

Regular Session, 2011

SENATE BILL NO. 24

BY SENATOR ALARIO

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

CIVIL PROCEDURE. Authorizes uniform cancellation affidavit for cancellation of mortgage and vendor's lien inscriptions. (8/15/11)

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 **(1) Contain the information required by this Section;**

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

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

8 **C. The filing with the clerk of court and ex officio recorder of mortgages**
9 **of a uniform cancellation affidavit containing a request to cancel, together with**
10 **any additional documents as may otherwise be required by law, shall operate**
11 **as a release and authorization to the clerk of court and ex officio recorder of**
12 **mortgages to cancel and erase from the mortgage records any mortgage or**
13 **vendor's lien inscription described in the uniform cancellation affidavit.**

14 **D. Liability:**

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

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

23 **(3) The preparing, signing, or filing of a uniform cancellation affidavit**
24 **with the knowledge that it contains materially false or incorrect statements shall**
25 **subject the offender to civil and criminal liability under Louisiana law,**
26 **including as set forth in La. R.S. 9:5174, La. R.S. 14:125 and La. R.S. 14:133.**

27 **E. The provisions of this Section shall not be construed to invalidate,**
28 **prohibit, restrict or limit the use of any other method or form otherwise**

1 authorized by law for the cancellation of a mortgage or vendor's lien
2 inscription.

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

5 UNIFORM CANCELLATION AFFIDAVIT
6 (FOR MORTGAGES AND VENDOR'S LIENS)

7
8 STATE OF _____

9 PARISH/COUNTY OF _____

10 BE IT KNOWN THAT before me, the undersigned Notary Public, appeared:

11 (Name) _____ (Corporate Title and Name of Entity if Applicable) _____,

12 its duly authorized agent hereinafter referred to as affiant, who after first being sworn
13 declares that affiant is:

14 CHECK ONE BOX ONLY:

15 A notary public requesting cancellation under La. R.S. 9:5167 A. (1), herein declaring
16 that affiant or someone under his direction did satisfy the promissory note, and that
17 the affiant or someone under his direction (1) received the note marked "Paid in Full"
18 from the last holder of the note, and that the note was lost or destroyed while in the
19 affiant's custody; or (2) has confirmed that the last holder of the paraphed note
20 received payment in full and sent the note but the note was never received, and that
21 the affiant has made a due and diligent search for the note, the note cannot be located,
22 and sixty days have elapsed since payment or satisfaction of the note.

23 A duly authorized officer of a Louisiana licensed title insurer as defined in La. R.S.
24 22:46 of the Louisiana Insurance Code, requesting cancellation under La. R.S. 9:5167B
25 (1), herein declaring that all obligations secured by the mortgage or vendor's privilege
26 have been satisfied, and that affiant has made a due and diligent search for the lost or
27 destroyed instrument which was sufficient to cause a cancellation of the mortgage or
28 vendor's privilege, that the lost or destroyed instrument cannot be located, and that
29 sixty days have elapsed since payment or satisfaction of the secured obligation.

30 An authorized officer of a title insurance business, the closing notary public, or the
31 attorney for the person or entity which made the payment requesting cancellation under
32 La. R.S. 9:5167.1, herein declaring on behalf of the mortgagor or an owner of the
33 property encumbered by the mortgage that the mortgagee provided a payoff
34 statement with respect to the loan secured by the mortgage and that the mortgagee has
35 received payment of the loan secured by the mortgage in accordance with the payoff
36 statement, as evidenced by (1) a bank check, certified check, or escrow account check
37 which has been negotiated by or on behalf of the mortgagee, or (2) other documentary
38 evidence of the receipt of payment by the mortgagee, including but not limited to
39 verification that the funds were wired to the mortgagee, that more than sixty days
40 have elapsed since the date payment was received by the mortgagee and that the
41 mortgagee has not returned documentary authorization for cancellation of the
42 mortgage; and that the mortgagee has been given at least fifteen days notice in writing
43 of the intention to execute and record an affidavit in accordance with La. R.S.
44 9:5167.1, with a copy of the proposed affidavit attached to the written notice. Affiant
45 declares that he has attached all evidence required by law.

46 An obligee of record requesting cancellation under La. R.S. 9:5168, said obligee
47 herein declaring that affiant is the obligee of record of the mortgage or vendor's
48 privilege securing a paraphed promissory note and that the note has been lost or
49 destroyed and cannot be presented; that the note is paid, forgiven, or otherwise
50 satisfied; and that affiant has not sold, transferred, or assigned the note to any other
51 person or entity. If affiant is not the Original Obligee of Record, but an Obligee of
52 Record by recorded Assignment of the inscription to be cancelled, a list of recorded

1 assignments is attached.

2
3 [] An obligee of record requesting release under La. R.S. 9:5169, said obligee declaring
4 that affiant is herein acknowledging the satisfaction, releasing or acknowledging the
5 extinction of the mortgage or privilege. If affiant is not the Original Obligee of Record,
6 but an Obligee of Record by recorded Assignment of the inscription to be cancelled,
7 affiant has attached a list of recorded assignments. JUDGMENTS OR LEGAL
8 MORTGAGES MAY NOT BE CANCELLED USING THIS FORM.

