

Regular Session, 2011

SENATE BILL NO. 225

BY SENATOR MOUNT

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

FINANCIAL INSTITUTIONS. Provides relative to release and cancellation of mortgages.

AN ACT

To amend and reenact R.S. 9:5557 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; to provide for the obligation to grant releases of mortgages; to provide for limitations; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:5557 is hereby amended and reenacted and R.S. 9:5165 is hereby enacted to read as follows:

§5165. Issuance of release of mortgage by current mortgagee

A. The provisions of this Section shall apply only to residential mortgages, where a mortgage has been granted by a consumer on a one-to-four family residential immovable property, including a mortgage to finance the initial construction of the one-to-four family residential immovable property.

The provisions of this Section shall apply only to mortgages recorded on and

1 after January 1, 2012.

2 B. (1) Upon extinction of the mortgage in accordance with Louisiana
3 Civil Code Article 3319, the mortgagor, his successor in ownership or settlement
4 agent may submit a written request, signed by the mortgagor to the mortgagee,
5 to issue a written act of release directing the appropriate recorder of mortgages
6 to cancel the inscription of the mortgage from the public mortgage records.
7 This written request that the mortgage be cancelled shall extinguish any
8 obligation on the part of the mortgagee and all additional lenders, on whose
9 behalf the mortgagee may be representing or acting for the benefit of, to make
10 any further loan or advance that would be secured by the mortgage.

11 (2) If the mortgagee has assigned, transferred, or delegated the servicing
12 rights to a third party then the duties and liabilities of the mortgagee under this
13 Section shall apply solely to the third party.

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

18 (4) The mortgagee shall submit the act of release of the mortgage
19 directly to the settlement agent if a written request was received by the
20 mortgagee from a settlement agent. The written request to issue an act of
21 release of the mortgage must be accompanied by sufficient payment to the
22 mortgagee to pay the mortgagee a reasonable fee for this service. The
23 mortgagee may charge a reasonable fee to the mortgagor or his agent for all
24 services and costs to prepare, execute, and mail the act of release. Any fees
25 charged by the mortgagee under this Subsection shall be clearly itemized to the
26 requesting mortgagor or settlement agent in the payoff letter or statement or
27 other communication.

28 (5) The mortgagee shall issue within forty-five days after receipt from
29 the mortgagor of a written request for cancellation of the mortgage

1 accompanied by the fees required by Subsection (B)(4), the act of release along
2 with a request for cancellation that complies with Louisiana Civil Code Article
3 3366.

4 (6) If the mortgagee receives a signed written request, in accordance with
5 Subsection (B)(1), directly from the mortgagor or the successor in ownership,
6 and there is no settlement agent involved in forwarding the request, and the
7 required fees are received in accordance with Subsection (B)(4) along with the
8 appropriate cancellation fees for the recorder of mortgages, then the mortgagee
9 shall within forty-five days of receiving such request prepare and submit to the
10 appropriate recorder of mortgages an act of release along with the request for
11 cancellation that complies with Louisiana Civil Code Article 3366.

12 C. Upon receipt of the act of release and request for cancellation, the
13 settlement agent shall file same with the appropriate recorder of mortgages
14 within forty-five days.

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

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

23 D. In the event either the mortgagee or settlement agent has failed to
24 comply with the requirements of this Section, the mortgagee and settlement
25 agent shall be provided with written notice of noncompliance identifying the
26 mortgage at issue and the explanation of how they failed to comply with the
27 requirements of this Section, and then the mortgagee and settlement agent shall
28 be given an opportunity to prepare and submit an act of release of mortgage
29 and request for cancellation to the appropriate recorder of mortgages within

1 fifteen days of receiving the notice before any rights accrue under Subsection
2 E.

3 E. If the mortgagee fails to perform the duty described in this Section,
4 the mortgagor or his successor in ownership may, by summary proceedings
5 instituted against the mortgagee, in the parish where the mortgaged property
6 is located, obtain a judgment ordering the mortgage inscription to be cancelled
7 from the records and for the costs, reasonable attorney fees, statutory damages
8 in the amount of five hundred dollars, and actual damages he has suffered from
9 the failure to comply with this Section. Any judgment for damages may be
10 awarded individually, but not in a representative capacity. The rights to
11 recover damages under this Section are personal to the mortgagor or his
12 successor in ownership of the property and may not be assigned.

