

2022 Regular Session

SENATE BILL NO. 363

BY SENATOR FOIL

SEIZURES/SALES. Provides for release of superior mortgage payoff amount for sheriff sales. (8/1/22)

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AN ACT

To amend and reenact R.S. 6:333(B) and to enact Code of Civil Procedure Art. 2336.1, relative to the judicial sale of property; to provide for the determination or superior encumbrances or privileges; to provide for issuance of a subpoena duces tecum upon the owner or servicer of an obligation secured by a superior encumbrance; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Civil Procedure Art. 2336.1 is hereby enacted to read as follows:

Art. 2336.1. Determination of superior encumbrances or privileges

A. To determine the amount due to the owner of any mortgage, security interest, lien, privilege, or other encumbrance that is superior to that of the seizing creditor, hereinafter "superior encumbrance", the sheriff or the seizing creditor may cause a subpoena duces tecum to be issued by the clerk of court to the owner or servicer of an obligation secured by a superior encumbrance, requiring that the owner or servicer of any such obligation produce to the sheriff or to the seizing creditor a document setting forth the amount due to the owner of the obligations secured by the superior encumbrance, as of the

1 scheduled date of the sheriff's sale. The subpoena shall be served on the owner
2 or servicer of the superior encumbrance at least seven calendar days before the
3 response is due, and shall be made returnable at least seven calendar days prior
4 to the scheduled date of the sheriff's sale, at the office of the sheriff or at the
5 office of the seizing creditor or its attorney.

6 B. The owner or servicer shall respond to the sheriff or the seizing
7 creditor, depending on who has caused the subpoena to issue, at least seven
8 calendar days prior to the scheduled sheriff's sale. The response shall include
9 the total amount of all obligations secured by the superior encumbrance, and
10 shall itemize the amount due on each obligation by setting out the principal,
11 accrued interest, any negative or positive escrow, any other charges or expenses
12 of all obligations secured by the superior encumbrance, and any attorney fees,
13 courts costs and sheriff's costs that have been incurred in connection with the
14 enforcement of the superior encumbrance or the obligations secured by the
15 superior encumbrance. If a response is timely made, no personal appearance
16 shall be required in connection with the subpoena.

17 C. The subpoena duces tecum may be served by the sheriff or by the
18 seizing creditor either in the manner required for other subpoenas, or by
19 certified mail, return receipt requested, or by commercial courier. The
20 subpoena may be served within or outside of the state.

21 E. More than one subpoena duces tecum may be issued in connection
22 with a superior encumbrance if there is more than one superior encumbrance.

23 F. If the date of the sheriff's sale is postponed, or stopped and thereafter
24 rescheduled, the seizing creditor may request that the owner or servicer of the
25 superior encumbrance update the amounts due. The request must be made in
26 writing and served on the owner or servicer of the superior encumbrance either
27 in the manner required for subpoenas, or by certified mail, return receipt
28 requested, or by recognized overnight courier, at least seven days before the
29 response is due.

related to the subpoena is required.

Proposed law provides that the subpoena duces tecum may be served by the sheriff, the seizing creditor, or by the clerk of court, or by certified mail or commercial courier, and may be served within or outside the state. Proposed law also provides for more than one subpoena duces tecum to be issued in connection with a superior encumbrance if there are multiple superior encumbrances.

Proposed law provides that if the sheriff's sale is postponed, or canceled and thereafter rescheduled, then the seizing creditor may request that the owner or servicer of the superior encumbrance update the amounts due. Proposed law further requires that the request be made in writing and served on the owner or servicer of the superior encumbrance at least 7 days before the response is due.

Proposed law provides that nothing in this Article will prohibit the owner or servicer of a superior encumbrance from providing the requested information voluntarily, without the issuance of a subpoena or written request, or from voluntarily waiving or accepting service of the subpoena or written request.

Proposed law provides for the owner or servicer of the superior encumbrance to revise its response to the subpoena duces tecum or written request by providing its revisions to the sheriff or seizing creditor within 24 hours before the scheduled sheriff's sale.

Present law provides exceptions from present law related to prohibiting a bank or its affiliate from disclosing financial records to any person other than the customer to whom the financial records pertain. Proposed law adds Code of Civil Procedure Articles 2336 and 2336.1 to the exceptions.
Effective August 1, 2022.

(Amends R.S. 6:333(B); adds C.C.P. Art 2336.1)