

# Mortgage Release Requirements Revised, Expanded



By Matthew Steele



The Ohio General Assembly has made changes to the mortgage release statute that may affect how residential and commercial loans are processed. Since 1984, Ohio law has required lenders to record a release of each residential mortgage within 90 days of its satisfaction. If a lender fails to timely release the mortgage, a property owner can recover through a civil action statutory damages of \$250.

House Bill 201 from the most recent General Assembly expanded the scope of Ohio Revised

Code §5301.36 to include commercial mortgages and sharpened the penalties for non-compliance. Effective March 23, 2015, all mortgagees (lenders) must now release mortgages — whether residential or commercial — within 90 days of satisfaction, or be

subject to the \$250 penalty. The amended statute adds another layer of harsher penalties for mortgagees who fail to release their mortgages after notice from the property owner.

If a mortgage is unreleased after 90 days, a property owner may now send the mortgagee a notice that the mortgagee has

failed to release a mortgage, identifying the mortgage, and identifying the date of satisfaction. The notice must also include a warning that, under the statute, if the mortgagee fails to release the mortgage within 15 days after

‘delivery’ of the notice, the property owner can recover statutory damages of \$100 per day (up to \$5,000) plus attorney fees.

O.R.C. §5301.361 provides a modest safe harbor for commercial mortgages that were satisfied before the bill’s effective date.

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For those mortgages, mortgagees will not be subject to the \$250 statutory damages. They will, however, be subject to the \$100 per day penalty if they fail to release the mortgage within 15 days after notice from the property owner.

While it is clear that the goal of the revised statute is to encourage the timely release of satisfied Ohio mortgages, the mechanism for doing so could cause headaches for lenders, servicers, title companies, and courts on how to enforce its provisions. For instance:

**Is Every Mortgage Assignee Responsible for Releasing the Mortgage?**

It has become increasingly rare for a mortgage lender to retain the mortgage loan through the time the mortgage is to be satisfied. Mortgage loans are often sold, collateralized, or otherwise assigned. While it seems unreasonable, the amended statute suggests that every lender in the chain of mortgage assignments is liable for damages because of an untimely release. “Mortgagee” is defined in §5301.36(G)(2) to include “the original mortgagee or any successor to or assignee of the original mortgage.” This suggests that a property owner can send notice to a bank who originated a loan but who sold the note and mortgage years earlier, and that original bank is liable for damages if the mortgage is not timely released.

**How Must the Notice be Served?** The new statute contains language in its notice provision that is increasingly popular in Ohio legislation, but that does not provide clarity for practitioners. §5301.36(D)(1) requires a property owner to serve the notice “in accordance with the Rules of Civil Procedure,” without identifying a particular rule.

*Civil Rule 4.* The General Assembly may have meant Civ.R. 4.1. If so, the notice may be sent by certified mail, by commercial carrier, by personal service, or by other means permitted for service of process.

Civ.R. 4.2(F) and 4.2(G) allow for service upon corporations and limited liability companies by serving the agent authorized by appointment or by law to receive service of process or by serving the entity at any of its usual places of

business by any of the methods authorized under Civ.R. 4.1(A)(1). In the case of a corporation, Civ.R. 4.2(F) allows service upon an officer.

*Civil Rule 5.* Alternatively, the General Assembly may have meant Civ.R. 5. Civ.R. 5(B)(1) requires service upon the attorney of a represented party. Among the service methods allowed in Civ.R. 5(B)(2) are: leaving it at the person’s office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office,<sup>1</sup> mailing it to the person’s last known address by United States mail,<sup>2</sup> leaving it with the clerk of court if the person has no known address,<sup>3</sup> and sending it by electronic means to a facsimile number or e-mail address provided in accordance with Civ.R. 11 by the attorney or party to be served.<sup>4</sup>

**When Does the Daily Penalty Commence?**

Given that the statute does not specify how delivery of the notice is to be made, it is equally unclear when the penalties for non-compliance commence. §5301.36(D)(2) requires the mortgagee to release the mortgage “within fifteen days after *delivery*” of the notice (emphasis added). Unfortunately, the statute does not define “delivery.” Therefore, the date of delivery appears to depend on the method used to serve the notice and is open to many interpretations on what that means. For instance, if the notice is sent by certified mail, return receipt requested, is it ‘delivered’ the date that it was sent by the property owner? Or is it only considered ‘delivered’ when it is picked up by the recipient? Or what happens if the notice goes unclaimed by the mortgagee? Is the property owner then permitted to send the notice by regular mail, as is permitted under Civ.R. 4.6(C)? If the notice is sent by ordinary mail as prescribed in Civ.R. 5, is it delivered when deposited in the mail?

Practically speaking, if the notice is delivered to an officer at a local bank branch of a large bank, it is relatively unlikely that the notice will reach the appropriate person in the bank to process the release within 15 days.

**Conclusion**

There are many questions about the practical enforcement of the new statute.

Creative property owner’s attorneys may decide to deliver the notice by the method that would give the mortgagee the least amount of time possible so that the property owner can sue to recover damages and attorney fees.

To avoid any penalties, all mortgagees would be prudent to assume the responsibility of recording every mortgage release within 90 days after satisfaction. Relying upon a title company, closing attorney, property owner or anyone other than the mortgagee or the mortgagee’s counsel to record the release could prove quite expensive to the mortgagee. 

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- 1 Civ.R. 5(B)(2)(b)(i).
- 2 Civ.R. 5(B)(2)(c).
- 3 Civ.R. 5(B)(2)(e).
- 4 Civ.R. 5(B)(2)(f).



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