



STATE OF NEW JERSEY

**N J L R C**

NEW JERSEY LAW REVISION COMMISSION

**FINAL REPORT**

Relating to

**RESIDENTIAL MORTGAGE SATISFACTION ACT**

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# **RESIDENTIAL MORTGAGE SATISFACTION ACT**

## **Introduction**

The Law Revision Commission began this project with consideration of the Uniform Residential Mortgage Satisfaction Act, which was promulgated by the National Conference of Commissioners on Uniform State Laws in 2004. That Act requires mortgage holders to provide payoff statements, to file a satisfaction of mortgage when the mortgage is paid, and provides a mechanism to clear title when a mortgage holder fails to file the satisfaction of mortgage. The Commission compared the Uniform Law to current New Jersey statutes and found certain advantages to the Uniform Law. While it is not identical to the Uniform Residential Mortgage Satisfaction Act, this report is based on that Act.

While the Commission was working with the Uniform Law, the New Jersey Land Title Association presented an idea for improvement of law based on an approach taken by the states of Minnesota and Illinois. This approach is uniquely well designed for situations where a piece of property is being sold or remortgaged and the current mortgage must be satisfied. The landowner requests a payoff statement and complies with its terms. The lawyer or title officer for the landowner then files an affidavit certifying that the mortgage has been paid. This “one touch” system allows a satisfaction agent to file an affidavit of satisfaction when he knows that the mortgage has been satisfied as required by the payoff statement. The agent can pay the mortgage at closing and immediately satisfy it of record, simplifying and expediting the settling of the matter.

The Commission proposal also allows affidavits to be filed as provided in the Uniform Act. Those affidavits may be required where no payoff statement is provided. Such situations include where the mortgage was paid sometime in the past but no record of satisfaction was filed.

The Commission made a number of other changes to the Uniform Act. Provisions were added to apply the act where a mortgage covers more than one parcel of property and partial payment will satisfy the mortgage as to a particular parcel. See Sections 2(11), 12(5) and 15. The act has been changed to allow, in addition to the landowner or his agent, anyone with a mortgage or lien on the property to request a payoff statement, but to provide a penalty where an unauthorized person requests one. See Sections 2(5), 4(a)(1) and 4(k).

The Commission also added a reference in Section 7(b) to cancellation of a mortgage by endorsement on the original. That method is simple and convenient, though unique to New Jersey. The proposal substitutes the more common terms, “mortgage holder” and “mortgage” for the terms “secured creditor” and “security instrument” used in the Uniform Law. The Commission also simplified and clarified provisions of the Uniform Law. While the resulting proposal is based on the Uniform Residential Mortgage Satisfaction Act, it is significantly different, and improved.

## **SECTION 1. SHORT TITLE.**

This act may be cited as the Residential Mortgage Satisfaction Act.

### **COMMENT**

This section is identical to Section 101 of the Uniform Act.

## **SECTION 2. DEFINITIONS.**

In this act:

(1) “Address for giving notice” means the most recent address provided in a document by the intended recipient of notice to the person giving notice, unless the person giving notice knows of a more accurate address, in which case the term means that address.

(2) “Day” means calendar day, except that in computing a period of time of less than seven days, Saturday, Sunday and legal holidays shall be excluded.

(3) “Document” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(5) “Entitled person” means a person liable for payment or performance of the obligation secured by the real property described in a mortgage, the landowner, or any person with a recorded interest in the property.

(6) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) “Landowner” means a person that, before foreclosure, has the right of redemption in the real property described in a mortgage. The term does not include a person that holds only a lien on the real property.

(8) “Mortgage holder” means a person that holds or is the beneficiary of a mortgage or that is authorized to receive payments on behalf of a person that holds a mortgage. The term does not include a trustee under a security instrument.

(9) “Mortgage” means an agreement, however denominated, that creates or provides for an interest in residential real property to secure payment or performance of an obligation, whether or not it also creates or provides for a lien on personal property.

(10) “Notice” means a document containing information required under this act and signed by the person required to provide the information.

(11) “Payoff amount” means the sum necessary to satisfy a mortgage, or, if the payoff statement so provides, the amount necessary to release a portion of the property from the mortgage.

(12) “Payoff statement” means a document containing the information specified in Section 4(d).

(13) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation,

government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(14) “Recording data” means book and page number or other document number that indicates where a document is recorded in the office of the county clerk or register of deeds.

