

SENATE BILL NO. 24

BY SENATOR ALARIO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

AN ACT

To enact R.S. 9:5166, relative to mortgages and vendor's liens; to provide relative to cancellation of mortgage and vendor's lien inscriptions; to create and authorize the use of a uniform cancellation affidavit for cancellation of mortgage and vendor's lien inscriptions; to provide for the contents and effects of such affidavit; to provide relative to liability; to provide certain terms, conditions, procedures, and requirements; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:5166 is hereby enacted to read as follows:

§5166. Cancellation of mortgage and vendor's lien inscriptions; uniform cancellation affidavit; requirements and effects

A. A uniform cancellation affidavit as provided in this Section may be used to cancel a mortgage or vendor's lien inscription, except for judgments or legal mortgages. The uniform cancellation affidavit may be in lieu of any other affidavit otherwise required by law, and no additional affidavit shall be necessary for cancellation.

B. The uniform cancellation affidavit shall:

(1) Contain the information required by this Section.

(2) Recite the statutory authorization for the cancellation, any other recitations as may be required by law for cancellation, and a declaration that the affiant has complied with all requirements of law for the cancellation.

(3) Be sworn to and subscribed in the presence of a notary public or other properly authorized official, but shall not be required to be an authentic or witnessed act.

C. The filing with the clerk of court and ex officio recorder of mortgages of a uniform cancellation affidavit containing a request to cancel, together with any additional documents as may otherwise be required by law, shall operate

1 as a release and authorization to the clerk of court and ex officio recorder of
2 mortgages to cancel and erase from the mortgage records any mortgage or
3 vendor's lien inscription described in the uniform cancellation affidavit.

4 D. Liability

5 (1) The clerk of court as ex officio recorder of mortgages shall not be
6 liable for any damages resulting to any person or entity as a consequence of
7 canceling a mortgage in reliance upon a uniform cancellation affidavit
8 complying with this Section.

9 (2) The affiant shall be liable to and indemnify the clerk of court as ex
10 officio recorder of mortgages and any person relying upon the cancellation for
11 any claims or damages suffered if the uniform cancellation affidavit contains
12 materially false or incorrect statements.

13 (3) The preparing, signing, or filing of a uniform cancellation affidavit
14 with the knowledge that it contains materially false or incorrect statements shall
15 subject the offender to civil and criminal liability under Louisiana law,
16 including R.S. 9:5174, R.S. 14:125, and R.S. 14:133.

17 E. The provisions of this Section shall not be construed to invalidate,
18 prohibit, restrict or limit the use of any other method or form otherwise
19 authorized by law for the cancellation of a mortgage or vendor's lien
20 inscription.

21 F. A uniform cancellation affidavit shall satisfy the requirements of this
22 Section if it provides all the information set forth in the following form:

23 UNIFORM CANCELLATION AFFIDAVIT
24 (FOR MORTGAGES AND VENDOR'S LIENS)

25
26 STATE OF _____

27 PARISH OF _____

28 BE IT KNOWN THAT before me, the undersigned Notary Public, appeared:
29 (Name) _____ (Corporate Title and Name of Entity if Applicable) _____,
30 its duly authorized agent hereinafter referred to as affiant, who after first being sworn
31 declares that affiant is:
32 CHECK ONE BOX ONLY:

33 A notary public requesting cancellation under R.S. 9:5167(A)(1), herein declaring
34 that affiant or someone under his direction did satisfy the promissory note, and that
35 the affiant or someone under his direction (1) received the note marked "Paid in Full"

1 from the last holder of the note, and that the note was lost or destroyed while in the
 2 affiant's custody; or (2) has confirmed that the last holder of the paraphed note
 3 received payment in full and sent the note but the note was never received, and that
 4 the affiant has made a due and diligent search for the note, the note cannot be located,
 5 and sixty days have elapsed since payment or satisfaction of the note.

6 [] A duly authorized officer of a Louisiana licensed title insurer as defined in R.S. 22:46
 7 of the Louisiana Insurance Code, requesting cancellation under R.S. 9:5167(B)(1),
 8 herein declaring that all obligations secured by the mortgage or vendor's privilege
 9 have been satisfied, and that affiant has made a due and diligent search for the lost or
 10 destroyed instrument which was sufficient to cause a cancellation of the mortgage or
 11 vendor's privilege, that the lost or destroyed instrument cannot be located, and that
 12 sixty days have elapsed since payment or satisfaction of the secured obligation.

13 [] An authorized officer of a title insurance business, the closing notary public, or the
 14 attorney for the person or entity which made the payment requesting cancellation under
 15 R.S. 9:5167.1, herein declaring on behalf of the mortgagor or an owner of the property
 16 encumbered by the mortgage that the mortgagee provided a payoff statement with
 17 respect to the loan secured by the mortgage and that the mortgagee has received
 18 payment of the loan secured by the mortgage in accordance with the payoff statement,
 19 as evidenced by (1) a bank check, certified check, or escrow account check which has
 20 been negotiated by or on behalf of the mortgagee, or (2) other documentary evidence
 21 of the receipt of payment by the mortgagee, including but not limited to verification
 22 that the funds were wired to the mortgagee, that more than sixty days have elapsed
 23 since the date payment was received by the mortgagee and that the mortgagee has not
 24 returned documentary authorization for cancellation of the mortgage; and that the
 25 mortgagee has been given at least fifteen days notice in writing of the intention to
 26 execute and record an affidavit in accordance with R.S. 9:5167.1, with a copy of the
 27 proposed affidavit attached to the written notice. Affiant declares that he has attached
 28 all evidence required by law.

