

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) and 5173.1, relative to the cancellation of mortgages; to
4 provide for procedure; to change certain form requirements; to provide a form for
5 partial cancellation of a mortgage; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 9:5172(A)(introductory paragraph) and (2) and (B) and 5173 are
8 hereby amended and reenacted and R.S. 9:5172(A)(3) and 5173.1 are hereby enacted to read
9 as follows:

10 §5172. Cancellation; partial cancellation; licensed financial institution

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

1 Subsection C of this Section and that the institution meets any of the following
2 criteria:

3 * * *

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

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

10 B. When a request for cancellation or partial cancellation is made by the
11 licensed financial institution, in lieu of attaching a separate act of release or partial
12 release, the financial institution may include the information required by R.S.
13 9:5169, 5170, and 5171 if the request is in authentic or authenticated form or
14 otherwise complies with Subsection A of this Section.

15 * * *

16 §5173. Mortgage or privilege cancellation by financial institution-standard form

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

24 R.S. 9:5172 FORM:

25 REQUEST FOR CANCELLATION OF MORTGAGE OR PRIVILEGE AND

26 RELEASE BY LICENSED FINANCIAL INSTITUTION

27 PURSUANT TO R.S. 9:5172

28 State of _____

29 Parish or County of _____

1 BE IT KNOWN THAT on this _____ day of _____, 20____,
2 ~~before me, the undersigned Notary Public, appeared~~ _____ (name
3 of financial institution) herein represented by its undersigned duly authorized
4 ~~representative, which declared~~ officer or officers, declares that it is a licensed
5 financial institution as defined in R.S. 9:5172 et seq. and that one of the following
6 statements is true and correct:

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

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

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

16 A mortgage or privilege granted by:

17 In favor of: _____

18 Date of Instrument: _____

19 Parish of Recordation: _____

20 Recording Data: _____

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

22 _____
23 _____
24 _____
25 _____
26 _____.

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

1

[Choose one of the two following signature options.]

2

THUS DONE AND ~~PASSED~~ SIGNED before me, Notary Public, on the date

3

set forth above.

4

5

Name of officer and title

6

Name of financial institution

7

Requested mailing address

8

City, state, and zip code

9

10

Notary Public

11

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

12

OR

13

THUS DONE AND SIGNED by the two undersigned authorized officers of the

14

above named financial institution.

15

16

Name of officer and title

17

Name of financial institution

18

Requested mailing address

19

City, state, and zip code

20

21

Name of officer and title

22

Name of financial institution

23

Requested mailing address

24

City, state, and zip code

25

§5173.1. Mortgage or privilege partial cancellation by financial institution-standard

26

form

27

A financial institution seeking a partial cancellation of a mortgage or

28

privilege inscription pursuant to R.S. 9:5172 may use, and the recorder of mortgages

29

for each and every parish in the state of Louisiana shall accept, the following form

1 as fully compliant as a request for partial cancellation and act of partial release. The
2 form contained in this Section is not the exclusive form to be accepted for filing, and
3 any other form meeting the requirements of R.S. 9:5172 may be used and filed to
4 partially cancel the recordation of a mortgage or privilege:

5 REQUEST FOR PARTIAL CANCELLATION OF MORTGAGE OR PRIVILEGE

6 AND PARTIAL RELEASE BY LICENSED FINANCIAL INSTITUTION

7 PURSUANT TO R.S. 9:5172

8 State of _____

9 Parish or County of _____

10 BE IT KNOWN THAT on this _____ day _____ of 20 _____,

11 _____ (name of financial institution), herein represented by its
12 undersigned duly authorized officer or officers, declares the following:

13 The institution is a licensed financial institution as defined in R.S. 9:5172 et
14 seq., and is the obligee or authorized agent of the obligee for the obligation secured
15 by the mortgage or privilege described as follows:

16 A mortgage or privilege granted by: _____

17 In favor of: _____

18 Date of Instrument: _____

19 Parish of Recordation: _____

20 Recording Data: _____

21 The institution grants a partial release of the above-described mortgage or
22 privilege, and does hereby release ONLY the following described property from the
23 above-described mortgage or privilege, to wit:

24 Legal description of released property is as follows or is hereby attached as

25 Exhibit "A":

26 _____
27 _____
28 _____

1 The institution hereby requests, authorizes, and directs the Clerk of Court and
2 Ex-Officio Recorder of Mortgages for the Parish in which the above-described
3 property is situated to release the above-described property from the mortgage or
4 privilege described above and to partially cancel the above-described mortgage or
5 privilege ONLY AS TO such described property hereby released from the same.

6 The institution further expressly declares that the above-described mortgage
7 or privilege is not released or cancelled as to any other property described in such
8 mortgage or privilege, and such mortgage or privilege shall continue to encumber
9 and remain in full force and effect as to all other property described therein.

10 The recorder of mortgages shall not be liable for any damages resulting to
11 any person or entity as a consequence of partially cancelling a mortgage or vendor's
12 privilege pursuant to this form.

13 [Choose one of the two following signature options.]

14 THUS DONE AND SIGNED, before me, Notary Public, on the date set forth
15 above.

16 _____

17 Name of officer and title

18 Name of financial institution

19 Requested mailing address

20 City, state, and zip code

21 _____

22 Notary Public

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

24 OR

25 THUS DONE AND SIGNED, by the two undersigned authorized officers of
26 the above named financial institution on the date set forth above.

27 _____

28 Name of officer and title

29 Name of financial institution

1 Requested mailing address
2 City, state, and zip code
3 _____
4 Name of officer and title
5 Name of financial institution
6 Requested mailing address
7 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 Engrossed

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 and partial 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 retains present law and makes it applicable to partial cancellation as well.

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.

Proposed law provides a new form which may be used for the partial cancellation of a mortgage.

(Amends R.S. 9:5172(A)(intro. para.) and (2) and (B) and 5173; Adds R.S. 9:5172(A)(3) and 5173.1)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Specify that the financial institution be represented by one of its officers.
2. Change "any act" that is self-proving to "any form" that is self-proving.
3. Add various technical changes to the form for a mortgage cancellation.
4. Add a new form for the partial cancellation of a mortgage.