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P.L. 1999, CHAPTER 272, *approved November 24, 1999*
Senate, No. 235 (*Third Reprint*)

1 AN ACT concerning mortgages and amending ¹and supplementing¹
2 P.L.1975, c.137.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.1975, c.137 (C.46:18-11.2) is amended to read
8 as follows:

9 1. a. When any mortgage registered or recorded pursuant to
10 R.S.46:17-1 et seq. shall be redeemed, paid and satisfied, a mortgagee,
11 other than a bank, savings bank, savings and loan association, credit
12 union or other corporation engaged in the business of making or
13 purchasing mortgage loans, or his agents or assigns shall within 10
14 days notify the mortgagor that he has the right to demand the
15 mortgagee to cancel the mortgage of record upon payment by the
16 mortgagor of the fee required by the county to effect the cancellation
17 and the mortgagee shall within 30 days of the receipt by the mortgagee
18 of the required fee from the mortgagor ¹:

19 (1)¹ apply to the county recording officer to have the mortgage
20 canceled of record ¹; and

21 (2) send to the mortgagor or mortgagor's agent at the same time the
22 mortgage is sent to the county recording officer for cancellation of
23 record ³ **]**:

24 (a) the original note ² or a copy thereof ² with an indication that it
25 is paid in full;

26 (b) a copy of the mortgage marked "copy" and "canceled;" and

27 (c) **]** ³ a copy of the letter of transmittal which the mortgagee sent
28 to the county recording officer requesting the cancellation of the
29 mortgage of record ¹ .

30 b. (1) When any mortgage registered or recorded pursuant to
31 R.S.46:17-1 et seq. shall be redeemed, paid and satisfied ³ **]** ¹ by
32 payments made by the mortgagor without a sale by the mortgagor of
33 the property which secures the mortgage. ¹ **]** ³ and the mortgagee is a
34 bank, savings bank, savings and loan association, credit union or other
35 corporation in the business of making or purchasing mortgage loans,

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SGB committee amendments adopted March 5, 1998.

² Assembly floor amendments adopted March 29, 1999.

³ Senate amendments adopted in accordance with Governor's recommendations September 30, 1999.

1 that mortgagee, its agents or assigns shall:

2 (a) cause the mortgage to be submitted to the county recording
3 officer for cancellation of record within 30 days of receipt of all fees
4 which are required to be paid by the mortgagor pursuant to this
5 subsection; and

6 (b) send to the mortgagor¹ or mortgagor's agent¹ at the same time
7 the mortgage is sent to the county recording officer for cancellation of
8 record³]:

9 (i) the original note² or a copy thereof² with an indication that it
10 is paid in full:

11 (ii) a copy of the mortgage marked "copy" and "canceled;" and

12 (iii)³ a copy of the letter of transmittal which the mortgagee sent
13 to the county recording officer requesting the cancellation of the
14 mortgage of record¹ [and requesting that the county recording
15 officer, upon recordation of the cancellation of the mortgage, return
16 the canceled mortgage directly to mortgagor or the mortgagor's
17 agent]¹.

18 (2) The mortgagee shall have the right to receive from the
19 mortgagor the amount of the fee charged by the county recording
20 officer to cancel the mortgage plus an additional service fee from the
21 mortgagor, which service fee shall not exceed \$25 or such higher
22 amount which the Commissioner of Banking and Insurance may
23 approve by regulation, provided the mortgagor has received notice of
24 the fees required by the mortgagee. The mortgagee may collect the
25 service fee at the time of the mortgage transaction or at the time the
26 mortgage is redeemed, paid and satisfied. The fee charged by the
27 county recording officer to cancel the mortgage of record shall be
28 collectible at the time the mortgage is redeemed, paid and satisfied.

29 ³[(3) If the mortgagee has not collected the service fee at the time
30 of the mortgage transaction, the mortgagee, his agents or assigns shall
31 include the service fee, if any, and the fee charged by the county
32 recording officer to cancel the mortgage of record in the final
33 payment figure provided to the mortgagor or the mortgagor's agent.
34 The service fee, if any, and the fee charged by the county recording
35 officer to cancel the mortgage of record, while included in the final
36 payment figure, shall be itemized separately.

37 c. ¹(1) When any mortgage registered or recorded pursuant to
38 R.S.46:17-1 et seq. shall be redeemed, paid and satisfied through a
39 sale of the property which secures the mortgage and the mortgagee is
40 a bank, savings bank, savings and loan association, credit union or
41 other corporation in the business of making or purchasing mortgage
42 loans, that mortgagee, its agents or assigns shall:

43 (a) cause the mortgage to be submitted to the county recording
44 officer for cancellation of record within 30 days of receipt of all fees
45 which are required to be paid by the mortgagor pursuant to this
46 subsection; and

1 (b) send to the purchaser or the purchaser's agent at the same time
2 the mortgage is sent to the county recording officer for cancellation of
3 record, a copy of the letter of transmittal which the mortgagee sent to
4 the county recording officer requesting the cancellation of the
5 mortgage of record.

6 (2) The mortgagee shall have the right to receive from the selling
7 mortgagor the amount of the fee charged by the county recording
8 officer to cancel the mortgage plus an additional service fee from the
9 selling mortgagor, which service fee shall not exceed \$25 or such
10 higher amount which the Commissioner of Banking and Insurance may
11 approve by regulation, provided the selling mortgagor has received
12 notice of the fees required by the mortgagee. The mortgagee may
13 collect the service fee at the time of the mortgage transaction or at the
14 time the mortgage is redeemed, paid and satisfied. The fee charged by
15 the county recording officer to cancel the mortgage of record shall be
16 collectible at the time the mortgage is redeemed, paid and satisfied.

17 (3) If the mortgagee has not collected the service fee at the time of
18 the mortgage transaction, the mortgagee, his agents or assigns shall
19 include the service fee, if any, and the fee charged by the county
20 recording officer to cancel the mortgage of record in the final
21 payment figure provided to the purchaser or the purchaser's agent.
22 The service fee, if any, and the fee charged by the county recording
23 officer to cancel the mortgage of record, while included in the final
24 payment figure, shall be itemized separately.

25 d.¹ c.³ If the final payment is made in cash, by certified check or
26 cashier's check, the mortgage shall be deemed paid, satisfied and
27 redeemed upon receipt of the cash, certified check or cashier's check
28 by the mortgagee, his agents or assigns.

29 (cf: P.L.1991, c.289, s.2)

30
31 ¹2. Section 2 of P.L.1975, c.137 (C.46:18-11.3) is amended to
32 read as follows:

33 2. a. (1) If the mortgagee, his agent or assigns fails to comply
34 with the applicable provisions of subsection a. or b. of section 1 of
35 【this act】 P.L.1975, c.137 (C.46:18-11.2) , the mortgagor or the
36 mortgagor's agent may serve the mortgagee or his assigns with written
37 notice of the noncompliance, which notice shall identify the mortgage
38 and the date and means of its redemption, payment and satisfaction.
39 If the mortgagee has not complied within 15 business days after
40 receipt of the written notice from the mortgagor or mortgagor's agent
41 pursuant to this 【subsection a.】 paragraph (1) , the mortgagee or his
42 assigns shall be subject to a fine of \$50 per day for each day after the
43 15-day period until compliance, except that the total fine imposed
44 pursuant to this 【subsection a.】 paragraph (1) shall not exceed
45 \$1,000.

46 (2) If the mortgagee, his agent or assigns fails to comply with the

1 applicable provisions of ³ [subsection a. or c. of] ³ section 1 of
2 P.L.1975, c.137 (C.46:18-11.2), the purchaser or the purchaser's agent
3 may serve the mortgagee or his assigns with written notice of the
4 noncompliance, which notice shall identify the mortgage and the date
5 and means of its redemption, payment and satisfaction. If the
6 mortgagee has not complied within 15 business days after receipt of
7 the written notice from the purchaser or purchaser's agent pursuant to
8 this paragraph (2), the mortgagee or his assigns shall be subject to a
9 fine of \$50 per day for each day after the 15-day period until
10 compliance, except that the total fine imposed pursuant to this
11 paragraph (2) shall not exceed \$1,000.