(15) “Residential real property” means real property located in this state that is used primarily for personal, family, or household purposes and is improved by one to four dwelling units.

(16) “Sign” means, with present intent to authenticate or adopt a document:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the document an electronic sound, symbol, or process.

(17) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or possession subject to the jurisdiction of the United States.

(18) “Submit for recording” means to deliver, with required fees, a document sufficient to be recorded, to the appropriate county recording office.

#### COMMENT

Most of this section is substantively identical to Section 102 of the Uniform Act. Definition (17) (“Security interest”) of the Uniform Law has been deleted because all uses of the phrase have been deleted. Definition (5) has been changed slightly to allow the holder of another mortgage on the property or an interest in it to protect his interests by obtaining a payoff statement. Definition (11) has been expanded to provide for situations where a mortgage is secured by several parcels and payment of a portion of the mortgage releases less than all parcels and allows them to be transferred free of the mortgage.

### **SECTION 3. NOTICE: MANNER OF GIVING AND EFFECTIVE DATE.**

a. A person gives notice by:

(1) depositing it with the United States Postal Service with first-class postage paid or with a commercially reasonable delivery service with cost of delivery provided, properly addressed to the recipient’s address for giving notice;

(2) sending it by facsimile transmission, electronic mail, or other electronic transmission to the recipient’s address for giving notice, but only if the recipient agreed to receive notice in that manner; or

(3) causing it to be received at the address for giving notice within the time that it would have been received if given pursuant to paragraph (1).

b. Notice is effective:

(1) the day after it is deposited with a commercially reasonable delivery service for overnight delivery;

(2) three days after it is deposited with the United States Postal Service, first-class mail with postage prepaid, or with a commercially reasonable delivery service for delivery other than by overnight delivery;

(3) the day after it is given, if given pursuant to subsection (a)(2); or

(4) the day it is received, if given by a method other than as provided in subsection (a)(1) or (2).

c. A person need not use a method of giving notice that provides proof of receipt unless the provision directing giving notice specifically so provides.

#### COMMENT

Subsection (c) of Section 103 the Uniform Act as been deleted as recommended by the legislative note to the Uniform Act. Subsection (c) as it appears here is new; it is a clarification of the Uniform Act.

### **SECTION 4. PAYOFF STATEMENT: REQUEST AND CONTENT.**

a. An entitled person, or an agent authorized by an entitled person to request a payoff statement, may give to the mortgage holder notice requesting a payoff statement for a specified payoff date not more than 30 days after the notice is given. The notice must contain:

(1) the entitled person's name, and if the person is not the landowner, the basis of the person's entitlement;

(2) if given by a person other than an entitled person, the name of the person giving notice and a statement that the person is an authorized agent of the entitled person;

(3) a direction whether the statement is to be sent to the entitled person or that person's authorized agent;

(4) the address to which the mortgage holder must send the statement; and

(5) sufficient information to enable the mortgage holder to identify the mortgage and the real property encumbered by it.

b. If notice under subsection (a) directs the mortgage holder to send the payoff statement to a person identified as an authorized agent of the entitled person, the mortgage holder must send the statement to the agent, unless the mortgage holder knows that the entitled person has not authorized the request.

c. (1) Within 10 days after the effective date of notice that complies with subsection (a), the mortgage holder shall issue a payoff statement and send it as directed by Section 3 for giving notice. A mortgage holder who sends a payoff statement to the entitled person or the authorized agent may not claim that the notice did not satisfy subsection (a).

(2) If the person to whom the notice is given once held an interest in the mortgage but has since transferred that interest, the person need not send a payoff statement but, within ten days, shall give notice of the transfer to the person to whom the payoff statement otherwise would have been sent, providing the name and address of the transferee.

d. A payoff statement must contain:

(1) the date on which it was prepared and the payoff amount as of that date, including the amount by type of each fee, charge, or other sum included within the payoff amount;

(2) the information reasonably necessary to calculate the payoff amount as of the requested payoff date, including the per diem interest amount; and

(3) the payment cutoff time, if any, the address or place where payment must be made, and any limitation as to the authorized method of payment.

e. A payoff statement may contain the amount of any fees authorized under this section not included in the payoff amount.

