

Regular Session, 2007

# ACT No. 337

HOUSE BILL NO. 739

BY REPRESENTATIVE GALLOT

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

1 AN ACT

2 To amend and reenact R.S. 9:5167 and R.S. 44:106(A), 109(A), and 110 and to enact R.S.  
3 44:109.1, relative to the cancellation of mortgages and vendor's privileges; to require  
4 the recorder of mortgages to cancel mortgages and vendor's privileges under certain  
5 circumstances; to authorize certain persons to file cancellations of mortgages and  
6 vendor's privileges; to provide for the contents of the affidavit of cancellation; to  
7 provide for the liability of persons executing an affidavit of cancellation; to provide  
8 for the indemnification of persons relying on the affidavit of cancellation; to provide  
9 for the form attached to the affidavit of cancellation; to provide relative to licensed  
10 financial institutions executing certain acts; to provide a standard form for and  
11 mandatory acceptance of mortgage or privilege cancellations; to provide relative to  
12 the requisite knowledge of and liability for executing or filing a materially false or  
13 incorrect statement; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. R.S. 9:5167 is hereby amended and reenacted to read as follows:

16 §5167. Cancellation of mortgage ~~inscription upon presentation of note or affidavit;~~  
17 ~~lost or destroyed note~~ or vendor's privilege by affidavit of notary or title  
18 insurer where paraphed note or other evidence is lost or destroyed

19 E. A.(1) When a promissory note ~~secured by a mortgage~~ paraphed for  
20 identification with a mortgage or act creating a vendor's privilege on immovable  
21 property has been lost or destroyed after receipt by the notary public who satisfied  
22 the promissory note out of the proceeds of an act of sale or mortgage executed before

1 him, or with funds given to him for that purpose, the clerk of court or recorder of  
2 mortgages may cancel the mortgage or vendor's privilege upon receipt of an affidavit  
3 from the notary public. The affidavit shall set forth all of the following:

4 (a) The name of the mortgagor or obligor of the privilege as it appears in the  
5 recorded mortgage or vendor's privilege and recordation information.

6 ~~(a)~~(b) A description of the paraphed promissory note and the property;

7 ~~(b)~~(c) That A statement that the affiant or someone under his direction did  
8 satisfy the promissory note;

9 ~~(c)~~(d) That the affiant or someone under his direction:

10 (i) ~~did receive~~ Received the note marked "Paid in Full" from the last holder  
11 of the note, and that

12 ~~(d) That the note was lost or destroyed while in the affiant's custody; and; or~~

13 (ii) Has confirmed that the last holder of the paraphed note received payment  
14 in full and sent the note and the note was never received.

15 ~~(e) That the affiant agrees to hold harmless the clerk of court or recorder of~~  
16 ~~mortgages for any loss or damage occasioned by his failure to produce the note to~~  
17 ~~be personally liable to and indemnify the recorder of mortgages and any person~~  
18 ~~relying upon the cancellation by affidavit for any damages that they may suffer as~~  
19 ~~a consequence of such reliance if the recorded affidavit contains materially false or~~  
20 ~~incorrect statements that cause the recorder to incorrectly cancel the recordation of~~  
21 ~~a mortgage or privilege.~~

22 ~~(2)(f) In addition, the affidavit shall include a~~ A statement that the affiant has  
23 made a due and diligent search for the ~~last holder~~ note, the ~~last holder~~ note cannot  
24 be located, and ~~one year has~~ sixty days have elapsed since ~~recordation of the act of~~  
25 ~~sale or mortgage giving rise to the affidavit of cancellation; or, shall be accompanied~~  
26 ~~by an affidavit from the last holder stating that the promissory note marked "Paid in~~  
27 ~~Full" was delivered to the notary public~~ payment or satisfaction of the note.

28 ~~(3)~~(2) No mandamus proceeding is required to use the provisions of this  
29 Subsection.

1           ~~(4)~~(3) A person who signed an affidavit that is provided to the recorder of  
2           mortgages pursuant to this Subsection and that contains materially false or incorrect  
3           statements causing the recorder to incorrectly cancel the recordation of a mortgage  
4           or privilege is liable to and shall indemnify the recorder and any person relying upon  
5           the cancellation for any damages that they may suffer as a consequence of such  
6           reliance.

