

Discharge of mortgage not signed by the holder of record

Q We have been provided with a discharge of mortgage but it was not signed by the holder of record. Is it valid?

A It may be.

In NJSA 46:11-18.6, New Jersey law provides

b. A person which is the owner or holder of a mortgage duly recorded or registered in this State for which a prior assignment thereof is unrecorded, may execute a discharge, satisfaction-piece, release, subordination or postponement thereof, which instrument shall be accepted for recording by the county clerk or register of deeds and mortgages, so long as:

(1) it meets the requirements of 46:15-1.1(now 46:26A-3 - Prerequisites for Recording); and

(2) it contains wording in the body of the instrument setting forth the particulars concerning all assignments of the mortgage, whether or not recorded. (underlined for emphasis)

Thus, if the discharge contains the chain of ownership of the mortgage, it is acceptable. In addition, if the mortgage is a "MERS" mortgage and you are able to verify that the discharge came from the owner of the mortgage per the MERS website, you may accept it.

If the discharge does not contain the chain of ownership (or cannot be verified on the MERS website), proof that the party to whom payoff was made was the owner of the mortgage must be obtained. If the payoff was made to a servicer, proof of their authority must likewise be obtained.