f. A mortgage holder may not qualify a payoff amount or state that it is subject to change before the payoff date unless the payoff statement provides information sufficient to permit the entitled person or the person's authorized agent to request an updated payoff amount in writing at no charge and to obtain that updated payoff amount during normal business hours on the payoff date or the immediately preceding business day.

g. A mortgage holder must provide upon request one payoff statement without charge during any six-month period. A mortgage holder may charge a fee of \$25 for each additional payoff statement requested during that six-month period. However, a mortgage holder may not charge a fee for providing an updated payoff amount under subsection (f) or a corrected payoff statement.

h. Unless the mortgage provides otherwise, a mortgage holder is not required to send a payoff statement by means other than first-class mail. If the mortgage holder agrees to send a statement by another means, it may charge a reasonable fee for complying with the requested manner of delivery.

i. Except as otherwise provided in Section 8, if a mortgage holder to whom notice has been given pursuant to subsection (a) does not send a timely payoff statement that substantially complies with subsection (d) and the entitled person prevails in an action to enforce this act, the mortgage holder is liable to the entitled person for any actual damages caused by the failure or a penalty of \$500, whichever is greater, but additional punitive damages shall not be allowed.

j. A request for a payoff statement may be combined with a notice of intent to submit for recording an affidavit of satisfaction of a mortgage.

k. If persons who know they are not entitled to request a payoff statement, request one and receive it, they are liable to the landowner for any actual damages caused or a penalty of \$500, whichever is greater, but additional punitive damages shall not be allowed.

#### COMMENT

The section is substantially identical to Section 201 of the Uniform Law. The language added in subsection (a)(1) reflects the broadening of the class of those persons entitled to a payoff statement. See the definition of "entitled person." The addition of the word "additional" in subsection (i) is intended as a clarification. The last sentence of subsection (h) has been deleted as it duplicates the last sentence of subsection (g). New subsection (j) reflects Official Comment 4 to Section 302. New subsection (k) is intended to enforce the restriction on those persons entitled to a payoff statement.

#### **SECTION 5. UNDERSTATED PAYOFF STATEMENT: CORRECTION; EFFECT.**

a. If a mortgage holder determines that the payoff amount it provided in a payoff statement was understated, the mortgage holder may send a corrected payoff statement in

the same manner as the original payoff statement was sent. If the entitled person or the person's authorized agent receives and has a reasonable opportunity to act upon a corrected payoff statement before making payment, the corrected statement supersedes an earlier statement.

b. A mortgage holder that sends a payoff statement containing an understated payoff amount may not deny the accuracy of the payoff amount as against any person that reasonably and detrimentally relies upon the understated payoff amount.

c. Except as provided by subsection (b), this act does not:

(1) affect the right of a mortgage holder to recover any sum that it did not include in a payoff amount from any person liable for payment of the mortgage; or

(2) limit any claim or defense under law.

#### COMMENT

The section is substantially identical to Section 202 of the Uniform Law.

### **SECTION 6. MORTGAGE HOLDER TO SUBMIT SATISFACTION FOR RECORDING; LIABILITY FOR FAILURE.**

a. Except as provided in subsection (b), a mortgage holder shall submit for recording a satisfaction of a mortgage within 30 days after the mortgage holder receives full payment or performance of the mortgage. If a mortgage secures a line of credit or future advances, the mortgage is fully performed only if, in addition to full payment, the landowner has given notice requesting the mortgage holder to terminate the line of credit or containing a statement sufficient to terminate the effectiveness of the provision for future advances in the mortgage.

b. A mortgage holder is not required to submit a satisfaction of a mortgage when the person making payment has given notice as provided by section 4(j) that an affidavit of satisfaction of mortgage will be filed.

c. Except as otherwise provided in Section 8, a mortgage holder that is required to submit a satisfaction of a mortgage for recording and does not do so by the end of the period specified in subsection (a) is liable to the landowner for any actual damages caused by the failure, but not punitive damages.

d. Except as otherwise provided in subsection (e) and in Section 8, a mortgage holder that is required to submit a satisfaction of a mortgage for recording and does not do so by the end of the period specified in subsection (a) is also liable to the landowner for any additional court costs and damages incurred or a penalty of \$500, whichever is greater, if, after the expiration of the period specified in subsection (a):

(1) the landowner gives the mortgage holder notice, by any method that provides proof of receipt, demanding that the mortgage holder submit a satisfaction for recording; and

(2) the mortgage holder does not submit a satisfaction for recording within 30 days after receipt of the notice.

e. Subsection (d) does not apply if the mortgage holder received full payment or performance of the mortgage before the effective date of this act.