12 b. ³ [(1)]³ Of each fine collected pursuant to ³ [paragraph (1) of]³
13 subsection a. of this section, 100% shall be payable to the
14 ³ [mortgagor if the mortgagor or the mortgagor's agent takes action
15 seeking compliance with the provisions of P.L.1975, c.137 (C.46:18-
16 11.2 et seq.), and payment for failure to comply on a timely basis or
17 institutes summary proceedings pursuant to this paragraph; and if the
18 Commissioner of Banking and Insurance, at the request of the
19 mortgagor or mortgagor's agent, takes action seeking compliance with
20 the provisions of P.L.1975, c.137 (C.46:18-11.2 et seq.), and payment
21 for failure to comply on a timely basis or institutes summary
22 proceedings pursuant to this paragraph (1), 25% shall be payable to
23 the [county clerk for deposit in the county treasury], and 75% shall
24 be payable to the mortgagor] private citizen instituting the action³ .
25 The fine may be collected by summary proceedings instituted by
26 ³ [the]³ [county clerk or the Attorney General] ³ [mortgagor or the
27 mortgagor's agent, or the Commissioner of Banking and Insurance]
28 a private citizen or the Attorney General³ in accordance with "the
29 penalty enforcement law" (N.J.S.2A:58-1 et seq.).

30 ³ [(2)] Of each fine collected pursuant to paragraph (2) of
31 subsection a. of this section, 100% shall be payable to the purchaser
32 if the purchaser or the purchaser's agent takes action seeking
33 compliance with the provisions of P.L.1975, c.137 (C.46:18-11.2 et
34 seq.), and payment for failure to comply on a timely basis or institutes
35 summary proceedings pursuant to this paragraph (2); and if the
36 Commissioner of Banking and Insurance, at the request of the
37 purchaser or purchaser's agent, takes action seeking compliance with
38 the provisions of P.L.1975, c.137 (C.46:18-11.2 et seq.), and payment
39 for failure to comply on a timely basis or institutes summary
40 proceedings pursuant to this paragraph (2), 25% shall be payable to
41 the Department of Banking and Insurance, and 75% shall be payable
42 to the purchaser. The fine may be collected by summary proceedings
43 instituted by the purchaser or the purchaser's agent, or the
44 Commissioner of Banking and Insurance in accordance with "the
45 penalty enforcement law" (N.J.S.2A:58-1 et seq.).]³

1 c. (1) If a mortgagee, his agent or assigns has not applied to the
 2 county recording officer to cancel the mortgage of record pursuant to
 3 subsection a. or b. of section 1 of P.L.1975, c.137 (C.46:18-11.2),
 4 within the 15 business day period provided by paragraph (1) of
 5 subsection a. of this section, the mortgagee shall be liable to the
 6 mortgagor for the greater of the mortgagor's actual damages or the
 7 sum of \$1,000, less any fines recovered by the mortgagor pursuant to
 8 【subsections】 paragraph (1) of subsection a. and paragraph (1) of
 9 subsection b. of this section. In any successful action to recover
 10 damages pursuant to this 【subsection c.】 paragraph (1) , the
 11 mortgagee shall reimburse the mortgagor for the costs of the action
 12 including the mortgagor's reasonable attorneys' fees.

13 (2) If a mortgagee, his agent or assigns has not applied to the
 14 county recording officer to cancel the mortgage of record pursuant to
 15 subsection a. or ³【c.】 b.³ of section 1 of P.L.1975, c.137
 16 (C.46:18-11.2), within the 15 business day period provided by
 17 paragraph (2) of subsection a. of this section, the mortgagee shall be
 18 liable to the purchaser for the greater of the purchaser's actual
 19 damages or the sum of \$1,000, less any fines recovered by the
 20 purchaser pursuant to paragraph (2) of subsection a. and paragraph (2)
 21 of subsection b. of this section. In any successful action to recover
 22 damages pursuant to this paragraph (2), the mortgagee shall reimburse
 23 the purchaser for the costs of the action including the purchaser's
 24 reasonable attorneys' fees.¹

25 (cf: P.L.1991, c.289, s.3)

26

27 ¹3. (New section) The Commissioner of Banking and Insurance
 28 may promulgate regulations pursuant to the "Administrative Procedure
 29 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate
 30 the provisions of P.L.1975, c.137 (C.46:18-11.2 et seq.).¹

31

32 ¹【2.】 4.¹ This act shall take effect on the 30th day following
 33 enactment.

34

35

36

37

38 _____
 38 Makes certain changes in the requirements for and enforcement of
 39 cancellation of mortgages of record.

SENATE, No. 235

STATE OF NEW JERSEY
208th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

Sponsored by:

Senator JAMES S. CAFIERO

District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS

Requires a mortgagee to send certain documents to a mortgagor upon satisfaction of the mortgage.

CURRENT VERSION OF TEXT

As Introduced.



1 AN ACT concerning mortgages and amending P.L.1975, c.137.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. Section 1 of P.L.1975,c.137 (C.46:18-11.2) is amended to read
7 as follows:

8 1. a. When any mortgage registered or recorded pursuant to
9 R.S.46:17-1 et seq. shall be redeemed, paid and satisfied, a mortgagee,
10 other than a bank, savings bank, savings and loan association, credit
11 union or other corporation engaged in the business of making or
12 purchasing mortgage loans, or his agents or assigns shall within 10
13 days notify the mortgagor that he has the right to demand the
14 mortgagee to cancel the mortgage of record upon payment by the
15 mortgagor of the fee required by the county to effect the cancellation
16 and the mortgagee shall within 30 days of the receipt by the mortgagee
17 of the required fee from the mortgagor apply to the county recording
18 officer to have the mortgage canceled of record.

19 b. (1) When any mortgage registered or recorded pursuant to
20 R.S.46:17-1 et seq. shall be redeemed, paid and satisfied and the
21 mortgagee is a bank, savings bank, savings and loan association, credit
22 union or other corporation in the business of making or purchasing
23 mortgage loans, that mortgagee, its agents or assigns shall:

24 (a) cause the mortgage to be submitted to the county recording
25 officer for cancellation of record within 30 days of receipt of all fees
26 which are required to be paid by the mortgagor pursuant to this
27 subsection; and

28 (b) send to the mortgagor at the same time the mortgage is sent to
29 the county recording officer for cancellation of record:

30 (i) the original note with an indication that it is paid in full;

31 (ii) a copy of the mortgage marked "copy" and "canceled;" and

32 (iii) a copy of the letter of transmittal which the mortgagee sent to
33 the county recording officer requesting the cancellation of the
34 mortgage of record and requesting that the county recording officer,
35 upon recordation of the cancellation of the mortgage, return the
36 canceled mortgage directly to mortgagor or the mortgagor's agent.

37 (2) The mortgagee shall have the right to receive from the
38 mortgagor the amount of the fee charged by the county recording
39 officer to cancel the mortgage plus an additional service fee from the
40 mortgagor, which service fee shall not exceed \$25 or such higher
41 amount which the Commissioner of Banking and Insurance may
42 approve by regulation, provided the mortgagor has received notice of
43 the fees required by the mortgagee. The mortgagee may collect the

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 service fee at the time of the mortgage transaction or at the time the
2 mortgage is redeemed, paid and satisfied. The fee charged by the
3 county recording officer to cancel the mortgage of record shall be
4 collectible at the time the mortgage is redeemed, paid and satisfied.

5 (3) If the mortgagee has not collected the service fee at the time of
6 the mortgage transaction, the mortgagee, his agents or assigns shall
7 include the service fee, if any, and the fee charged by the county
8 recording officer to cancel the mortgage of record in the final
9 payment figure provided to the mortgagor or the mortgagor's agent.
10 The service fee, if any, and the fee charged by the county recording
11 officer to cancel the mortgage of record, while included in the final
12 payment figure, shall be itemized separately.

