

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.

16 * * *

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.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____