#### COMMENT

This section is substantively identical to Section 203 of the Uniform Law except for the addition of the final sentence of subsection (a). That additional language is necessary to implement the “one touch” system in which the satisfaction agent files an affidavit of satisfaction after paying the mortgage in compliance with the payoff statement.

### **SECTION 7. FORM AND EFFECT OF SATISFACTION.**

A satisfaction of a mortgage shall be either:

a. a document that:

(1) identifies the parties to the mortgage, the property mortgaged and the recording data for the mortgage;

(2) states that the person signing the satisfaction is the mortgage holder;

(3) contains language terminating the effectiveness of the mortgage; and

(4) is signed and acknowledged by the mortgage holder; or

b. an endorsement:

(1) authorizing cancellation of the mortgage signed by the mortgage holder; and

(2) made on the original mortgage that bears on it the receipt given by the county recording officer at the time it was recorded.

#### COMMENT

Subsection (a) is derived from Section 204 of the Uniform Law. Subsection (b) allows the cancellation of mortgages by re-recording the original mortgage with an endorsement authorizing cancellation. That is derived from current statute, 46:18-5.1(a). Subsection (b) of the Uniform Law section required the recording officer to record satisfactions of mortgage. That subject is governed by other law and has been deleted.

### **SECTION 8. LIMITATION OF MORTGAGE HOLDER’S LIABILITY.**

A mortgage holder is not liable under this act if the mortgage holder:

a. established a reasonable procedure to achieve compliance with its obligations under this act;

b. complied with that procedure in good faith; and

c. was unable to comply with its obligations because of circumstances beyond its control.

#### COMMENT

This section is substantively identical to Section 205 of the Uniform Law.

### **SATISFACTION BY AFFIDAVIT**



## **SECTION 9. DEFINITION; ELIGIBILITY TO SERVE AS SATISFACTION AGENT; REGULATION OF SATISFACTION AGENTS.**

a. "Title insurance company" means an organization authorized to conduct the business of insuring titles to real property in this state.

b. The following may serve as a satisfaction agent under this act:

(1) a title insurance company, acting directly or through an insurance producer licensed in the line of title insurance authorized to sign and submit for recording an affidavit of satisfaction; or

(2) an attorney at law licensed to practice law in this state.

### **COMMENT**

In accordance with the legislative note appended to Section 301 of the Uniform Law, subsection (c) which allowed specification of others who could serve as satisfaction agents has been deleted. As a result, only title insurance agents and lawyers may file affidavits to clear title. That is current law.

## **SECTION 10. AFFIDAVIT OF SATISFACTION: NOTICE TO MORTGAGE HOLDER.**

a. If a mortgage holder has not submitted for recording a satisfaction of a mortgage a satisfaction agent acting for, and with authority from, the landowner may give the mortgage holder notice that the satisfaction agent intends to submit for recording an affidavit of satisfaction of the mortgage. The notice shall include:

(1) the identity and mailing address of the satisfaction agent;

(2) identification of the mortgage for which a recorded satisfaction is sought, including the names of the original parties to, and the recording data for, the mortgage;

(3) a statement that the satisfaction agent has reasonable grounds to believe that:

(A) the real property described in the mortgage is residential real property;

(B) the person to whom notice is being given is the mortgage holder; and

(C) the mortgage holder has received satisfaction of all obligations secured by the mortgage;

(4) a statement that the satisfaction agent, acting with the authorization of the owner of the real property described in the mortgage, intends to sign and submit for recording an affidavit of satisfaction of the mortgage unless, within 30 days after the effective date of the notice:

(A) the mortgage holder submits a satisfaction of the mortgage for recording;

(B) the satisfaction agent receives from the mortgage holder a notice stating that the mortgage remains unsatisfied; or

(C) the satisfaction agent receives notice from the mortgage holder stating that the mortgage holder has assigned the mortgage and identifying the name and address of the assignee.

b. A notice under subsection (a) shall be sent by a method:

(1) authorized by Section 6, and

(2) that provides proof of receipt at the mortgage holder's address as defined in Section 2.

c. This act does not require a person to agree to serve as a satisfaction agent.

