
DIGEST

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Mount

SB No. 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 construction and residential mortgages perfected on and after January 1, 2012, that have been granted to a consumer and are relative to one-to-four family unit properties.

Proposed law provides that upon extinction of the mortgage, the mortgagor, his successor or settlement agent may submit a written request, signed by the mortgagor to the current holder of the mortgage, to issue a written act of release directing the appropriate recorder of mortgages to cancel the inscription of the mortgage from the mortgage records. Provides that the written request that the mortgage be cancelled extinguishes any obligation on the part of the 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. Provides that if the mortgagee has assigned, transferred or delegated the servicing rights to a third party, the duties and liabilities of the mortgagee under proposed law apply solely to the third party.

Proposed law provides that the written request shall be delivered to the mortgagee at the address designated by the mortgagee to be used for such written requests, but if the request is accompanied by a payoff check from a settlement agent, the written request is to be delivered to the same address where the payoff check is delivered.

Proposed law provides that the written request for an act of release must be accompanied by sufficient payment to the current mortgagee to pay the mortgagee a fee for this service. Allows the mortgagee to charge a fee, not to exceed \$40 to the mortgagor or his agent for all services and costs to prepare, execute, and mail the act of release. Any fees charged by the mortgagee has to be clearly itemized to the requesting mortgagor or settlement agent in the payoff letter, statement or other communication.

Proposed law provides that a fee not to exceed \$100 may be charged to the mortgagor if there is no settlement agent involved in forwarding the request.

Proposed law provides that within 45 days after receipt from the mortgagor or settlement agent of a written request for cancellation of the mortgage accompanied by the fee, the mortgagee shall issue the act of release along with a request for cancellation. If the written request and fee was received from a settlement agent, the mortgagee issues the act of release and request for cancellation to the settlement agent who then has 45 days to file same with the appropriate recorder of mortgages. If the written request and fee was received from the mortgagor, the mortgagee submits the act of release and request for cancellation to the appropriate recorder of mortgages.

Proposed law authorizes the mortgagor to obtain a complimentary copy of the act or release from the mortgagee when there is no settlement agent involved.

Proposed law provides that the mortgagee shall not be liable for damages, fees, or costs caused by the failure of a settlement agent to timely file the act of release and request or

cancellation if the documents are in compliance with the law and sufficient to cancel the inscription of the mortgage from the mortgage records.

Proposed law provides that in the event that either the mortgagee or the settlement agent fails to comply with proposed law, the mortgagee and settlement agent shall be provided with written notice of noncompliance identifying the mortgage at issue and an explanation of how they failed to comply with the law. The mortgagee and settlement agent shall then be given an opportunity to prepare and submit an act of release and request for cancellation to the appropriate recorder of mortgages within 15 days of receipt of the noncompliance notice.

Proposed law provides that if the mortgagee or the settlement agent fails to perform the duties as described in proposed law, the mortgagor or his successor in ownership may, by summary proceedings instituted against the mortgagee, in the parish where the mortgaged property is located, obtain a judgment ordering the mortgage inscription to be cancelled from the records and for the costs, reasonable attorney fees, statutory damages in the amount of \$500, and actual damages he has suffered from the failure to comply with proposed law. Provides that any judgment for damages may be awarded individually, but not in a representative capacity. Provides that the rights to recover damages are personal to the mortgagor or his successor in ownership of the property and may not be assigned.

Effective January 1, 2012.

(Amends R.S. 9:5557; 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.

Senate Floor Amendments to engrossed bill.

1. Adds provisions limiting application of proposed law to residential mortgages granted to a consumer of a one-to-four family property.
2. Changes to whom the mortgagee submits the act of release and request for cancellation when the written request is received from a settlement agent from the appropriate recorder of mortgages to the settlement agent and requires settlement agent to file same with appropriate recorder of mortgages within 45 days.
3. Removes requirement that mortgagee provide a copy of request for cancellation and cancellation information received from the recorder of mortgages to the mortgagor or his agent.

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the reengrossed bill.

1. Added provisions specifying that the request and payoff check be delivered to the address designated by the mortgagee.
2. Deleted provisions authorizing a reasonable fee and specifically provided for a fee not to exceed \$40 for preparing and executing the act of release and request for cancellation.
3. Added a provision authorizing a fee payable by the mortgagor not to exceed \$100 if there is no settlement agent involved in forwarding the request for cancellation.

4. Added a provision authorizing the mortgagor to obtain a complimentary copy of the act of release.