



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. H.B. 201

130th General Assembly  
(As Passed by the House)

**Reps.** Butler, J. Adams, Terhar, Thompson, Hayes, R. Adams, Amstutz, Anielski, Beck, Bishoff, Blair, Blessing, Boyce, Budish, Burkley, Conditt, Green, Hood, Huffman, Letson, Milkovich, Perales, Retherford, Strahorn, Sykes, Winburn, Batchelder

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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.
- Expands to a current owner of real property to which a mortgage pertains the provision permitting a mortgagor to bring a cause of action for damages of \$250 for a mortgagee's failure to record a satisfied mortgage.
- Requires a current owner of property to provide a notice to a mortgagee if the mortgagee fails to record a satisfied mortgage within the required time period.
- Creates a cause of action for the current owner to collect damages when a mortgagee fails to record the satisfied mortgage after the current owner provides the notice.
- Provides requirements and damages for noncompliance with the requirements for a mortgagee, mortgagor, and property owner 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

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. 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>

#### 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, Sections 35, 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**

### **Overview**

The bill makes changes to the law for recording mortgage satisfactions to include current owner rights and duties and to expand the law to cover commercial properties.

### **Background**

When a person who holds a mortgage on residential property (mortgagor) sells the property, the deed is transferred to the buyer of the property (current owner) at closing. Continuing law requires the mortgagee to record the satisfaction of the mortgagor's mortgage with the county recorder within a certain period of time.<sup>7</sup> If the mortgagee fails to record the satisfaction, and the current owner has a mortgage on the property, the county records will indicate that there are two mortgages on the property – the mortgagor's mortgage and the current owner's mortgage. However, the mortgagee's failure to record the satisfaction may be unknown because the recording takes place after closing of the sale of the property. If the current owner subsequently attempts to sell the property, the fact of the mortgagee's failure to record the satisfaction of the mortgagor's mortgage will be revealed and may complicate the transfer of 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.



property to a subsequent owner. In this case, both the mortgagor and current owner are negatively affected by the failure of the mortgagee to record the 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>8</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.<sup>9</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>10</sup>

### **Penalties for noncompliance**

#### **Failure to record**

The bill maintains the penalty for a mortgagee's failure to record the satisfaction of a mortgage in accordance with the law; it permits a mortgagor, specified in the bill as the mortgagor of the unrecorded satisfaction, to recover, in a civil action, damages of \$250. The bill explicitly expands this permission for recovery in a civil action to the current owner of the real property to which the mortgage pertains. The bill specifies that this remedy not bar other legal damages, in addition to continuing law's provision that this remedy does not bar other legal remedies.<sup>11</sup>

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

<sup>9</sup> R.C. 5301.36(H); Section 3(D).

<sup>10</sup> See *Black's Law Dictionary*, 9th Ed., p. 1101, 1105.

<sup>11</sup> R.C. 5301.36(C) and (E).



## **Current owner's notice of noncompliance and penalty for noncompliance with that notice**

If the satisfaction of the mortgage remains unrecorded upon the expiration of 90 days, the bill directs the current owner of the real property to which the mortgage pertains to provide written notice to the mortgagee, in accordance with the Rules of Civil Procedure, of the failure to enter the release of the mortgage of record. The notice must be in substantially the same form as the one provided in the bill, which form notifies the mortgagee of (1) the duty to record a release, (2) the identity of the satisfied mortgage, (3) the mortgagee's failure to record the release, and (4) the consequences of failing to record the release within 15 days of receiving the notice (actions for damages, costs, and reasonable attorneys' fees, as provided in the bill (discussed below)).<sup>12</sup>

Within 15 days after delivery of the notice, the mortgagee must record a release of the mortgage evidencing the fact of its satisfaction in the appropriate county recorder's office and pay any fees required for the recording. The mortgagee may, by contract with the mortgagor or current owner, recover the cost of the fees required for the recording of the satisfaction by the county recorder.<sup>13</sup>

If the mortgagee fails to record the satisfaction in accordance with the bill's provisions, the current owner of the real property may recover, in a civil action, reasonable attorneys' fees and costs incurred in such an action or otherwise to obtain the recording of a satisfaction of mortgage plus damages of \$100 for each day of noncompliance, not to exceed \$5,000 in total damages. The bill specifies that the recovery of these fees, costs, and damages does not preclude or affect any other legal remedies or damages that may be available to the current owner.<sup>14</sup>

Under the bill, a current owner may combine civil actions or bring separate action for recovery of the \$250 in damages for the mortgagee's failure to record the satisfaction and the damages for the mortgagee's failure to do so after receiving the notice.<sup>15</sup>

The bill provides a safe harbor clause for mortgagees that record a release of a mortgage evidencing its satisfaction within the required time periods. Such a mortgagee

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<sup>12</sup> R.C. 5301.36(D)(1).

<sup>13</sup> R.C. 5301.36(D)(2).

<sup>14</sup> R.C. 5301.36(E).

<sup>15</sup> R.C. 5301.36(G).



is not in violation of the bill's provisions, or subject to any damages or fees, due to the failure of a county recorder to timely process that release of mortgage.<sup>16</sup>

### **Mortgages that are satisfied, but unrecorded, prior to the bill's effective date**

The bill provides the following procedures for unreleased mortgages that have been satisfied, but not recorded, prior to the effective date of the bill:

#### **Civil action damages for failure to record a release within 90 days**

For unreleased and satisfied commercial mortgages, the mortgagee is not subject to the civil action for \$250 in damages for failure to record a release within the 90-day time period after satisfaction of the mortgage (see "**Recording requirements**" and "**Penalties for noncompliance**," above). For unreleased and satisfied residential mortgages, the mortgagee is subject to the civil action for damages.

#### **Civil action damages for failure to comply with current owner's notice**

For unreleased commercial and residential mortgages that are satisfied more than 90 days prior to the effective date of the bill, the current owner is required to send the written notice (see "**Current owner's notice of noncompliance and penalty for noncompliance with that notice**," above) not sooner than the effective date of the bill. For unreleased commercial and residential mortgages that are satisfied less than 90 days prior to the effective date of the bill, the current owner is required to send the written notice not sooner than on the 90th day after the satisfaction of the mortgage. Regardless of whether these mortgages were satisfied more or less than 90 days after the effective date of the bill, the current owner of the real property may recover the allowable civil damages (\$100 for each day of noncompliance, not to exceed \$5,000 in total damages) for failure to record the satisfaction after receipt of the notice.<sup>17</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	06-11-13
Reported, H. Financial Institutions, Housing & Urban Development	02-13-14
Passed House (97-0)	02-26-14

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<sup>16</sup> R.C. 5301.36(F).

<sup>17</sup> Section 3.