#### COMMENT

This section is substantively identical to Section 302 the Uniform Law. The change in subsection (a)(3)(C) is merely a clarification. The change in subsection (b)(1) is also a clarification; the definition in Section 2, for most purposes, is the last known address.

### **SECTION 11. AFFIDAVIT OF SATISFACTION: AUTHORIZATION TO SUBMIT FOR RECORDING.**

a. A satisfaction agent may sign and submit for recording an affidavit of satisfaction of a mortgage if:

(1) the agent knows that the mortgage has been paid in compliance with a written payoff statement provided by the mortgage holder;

(2) the mortgage holder has not, to the knowledge of the satisfaction agent, submitted for recording a satisfaction of a mortgage within 30 days after the effective date of a notice; or

(3) the mortgage holder authorizes the satisfaction agent to do so.

(b) A satisfaction agent may not sign and submit for recording an affidavit of satisfaction of a mortgage by authority of subsection (a)(2) if the agent has received notice stating that the mortgage remains unsatisfied.

(c) If a satisfaction agent receives notice that the mortgage has been assigned, the satisfaction agent may not submit for recording an affidavit of satisfaction of the mortgage by authority of subsection (a)(2) without:

(1) giving a notice of intent to submit for recording an affidavit of satisfaction to the identified assignee at the identified address; and

(2) complying with Section 10 with respect to the identified assignee.

#### COMMENT

Except for subsection (a)(1), this section is substantively similar to Section 303 of the Uniform Law. Subsection (a)(1) is new and implements the "one touch" approach. As a result of that addition, the restrictions of subsections (b) and (c) have been limited. They apply only to situations where the satisfaction agent is acting because the mortgage holder had not replied, not where the mortgage holder has provided a payoff statement or given authority for an affidavit of satisfaction.

### **SECTION 12. AFFIDAVIT OF SATISFACTION: FORM.**

An affidavit of satisfaction shall be substantially in the following form:

(Date of Affidavit)

## **AFFIDAVIT OF SATISFACTION**

I state as follows:

1. I am: [check appropriate box]

☐ an officer or agent of [Name of title insurance company] (the “Company”), which is licensed as an insurance producer licensed in the line of title insurance in this state, and I have been authorized by the Company to sign and submit for recording an affidavit of satisfaction.

☐ an attorney licensed to practice law in this state.

2. I am signing this Affidavit of Satisfaction to evidence full payment or performance of the obligations secured by real property encumbered by the following mortgage (the “mortgage”) currently held by \_\_\_\_\_ (the “mortgage holder”):

Original parties to mortgage:

County and state of recording:

Recording data for mortgage:

3. I have reasonable grounds to believe that:

a. the mortgage holder has received full payment or performance of the balance of the obligations secured by the mortgage; and

b. the real property described in the mortgage constitutes residential real property.

4. [check appropriate box]

☐ The mortgage holder has provided a written payoff statement for the mortgage and I know that the mortgage has been paid as specified in the statement; or

☐ With the authorization of the owner of the real property described in the mortgage, I gave notice to the mortgage holder that I would sign and record an affidavit of satisfaction of the mortgage unless, within 30 days after the effective date of the notice, the mortgage holder gave notice that the mortgage remains unsatisfied. The 30-day period has elapsed, and I have not received notice that the mortgage remains unsatisfied; or

☐ The mortgage holder authorized me to execute and record this affidavit of satisfaction.

5. [check box and complete if appropriate] ☐ This affidavit of satisfaction affects only the following portion of the property mortgage: (state property description).

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(Signature of Satisfaction Agent)

(Notarization)

#### COMMENT

This section is derived from Section 305 of the Uniform Law. There is no section equivalent to Section 304 of the Uniform Law. In the Uniform Law, Section 304 sets out the requirements for an affidavit of satisfaction and Section 305 establishes a form meeting those requirements. That duplication was obviated by the approach of this section, requiring an affidavit be “substantially in the following form” and providing a form that meets the substantive requirements.

Paragraph (4) of the form differs from that of the Uniform Law as the result of the “one-touch” system. That paragraph now includes three options: an affidavit after making payment in response to a payoff statement, an affidavit when the mortgage holder has been given notice that the mortgage has been paid and does not respond, and an affidavit authorized by the mortgage holder. In the ordinary case of a current mortgage paid as directed in a payoff statement, the first option would be used. When the mortgage was paid sometime in the past but no satisfaction was filed, the second or third option may be appropriate depending on whether the mortgage holder fails to respond or responds authorizing the affidavit.

