

DIGEST

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SB 363 Reengrossed

2022 Regular Session

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Proposed law provides that the sheriff or seizing creditor may issue a subpoena duces tecum through the clerk of court to the owner or servicer of an obligation secured by a superior encumbrance, requiring the production of a document showing the amount due to the owner or servicer of the obligations secured by the superior encumbrances as of the scheduled date of the sheriff's sale.

Proposed law requires the subpoena to be served on the owner or servicer of the superior encumbrance at least 14 days before the response is due, and that the owner or servicer respond to the subpoena at least 14 days prior to the scheduled sheriff's sale and to include in the response the total amount of all obligations secured by the superior encumbrance. Proposed law also provides that if a response is timely made then no personal appearance 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 owner or servicer of the superior encumbrance has a registered agent in the state, service of process may be made by the sheriff or by certified mail or courier with the envelope directed to the attention of the registered agent.

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 seven days before the response is due.

Proposed law provides that nothing in proposed law shall 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 exceptions.

Proposed law provides that if the owners or servicer is a bank, the bank is entitled to charge a fee of \$25 for each time that information is requested. The fee shall be payable only after the requested information has been provided and the fee shall be taxed as costs of the judicial sale.

Effective Aug. 1, 2022.

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

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Change the legal delays from seven days to 14 days.
2. Allow banks to charge a fee of \$25 for providing information which is then taxed as costs.

Senate Floor Amendments to engrossed bill

1. Make technical changes.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the reengrossed bill:

1. Make technical changes.