

Regular Session, 2012

HOUSE BILL NO. 452

BY REPRESENTATIVE ABRAMSON

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AN ACT

To amend and reenact R.S. 13:4344.1(A)(introductory paragraph), (6), and (7), (D), (E), and (F) and to enact R.S. 13:4344.1(G), relative to inscriptions on mortgage certificates; to provide for deletion of inscriptions; to delete antiquated references to the recorder of mortgages for Orleans Parish; to provide for technical corrections; to provide for inscriptions of cancelled and prescribed mortgages; to provide for prospective application; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 13:4344.1(A)(introductory paragraph), (6), and (7), (D), (E), and (F) are hereby amended and reenacted and R.S. 13:4344.1(G) is hereby enacted to read as follows:

§4344.1. Deletion of inscriptions on mortgage certificates ordered by a sheriff

A. For immovable property procured pursuant to a judicial sale under a writ of fieri facias or a writ of seizure and sale, the clerk of court, ~~or the recorder of mortgages for Orleans Parish, or his successor,~~ shall partially cancel from a mortgage certificate ordered in connection with a judicial sale the inscription of any ~~legal or judicial~~ mortgage, lien, or privilege, appearing on the certificate, only insofar as the foreclosed property is concerned, upon the filing of an affidavit executed by an officer of a title insurer duly licensed by the Louisiana Department of Insurance. The affidavit shall set forth all of the following:

* * *

(6) A direction from the title insurer to the clerk of court ~~or recorder of mortgages~~ to partially cancel from the mortgage certificate the encumbrance identified on the affidavit.

1 (7) The title insurer agrees to be liable to and defend and indemnify the clerk
2 of court ~~or recorder of mortgages~~, the sheriff, and any person relying upon the
3 cancellation by affidavit for any damages that they may suffer as a consequence of
4 such reliance if the recorded affidavit contains incorrect statements that cause the
5 ~~recorder~~ clerk of court to incorrectly partially cancel on the mortgage certificate
6 ordered in connection with the judicial sale the inscription of a mortgage, lien,
7 privilege, or other encumbrance from the mortgage certificate.

8 * * *

9 D. Any person in whose favor a partially canceled inscription was recorded
10 shall have a cause of action against the title insurer in the event the mortgage, lien,
11 privilege, or other encumbrance which was partially canceled from the clerk's
12 mortgage certificate was legally enforceable at the time of the deletion against the
13 person or property described in that certificate because the obligor under the ~~legal~~
14 ~~or judicial~~ mortgage, lien, or privilege, was in fact the same person whose property
15 was sold. The cause of action created by this Subsection shall prescribe on the same
16 date that the cause of action to enforce the underlying ~~legal or judicial~~ mortgage,
17 lien, or privilege prescribes.

18 E. A title insurer whose officer has signed an affidavit that is provided to the
19 clerk of court ~~or the recorder of mortgages~~ pursuant to this Section and that contains
20 incorrect statements causing the ~~recorder~~ clerk of court to incorrectly partially cancel
21 the inscription of a mortgage or privilege from his certificate is liable to and shall
22 defend and indemnify the clerk of court ~~or the recorder of mortgages~~, the sheriff, and
23 any person relying upon the partial cancellation on the mortgage certificate for any
24 damages that they may suffer as a consequence of such reliance.

25 F. The clerk of court ~~and the recorder of mortgages~~ shall not be liable for any
26 damages resulting to any person or entity as a consequence of partially canceling
27 from the certificate a ~~legal or judicial~~ mortgage, lien, or privilege pursuant to an
28 affidavit which complies with the provisions of this Section.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 G.(1) It shall not be necessary to delete, cancel, or partially release
2 inscriptions that may appear on a mortgage certificate ordered in connection with a
3 judicial sale for the following:

4 (a) Any assignment, assumption, or modification of a canceled mortgage.

5 (b) Prescribed judicial mortgages which have not been reinscribed or for
6 which no notice of pendency of action of a revival action is shown on the mortgage
7 certificate.

8 (2) The sheriff shall proceed with the judicial sale without regard to the
9 inscriptions designated in this Subsection.

10 Section 2. The provisions of this Act shall be given prospective application only.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____