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**HOUSE COMMITTEE AMENDMENTS**

2018 Regular Session

Amendments proposed by House Committee on Civil Law and Procedure to Original House Bill No. 172 by Representative Garofalo

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1 AMENDMENT NO. 1

2 On page 1, line 2, after "2376" and before the comma "," insert "and to enact R.S. 13:4368"

3 AMENDMENT NO. 2

4 On page 1, delete line 3 in its entirety and insert "privileges, liens, and mortgages; to provide  
5 for the cancellation or partial release of inferior privileges, liens, and mortgages"

6 AMENDMENT NO. 3

7 On page 1, line 4, after "sale;" and before "and" insert the following:

8 "to provide for the procedures for cancelling or partially releasing inferior  
9 privileges, liens, and mortgages; to provide for the required information for  
10 the filing of an affidavit; to provide the duties, effect, and liability for the  
11 filing of an affidavit; to provide for exceptions;"

12 AMENDMENT NO. 4

13 On page 1, at the end of line 8, insert a comma ";" and insert "liens, and privileges"

14 AMENDMENT NO. 5

15 On page 1, at the beginning of line 9, delete "A."

16 AMENDMENT NO. 6

17 On page 1, delete line 12 in its entirety and insert "clerk of court or proper filing officer to  
18 cancel or partially release their inscriptions in so far insofar"

19 AMENDMENT NO. 7

20 On page 1, delete lines 14 through 19 in their entirety and on page 2, delete lines 1 and 2 in  
21 their entirety

22 AMENDMENT NO. 8

23 On page 2, after line 2, add the following:

24 "Section 2. R.S. 13:4368 is hereby enacted to read as follows:

25 §4368. Post judicial sale; cancellation of inferior mortgages, liens, and  
26 privileges

27 A. If the inscription of an inferior mortgage, lien, or privilege  
28 encumbering the immovable property sold through a judicial sale is not  
29 cancelled as required by Code of Civil Procedure Article 2376, the seizing  
30 creditor or its agent may have the inferior mortgage, lien, or privilege  
31 cancelled or partially released as to the immovable property sold by  
32 recording in the mortgage records of the parish in which the immovable  
33 property sold is located an "affidavit to cancel an inferior encumbrance" that  
34 is in compliance with the requirements of this Section. For purposes of this

1 Section, an "inferior creditor" means the holder of record of a mortgage, lien,  
2 or privilege that is inferior to a seizing creditor's mortgage, lien, or privilege  
3 at the time the encumbered immovable property was sold at judicial sale.

4 B. A seizing creditor or its agent may file an affidavit to cancel or  
5 partially release the inferior mortgage, lien, or privilege in accordance with  
6 this Section only if the inferior creditor was provided written notice of  
7 seizure prior to the judicial sale.

8 C. An affidavit executed by a seizing creditor or its agent to cancel  
9 or partially release an inferior mortgage, lien, or privilege shall include all of  
10 the following information:

11 (1) The name, mailing address, telephone number, and email address  
12 of the seizing creditor or its agent.

13 (2) The name of the court, case name, and docket number of the  
14 action under which the seizure and sale of the immovable property was  
15 ordered.

16 (3) The date of the judicial sale.

17 (4) A description of the seizing creditor's foreclosed mortgage, lien,  
18 or privilege, including the recordation information and recording date.

19 (5) A description sufficient to identify the foreclosed immovable  
20 property.

21 (6) A description of the inferior mortgage, lien, or privilege,  
22 including the recordation information and recording date, and a declaration  
23 that the described mortgage, lien, or privilege requested to be cancelled or  
24 partially released is inferior to the foreclosed mortgage, lien, or privilege.

25 (7) A certification that written notice of seizure was given to the  
26 inferior creditor prior to the judicial sale, and a copy attached of the written  
27 notice together with evidence that it was delivered to the inferior creditor.

28 (8) A request that the clerk of court cancel or partially release the  
29 identified inferior mortgage, lien, or privilege pursuant to this Section.

30 D. The clerk of court shall cancel or partially release the inferior  
31 mortgage, lien, or privilege upon the recordation of an affidavit that is in  
32 compliance with this Section.

33 E. The cancellation of a mortgage, lien, or privilege by the filing of  
34 an affidavit in accordance with the provisions of this Section shall have no  
35 effect if the mortgage, lien, or privilege is actually superior to the seizing  
36 creditor's foreclosed mortgage, lien, or privilege.

37 F. Any party recording an affidavit pursuant to this Section shall be  
38 subject to the liability requirements and standards provided in R.S. 9:5174.

39 G. This Section shall not apply to utility servitudes."  
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