

# State of South Dakota

SEVENTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 1997

381A0272

## SENATE BILL NO. 145

Introduced by: Senators Hunhoff and Rounds and Representatives Richter, Chicoine, and Lee

1 FOR AN ACT ENTITLED, An Act to authorize title insurance companies to execute certain  
2 certificates of release of mortgages.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 44-8 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Terms used in this Act mean:

- 7 (1) "Mortgage," a mortgage or mortgage lien on an interest in real property in this state  
8 given to secure a loan in the original principal amount of five hundred thousand  
9 dollars or less;
- 10 (2) "Mortgagee," the grantee of a mortgage or, if a mortgage has been assigned of  
11 record, the last person to whom the mortgage has been assigned of record;
- 12 (3) "Mortgage servicer," the last person to whom a mortgagor or the mortgagor's  
13 successor in the interest has been instructed by a mortgagee to send payments on a  
14 loan secured by a mortgage. A person transmitting a payoff statement is the mortgage  
15 servicer for the mortgage described in the payment statement;
- 16 (4) "Mortgagor," the grantor of a mortgage;

- 1       (5) "Payoff statement," a statement of the amount of the unpaid balance of a loan secured
- 2             by a mortgage, including principal, interest, and any other charges properly due under
- 3             or secured by the mortgage; and interest on a per day basis for the unpaid balance;
- 4       (6) "Record," to record with the county register of deeds;
- 5       (7) "Title insurance company," any corporation or other business entity authorized and
- 6             licensed to transact the business of insuring titles to interests in real property in this
- 7             state under chapter 58-25.

8       Section 2. That chapter 44-8 be amended by adding thereto a NEW SECTION to read as  
9 follows:

10       Any officer or duly appointed agent of a title insurance company may, on behalf of a  
11 mortgagor or a person who acquired from the mortgagor title to all or a part of the property  
12 described in a mortgage, execute a certificate of release that complies with the requirements of  
13 this Act and record the certificate of release in the real property records of each county in which  
14 the mortgage is recorded if:

- 15       (1) A satisfaction or release of the mortgage has not been executed and recorded within
- 16             sixty days after the date payment in full of the loan secured by the mortgage was sent
- 17             in accordance with a payoff statement furnished by the mortgagee or the mortgage
- 18             servicer; and
- 19       (2) The title insurance company, its officer, or agent has sent to the last known address
- 20             of the mortgagee or the mortgage servicer, at least thirty days before executing the
- 21             certificate of release, written notice of its intention to execute and record a certificate
- 22             of release in accordance with this Act after the expiration of the sixty-day period.

23       Section 3. That chapter 44-8 be amended by adding thereto a NEW SECTION to read as  
24 follows:

25       A certificate of release executed under this Act shall contain substantially all of the following:

- 1       (1)    The name of the mortgagor; the name of the original mortgagee; if applicable, the  
2            mortgage servicer; the date of the mortgage; the date of recording; and the volume  
3            and page or document number in the real property records where the mortgage is  
4            recorded; together with similar information for the last recorded assignment of the  
5            mortgage;
- 6       (2)    A statement that the mortgage was in the original principal amount of five hundred  
7            thousand dollars or less;
- 8       (3)    A statement that the person executing the certificate of release is an officer or a duly  
9            appointed agent of a title insurance company authorized and licensed to transact the  
10           business or insuring titles to interests in real property in this state under chapter 58-  
11           25;
- 12       (4)    A statement that the certificate of release is made on behalf of the mortgagor or a  
13            person who acquired title from the mortgagor to all or a part of the property  
14            described in the mortgage;
- 15       (5)    A statement that the mortgagee or mortgage servicer provided a payoff statement that  
16            was used to make payment in full of the unpaid balance of the loan secured by the  
17            mortgage;
- 18       (6)    A statement that payment in full of the unpaid balance of the loan secured by the  
19            mortgage was made in accordance with the written or verbal payoff statement, and  
20            received by the mortgagee or mortgage servicer, as evidenced by one or more of the  
21            following in the records of the title insurance company or its agent: a bank check,  
22            certified check, escrow account check from the title company or title insurance agent,  
23            or attorney trust account check that has been negotiated by the mortgagee or  
24            mortgage servicer, or other documentary evidence of payment to the mortgage or  
25            mortgage servicer;

