

2024 Regular Session

HOUSE BILL NO. 580

BY REPRESENTATIVE MUSCARELLO

CIVIL/PROCEDURE: Provides relative to bankruptcy

1 AN ACT

2 To amend and reenact R.S. 9:5175(A), (B), and (C)(1), (2)(a), (f), and (g), and (3) and to  
3 enact R.S. 9:5175(C)(2)(h) and 5175.1, relative to bankruptcy; to provide procedures  
4 for bankruptcy orders and discharges; to provide for an effective date; and to provide  
5 for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 9:5175(A), (B), and (C)(1), (2)(a), (f), and (g), and (3) are hereby  
8 amended and reenacted and R.S. 9:5175(C)(2)(h) and 5175.1 are hereby enacted to read as  
9 follows:

10 §5175. Order of discharge in bankruptcy; effect

11 A.(1) A judgment debtor in whose favor a United States Bankruptcy Court  
12 has entered an order of discharge, or any person whose rights are or may be affected  
13 by the order, may bring an action in accordance with the provisions of R.S. 44:114,  
14 against the recorder of mortgages of a parish in which the judgment is recorded to  
15 declare the judicial mortgage created by its recordation extinguished and order the  
16 recordation of the judgment cancelled from the records of the parish and any other  
17 parish in which the judgment is recorded.

18 B.~~(1)~~ (2) Upon proof of the order of discharge, and that the judgment upon  
19 which a judicial mortgage is based is for a claim that ~~has been discharged~~ was  
20 scheduled or disclosed in the bankruptcy proceeding, the court shall declare  
21 extinguished the judicial mortgage evidenced by the recordation of the judgment and

1 order the recordation of the judgment cancelled unless the judgment creditor, or any  
2 other party to the action whose rights are or may be adversely affected by the  
3 cancellation, proves that the judgment creditor or such other person possesses equity  
4 in property as a result of the judicial mortgage over and above superior liens, in  
5 which case the order of cancellation shall expressly exclude ~~its effect as to that~~  
6 property: any property encumbered by the judicial mortgage in which there is equity.

7 ~~(2) If a bankruptcy court order authorizing the sale of property free and clear~~  
8 ~~of all judgments, mortgages, and privileges does not specify the discharged~~  
9 ~~judgments, mortgages, or privileges to be cancelled, the trustee or former trustee in~~  
10 ~~the proceedings, or his attorney of record, may specify by affidavit which discharged~~  
11 ~~judgments, mortgages, or privileges are to be partially cancelled as to the particular~~  
12 ~~property subject to the order. The affidavit and a Request to Cancel shall be filed~~  
13 ~~with the bankruptcy court order. The affidavit shall contain all of the following~~  
14 ~~information:~~

15 ~~(a) A statement that the debtor filed a petition under the United States~~  
16 ~~Bankruptcy Code.~~

17 ~~(b) The name of the court where the bankruptcy proceeding was filed.~~

18 ~~(c) The date on which the petition was filed.~~

19 ~~(d) A statement that the debt or debts upon which the judgment, mortgage,~~  
20 ~~or privilege is based were listed in the bankruptcy proceeding.~~

21 ~~(e) A description of the particular property to be released and a statement~~  
22 ~~that the property is free and clear of all judgments, mortgages, or privileges.~~

23 ~~(f) A listing of the judgments, mortgages, or privileges, including the clerk's~~  
24 ~~office identification by instrument number, book, or folio.~~

25 ~~(g) A certified copy of the bankruptcy court order.~~

26 ~~€: B.(1)~~ A judgment debtor may obtain a partial cancellation of the  
27 inscription of a judgment as it affects property not owned by the judgment debtor on  
28 the date of his ~~filing a petition~~ the filing of a petition or at any time prior to the

1 discharge order under ~~Chapter 7 or Chapter 13~~ of the United States Bankruptcy Code  
2 upon the filing of an affidavit in accordance with this Subsection.

3 (2) The affidavit shall contain all of the following:

4 (a) A statement that the judgment debtor filed a petition under ~~Chapter 7 or~~  
5 ~~Chapter 13~~ of the United States Bankruptcy Code.

6 \* \* \*

7 (f) ~~A copy of the schedule or schedules listing the debt.~~ A statement that the  
8 affiant is liable to and shall indemnify the clerk or recorder and any of his or her  
9 employees or agents relying on the affidavit for any damages they may suffer as a  
10 consequence of such reliance.

11 (g) ~~A copy of the discharge order.~~ A copy of the schedule or schedules  
12 listing the debt.

13 (h) A copy of the discharge order.

14 (3) Upon the filing of an affidavit in compliance with this Subsection, the  
15 recorder shall partially cancel the judgment insofar as it affects the property  
16 described in the affidavit and any property that may have been acquired after the date  
17 stated in Subparagraph (2)(c) of this Subsection that the debtor filed ~~his~~ the petition  
18 for bankruptcy.

