

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, court 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 shall be payable only after the requested information has been

1 provided to the person requesting the information, which fees shall be taxed as  
2 costs.

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

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

5 A. \* \* \*

6 B. Notwithstanding any other provision of law to the contrary, except R.S.  
7 9:151 et seq. and 3854(B)(2), R.S. 13:3921 et seq., Code of Civil Procedure ~~Article~~  
8 Articles 2336, 2336.1, and 2411 et seq., Code of Civil Procedure Articles 2336  
9 and 2336.1, R.S. 46:236.1.4, and R.S. 47:1676(D)(2) and 1677, no bank or its  
10 affiliate shall disclose any financial records to any person other than the customer to  
11 whom the financial records pertain, unless such financial records are disclosed:

12 \* \* \*

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Lebra R. Bias.

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DIGEST

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 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 seven days to 14 days.
2. Allows banks to charge a fee of \$25 for providing information which is then taxed as costs.

##### Senate Floor Amendments to engrossed bill

1. Makes technical changes.