

UNDERWRITING BULLETIN TO LOUISIANA AGENTS

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Name: **Legislative Update**

The 2015 legislative session has been underway for about a week now, and the following bills are of interest to the title industry:

HB 496 (Rep. Willmott)—This would change the recordation and most importantly the prescriptive periods for loans by savings and loan associations. As of now under CC 3357 & 3358, the prescriptive period for recordation is basically 41 years. This bill would reduce that to 5 years after the latest maturity date in the instrument.

HB 687 (Rep. Hazel)—This bill provides that upon the termination of a trust which owns immovable property, if the act of termination is not discernible on the face of the recorded trust agreement or the extract, the termination would not effect the dispositive provisions of the trust as to third parties until an act evidencing termination has been recorded in the parish where the immovable property is located.

It also adds a provision, that when recording an extract of a trust, rather than the full trust instrument, any restrictions on the trustee to sell, lease or encumber immovable property must be stated.

SB 265 (Sen. Broome)—This bill would require the recordation of an assignment or transfer of an interest in a note secured by a mortgage. It also provides for penalties payable to the clerk of court for failure to conform. Not sure why the clerk should receive the penalties. Subsection C provides, however, that the failure of the assignee to record *shall not* affect the validity or perfection of the interest.

As of now, a note which is bearer paper, does not require a recorded assignment, so this may create a title examination concern, but for the savings clause in subsection C. It seems more problematic and is probably aimed at the electronic assignments commonly taking place to MERS.

This bill seems only to put money into the clerk's office, but may be of some assistance when trying to determine the last holder of a note for payoff purposes.

HB 504 (Rep. Morris)—This bill would amend R.S. 9:2371.1 to provide that no party may contradict a donation that “on its face is in authentic form” to the prejudice of a third party in good faith who acquires an interest after recordation. This was filed in response to a decision of the first circuit in *Eschete v. Eschete*, 142 So.3d 985, wherein the court nullified an authentic act where the notary and witnesses were in different rooms. It seems this should be broadened to include any authentic act. But be careful of executing an act where the witnesses and signatories and notary are not in the same room, may be subject to attack under *Eschete*.

HB 422 (Rep. Garofalo)—This, in my opinion, is a very dangerous bill. It adds to those authorized to execute a notarial act of correction under R.S. 35:2.1(A)(1) to include “any attorney or **notary** who certifies that he has inspected and examined the public records and any other relevant factual information affecting the property and states that the records contain obvious and apparent clerical errors, and who itemizes and sets forth by specific reference the documents evidencing the errors”. My concern is that the attorney or notary referred to does not need to have any connection to the original transaction and may not have any real idea of what the intent of the parties was. Seems it should be left to the notary before whom the act was executed or someone who has his/her records, if deceased, or otherwise require a full act of correction by the parties. I solicit your comments on this.

HB 492 (Reps Williams and Seabaugh)—This will change the prescriptive period on open account actions, actions for rent and annuities, and payment of wages from 3 to 5 years.