7           (4) The ~~clerk of court~~ or recorder of mortgages shall not be liable for any  
8           damages resulting to any person or entity as a consequence of canceling a mortgage  
9           or vendor's privilege pursuant to an affidavit which complies with this Subsection.

10           B.(1) When a paraphed promissory note or other evidence sufficient to cause  
11           a cancellation of a mortgage or vendor's privilege is lost or destroyed, and all  
12           obligations secured by the mortgage or vendor's privilege have been satisfied, the  
13           recorder of mortgages shall cancel the mortgage or vendor's privilege upon receipt  
14           of an affidavit from an officer of a licensed title insurer that has issued or issues a  
15           title insurance policy covering the immovable property encumbered by the mortgage  
16           or vendor's privilege. The affidavit shall set forth all of the following:

17           (a) A description of the instrument that was lost or destroyed and an  
18           affirmative statement that the instrument has been lost or destroyed.

19           (b) The name of the mortgagor or obligor of the privilege as it appears in the  
20           recorded mortgage or vendor's privilege, and recordation number or other  
21           appropriate recordation information.

22           (c) A statement that all obligations secured by the mortgage or vendor's  
23           privilege have been satisfied.

24           (d) A declaration that the title insurer agrees to be liable to and indemnify  
25           the recorder of mortgages and any person relying upon the cancellation by affidavit  
26           for any damages that they may suffer as a consequence of such reliance if the  
27           recorded affidavit contains materially false or incorrect statements that cause the  
28           recorder to incorrectly cancel the recordation of a mortgage or privilege.

(e) A statement that the affiant has made a due and diligent search for the lost or destroyed instrument, the lost or destroyed instrument cannot be located, and sixty days have elapsed since payment or satisfaction of the secured obligation.

(2) No mandamus proceeding is required to use the provisions of this Subsection.

(3) A title insurer whose officer has signed an affidavit that is provided to the recorder of mortgages pursuant to this Subsection and that contains materially false or incorrect statements causing the recorder to incorrectly cancel the recordation of a mortgage or privilege is liable to and shall indemnify the recorder and any person relying upon the cancellation for any damages that they may suffer as a consequence of such reliance.

(4) The recorder of mortgages shall not be liable for any damages resulting to any person or entity as a consequence of canceling a mortgage or vendor's privilege pursuant to an affidavit which complies with this Subsection.

Section 2. R.S. 44:106(A), 109(A), and 110 are hereby amended and reenacted and R.S. 44:109.1 is hereby enacted to read as follows:

§106. Cancellation of mortgages and privileges not securing paraphed obligations

A. If a mortgage or privilege does not secure a note or other written obligation that is paraphrased for identification with it, the request for cancellation shall have attached to it an act ~~in authentic or authenticated form~~ executed before a notary public or duly acknowledged before a notary public with or without witnesses or any act that is otherwise self-proving under the provisions of Code of Evidence Article 902(1), (2), (3), or (8), signed by the obligee of record of the mortgage or privilege that acknowledges the satisfaction or extinction of the secured obligation, releases or acknowledges the extinction of the mortgage or privilege, or directs the recorder to cancel its recordation.

\* \* \*

§109. Cancellation; licensed financial institution

A. In lieu of complying with the provisions of Sections 106 through 108, a request for cancellation may have attached to it the signed, written act, in authentic

~~or authenticated form,~~ of a licensed financial institution executed before a notary public or duly acknowledged before a notary public with or without witnesses or any act that is otherwise self-proving under the provisions of Code of Evidence Article 902(1), (2), (3), or (8), declaring that the obligee is a licensed financial institution as defined in Subsection C of this Section and that the institution:

(1) ~~Declares that the institution was~~ Was the obligee or the authorized agent of the obligee of the obligation secured by the mortgage or privilege when the obligation was extinguished and that the secured obligation has been paid or otherwise satisfied or extinguished; or

(2) ~~Declares that the institution is~~ Is the obligee or authorized agent of the obligee of the secured obligation and that it releases the mortgage or privilege ~~or and~~ directs the recorder to cancel its recordation.

