

2024 Regular Session

HOUSE BILL NO. 580

BY REPRESENTATIVE MUSCARELLO

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
22 order the recordation of the judgment cancelled unless the judgment creditor, or any

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

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

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

16 ~~(b) The name of the court where the bankruptcy proceeding was filed:~~

17 ~~(c) The date on which the petition was filed:~~

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

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

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

24 ~~(g) A certified copy of the bankruptcy court order:~~

25 ~~€: B.(1) A judgment debtor may obtain a partial cancellation of the~~
 26 ~~inscription of a judgment as it affects property not owned by the judgment debtor on~~
 27 ~~the date of his filing a petition the filing of a petition or at any time prior to the~~
 28 ~~discharge order under Chapter 7 or Chapter 13 of the United States Bankruptcy Code~~
 29 ~~upon the filing of an affidavit in accordance with this Subsection.~~

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

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

3 * * *

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

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

10 (h) A copy of the discharge order.

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

16 * * *

17 §5175.1. Bankruptcy order authorizing sale of property

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

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

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

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

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

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

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

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

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

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____