



UNDERWRITING BULLETIN TO LOUISIANA AGENTS

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Name: Acts of the Louisiana Legislature - 2011

Here is a summary of the 2011 Acts of the Louisiana Legislature that Louisiana title agents should review. You may view these new laws at www.legis.state.la.us . First click on the session tab, enter the bill number and select "Text Current" to see the new law. Unless noted below for a particular act, these laws are currently in effect.

Act 84 (HB 227) – Adds a provision to the Louisiana Condominium Act to require a condominium association to maintain a fidelity bond in an amount equal to the lesser of one million dollars or the sum of the association’s reserve balance plus one fourth of its aggregate annual assessments. An association whose managing agent maintains a bond that complies with the new provision is deemed to be in compliance with the law. Proof of compliance must be maintained on the premises and available for inspection upon request by a member. The new provision appears at R.S. 9:1123.113.

COMMENT: Although not required by the statute, a title agent should disclose that he made no inquiry as to the existence and sufficiency of the association’s fidelity bond required by law, as non-compliance with this statute does not affect title. Any loss sustained by an insured due to the failure of the association or its managing agent to maintain the required fidelity bond would not be covered under a loan or owner’s policy insuring a condominium unit.

Act 180 (HB 344) – Establishes a 10 day grace period for payment of condominium assessments before a late charge may be imposed by a condominium association. The late charge may not exceed thirty percent of the monthly assessment. The Act further requires a condominium association to provide each unit owner with written or electronic notice setting forth the amount of the assessment, its due date and a statement that the assessment must be paid within 10 days of the due date. This Act amends R.S. 9:1123.102 (11).

Act 124 (SB 24) – provides a Uniform Cancellation Affidavit for use throughout the State to cancel mortgage inscriptions of conventional mortgages and vendor’s privileges. A copy of the affidavit is attached. This new uniform affidavit is in addition to other cancellation provisions contained in Title 9 and does not replace them. The Act adds a penalty provision. A person who knowingly prepares, signs or files a uniform cancellation affidavit containing materially false or incorrect statements may be charged with a felony under R.S. 14:133. The Act appears in Title 9 at R.S. 9:5166.

COMMENT: This new affidavit does not dispense with obtaining the actual cancellation documentation required by the various cancellation statutes. While the documentation will no longer be filed with the clerk where a uniform cancellation affidavit is used, title agents should retain the actual cancellations in their files.

Act 164 (HB 85) – On January 1, 2012, transfers of an interest in 1-4 family residential property which are insured by an owner’s title policy and mortgages on 1-4 family residential property insured by a loan title policy must contain: 1) the name, address and Louisiana license number of the title producer issuing the policy; 2) the name of the title insurance underwriter; and 3) the name and bar roll number of the Louisiana attorney who rendered the written title opinion upon which the title policy is based. This information can be typed or stamped on the document to be recorded or appear on a separate attachment. Act 164 appears at R.S. 22:513.1.

COMMENT: This Act appears in the Louisiana Title Insurance Act and the penalty provision contained in R.S. 22:536 will apply to violations of the Act. The Department of Insurance may impose fines not exceeding \$50,000 per violation on a corporate producer and not exceeding \$10,000 per violation on an individual producer. DOI may also revoke a producer’s license for violations of the Title Insurance Act. Therefore, it is important to make certain that you are in compliance with this Act no later than January 1, 2012.

Act 226 (HB 184) – clarifies that a co-owner or co-heir is liable to his co-owners or co-heirs for three times the fair market value of any trees that he removes without the permission of the other co-owners or co-heirs, or pursuant to specific terms of a valid contract. He is also liable for reasonable attorney fees and costs. The law appears at R.S. 3:4278.1

Act 316 (SB 208) requires a court in an expropriation proceeding to award an owner of immovable property reasonable attorney fees and court costs if the plaintiff fails to acquire at least 50% of the immovable property requested in the petition for expropriation. The Act amends R.S. 19:201.

Act 323 (SB 22) – amends several articles contained in the Code of Civil Procedure dealing with small successions. The law clarifies that the small succession affidavit may be used for any decedent who leaves property having a gross value of \$75,000.00 or less, regardless of decedent’s date of death.

