

§ 45-36.7. Payoff and short-pay statements; request and content.

(a) An entitled person, or an agent authorized by an entitled person to request a payoff or a short-pay statement, may give to the secured creditor a notification requesting a payoff statement or a short-pay statement. The notification must contain all of the following:

- (1) The entitled person's name.
- (2) If given by a person other than an entitled person, the name of the person giving the notification 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 creditor must send the statement.
- (5) Sufficient information to enable the creditor to identify the secured obligation and the real property encumbered by the security interest.
- (6) Whether the request is for a payoff statement or a short-pay statement.
- (7) If the request is for a payoff statement, the specified payoff date, which may not be more than 30 days after the notification is given.
- (8) If the request is for a short-pay statement, (i) the specified short-pay date, which may not be more than 30 days after the notification is given, (ii) a clear statement as to whether the request is for the short-pay amount required to release all of the real property described in the security instrument or only a portion of that property, and (iii) if the request is for the short-pay amount required to release only a portion of the real property described in the security instrument, a description of the specific real property to be released upon payment of the short-pay amount.

(b) If a notification under subsection (a) of this section directs the secured creditor to send the payoff statement or a short-pay statement to a person identified as an authorized agent of the entitled person, the secured creditor must send the statement to the agent, unless the secured creditor knows that the entitled person has not authorized the request.

(c) A person who gives to a secured creditor a notification requesting a payoff statement or a short-pay statement thereby represents that the person is an entitled person or the authorized agent of an entitled person. A secured creditor may rely on that representation in providing a payoff statement or a short-pay statement unless the secured creditor knows that the requesting person is neither an entitled person nor the authorized agent of an entitled person. A secured creditor has no duty to make inquiry as to whether, or to verify that, the person requesting a payoff statement or a short-pay statement is an entitled person or the authorized agent of an entitled person.

(d) Within 10 days after the effective date of a notification that complies with subsection (a) of this section, the secured creditor shall issue a payoff statement or a short-pay statement and send it as directed pursuant to subdivision (a)(3) of this section in the manner prescribed in G.S. 45-36.5 for giving a notification. A secured creditor that sends a payoff statement or a short-pay statement to the entitled person or the authorized agent may not claim that the notification did not satisfy subsection (a) of this section. If the person to whom the notification is given once held an interest in the secured obligation but has since assigned that interest, the person need not send a payoff statement or a short-pay statement but shall give (i) a notification of the assignment to the person to whom the payoff statement or a short-pay statement otherwise would have been sent, providing the name and address of the assignee, or (ii) a notification to the person to whom the payoff statement or a short-pay statement otherwise would have been sent, stating that the recipient claims no interest in the security

instrument or the secured obligation, that the secured obligation was assigned, but that the identity and address of the assignee is not known.

- (e) 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.
- (e1) A short-pay statement must contain:
 - (1) The information reasonably necessary to calculate the short-pay amount as of the requested short-pay date, including the per diem interest amount, if any;
 - (2) The payment cutoff time, if any, the address or place where payment of the short-pay amount must be made, and any limitation as to the authorized method of payment;
 - (3) Any conditions precedent that must be satisfied to obtain the release of the property identified in the request for the short-pay statement from the lien of the security instrument; and
 - (4) Confirmation of the specific real property to be released from the lien of the security instrument upon receipt of the timely payment of the short-pay amount and satisfaction of the other conditions precedent to the release of that property.

Unless the short-pay statement expressly provides otherwise, all persons liable for payment or performance of the obligations secured by the security instrument will remain liable for the secured obligations to the extent the short-pay amount is not sufficient to satisfy the secured obligations in full.

(f) A payoff statement or a short-pay statement may contain the amount of any fees authorized under this section not included in the payoff amount. A secured creditor may require the payment in full of any fees authorized under this section before issuing a payoff statement or a short-pay statement.

(g) A secured creditor 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 at no charge and to obtain that updated payoff amount during the secured creditor's normal business hours on the payoff date or the immediately preceding business day. A secured creditor may not qualify a short-pay amount or state that it is subject to change before the short-pay date unless the short-pay statement provides information sufficient to permit the entitled person or the person's authorized agent to request an updated short-pay amount at no charge and to obtain that updated short-pay amount during the secured creditor's normal business hours on the short-pay date or the immediately preceding business day.

(h) A secured creditor must provide upon request one payoff statement or one short-pay statement without charge during any six-month period. A secured creditor may charge a fee of twenty-five dollars (\$25.00) for each additional payoff statement and one hundred dollars (\$100.00) for each additional short-pay statement requested during that six-month period. However, a secured creditor may not charge a fee for providing an updated payoff amount or short-pay amount under subsection (g) of this section or a corrected payoff statement or short-pay statement under G.S. 45-36.8(a).

(i) Unless the security instrument provides otherwise, a secured creditor is not required to send a payoff statement or a short-pay statement by means other than first-class mail. If the creditor agrees to send a statement by another means, it may charge a reasonable fee for complying with the requested manner of delivery.

(j) Except as otherwise provided in G.S. 45-36.12, if a secured creditor to which a notification has been given pursuant to subsection (a) of this section does not send a timely payoff statement that substantially complies with subsection (e) of this section or a short-pay statement that substantially complies with subsection (e1) of this section, the creditor is liable to the entitled person for any actual damages caused by the failure, but not punitive damages. A creditor that does not pay the damages provided in this subsection within 30 days after receipt of a notification demanding payment shall also be liable for reasonable attorneys' fees and costs.

(k) This section does not apply unless (i) the notification requesting a payoff statement is given on or after October 1, 2005, and (ii) the notification requesting a short-pay statement is given on or after October 1, 2011. (2005-123, s. 1; 2011-312, s. 5.)