13 c. If the final payment is made in cash, by certified check or
14 cashier's check, the mortgage shall be deemed paid, satisfied and
15 redeemed upon receipt of the cash, certified check or cashier's check
16 by the mortgagee, his agents or assigns.

17 (cf: P.L.1991, c.289, s.2)

18
19 2. This act shall take effect on the 30th day following enactment.

20
21
22 STATEMENT

23
24 When any mortgage registered or recorded pursuant to R.S.46:17-1
25 et seq. is redeemed, paid and satisfied and the mortgagee is a bank,
26 savings bank, savings and loan association, credit union or other
27 corporation in the business of making or purchasing mortgage loans,
28 this bill requires the mortgagee, its agents or assigns to send to the
29 mortgagor the following: the original note with an indication that it
30 is paid in full; a copy of the mortgage marked, "copy" and "canceled;"
31 and a copy of the letter of transmittal which the mortgagee sent to the
32 county recording officer requesting that the mortgage be canceled of
33 record and be returned to the mortgagor upon making such
34 recordation. The bill requires the mortgagee, his agent or assigns to
35 send these material to the mortgagor at the same time the mortgage is
36 sent to the county recording officer for cancellation of record.
37 Existing penalties would apply to a mortgagee, his agent or assigns
38 who fails to comply with these new requirements.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 235

STATE OF NEW JERSEY

DATED: JANUARY 21, 1999

The Assembly Banking and Insurance Committee reports favorably Senate Bill No. 235 (1R).

Senate Bill No.235 (1R) requires that when a mortgage is redeemed, paid and satisfied, and appropriate notices for cancellation have been sent and the fees received from the mortgagor and the mortgagee is other than a bank, savings bank, savings and loan association, credit union or other corporation engaged in the business of making or purchasing mortgage loans, the mortgagee, his agent or assigns, in addition to applying to have the mortgage canceled of record is to send to the mortgagor or the mortgagor's agent, at the same time the mortgage is sent for cancellation of record, the original note with an indication that it is paid in full, a copy of the mortgage marked "copy" and "canceled" and a copy of the letter of transmittal which the mortgagee sent to the county recording officer requesting the cancellation of the mortgage of record.

The bill makes a distinction between the two basic ways a mortgage which is registered or recorded pursuant to R.S.46:17-1 et seq. is redeemed, paid and satisfied: when the mortgagor pays off the mortgage without a sale of the property securing the mortgage (refinancing); and when the mortgagor sells the property securing the mortgage and uses those proceeds to pay off the mortgage.

When any mortgage registered or recorded pursuant to R.S.46:17-1 et seq. is redeemed, paid and satisfied by the mortgagor by payments made by the mortgagor without a sale of the property which secures the mortgage and the mortgagee is a bank, savings bank, savings and loan association, credit union or other corporation in the business of making or purchasing mortgage loans, this bill requires the mortgagee, its agents or assigns to send to the mortgagor the following: the original note with an indication that it is paid in full; a copy of the mortgage marked, "copy" and "canceled;" and a copy of the letter of transmittal which the mortgagee sent to the county recording officer requesting that the mortgage be canceled of record. The bill requires the mortgagee, his agent or assigns to send these materials to the mortgagor at the same time the mortgage is sent to the county recording officer by the mortgagee for cancellation of record.

In addition, the bill requires that all unpaid fees required to be paid by a mortgagor to have a mortgage canceled of record be included in the final payoff amount, itemized separately.

When any mortgage registered or recorded pursuant to R.S.46:17-1 et seq. is redeemed, paid and satisfied by the mortgagor by selling the property which secures the mortgage and the mortgagee is a bank, savings bank, savings and loan association, credit union or other corporation in the business of making or purchasing mortgage loans, this bill requires the mortgagee, his agent or assigns to send to the purchaser or the purchaser's agent, at the same time the mortgage is sent by the mortgagee to the county recording officer for cancellation of record, a copy of the letter of transmittal which the mortgagee sent to the county recording officer requesting that the mortgage be canceled of record. In addition, the bill requires that all unpaid fees required to be paid by a mortgagor to have a mortgage canceled of record be included in the final payoff amount, itemized separately.

The bill provides if a mortgage has been paid in full by the mortgagor without a sale of the property and the mortgagee or his agent does not comply with the 30 day requirement, the mortgagor or mortgagor's agent may serve notice on the mortgagee concerning noncompliance. Failure to comply within 15 days of receipt of the notice from the mortgagor subjects the mortgagee to a penalty of \$50 per day until compliance with a cap of \$1,000. The bill permits the mortgagor or the Commissioner of Banking and Insurance to take action seeking compliance with the provisions of the bill and, if necessary, institute summary proceedings to collect any monetary penalty. If the mortgagor or mortgagor's agent takes the action seeking compliance or institutes summary proceedings, the full amount of any penalty collected goes to the mortgagor. If the Commissioner of Banking and Insurance takes action, at the request of the mortgagor or mortgagor's agent, seeking compliance or institutes summary proceedings, the Department of Banking and Insurance receives 25% and the mortgagor 75% of any penalty collected.

The bill provides that if the mortgage has been paid in full as the result of the sale of the property, the purchaser or purchaser's agent may take the actions set out above for the mortgagor and the mortgagor's agent. The Commissioner of Banking and Insurance may, at the request of the purchaser or purchaser's agent, take action seeking compliance and, if necessary, institute summary proceedings to collect any monetary penalty.

The bill provides the Commissioner of Banking and Insurance with the authority to promulgate regulations necessary to effectuate the purposes of the bill.

As reported by the committee, this bill is identical to Assembly Bill No. 1895.

SENATE STATE GOVERNMENT, BANKING AND FINANCIAL
INSTITUTIONS COMMITTEE

STATEMENT TO

SENATE, No. 235

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 5, 1998

The Senate State Government, Banking and Financial Institutions Committee reports favorably and with committee amendments Senate Bill No. 235.

This bill, as amended, requires that when a mortgage is redeemed, paid and satisfied, and appropriate notices for cancellation have been sent and the fees received from the mortgagor and the mortgagee is other than a bank, savings bank, savings and loan association, credit union or other corporation engaged in the business of making or purchasing mortgage loans, the mortgagee, his agent or assigns, in addition to applying to have the mortgage canceled of record is to send to the mortgagor or the mortgagor's agent, at the same time the mortgage is sent for cancellation of record, the original note with an indication that it is paid in full, a copy of the mortgage marked "copy" and "canceled" and a copy of the letter of transmittal which the mortgagee sent to the county recording officer requesting the cancellation of the mortgage of record.

The bill makes a distinction between the two basic ways a mortgage which is registered or recorded pursuant to R.S.46:17-1 et seq. is redeemed, paid and satisfied: when the mortgagor pays off the mortgage without a sale of the property securing the mortgage; and when the mortgagor sells the property securing the mortgage and uses those proceeds to pay off the mortgage.

When any mortgage registered or recorded pursuant to R.S.46:17-1 et seq. is redeemed, paid and satisfied by the mortgagor by payments made by the mortgagor without a sale of the property which secures the mortgage and the mortgagee is a bank, savings bank, savings and loan association, credit union or other corporation in the business of making or purchasing mortgage loans, this bill requires the mortgagee, its agents or assigns to send to the mortgagor the following: the original note with an indication that it is paid in full; a copy of the mortgage marked, "copy" and "canceled;" and a copy of the letter of transmittal which the mortgagee sent to the county recording officer requesting that the mortgage be canceled of record.

The bill requires the mortgagee, his agent or assigns to send these materials to the mortgagor at the same time the mortgage is sent to the county recording officer by the mortgagee for cancellation of record. In addition, the bill requires that all unpaid fees required to be paid by a mortgagor to have a mortgage canceled of record be included in the final payoff amount, itemized separately.

