

RÉSUMÉ DIGEST

SB 333

2024 Regular Session

Morris

Present law (C.C.P. Art. 3721) provides that a conventional mortgage is enforced by ordinary or executory proceedings.

Proposed law would have provided that in any ordinary or executory proceeding to enforce a mortgage, privilege, or security interest, the judgment or order of executory process granted may include any amounts which accrue after the rendition of the judgment or order and until the judicial sale, including, without limitation, obligations to reimburse advances for taxes and insurance, inspection or other fees provided for by contract, reasonable attorney fees, and court costs.

Proposed law also would have provided that it shall be enforceable notwithstanding any other provision of law requiring that a judgment or order specify a definite amount.

Proposed law would have provided that the seizing creditor or his counsel shall, upon the request of the sheriff, file into the record the payoff amount of the obligation being enforced including any amounts which have accrued after the issuance of the order of executory process or the judgment rendered in an ordinary proceeding prior to the date of the sheriff's sale.

Proposed law would have provided that any party with an interest in the property seized, including but not limited to mortgage and lien holders, and the defendant, may file a rule to show cause to traverse the payoff amount filed in accordance with proposed law.

Proposed law would have provided that a judicial sale shall be valid notwithstanding failure of an interested party to comply with the provisions of proposed law.

Would have become effective August 1, 2024.

(Proposed to amend C.C.P. Art. 3721)

VETO MESSAGE:

"Please be advised that I have vetoed Senate Bill 333 of the 2024 Regular Session. Senate Bill 333 permits the retroactive inclusion of obligations allegedly owed by a debtor after a court has rendered a final judgment. Allowing creditors to unilaterally determine and add unlimited post-judgment fees and costs after a final judgment undermines transparency in the legal process.

This bill gives mortgage companies and their attorneys an unfair advantage. It would allow final judgments to include broad language such as "all expenses incurred in enforcing the note and mortgage" and "all fees and all law charges, costs, fees and expenses incurred in connection or relating to this proceeding," instead of final, definite amounts reviewed by a court. Notably, this type of broad language was recently rejected by the Louisiana First Circuit Reverse Mortg. Sols., Inc. v. Conerly, 22-1054 (La. App. 1 Cir. 5/19/23), 2023 WL 3595359. I agree with the Louisiana First Circuit Court of Appeal that definite amounts should be fixed in the final judgment, and a third person should be able to determine from the judgment the precise amount owed. Reverse Mortg. Sols., Inc. v. Conerly, 22-1054 (La. App. 1 Cir. 5/19/23); Wachovia Mortg. Corp. v. Hoover, 2019-1520 (La. App. 1 Cir. 9/21/20), 314 So.3d 42. US. Bank Nat'l Ass'n as Tr. for RFMSI 2005S7 v. Dumas, 21-0585 (La. App. 1 Cir. 12/22/21), 340 So. 3d 246. There is no compelling reason to create an exception to La. C.C.P. art. 1918, the law on final judgments, for mortgage companies and their attorneys.

In addition to creating an exception for mortgage companies, this bill creates a presumption that post-judgment fees and expenses are owed by the debtor without a requirement that the court review the actual amounts. The bill shifts the burden to the debtor to prove why the post-judgment fees claimed by the mortgage holder are not owed. This presumption, coupled with the absence of timely notice requirements and only the potential for judicial review, is particularly concerning. Debtors may find themselves facing unforeseen and potentially inflated post-judgment expenses without proper scrutiny or a reasonable opportunity to dispute these expenses, leading to a lack of transparency and fairness to the debtor.

For these reasons, Senate Bill 333 will not become law."