

Regular Session, 2012

HOUSE BILL NO. 452

BY REPRESENTATIVE ABRAMSON

MORTGAGES: Provides for the deletion of inscriptions on mortgage certificates

1 AN ACT

2 To amend and reenact R.S. 13:4344.1(A)(introductory paragraph), (6), and (7), (D), (E), and
3 (F) and to enact R.S. 13:4344.1(G) and (H), relative to inscriptions on mortgage
4 certificates; to provide for deletion of inscriptions; to delete antiquated references to
5 the recorder of mortgages for Orleans Parish; to provide for technical corrections;
6 to provide for inscriptions of cancelled and prescribed mortgages; to provide for
7 retroactive application; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 13:4344.1(A)(introductory paragraph), (6), and (7), (D), (E), and (F)
10 are hereby amended and reenacted and R.S. 13:4344.1(G) and (H) are hereby enacted to read
11 as follows:

12 §4344.1. Deletion of inscriptions on mortgage certificates ordered by a sheriff

13 A. For immovable property procured pursuant to a judicial sale under a writ
14 of fieri facias or a writ of seizure and sale, the clerk of court, ~~or the recorder of~~
15 ~~mortgages for Orleans Parish, or his successor,~~ shall partially cancel from a
16 mortgage certificate ordered in connection with a judicial sale the inscription of any
17 ~~legal or judicial~~ mortgage, lien, or privilege, appearing on the certificate, only insofar
18 as the foreclosed property is concerned, upon the filing of an affidavit executed by
19 an officer of a title insurer duly licensed by the Louisiana Department of Insurance.

20 The affidavit shall set forth all of the following:

21 * * *

(6) A direction from the title insurer to the clerk of court or recorder of mortgages to partially cancel from the mortgage certificate the encumbrance identified on the affidavit.

(7) The title insurer agrees to be liable to and defend and indemnify the clerk of court ~~or recorder of mortgages~~, the sheriff, and any person relying upon the cancellation by affidavit for any damages that they may suffer as a consequence of such reliance if the recorded affidavit contains incorrect statements that cause the recorder clerk of court to incorrectly partially cancel on the mortgage certificate ordered in connection with the judicial sale the inscription of a mortgage, lien, privilege, or other encumbrance from the mortgage certificate.

* * *

D. Any person in whose favor a partially canceled inscription was recorded shall have a cause of action against the title insurer in the event the mortgage, lien, privilege, or other encumbrance which was partially canceled from the clerk's mortgage certificate was legally enforceable at the time of the deletion against the person or property described in that certificate because the obligor under the legal or judicial mortgage, lien, or privilege, was in fact the same person whose property was sold. The cause of action created by this Subsection shall prescribe on the same date that the cause of action to enforce the underlying legal or judicial mortgage, lien, or privilege prescribes.

E. A title insurer whose officer has signed an affidavit that is provided to the clerk of court ~~or the recorder of mortgages~~ pursuant to this Section and that contains incorrect statements causing the ~~recorder~~ clerk of court to incorrectly partially cancel the inscription of a mortgage or privilege from his certificate is liable to and shall defend and indemnify the clerk of court ~~or the recorder of mortgages~~, the sheriff, and any person relying upon the partial cancellation on the mortgage certificate for any damages that they may suffer as a consequence of such reliance.

F. The clerk of court and the recorder of mortgages shall not be liable for any damages resulting to any person or entity as a consequence of partially canceling

1 from the certificate a ~~legal or judicial~~ mortgage, lien, or privilege pursuant to an
2 affidavit which complies with the provisions of this Section.

3 G.(1) It shall not be necessary to delete, cancel, or partially release
4 inscriptions that may appear on a mortgage certificate ordered in connection with a
5 judicial sale for the following:

6 (a) Any assignment, assumption, or modification of a cancelled mortgage.

7 (b) Prescribed judicial mortgages which have not been reinscribed or for
8 which no notice of pendency of action of a revival action is shown on the mortgage
9 certificate.

10 (2) The sheriff shall proceed with the judicial sale without regard to the
11 inscriptions designated in this Subsection.

12 H. The provisions of this Section shall apply retroactively to any inscription
13 appearing on any mortgage certificate ordered in connection with a judicial sale.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Abramson

HB No. 452

Abstract: Provides relative to inscriptions on mortgage certificates and directs the sheriff to disregard inscriptions of certain cancelled and prescribed mortgages.

Present law provides for cancellation of inscriptions on mortgage certificates and liability for inscriptions wrongfully cancelled.

Proposed law maintains present law and directs the sheriff to disregard inscriptions of certain cancelled and prescribed mortgages and proceed with judicial sale. Further removes antiquated references to the recorder of mortgages of Orleans Parish.

(Amends R.S. 13:4344.1(A)(intro. para.), (6), and (7), (D), (E), and (F); Adds R.S. 13:4344.1(G) and (H))