

§ 275. Certificate of discharge of mortgage required. 1. Whenever a mortgage upon real property is due and payable, and the full amount of principal and interest due on the mortgage is paid, a certificate of discharge of mortgage shall be given to the mortgagor or person designated by him or her, signed by the person or persons specified in section three hundred twenty-one of this chapter. The person signing the certificate shall, within thirty days thereafter, arrange to have the certificate presented for recording to the recording officer of the county where the mortgage is recorded. Failure by a mortgagee to present a certificate of discharge for recording shall result in the mortgagee being liable to the mortgagor in the amount of five hundred dollars if he or she fails to present such certificate within thirty days, shall result in the mortgagee being liable to the mortgagor in the amount of one thousand dollars if he or she fails to present a certificate of discharge for recording within sixty days and shall result in the mortgagee being liable to the mortgagor in the amount of one thousand five hundred dollars if he or she fails to present a certificate of discharge for recording within ninety days. For the purposes of such liability under this subdivision, the term "mortgagee" shall not include a person, partnership, association, corporation or other entity which makes less than five mortgage loans in any calendar year. The provisions of this section shall not apply to any mortgage granted to or made by the state of New York, or any agency or instrumentality thereof or any political subdivision of the state or any agency or instrumentality thereof.

2. For purposes of this section, the full amount of principal and interest due on a mortgage shall not be considered to be paid whenever such mortgage continues to secure a bona fide debt and an enforceable lien continues to exist, such as may occur in the following situations:

- (a) the commercial practice of lenders trading or selling mortgages on the secondary market;
- (b) the replacement of a construction loan with permanent financing;
- (c) the refinancing of an existing loan with a new lender, such as where the original lender assigns a note and the mortgage securing its payment to another lender in return for consideration and such mortgage is consolidated with another mortgage which secures any funds advanced by the new lender to the mortgagor;
- (d) the modification of the terms of a loan by a mortgagor and mortgagee in order to avoid foreclosure; and
- (e) a refinancing that occurs in conjunction with the sale of property such that the seller conveys property to the purchaser subject to the lien of the mortgage and the original lender assigns its note and mortgage on the property to the purchaser's lender.

3. Except with respect to the assignment of a mortgage in connection with a transaction described in paragraph (a) of subdivision two of this section, in order to record an assignment of a mortgage there must be set forth in the assignment document or attached thereto and recorded as part thereof a statement under oath signed by the mortgagor or any other party to the transaction having knowledge of the facts (provided such other party asserts such knowledge), that the assignee is not acting as a nominee of the mortgagor and that the mortgage continues to secure a bona fide obligation. With respect to the assignment of a mortgage in connection with a transaction described in paragraph (a) of subdivision two of this section, such assignment shall contain the following statement: "This assignment is not subject to the requirements of section two hundred seventy-five of the Real Property Law because it is an assignment within the secondary mortgage market."