29 [] An obligee of record requesting cancellation under R.S. 9:5168, herein declaring that
 30 affiant is the obligee of record of the mortgage or vendor's privilege securing a
 31 paraphed promissory note and that the note has been lost or destroyed and cannot be
 32 presented; that the note is paid, forgiven, or otherwise satisfied; and that affiant has
 33 not sold, transferred, or assigned the note to any other person or entity. If affiant is not
 34 the Original Obligee of Record, but an Obligee of Record by recorded Assignment of the
 35 inscription to be cancelled, a list of recorded assignments is attached.

37 [] An obligee of record requesting release under R.S. 9:5169, declaring that affiant is
 38 herein acknowledging the satisfaction, releasing or acknowledging the extinction of the
 39 mortgage or privilege. If affiant is not the Original Obligee of Record, but an Obligee
 40 of Record by recorded Assignment of the inscription to be cancelled, affiant has
 41 attached a list of recorded assignments. JUDGMENTS OR LEGAL MORTGAGES
 42 MAY NOT BE CANCELLED USING THIS FORM.

43 [] An affiant requesting cancellation under R.S. 9:5170, herein declaring that he is
 44 attaching herewith

45 _____ The paraphed obligation marked "PAID" or "CANCELLED"; or
 46 _____ An authentic act of release conforming to the requirements of R.S.
 47 9:5170(A)(2).

48 [] A duly authorized officer of a Licensed Financial Institution under R.S. 9:5172,
 49 herein declaring that the institution was the obligee or the authorized agent of the
 50 obligee of the obligation secured by the mortgage or privilege when the obligation was
 51 extinguished and that the secured obligation has been paid or otherwise satisfied or
 52 extinguished; or that the institution is the obligee or authorized agent of the obligee
 53 of the secured obligation and that it releases the mortgage or privilege and directs the
 54 recorder to cancel its recordation.

55 AFFIANT HEREBY EXPRESSLY REQUESTS, AUTHORIZES, AND
 56 DIRECTS, in accordance with the provisions of the applicable statute indicated by the
 57 checked box above and in accordance with the provisions of Civil Code Art. 3366, that
 58 the Clerk of Court and ex officio Recorder of Mortgages for the Parish of

1 _____ to [] FULLY CANCEL, or [] PARTIALLY CANCEL the
2 following:

3 A mortgage or Vendor's privilege:

4 Granted/Made by: _____

5 In favor of: _____

6 Instrument dated _____ Recorded in _____ Parish;

7 Recorded in MOB _____ FOLIO _____, INSTRUMENT NO. _____ ;

8 [LEGAL DESCRIPTION OF PROPERTY: SEE ATTACHMENT HERETO
9 MADE A PART HEREOF.]

10 AFFIANT DECLARES that he has attached property descriptions as required
11 by law, and that he is aware that if no property description is attached, this Affidavit
12 will be rejected.

13 AFFIANT FURTHER DECLARES that if this Affidavit is intended to cancel
14 related inscriptions, such as assignments or subordinations, in a parish where the
15 clerk allows such cancellations, he has attached a separate list of related inscriptions.

16 AFFIANT WARRANTS that affiant has complied with all requirements of
17 applicable law, including full or partial discharge of the obligation where the law
18 requires.

19 AFFIANT AGREES to be liable to and to indemnify the Clerk of Court as ex
20 officio recorder of mortgages and any person relying upon the cancellation by this
21 affidavit for any claims or damages suffered as a consequence of such reliance if this
22 affidavit contains materially false or incorrect statements.

23 AFFIANT ACKNOWLEDGES BY HIS SIGNATURE BELOW that the
24 contents of this affidavit are true and correct to the best of his knowledge, information,
25 and belief, and further that he is aware that knowingly preparing, signing, or filing a
26 uniform cancellation affidavit containing materially false or incorrect statements shall
27 subject the affiant to civil and criminal liability under Louisiana law, including the
28 provisions of R.S. 9:5174, R.S. 14:125, and R.S. 14:133.

29 Affiant's Signature: _____ Printed Name: _____

30 Company Name: _____ Title: _____
31 (Its duly authorized agent)

32 Mailing Address: _____

33 City: _____ State : _____ ZIP: _____

34 Telephone #: _____ Email: _____

35 SWORN TO AND SUBSCRIBED before me this _____ day of _____,
36 20_____.

37 Notary Signature and Seal:

38 Printed Name of Notary: _____

39 State of Appointment : _____

40 Notary or Bar No.: _____

41 Commission expires: _____

42 FILER: Fill out below if filer is NOT the affiant:

43 **REQUEST TO CANCEL**

44 In accordance with the provisions of Civil Code Art. 3366, the undersigned filer
45 requests the Clerk of Court and ex officio Recorder of Mortgages to file this Uniform
46 Cancellation Affidavit and hereby requests the cancellation referenced therein.

47 Signature: _____

48 Printed Name: _____

49 Company: _____

50 Title: _____ (Its duly authorized agent)

51 Mailing Address: _____

1
2

City: _____ State : _____ ZIP: _____
Telephone #: _____ Email: _____

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____