



UNDERWRITING BULLETIN TO LOUISIANA AGENTS

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Name: Acts of the Louisiana Legislature - 2012

Here is a summary of the 2012 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, select "2012 Regular Legislative Session" and enter the bill number. Select "Text Current" to see the new law. Unless noted below for a particular act, these laws become effective on August 1, 2012.

Act No. 179 (HB 170) provides that if a bankruptcy court order authorizing a sale of property free and clear of all judgments, mortgages and privileges does not specify the encumbrances to be cancelled, the trustee or former trustee, or his attorney may execute an affidavit that specifies which encumbrances are to be partially cancelled as to the property subject to the order. The affidavit must be filed along with a request to cancel. The Act sets forth what information must be contained in the affidavit and requires that a certified copy of the bankruptcy court order be attached to the affidavit.

Act No. 394 (HB 450)

This Act changes the time period within which the holder of a claim or privilege under the Private Works Act must institute an action against the owner for enforcement of the claim or privilege.

Under current law, an action against the owner is considered timely as long as it is filed within one year after the expiration of the time for filing a statement of claims and privileges as set forth in R.S. 9:4822.

On or after January 1, 2013, the holder of the claim or privilege must file an action against the owner within one year from the date on which the statement of claim or privilege is filed.

In order to preserve the claim or privilege as to third persons, a notice of pendency of action (formerly “lis pendens”) must be filed within one year from the date of filing of the statement of claim or privilege. This time period did not change. R.S. 9:4833E already provided that the one year period within which to file the notice commenced from date of filing the claim or privilege.

The Act did not change the time period within which a claimant may bring an action against a contractor. An action against a contractor or his surety is timely filed as long as it is brought within one year after the expiration of the time given by R.S. 9:4822 for filing the statement of claim or privilege.

Act No. 397 (HB 470)

This Act authorizes a Louisiana notary who is in possession of the records of a notary who signed an act or prepared an act to execute a notarial act of correction if the notary who signed or prepared the act is deceased, incapacitated or whose whereabouts are unknown. The act of correction executed by the Louisiana notary must be in authentic form, i.e. in the presence of a notary and two witnesses who also must sign the act of correction.

Act No. 425 (HB 941)

This Act amends a provision in the Private Works Act regarding the legal effect of a no work affidavit. The Act clarifies that a mortgagee who obtains a no work affidavit and files the affidavit along with the mortgage or privilege in accordance with R.S. 9:4820C shall have priority over privileges granted by the Private Works Act (other than privileges granted to laborers of the owner, contractor or subcontractor). It makes no difference as to ranking that work may have commenced or that materials were delivered to the site after the date of the affidavit but prior to recordation of the affidavit and mortgage. This eliminates the need to obtain two no work affidavits on large commercial transactions, one dated prior to recordation of the mortgage and another dated after the mortgage is filed.

Act No. 504 (HB 940)

This amendment relative to the notice of seizure required in connection with judicial sales clarifies that only one notice of seizure is required as long as the sheriff has not returned the writ to the clerk of court.

Act No. 618 (SB 70)

This Act redefines ‘small succession’ to include the succession or ancillary succession of a person who died at least 25 years prior to filing the small succession affidavit regardless of the value of the succession property. The Act also sets forth the requirements for the small succession affidavit where the decedent was domiciled outside of Louisiana and died testate. This Act became effective 6/7/12.

Act No. 712 (HB 452)

This amendment to R.S. 13:4344.1 provides that it is not necessary for the sheriff conducting a judicial sale to cancel an assignment, assumption or modification of a cancelled mortgage. The Act also provides that it is not necessary to cancel a prescribed judicial mortgage which has not been reinscribed or for which no pendency of a revival action has been filed. The Act mandates that the sheriff proceed with the sale without regard to the above uncanceled items.

Act No. 739 (HB 468)

This Act amends the Civil Code articles providing for a right of passage. In response to the Third Circuit decision in *Perdue v. Cruse*, 38 So. 3d 1235 (La. App. 2010), holding that the owner of an enclosed estate is not entitled to supply his property with utilities crossing over the servient estate, the Legislature established the right of the owner of an enclosed estate to obtain utilities that cross over his neighbor's property. The owner of the enclosed estate must compensate his neighbor for this right of passage and is liable to the owner of the servient estate for new or additional maintenance burdens upon the servient estate.

The location of the utility right-of-way shall be the same as the servitude of passage unless an alternate location is least injurious to the servient estate and intervening lands. A court, in deciding on the location of the servitude for passage or utility, must make a determination that the servitude of passage or utility shall not affect the safety of operations on the servient estate or significantly interfere with the operations conducted by the owner on the servient estate. This determination must be made prior to granting the servitude.