19 \* \* \*

20 §5175.1. Bankruptcy order authorizing sale of property

21 If a United States Bankruptcy Court order authorizing the sale of property  
22 free and clear of all liens, judgments, mortgages, and privileges does not specify the  
23 liens, judgments, mortgages, or privileges to be cancelled, a Louisiana licensed  
24 attorney may specify by affidavit which liens, judgments, mortgages, or privileges  
25 are to be partially cancelled as to the particular property subject to the order. The  
26 affidavit and a Request to Cancel shall be filed in the mortgage records of the parish  
27 in which the property is situated with a certified copy of the entire bankruptcy court  
28 order including all attachments thereto. The affidavit shall contain all of the  
29 following information:

1           (a) A statement that the debtor filed a petition under the United States  
2           Bankruptcy Code.

3           (b) The name of the court where the bankruptcy proceeding was filed.

4           (c) The date on which the petition was filed.

5           (d) A statement that the debt or debts upon which the judgment, mortgage,  
6           or privilege is based were listed in the bankruptcy proceeding.

7           (e) A full legal description of the particular property subject to the order.

8           (f) A listing of the liens, judgments, mortgages, or privileges, including the  
9           clerk's office identification by instrument number, book, or folio, or by whatever  
10           local method the clerk's office identifies such records.

11           (g) A statement that each holder of the liens, judgments, mortgages, or  
12           privileges sought to be partially cancelled was provided notice of the bankruptcy  
13           court order.

14           (h) A statement that the affiant is liable to and shall indemnify and hold  
15           harmless the clerk or recorder, and any of his or her employees or agents, relying on  
16           the affidavit for any damages they may suffer as a consequence of such reliance.

17           Section 2. This Act shall become effective upon signature by the governor or, if not  
18           signed by the governor, upon expiration of the time for bills to become law without signature  
19           by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
20           vetoed by the governor and subsequently approved by the legislature, this Act shall become  
21           effective on the day following such approval.

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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)]

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HB 580 Reengrossed

2024 Regular Session

Muscarello

**Abstract:** Provides procedures for bankruptcy orders of discharge and sale of property.

Present law (R.S. 9:5175) provides that any person whose rights are or could be affected by a bankruptcy order discharging a judgment debtor may bring an action against the recorder of mortgages to extinguish and cancel the judgment creating the judicial mortgage.

Present law also provides that the court shall declare a judicial mortgage extinguished upon proof of the order of discharge and that the judgment is for a claim that has been properly included in the discharged debtor's bankruptcy proceeding.

Proposed law retains present law and corrects the language referencing a discharged claim and clarifies that claims are properly included in a bankruptcy proceeding by being scheduled or disclosed in the bankruptcy proceeding.

Present law authorizes a judgment debtor to obtain a partial cancellation of an inscription of a judgment affecting property not owned by him on the date of his filing of a petition under Chapter 7 or Chapter 13 of the U.S. Bankruptcy Code upon the filing of an affidavit that meets the requirements of present law.

Proposed law retains present law but removes the limitation to bankruptcy petitions filed under Chapter 7 or Chapter 13 and allows application of the law under any Chapter of the U.S. Bankruptcy Code.

Proposed law also requires a statement in the affidavit that the affiant is liable to and shall indemnify the clerk or recorder and any of his employees or agents relying on the affidavit for any damages suffered.

Proposed law authorizes a La. licensed attorney to specify by affidavit the liens, judgments, mortgages, or privileges to be cancelled if the order does not provide that information. The affidavit must contain the information required by proposed law and be filed with a Request to Cancel and a certified copy of the bankruptcy court order in the mortgage records of the parish in which the property is situated.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 9:5175(A), (B), and (C)(1), (2)(a), (f), and (g), and (3); Adds R.S. 9:5175(C)(2)(h) and 5175.1)

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Add technical changes.
2. Add "liens" to the list of records that a La. licensed attorney may use to specify the particular property subject to the bankruptcy order.
3. Provide that a La. licensed attorney may specify by affidavit which liens, judgments, mortgages, or privileges are to be partially cancelled as to the particular property subject to the bankruptcy order.
4. Provide that an affidavit that specifies a particular property subject to the bankruptcy order shall include a statement that the holder of the lien, mortgage, or privilege was provided notice of the court order.
5. Add an effective date.

The House Floor Amendments to the engrossed bill:

1. Add technical changes.
2. Specify that the judgment upon which a judicial mortgage is based is for the claim being discharged.

3. Specify that the order of cancellation shall expressly exclude any property encumbered by the judicial mortgage.
4. Provide that a judgment debtor may obtain a partial cancellation of the inscription of a judgment as it affects property not owned by the judgment debtor on the date of the filing of a petition at any time prior to the discharge order.
5. Provide that a statement that each holder of the liens, judgments, mortgages, or privileges sought to be partially cancelled was provided notice.