

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

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

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

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

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

28 D. More than one subpoena duces tecum may be issued in connection
29 with a superior encumbrance if there is more than one superior encumbrance.

1 E. If the date of the sheriff's sale is postponed, or stopped and thereafter
2 rescheduled, the seizing creditor may request that the owner or servicer of the
3 superior encumbrance update the amounts due. If there is more than one
4 superior encumbrance, the request must be made in writing and served on the
5 owner or servicer of the superior encumbrance either in the manner required
6 for subpoenas, or by certified mail, return receipt requested, or by recognized
7 overnight courier, at least fourteen days before the response is due. If the owner
8 or servicer of the superior encumbrance has a registered agent for service of
9 process in the state, service of process shall be made by one of following
10 methods:

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

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

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

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

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

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 proposed law 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 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 will be payable only after the requested information has been provided and the fee will be taxed as costs of the judicial sale.

Effective August 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. Changes the legal delays from 7 days to 14 days.
2. Allows banks to charge a fee of \$25 for providing information which is then taxed as costs.