When any mortgage registered or recorded pursuant to R.S.46:17-1 et seq. is redeemed, paid and satisfied by the mortgagor by selling the property which secures the mortgage and the mortgagee is a bank, savings bank, savings and loan association, credit union or other corporation in the business of making or purchasing mortgage loans, this bill requires the mortgagee, his agent or assigns to send to the purchaser or the purchaser's agent, at the same time the mortgage is sent by the mortgagee to the county recording officer for cancellation of record, a copy of the letter of transmittal which the mortgagee sent to the county recording officer requesting that the mortgage be canceled of record. In addition, the bill requires that all unpaid fees required to be paid by a mortgagor to have a mortgage canceled of record be included in the final payoff amount, itemized separately.

The bill provides if a mortgage has been paid in full by the mortgagor without a sale of the property and the mortgagee or his agent does not comply with the 30 day requirement, the mortgagor or mortgagor's agent may serve notice on the mortgagee concerning noncompliance. Failure to comply within 15 days of receipt of the notice from the mortgagor subjects the mortgagee to a penalty of \$50 per day until compliance with a cap of \$1,000. The bill permits the mortgagor or the Commissioner of Banking and Insurance to take action seeking compliance with the provisions of the bill and, if necessary, institute summary proceedings to collect any monetary penalty. If the mortgagor or mortgagor's agent takes the action seeking compliance or institutes summary proceedings, the full amount of any penalty collected goes to the mortgagor. If the Commissioner of Banking and Insurance takes action, at the request of the mortgagor or mortgagor's agent, seeking compliance or institutes summary proceedings, the Department of Banking and Insurance receives 25% and the mortgagor 75% of any penalty collected.

The bill provides that if the mortgage has been paid in full as the result of the sale of the property, the purchaser or purchaser's agent may take the actions set out above for the mortgagor and the mortgagor's agent. The Commissioner of Banking and Insurance may, at the request of the purchaser or purchaser's agent, take action seeking compliance and, if necessary, institute summary proceedings to collect any monetary penalty.

The bill provides the Commissioner of Banking and Insurance with the authority to promulgate regulations necessary to effectuate the purposes of the bill.

COMMITTEE AMENDMENTS

The committee amended the bill to: make a distinction in the way a mortgage is paid off--without a sale of the property and with a sale of the property; provide that if a mortgage is paid off without a sale, the pay off amount is to include all unpaid fees, itemized separately, that are necessary to have the mortgage canceled of record and that the mortgagee is to send certain information and documents to the mortgagor at the same time the mortgage is sent to the county recording officer for cancellation of record; provide that if the mortgage is paid off by sale of the property, the pay off amount is to include all unpaid fees, itemized separately, that are necessary to have the mortgage canceled of record and the mortgagee is to send the purchaser or the purchaser's agent a copy of the letter sent to the county recording officer requesting the mortgage be canceled of record at the same time the mortgage is sent to the county recording officer; add a new section which amends section 2 of P.L.1975, c.137 (C.46:18-11.3) to provide that the mortgagor or mortgagor's agent, the purchaser or purchaser's agent and the Commissioner of Banking and Insurance (instead of the Attorney General or the county clerk), at the request of the mortgagor or purchaser, may take action to bring about compliance with the requirements for cancellation and collect the \$50 per day fine assessed against a mortgagee which does not comply with the requirements of the bill, and, if necessary, may institute summary proceedings for the purpose of collecting the fine; and add a new section providing the Commissioner of Banking and Insurance the authority to promulgate regulations necessary to effectuate the provisions of P.L.1975, c.137 (C.46:18-11.2 et seq.).

STATEMENT TO
[First Reprint]
SENATE, No. 235

with Assembly Floor Amendments
(Proposed By Assemblyman GIBSON)

ADOPTED: MARCH 29, 1999

Senate, No. 235(1R) requires mortgagees or their agents to apply to the county recording officer to have the mortgage canceled of record within 30 days of the date any mortgage registered or recorded pursuant to R.S.46:17-1 et seq. is redeemed, paid and satisfied and also, within that same 30 days, to provide a mortgagor and purchasing mortgagor, if applicable, certain information, regarding cancellation of the mortgage of record. Part of the information required to be provided a mortgagor is the original note. This amendment permits a copy of the original note, rather than the original note, to be sent to the mortgagor, or the mortgagor's agent.

ASSEMBLY, No. 1895

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED MARCH 30, 1998

Sponsored by:

Assemblyman JOHN C. GIBSON

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman NICHOLAS ASSELTA

District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS

Makes certain changes in the requirements for and enforcement of cancellation of mortgages of record.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning mortgages and amending and supplementing
2 P.L.1975, c.137.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 1 of P.L.1975, c.137 (C.46:18-11.2) is amended to read
8 as follows:

9 1. a. When any mortgage registered or recorded pursuant to
10 R.S.46:17-1 et seq. shall be redeemed, paid and satisfied, a mortgagee,
11 other than a bank, savings bank, savings and loan association, credit
12 union or other corporation engaged in the business of making or
13 purchasing mortgage loans, or his agents or assigns shall within 10
14 days notify the mortgagor that he has the right to demand the
15 mortgagee to cancel the mortgage of record upon payment by the
16 mortgagor of the fee required by the county to effect the cancellation
17 and the mortgagee shall within 30 days of the receipt by the mortgagee
18 of the required fee from the mortgagor :

19 (1) apply to the county recording officer to have the mortgage
20 canceled of record ; and

21 (2) send to the mortgagor or mortgagor's agent at the same time
22 the mortgage is sent to the county recording officer for cancellation of
23 record:

24 (a) the original note with an indication that it is paid in full;

25 (b) a copy of the mortgage marked "copy" and "canceled;" and

26 (c) a copy of the letter of transmittal which the mortgagee sent to
27 the county recording officer requesting the cancellation of the
28 mortgage of record.

29 b. (1) When any mortgage registered or recorded pursuant to
30 R.S.46:17-1 et seq. shall be redeemed, paid and satisfied by payments
31 made by the mortgagor without a sale by the mortgagor of the
32 property which secures the mortgage, and the mortgagee is a bank,
33 savings bank, savings and loan association, credit union or other
34 corporation in the business of making or purchasing mortgage loans,
35 that mortgagee, its agents or assigns shall:

36 (a) cause the mortgage to be submitted to the county recording
37 officer for cancellation of record within 30 days of receipt of all fees
38 which are required to be paid by the mortgagor pursuant to this
39 subsection; and

40 (b) send to the mortgagor or mortgagor's agent at the same time
41 the mortgage is sent to the county recording officer for cancellation of
42 record:

43 (i) the original note with an indication that it is paid in full;

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (ii) a copy of the mortgage marked "copy" and "canceled;" and
2 (iii) a copy of the letter of transmittal which the mortgagee sent to
3 the county recording officer requesting the cancellation of the
4 mortgage of record.

5 (2) The mortgagee shall have the right to receive from the
6 mortgagor the amount of the fee charged by the county recording
7 officer to cancel the mortgage plus an additional service fee from the
8 mortgagor, which service fee shall not exceed \$25 or such higher
9 amount which the Commissioner of Banking and Insurance may
10 approve by regulation, provided the mortgagor has received notice of
11 the fees required by the mortgagee. The mortgagee may collect the
12 service fee at the time of the mortgage transaction or at the time the
13 mortgage is redeemed, paid and satisfied. The fee charged by the
14 county recording officer to cancel the mortgage of record shall be
15 collectible at the time the mortgage is redeemed, paid and satisfied.

16 (3) If the mortgagee has not collected the service fee at the time of
17 the mortgage transaction, the mortgagee, his agents or assigns shall
18 include the service fee, if any, and the fee charged by the county
19 recording officer to cancel the mortgage of record in the final
20 payment figure provided to the mortgagor or the mortgagor's agent.
21 The service fee, if any, and the fee charged by the county recording
22 officer to cancel the mortgage of record, while included in the final
23 payment figure, shall be itemized separately.

