

2017 Regular Session

HOUSE BILL NO. 400

BY REPRESENTATIVE GAROFALO

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

MORTGAGES: Provides for certain form requirements imposed on financial institutions relative to the cancellation of mortgages

## 1 AN ACT

2 To amend and reenact R.S. 9:5172(A)(introductory paragraph) and (2) and (B) and 5173 and  
3 to enact R.S. 9:5172(A)(3), relative to the cancellation of mortgages; to provide for  
4 procedure; to change certain form requirements; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 9:5172(A)(introductory paragraph) and (2) and (B) and 5173 are  
7 hereby amended and reenacted and R.S. 9:5172(A)(3) is hereby enacted to read as follows:

8 §5172. Cancellation; partial cancellation; licensed financial institution

9 A. In lieu of complying with the provisions of R.S. 9:5169, 5170, and 5171,  
10 a request for cancellation or partial cancellation may have attached to it the signed,  
11 written act of a licensed financial institution executed before a notary public or duly  
12 acknowledged before a notary public with or without witnesses, ~~or~~ any act that is  
13 otherwise self-proving under the provisions of Code of Evidence Article 902(1), (2),  
14 (3), or (8), or an act under private signature by two authorized officers of the licensed  
15 financial institution, declaring that the obligee is a licensed financial institution as  
16 defined in Subsection C of this Section and that the institution meets any of the  
17 following criteria:

18 \* \* \*

1 (2) Is the obligee or authorized agent of the obligee of the secured obligation  
2 and that it releases the mortgage or privilege and directs the recorder to cancel its  
3 recordation.

4 (3) Is the obligee or authorized agent of the obligee of the secured obligation  
5 and that it partially releases the mortgage or privilege and directs the recorder to  
6 partially cancel its recordation.

7 B. When a request for cancellation or partial cancellation is made by the  
8 licensed financial institution, in lieu of attaching a separate act of release or partial  
9 release, the financial institution may include the information required by R.S.  
10 9:5169, 5170, and 5171 if the request is in authentic or authenticated form or  
11 otherwise complies with Subsection A of this Section.

12 \* \* \*

13 §5173. Mortgage or privilege cancellation by financial institution-standard form

14 A financial institution seeking to cancel a mortgage or privilege inscription  
15 pursuant to R.S. 9:5172 may use, and the recorder of mortgages for each and every  
16 parish in the state of Louisiana shall accept, the following form as fully compliant  
17 as a request for cancellation and act of release. The form contained in this Section  
18 is not the exclusive form to be accepted for filing, and any other form meeting the  
19 requirements of R.S.9:5172 may be used and filed for canceling the recordation of  
20 a mortgage or privilege:

21 R.S. 9:5172 FORM:

22 REQUEST FOR CANCELLATION OF MORTGAGE OR PRIVILEGE AND

23 RELEASE BY LICENSED FINANCIAL INSTITUTION

24 PURSUANT TO R.S. 9:5172

25 State of \_\_\_\_\_

26 Parish or County of \_\_\_\_\_

27 BE IT KNOWN THAT on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

28 ~~before me, the undersigned Notary Public,~~ appeared \_\_\_\_\_ (name

29 of financial institution) herein represented by its undersigned duly authorized

1        ~~representative~~ representatives, which declared that it is a licensed financial institution  
2        as defined in R.S. 9:5172 et seq. and that one of the following statements is true and  
3        correct:

4                (1) The institution was the obligee or the authorized agent of the obligee of  
5        the obligation secured by the mortgage or privilege described below when the  
6        obligation was extinguished, and the secured obligation has been paid or otherwise  
7        satisfied or extinguished; or

8                (2) The institution is the obligee or authorized agent of the obligee of the  
9        secured obligation, and it releases the mortgage or privilege described below.

