

Regular Session, 2008  
HOUSE BILL NO. 134  
BY REPRESENTATIVE HENRY

# ACT No. 339

1 AN ACT

2 To enact R.S. 13:4344.1, relative to the removal of mortgage inscriptions affecting property  
3 subject to judicial sale; to provide for the contents and filing of an affidavit by a title  
4 insurer; to provide procedures for the removal of mortgage inscriptions; to provide  
5 a cause of action for improper cancellation; to provide for indemnification and  
6 exemption from liability under certain circumstances; and to provide for related  
7 matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 13:4344.1 is hereby enacted to read as follows:

10 §4344.1. Deletion of inscriptions on mortgage certificates ordered by a sheriff

11 A. For immovable property procured pursuant to a judicial sale under a writ  
12 of fieri facias or a writ of seizure and sale, the clerk of court, or the recorder of  
13 mortgages for Orleans Parish, or his successor, shall partially cancel from a  
14 mortgage certificate ordered in connection with a judicial sale the inscription of any  
15 legal or judicial mortgage, lien, or privilege, appearing on the certificate, upon the  
16 filing of an affidavit executed by an officer of a title insurer duly licensed by the  
17 Louisiana Department of Insurance. The affidavit shall set forth all of the following:

18 (1) The name of the title insurer, the name of the affiant, and the office  
19 which the affiant holds.

20 (2) The fact that a mortgage certificate was ordered in connection with a  
21 judicial sale under a writ of fieri facias or a writ of seizure and sale.

22 (3) The number of the judicial proceeding in which the mortgage certificate  
23 was ordered, the name of the person and the property on which the mortgage  
24 certificate was issued, and the mortgage certificate number if it bears one.

1           (4) The title insurance company has conducted an investigation into the  
2           identity of the owner of the property and of the person identified in the inscription  
3           sought to be partially canceled on the mortgage certificate.

4           (5) The individual against whom the mortgage, lien, privilege, or other  
5           encumbrance was recorded and described in the affidavit is not the same person  
6           whose property is being sold at the judicial sale for which the mortgage certificate  
7           was issued.

8           (6) A direction from the title insurer to the clerk of court or recorder of  
9           mortgages to partially cancel from the mortgage certificate the encumbrance  
10          identified on the affidavit.

11          (7) The title insurer agrees to be liable to and defend and indemnify the clerk  
12          of court or recorder of mortgages, the sheriff, and any person relying upon the  
13          cancellation by affidavit for any damages that they may suffer as a consequence of  
14          such reliance if the recorded affidavit contains incorrect statements that cause the  
15          recorder to incorrectly partially cancel on the mortgage certificate ordered in  
16          connection with the judicial sale the inscription of a mortgage, lien, privilege, or  
17          other encumbrance from the mortgage certificate.

18          B. The title insurer shall file the affidavit into the mortgage records, and the  
19          filing of the affidavit shall operate as a partial cancellation on the mortgage  
20          certificate of the inscriptions of the encumbrances identified in the mortgage  
21          certificate.

22          C. The sheriff shall proceed with the judicial sale without regarding the  
23          partially canceled inscription as superior to that of the seizing creditor, and the  
24          subsequent judicial sale shall be made free and clear of the partially canceled  
25          inscriptions identified in the affidavit.

26          D. Any person in whose favor a partially canceled inscription was recorded  
27          shall have a cause of action against the title insurer in the event the mortgage, lien,  
28          privilege, or other encumbrance which was partially canceled from the clerk's  
29          mortgage certificate was legally enforceable at the time of the deletion against the  
30          person or property described in that certificate because the obligor under the legal

1            or judicial mortgage, lien, or privilege, was in fact the same person whose property  
 2            was sold. The cause of action created by this Subsection shall prescribe on the same  
 3            date that the cause of action to enforce the underlying legal or judicial mortgage,  
 4            lien, or privilege prescribes.

5            E. A title insurer whose officer has signed an affidavit that is provided to the  
 6            clerk of court or the recorder of mortgages pursuant to this Section and that contains  
 7            incorrect statements causing the recorder to incorrectly partially cancel the  
 8            inscription of a mortgage or privilege from his certificate is liable to and shall defend  
 9            and indemnify the clerk of court or the recorder of mortgages, the sheriff, and any  
 10           person relying upon the partial cancellation on the mortgage certificate for any  
 11           damages that they may suffer as a consequence of such reliance.

12           F. The clerk of court and the recorder of mortgages shall not be liable for any  
 13           damages resulting to any person or entity as a consequence of partially canceling  
 14           from the certificate a legal or judicial mortgage, lien, or privilege pursuant to an  
 15           affidavit which complies with the provisions of this Section.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_