24 c. (1) When any mortgage registered or recorded pursuant to
25 R.S.46:17-1 et seq. shall be redeemed, paid and satisfied through a
26 sale of the property which secures the mortgage and the mortgagee is
27 a bank, savings bank, savings and loan association, credit union or
28 other corporation in the business of making or purchasing mortgage
29 loans, that mortgagee, its agents or assigns shall:

30 (a) cause the mortgage to be submitted to the county recording
31 officer for cancellation of record within 30 days of receipt of all fees
32 which are required to be paid by the mortgagor pursuant to this
33 subsection; and

34 (b) send to the purchaser or the purchaser's agent at the same time
35 the mortgage is sent to the county recording officer for cancellation of
36 record, a copy of the letter of transmittal which the mortgagee sent to
37 the county recording officer requesting the cancellation of the
38 mortgage of record.

39 (2) The mortgagee shall have the right to receive from the selling
40 mortgagor the amount of the fee charged by the county recording
41 officer to cancel the mortgage plus an additional service fee from the
42 selling mortgagor, which service fee shall not exceed \$25 or such
43 higher amount which the Commissioner of Banking and Insurance may
44 approve by regulation, provided the selling mortgagor has received
45 notice of the fees required by the mortgagee. The mortgagee may
46 collect the service fee at the time of the mortgage transaction or at the

1 time the mortgage is redeemed, paid and satisfied. The fee charged by
2 the county recording officer to cancel the mortgage of record shall be
3 collectible at the time the mortgage is redeemed, paid and satisfied.

4 (3) If the mortgagee has not collected the service fee at the time of
5 the mortgage transaction, the mortgagee, his agents or assigns shall
6 include the service fee, if any, and the fee charged by the county
7 recording officer to cancel the mortgage of record in the final
8 payment figure provided to the purchaser or the purchaser's agent.
9 The service fee, if any, and the fee charged by the county recording
10 officer to cancel the mortgage of record, while included in the final
11 payment figure, shall be itemized separately.

12 d. If the final payment is made in cash, by certified check or
13 cashier's check, the mortgage shall be deemed paid, satisfied and
14 redeemed upon receipt of the cash, certified check or cashier's check
15 by the mortgagee, his agents or assigns.

16 (cf: P.L.1991, c.289, s.2)

17
18 2. Section 2 of P.L.1975, c.137 (C.46:18-11.3) is amended to read
19 as follows:

20 2. a. (1) If the mortgagee, his agent or assigns fails to comply
21 with the applicable provisions of subsection a. or b. of section 1 of
22 【this act】 P.L.1975, c.137 (C.46:18-11.2) , the mortgagor or the
23 mortgagor's agent may serve the mortgagee or his assigns with written
24 notice of the noncompliance, which notice shall identify the mortgage
25 and the date and means of its redemption, payment and satisfaction.
26 If the mortgagee has not complied within 15 business days after
27 receipt of the written notice from the mortgagor or mortgagor's agent
28 pursuant to this 【subsection a.】 paragraph (1) , the mortgagee or his
29 assigns shall be subject to a fine of \$50 per day for each day after the
30 15-day period until compliance, except that the total fine imposed
31 pursuant to this 【subsection a.】 paragraph (1) shall not exceed
32 \$1,000.

33 (2) If the mortgagee, his agent or assigns fails to comply with the
34 applicable provisions of subsection a. or c. of section 1 of P.L.1975,
35 c.137 (C.46:18-11.2), the purchaser or the purchaser's agent may
36 serve the mortgagee or his assigns with written notice of the
37 noncompliance, which notice shall identify the mortgage and the date
38 and means of its redemption, payment and satisfaction. If the
39 mortgagee has not complied within 15 business days after receipt of
40 the written notice from the purchaser or purchaser's agent pursuant to
41 this paragraph (2), the mortgagee or his assigns shall be subject to a
42 fine of \$50 per day for each day after the 15-day period until
43 compliance, except that the total fine imposed pursuant to this
44 paragraph (2) shall not exceed \$1,000.

45 b. (1) Of each fine collected pursuant to paragraph (1) of
46 subsection a. of this section, 100% shall be payable to the mortgagor

1 if the mortgagor or the mortgagor's agent takes action seeking
2 compliance with the provisions of P.L.1975, c.137 (C.46:18-11.2 et
3 seq.), and payment for failure to comply on a timely basis or institutes
4 summary proceedings pursuant to this paragraph; and if the
5 Commissioner of Banking and Insurance, at the request of the
6 mortgagor or mortgagor's agent, takes action seeking compliance with
7 the provisions of P.L.1975, c.137 (C.46:18-11.2 et seq.), and payment
8 for failure to comply on a timely basis or institutes summary
9 proceedings pursuant to this paragraph (1), 25% shall be payable to
10 the [county clerk for deposit in the county treasury] Department of
11 Banking and Insurance , and 75% shall be payable to the mortgagor.
12 The fine may be collected by summary proceedings instituted by the
13 [county clerk or the Attorney General] mortgagor or the mortgagor's
14 agent, or the Commissioner of Banking and Insurance in accordance
15 with "the penalty enforcement law" (N.J.S.2A:58-1 et seq.).

16 (2) Of each fine collected pursuant to paragraph (2) of subsection
17 a. of this section, 100% shall be payable to the purchaser if the
18 purchaser or the purchaser's agent takes action seeking compliance
19 with the provisions of P.L.1975, c.137 (C.46:18-11.2 et seq.), and
20 payment for failure to comply on a timely basis or institutes summary
21 proceedings pursuant to this paragraph (2); and if the Commissioner
22 of Banking and Insurance, at the request of the purchaser or
23 purchaser's agent, takes action seeking compliance with the provisions
24 of P.L.1975, c.137 (C.46:18-11.2 et seq.), and payment for failure to
25 comply on a timely basis or institutes summary proceedings pursuant
26 to this paragraph (2), 25% shall be payable to the Department of
27 Banking and Insurance, and 75% shall be payable to the purchaser.
28 The fine may be collected by summary proceedings instituted by the
29 purchaser or the purchaser's agent, or the Commissioner of Banking
30 and Insurance in accordance with "the penalty enforcement law"
31 (N.J.S.2A:58-1 et seq.).

32 c. (1) If a mortgagee, his agent or assigns has not applied to the
33 county recording officer to cancel the mortgage of record pursuant to
34 subsection a. or b. of section 1 of P.L.1975, c.137 (C.46:18-11.2),
35 within the 15 business day period provided by paragraph (1) of
36 subsection a. of this section, the mortgagee shall be liable to the
37 mortgagor for the greater of the mortgagor's actual damages or the
38 sum of \$1,000, less any fines recovered by the mortgagor pursuant to
39 [subsections] paragraph (1) of subsection a. and paragraph (1) of
40 subsection b. of this section. In any successful action to recover
41 damages pursuant to this [subsection c.] paragraph (1), the mortgagee
42 shall reimburse the mortgagor for the costs of the action including the
43 mortgagor's reasonable attorneys' fees.

44 (2) If a mortgagee, his agent or assigns has not applied to the
45 county recording officer to cancel the mortgage of record pursuant to
46 subsection a. or c. of section 1 of P.L.1975, c.137 (C.46:18-11.2),

1 within the 15 business day period provided by paragraph (2) of
2 subsection a. of this section, the mortgagee shall be liable to the
3 purchaser for the greater of the purchaser's actual damages or the sum
4 of \$1,000, less any fines recovered by the purchaser pursuant to
5 paragraph (2) of subsection a. and paragraph (2) of subsection b. of
6 this section. In any successful action to recover damages pursuant to
7 this paragraph (2), the mortgagee shall reimburse the purchaser for the
8 costs of the action including the purchaser's reasonable attorneys' fees.
9 (cf: P.L.1991, c.289, s.3)

10
11 3. (New section) The Commissioner of Banking and Insurance
12 may promulgate regulations pursuant to the "Administrative Procedure
13 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate
14 the provisions of P.L.1975, c.137 (C.46:18-11.2 et seq.).

15
16 4. This act shall take effect on the 30th day following enactment.

