

GREEN SHEET REDIGEST

HB 172

2018 Regular Session

Garofalo

(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)

MORTGAGES: Provides relative to the cancellation of inferior privileges, liens, and mortgages

DIGEST

Present law provides that the property sold at a sheriff's sale shall be sold with a release of the mortgage of the seizing creditor and inferior mortgages and liens, and the sheriff shall direct the recorder of mortgages to cancel those inscriptions in so far as they affect the property sold.

Proposed law provides for the cancellation or partial release of inferior inscriptions by the clerk of court or proper filing officer, regardless of whether they appeared on the mortgage certificate in the foreclosure proceeding.

Proposed law provides that if the inscription of an inferior mortgage, lien, or privilege encumbering the immovable property sold through a judicial sale is not cancelled as required by C.C.P. Art. 2376, the seizing creditor or its agent may have the inferior mortgage, lien, or privilege cancelled or partially released as to the immovable property sold by recording in the mortgage records of the parish in which the immovable property sold is located an "affidavit to cancel an inferior encumbrance".

Proposed law defines "inferior creditor".

Proposed law requires written notice of seizure to the inferior creditor prior to the judicial sale.

Proposed law provides that an affidavit executed by a seizing creditor or its attorney of record to cancel or partially release an inferior mortgage, lien, or privilege shall include all of the following information:

- (1) The name, mailing address, telephone number, and email address of the seizing creditor or its agent.
- (2) The name of the court, case name, and docket number of the action under which the seizure and sale of the immovable property was ordered.
- (3) The date of the judicial sale.
- (4) A description of the seizing creditor's foreclosed mortgage, lien, or privilege, including the recordation information and recording date.
- (5) A description sufficient to identify the foreclosed immovable property.
- (6) A description of the inferior mortgage, lien, or privilege, including the recordation information and recording date, and a declaration that the described mortgage, lien, or privilege requested to be cancelled or partially released is inferior to the foreclosed mortgage, lien, or privilege.
- (7) A certification that written notice of seizure was given to the inferior creditor prior to the judicial sale, and a copy attached of the written notice together with evidence that it was delivered to the inferior creditor.

- (8) A request that the clerk of court cancel or partially release the identified inferior mortgage, lien, or privilege pursuant to proposed law.

Proposed law requires the clerk of court to cancel or partially release the inferior mortgage, lien, or privilege upon the recordation of an affidavit that is in compliance with proposed law.

Proposed law provides that the cancellation of a mortgage, lien, or privilege shall have no effect if the mortgage, lien, or privilege is actually superior to the seizing creditor's foreclosed mortgage, lien, or privilege.

Proposed law requires that any party recording an affidavit pursuant to proposed law shall be subject to the liability requirements and standards of present law.

Proposed law excepts utility servitudes from proposed law.

Proposed law defines attorney of record.

(Amends C.C.P. Art. 2376; Adds R.S. 13:4368)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Specify and require that the clerk of court or proper filing officer shall cancel or partially release the inscription upon receipt of the affidavit.
2. Remove proposed law cancellation procedures from the C.C.P.
3. Add proposed law cancellation procedures to Title 13 of the Revised Statutes.
4. Add requirement of actual notice to the mortgage, lien, or privilege holder.
5. Require the inclusion of certain information in the affidavit to cancel or partially release.
6. Add exceptions and liability provisions to proposed law.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the engrossed bill

1. Changes "agent" to "attorney of record".
2. Adds definition.