

Regular Session, 2013

SENATE BILL NO. 27

BY SENATOR BROOME AND REPRESENTATIVE WESLEY BISHOP

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 seek legal**
 25 **counsel. If you cannot afford to pay an attorney, you may be able to qualify for**
 26 **free legal services. Foreclosure prevention counseling services through a**
 27 **housing counselor, including loss mitigation, are provided free of charge. To**
 28 **find a local housing counseling agency approved by the U.S. Department of**
 29 **Housing and Urban Development, you may contact the U.S. Department of**

1 Housing and Urban Development or the Louisiana Housing Corporation.

2 _____,

3 _____,

4 Sheriff

5 Parish of _____

6 By: _____"

7 C. The sheriff shall not be required to serve any further notice of rescheduled
8 sale dates provided he has not returned the writ to the clerk of court.

9 Section 2. Code of Civil Procedure Articles 2293(B)(1) and 2721(B) are hereby
10 amended and reenacted to read as follows:

11 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 **initial scheduled sale date,** the sheriff shall serve ~~promptly~~ upon the judgment
15 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 service may be made. The notice of seizure shall ~~be substantially similar to~~ **include**
20 **information concerning the availability of housing counseling services, as well**
21 **as the time, date, and place of the sheriff's sale, in accordance with** the form
22 provided in R.S. 13:3852(B).

23 * * *

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 **Such notice of seizure shall be accomplished by personal service or domiciliary**
29 **service. The notice of seizure shall include information concerning the**

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 include information concerning the availability of housing counseling services, as well as time, date, and place of the sheriff's sale, in accordance with the form provided in R.S. 13:3852(B).

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.

Senate Floor Amendments to engrossed bill

1. Makes Legislative Bureau technical changes.
2. Provides that foreclosure prevention counseling services should be made through a housing counselor.
3. Encourages judgment debtor to seek legal counsel.
4. Makes Bureau note changes.