Paragraph (5) of the form is new. It allows the affidavit of satisfaction procedure to be used where the mortgage is secured by several parcels of property and the payoff statement allows particular parcels to be released from the mortgage after partial payment.

### **SECTION 13. AFFIDAVIT OF SATISFACTION: EFFECT.**

a. Upon recording, an affidavit constitutes a satisfaction of the mortgage described in the affidavit provided it substantially complies with Section 12.

b. The recording of an affidavit of satisfaction of a mortgage does not by itself extinguish any liability of a person for payment or performance of any obligation secured by the mortgage.

#### COMMENT

Subsections (a) and (b) are substantively identical to Section 306 of the Uniform Law. Subsection (c) of the Uniform Law section required the recording officer to record affidavits. That subject is governed by other law and has been deleted.

### **SECTION 14. LIABILITY OF SATISFACTION AGENT.**

a. Except as otherwise provided in subsection (b), a satisfaction agent who records an affidavit of satisfaction of a mortgage erroneously or with knowledge that the statements contained in the affidavit are false is liable to the mortgage holder for any actual damages caused by the recording and costs.

b. A satisfaction agent who records an affidavit of satisfaction of a mortgage erroneously is not liable if the agent properly complied with this act.

c. If a satisfaction agent records an affidavit of satisfaction of a mortgage with knowledge that the statements contained in the affidavit are false, this section does not preclude:

- (1) a court from awarding punitive damages on account of the conduct;
- (2) the mortgage holder from proceeding against the satisfaction agent under law of this state other than this act; or
- (3) the enforcement of any criminal statute prohibiting the conduct.

#### COMMENT

This section is substantively identical with Section 307 of the Uniform Law.

## **SECTION 15. SATISFACTION OF MORTGAGES AFFECTING MORE THAN ONE PARCEL OF PROPERTY.**

When a mortgage is secured by more than one parcel of property, and the payoff statement provides that it may be satisfied in respect to particular parcels by making a payment in compliance with the payoff statement satisfying particular conditions, the provisions of this act may be applied to those parcels.

### **COMMENT**

This section is not found the Uniform Law. It applies the act to partial satisfactions

## **SECTION 16. DOCUMENT OF RESCISSION: EFFECT; LIABILITY FOR WRONGFUL RECORDING.**

a. In this section, “document of rescission” means a document stating that an identified satisfaction or affidavit of satisfaction of a mortgage was erroneous, and the mortgage remains unsatisfied, and in force.

b. A person who has recorded a satisfaction or affidavit of satisfaction of a mortgage in error may execute and record a document of rescission. Upon recording, the document rescinds an erroneous satisfaction or affidavit.

c. A recorded document of rescission has no effect on the rights of a person that:

(1) acquired an interest in the real property described in a mortgage after the recording of the satisfaction or affidavit of satisfaction of the mortgage and before the recording of the document of rescission; and

(2) would otherwise have priority over or take free of the lien created by the mortgage.

d. A person who erroneously records a document of rescission is liable to any person injured thereby for the actual damages caused by the recording and costs.

### **COMMENT**

This section is substantially identical to Section 104 of the Uniform Act. Subsection (b) has been reworded to remove an ambiguity. The subsection now states what was intended by the Uniform Law: only the person who filed the erroneous document may rescind it.

The deletion in subsection (c)(2) reflects the fact that whether or not an interest has priority over a mortgage is not just a question under the recording statute. Subsections (a) and (b) have been reworded slightly to clarify the fact that it is the prior satisfaction itself that was erroneous, not that there was an error in the way it was recorded.

## **MISCELLANEOUS PROVISIONS**

### **SECTION 17. AWARD OF ATTORNEYS’ FEES**

In any action brought under this act, the land owner may be awarded a reasonable attorney's fee as part of the cost, provided however, that no attorney's fee shall be

awarded to a defendant unless there is a determination that the action was brought in bad faith.

#### COMMENT

This section is new. It generalizes sections 104(d), 201(i) and 203(c), all of which provide for award of attorneys' fees. In form, the section is based on a provision of the Law Against Discrimination, 10:5-27.1.

### **SECTION 18. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.**

As permitted by the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 *et seq.*), this act modifies, limits, and supersedes that act but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)).

#### COMMENT

This section is substantially identical to Section 401 of the Uniform Act.