Utility is defined as "a service such as electricity, water, sewer, gas, telephone, cable television and other commonly used power and communication networks required for the operation of an ordinary household or business."

Act No. 740 (HB 469)

This amendment to the Louisiana Trust Code eliminates the requirement that an extract of trust contain a description of property owned by the trust unless the trust instrument contains a transfer of immovable or other property to the trust. A clerk certified copy of a trust or extract by the clerk for the parish where the original trust instrument or extract was filed may be filed in other parishes where trust property is located.

If the recorded trust or extract fails to note any limitation or restriction on a trustee's powers or duties, a trustee shall be deemed to have all powers and duties granted under the Louisiana Trust Code.

The Act applies to both foreign and domestic trusts.

OTHER ACTS OF INTEREST

Act No. 20 (HB 405) allows the clerk to charge an additional fee of up to \$25 per debtor where the judgment or lien to be recorded does not contain the last 4 digits of the debtor's social security number and date of birth, or, in the case of a lien against a debtor doing business other than as an individual, the IRS taxpayer identification number. This additional fee may not be charged if at the time of recording a judgment, the creditor attaches to and records an affidavit setting forth the DOB and last 4 digits of the social security number.

Where a person files an affidavit of distinction pursuant to R.S. 9:5501 through 9:5503 to distinguish a judgment recorded on or after July 1, 2012, the clerk may not charge a filing fee. This Act was effective July 1, 2012.

Act No. 79 (HB 311) amends the condominium act to allow a condominium unit owners' association to obtain an equivalent form of insurance covering the officers, directors and employees of the association in place of the fidelity bond required by current law.

Act No. 96 (HB 624) requires appraisers assessing losses under a fire insurance policy in accordance with R.S. 22:1311 (F)(2) to register with the Department of Insurance. The registration must be renewed each year.

Act No. 112 (HB 1029) entitled "New Manufactured And Modular Home Warranty Act" adopts building standards for manufactured and modular housing. The standards for manufactured housing are those in compliance with the National Manufactured Home Construction and Safety Standards Act of 1974 (42USC 5401 *et seq.*), regulations promulgated pursuant thereto, and those adopted by the Louisiana Manufactured Housing Commission. For modular homes, building standards are those contained in the International Residential Code as adopted by the Louisiana State Uniform Construction Code Council.

Depending on the type of defect, the Act establishes a 1, 2 or 5 year warranty in favor of the initial purchaser, his successor in title and invitees. The 1 year warranty period covers any defect due to noncompliance with building standards or due to other defects in materials or workmanship not regulated by building standards. The 2 year period extends to defects in plumbing, electrical, heating, cooling and ventilating systems, and the 5 year period covers major structural defects.

There are 19 enumerated exclusions listed in the act that are not covered by the warranty unless the parties agree otherwise in writing.

The warranties may not be waived by the purchaser or reduced by the builder where the home is a single or multi-family dwelling to be occupied by an owner as his home.

Written notice of the requirements of the Act must be given by the dealer at the time of the closing, or, if there is no closing contemplated, at the time of execution of the purchase agreement. An action to enforce any warranties is subject to a 30 day preemptive period that commences after the expiration of the appropriate time periods. These warranties replace the other warranties in the Civil Code and rights of purchasers to sue for redhibitory vices and defects but in no way do they limit warranties of title.

Act No. 178 (HB 169) amends R.S. 9:2743 to provide that a Louisiana licensed attorney who has ordered a mortgage certificate may furnish an affidavit for the purpose of distinguishing that an uncanceled inscription is not against the person in whose name the certificate is ordered. The affidavit must contain a statement that the attorney agrees to be personally liable and indemnify the clerk and any person relying on the affidavit for any damages they may suffer if the affidavit contains incorrect statements that cause the clerk to delete the open inscription from the certificate. The clerk is not liable in his official capacity for any loss caused by reliance on an incorrect statement in the affidavit.

Act No. 193 (HB 386) allows a homeowner to cancel a home improvement contract for the repair or replacement of a roof system within 72 hours of receipt from his property insurer that all or any part of his claim for the repairs has been denied. The roofing contractor is required to give a notice of the right to cancel in duplicate. This notice must be easily detachable from the contract and must be in boldface type at a minimum size of 10 points. If the roofing contractor has performed any emergency repairs acknowledged in writing by the owner to be necessary to prevent damage to the premises, the contractor is entitled to the reasonable value of the services.

The Act also prohibits a home improvement contractor from advertising or promising to pay or rebate any portion of the owner's deductible. This prohibition includes paying any form of compensation to the owner, including an allowance or rebate, for permitting the contractor to display a sign or providing him with a letter of recommendation. Violation of this provision of the law is considered a prohibited practice under the Louisiana Unfair Trade Practices and Consumer Protection Law.

