

2015 Regular Session

SENATE BILL NO. 265

BY SENATOR BROOME

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

IMMOVABLE PROPERTY. Requires the recordation of certain instruments regarding real property rights and provides for the allocation of fees and penalties concerning the recordation requirement. (8/1/15)

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AN ACT

To amend and reenact Civil Code Article 3338 and to enact R.S. 13: 844(F), relative to the recordation of certain instruments involving a real right in an immovable; to require record notice of the transfer or establishment of a real right in an immovable and the transfer of a promissory note secured by a mortgage; to provide for the imposition of civil penalties and civil relief; to provide for the allocation of revenues derived from certain filing fees and assessed penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Art. 3338 is hereby amended and reenacted to read as follows:

Art. 3338. Instruments creating real rights in immovables; recordation required to affect third persons; mandatory recording of certain instruments creating, establishing or transferring real rights in immovables

A. The rights and obligations established or created by the following written instruments are without effect as to a third person unless the instrument is registered by recording it in the appropriate mortgage or conveyance records pursuant to the provisions of this Title:

- (1) An instrument that transfers an immovable or establishes a real right in

1 or over an immovable.

2 **(2) An instrument or endorsement that transfers an interest in a note**
3 **that is secured by a mortgage or a deed of trust on an immovable.**

4 ~~(3)~~ The lease of an immovable.

5 ~~(3)(4)~~ An option or right of first refusal, or a contract to buy, sell, or lease an
6 immovable or to establish a real right in or over an immovable.

7 ~~(4)(5)~~ An instrument that modifies, terminates, or transfers the rights created
8 or evidenced by the instruments described in Subparagraphs (1) through ~~(3)(4)~~ of this
9 Article.

10 **B.(1) An assignee of a legal or beneficial interest in an instrument**
11 **described in Paragraph A of this Article shall record each such assignment in**
12 **the parish where the property that is subject to the right created or evidenced**
13 **by the instrument is situated.**

14 **(2) The assignee shall record an assignment within thirty days after the**
15 **assignee first acquires the assignment. However, an assignee that reassigns the**
16 **note or other instrument prior to the thirtieth day after first acquiring the**
17 **assignment may request that the subsequent assignee file the unfiled assignment**
18 **with the new reassignment.**

19 **(3) The recorded assignment shall include the name and address of the**
20 **assignor and the assignee of the instrument, the legal description and address**
21 **of the encumbered property, the original recordation number of the document**
22 **that first created or first evidenced the right or rights that are being assigned,**
23 **and the date of the assignment.**

24 **(4) At the time of filing the ex officio recorder of the property in which**
25 **the encumbered property is located shall demand and receive filing fees as**
26 **provided in R.S. 13:844 (A)(1) and (2) and any penalties assessed pursuant to**
27 **Subparagraph (5) of this Paragraph.**

28 **(5) Each failure to record an assignment within the time frame specified**
29 **in Subparagraph (2) of this Paragraph shall subject the assignee to a civil**

1 penalty of two hundred and fifty dollars. The penalty shall be assessed by and
2 payable to the ex officio recorder of the parish in which the encumbered
3 property is situated.

4 C. The failure of the assignee to record the assignment of an instrument
5 described in Paragraph A of this Article shall not affect the validity or
6 perfection, or invalidity or lack of perfection, of the interest established or
7 evidenced by the instrument under applicable law.

8 D. Evidence of the recorded assignment required under Paragraph B of
9 this Article shall be made part of any authenticated record filed in an executory
10 or ordinary foreclosure action pursuant to R.S. 10:9-629.

11 E. The obligor on a mortgage instrument shall have the right to recover
12 damages for an assignee's willful failure to comply with Subparagraph (B)(2)
13 of this Article. Damages shall not exceed three times the actual damages plus
14 attorney fees and court costs, but in no event shall be less than five hundred
15 dollars.

