

2015 Regular Session

SENATE BILL NO. 265

BY SENATOR BROOME

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

IMMOVABLE PROPERTY. Requires the recordation of certain instruments regarding real property rights and provides for the allocation of fees and penalties concerning the recordation requirement. (8/1/15)

AN ACT

To amend and reenact Civil Code Article 3338 and to enact R.S. 13: 844(F), relative to the recordation of certain instruments involving a real right in an immovable; to require record notice of the transfer or establishment of a real right in an immovable and the transfer of a promissory note secured by a mortgage; to provide for the imposition of civil penalties and civil relief; to provide for the allocation of revenues derived from certain filing fees and assessed penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Art. 3338 is hereby amended and reenacted to read as follows:

Art. 3338. Instruments creating real rights in immovables; recordation required to affect third persons; **mandatory recording of certain instruments creating, establishing or transferring real rights in immovables**

A. The rights and obligations established or created by the following written instruments are without effect as to a third person unless the instrument is registered by recording it in the appropriate mortgage or conveyance records pursuant to the provisions of this Title:

(1) An instrument that transfers an immovable or establishes a real right in

1 or over an immovable.

2 (2) An instrument or endorsement that transfers an interest in a note
3 that is secured by a mortgage or a deed of trust on an immovable.

4 (3) The lease of an immovable.

5 ~~(3)~~(4) An option or right of first refusal, or a contract to buy, sell, or lease an
6 immovable or to establish a real right in or over an immovable.

7 ~~(4)~~(5) An instrument that modifies, terminates, or transfers the rights created
8 or evidenced by the instruments described in Subparagraphs (1) through ~~(3)~~(4) of this
9 Article.

10 B.(1) An assignee of a legal or beneficial interest in an instrument
11 described in Paragraph A of this Article shall record each such assignment in
12 the parish where the property that is subject to the right created or evidenced
13 by the instrument is situated.

14 (2) The assignee shall record an assignment within thirty days after the
15 assignee first acquires the assignment. However, an assignee that reassigns the
16 note or other instrument prior to the thirtieth day after first acquiring the
17 assignment may request that the subsequent assignee file the unfiled assignment
18 with the new reassignment.

19 (3) The recorded assignment shall include the name and address of the
20 assignor and the assignee of the instrument, the legal description and address
21 of the encumbered property, the original recordation number of the document
22 that first created or first evidenced the right or rights that are being assigned,
23 and the date of the assignment.

24 (4) At the time of filing the ex officio recorder of the property in which
25 the encumbered property is located shall demand and receive filing fees as
26 provided in R.S. 13:844 (A)(1) and (2) and any penalties assessed pursuant to
27 Subparagraph (5) of this Paragraph.

28 (5) Each failure to record an assignment within the time frame specified
29 in Subparagraph (2) of this Paragraph shall subject the assignee to a civil

1 penalty of two hundred and fifty dollars. The penalty shall be assessed by and
2 payable to the ex officio recorder of the parish in which the encumbered
3 property is situated.

4 C. The failure of the assignee to record the assignment of an instrument
5 described in Paragraph A of this Article shall not affect the validity or
6 perfection, or invalidity or lack of perfection, of the interest established or
7 evidenced by the instrument under applicable law.

8 D. Evidence of the recorded assignment required under Paragraph B of
9 this Article shall be made part of any authenticated record filed in an executory
10 or ordinary foreclosure action pursuant to R.S. 10:9-629.

11 E. The obligor on a mortgage instrument shall have the right to recover
12 damages for an assignee's willful failure to comply with Subparagraph (B)(2)
13 of this Article. Damages shall not exceed three times the actual damages plus
14 attorney fees and court costs, but in no event shall be less than five hundred
15 dollars.

16 Section 2. R.S. 13:844(F) is hereby enacted to read as follows:

17 §844. Fees of ex officio recorders

18 * * *

19 F. The funds derived by the ex officio recorders of the various parishes
20 from that portion of the fees and any penalties collectable pursuant to Civil
21 Code Art. 3339 regarding the filing of assignments of mortgages and notes shall
22 be allocated exclusively as follows:

23 (1) Sixty percent shall be retained by the ex officio recorder.

24 (2) Forty percent shall be paid to the Louisiana Housing Trust Fund
25 established pursuant to the Louisiana Housing Trust Fund Act of 2003 and
26 administered by the Louisiana Housing Corporation pursuant to R.S. 40:600.86,
27 et seq.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Jerry J. Guillot.

DIGEST

SB 265 Original

2015 Regular Session

Broome

Present law provides that the rights and obligations established or created by the following written instruments are without effect as to a third person unless the instrument is registered by recording it in the appropriate mortgage or conveyance records pursuant to present law:

- (1) An instrument that transfers an immovable or establishes a real right in or over an immovable.
- (2) The lease of an immovable.
- (3) An option or right of first refusal, or a contract to buy, sell, or lease an immovable or to establish a real right in or over an immovable.
- (4) An instrument that modifies, terminates, or transfers the rights created or evidenced by the instruments described in (1) through (3) above.

Proposed law retains present law and adds an instrument or endorsement that transfers an interest in a note that is secured by a mortgage or a deed of trust on an immovable.

Proposed law requires an assignee of a legal or beneficial interest in an instrument listed above to record each such assignment in the parish where the property that is subject to the right created or evidenced by the instrument is situated. Provides that the assignee shall record an assignment within 30 days after the assignee first acquires the assignment. However, an assignee that reassigns the note or other instrument prior to the thirtieth day after first acquiring the assignment may request that the subsequent assignee file the unfiled assignment with the new reassignment. Requires that the recorded assignment include the name and address of the assignor and the assignee of the instrument, the legal description and address of the encumbered property, the original recordation number of the document that first created or first evidenced the right or rights that are being assigned, and the date of the assignment. Provides that at the time of filing the ex officio recorder of the parish in which the encumbered property is located shall demand and receive filing fees as provided in present law and any penalties assessed as provided in proposed law. Provides that each failure to record an assignment within the specified time frame in proposed law shall subject the assignee to a civil penalty of \$250 with the penalty being assessed by and payable to the ex officio recorder of the parish in which the encumbered property is situated.

Proposed law provides that the failure of the assignee to record the assignment of an instrument shall not affect the validity or perfection, or invalidity or lack of perfection, of the interest established or evidenced by the instrument under applicable law.

Proposed law provides that evidence of the recorded assignment be made part of any authenticated record filed in an executory or ordinary foreclosure action pursuant to R.S. 10:9-629.

Proposed law provides that the obligor on a mortgage instrument shall have the right to recover damages for an assignee's willful failure to comply with proposed law. Provides that damages shall not exceed three times the actual damages plus attorney fees and court costs, but in no event shall be less than \$500.

Present law authorizes the clerks of court as ex officio recorders to charge certain fees for services, including:

- (1) For filing and recording any document, \$25 dollars per book for the first page and \$10 for each subsequent page per book up to 10 pages. All documents that exceed 10 pages, \$25 for the first page and eight dollars for each subsequent page.
- (2) For indexing of all documents filed for record for each name after the first name that is required to be indexed, five dollars per name.

Proposed law retains present law and adds that the funds derived from that portion of the fees and any penalties collectable pursuant to Civil Code Art. 3339 regarding the filing of assignments of mortgages and notes shall be expended exclusively as follows:

- (1) 60% shall be retained by the ex officio recorder.
- (2) 40% shall be paid to the Louisiana Housing Trust.

Effective August 1, 2015.

(Amends CC Art. 3338 and adds R.S. 13:844(F))