

Regular Session, 2011

SENATE BILL NO. 225

BY SENATOR MOUNT

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

FINANCIAL INSTITUTIONS. Provides relative to release and cancellation of mortgages.

1 AN ACT

2 To amend and reenact R.S. 9:5557 and to enact R.S. 9:5165, relative to mortgages; to
3 provide relative to release and cancellation of mortgages under certain
4 circumstances; to provide certain procedures, terms, conditions, requirements,
5 application and effects; to provide certain time periods; to provide for recovery of
6 certain damages, fees, and costs under certain circumstances; to provide for the
7 obligation to grant releases of mortgages; to provide for limitations; and to provide
8 for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 9:5557 is hereby amended and reenacted and R.S. 9:5165 is hereby
11 enacted to read as follows:

12 **§5165. Issuance of release of mortgage by current mortgagee**

13 **A. The provisions of this Section shall apply only to mortgages perfected**
14 **on and after January 1, 2012.**

15 **B. (1) Upon extinction of the mortgage in accordance with La. Civil Code**
16 **Article 3319, the mortgagor, his successor or settlement agent may submit a**
17 **written request, signed by the mortgagor to the current mortgagee, to provide**

1 the appropriate recorder of mortgages with a written act of release directing the
2 recorder to erase the mortgage from the records. This written request that the
3 mortgage be cancelled shall extinguish any obligation on the part of the current
4 mortgagee and all additional lenders, on whose behalf the mortgagee may be
5 representing or acting for the benefit of, to make any further loan or advance
6 that would be secured by the mortgage.

7 (2) The term “current mortgagee” as used in this Section shall mean the
8 current holder of the mortgage. If the current holder of the mortgage has
9 assigned, sold, or transferred the servicing rights to a third party, then the third
10 party shall be deemed the current mortgagee.

11 (3) The written request shall be mailed to the current mortgagee at the
12 address designated by the current mortgagee to be used for such written
13 requests. If the request is accompanied by a payoff check from a settlement
14 agent, the notice shall be delivered to the same address where the payoff check
15 is sent.

16 (4) The written request to issue an act of release of the mortgage must be
17 accompanied by sufficient payment to the current mortgagee to pay the fees of
18 the recorder of mortgages to cancel the mortgage and to pay the current
19 mortgagee a reasonable fee for this service. The current mortgagee may charge
20 a reasonable fee to the mortgagor or his agent for all services and costs to
21 prepare, execute, mail, submit or record the act of release. Any fees charged by
22 the current mortgagee under this Paragraph shall be clearly itemized to the
23 requesting mortgagor or settlement agent in the pay off letter, statement, or
24 other documentation.

25 (5) Within forty-five days after receipt from the mortgagor of a written
26 request for cancellation of the mortgage accompanied by the fees required by
27 Paragraph (4), the current mortgagee shall submit to the recorder of mortgages
28 the act of release along with a request for cancellation that complies with Civil
29 Code Article 3366 and the requisite fees of the recorder. The mortgagor or his

1 agent shall be copied with this request and with cancellation information
2 received from the recorder of mortgages.

3 (6) If the mortgagee fails to deliver the act of release and request for
4 cancellation to the settlement agent within forty-five days of receipt of funds
5 from the settlement agent, he shall be liable for the statutory and actual
6 damages, fees and costs as provided in Subsection (D).

7 C. If the current mortgagee does not itemize the fees in the payoff
8 statement requested by mortgagor or the settlement agent as required under
9 Paragraph (B)(4), the mortgagor or the settlement agent may request that the
10 act of release and request for cancellation be delivered to the settlement agent.
11 Upon receipt of the act of release and request for cancellation, the settlement
12 agent shall file same with the clerk of court within forty-five days.

13 (1) The mortgagee shall not be liable for damages, fees or costs caused
14 by the failure of the settlement agent to timely file the act of release and request
15 for cancellation, if the act of release and request for cancellation are in
16 compliance with law and sufficient to cancel the inscription of the mortgage
17 from the mortgage records.

18 (2) If the settlement agent fails to timely file the release, he shall be liable
19 for the statutory and actual damages, costs and fees provided for in Subsection
20 (D).

21 D. If the current mortgagee fails to perform the duty described in this
22 Section, the mortgagor or his successor in title may, by summary proceedings
23 instituted against the current mortgagee, in the parish where the mortgaged
24 property is located, obtain a judgment ordering the mortgage to be erased from
25 the records and for the costs, reasonable attorneys fees, statutory damages in
26 the amount of five hundred dollars, and actual damages he has suffered from
27 the mortgagee's default.