16 Section 2. R.S. 13:844(F) is hereby enacted to read as follows:

17 §844. Fees of ex officio recorders

18 * * *

19 F. The funds derived by the ex officio recorders of the various parishes
20 from that portion of the fees and any penalties collectable pursuant to Civil
21 Code Art. 3339 regarding the filing of assignments of mortgages and notes shall
22 be allocated exclusively as follows:

23 (1) Sixty percent shall be retained by the ex officio recorder.

24 (2) Forty percent shall be paid to the Louisiana Housing Trust Fund
25 established pursuant to the Louisiana Housing Trust Fund Act of 2003 and
26 administered by the Louisiana Housing Corporation pursuant to R.S. 40:600.86,
27 et seq.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Jerry J. Guillot.

DIGEST

SB 265 Original 2015 Regular Session Broome

Present law provides that the rights and obligations established or created by the following written instruments are without effect as to a third person unless the instrument is registered by recording it in the appropriate mortgage or conveyance records pursuant to present law:

- (1) An instrument that transfers an immovable or establishes a real right in or over an immovable.
- (2) The lease of an immovable.
- (3) An option or right of first refusal, or a contract to buy, sell, or lease an immovable or to establish a real right in or over an immovable.
- (4) An instrument that modifies, terminates, or transfers the rights created or evidenced by the instruments described in (1) through (3) above.

Proposed law retains present law and adds an instrument or endorsement that transfers an interest in a note that is secured by a mortgage or a deed of trust on an immovable.

Proposed law requires an assignee of a legal or beneficial interest in an instrument listed above to record each such assignment in the parish where the property that is subject to the right created or evidenced by the instrument is situated. Provides that the assignee shall record an assignment within 30 days after the assignee first acquires the assignment. However, an assignee that reassigns the note or other instrument prior to the thirtieth day after first acquiring the assignment may request that the subsequent assignee file the unfiled assignment with the new reassignment. Requires that the recorded assignment include the name and address of the assignor and the assignee of the instrument, the legal description and address of the encumbered property, the original recordation number of the document that first created or first evidenced the right or rights that are being assigned, and the date of the assignment. Provides that at the time of filing the ex officio recorder of the parish in which the encumbered property is located shall demand and receive filing fees as provided in present law and any penalties assessed as provided in proposed law. Provides that each failure to record an assignment within the specified time frame in proposed law shall subject the assignee to a civil penalty of \$250 with the penalty being assessed by and payable to the ex officio recorder of the parish in which the encumbered property is situated.

Proposed law provides that the failure of the assignee to record the assignment of an instrument shall not affect the validity or perfection, or invalidity or lack of perfection, of the interest established or evidenced by the instrument under applicable law.

Proposed law provides that evidence of the recorded assignment be made part of any authenticated record filed in an executory or ordinary foreclosure action pursuant to R.S. 10:9-629.

Proposed law provides that the obligor on a mortgage instrument shall have the right to recover damages for an assignee's willful failure to comply with proposed law. Provides that damages shall not exceed three times the actual damages plus attorney fees and court costs, but in no event shall be less than \$500.

Present law authorizes the clerks of court as ex officio recorders to charge certain fees for services, including:

- (1) For filing and recording any document, \$25 dollars per book for the first page and \$10 for each subsequent page per book up to 10 pages. All documents that exceed 10 pages, \$25 for the first page and eight dollars for each subsequent page.
- (2) For indexing of all documents filed for record for each name after the first name that is required to be indexed, five dollars per name.

Proposed law retains present law and adds that the funds derived from that portion of the fees and any penalties collectable pursuant to Civil Code Art. 3339 regarding the filing of assignments of mortgages and notes shall be expended exclusively as follows:

- (1) 60% shall be retained by the ex officio recorder.
- (2) 40% shall be paid to the Louisiana Housing Trust.

Effective August 1, 2015.