10               The Clerk of Court and Ex-Officio Recorder of Mortgages for the Parish  
11        identified below is hereby expressly requested, authorized, and directed to cancel the  
12        recordation of the mortgage or privilege described as follows:

13               A mortgage or privilege granted by:

14               In favor of: \_\_\_\_\_

15               Date of Instrument: \_\_\_\_\_

16               Parish of Recordation: \_\_\_\_\_

17               Recording Data: \_\_\_\_\_

18               Legal description is as follows or is hereby attached as Exhibit "A":

19        \_\_\_\_\_  
20        \_\_\_\_\_  
21        \_\_\_\_\_  
22        \_\_\_\_\_  
23        \_\_\_\_\_.

24               (3) The recorder of mortgages shall not be liable for any damages resulting  
25        to any person or entity as a consequence of canceling a mortgage or vendor's  
26        privilege pursuant to this form.

27               THUS DONE AND PASSED before me, Notary Public, on the date set forth  
28        above.

29        \_\_\_\_\_

| 1 | Name of officer and title |
|---|---------------------------|
|---|---------------------------|

|   |                               |
|---|-------------------------------|
| 2 | Name of financial institution |
|---|-------------------------------|

3 Requested mailing address

4 City, state, and zip code

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5

6 Notary Public

7 (Printed name of notary and bar roll or notary number)

8                    OR

9                    THUS DONE AND SIGNED by the two undersigned authorized officers of the  
10                   above named financial institution.

11

12 Name of officer and title

13 Name of financial institution

14 Requested mailing address

15 City, state, and zip code

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16

17 Name of officer and title

18 Name of financial institution

19 Requested mailing address

20 City, state, and zip code

## 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)]

HB 400 Original

2017 Regular Session

Garofalo

**Abstract:** Authorizes licensed financial institutions to utilize an act under private signature to satisfy certain form requirements relative to the cancellation of a mortgage.

Proposed law makes technical changes.

Present law provides that, in lieu of complying with certain provisions of present law (R.S. 9:5169-5171), a request for cancellation of a mortgage may have attached to it the signed, written act of a licensed financial institution executed before a notary public or duly acknowledged before a notary public with or without witnesses or any act that is otherwise self-proving pursuant to certain provisions of present law (C.E. Art. 902(1) through (3) or (8)), declaring that the obligee is a licensed financial institution as defined in present law and that the institution meets certain other requirements.

Proposed law allows for partial cancellation of a mortgage.

Proposed law adds that an act under private signature by two authorized officers of the licensed financial institution shall also be allowed to substitute in lieu of complying with certain provisions of present law (R.S. 9:5169-5171).

Present law requires that a request for cancellation must declare certain circumstances related to the nature of the relationship of the particular financial institution making the request for cancellation. Proposed law clarifies by adding that a financial institution, who is the obligee or authorized agent of the obligee of the secured obligation and that it partially releases the mortgage or privilege and directs the recorder to partially cancel its recordation, may request the cancellation or partial cancellation.

Present law provides that when a request for cancellation is made by the licensed financial institution, in lieu of attaching a separate act of release, the financial institution may include the information required by present law (R.S. 9:5169-5171) if the request is in authentic or authenticated form.

Proposed law provides that, when a request for cancellation or partial cancellation is made by the licensed financial institution, in lieu of attaching a separate act of release or partial release, the financial institution may include the information required by present law (R.S. 9:5169-5171) if the request is in authentic or authenticated form or otherwise complies with proposed law.

Present law provides that a financial institution seeking to cancel a mortgage or privilege inscription may use, and the recorder of mortgages for each and every parish in the state of La. shall accept, the form provided by present law as fully compliant as a request for cancellation and act of release.

Proposed law removes the requirement that the form must be executed before a notary public. Proposed law further changes the form provided by present law to allow for an act under private signature by two authorized officers of the named financial institution.

(Amends R.S. 9:5172(A)(intro. para.) and (2) and (B) and 5173; Adds R.S. 9:5172(A)(3))