

Regular Session, 2012

HOUSE BILL NO. 169

BY REPRESENTATIVE HENRY

RECORDS/RECORDATION: Provides with respect to certificates of encumbrances

1 AN ACT

2 To amend and reenact R.S. 9:2743(B) and (D)(2), relative to certificates of encumbrances;
3 to provide procedures for identifying the mortgagor or obligor of debt; to provide for
4 affidavit to serve as satisfactory evidence; to provide with respect to liability; and to
5 provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 9:2743(B) and (D)(2) are hereby amended and reenacted to read as
8 follows:

9 §2743. Certificate of encumbrances; procedure; content; liability

10 * * *

11 B.(1) The certificate shall list all the uncanceled mortgages and instruments
12 evidencing privileges, in the order of their recordation, that appear in the mortgage
13 records and that identify the persons designated in the request as the mortgagor or
14 obligor of the debt secured by the privilege, unless the recorder is supplied with
15 evidence satisfactory to him that such instruments are in fact not those of the person
16 in whose name the certificate is sought.

17 (2) Satisfactory evidence shall include an affidavit from the Louisiana
18 licensed attorney requesting the certificate, setting forth all of the following
19 information:

1 (a) A description of the uncanceled mortgages and instruments evidencing
2 privileges.

3 (b) A statement from the affiant that he or someone under his direction has
4 researched the uncanceled mortgages and instruments evidencing privileges.

5 (c) A statement that the affiant has determined through due and diligent
6 research that the mortgages and instruments evidencing privileges are not those of
7 the person in whose name the certificate is sought.

8 (d) A statement that the affiant agrees to be personally liable to and
9 indemnify the recorder and any person relying upon the certificate by affidavit for
10 any damages they may suffer if the affidavit contains materially false or incorrect
11 statements that cause the recorder to incorrectly list or fail to list instruments in the
12 certificate.

13 (3) The affidavit provided for in Paragraph (2) of this Subsection shall be
14 recorded in the mortgage records.

15 * * *

16 D.

17 * * *

18 (2) The recorder is liable in his official capacity for any loss caused by the
19 failure to list a mortgage or privilege in the certificate or by listing a mortgage or
20 privilege that has been cancelled from his records unless the error proceeds from one
21 of the following:

22 (a) A want of exactness in the description of the property or the name of the
23 mortgagor or obligor of the debt secured by the privilege specifically given to the
24 recorder in the request.

25 (b) An incorrect statement in an affidavit submitted pursuant to Subsection
26 B of this Section.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Henry

HB No. 169

Abstract: Provides that the attorney requesting a certificate of encumbrances may supply as satisfactory evidence an affidavit that distinguishes whether an instrument is in the name of the person for whom the certificate is sought.

Present law provides that the recorder shall deliver a certificate of encumbrances that includes all uncanceled mortgages and instruments evidencing privileges that appear in the mortgage records and identify the person in the request as the mortgagor or obligor. Provides for an exception when the recorder receives satisfactory evidence that the person on the instrument is not the person in whose name the certificate is sought.

Proposed law retains present law and provides that satisfactory evidence shall include an affidavit provided by the attorney requesting the certificate that distinguishes the person in whose name the certificate is requested from a person listed as a mortgagor or obligor for an instrument on the certificate. Provides for liability of the affiant if materially false information is contained within the affidavit. Provides for limited liability of the recorder when the affidavit contains an incorrect statement.

(Amends R.S. 9:2743(B) and (D)(2))