28 * * *

29 §5557. Obligation to grant release of mortgage

1 **A. The provisions of this Section shall apply only to mortgages recorded**
2 **prior to January 1, 2012.**

3 ~~B. A.~~ Upon extinction of the mortgage, the mortgagor or his successor may
4 request the mortgagee to provide a written act of release directing the recorder to
5 erase the mortgage from his records. The mortgagee shall deliver the act of release
6 to the mortgagor within sixty days of receiving the request. If the mortgagee fails
7 to deliver the act timely and in a form susceptible of recordation, the mortgagor may,
8 by summary proceedings instituted against the mortgagee in the parish where the
9 mortgaged property is located, obtain a judgment ordering the mortgage to be erased
10 from the records and for the costs, reasonable attorneys fees, and any damages he has
11 suffered from the mortgagee's default.

12 ~~C. B.~~ This Section does not apply to a mortgage insofar as it secures
13 payment of a note or other instrument paraphed for identification with the act of
14 mortgage by the notary before whom it is executed.

15 Section 2. This Act shall become effective on January 1, 2012.

The original instrument was prepared by Alan Miller. The following digest,
which does not constitute a part of the legislative instrument, was prepared
by Jerry G. Jones.

DIGEST

Mount (SB 225)

Present law relative to the obligation to grant a release of mortgage provides that upon extinction of the mortgage, the mortgagor may request the mortgagee to provide a written release directing the recorder of mortgages to erase the mortgage. If the mortgagee fails to deliver the release within 60 days of receipt of the request, present law allows the mortgagee to file a summary proceeding to obtain a judgment ordering cancellation of the mortgage and awarding costs, attorney fees and any damages sustained by mortgagor.

Proposed law retains present law, but adds that its provisions shall apply only to mortgages recorded prior to January 1, 2012.

Proposed law adds certain requirements relative to release and cancellation of mortgages perfected on and after January 1, 2012.

Proposed law provides that upon extinction of the mortgage in accordance with La. Civil Code article 3319, the mortgagor, his successor or settlement agent may submit a written request, signed by the mortgagor to the current holder of the mortgage, to provide the appropriate recorder of mortgages with a written act of release directing the recorder to erase the mortgage from the records. This written request that the mortgage be cancelled shall extinguish any obligation on the part of the current mortgagee and all additional lenders, on whose behalf the mortgagee may be representing or acting for the benefit of, to make any

further loan or advance that would be secured by the mortgage.

Proposed law provides that if the request is accompanied by a payoff check from a settlement agent, the notice shall be delivered to the same address where the payoff check is sent. Further provides that such request must be accompanied by sufficient payment to the current mortgagee to pay the fees of the recorder of mortgages to cancel the mortgage and to pay the current mortgagee a reasonable fee for this service. The current mortgagee may charge a reasonable fee to the mortgagor or his agent for all services and costs to prepare, execute, mail, submit or record the act of release. Any fees charged by the current mortgagee under shall be clearly itemized to the requesting mortgagor or settlement agent in the pay off letter, statement, or other documentation.

Proposed law further provides that within 45 days after receipt from the mortgagor of a written request for cancellation of the mortgage accompanied by the required, the current mortgagee shall submit to the recorder of mortgages the act of release along with a request for cancellation and the requisite fees of the recorder. The mortgagor or his agent shall be copied with this request and with cancellation information received from the recorder of mortgages.

Proposed law provides that if the mortgagee fails to deliver the act of release and request for cancellation to the settlement agent within such 45 days of receipt of funds from the settlement agent, he shall be liable for the statutory and actual damages, fees and costs as provided in the proposed law.

Proposed law further provides if the current mortgagee does not itemize the fees in the payoff statement requested by mortgagor or the settlement agent, the mortgagor or the settlement agent may request that the act of release and request for cancellation be delivered to the settlement agent. Upon receipt of the act of release and request for cancellation, the settlement agent shall file same with the clerk of court within 45 days.

Proposed law provides that the mortgagee shall not be liable for damages, fees or costs caused by the failure of the settlement agent to timely file the act of release and request for cancellation, if the act of release and request for cancellation are in compliance with law and sufficient to cancel the inscription of the mortgage from the mortgage records. Also provides that if the settlement agent fails to timely file the release, he shall be liable for the statutory and actual damages, costs and fees provided for in the proposed law.

Proposed law also provides if the current mortgagee fails to perform the duty set forth in the proposed law, the mortgagor or his successor in title may, by summary proceedings instituted against the current mortgagee, in the parish where the mortgaged property is located, obtain a judgment ordering the mortgage to be erased from the records and for the costs, reasonable attorneys fees, statutory damages in the amount of \$500, and actual damages he has suffered from the mortgagee's default.

Effective January 1, 2012.

(Amends R.S. 9:5557 and adds R.S. 9:5165)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill.

1. Added R.S. 9:5165 setting forth revised proposed law provisions.
2. Removed proposed law provisions from R.S. 9:5557 and added that its present provisions applied only to mortgages recorded prior to 1/1/12.