13 F. A mortgagee complying with the provisions of this Section shall not
14 be subject to the requirements of R.S. 9:5167.2.

15 * * *

16 §5557. Obligation to grant release of mortgage

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

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

28 C. ~~B.~~ This Section does not apply to a mortgage insofar as it secures
29 payment of a note or other instrument paraphed for identification with the act of

1 mortgage by the notary before whom it is executed.

2 Section 2. This Act shall become effective on January 1, 2012.

The original instrument was prepared by Alan Miller. The following digest, which does not constitute a part of the legislative instrument, was prepared by Dawn Romero Watson.

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 construction and residential mortgages perfected on and after January 1, 2012, that have been granted to a consumer and are relative to a single or up to four family unit properties.

Proposed law provides that upon extinction of the mortgage, the mortgagor, his successor or settlement agent may submit a written request, signed by the mortgagor to the current holder of the mortgage, to issue a written act of release directing the appropriate recorder of mortgages to cancel the inscription of the mortgage from the public mortgage records. Provides that the written request that the mortgage be cancelled extinguishes any obligation on the part of the 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. Provides that if the mortgagee has assigned, transferred or delegated the servicing rights to a third party, the duties and liabilities of the mortgagee under proposed law apply solely to the third party.

Proposed law provides that the written request shall be mailed to the mortgagee at the address designated by the mortgagee to be used for such written requests, but if the request is accompanied by a payoff check from a settlement agent, the written request is to be delivered to the same address where the payoff check is sent.

Proposed law provides that the written request for an act of release must be accompanied by sufficient payment to the current mortgagee to pay the mortgagee a reasonable fee for this service. Allows the mortgagee to charge a reasonable fee to the mortgagor or his agent for all services and costs to prepare, execute, and mail the act of release. Any fees charged by the mortgagee has to be clearly itemized to the requesting mortgagor or settlement agent in the payoff letter, statement or other communication.

Proposed law provides that within 45 days after receipt from the mortgagor or settlement agent of a written request for cancellation of the mortgage accompanied by the fee, the mortgagee shall issue the act of release along with a request for cancellation. If the written request and fee was received from a settlement agent, the mortgagee issues the act of release and request for cancellation to the settlement agent who then has 45 days to file same with the appropriate recorder of mortgages. If the written request and fee was received from the mortgagor, the mortgagee submits the act of release and request for cancellation to the appropriate recorder of mortgages.

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

Proposed law provides that in the event that either the mortgagee or the settlement agent fails to comply with proposed law, the mortgagee and settlement agent shall be provided with written notice of noncompliance identifying the mortgage at issue and an explanation of how they failed to comply with the law. The mortgagee and settlement agent shall then be given an opportunity to prepare and submit an act of release and request for cancellation to the appropriate recorder of mortgages within 15 days of receipt of the noncompliance notice.

Proposed law provides that if the mortgagee or the settlement agent fails to perform the duties as described in proposed law, the mortgagor or his successor in ownership may, by summary proceedings instituted against the mortgagee, in the parish where the mortgaged property is located, obtain a judgment ordering the mortgage inscription to be cancelled from the records and for the costs, reasonable attorney fees, statutory damages in the amount of \$500, and actual damages he has suffered from the failure to comply with proposed law. Provides that any judgement for damages may be awarded individually, but not in a representative capacity. Provides that the rights to recover damages are personal to the mortgagor or his successor in ownership of the property and may not be assigned.

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.

Senate Floor Amendments to engrossed bill.

1. Adds provisions limiting application of proposed law to residential mortgages granted to a consumer of a one-to-four family property.
2. Changes to whom the mortgagee submits the act of release and request for cancellation when the written request is received from a settlement agent from the appropriate recorder of mortgages to the settlement agent and requires settlement agent to file same with appropriate recorder of mortgages within 45 days.
3. Removes requirement that mortgagee provide a copy of request for cancellation and cancellation information received from the recorder of mortgages to the mortgagor or his agent.