
The original instrument was prepared by Alan Miller. The following digest, which does not constitute a part of the legislative instrument, was prepared by Jerry G. Jones.

DIGEST

Mount (SB 225)

Present law relative to the obligation to grant a release of mortgage 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 retains present law, but adds that its provisions shall apply only to mortgages recorded prior to January 1, 2012.

Proposed law adds certain requirements relative to release and cancellation of mortgages perfected on and after January 1, 2012.

Proposed law provides that 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 holder of the mortgage, 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.

Proposed law provides that 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. Further provides that such request 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 shall be clearly itemized to the requesting mortgagor or settlement agent in the pay off letter, statement, or other documentation.

Proposed law further provides that within 45 days after receipt from the mortgagor of a written request for cancellation of the mortgage accompanied by the required, the current mortgagee shall submit to the recorder of mortgages the act of release along with a request for cancellation 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.

Proposed law provides that if the mortgagee fails to deliver the act of release and request for cancellation to the settlement agent within such 45 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 the proposed law.

Proposed law further provides if the current mortgagee does not itemize the fees in the payoff statement requested by mortgagor or the settlement agent, 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 45 days.

Proposed law provides that 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. Also provides that 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 the proposed law.

Proposed law also provides if the current mortgagee fails to perform the duty set forth in the proposed law, 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 \$500, and actual damages he has suffered from the mortgagee's default.

Effective January 1, 2012.

(Amends R.S. 9:5557 and adds R.S. 9:5165)

Summary of Amendments Adopted by Senate

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

1. Added R.S. 9:5165 setting forth revised proposed law provisions.
2. Removed proposed law provisions from R.S. 9:5557 and added that its present provisions applied only to mortgages recorded prior to 1/1/12.