SLS 22RS-466 ORIGINAL

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)

1 AN ACT
2 To amend and reenact R.S. 6:333(B) and to enact Code of Civil Procedure Art. 2336.1,

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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

scheduled date of the sheriff's sale. The subpoena shall be served on the owner or servicer of the superior encumbrance at least seven calendar days before the response is due, and shall be made returnable at least seven calendar days prior to the scheduled date of the sheriff's sale, at the office of the sheriff or at the office of the seizing creditor or its attorney.

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

C. The subpoena duces tecum may be served by the sheriff or by the seizing creditor either in the manner required for other subpoenas, or by certified mail, return receipt requested, or by commercial courier. The subpoena may be served within or outside of the state.

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

F. If the date of the sheriff's sale is postponed, or stopped and thereafter rescheduled, the seizing creditor may request that the owner or servicer of the superior encumbrance update the amounts due. The request must be made in writing and served on the owner or servicer of the superior encumbrance either in the manner required for subpoenas, or by certified mail, return receipt requested, or by recognized overnight courier, at least seven days before the response is due.

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1	G. Nothing in this article shall prohibit the owner or servicer of a
2	superior encumbrance from voluntarily providing the requested information
3	without the necessity of a subpoena or written request, or from voluntarily
4	waiving or accepting service of the subpoena or written request.
5	H. The owner or servicer of the superior encumbrance may update or
6	correct its latest response by providing to the sheriff or the seizing creditor,
7	depending on at whose request the latest subpoena or written request was
8	issued, with an updated or corrected response, if the updated or corrected
9	response is received at least twenty-four hours before the time scheduled for the
10	sheriff's sale.
11	Section 2. R.S. 6:333(B) is hereby amended and reenacted to read as follows:
12	§333. Disclosure of financial records; reimbursement of costs
13	A. * * *
14	B. Notwithstanding any other provision of law to the contrary, except R.S.
15	9:151 et seq. and 3854(B)(2), R.S. 13:3921 et seq., Code of Civil Procedure Article
16	2411 et seq., Code of Civil Procedure Articles 2336 and 2336.1, R.S. 46:236.1.4,
17	and R.S. 47:1676(D)(2) and 1677, no bank or its affiliate shall disclose any financial
18	records to any person other than the customer to whom the financial records pertain,
19	unless such financial records are disclosed:
20	* * *
	The original instrument and the following digest, which constitutes no part

DIGEST

SB 363 Original

2022 Regular Session

of the legislative instrument, were prepared by Lebra R. Bias.

Proposed law provides that the sheriff or seizing creditor may issue a subpoena duces tecum though the clerk of court to the owner or servicer of an obligation secured by a superior encumbrance, requiring them to produce 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 7 days before the response is due, and that the owner or servicer respond to the subpoena at least 7 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 if timely made then no personal appearance

related to the subpoena is required.

<u>Proposed law</u> 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. <u>Proposed law</u> also provides for more than one subpoena duces tecum to be issued in connection with a superior encumbrance if there are multiple superior encumbrances.

<u>Proposed law</u> 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. <u>Proposed law</u> further requires that the request be made in writing and served on the owner or servicer of the superior encumbrance at least 7 days before the response is due.

<u>Proposed law</u> provides that nothing in this Article 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.

<u>Proposed law</u> 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.

<u>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 Code of Civil Procedure Articles 2336 and 2336.1 to the exceptions.</u>
Effective August 1, 2022.

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