

2024 Regular Session

HOUSE BILL NO. 580

BY REPRESENTATIVE MUSCARELLO

CIVIL/PROCEDURE: Provides relative to bankruptcy

1 AN ACT

2 To amend and reenact R.S. 9:5175(B) and (C)(1), (2)(a), (f), and (g), and (3) and to enact
3 R.S. 9:5175(C)(2)(h) and 5175.1, relative to bankruptcy; to provide procedures
4 for bankruptcy orders and discharges; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 9:5175(B) and (C)(1), (2)(a), (f), and (g), and (3) are hereby amended
7 and reenacted and R.S. 9:5175(C)(2)(h) and 5175.1 are hereby enacted to read as follows:

8 §5175. Order of discharge in bankruptcy; effect

9 * * *

10 B.~~(1)~~ Upon proof of the order of discharge, and that the judgment is for a
11 claim that ~~has been discharged~~ was filed or scheduled in the bankruptcy proceeding,
12 the court shall declare extinguished the judicial mortgage evidenced by the
13 recordation of the judgment and order the recordation of the judgment cancelled
14 unless the judgment creditor, or any other party to the action whose rights are or may
15 be adversely affected by the cancellation, proves that the judgment creditor or such
16 other person possesses equity in property as a result of the judicial mortgage over
17 and above superior liens, in which case the order of cancellation shall expressly
18 exclude its effect as to that property.

19 ~~(2) If a bankruptcy court order authorizing the sale of property free and clear~~
20 ~~of all judgments, mortgages, and privileges does not specify the discharged~~

1 ~~judgments, mortgages, or privileges to be cancelled, the trustee or former trustee in~~
2 ~~the proceedings, or his attorney of record, may specify by affidavit which discharged~~
3 ~~judgments, mortgages, or privileges are to be partially cancelled as to the particular~~
4 ~~property subject to the order. The affidavit and a Request to Cancel shall be filed~~
5 ~~with the bankruptcy court order. The affidavit shall contain all of the following~~
6 ~~information:~~

7 (a) ~~A statement that the debtor filed a petition under the United States~~
8 ~~Bankruptcy Code.~~

9 (b) ~~The name of the court where the bankruptcy proceeding was filed.~~

10 (c) ~~The date on which the petition was filed.~~

11 (d) ~~A statement that the debt or debts upon which the judgment, mortgage,~~
12 ~~or privilege is based were listed in the bankruptcy proceeding.~~

13 (e) ~~A description of the particular property to be released and a statement~~
14 ~~that the property is free and clear of all judgments, mortgages, or privileges.~~

15 (f) ~~A listing of the judgments, mortgages, or privileges, including the clerk's~~
16 ~~office identification by instrument number, book, or folio.~~

17 (g) ~~A certified copy of the bankruptcy court order.~~

18 C.(1) A judgment debtor may obtain a partial cancellation of the inscription
19 of a judgment as it affects property not owned by the judgment debtor on the date of
20 his filing a petition under ~~Chapter 7 or Chapter 13~~ of the United States Bankruptcy
21 Code upon the filing of an affidavit in accordance with this Subsection.

22 (2) The affidavit shall contain all of the following:

23 (a) A statement that the judgment debtor filed a petition under ~~Chapter 7 or~~
24 ~~Chapter 13~~ of the United States Bankruptcy Code.

25 * * *

26 (f) ~~A copy of the schedule or schedules listing the debt.~~ A statement that the
27 affiant is liable to and shall indemnify the clerk or recorder and any of his or her
28 employees or agents relying on the affidavit for any damages they may suffer as a
29 consequence of such reliance.

1 (g) ~~A copy of the discharge order.~~ A copy of the schedule or schedules
2 listing the debt.

3 (h) A copy of the discharge order.

4 (3) Upon the filing of an affidavit in compliance with this Subsection, the
5 recorder shall partially cancel the judgment insofar as it affects the property
6 described in the affidavit and any property that may have been acquired after the date
7 stated in Subparagraph (2)(c) of this Subsection that the debtor filed ~~his~~ the petition
8 for bankruptcy.

9 * * *

10 §5175.1. Bankruptcy order authorizing sale of property

11 If a United States Bankruptcy Court order authorizing the sale of property
12 free and clear of all judgments, mortgages, and privileged does not specify the
13 discharged judgments, mortgages, or privileges to be cancelled, any interested person
14 may specify by affidavit which judgments, mortgages, or privileges are to be
15 partially cancelled as to the particular property subject to the order. The affidavit
16 and a Request to Cancel shall be filed in the mortgage records of the parish in which
17 the property is situated with a certified copy of the bankruptcy court order. The
18 affidavit shall contain all of the following information:

19 (a) A statement that the debtor filed a petition under the United States
20 Bankruptcy Code.

21 (b) The name of the court where the bankruptcy proceeding was filed.

22 (c) The date on which the petition was filed.

23 (d) A statement that the debt or debts upon which the judgment, mortgage,
24 or privilege is based were listed in the bankruptcy proceeding.

25 (e) A full legal description of the particular property to be sold and released.

26 (f) A listing of the judgments, mortgages, or privileges, including the clerk's
27 office identification by instrument number, book, or folio, or by whatever local
28 method the clerk's office identifies such records.

1 (g) A statement that affiant is liable to and shall indemnify and hold
 2 harmless the clerk or recorder, and any of his or her employees or agents, relying on
 3 the affidavit for any damages they may suffer as a consequence of such reliance.

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 580 Original

2024 Regular Session

Muscarello

Abstract: Provides procedures for bankruptcy orders of discharge and sale of property.

Present law (R.S. 9:5175.1) 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.

Present 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 discharged.

Proposed law retains present law but only requires proof that the judgment for a claim was filed or scheduled in the bankruptcy proceeding.

Present 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 present law.

Proposed law retains present law but removes the requirement that a judgment debtor had to file his petition for bankruptcy under Chapter 7 or Chapter 13 and allows the judgment debtor to obtain a partial cancellation if he filed under the U.S. Bankruptcy Code generally.

Proposed 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 or her employees or agents relying on the affidavit for any damages they may suffer through their reliance of that affidavit.

Proposed law authorizes any interested person of a particular property subject to a bankruptcy order to specify by affidavit the discharged judgments, mortgages, or privileges to be cancelled if the order does not provide that information. The affidavit must contain the information required by proposed 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.

(Amends R.S. 9:5175(B) and (C)(1), (2)(a), (f), and (g), and (3); Adds R.S. 9:5175(C)(2)(h) and 5175.1)