

Prior law, relative to the obligation to grant a release of mortgage, provided 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 failed to deliver the release within 60 days of receipt of the request, prior law allowed 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.

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

New law additionally enacts R.S. 9:5165, relative to release of mortgage by the current mortgagee. Provides that it shall apply only to mortgages recorded on and after January 1, 2012. Further provides that it shall apply only to residential mortgages, where a mortgage has been granted by a consumer on a one-to-four family residential immovable property, including a mortgage to finance the initial construction of the one-to-four family residential immovable property.

New law provides that upon extinction of the mortgage in accordance with law, the mortgagor, his successor in ownership or settlement agent may submit a written request, signed by the mortgagor to the mortgagee, to issue a written act of release directing the appropriate recorder of mortgages to cancel the inscription of the mortgage from the mortgage records. The written request that the mortgage be cancelled shall extinguish 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.

New law provides that if the mortgagee has assigned, transferred, or delegated the servicing rights to a third party then the duties and liabilities of the mortgagee pursuant to the new law shall apply solely to the third party.

New 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. If the request is accompanied by a payoff check from a settlement agent, the written request shall be delivered to the same address where the payoff check is delivered. Also provides that the mortgagee shall issue within 45 days after receipt from the mortgagor or settlement agent of a written request for cancellation of the mortgage accompanied by the fees required by the proposed law, the act of release along with a request for cancellation.

New law provides that the mortgagee shall submit the act of release of the mortgage directly to the settlement agent if a written request was received by the mortgagee from a settlement agent. The written request to issue an act of release of the mortgage shall be accompanied by sufficient payment to the mortgagee to pay the mortgagee a fee for this service. The mortgagee may charge a fee to the mortgagor or his agent for all services and costs to prepare and execute the act of release and request for cancellation, in an amount not to exceed \$40, plus postage. Any fees charged by the mortgagee shall be clearly itemized to the requesting mortgagor or settlement agent in the payoff letter or statement or other communication.

New law further provides that if the mortgagee receives a signed written request, directly from the mortgagor or the successor in ownership, and there is no settlement agent involved in forwarding the request, and the required fees in an amount not to exceed \$100 are received by the mortgagee for all services and costs to prepare, execute, and deliver the act of release and request for cancellation, along with the appropriate cancellation fees for the recorder of mortgages, then the mortgagee shall, within 45 days of receiving such request and fees prepare and submit to the appropriate recorder of mortgages an act of release along with the request for cancellation that complies with law. Also provides that a mortgagor may obtain a complimentary copy of the act of release from the mortgagee when there is no settlement agent involved.

New law provides that upon receipt of the act of release and request for cancellation, the settlement agent shall file same with the appropriate recorder of mortgages within 45 days. 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 the 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 under the new law.

New law provides that in the event either the mortgagee or settlement agent has failed to comply with the new law, the mortgagee and settlement agent shall be provided with written notice of noncompliance identifying the mortgage at issue and the explanation of how they failed to comply, and then the mortgagee and settlement agent shall be given an opportunity to prepare and submit an act of release of mortgage and request for cancellation to the appropriate recorder of mortgages within 15 days of receiving the notice before any rights accrue. Provides that if the mortgagee fails to perform the duty required, 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 the new law. Any judgment for damages may be awarded individually, but not in a representative capacity. The rights to recover damages provided by new law are personal to the mortgagor or his successor in ownership of the property and may not be assigned.

New law further provides that a mortgagee complying with the provisions of the new law shall not be subject to the requirements of R.S. 9:5167.2, concerning cancellation of mortgage inscriptions.

Effective January 1, 2012.

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