Act No. 201 (HB 569) amends Section 22:1926(A) of the Insurance Code to require all persons and companies who suspect that a fraudulent insurance act will be, is being or has been committed to report the activity to the Department of Insurance within 60 days of receipt of notice of the fraudulent act.

Act No. 242 (HB 132) amends CCP Article 1314 to provide that personal service on a secretary, receptionist, legal or administrative staff member or paralegal employed by an attorney of record constitutes valid service on the attorney.

Act No. 258 (HB 466) is the Louisiana Law Institute revision of the Civil Code articles entitled “Of Rents and Annuities.” The articles relating to rent of lands have been deleted and replaced with a revision of the laws pertaining to annuity contracts. An annuity contract may involve the transfer of an immovable which is binding on third parties upon recordation. The obligation to make periodic payments, known as the annuity charge, may not exceed 30 years but it may continue for the lifetime of a natural person who is the recipient of an annuity. The effective date of this Act is January 1, 2013.

Act No. 277 (HB 764) is a revision by the Louisiana Law Institute of the Civil Code articles relating to simulations and counterletters. The Act clarifies the law by providing that a counterletter is required to prove that an act transferring immovable property is an absolute simulation. However, a counterletter is not required to prove an absolute simulation where the law creates a presumption that an act is a simulation (e.g. CC Art. 2480 when the seller retains corporeal possession of the thing sold), or when necessary to protect the rights of forced heirs.

CC Art. 2444 is repealed in its entirety. That code article allowed forced heirs to attack a sale of immovable property by parents to their children as a donation in disguise if no price was paid or if the price paid was less than one fourth of the value of the immovable at the time of the sale.

Act No. 279 (HB 929) sets forth grounds for revocation or suspension of a notary public who is not an attorney. The Act permits the district attorney or the attorney general to file a summary proceeding in the district court of either the parish in which the notary is commissioned or the parish where the conduct complained of occurred.

If after a hearing the court finds that the notary public has a felony conviction for which no pardon has been issued, or that the notary public committed an act of “gross misconduct or malfeasance” in the exercise of his notarial powers, or that the notary no longer possesses any qualification required for holding his commission, the Act mandates that the court order revocation of the notary’s commission. If the court finds other violations of the Act, either an order of revocation or suspension may be entered.

A notary whose commission is revoked or suspended is obligated to pay costs and attorney fees. The court may also order that the notary pay restitution to third parties damaged by the notary’s actions.

The Act also requires the secretary of state to suspend the commission of a non-attorney notary public when the notary ceases to be a registered voter in the parish of the notary’s commission, or if the notary is convicted of a felony.

The Act authorizes the Secretary of State to develop a notary education program and requires that after February 28, 2015, any person who provides education and instruction for the notary examination must be a commissioned notary public with statewide authority.

Act No. 445 (HB 26) allows the original owner of expropriated residential property who has possessed and maintained the property for over 30 years to tender payment of fair market value to the expropriating authority, along with an act of transfer. The state or political subdivision that expropriated the property may either execute the act of transfer or file an action for injunction within 30 days of receipt of the tendered payment and act of transfer. If the court finds that the original owner or his heir retained possession of the property for over 30 years, maintained the property and tendered fair market value, the Act requires the court to order the state or political subdivision to execute the act of transfer. The original owner or heir is also entitled to an award for costs and attorney fees.

The Act does not apply to property expropriated for levees, flood control, drainage, storm surge protection or coastal protection. The Act is also inapplicable to property expropriated by the Department of Transportation and Development.

Act No. 492 (HB 361) allows a validly appointed notary public in the parish of his residence to exercise his powers in all adjacent parishes that have a population of less than forty thousand and in which he or his employer maintains an office.

Act No. 702 (HB 274) amends the requirements and procedures for expropriation proceedings on recommendation of the Louisiana Law Institute.

Act No. 829 (HB 1192) authorizes provisional appointment of persons as notaries who reside in parishes with populations of less than forty thousand despite the fact that such persons have not passed the performance assessment component of exams administered between December 1, 2009 and December 31, 2012. These notaries may only exercise notarial functions within the course and scope of their employment. They may not draft wills, trusts, or transfers of immovable property, including sales and donations. All persons appointed pursuant to this Act are required to attend a notary orientation class approved by the Secretary of State. The Act is primarily designed for banks to facilitate operations in rural areas. The provisions of the Act expire on August 1, 2016. Any commission granted pursuant to the Act expires on that date unless the notary commissioned under authority of the Act has subsequently passed all components of the required notarial examination.

The effective date of the Act is January 1, 2013.

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