



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 201

130th General Assembly  
(As Introduced)

**Reps.** Butler, J. Adams, Terhar, Thompson, Hayes

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### BILL SUMMARY

- Provides that a mortgage encumbering real property that is used to satisfy a prior mortgage or lien on that real property generally be subrogated to the priority of the satisfied prior mortgage or lien.
- Provides that the holder of a mortgage or lien subordinate to a subrogated mortgage or lien retains the same subordinate position that the holder would have had if the prior mortgage or lien had not been satisfied.
- Requires a mortgagee to record a release of a mortgage evidencing its satisfaction within 90 days from the date of its satisfaction, regardless of whether it is a residential or commercial mortgage.
- Changes the damages for failure to record a mortgage satisfaction from \$250 to up to \$50 for each day of noncompliance and reasonable attorney's fees and costs to obtain the recording of satisfaction.
- Provides requirements and damages for noncompliance with the requirements for a mortgagee and mortgagor who are parties to an unreleased mortgage that has been satisfied, but not recorded, prior to the effective date of the bill.

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## CONTENT AND OPERATION

### Mortgage subrogation

#### Overview

Under continuing Ohio law, each county recorder keeps a record of mortgages and specified liens.<sup>1</sup> Generally, liens on real property take priority in the order in which they are recorded against the property.<sup>2</sup> The bill enacts provisions regarding lien priorities and mortgage subrogation in cases when one mortgage is used to satisfy a prior mortgage or lien on real property.

#### Priority of subrogated mortgage

The bill requires that a mortgage encumbering real property granted to secure funds that are used to satisfy a prior mortgage or lien on the real property be subrogated to the priority of the prior mortgage or lien that was satisfied, to the extent of the amount satisfied, if both of the following apply:

(1) The parties to the mortgage granted to secure funds that are used to satisfy a prior mortgage or lien intend that mortgage to have the priority of the satisfied mortgage or lien.

(2) At the time the holder of a subordinate mortgage or lien received its interest, the holder expected the interest to be junior to the satisfied mortgage or lien.<sup>3</sup>

"Subrogation" is the substitution of one party for another whose debt the party pays, entitling the paying party to rights, remedies, or securities that otherwise belong to the debtor.<sup>4</sup>

The bill prohibits a mortgagee (the person holding the mortgage, often the lender) seeking subrogation from being denied subrogation for any of the following reasons:

- The mortgagee is engaged in the business of lending.

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<sup>1</sup> R.C. 317.08(A)(2) and (B), not in the bill.

<sup>2</sup> 66 Ohio Jurisprudence 3d, Liens, Section 37 (2013).

<sup>3</sup> R.C. 5301.234(A).

<sup>4</sup> *Black's Law Dictionary*, 9th Ed., pp. 1563-64.

- The mortgagee had actual knowledge or constructive notice of a mortgage or lien over which the mortgagee would gain priority through subrogation.
- The mortgagee committed a mistake or was negligent or a third party committed a mistake or was negligent.
- The lien for which the mortgagee seeks to be subrogated was released.
- The mortgagee obtained a title insurance policy.<sup>5</sup>

### **Priority of subordinate liens**

The bill provides that the holder of a subordinate mortgage or lien will retain the same subordinate position that the holder would have had if the prior mortgage or lien had not been satisfied, regardless of whether the mortgage or lien is held by a subrogated mortgagee or the prior mortgagee.<sup>6</sup>

### **Entries of satisfaction**

#### **Recording requirements**

The bill expands current law's requirement regarding entries of mortgage satisfactions to include mortgages encumbering commercial real property, in addition to residential real property as under current law, and requires the recording of a release. The bill requires, within 90 days from the date of the satisfaction of any mortgage, the mortgagee to record a release of the mortgage evidencing the fact of its satisfaction in the appropriate county recorder's office. Current law requires, within 90 days from the date of the satisfaction of a residential mortgage, the mortgagee to record the fact of the satisfaction in the appropriate county recorder's office.<sup>7</sup>

Under the bill, "satisfaction" means that the obligation secured by a mortgage has been paid in full and the underlying obligation terminated, with no opportunities for future advancements. The bill removes the definition of "residential mortgage" and provides, for purposes of the entries of satisfaction requirements, that "mortgagee" includes the original mortgagee or any successor to or assignee of the original mortgagee and "mortgagor" includes the original mortgagor and any successor to the

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<sup>5</sup> R.C. 5301.234(B).

<sup>6</sup> R.C. 5301.234(C).

<sup>7</sup> R.C. 5301.36(B).

interest of the original mortgagor in the real property located within Ohio.<sup>8</sup> In general terms, a mortgagor is a person with an interest in real property who pledges that property as security for a debt, in other words, the borrower.<sup>9</sup>

### **Penalties for noncompliance**

The bill changes the penalty for a mortgagee's failure to record the satisfaction of a mortgage in accordance with the law (see "**Recording requirements**" above). The bill permits a mortgagor to recover, in a civil action, damages up to \$50 for each day of noncompliance and reasonable attorneys' fees and costs incurred in such an action or otherwise to obtain the recording of a satisfaction of mortgage. Current law permits the mortgagor to recover, in a civil action, damages of \$250. The bill specifies that this remedial fee does not bar other legal damages, in addition to continuing law's provision that the fee does not bar other legal remedies.<sup>10</sup>

### **Mortgages that are unreleased but satisfied on bill's effective date**

With respect to an unreleased mortgage that has been satisfied but not recorded prior to the effective date of the bill, the bill requires the mortgagor to provide the mortgagee written notice, addressed to the last address of public record for the mortgagee, of the failure to enter the release of the mortgage of record. Then, the mortgagee has 60 days from the delivery of the notice to record the satisfaction and release of the mortgage in the appropriate county recorder's office. The bill requires the mortgagee to pay any fees required for the recording within 180 days after the effective date of the bill and permits a mortgagor to institute a civil action and recover damages as described above in "**Penalties for noncompliance.**"<sup>11</sup>

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## **COMMENT**

The bill is silent regarding a time frame in which a mortgagor must send a written notice to the mortgagee with respect to an unreleased mortgage that has been satisfied but not recorded prior to the effective date of the bill. However, a mortgagee must record such an unreleased mortgage within 180 days of the effective date to avoid the bill's penalties. It appears possible that a mortgagor could delay sending the notice until after the 180-day period, making a mortgagee who is unaware of the requirement unable to record and pay the recording fees within that time period.

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<sup>8</sup> R.C. 5301.36(D).

<sup>9</sup> See *Black's Law Dictionary*, 9th Ed., p. 1101, 1105.

<sup>10</sup> R.C. 5301.36(C).

<sup>11</sup> Section 3.

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## HISTORY

ACTION

DATE

Introduced

06-11-13

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