
DIGEST

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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.