

SENATE BILL NO. 225

BY SENATOR MOUNT AND REPRESENTATIVES BALDONE, BARRAS, TIM BURNS, CARMODY, FANNIN, GUINN, HARRISON, HOWARD, LABRUZZO, LANDRY, LIGI, GARY SMITH, ST. GERMAIN, TUCKER, WHITE AND WILLMOTT

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

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 residential**  
14 **mortgages, where a mortgage has been granted by a consumer on a one-to-four**  
15 **family residential immovable property, including a mortgage to finance the**  
16 **initial construction of the one-to-four family residential immovable property.**  
17 **The provisions of this Section shall apply only to mortgages recorded on and**  
18 **after January 1, 2012.**

19 **B. (1) Upon extinction of the mortgage in accordance with Civil Code**  
20 **Article 3319, the mortgagor, his successor in ownership or settlement agent may**

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

8 (2) If the mortgagee has assigned, transferred, or delegated the servicing  
9 rights to a third party, then the duties and liabilities of the mortgagee pursuant  
10 to this Section shall apply solely to the third party.

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

15 (4) The mortgagee shall issue within forty-five days after receipt from  
16 the mortgagor or settlement agent of a written request for cancellation of the  
17 mortgage accompanied by the fees required by Subsection (B)(5) of this Section,  
18 the act of release along with a request for cancellation that complies with Civil  
19 Code Article 3366.

20 (5) The mortgagee shall submit the act of release of the mortgage  
21 directly to the settlement agent if a written request was received by the  
22 mortgagee from a settlement agent. The written request to issue an act of  
23 release of the mortgage shall be accompanied by sufficient payment to the  
24 mortgagee to pay the mortgagee a fee for this service. The mortgagee may  
25 charge a fee to the mortgagor or his agent for all services and costs to prepare  
26 and execute the act of release and request for cancellation that complies with  
27 Civil Code Article 3366, in an amount not to exceed forty dollars, plus postage.  
28 Any fees charged by the mortgagee pursuant to this Subsection shall be clearly  
29 itemized to the requesting mortgagor or settlement agent in the payoff letter or  
30 statement or other communication.

1           (6) If the mortgagee receives a signed written request, in accordance with  
2           Subsection (B)(1), directly from the mortgagor or the successor in ownership,  
3           and there is no settlement agent involved in forwarding the request, and the  
4           required fees in an amount not to exceed one hundred dollars are received by  
5           the mortgagee for all services and costs to prepare, execute, and deliver the act  
6           of release and request for cancellation that complies with Civil Code Article  
7           3366, along with the appropriate cancellation fees for the recorder of mortgages,  
8           then the mortgagee shall, within forty-five days of receiving such request and  
9           fees, prepare and submit to the appropriate recorder of mortgages an act of  
10           release along with the request for cancellation that complies with Civil Code  
11           Article 3366.

12           (7) A mortgagor may obtain a complimentary copy of the act of release  
13           from the mortgagee when there is no settlement agent involved.

14           C. Upon receipt of the act of release and request for cancellation, the  
15           settlement agent shall file them with the appropriate recorder of mortgages  
16           within forty-five days.

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

22           (2) If the settlement agent fails to timely file the release, he shall be liable  
23           for the statutory and actual damages, costs, and fees provided for in Subsection  
24           E of this Section.

25           D. In the event either the mortgagee or settlement agent has failed to  
26           comply with the requirements of this Section, the mortgagee and settlement  
27           agent shall be provided with written notice of noncompliance identifying the  
28           mortgage at issue and the explanation of how they failed to comply with the  
29           requirements of this Section, and then the mortgagee and settlement agent shall  
30           be given an opportunity to prepare and submit an act of release of mortgage

1 and request for cancellation to the appropriate recorder of mortgages within  
 2 fifteen days of receiving the notice before any rights accrue pursuant to  
 3 Subsection E of this Section.

4 E. If the mortgagee fails to perform the duty required by this Section, the  
 5 mortgagor or his successor in ownership may, by summary proceedings  
 6 instituted against the mortgagee, in the parish where the mortgaged property  
 7 is located, obtain a judgment ordering the mortgage inscription to be cancelled  
 8 from the records and for the costs, reasonable attorney fees, statutory damages  
 9 in the amount of five hundred dollars, and actual damages he has suffered from  
 10 the failure to comply with this Section. Any judgment for damages may be  
 11 awarded individually, but not in a representative capacity. The rights to  
 12 recover damages provided by this Section are personal to the mortgagor or his  
 13 successor in ownership of the property and may not be assigned.

14 F. A mortgagee complying with the provisions of this Section shall not  
 15 be subject to the requirements of R.S. 9:5167.2.

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17 §5557. Obligation to grant release of mortgage

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

20 B. A: Upon extinction of the mortgage, the mortgagor or his successor may  
 21 request the mortgagee to provide a written act of release directing the recorder to  
 22 erase the mortgage from his records. The mortgagee shall deliver the act of release  
 23 to the mortgagor within sixty days of receiving the request. If the mortgagee fails  
 24 to deliver the act timely and in a form susceptible of recordation, the mortgagor may,  
 25 by summary proceedings instituted against the mortgagee in the parish where the  
 26 mortgaged property is located, obtain a judgment ordering the mortgage to be erased  
 27 from the records and for the costs, reasonable attorneys fees, and any damages he has  
 28 suffered from the mortgagee's default.

29 C. B: This Section does not apply to a mortgage insofar as it secures  
 30 payment of a note or other instrument paraphed for identification with the act of

1 mortgage by the notary before whom it is executed.

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

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_