
The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alan Miller.

DIGEST

Present law provides that upon extinction of the mortgage, the mortgagor may request the mortgagee to provide a written release directing the recorder of mortgages to erase the mortgage. If the mortgagee fails to deliver the release within 60 days of receipt of the request, present law allows the mortgagee to file a summary proceeding to obtain a judgment ordering cancellation of the mortgage and awarding costs, attorney fees and any damages sustained by mortgagor.

Proposed law requires the mortgagee, upon full payment of the mortgage by a settlement agent, to issue a request for cancellation in proper form that allows mortgagor to obtain cancellation of the mortgage. Where the mortgage has been paid by the mortgagor rather than through a settlement agent, proposed law allows mortgagor to request in writing that the mortgage not be cancelled.

Proposed law requires mortgagee to deliver a request for cancellation to the settlement agent who has paid the mortgage in full within 60 days of receipt of a request from settlement agent to forward the cancellation directly to the settlement agent. Where no such request is received, mortgagee is required by proposed law to forward a cancellation of the mortgage in proper form to the clerk of court with sufficient funds to pay the cost of filing the cancellation.

Proposed law authorizes a penalty of \$1,000 per month up to a maximum of \$5,000 payable to the mortgagor or his successor if the mortgagee fails to timely comply with the requirements set forth in proposed law.

Proposed law authorizes the mortgagor, his successor, or any interested party to file a summary proceeding to recover costs, attorney fees, damages and a penalty of up to \$5,000 where the mortgagee fails to deliver the required request for cancellation within 90 days of receipt of full payment of the mortgagee debt.

Effective January 1, 2012.

(Amends R.S. 9:5557)