

HOUSE SUMMARY OF SENATE AMENDMENTS

HB 172

2018 Regular Session

Garofalo

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

Synopsis of Senate Amendments

1. Changes all references from the "agent" for the creditor to the "attorney of record" for the creditor.
2. Adds a definition of "attorney of record".

Digest of Bill as Finally Passed by Senate

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 attorney of record 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 attorney of record.
- (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)