RÉSUMÉ DIGEST

ACT 383 (HB 580)   **2024 Regular Session**   **Muscarello**

Existing 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. Existing 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.

New law 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.

Existing 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 existing law.

New law 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. New 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.

New law (R.S. 9:5175.1) 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 new 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 May 28, 2024.

(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)