

May 30, 2014

The Honorable Nikki R. Haley
Governor, State of South Carolina
State House, 1st Floor
Columbia, SC 29201

Re: H3134, R247 – Mortgage Satisfaction

Dear Governor Haley,

On behalf of the South Carolina Bankers Association I write to ask you that you sign in to law H3134, a ratified bill that facilitates electronic filing of mortgage satisfactions in South Carolina.

H3134 addresses a problem that banks and other entities that file high volumes of mortgage satisfactions have encountered in various Register of Deeds offices. Even though South Carolina adopted the Uniform Real Property Electronic Recording Act in 2008, S.C. Code § 29-3-330(b) still requires the original mortgage to be filed if the mortgage was not lost or destroyed. If the mortgage is lost or destroyed then § 29-3-330(c) provides an affidavit to allow the filing. However, in the majority of transactions, the lender likely retains the original mortgage in its files and therefore cannot attest that the mortgage is lost or destroyed. As such, the lender must follow subsection (b) and return the original mortgage to the Register of Deeds for recording.

This requirement to present the original mortgage was not designed for today's high-volume mortgage market. Mortgage lenders frequently process tens of thousands of mortgage satisfactions each month. Complying with the current statute can require a mortgage lender to mail thousands of original mortgages to the Register of Deeds for cancellation, a significant administrative burden and expense for both the lender and the Register of Deeds. H3134 offers an alternative – consistent with other states such as North Carolina - to the antiquated practice of producing the original mortgage for cancellation by amending § 29-3-330 and adding a new affidavit form for satisfaction.

When this new affidavit is executed by the appropriate authorized party and recorded, the mortgage would be cancelled of record. This new affidavit is only an additional method of satisfying a mortgage and not a replacement for the existing methods of satisfaction.

The new affidavit requires swearing before two witnesses, with notarization, that the filer has the authority to file the satisfaction and the mortgage is satisfied. There is a penalty of perjury requirement as in the present attorney satisfaction subsection. Finally, in order to efficiently provide just one affidavit for all situations, H3134 deletes the present lost and destroyed mortgage subsection as this new affidavit would suffice in those situations.

H3134 is the result of a multi-year effort by many parties that strived to balance the need for cost-efficient filing along with the security that mortgages are properly satisfied only by entities authorized to do so. Parties that have worked on and support H3134 are the Registers of Deeds, the South Carolina Bankers Association, and the Mortgage Bankers Association of the Carolinas. The South Carolina Bar was present in all meetings and has reviewed the bill through its Real Estate Section with no objection.

Please contact me if you have any questions or concerns.

With kind regards,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, representing the name A. O'Neil Rashley, Jr.

A. O'Neil Rashley, Jr.
Senior Vice President and Counsel