

SENATE BILL NO. 363

BY SENATOR FOIL

1 AN ACT

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

7 Be it enacted by the Legislature of Louisiana:

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

9 **Art. 2336.1. Determination of superior encumbrances or privileges**

10 **A. To determine the amount due to the owner of any mortgage, security**
11 **interest, lien, privilege, or other encumbrance that is superior to that of the**
12 **seizing creditor, hereinafter "superior encumbrance", the sheriff or the seizing**
13 **creditor may cause a subpoena duces tecum to be issued by the clerk of court**
14 **to the owner or servicer of an obligation secured by a superior encumbrance,**
15 **requiring that the owner or servicer of any such obligation produce to the**
16 **sheriff or to the seizing creditor a document setting forth the amount due to the**
17 **owner of the obligations secured by the superior encumbrance, as of the**
18 **scheduled date of the sheriff's sale. The subpoena duces tecum shall be served**
19 **on the owner or servicer of the superior encumbrance at least fourteen calendar**

1 days before the response is due, and shall be made returnable at least seven
2 calendar days prior to the scheduled date of the sheriff's sale, at the office of the
3 sheriff or at the office of the seizing creditor or its attorney. If the owner or
4 servicer of the superior encumbrance has a registered agent for service of
5 process in the state, service of process shall be made by one of the following
6 methods:

7 (1) The subpoena shall be served on the registered agent by the sheriff.

8 (2) If service is made through certified mail or overnight courier, the
9 envelope shall be directed to the attention of the registered agent.

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

21 C. The subpoena duces tecum may be served by the sheriff or by the
22 seizing creditor either in accordance with the procedure for subpoenas in
23 Chapter 1 of Title III of Book II of this Code, or by certified mail, return receipt
24 requested, or by commercial courier. The subpoena duces tecum may be served
25 within or outside of the state.

26 D. More than one subpoena duces tecum may be issued in connection
27 with a superior encumbrance.

28 E. If the date of the sheriff's sale is postponed, or stopped and thereafter
29 rescheduled, the seizing creditor may request that the owner or servicer of the
30 superior encumbrance update the amounts due. The request shall be made in

1 writing and served on the owner or servicer of the superior encumbrance either
 2 in the manner required for subpoenas, or by certified mail, return receipt
 3 requested, or by recognized overnight courier, at least fourteen days before the
 4 response is due. The response shall be due at least seven days prior to the sale
 5 date. If the owner or servicer of the superior encumbrance has a registered
 6 agent for service of process in the state, service of process shall be made by one
 7 of the following methods:

8 (1) The request shall be served on the registered agent by the sheriff.

9 (2) If service is made through certified mail or overnight courier, the
 10 envelope shall be directed to the attention of the registered agent.

11 F. Nothing in this article shall prohibit the owner or servicer of a
 12 superior encumbrance from voluntarily providing the requested information
 13 without the necessity of a subpoena duces tecum or written request, or from
 14 voluntarily waiving or accepting service of the subpoena duces tecum or written
 15 request.

16 G. The owner or servicer of the superior encumbrance may update or
 17 correct its latest response by providing to the sheriff or the seizing creditor,
 18 depending on at whose request the latest subpoena duces tecum or written
 19 request was issued, with an updated or corrected response, if the updated or
 20 corrected response is received at least twenty-four hours before the time
 21 scheduled for the sheriff's sale.

22 H. If the owner or servicer of the superior encumbrance is a bank as
 23 defined in R.S. 6:333(A)(2) or an affiliate as defined in R.S. 6:333(A)(1), then it
 24 will be entitled to charge a reasonable fee, not to exceed twenty-five dollars, for
 25 each time that information is requested or updates of information provided. The
 26 fee shall be payable only after the requested information has been provided to
 27 the person requesting the information, which fees shall be taxed as costs.

28 Section 2. R.S. 6:333(B) is hereby amended and reenacted to read as follows:

29 §333. Disclosure of financial records; reimbursement of costs

30 A. * * *

