
SENATE COMMITTEE AMENDMENTS

Amendments proposed by Senate Committee on Judiciary A to Original Senate Bill No. 225
by Senator Mount

AMENDMENT NO. 1

On page 1, line 2, after "9:5557" delete the remainder of the line and insert

"and to enact R.S. 9:5165, relative to mortgages; to provide relative to release and cancellation of mortgages under certain circumstances; to provide certain procedures, terms, conditions, requirements, application and effects; to provide certain time periods; to provide for recovery of certain damages, fees, and costs under certain circumstances;"

AMENDMENT NO. 2

On page 1, line 3, after "provide for" insert "the"

AMENDMENT NO. 3

On page 1, line 6, after "reenacted" insert "and R.S. 9:5165 is hereby enacted"

AMENDMENT NO. 4

On page 1, between lines 6 and 7, insert

"§5165. Issuance of release of mortgage by current mortgagee

A. The provisions of this Section shall apply only to mortgages perfected on and after January 1, 2012.

B. (1) Upon extinction of the mortgage in accordance with La. Civil Code Article 3319, the mortgagor, his successor or settlement agent may submit a written request, signed by the mortgagor to the current mortgagee, to provide the appropriate recorder of mortgages with a written act of release directing the recorder to erase the mortgage from the records. This written request that the mortgage be cancelled shall extinguish any obligation on the part of the current mortgagee and all additional lenders, on whose behalf the mortgagee may be representing or acting for the benefit of, to make any further loan or advance that would be secured by the mortgage.

(2) The term "current mortgagee" as used in this Section shall mean the current holder of the mortgage. If the current holder of the mortgage has assigned, sold, or transferred the servicing rights to a third party, then the third party shall be deemed the current mortgagee.

(3) The written request shall be mailed to the current mortgagee at the address designated by the current mortgagee to be used for such written requests. If the request is accompanied by a payoff check from a settlement agent, the notice shall be delivered to the same address where the payoff check is sent.

(4) The written request to issue an act of release of the mortgage must be accompanied by sufficient payment to the current mortgagee to pay the fees of the recorder of mortgages to cancel the mortgage and to pay the current mortgagee a reasonable fee for this service. The current mortgagee may charge a reasonable fee to the mortgagor or his agent for all services and costs to prepare, execute, mail, submit or record the act of release. Any fees charged by the current mortgagee under this Paragraph shall be clearly itemized to the requesting mortgagor or settlement agent in the pay off letter, statement, or other documentation.

(5) Within forty-five days after receipt from the mortgagor of a written request for cancellation of the mortgage accompanied by the fees

required by Paragraph (4), the current mortgagee shall submit to the recorder of mortgages the act of release along with a request for cancellation that complies with Civil Code Article 3366 and the requisite fees of the recorder. The mortgagor or his agent shall be copied with this request and with cancellation information received from the recorder of mortgages.

(6) If the mortgagee fails to deliver the act of release and request for cancellation to the settlement agent within forty-five days of receipt of funds from the settlement agent, he shall be liable for the statutory and actual damages, fees and costs as provided in Subsection (D).

C. If the current mortgagee does not itemize the fees in the payoff statement requested by mortgagor or the settlement agent as required under Paragraph (B)(4), the mortgagor or the settlement agent may request that the act of release and request for cancellation be delivered to the settlement agent. Upon receipt of the act of release and request for cancellation, the settlement agent shall file same with the clerk of court within forty-five days.

(1) The mortgagee shall not be liable for damages, fees or costs caused by the failure of the settlement agent to timely file the act of release and request for cancellation, if the act of release and request for cancellation are in compliance with law and sufficient to cancel the inscription of the mortgage from the mortgage records.

(2) If the settlement agent fails to timely file the release, he shall be liable for the statutory and actual damages, costs and fees provided for in Subsection (D).

D. If the current mortgagee fails to perform the duty described in this Section, the mortgagor or his successor in title may, by summary proceedings instituted against the current mortgagee, in the parish where the mortgaged property is located, obtain a judgment ordering the mortgage to be erased from the records and for the costs, reasonable attorneys fees, statutory damages in the amount of five hundred dollars, and actual damages he has suffered from the mortgagee's default.

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AMENDMENT NO. 5

On page 1, delete lines 8 through 17 and insert

"A. The provisions of this Section shall apply only to mortgages recorded prior to January 1, 2012.

~~B. A:~~ Upon extinction of the mortgage, the mortgagor or his successor may request the mortgagee to provide a written act of release directing the recorder to erase the mortgage from his records. The mortgagee shall deliver the act of release to the mortgagor within sixty days of receiving the request. If the mortgagee fails to deliver the act timely and in a form susceptible of recordation, the mortgagor may, by summary proceedings instituted against the mortgagee in the parish where the mortgaged property is located, obtain a judgment ordering the mortgage to be erased from the records and for the costs, reasonable attorneys fees, and any damages he has suffered from the mortgagee's default.

~~C. B:~~ This Section does not apply to a mortgage insofar as it secures payment of a note or other instrument paraphed for identification with the act of mortgage by the notary before whom it is executed."

AMENDMENT NO. 6

On page 2, delete lines 1 through 29

AMENDMENT NO. 7

On page 3, delete lines 1 through 11