

Regular Session, 2010

HOUSE BILL NO. 645

BY REPRESENTATIVES ABRAMSON AND TIM BURNS

PRESCRIPTION: Provides relative to the prescriptive period for certain actions to invalidate documents executed pursuant to a power of attorney

1 AN ACT

2 To amend and reenact R.S. 9:5647, relative to powers of attorney; to clarify the application
3 of the five-year prescriptive period for actions to set aside certain recorded
4 documents; to provide for retroactive application; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 9:5647 is hereby amended and reenacted to read as follows:

7 §5647. Power of attorney; action to set aside under certain conditions

8 A. Any action to set aside a document or instrument on the ground that the
9 party executing the document or instrument under authority of a power of attorney
10 was without authority to do so, or that the power of attorney was not valid, is
11 prescribed by five years, beginning from the date on which the document or
12 instrument is recorded in the conveyance records, or the mortgage records if
13 appropriate. Nothing contained in this Section shall be construed to limit or
14 prescribe any action or proceeding which may arise between a principal and the
15 person acting under authority of a power of attorney. ~~The prescription established
16 herein shall not become final and complete as to any document or instrument
17 executed prior to one year from August 15, 2008.~~

18 B. The prescriptive period established by Subsection A of this Section shall
19 be retroactive and shall apply to all such documents whether recorded prior to or
20 after August 15, 2008; however, as to any documents recorded prior to August 15,

1 2008, as to which prescription has not already run and become final, ~~this~~ the
2 prescriptive period established by Subsection A of this Section shall ~~not~~ become final
3 and complete ~~until~~ ten years from the date the document was recorded or August 15,
4 2013, whichever occurs first.

5 Section 2. This Act is declared to be remedial, curative, and procedural and therefore
6 is to be applied prospectively and retroactively to August 15, 2008.

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)]

Abramson

HB No. 645

Abstract: Clarifies the application of the five-year prescriptive period to actions to invalidate documents executed under authority of a power of attorney and recorded prior to Aug. 15, 2008.

Present law (R.S. 9:5647) provides for a prescriptive period of five years to set aside a document or instrument executed under authority of a power of attorney on the ground that the power of attorney was without authority to do so or that the power of attorney was not valid. Provides that the prescription begins running from the date on which the document is recorded in the conveyance or mortgage records.

Proposed law retains present law.

Present law provides that the prescriptive period shall not become final and complete as to any document or instrument executed prior to one year from Aug. 15, 2008, but also provides that the five-year prescriptive period shall be retroactive and shall apply to all such documents whether recorded prior to or after Aug. 15, 2008. Further provides that as to any documents as to which prescription has not already run and become final, this prescriptive period shall not become final and complete until 10 years from the date the document was recorded or Aug. 15, 2013, whichever occurs first.

Proposed law clarifies the retroactive application of present law by providing that the prescriptive period established by present law shall be retroactive and shall apply to all documents whether recorded prior to or after Aug. 15, 2008; however, as to any documents recorded prior to Aug. 15, 2008, as to which prescription has not already run and become final, the prescriptive period shall become final 10 years from the date the document was recorded or Aug. 15, 2013, whichever occurs first.

Proposed law provides for prospective and retroactive application to Aug. 15, 2008.

(Amends R.S. 9:5647)