

Regular Session, 2011

SENATE BILL NO. 225

BY SENATOR MOUNT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

FINANCIAL INSTITUTIONS. Requires a mortgagee to cancel a mortgage within sixty days of full satisfaction of the obligation. (1/01/12)

1 AN ACT

2 To amend and reenact R.S. 9:5557, relative to collateral mortgages and vendor's privileges;
3 to provide for obligation to grant releases of mortgages; to provide for limitations;
4 and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 9:5557 is hereby amended and reenacted to read as follows:

7 §5557. Obligation to grant release of mortgage

8 A. Upon **full payment or satisfaction of all the indebtedness secured by**
9 **a mortgage on immovable property,** ~~extinction of the mortgage, the mortgagor or~~
10 ~~his successor may request the mortgagee to provide a written act of release directing~~
11 ~~the recorder to erase the mortgage from his records. The mortgagee shall deliver the~~
12 ~~act of release to the mortgagor within sixty days of receiving the request. If the~~
13 ~~mortgagee fails to deliver the act timely and in a form susceptible of recordation, the~~
14 ~~mortgagor may, by summary proceedings instituted against the mortgagee in the~~
15 ~~parish where the mortgaged property is located, obtain a judgment ordering the~~
16 ~~mortgage to be erased from the records and for the costs, reasonable attorneys fees,~~
17 ~~and any damages he has suffered from the mortgagee's default~~ **the mortgagee shall**

1 issue a request for cancellation in a form sufficient to cancel the mortgage from
2 the mortgage records of the parish in which the mortgaged property is located.

3 B. (1) This Section does not apply to a mortgage insofar as it secures
4 payment of a note or other instrument paraphed for identification with the act of
5 mortgage by the notary before whom it is executed when the indebtedness secured
6 by the mortgage has been paid in full by the obligor personally, and not by a
7 settlement agent, and the obligor has requested in writing that the mortgage not
8 be cancelled. For purposes of this Section, a settlement agent is defined as a
9 party conducting a settlement as defined in R.S. 22:512.

10 (2) If the mortgagee receives written notice from the settlement agent
11 who has paid the indebtedness in full requesting that the act of cancellation be
12 sent to such settlement agent, the mortgage holder shall, within sixty days after
13 receipt of the notice, send the request for cancellation to the settlement agent at
14 the address specified in the notice. If such notice is not received from the
15 settlement agent, the mortgagee shall, within sixty days of receipt of collected
16 funds, cause to be recorded in the parish where the immovable property is
17 situated a request for cancellation of the mortgage in a form acceptable for
18 recordation by the clerk and recorder for the parish in which the immovable
19 property is situated, together with sufficient funds to record the cancellation.

20 C. If the mortgagee has not, within sixty days after payment, either
21 provided the request for cancellation to the settlement agent or delivered it to
22 the clerk's office with the necessary fee for recordation, the mortgagee shall be
23 subject to a penalty of one thousand dollars payable to the mortgagor or his
24 successor. This penalty shall escalate by one thousand dollars every thirty day
25 period thereafter until the mortgage is cancelled, but in no event shall the fine
26 be more than a total of five thousand dollars. If the mortgage records of the
27 clerk and recorder of the parish in which the immovable property is situated
28 shows that the request for cancellation has not been timely recorded, it shall be
29 presumed that the mortgagee is in violation of this Section and liable for the

1 **penalty imposed by this Section. If the mortgagee fails to deliver the act of**
 2 **cancellation within ninety days of funds being received and collected, and in a**
 3 **form susceptible of recordation, the mortgagor, his successor, or any interested**
 4 **party may, by summary proceedings instituted against the mortgagee in the**
 5 **parish where the immovable property is situated, obtain a judgment ordering**
 6 **the clerk of court for the parish where the property is situated to cancel and**
 7 **erase the mortgage from the mortgage records of his office and grant a**
 8 **judgment against the mortgagee or its assigns for the penalty imposed by this**
 9 **Section in favor of the mortgagor or his successor, in addition to the costs,**
 10 **reasonable attorney fees, and damages the mover has suffered by reason of the**
 11 **failure to cancel the mortgage.**

12 Section 2. This Act shall become effective on January 1, 2012.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alan Miller.

DIGEST

Present law provides 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 fails to deliver the release within 60 days of receipt of the request, present law allows 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.

Proposed law requires the mortgagee, upon full payment of the mortgage by a settlement agent, to issue a request for cancellation in proper form that allows mortgagor to obtain cancellation of the mortgage. Where the mortgage has been paid by the mortgagor rather than through a settlement agent, proposed law allows mortgagor to request in writing that the mortgage not be cancelled.

Proposed law requires mortgagee to deliver a request for cancellation to the settlement agent who has paid the mortgage in full within 60 days of receipt of a request from settlement agent to forward the cancellation directly to the settlement agent. Where no such request is received, mortgagee is required by proposed law to forward a cancellation of the mortgage in proper form to the clerk of court with sufficient funds to pay the cost of filing the cancellation.

Proposed law authorizes a penalty of \$1,000 per month up to a maximum of \$5,000 payable to the mortgagor or his successor if the mortgagee fails to timely comply with the requirements set forth in proposed law.

Proposed law authorizes the mortgagor, his successor, or any interested party to file a summary proceeding to recover costs, attorney fees, damages and a penalty of up to \$5,000 where the mortgagee fails to deliver the required request for cancellation within 90 days of receipt of full payment of the mortgagee debt.

Effective January 1, 2012.

(Amends R.S. 9:5557)