17
18
19 STATEMENT

20
21 This bill requires that when a mortgage is redeemed, paid and
22 satisfied, and appropriate notices for cancellation have been sent and
23 the fees received from the mortgagor and the mortgagee is other than
24 a bank, savings bank, savings and loan association, credit union or
25 other corporation engaged in the business of making or purchasing
26 mortgage loans, the mortgagee, his agent or assigns, in addition to
27 applying to have the mortgage canceled of record is to send to the
28 mortgagor or the mortgagor's agent, at the same time the mortgage is
29 sent for cancellation of record, the original note with an indication that
30 it is paid in full, a copy of the mortgage marked "copy" and "canceled"
31 and a copy of the letter of transmittal which the mortgagee sent to the
32 county recording officer requesting the cancellation of the mortgage
33 of record.

34 The bill makes a distinction between the two basic ways a mortgage
35 which is registered or recorded pursuant to R.S.46:17-1 et seq. is
36 redeemed, paid and satisfied: when the mortgagor pays off the
37 mortgage without a sale of the property securing the mortgage; and
38 when the mortgagor sells the property securing the mortgage and uses
39 those proceeds to pay off the mortgage.

40 When any mortgage registered or recorded pursuant to R.S.46:17-1
41 et seq. is redeemed, paid and satisfied by the mortgagor by payments
42 made by the mortgagor without a sale of the property which secures
43 the mortgage and the mortgagee is a bank, savings bank, savings and
44 loan association, credit union or other corporation in the business of
45 making or purchasing mortgage loans, this bill requires the mortgagee,
46 its agents or assigns to send to the mortgagor the following: the

1 original note with an indication that it is paid in full; a copy of the
2 mortgage marked, "copy" and "canceled;" and a copy of the letter of
3 transmittal which the mortgagee sent to the county recording officer
4 requesting that the mortgage be canceled of record. The bill requires
5 the mortgagee, his agent or assigns to send these materials to the
6 mortgagor at the same time the mortgage is sent to the county
7 recording officer by the mortgagee for cancellation of record. In
8 addition, the bill requires that all unpaid fees required to be paid by a
9 mortgagor to have a mortgage canceled of record be included in the
10 final payoff amount, itemized separately.

11 When any mortgage registered or recorded pursuant to R.S.46:17-1
12 et seq. is redeemed, paid and satisfied by the mortgagor by selling the
13 property which secures the mortgage and the mortgagee is a bank,
14 savings bank, savings and loan association, credit union or other
15 corporation in the business of making or purchasing mortgage loans,
16 this bill requires the mortgagee, his agent or assigns to send to the
17 purchaser or the purchaser's agent, at the same time the mortgage is
18 sent by the mortgagee to the county recording officer for cancellation
19 of record, a copy of the letter of transmittal which the mortgagee sent
20 to the county recording officer requesting that the mortgage be
21 canceled of record. In addition, the bill requires that all unpaid fees
22 required to be paid by a mortgagor to have a mortgage canceled of
23 record be included in the final payoff amount, itemized separately.

24 The bill provides if a mortgage has been paid in full by the
25 mortgagor without a sale of the property and the mortgagee or his
26 agent does not comply with the 30 day requirement, the mortgagor or
27 mortgagor's agent may serve notice on the mortgagee concerning
28 noncompliance. Failure to comply within 15 days of receipt of the
29 notice from the mortgagor subjects the mortgagee to a penalty of \$50
30 per day until compliance with a cap of \$1,000. The bill permits the
31 mortgagor or the Commissioner of Banking and Insurance to take
32 action seeking compliance with the provisions of the bill and, if
33 necessary, institute summary proceedings to collect any monetary
34 penalty. If the mortgagor or mortgagor's agent takes the action
35 seeking compliance or institutes summary proceedings, the full amount
36 of any penalty collected goes to the mortgagor. If the Commissioner
37 of Banking and Insurance takes action, at the request of the mortgagor
38 or mortgagor's agent, seeking compliance or institutes summary
39 proceedings, the Department of Banking and Insurance receives 25%
40 and the mortgagor 75% of any penalty collected.

41 The bill provides that if the mortgage has been paid in full as the
42 result of the sale of the property, the purchaser or purchaser's agent
43 may take the actions set out above for the mortgagor and the
44 mortgagor's agent. The Commissioner of Banking and Insurance may,
45 at the request of the purchaser or purchaser's agent, take action
46 seeking compliance and, if necessary, institute summary proceedings

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1 to collect any monetary penalty.

2 The bill provides the Commissioner of Banking and Insurance with
3 the authority to promulgate regulations necessary to effectuate the
4 purposes of the bill.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1895

STATE OF NEW JERSEY

DATED: JANUARY 21, 1999

The Assembly Banking and Insurance Committee reports favorably Assembly Bill No. 1895.

This bill requires that when a mortgage is redeemed, paid and satisfied, and appropriate notices for cancellation have been sent and the fees received from the mortgagor and the mortgagee is other than a bank, savings bank, savings and loan association, credit union or other corporation engaged in the business of making or purchasing mortgage loans, the mortgagee, his agent or assigns, in addition to applying to have the mortgage canceled of record is to send to the mortgagor or the mortgagor's agent, at the same time the mortgage is sent for cancellation of record, the original note with an indication that it is paid in full, a copy of the mortgage marked "copy" and "canceled" and a copy of the letter of transmittal which the mortgagee sent to the county recording officer requesting the cancellation of the mortgage of record.

The bill makes a distinction between the two basic ways a mortgage which is registered or recorded pursuant to R.S.46:17-1 et seq. is redeemed, paid and satisfied: when the mortgagor pays off the mortgage without a sale of the property securing the mortgage; and when the mortgagor sells the property securing the mortgage and uses those proceeds to pay off the mortgage.

When any mortgage registered or recorded pursuant to R.S.46:17-1 et seq. is redeemed, paid and satisfied by the mortgagor by payments made by the mortgagor without a sale of the property which secures the mortgage and the mortgagee is a bank, savings bank, savings and loan association, credit union or other corporation in the business of making or purchasing mortgage loans, this bill requires the mortgagee, its agents or assigns to send to the mortgagor the following: the original note with an indication that it is paid in full; a copy of the mortgage marked, "copy" and "canceled;" and a copy of the letter of transmittal which the mortgagee sent to the county recording officer requesting that the mortgage be canceled of record. The bill requires the mortgagee, his agent or assigns to send these materials to the mortgagor at the same time the mortgage is sent to the county recording officer by the mortgagee for cancellation of record. In addition, the bill requires that all unpaid fees required to be paid by a mortgagor to have a mortgage canceled of record be included in the

final payoff amount, itemized separately.

When any mortgage registered or recorded pursuant to R.S.46:17-1 et seq. is redeemed, paid and satisfied by the mortgagor by selling the property which secures the mortgage and the mortgagee is a bank, savings bank, savings and loan association, credit union or other corporation in the business of making or purchasing mortgage loans, this bill requires the mortgagee, his agent or assigns to send to the purchaser or the purchaser's agent, at the same time the mortgage is sent by the mortgagee to the county recording officer for cancellation of record, a copy of the letter of transmittal which the mortgagee sent to the county recording officer requesting that the mortgage be canceled of record. In addition, the bill requires that all unpaid fees required to be paid by a mortgagor to have a mortgage canceled of record be included in the final payoff amount, itemized separately.

The bill provides if a mortgage has been paid in full by the mortgagor without a sale of the property and the mortgagee or his agent does not comply with the 30 day requirement, the mortgagor or mortgagor's agent may serve notice on the mortgagee concerning noncompliance. Failure to comply within 15 days of receipt of the notice from the mortgagor subjects the mortgagee to a penalty of \$50 per day until compliance with a cap of \$1,000. The bill permits the mortgagor or the Commissioner of Banking and Insurance to take action seeking compliance with the provisions of the bill and, if necessary, institute summary proceedings to collect any monetary penalty. If the mortgagor or mortgagor's agent takes the action seeking compliance or institutes summary proceedings, the full amount of any penalty collected goes to the mortgagor. If the Commissioner of Banking and Insurance takes action, at the request of the mortgagor or mortgagor's agent, seeking compliance or institutes summary proceedings, the Department of Banking and Insurance receives 25% and the mortgagor 75% of any penalty collected.

