

Regular Session, 2008

HOUSE BILL NO. 245

BY REPRESENTATIVE DOWNS

MORTGAGES: Provides relative to the cancellation of certain mortgages and vendor's privileges

1 AN ACT

2 To enact R.S. 9:5168, relative to cancellation of mortgages and privileges, to require the
3 recorder of mortgages to cancel mortgages and vendor's privileges under certain
4 circumstances; to authorize the filing of cancellations of mortgages and vendor's
5 privileges; to authorize certain persons to execute an affidavit of cancellation; to
6 provide for the contents of the affidavit of cancellation; to provide a limitation of
7 liability for clerks of court and recorders of mortgages; to provide for the
8 indemnification of persons relying on the affidavit of cancellation; and to provide for
9 related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 9:5168 is hereby enacted to read as follows:

12 §5168. Promissory notes; loss or destruction; proof by affidavit

13 A. When a promissory note paraphed for identification with a mortgage or
14 act creating a vendor's privilege on immovable property has been lost or destroyed,
15 the maker of such note or any other interested party may prove its payment by
16 presentation of the sworn affidavit of the obligee of record of the mortgage or
17 vendor's privilege specifically attesting to and testifying as to the truth of all of the
18 allegations required by this Section.

19 B. The affidavit shall set forth all of the following:

1 (1) The name of the mortgagor or obligor of the privilege as it appears in the
2 recorded mortgage or vendor's privilege, and the recordation information.

3 (2) A description of the paraphed promissory note and the encumbered
4 immovable property.

5 (3) A statement that the affiant is the obligee of record of the paraphed
6 promissory note.

7 (4) A statement that the note has been lost or destroyed and cannot be
8 presented.

9 (5) A statement that the note is paid, forgiven, or otherwise satisfied.

10 (6) A statement that the affiant authorizes the clerk of court and ex officio
11 recorder of mortgages to cancel the inscription of the mortgage or vendor's privilege.

12 (7) A statement that the affiant has not sold, transferred, or assigned the note
13 to any other person or entity.

14 (8) A statement that the affiant agrees to be personally liable to and
15 indemnify the clerk of court and ex officio recorder of mortgages and any person
16 relying upon the cancellation by affidavit for any damages that they may suffer as
17 a consequence of such reliance if the recorded affidavit contains materially false or
18 incorrect statements that cause the recorder to incorrectly cancel the recordation of
19 a mortgage or privilege.

20 C. An affidavit executed according to the provisions of this Section may be
21 substituted for the original paraphed note as is otherwise required in R.S. 44:107.
22 No mandamus proceeding is required to use the provisions of this Section. Neither
23 the clerk of court and ex officio recorder of mortgages nor his surety on his official
24 bond shall have any liability for any damages resulting to any person or entity as a
25 consequence of canceling the inscription of a mortgage or vendor's privilege
26 pursuant to an affidavit which complies with this Section.

27 D. The clerk of court and ex officio recorder of mortgages shall not refuse
28 to accept an affidavit which complies with this Section and shall not require the

1 filing of a mandamus proceeding as a condition of canceling the inscription of a
2 mortgage or vendor's privilege.

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)]

Downs

HB No. 245

Abstract: Provides that when a paraphed promissory note has been lost or destroyed, the maker of the note or any other interested party may prove its payment by presentation of a sworn affidavit of the obligee of record.

Proposed law provides that when a promissory note paraphed for identification with a mortgage or act creating a vendor's privilege on immovable property has been lost or destroyed, the maker of such note or any other interested party may prove its payment by presentation of the sworn affidavit of the obligee of record of the mortgage or vendor's privilege specifically attesting to and testifying as to the truth of all of the allegations required by proposed law.

Proposed law provides for requirements of the affidavit (R.S. 9:5168(B)).

Proposed law provides that an affidavit executed according to the provisions of proposed law may be substituted for the original paraphed note as is otherwise required by R.S. 44:107, and that no mandamus proceeding is required to use the provisions of proposed law.

Proposed law provides that neither the clerk of court and ex officio recorder of mortgages nor his surety on his official bond shall have any liability for any damages resulting to any person or entity as a consequence of canceling the inscription of a mortgage or vendor's privilege pursuant to an affidavit which complies with proposed law.

Proposed law provides that the clerk of court and ex officio recorder of mortgages shall not refuse to accept an affidavit which complies with proposed law and shall not require the filing of a mandamus proceeding as a condition of canceling the inscription of a mortgage or vendor's privilege.

(Adds R.S. 9:5168)