

ACT No. 452

2018 Regular Session

HOUSE BILL NO. 172

BY REPRESENTATIVE GAROFALO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

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

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

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

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

A. 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

1 Code of Civil Procedure Article 2376, the seizing creditor or its attorney of record
2 may have the inferior mortgage, lien, or privilege cancelled or partially released as
3 to the immovable property sold by recording in the mortgage records of the parish
4 in which the immovable property sold is located an "affidavit to cancel an inferior
5 encumbrance" that is in compliance with the requirements of this Section. For
6 purposes of this Section, an "inferior creditor" means the holder of record of a
7 mortgage, lien, or privilege that is inferior to a seizing creditor's mortgage, lien, or
8 privilege at the time the encumbered immovable property was sold at judicial sale.

9 B. A seizing creditor or its attorney of record may file an affidavit to cancel
10 or partially release the inferior mortgage, lien, or privilege in accordance with this
11 Section only if the inferior creditor was provided written notice of seizure prior to
12 the judicial sale.

13 C. An affidavit executed by a seizing creditor or its attorney of record to
14 cancel or partially release an inferior mortgage, lien, or privilege shall include all of
15 the following information:

16 (1) The name, mailing address, telephone number, and email address of the
17 seizing creditor or its attorney of record.

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

20 (3) The date of the judicial sale.

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

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

24 (6) A description of the inferior mortgage, lien, or privilege, including the
25 recordation information and recording date, and a declaration that the described
26 mortgage, lien, or privilege requested to be cancelled or partially released is inferior
27 to the foreclosed mortgage, lien, or privilege.

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

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

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

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

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

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

13 H. For the purposes of this Section "attorney of record" means the attorney
14 of record in the seizing creditor's suit that results in the judicial sale of the
15 immovable property.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____