SLS 13RS-148 ENGROSSED

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)

1 AN ACT

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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:

11 §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

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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 property. If the immovable property to be seized is owned by more than one party, 3 the sheriff shall make an additional notice for each additional party. No other notice 4 5 of seizure shall be required. B. The following form may shall be used for these notices by the sheriff: 6 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 _____, under a writ of _____, issued on the ____ day of 10 ______, _____, by the ______ District Court for the Parish of 11 _____, in the matter entitled _____ 12 versus______, No. _____ of its docket, to satisfy a claim of 13 \$______, interest and costs, this _____ day of ______, ____. This matter 14 is scheduled for sheriff's sale on _____day of_____, ____, 15 at_____A.M./P.M., or any day thereafter as scheduled by the sheriff. Please be 16 aware that the sheriff's sale date may change. You may contact the sheriff's 17 office to find out the new date when the property is scheduled to be sold. The 18 19 new sale date will also be published in the local newspaper in accordance with R.S. 43:203. If the seized property is residential property, you may be afforded 20 21 the opportunity to bring your account in good standing by entering into a loss mitigation agreement with your lender, or by paying all of your past due 22 payments plus permitted costs and expenses within the time permitted by law 23 for reinstatement of your account. You are strongly encouraged to obtain the 24 services of a housing counselor, bankruptcy attorney or other competent legal 25 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 mitigation, are provided free of charge. To find a local housing counseling 28 29 agency approved by the U.S. Department of Housing and Urban Development,

1 you may call the U.S. Department of Housing and Urban Development or the 2 **Louisiana Housing Corporation.** 3 5 Sheriff Parish of _____ 6 7 By: _____ 8 C. The sheriff shall not be required to serve any further notice of rescheduled 9 sale dates provided he has not returned the writ to the clerk of court. 10 Section 2. Code of Civil Procedure Articles 2293(B)(1) and 2721(B) are hereby 11 amended and reenacted to read as follows: Art. 2293. Notice to judgment debtor; appointment of attorney 12 13 B. (1) After the seizure of property, and at least forty-five days prior to the 14 15 initial scheduled sale date, the sheriff shall serve promptly upon the judgment debtor a written notice of the seizure and a list of the property seized, in the manner 16 provided for service of citation. Such notice of seizure shall be accomplished by 17 personal service or domiciliary service. If service cannot be made on the judgment 18 debtor or his attorney of record, the court shall appoint an attorney upon whom 19 20 service may be made. The notice of seizure shall be substantially similar to in 21 accordance with the form provided in R.S. 13:3852, and, as provided in R.S. 13:3852(B), shall include information concerning the availability of housing 22 23 counseling services, as well as the time, date, and place of the sheriff's sale. 24 Art. 2721. Seizure of property; notice 25 26 B. At least forty-five days prior to the initial scheduled sale date, The the 27 sheriff shall serve upon the defendant a written notice of the seizure of the property. 28 29 Such notice of seizure shall be accomplished by personal service or domiciliary SLS 13RS-148 **ENGROSSED** SB NO. 27

1 service. The notice of seizure shall be in accordance with the form provided in 2 R.S. 13:3852 and, as provided in R.S. 13:3852(B), shall include information concerning the availability of housing counseling services, as well as the time, 3 date and place of the sheriff's sale. 4 5

Section 3. The provisions of this Act shall be known and may be cited as the

Louisiana Home Protection Act.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Julie J. Baxter.

DIGEST

Broome (SB 27)

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<u>Present law</u> provides that, for notices of seizure, the sheriff to whom the writ is directed shall make three notices setting forth the title of the action, 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, the fact that the sheriff is seizing the property, and the date of the first scheduled sale of the property.

<u>Proposed law</u> provides that, in addition to those items, the sheriff's notice of seizure shall provide information concerning the availability of housing counseling services.

Present law provides that the sheriff may use the form set out in R.S. 13:3852 for a notice of seizure.

<u>Proposed law</u> provides that the sheriff shall use the form set out in R.S. 13:3852 for a notice of seizure.

<u>Present law</u> provides the form the sheriff may use for a notice of seizure.

Proposed law adds to the form the sheriff shall use for notice of seizure information that the sheriff's sale date may change and that the defendant (judgment debtor) may contact the sheriff's office to find out the new date when the property is scheduled to be sold, and that the new sale date will be published in the local newspaper. Further provides that the notice of seizure shall contain information that, if the seized property is residential property, the defendant may be afforded the opportunity to bring his account in good standing by entering into a loss mitigation agreement with his lender, or by paying all his past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of his account.

Proposed law further provides that the notice of seizure shall also indicate that the defendant (judgment debtor) is strongly encouraged to obtain the services of a housing counselor, bankruptcy attorney or other competent legal counsel. Further includes notice to defendant that, if he cannot afford to pay an attorney, he may be able to qualify for free legal services.

<u>Proposed law</u> further provides that foreclosure prevention counseling services, including loss mitigation, are provided free of charge. Further includes in the form for notice of seizure advice that the U.S. Department of Housing and Urban Development and the Louisiana Housing Corporation provide local housing counseling services.

<u>Present law</u> 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.

<u>Proposed law</u> 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. <u>Proposed law</u> 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.

<u>Present law</u> 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.

<u>Proposed law</u> 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. <u>Proposed law</u> 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

<u>Committee Amendments Proposed by Senate Committee on Judiciary A to the</u> 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 <u>from</u> 90 days <u>to</u> 45 days.