(3) ~~Contains a statement identifying the type of institution and its licensing or regulatory authority.~~

\* \* \*

§109.1. Mortgage or privilege cancellation by financial institution-standard form

A financial institution seeking to cancel a mortgage or privilege inscription pursuant to R.S. 44:109 may use, and the recorder of mortgages for each and every parish in the state of Louisiana shall accept, the following form as fully compliant as a request for cancellation and act of release. The form contained in this Section is not the exclusive form to be accepted for filing, and any other form meeting the requirements of R.S. 44:109 may be used and filed for canceling the recordation of a mortgage or privilege:

R.S. 44:109 FORM:

REQUEST FOR CANCELLATION OF MORTGAGE OR PRIVILEGE AND

RELEASE BY LICENSED FINANCIAL INSTITUTION

PURSUANT TO R.S. 44:109

State of \_\_\_\_\_

Parish or County of \_\_\_\_\_

1                    BE IT KNOWN THAT on this                    day of                    , 20                    ,  
 2                    before me, the undersigned Notary Public, appeared                    (name  
 3                    of financial institution) herein represented by its undersigned duly authorized  
 4                    representative, which declared that it is a licensed financial institution as defined in  
 5                    R.S. 44:109 et seq. and that one of the following statements is true and correct:

6                    (1) The institution was the obligee or the authorized agent of the obligee of  
 7                    the obligation secured by the mortgage or privilege described below when the  
 8                    obligation was extinguished, and the secured obligation has been paid or otherwise  
 9                    satisfied or extinguished; or

10                    (2) The institution is the obligee or authorized agent of the obligee of the  
 11                    secured obligation, and it releases the mortgage or privilege described below.

12                    The Clerk of Court and Ex-Officio Recorder of Mortgages for the Parish  
 13                    identified below is hereby expressly requested, authorized, and directed to cancel the  
 14                    recordation of the mortgage or privilege described as follows:

15                    A mortgage or privilege granted by:  
 16                    In favor of: \_\_\_\_\_  
 17                    Date of Instrument: \_\_\_\_\_  
 18                    Parish of Recordation: \_\_\_\_\_  
 19                    Recording Data: \_\_\_\_\_  
 20                    Legal description is as follows or is hereby attached as Exhibit "A": \_\_\_\_\_  
 21                    \_\_\_\_\_  
 22                    \_\_\_\_\_  
 23                    \_\_\_\_\_  
 24                    \_\_\_\_\_.

25                    (3) The recorder of mortgages shall not be liable for any damages resulting  
 26                    to any person or entity as a consequence of canceling a mortgage or vendor's  
 27                    privilege pursuant to this form.

28                    THUS DONE AND PASSED before me, Notary Public, on the date set forth  
 29                    above.

30                    \_\_\_\_\_

1                   Name of officer and title  
 2                   Name of financial institution  
 3                   Requested mailing address  
 4                   City, state, and zip code  
 5                   \_\_\_\_\_  
 6                                   Notary Public  
 7                   (Printed name of notary and bar roll or notary number)

8                   §110. Liability for incorrect or false request for cancellation

9                           A. ~~A person requesting~~ Any person who requests the recorder to cancel  
 10                   recordation of a mortgage or privilege and who ~~provides the recorder with an act or~~  
 11                   ~~declaration~~ knows or should have known that an act or declaration that he provided  
 12                   to the recorder pursuant to this ~~Chapter that~~ Title contains materially false or  
 13                   incorrect statements that cause the recorder to incorrectly cancel the recordation of  
 14                   a mortgage or privilege is personally liable to and shall indemnify the recorder and  
 15                   any person relying upon the cancellation for any damages ~~that they may suffer~~  
 16                   suffered as a consequence of such reliance.

17                           B. Any person signing any act or declaration that is presented to the recorder  
 18                   pursuant to this Title containing materially false or incorrect statements causing the  
 19                   recorder to incorrectly cancel the recordation of a mortgage or privilege is personally  
 20                   liable to and shall indemnify the recorder and any person relying upon the  
 21                   cancellation for any damages suffered as a consequence of such reliance.

1                    C. ~~A~~ Any person who knowingly provides or executes the materially false  
2                    or incorrect statement is also guilty of false swearing under the provisions of R.S.  
3                    14:125.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_