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

11 _____ The paraphed obligation marked "PAID" or "CANCELLED"; or
12 _____ An authentic act of release conforming to the requirements of La. R.S.
13 9:5170(2).

14 [] A duly authorized officer of a Licensed Financial Institution under La. R.S. 9:5172,
15 herein declaring that the institution was the obligee or the authorized agent of the
16 obligee of the obligation secured by the mortgage or privilege when the obligation was
17 extinguished and that the secured obligation has been paid or otherwise satisfied or
18 extinguished; or that the institution is the obligee or authorized agent of the obligee
19 of the secured obligation and that it releases the mortgage or privilege and directs the
20 recorder to cancel its recordation.

21 AFFIANT HEREBY EXPRESSLY REQUESTS, AUTHORIZES, AND
22 DIRECTS, in accordance with the provisions of the applicable statute indicated by the
23 checked box above and in accordance with the provisions of La. Civil Code Art. 3366,
24 that the Clerk of Court and ex officio Recorder of Mortgages for the Parish of
25 _____ to [] FULLY CANCEL, or [] PARTIALLY CANCEL the

26 following:
27 A mortgage or Vendor's privilege:
28 Granted/Made by: _____

29 In favor of: _____
30 Instrument dated _____ Recorded in _____ Parish;
31 Recorded in MOB _____ FOLIO _____, INSTRUMENT NO. _____;

32 [] LEGAL DESCRIPTION OF PROPERTY: SEE ATTACHMENT HERETO
33 MADE A PART HEREOF.]

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

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

40 AFFIANT WARRANTS that affiant has complied with all requirements of
41 applicable law, including full or partial discharge of the obligation where the law
42 requires.

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

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

53 Affiant's Signature: _____ Printed Name: _____

54 Company Name: _____ Title: _____
55 _____ (Its duly authorized agent)

56 Mailing Address: _____
57 City: _____ State : _____ ZIP: _____

1 **Telephone #:** _____ **Email:** _____

2 **SWORN TO AND SUBSCRIBED** before me this _____ day of _____,
3 **20** _____.

4 **Notary Signature and Seal:**
5 **Printed Name of Notary:** _____
6 **State of Appointment :** _____
7 **Notary or Bar No.:** _____
8 **Commission expires:** _____
9 **FILER: Fill out below if filer is NOT the affiant:**

10 **REQUEST TO CANCEL**

11 **In accordance with the provisions of La. Civ. Code. Art. 3366, the undersigned**
12 **filer requests the Clerk of Court and ex officio Recorder of Mortgages to file this**
13 **Uniform Cancellation Affidavit and hereby requests the cancellation referenced**
14 **therein.**

15 **Signature:** _____
16 **Printed Name:** _____
17 **Company:** _____
18 **Title:** _____ **(Its duly authorized agent)**
19 **Mailing Address:** _____
20 **City:** _____ **State :** _____ **ZIP:** _____
21 **Telephone #:** _____ **Email:** _____
22 _____

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Jerry G. Jones.

DIGEST

Alario (SB 24)

Proposed law creates uniform cancellation affidavit and provides that it may be used to cancel a mortgage or vendor's lien inscription, except for judgments or legal mortgages. Provides that it may be used in lieu of any other affidavit otherwise required by law, and no additional affidavit shall be necessary for cancellation.

Proposed law sets forth contents and requirements for uniform cancellation affidavit, including 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.

Proposed law provides that the uniform cancellation affidavit must 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.

Proposed law provides that 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 as a release and authorization to the clerk of court and ex officio recorder of mortgages to cancel and erase

from the mortgage records any mortgage or vendor's lien inscription described in the uniform cancellation affidavit.

Proposed law further provides that the clerk of court as ex officio recorder of mortgages shall not be liable for any damages resulting to any person or entity as a consequence of canceling a mortgage in reliance upon a uniform cancellation affidavit, and that the affiant shall be liable to and indemnify the clerk of court as ex officio recorder of mortgages and any person relying upon the cancellation for any claims or damages suffered if the uniform cancellation affidavit contains materially false or incorrect statements. Further provides that the preparing, signing, or filing of a uniform cancellation affidavit with the knowledge it contains materially false or incorrect statements shall subject the offender to civil and criminal liability.

Proposed law provides that its provisions shall not be construed to invalidate, prohibit, restrict or limit the use of any other method or form otherwise authorized by law for the cancellation of a mortgage or vendor's lien inscription.

Proposed law sets forth form for uniform cancellation affidavit, including identification and declarations of affiant, legal description of property, agreement to indemnify clerk of court, and request for cancellation.

Effective August 15, 2011.

(Adds R.S. 9:5166)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill.

1. Changed "of a request to cancel containing the uniform cancellation affidavit" to "of a uniform cancellation affidavit containing a request to cancel".