If property has been damaged by a disaster for which a declaration of emergency has been issued, the Act grants a co-owner in possession of immovable property for more than a year the power to manage the property on behalf of all co-owners. This power to manage includes the power to mortgage the property in order to secure funds to repair or reconstruct the immovable property. The power to manage also allows the managing co-owner to consent to any restrictions imposed by a public entity as a condition to receipt of funds. This power to manage may be negated by written agreement of the co-

owners filed in the mortgage records. This provision is designated CCP Art. 3422.1 and expires on January 1, 2013.

The Act also repeals Paragraph D of CCP 3431 that limited “small succession immovable property” to the residence of the decedent or surviving spouse or cemetery spaces.

Act 325 (SB 36) – amends the broad definition of “abstract” appearing in the original Title Insurance Act. If the abstract is to serve as the basis of an examining attorney’s title opinion in contemplation of issuance of a title commitment or title policy, it must contain: 1) a written history or summary of the recorded acts comprising the chain of title, 2) a certification that the abstract has been prepared in accordance with the minimum search periods mandated by the Title Insurance Act, 3) copies of the instruments appearing in the chain of title or extracts of the information prepared by the abstractor, and 4) the signature of the abstractor and date of the abstract. A stand-up examination of the public records by a Louisiana licensed attorney may be conducted if an abstract is not prepared.

The Act expands the definition of “public records.” In addition to the mortgage and conveyance records, the abstractor must examine the ad valorem tax records for the parish and political subdivision where the property is located.

The law now expressly provides that certifying, giving or rendering a title opinion as the basis of a title report constitutes the practice of law.

The new law appears at R.S. 22:512 and R.S. 37:212(A)(2).

Act 342 (SB 225) – imposes a penalty equal to \$500.00 and actual damages recoverable from a lender who does not timely release a mortgage on 1-4 family residential property. The lender must cancel the mortgage within 45 days of receipt of the payoff.

In order to trigger the penalty, the borrower, his successor or the settlement agent must submit to the lender a written request for a release signed by the mortgagor. The lender has the right to designate the address to which the written request must be sent, but the address cannot be different from the address where the payoff check is sent. When a settlement agent is involved, he or she may request that the lender send the release directly to the settlement agent. The lender may charge fees and costs not in excess of \$40.00 plus postage, provided the charges are itemized in the payoff statement or other communication. The lender is not liable for damages, fees or costs if a valid act of cancellation is sent to a settlement agent who fails to cancel the mortgage. The settlement agent may be liable for the actual damages and penalty where he or she fails to cancel the mortgage after receiving a valid cancellation from the lender and notice of noncompliance.

If no settlement agent is involved, the lender must send the act of release and request for cancellation directly to the clerk of court. The mortgagee may charge for his services in preparing and delivering the act of release and request for cancellation to the clerk of court. The lender’s charges may not exceed \$100.00 plus the costs payable to the clerk. The borrower has the right to obtain a copy of the release without charge.

Before the lender or settlement agent is liable for the statutory penalty and damages, they must be provided with a written notice of noncompliance that identifies the mortgage and contains an explanation of their failure to comply with the law. No penalty may be awarded if the lender or settlement agent sends the release and request for cancellation to the clerk within 15 days of receipt of the notice of noncompliance. At the expiration of the 15 days, if the mortgage has not been cancelled,

the mortgagor or his successor in ownership may bring a summary proceeding to recover the penalties and damages provided for in this Act.

This law is only applicable to mortgages recorded on or after January 1, 2012. It appears at R.S. 9:5165 and R.S. 9:5557.

Act 373 (HB 275) - allows for delivery of an insurance policy by electronic means in accordance with the Louisiana Electronic Transactions Act (R.S. 9:2601 et seq.).

Act 425 (HB 135) – proposes an amendment to the Louisiana Constitution that will prohibit imposition of any new taxes or fees upon the sale or transfer of immovable property after November 30, 2011. This must be approved by the voters at the next statewide election. If approved, the law will add Section 2.3 to Article VII of the Louisiana Constitution. According to the fiscal note for the bill, it will not affect the existing documentary transaction tax in Louisiana.

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