1 (7) A statement that more than sixty days have elapsed since the date payment in full was  
2 sent;

3 (8) A statement that after the expiration of the sixty-day period the title insurance  
4 company, its officer, or agent sent to the last known address of the mortgagee or  
5 mortgage servicer, at least thirty days before executing the certificate of release,  
6 notice in writing of its intention to execute and record a certificate of release in  
7 accordance with this Act, with an unexecuted copy of the proposed certificate of  
8 release attached to the written notice; and

9 (9) A statement that the title insurance company, its officer, or agent has not received  
10 notification in writing of any reason why the certificate of release should not be  
11 executed and recorded after the expiration of the thirty-day notice period.

12 Section 4. That chapter 44-8 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 A certificate of release authorized by section 2 of this Act shall be executed and  
15 acknowledged as required by law in the case of a deed pursuant to § 43-25-5 and may be  
16 executed by a duly appointed agent of a title insurance company, but such delegation to an agent  
17 by a title insurance company does not relieve the title insurance company of any liability for  
18 damages caused by its agent for the wrongful or erroneous execution of a certificate of release.  
19 The appointment of agent shall be executed and acknowledged as required by law in the case of  
20 a deed pursuant to § 43-25-5 and shall state:

21 (1) Title insurance company as the grantor;

22 (2) The identity of the person, partnership, or corporation authorized to act as agent to  
23 execute and record certificates of release provided for in this Act on behalf of the title  
24 insurance company;

25 (3) That the agent has the full authority to execute and record certificates of release

1 provided for in this Act on behalf of the title insurance company;

2 (4) The term of appointment of the agent; and

3 (5) That the agent has consented to and accepts the terms of the appointment.

4 A single appointment of agent may be recorded in each county in the register of deed's office.

5 A separate appointment of agent is not necessary for each certificate of release. The appointment

6 of agent shall be shown as a memorial on each certificate of title on which a mortgage to be

7 released by a certificate of release under this Act is a memorial. The appointment of agent may

8 be rerecorded if necessary to establish authority of the agent, but such authority continues until

9 a revocation of appointment is recorded in the office of the county register of deeds where the

10 appointment of agent was recorded.

11 Section 5. That chapter 44-8 be amended by adding thereto a NEW SECTION to read as

12 follows:

13 For purposes of releasing a mortgage, a certificate of release containing the information and

14 statements provided for in section 3 of this Act and executed as provided in this Act is prima

15 facie evidence of the facts contained in it, may be recorded with the county register of deeds, and

16 operates as a release of the mortgage described in the certificate of release. The county register

17 of deeds shall rely upon the certificate of release to release the mortgage. Recording of a

18 wrongful or erroneous certificate of release by a title insurance company or its agent does not

19 relieve the mortgagor, or the mortgagor's successors or assigns, from any personal liability on

20 the loan or other obligations secured by the mortgage. In addition to any other remedy provided

21 by law, a title insurance company wrongfully or erroneously recording a certificate of release

22 under this Act is liable to the mortgagee for actual damage sustained due to the recordings of the

23 certificate of release.

24 Section 6. That chapter 44-8 be amended by adding thereto a NEW SECTION to read as

25 follows:

1        If the mortgage is recorded in more than one county and a certificate of release is recorded  
2        in one of them, a certified copy of the certificate of release may be recorded in another county  
3        with the same effect as the original. In all cases, the certificate of release shall be recorded and  
4        indexed as satisfactions of mortgage are recorded and indexed pursuant to § 44-8-14.

5        Section 7. That chapter 44-8 be amended by adding thereto a NEW SECTION to read as  
6        follows:

7        This Act applies only to a mortgage in the original principal amount of five hundred thousand  
8        dollars or less.