

Regular Session, 2008

ACT No. 651

HOUSE BILL NO. 1067

BY REPRESENTATIVES EDWARDS AND DOWNS

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:

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

22 (2) A description of the paraphed promissory note and the encumbered
23 immovable property.

24 (3) The affiant is the obligee of record of the paraphed promissory note.

1 (4) The note has been lost or destroyed and cannot be presented.

2 (5) The note is paid, forgiven, or otherwise satisfied.

3 (6) The affiant authorizes the clerk of court and ex officio recorder of
 4 mortgages to cancel the inscription of the mortgage or vendor's privilege.

5 (7) The affiant has not sold, transferred, or assigned the note to any other
 6 person or entity.

7 (8) The affiant agrees to be personally liable to and indemnify the clerk of
 8 court and ex officio recorder of mortgages and any person relying upon the
 9 cancellation by affidavit for any damages that they may suffer as a consequence of
 10 such reliance if the recorded affidavit contains incorrect statements that cause the
 11 recorder to incorrectly cancel the recordation of a mortgage or privilege.

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

19 D. The clerk of court and ex officio recorder of mortgages shall not refuse
 20 to accept an affidavit which complies with this Section and shall not require the
 21 filing of a mandamus proceeding as a condition of canceling the inscription of a
 22 mortgage or vendor's privilege.

23 E. Any person in whose favor a cancelled inscription was recorded shall
 24 have a cause of action against the affiant in the event the note was not paid, forgiven,
 25 or otherwise satisfied and the mortgage or vendor's privilege cancelled from the
 26 mortgage records was legally enforceable. The cause of action created by this
 27 Subsection shall prescribe on the same date that the cause of action to enforce the
 28 underlying mortgage or vendor's privilege prescribes.

29 F. An affiant who has signed an affidavit that is provided to the clerk of
 30 court or the recorder of mortgages pursuant to this Section and that contains incorrect

1 statements causing the recorder to incorrectly cancel the inscription of a mortgage
 2 or privilege from his certificate is liable to and shall indemnify the clerk of court or
 3 the recorder of mortgages, the sheriff, and any person relying upon the cancellation
 4 for any damages that they may suffer as a consequence of such reliance.

5 Section 2. The provisions of this Act are declared to be curative and remedial and
 6 therefore shall be applied retroactively as well as prospectively.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____