

RÉSUMÉ DIGEST

ACT 452 (HB 172)

2018 Regular Session

Garofalo

Existing 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.

New 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.

New 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 attorney of record 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".

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

New law provides that an affidavit executed by a seizing creditor or its attorney of record 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 attorney of record.
- (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 new law.

New 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 new law.

New 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.

New law requires that any party recording an affidavit pursuant to new law shall be subject to the liability requirements and standards of existing law.

New law excepts utility servitudes from new law.

New law defines "attorney of record" and "inferior creditor".

Effective August 1, 2018.

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