(Amends CC Art. 3338 and adds R.S. 13:844(F))



SB 265 is sought to require/mandate *all* documents and contracts relating to real estate (immovable property), including assignments of mortgages from financial institution to financial institution, be recorded. Currently Louisiana law does not require that such documents be recorded.

Recording all real estate transactions is important because:

- It is in the consumers'/homeowner's best interest in our State to be able to research his or her chattel/mortgage documents held by a financial institution at the Louisiana Clerk of Courts, as well as other assignments recorded electronically
- It allows for full and complete chain of title to be of public record in the Clerk of Courts office where the immovable property is located
- It allows for and is consistent with maintaining lien priority under the Louisiana Public Records Doctrine
- Louisiana law affords greater protection for those who record against third party interests (Title IX, Louisiana Revised Statutes, Article 3348)
- It removes any potential for clouded titles or claims from innocent 3rd party purchasers, unlike with adjudicated and heirship property
- A homeowner wishing to redeem their foreclosed property will be able to search the records at the Clerk of Courts to determine from whom the mortgage can be redeemed, even after it is transferred by assignment
- There is no rational basis to treat one group or class of recorders (financial institutions) differently from others that record

Louisiana has a clear statutory scheme promoting the recordation of mortgages, mortgage transfers, assignments from financial institutions and brokers, and other instruments affecting immovable property, but there is nothing in the language that supports a mandate to record. Because Louisiana law affords greater protection for those who record against third party interests, the recording statutes serve as an incentive to record mortgages, but lack essential language to command it. Therefore, the Louisiana law regarding the recording of mortgage assignments is permissive, rather than mandatory. Consumer advocates suggest that it be corrected and be a mandate to record mortgages and assignments.

Allocation of Recording Fees to the Louisiana Housing Trust Fund

The Louisiana Housing Trust Fund is an existing state program that received a one-time allocation of \$25 million in 2007 (with \$22 million awarded), building 323 homes to date including 17 units of permanent supportive housing, 79 units for very low-income residents (30% AMI and below), and 105 accessible and adaptable units for persons with disabilities. The Trust Fund currently does not have a dedicated source of funding, and all of its original allocation is spent.

The increased fees that will be captured by the Clerks of Court once recording becomes mandatory are an ideal source of revenue for the Louisiana Housing Trust Fund. The current legislation proposes to capture 40% (subject to negotiation) of the **increased** revenue to develop more affordable homes throughout the State. The development of these homes will in turn trigger additional sale and mortgage recordings, which will inure to the benefit of the Clerks of Court. In addition, the increased revenue for the Clerks will enable them to upgrade their technology systems to accept and process electronic filings, which will increase efficiency and reduce labor costs, resulting in increased net revenue for operations.



Louisiana Housing Trust Fund (LHTF)

The Louisiana Housing Trust Fund was approved by the legislature in 2003 and received a one-time \$25 million allocation in 2007

Housing Trust Funds are used for all types of housing development/construction including

1. Single family
 - i. Home Ownership
 - ii. Rental
2. Multi-family

Housing Trust Funds develop/construct housing for a range of incomes including moderate and low income households

Trust funds are flexible sources of development funds that can meet a variety of needs that other sources cannot:

- Funds can be used in large projects (e.g. multi-million dollar tax credit deals) as an additional layer of funding for deeper affordability.
- The Trust Fund can be used as the primary funding source for smaller projects that cannot access tax credits. For example, a four unit home ownership project in Iberia Parish was successfully completed with Trust Funds in 2013.

Trust Funds are flexible in terms of the type of housing programs that can be undertaken. Other states have used trust fund dollars to create affordable housing that targets but is not limited to:

- Residents of disaster areas
- Veterans
- Homeless
- Mentally ill
- Senior Citizens
- Disabled Citizens
- Extremely Low income Citizens

Trust Funds can be used to underwrite programs for:

- Preservation and repair of owner occupied homes
- Homeless Prevention
- Utility arrearage
- Capacity building for non-profit organizations
- Support of blight elimination projects by non-profit agencies