

RÉSUMÉ DIGEST

ACT 91 (SB 363)

2022 Regular Session

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New 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.

New 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 seven 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. New law also provides that if a response is timely made then no personal appearance related to the subpoena is required.

New 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. New law also provides for more than one subpoena duces tecum to be issued in connection with a superior encumbrance.

New 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.

New 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. 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. New law further requires that the owner or servicer respond to the seizing creditor's request seven days prior to the sale date.

New law provides that nothing 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.

New 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.

Prior law provided exceptions 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. New law adds exceptions to prior law.

New law provides that if the owner or servicer is a bank, the bank is entitled to charge a fee of \$25 for each time that information is requested and that 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 August 1, 2022.

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