

2018 Regular Session

HOUSE BILL NO. 172

BY REPRESENTATIVE GAROFALO

MORTGAGES: Provides relative to the cancellation of inferior privileges, liens, and mortgages

1 AN ACT

2 To amend and reenact Code of Civil Procedure Article 2376 and to enact R.S. 13:4368,
3 relative to the cancellation of privileges, liens, and mortgages; to provide for the
4 cancellation or partial release of inferior privileges, liens, and mortgages on property
5 sold at sheriff's sale; to provide for the procedures for cancelling or partially
6 releasing inferior privileges, liens, and mortgages; to provide for the required
7 information for the filing of an affidavit; to provide the duties, effect, and liability
8 for the filing of an affidavit; to provide for exceptions; and to provide for related
9 matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Code of Civil Procedure Article 2376 is hereby amended and reenacted
12 to read as follows:

13 Art. 2376. Release of inferior mortgages, liens, and privileges

14 The sheriff shall give the purchaser a release from the security interest,
15 mortgage, lien, or privilege of the seizing creditor, and from all inferior security
16 interests, mortgages, liens, and privileges, and he shall direct the ~~recorder of~~
17 ~~mortgages or proper filing officer to cancel their inscriptions in so far~~ clerk of court
18 or proper filing officer to cancel or partially release their inscriptions ~~in so far~~ insofar
19 as they affect the property sold.

1 Section 2. R.S. 13:4368 is hereby enacted to read as follows:

2 §4368. Post judicial sale; cancellation of inferior mortgages, liens, and privileges

3 A. If the inscription of an inferior mortgage, lien, or privilege encumbering
4 the immovable property sold through a judicial sale is not cancelled as required by
5 Code of Civil Procedure Article 2376, the seizing creditor or its agent may have the
6 inferior mortgage, lien, or privilege cancelled or partially released as to the
7 immovable property sold by recording in the mortgage records of the parish in which
8 the immovable property sold is located an "affidavit to cancel an inferior
9 encumbrance" that is in compliance with the requirements of this Section. For
10 purposes of this Section, an "inferior creditor" means the holder of record of a
11 mortgage, lien, or privilege that is inferior to a seizing creditor's mortgage, lien, or
12 privilege at the time the encumbered immovable property was sold at judicial sale.

13 B. A seizing creditor or its agent may file an affidavit to cancel or partially
14 release the inferior mortgage, lien, or privilege in accordance with this Section only
15 if the inferior creditor was provided written notice of seizure prior to the judicial
16 sale.

17 C. An affidavit executed by a seizing creditor or its agent to cancel or
18 partially release an inferior mortgage, lien, or privilege shall include all of the
19 following information:

20 (1) The name, mailing address, telephone number, and email address of the
21 seizing creditor or its agent.

22 (2) The name of the court, case name, and docket number of the action under
23 which the seizure and sale of the immovable property was ordered.

24 (3) The date of the judicial sale.

25 (4) A description of the seizing creditor's foreclosed mortgage, lien, or
26 privilege, including the recordation information and recording date.

27 (5) A description sufficient to identify the foreclosed immovable property.

28 (6) A description of the inferior mortgage, lien, or privilege, including the
29 recordation information and recording date, and a declaration that the described

1 mortgage, lien, or privilege requested to be cancelled or partially released is inferior
2 to the foreclosed mortgage, lien, or privilege.

3 (7) A certification that written notice of seizure was given to the inferior
4 creditor prior to the judicial sale, and a copy attached of the written notice together
5 with evidence that it was delivered to the inferior creditor.

6 (8) A request that the clerk of court cancel or partially release the identified
7 inferior mortgage, lien, or privilege pursuant to this Section.

8 D. The clerk of court shall cancel or partially release the inferior mortgage,
9 lien, or privilege upon the recordation of an affidavit that is in compliance with this
10 Section.

11 E. The cancellation of a mortgage, lien, or privilege by the filing of an
12 affidavit in accordance with the provisions of this Section shall have no effect if the
13 mortgage, lien, or privilege is actually superior to the seizing creditor's foreclosed
14 mortgage, lien, or privilege.

15 F. Any party recording an affidavit pursuant to this Section shall be subject
16 to the liability requirements and standards provided in R.S. 9:5174.

17 G. This Section shall not apply to utility servitudes.

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)]

HB 172 Engrossed

2018 Regular Session

Garofalo

Abstract: Provides for the cancellation or partial release of inferior inscriptions on property sold at sheriff's sale regardless of whether the inscriptions appeared on the mortgage certificate in the foreclosure proceeding.

Present law provides that the property sold at a sheriff's sale shall be sold with a release of the mortgage of the seizing creditor and inferior mortgages and liens, and the sheriff shall direct the recorder of mortgages to cancel those inscriptions in so far as they affect the property sold.

Proposed law provides for the cancellation or partial release of inferior inscriptions by the clerk of court or proper filing officer, regardless of whether they appeared on the mortgage certificate in the foreclosure proceeding.

Proposed law provides that if the inscription of an inferior mortgage, lien, or privilege encumbering the immovable property sold through a judicial sale is not cancelled as required

by C.C.P. Art. 2376, the seizing creditor or its agent may have the inferior mortgage, lien, or privilege cancelled or partially released as to the immovable property sold by recording in the mortgage records of the parish in which the immovable property sold is located an "affidavit to cancel an inferior encumbrance".

Proposed law defines "inferior creditor".

Proposed law requires written notice of seizure to the inferior creditor prior to the judicial sale.

Proposed law provides that an affidavit executed by a seizing creditor or its agent to cancel or partially release an inferior mortgage, lien, or privilege shall include all of the following information:

- (1) The name, mailing address, telephone number, and email address of the seizing creditor or its agent.
- (2) The name of the court, case name, and docket number of the action under which the seizure and sale of the immovable property was ordered.
- (3) The date of the judicial sale.
- (4) A description of the seizing creditor's foreclosed mortgage, lien, or privilege, including the recordation information and recording date.
- (5) A description sufficient to identify the foreclosed immovable property.
- (6) A description of the inferior mortgage, lien, or privilege, including the recordation information and recording date, and a declaration that the described mortgage, lien, or privilege requested to be cancelled or partially released is inferior to the foreclosed mortgage, lien, or privilege.
- (7) A certification that written notice of seizure was given to the inferior creditor prior to the judicial sale, and a copy attached of the written notice together with evidence that it was delivered to the inferior creditor.
- (8) A request that the clerk of court cancel or partially release the identified inferior mortgage, lien, or privilege pursuant to this Section.

Proposed law requires the clerk of court to cancel or partially release the inferior mortgage, lien, or privilege upon the recordation of an affidavit that is in compliance with proposed law.

Proposed law provides that the cancellation of a mortgage, lien, or privilege shall have no effect if the mortgage, lien, or privilege is actually superior to the seizing creditor's foreclosed mortgage, lien, or privilege.

Proposed law requires that any party recording an affidavit pursuant to proposed law shall be subject to the liability requirements and standards of present law.

Proposed law excepts utility servitudes from proposed law.

(Amends C.C.P. Art. 2376; Adds R.S. 13:4368)

Summary of Amendments Adopted by House

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

1. Specify and require that the clerk of court or proper filing officer shall cancel or partially release the inscription upon receipt of the affidavit.
2. Remove proposed law cancellation procedures from the C.C.P.
3. Add proposed law cancellation procedures to Title 13 of the Revised Statutes.

4. Add requirement of actual notice to the mortgage, lien, or privilege holder.
5. Require the inclusion of certain information in the affidavit to cancel or partially release.
6. Add exceptions and liability provisions to proposed law.