

THE WAY TO SATISFACTION

By Judith I. Johannsen

"I can't get no-oh sa-tis-faction" is the very familiar lyric to a signature Rolling Stones song. It's also the tune sellers would sing if the recorded mortgage they just paid off wasn't properly released.

Mortgage loans have been around for as long as there has been land for sale and people who want to buy it but lack the resources to pay for it all at once. Years ago, buyers could not only apply for new mortgage loans from lenders, they could also assume a seller's mortgage with the approval of the lender.

The practice of assuming a mortgage has gone the way of the dinosaurs, mostly because interest rates were continually on the rise and it didn't make good business sense for the lender to allow a buyer/borrower to assume an existing mortgage loan at a below-market interest rate. What lenders wanted was to retire the existing loan and generate a new one at a higher interest rate, so the lending community created a way to prevent buyers from assuming sellers' mortgage loans by inserting a standard provision in the mortgage documents disallowing assumption of the mortgage and requiring satisfaction of the mortgage at transfer of title. This provision has become standard in today's mortgage loan documentation.

In today's residential real estate closings, sellers pay off (satisfy) their existing mortgage(s), usually with the money they receive from the buyers. The lender who provided the mortgage loan(s) to the seller typically receives a written request from the seller or seller's attorney for a Release of Mortgage or Satisfaction of Mortgage. This Release or Satisfaction is then recorded on the land records of the town or towns in which the property lies, giving notice to all that the property owner's mortgage loan obligation has been satisfied. The lender does this because Connecticut law requires a lender to execute and deliver a release within sixty days from the date a written request for a release is received. And what recourse does the property owner have if the lender fails to issue the requested release in the required amount of time? The law provides a remedy - the lender will be liable for damages to anyone *aggrieved* at the rate of two hundred dollars a week for each week after the expiration of sixty days up to a maximum of five thousand dollars, or in an amount equal to the loss sustained, *whichever is greater*, plus costs and reasonable attorneys fees.

The penalties sound good, but how do you know if you're aggrieved? Well, until recently, neither the general statutes nor case law provided any real clarity to "aggrieved", but legislative history of the statute regarding release or satisfaction of mortgages points us to the mortgagor (the property owner who pledges his property as security for a loan) who cannot sell his property or refinance his mortgage by virtue of not receiving a release of mortgage. Then, in December, a Superior Court decision integrated the intent of statute's legislative history into its decision, holding that damages for a lender's failure to promptly release a satisfied mortgage are available only to the mortgagor.

What can a mortgagor do if the lender hasn't executed and delivered a release of mortgage within the statutorily required time period? The law provides an unsatisfied mortgagor with another way to skin this cat - any attorney or authorized officer of a title insurance company can execute an affidavit attesting to certain statutorily required facts and record it on the land records in each town where the mortgage was recorded. When recorded, the affidavit constitutes a release of the lien of the mortgage.

So, what's the big deal about satisfying mortgages and releasing them? Well, if you are a property owner with a recorded mortgage and you want to re-finance or sell your property, a new lender won't want to give you a loan where it's mortgage encumbrance doesn't have priority over all others. If an older loan is still recorded on the land records, the new loan cannot enjoy priority.

So, the bottom line is, yes, selling property is satisfying - literally. The wise seller or seller's attorney will follow up on the requested release of mortgage documentation with the lender, and if it's not provided in the statutorily required period of time, can whistle a happy tune collecting the statutorily prescribed penalty.

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