

Regular Session, 2013

SENATE BILL NO. 27

BY SENATOR BROOME

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

SEIZURES/SALES. Provides for the Louisiana Home Protection Act. (8/1/13)

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AN ACT

To amend and reenact R.S. 13:3852 and Code of Civil Procedure Articles 2293(B)(1) and 2721(B), relative to seizure and sale of property; to provide relative to notice to judgment debtors in money judgments after seizure of property; to provide for the type of service and timing of notice of seizure of property; to provide for notice of the possibility of a change in scheduled sale dates of seized property; to provide for the information to be included in notice of seizure of property and applicable sale dates; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 13:3852 is hereby amended and reenacted to read as follows:

§3852. Notices of seizure

A. The sheriff to whom the writ is directed shall make three notices setting forth the title of the action or proceeding, its docket number, the court which issued the writ, the amount of the judgment or claim specified in the writ, an exact copy of the description of the immovable property furnished him in accordance with R.S. 13:3851, ~~and~~ the fact that the sheriff is seizing the described property, in accordance with Code of Civil Procedure Article 2293, **information as provided in Paragraph**

1        **B concerning the property owner's rights and the availability of housing**  
 2        **counseling services,** and, ~~if applicable,~~ the date of the first scheduled sale of the  
 3        property. If the immovable property to be seized is owned by more than one party,  
 4        the sheriff shall make an additional notice for each additional party. No other notice  
 5        of seizure shall be required.

6                B. The following form ~~may~~ **shall** be used for these notices by the sheriff:

7                "Notice is hereby given that I am this day seizing, in accordance with the  
 8        provisions of R.S. 13:3851 through 13:3861, the following described immovable  
 9        property, to wit: \_\_\_\_\_ as the property of  
 10        \_\_\_\_\_, under a writ of \_\_\_\_\_, issued on the \_\_\_\_\_ day of  
 11        \_\_\_\_\_, \_\_\_\_\_, by the \_\_\_\_\_ District Court for the Parish of  
 12        \_\_\_\_\_, in the matter entitled \_\_\_\_\_  
 13        versus \_\_\_\_\_, No. \_\_\_\_\_ of its docket, to satisfy a claim of  
 14        \$ \_\_\_\_\_, interest and costs, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. This matter  
 15        is scheduled for sheriff's sale on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
 16        at \_\_\_\_\_ A.M./P.M., ~~or any day thereafter as scheduled by the sheriff.~~ **Please be**  
 17        **aware that the sheriff's sale date may change. You may contact the sheriff's**  
 18        **office to find out the new date when the property is scheduled to be sold. The**  
 19        **new sale date will also be published in the local newspaper in accordance with**  
 20        **R.S. 43:203. If the seized property is residential property, you may be afforded**  
 21        **the opportunity to bring your account in good standing by entering into a loss**  
 22        **mitigation agreement with your lender, or by paying all of your past due**  
 23        **payments plus permitted costs and expenses within the time permitted by law**  
 24        **for reinstatement of your account. You are strongly encouraged to obtain the**  
 25        **services of a housing counselor, bankruptcy attorney or other competent legal**  
 26        **counsel. If you cannot afford to pay an attorney, you may be able to qualify for**  
 27        **free legal services. Foreclosure prevention counseling services, including loss**  
 28        **mitigation, are provided free of charge. To find a local housing counseling**  
 29        **agency approved by the U.S. Department of Housing and Urban Development,**





Present law provides that after seizure of property, the sheriff shall serve promptly upon the judgment debtor a written notice of seizure and list of property seized, in the manner provided for service of citation. If service cannot be made on the judgment debtor or his attorney of record, the court shall appoint an attorney to serve. The notice of seizure shall be substantially similar to the form provided in R.S. 13:3852.

Proposed law provides that the sheriff's service of the notice of seizure shall be at least 45 days prior to the scheduled sale date, and shall be accomplished by personal or domiciliary service. Proposed law further provides that the notice of seizure shall be in the form provided in R.S. 13:3852, and provides that the form shall include information concerning the availability of housing counseling services, as well as time, date, and place of sheriff's sale.

Present law provides that, in the execution of a writ of seizure and sale, the sheriff shall serve upon the defendant a written notice of the seizure of the property.

Proposed law provides that the sheriff shall serve such written notice upon the defendant by personal or domiciliary service at least 45 days prior to the scheduled sale date. Proposed law further provides that the notice of seizure shall be in accordance with the form provided in R.S. 13:3852, and provides that the form shall include information concerning the availability of housing counseling services, as well as the time, date, and place of the sheriff's sale.

Effective August 1, 2013.

(Amends R.S. 13:3852 and C.C.P. Arts. 2293(B)(1) and 2721(B))

#### Summary of Amendments Adopted by Senate

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

1. Removes proposed requirement that the sheriff serve amended notices each time the sheriff's sale date changes.
2. Adds notification in sheriff's form notice that sheriff's sale date may change, that the new sale date may be obtained by contacting the sheriff's office, and that the new sale date will be published in the local newspaper.
3. Adds notification that the judgment debtor is strongly encouraged to obtain the services of a housing counselor, bankruptcy attorney or other competent legal counsel, and that if the judgment debtor cannot afford to pay an attorney, he may be able to qualify for free legal services.
4. Changes the proposed required time period between sheriff's service of the notice of seizure on the judgment debtor and the sheriff's sale date from 90 days to 45 days.