The bill provides that if the mortgage has been paid in full as the result of the sale of the property, the purchaser or purchaser's agent may take the actions set out above for the mortgagor and the mortgagor's agent. The Commissioner of Banking and Insurance may, at the request of the purchaser or purchaser's agent, take action seeking compliance and, if necessary, institute summary proceedings to collect any monetary penalty.

The bill provides the Commissioner of Banking and Insurance with the authority to promulgate regulations necessary to effectuate the purposes of the bill.

As reported by the committee, this bill is identical to Senate Bill No. 235 (1R).

SENATE BILL NO. 235 (SECOND REPRINT)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 235 (Second Reprint) with my recommendations for reconsideration.

A.SUMMARY OF THE BILL

This bill amends N.J.S.A. 46:18-11.2 which concerns the redemption, payment or satisfaction of mortgages. This statute sets forth certain obligations on mortgagees regarding the cancellation of mortgages of record by county recording officers. This bill would require mortgagees (lenders) to send mortgagors (borrowers) three items when a recorded mortgage is paid and satisfied: (1) the original mortgage note or a copy thereof, (2) a copy of the mortgage marked "canceled;" and (3) a copy of the transmittal letter from the mortgagee to the county recording officer requesting cancellation of the mortgage. These items must be sent to the mortgagor at the same time the mortgagee sends the original mortgage and transmittal letter to the county recording officer. Under current New Jersey law, when a mortgage is redeemed, paid and satisfied and the mortgagee is a bank, savings bank, savings and loan association, credit union or other corporation in the business of making or purchasing mortgage loans, the mortgagee must cause the mortgage to be submitted to the county recording officer for cancellation of record within 30 days of receipt of all required fees. Upon payment of the fee to the county clerk, the mortgagee receives an acknowledgment from the county clerk that the mortgage was canceled. As such, the mortgagee is currently not required to automatically send the borrower the original note, a copy of a canceled mortgage, or a copy of the transmittal letter. This bill would mandate that the mortgage, note and transmittal letter be forwarded to the borrower and would allow the mortgagee to bill the borrower for the county clerk recording fee and include that fee in the last mortgage statement.

If the mortgagee fails to comply with the terms of this bill, it could be fined up to

\$1,000. The borrower is authorized to serve a notice of non-compliance upon the lender and institute a summary action to collect any monetary penalty. The Department of Banking and Insurance (?DBI?) must also take such action on behalf of a borrower and must remit seventy-five percent of the monies collected to the borrower. The Department may return the other twenty-five percent of the monies collected. Under present law, the responsibility for collection of these monies is placed upon the county clerk or the Attorney General in accordance with the penalty enforcement law (N.J.S.A. 2A:58-1 et seq.).

The bill applies to situations where the mortgage is paid off in conjunction with the sale of the property, as well as to situations where the owner pays off the mortgage and continues to live on the property. In the former case, the bill authorizes the purchaser or purchaser?s agent to act on behalf of the prior borrower.

RECOMMENDED ACTION

I understand the intent of the sponsors to ensure that New Jersey mortgagors have conclusive proof that their mortgages have been properly canceled as of record shortly after they make their final mortgage payment or when they sell their property. Ensuring that New Jersey citizens and their families will be free from unwarranted clouds on the titles to their property is a worthy goal. However, several financial institutions, lending institutions, and the New Jersey State Bar Association have expressed concern that this bill will place New Jersey in a unique position by requiring lenders to send copies of canceled mortgages and original promissory notes to borrowers. Indeed, I have been advised that other states do not have such a requirement in their laws. Such a unique requirement would make it difficult for high-volume mortgage servicing companies to efficiently serve New Jersey consumers, because they will not be able to apply the procedures they utilize in the forty-nine other states to mortgage cancellations in New Jersey. Unless there is a pressing need for unique laws, uniform procedures among the states generally lead to lower costs and more simple operations for both consumers and businesses.

I am not convinced that the present state of mortgage cancellation procedures in New Jersey requires legislation that would make New Jersey so different from the other

forty-nine states in the nation. Existing law (N.J.S.A. 46:18-11.3) provides for penalties of up to \$50.00 per day against mortgagees that do not promptly cancel mortgages of record. Additionally, I recently signed into law Assembly Bill No. 161 (P.L. 1999 c.40) which allows a real estate attorney or title agency to cancel a mortgage of record if the mortgagee has failed to cancel the mortgage in a timely manner. These laws provide New Jersey consumers with assurances that their mortgages will be properly canceled as of record.

I believe that the sponsor's objectives can be achieved without imposing unnecessary burdens on the mortgage servicing industry. Accordingly, I am recommending that this bill be amended to delete the requirement that mortgagees forward mortgagors the original note and a copy of the mortgage marked "canceled." I recommend retaining the requirement that mortgagees forward to mortgagors copies of their transmittal letters requesting cancellation of mortgages by the county recording officer. A copy of the transmittal letter from the mortgagee to the county recording officer should provide mortgagors with sufficient proof of mortgage cancellation without imposing excessive administrative burdens on the mortgage servicing industry. Existing law provides mortgagors with additional recourse if the mortgagees do not promptly request cancellation of mortgages as of record.

Lastly, I am advised that current law provides that summary penalty enforcement actions against lenders who fail to observe the laws pertaining to mortgage cancellation may be instituted by a private citizen or by the Attorney General on the citizen's behalf. Because the Department of Banking and Insurance would utilize Deputy Attorney Generals in the Office of the Attorney General to bring these actions, private citizens will not receive any additional benefit by changing the current law. I recommend, therefore, that the Attorney General retain this function.

Therefore, I herewith return Senate Bill No. 235 (Second Reprint) and recommend that it be amended as follows:

- Page 2, Section 1, Line 23: After ?record? delete ?:?
- Page 2, Section 1, Lines 24-26: Delete in their entirety
- Page 2, Section 1, Line 27: Delete ?(c)?
- Page 2, Section 1, Lines 31-33: After ?satisfied? delete ?by payments made by the mortgagor without a sale by the mortgagor of the property which secures the mortgage,?
- Page 3, Section 1, Line 3: After ?record? delete ?:?
- Page 3, Section 1, Lines 4-6: Delete in their entirety
- Page 3, Section 1, Line 7: Delete ?(iii)?
- Pages 3-4, Section 1, Lines 23-48 and 1-16: Delete in their entirety
- Page 4, Section 1, Line 17: Delete ?d.? and insert ?c.?
- Page 4, Section 2, Line 38: Delete ?subsection a. or c. of?
- Page 5, Section 2, Line 1: Delete ?(1)?; after ?to? delete ?paragraph (1) of?
- Page 5, Section 2, Line 2: After ?the? delete ?mortgagor? and insert ?private citizen instituting the action.?
- Page 5, Section 2, Lines 3-13: Delete in their entirety
- Page 5, Section 2, Line 14: After ?instituted by? delete ?the?
- Page 5, Section 2, Lines 15-16: Delete ?mortgagor or the mortgagor?s agent, or the Commissioner of Banking and Insurance? and insert ?a private citizen or the Attorney General?
- Page 5, Section 2, Lines 18-33: Delete in their entirety
- Page 6, Section 2, Line 1: After ?or? delete ?c.? and insert ?b.?

Respectfully,

/s/ Christine Todd Whitman

Governor

[seal]

Attest:

/s/ Richard S. Mroz

Chief Counsel to the Governor

Office of the Governor
NEWS RELEASE

CONTACT: Gene Herman
609-777-2600

RELEASE: September 23, 1999

Gov. Christie Whitman today conditionally vetoed the following pieces of legislation:

SCS For S-1220, sponsored by the late Senator Wynona M. Lipman (D-Essex/Union) and Senator Joseph A. Palaia (R-Monmouth) and Assembly Members William D. Payne (D-Essex/Union) and Joseph V. Doria, Jr. (D-Hudson), establishes an at-risk youth mentoring program for public school students in the Department of Labor (DOL). The bill appropriates \$750,000 from the work First New Jersey - Work Activities account in the Department of Human Services to the Workforce Development Partnership Fund in the DOL to implement the provisions of the bill.

