. Privacy duties of settlement agents

A settlement agent shall comply with the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001), if the settlement agent is a financial institution as defined in those regulations. This section is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24. [PL 2001, c. 262, Pt. E, §5 (NEW).]

SECTION HISTORY

PL 2001, c. 262, §E5 (NEW).

SUBCHAPTER 2

DISCHARGE OF MORTGAGES

§551. Entry on record; neglect to discharge

A mortgage only may be discharged by a written instrument acknowledging the satisfaction thereof and signed and acknowledged by the mortgagee or by the mortgagee's duly authorized officer or agent, personal representative or assignee. The instrument must recite the name or identity of the mortgagee and mortgagor, or their successors in interest and the record location of the mortgage discharged. The instrument, when recorded, has the same effect as a deed of release duly acknowledged and recorded. [PL 1999, c. 230, §1 (AMD); PL 1999, c. 230, §2 (AFF).]

Within 60 days after full performance of the conditions of the mortgage, the mortgagee shall record a valid and complete release of mortgage together with any instrument of assignment necessary to establish the mortgagee's record ownership of the mortgage. Within 30 days after receiving the recorded release of the mortgage from the registry of deeds, the mortgagee shall send the release by first class mail to the mortgagor's address as listed in the mortgage agreement or to an address specified

in writing by the mortgagor for this purpose. As used in this paragraph, the term "mortgagee" means both the owner of the mortgage at the time it is satisfied and any servicer who receives the final payment satisfying the debt. If a release is not transmitted to the registry of deeds within 60 days, the owner and any such servicer are jointly and severally liable to an aggrieved party for damages equal to exemplary damages of \$200 per week after expiration of the 60 days, up to an aggregate maximum of \$5,000 for all aggrieved parties or the actual loss sustained by the aggrieved party, whichever is greater. If multiple aggrieved parties seek exemplary damages, the court shall equitably allocate the maximum amount. If the release is not sent by first class mail to the mortgagor's address as listed in the mortgage agreement or to an address specified in writing by the mortgagor for this purpose within 30 days after receiving the recorded release, the mortgagee is liable to an aggrieved party for damages equal to exemplary damages of \$500. The mortgagee is also liable for court costs and reasonable attorney's fees in any successful action to enforce the liability imposed under this paragraph. The mortgagee may charge the mortgagor for any recording fees incurred in recording the release of mortgage and any postage fees incurred in sending the release to the mortgagor. [PL 2011, c. 146, §1 (AMD).]

With respect to a mortgage securing an open-end line of credit, the 60-day period to deliver a release commences after the mortgagor delivers to the address designated for payments under the line of credit a written request to terminate the line and the mortgage together with payment in full of all amounts secured by the mortgage. The mortgagee may designate in writing a different address for delivery of written notices under this paragraph. [PL 1999, c. 230, §1 (NEW); PL 1999, c. 230, §2 (AFF).]

All discharges of recorded mortgages, attachments or liens of any nature must be recorded by a written instrument and, except for termination statements filed pursuant to Title 11, section 9-1513, acknowledged in same manner as other instruments presented for record and no such discharges may be permitted by entry in the margin of the instrument to be discharged. [PL 1999, c. 699, Pt. D, §22 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]

SECTION HISTORY

PL 1973, c. 18 (AMD). PL 1973, c. 625, §226 (AMD). PL 1973, c. 788, §166 (AMD). PL 1977, c. 100, §§1,2 (AMD). PL 1999, c. 230, §1 (AMD). PL 1999, c. 230, §2 (AFF). PL 1999, c. 699, §D22 (AMD). PL 1999, c. 699, §D30 (AFF). PL 2011, c. 146, §1 (AMD).

§552. Validation

All marginal discharges of mortgages recorded prior to April 1, 1974, duly attested by the register of deeds as being recorded from discharge in margin of original mortgage, are validated and have the same effect as if made as provided in section 551. [PL 1997, c. 103, §1 (AMD).]

SECTION HISTORY

PL 1997, c. 103, §1 (AMD).

§553. Discharge by attorney

(REPEALED)

SECTION HISTORY

PL 1993, c. 534, §1 (RP).

§553-A. Discharge by attorney

1. Affidavit. A recorded mortgage on a residential owner-occupied one-to-4-family dwelling may be discharged in the office of the registry of deeds by an attorney-at-law licensed to practice in the State if the mortgagee, after receipt of payment of the mortgage in accordance with the payoff statement furnished to the mortgagor by the mortgagee, fails to make that discharge or to execute and acknowledge a deed of release of the mortgage. The attorney shall execute and record an affidavit in the registry of deeds affirming that:

A. The affiant is an attorney-at-law in good standing and licensed to practice in the State; [PL 1993, c. 534, §2 (NEW).]

B. The affidavit is made at the request of the mortgagor or the mortgagor's executor, administrator, successor, assignee or transferee or the transferee's mortgagee; [PL 1993, c. 534, §2 (NEW).]

C. The mortgagee has provided a payoff statement with respect to the loan secured by the mortgage; [PL 1993, c. 534, §2 (NEW).]

D. The mortgagee has received payment that has been proved by a bank check, certified check or attorney client funds account check negotiated by the mortgagee or by evidence of receipt of payment by the mortgagee; [PL 1993, c. 534, §2 (NEW).]

E. More than 30 days have elapsed since the payment was received by the mortgagee; and [PL 1993, c. 534, §2 (NEW).]

F. The mortgagee has received written notification by certified mail 15 days in advance, sent to the mortgagee's last known address, that the affiant intends to execute and record an affidavit in accordance with this section, enclosing a copy of the proposed affidavit; the mortgagee has not delivered a discharge or deed of release in response to the notification; and the mortgagor has complied with any request made by the mortgagee for additional payment at least 15 days before the date of the affidavit. [PL 1993, c. 534, §2 (NEW).]

[PL 1993, c. 534, §2 (NEW).]

2. Name; address; mortgagee; mortgagor. The affidavit must include the names and addresses of the mortgagor and the mortgagee, the date of the mortgage, the title reference and similar information with respect to recorded assignment of the mortgage.

[PL 1993, c. 534, §2 (NEW).]

3. Copy. The affiant shall attach to the affidavit the following, certifying that each copy is a true copy of the original document:

A. Photostatic copies of the documentary evidence that payment has been received by the mortgagee, including the mortgagee's endorsement of a bank check, certified check or attorney client funds account check; and [PL 1993, c. 534, §2 (NEW).]

B. A photostatic copy of the payoff statement if that statement is made in writing. [PL 1993, c. 534, §2 (NEW).]

[PL 1993, c. 534, §2 (NEW).]

4. Effect. An affidavit recorded under this section has the same effect as a recorded discharge.

[PL 1993, c. 534, §2 (NEW).]

5. Exception. A mortgage may not be discharged as provided by this section if the holder of the mortgage at the time a discharge is sought is a financial institution or credit union authorized to do business in the State as defined in Title 9-B, section 131, subsection 12-A or 17-A.

[PL 1995, c. 94, §1 (AMD).]

SECTION HISTORY

PL 1993, c. 534, §2 (NEW). PL 1995, c. 94, §1 (AMD).

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