The Governor commended the sponsors of the legislation, especially the late Senator Lipman, for their efforts to establish a mentoring program for at-risk youth. She said the recommendations in her conditional veto would enhance the program's effectiveness. The Governor recommended that the bill be amended to create a three-year pilot program to allow for evaluation of the program's success and its role in relation to other public and private mentoring programs that are currently offered to at-risk youth. She said the mentoring programs also should use existing resources. The Governor recommended that the programs be designed to utilize public and private community organizations that provide employment, mental health, substance abuse, and family planning services to provide training for mentors and services for the at-risk youth served by the mentoring program. In order to provide for the effective use of available funds, Gov. Whitman recommended that the DOL have the authority to provide grants of up to \$50,000 instead of \$25,000 and that the maximum number of students served by a program be increased from 25 to 50 students.

S-2008, sponsored by Senator Diane B. Allen (R-Burlington/Camden) and Assembly Member Guy R. Gregg (R-Sussex/Hunterdon/Morris), would have amended current law to reduce the surcharge levied annually on workers' compensation insurance policy holders and self-insured employers. The bill would have modified the assignment formula to reduce the estimate used to calculate the surcharge from 150% to 125% of the estimated cost of the program. Use of an overestimate ensures that moneys will be sufficient to cover any unanticipated claims against the fund. In her conditional veto, the Governor recommended limiting the assessment formula to 100% of estimated administrative costs and requiring the Commissioner of Labor to submit an informational copy of the assessment to the Joint Budget Oversight Committee. The Governor said her action will serve to reduce the financial burden on employers and avoid overfunding, while maintaining adequate reserves for benefit payments and administrative costs.

S-912, sponsored by Senators Joseph A. Palaia (R-Monmouth) and Martha W. Bark (R-Atlantic/Burlington/Camden) and Assembly Members Joseph J. Roberts, Jr. (D-Camden/Gloucester) and George E. Geist (R-Camden/Gloucester), would have authorized certain changes to the offices of the county fire marshals and allowed for the creation of arson investigation units. The bill would have amended current laws to require county fire marshals to conduct investigations pertaining to the

elimination of fire hazards. The bill would also have amended certain statutorily defined responsibilities of a county fire marshal that a freeholder board is authorized to approve.

In her conditional veto, the Governor said that after a unanimous vote on the bill in both the Senate and Assembly, the sponsors requested that she issue a conditional veto in order to allow the part time fire marshals that serve the state's smaller counties to have greater flexibility within the new mandates. She commended the sponsors for their work in amending existing law in order to more accurately reflect the role of county fire marshals. The Governor recommended amending the bill to allow the fire marshals to determine whether to conduct or assist in an investigation pertaining to the cause and origin of a fire when requested by the fire department having jurisdiction over it.

She also recommended changing the entity to whom the fire marshal reports from the entity with control over the executive functions of the county to an authority designated by that entity. Also, the Governor recommended limiting situations for which a fire marshal may be required to render coordination and control to those for which a fire department has responsibility by way of local ordinance.

S-235, sponsored by Senator James S. Cafiero (R-Cape May/Atlantic/Cumberland) and Assembly Members Nicholas Asselta (R- Cape May/Atlantic/Cumberland) and John C. Gibson (R-Cape May/Atlantic/Cumberland), would have made certain changes in the requirements for an enforcement of cancellation of mortgages of record. Currently, when a mortgage is paid and satisfied, a mortgagee (lender) must request the mortgage be canceled as of record by the county recording officer (typically the county clerk). Upon payment of the requisite fee, the county clerk marks the mortgage cancelled and returns a copy to the mortgagee. The bill would have placed additional requirements upon the mortgagee/lender by mandating that the lender send the borrower the following three items at the same time the lender requests the mortgage cancellation from the county clerk: (1) the original mortgage noted marked "paid in full."; (2) a copy of the mortgage marked "canceled"; and (3) a copy of the mortgagee's letter to the county recording officer requesting that the mortgage be canceled of record.

In her conditional veto, the Governor said ensuring that New Jersey citizens and their families will be free from unwarranted clouds on the titles to their property is a worthy goal. However, she said, several financial institutions, lending institutions and the New Jersey State Bar Association have expressed concern that this bill will place New Jersey in a unique position by requiring lenders to send copies of canceled mortgages and original promissory notes to borrowers.

The Governor recommended the deletion of the requirement that mortgagees forward mortgages with the original note and a copy of the mortgage marked canceled. She recommended retaining the requirement that mortgagees forward to mortgagees copies of their transmittal letters requesting cancellation of mortgages by county recording officers.

S-1492, establishes a Physician-Dentist Fellowship and Education Program within the University of Medicine and Dentistry (UMDNJ) to provide health care to persons with developmental disabilities. The program will train physicians and dentists in providing medical and dental services to individuals with developmental disabilities to ensure that these services are accessible and available to such individuals. The training will occur at the residency, post-doctoral fellowship and continuing education

levels. The bill would have appropriated a \$5 million grant to the UMDNJ for the costs associated with the program.

The Governor commended the sponsors of the bill for addressing the serious health care needs of the developmentally disabled community by establishing the program. She said, however, that it was essential that the program be administered by an agency that has the expertise to effectively respond to the unique needs of the state's developmentally disabled community. She said the Department of Human Services, working through the Division of Developmental Disabilities, has significant experience in identifying those needs.

The Governor recommended that the funds to administer the program be appropriated to DHS to ensure that the DHS and UMDNJ work together to achieve the program's goals. In addition to taking advantage of DHS, Gov. Whitman said she believed it was important that the program utilize existing resources at UMDNJ, as well as other institutions, to assist in providing training to physicians and dentists in caring for the developmentally disabled. Further, the Governor said, she believed the state can make a significant commitment and accomplish the objectives of this program with a \$2.5 million appropriation rather than a \$5 million appropriation.

The bill was sponsored by Senators Jack Sinagra (R-Middlesex) and C. Louis Bassano (R-Essex/Union) and Assembly Members Nilsa Cruz- Perez (D-Camden/Gloucester) and Charlotte Vandervalk (R-Bergen).

Office of the Governor
NEWS RELEASE

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RELEASE: November 24, 1999

Gov. Christie Whitman today signed the following pieces of legislation:

S-1063, sponsored by Senators Robert Martin (R-Essex/Morris/Passaic) and Raymond J. Zane (D-Salem/Cumberland/Gloucester), and Assembly Member Michael Patrick Carroll (R-Morris), establishes a new civil penalty enforcement act. The bill incorporates recommendations the Governor made in a conditional veto.

S-1112, sponsored by Senator Gerald Cardinale (R-Bergen), permits insurers to file and use life insurance policy contract forms in New Jersey if the forms were approved in at least 42 other states. The bill incorporates recommendations the Governor made in a conditional veto.

S-235, sponsored by Senator James S. Cafiero (R-Cape May/Atlantic/Cumberland) and Assembly Members Nicholas Asselta (R-Cape May/Atlantic/Cumberland) and John C. Gibson (R-Cape May/Atlantic/Cumberland), makes certain changes in the requirements for and enforcement of cancellation of mortgages of record. The bill incorporates recommendations the Governor made in a conditional veto.

S-761, sponsored by Senators Joseph M. Kyrillos, Jr. (R-Middlesex/Monmouth) and Bernard F. Kenny, Jr. (D-Hudson) and Assembly Members Steve Corodemus (R-Monmouth) and Louis A. Romano (D-Hudson), exempts the purchase, repair and maintenance of commuter ferries from the sales and use tax. The bill incorporates recommendations the Governor made in a conditional veto.

A-2884, sponsored by Assembly Members Joseph Azzolina (R-Middlesex/Monmouth) and George F. Geist (R-Camden/Gloucester), requires the New Jersey Economic Development Authority (EDA), in consultation with the Department of Military and Veterans' Affairs, to establish informational sessions to advise veterans of business assistance programs available from the EDA and assist them in applying to these programs.