

LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

March 17, 2023

Friday, March 17, 2023

Persons Present:

Boneno, David
Breard, L. Kent
Caldwell, N. Kordell
Castle, Marilyn
Crigler, James C., Jr.
Cromwell, L. David
DeCastro, Greg
Forrester, William R., Jr.
Freel, Angelique D.
Gregorie, Isaac M. "Mack"
Hamilton, Leo C.
Hawthorne, George "Trippe"
Hayes, Thomas M., III
Haymon, Cordell H.
Holdridge, Guy

Lee, Amy Allums
Manning, C. Wendell
Mengis, Joseph W.
Philips, Harry "Skip", Jr.
Richard, Carl
Saloom, Douglas J.
Stuckey, James A.
Surprenant, Monica T.
Swensek, Adam
Swinburn, Chastity R.
Title, Peter S.
Ventulan, Josef
Waller, Mallory C.
Weems, Charles S., III

President Thomas M. Hayes, III called the March Council meeting to order at 10:00 a.m. on Friday, March 17, 2023 at the Lod Cook Alumni Center in Baton Rouge. After asking Council members to briefly introduce themselves and making a few administrative announcements, the President called on Mr. L. David Cromwell, Reporter of the Security Devices Committee, to begin his presentation of materials.

Security Devices Committee

Mr. Cromwell began his presentation by informing the Council that pursuant to Senate Resolution No. 152 of the 2022 Regular Session, the Law Institute was requested to recommend legislation to implement procedures for conducting online judicial sales and to appoint representatives of the bankers, sheriffs, and marshals and constables as special advisors in doing so. The resolution also presupposed that in order to conduct an online judicial sale, the consent of the seizing creditor would be required, and the Committee had therefore incorporated this requirement into its draft. The Reporter then briefly reviewed the law applicable to judicial sales, noting that there are execution sales but also partition, succession, and tax sales, although these proposals would be confined to execution sales, which are largely conducted by the sheriff for immovables. Mr. Cromwell explained that the Code of Civil Procedure sets forth the procedures for sales pursuant to a writ of fieri facias or fifa, which is issued by the clerk of court to enforce a judgment, and then incorporates by reference all of these procedures in applying them to sales pursuant to a writ of seizure and sale. As a result, the Committee's proposal will operate similarly – an article of the Code of Civil Procedure will provide the sheriffs with the ability to conduct online judicial sales, additional detail concerning the use of online auction companies will be provided in a companion provision in Title 13, and coordinating changes will be made throughout the Code of Civil Procedure and Revised Statutes as necessary.

The Reporter then directed the Council's attention to proposed Article 2344, on page 4 of the materials, which provides the sheriff with the authority to conduct online judicial sales and permits, but does not require, the use of an online auction company to do so. Mr. Cromwell explained that in Paragraph A, the use of the "designated time and place" language was intended to mirror the requirements for an in-person sale and that the system used to conduct the online sale must be generally available to the public. He also emphasized that Paragraph A uses the word "may" because the use of this procedure is completely optional within the discretion of the sheriff; sheriffs who do not

want to conduct sales online may continue to hold them on the steps of the courthouse. A motion was made and seconded to adopt Paragraph A, at which time one Council member questioned why a designated "time" is included when the distinction is really online vs. in person. After discussion of the fact that an in-person sale is a sale conducted at a designated place, the Council agreed to delete "time and" on line 4 of page 4. A vote was then taken on the motion to adopt Paragraph A as amended, and the motion passed with no objection.

Turning to Paragraph B, Mr. Cromwell explained that this provision largely extends the advertisement requirements applicable to in-person sales to online judicial sales. The Council agreed to change "times" to "time" on line 13 of page 4 before discussing whether the "platform" referenced on line 12 must be "digital" and whether the advertisement must be made online, as opposed to printed in a newspaper, in order to garner more interest. The Reporter responded that the advertisement could certainly be made online but that the article was intended to simply set forth the minimum requirements, and after additional discussion, the Council adopted Paragraph B as previously amended without objection. The Council then considered Paragraph C, and the Reporter explained that this provision sets forth the mechanics of scheduling and bidding during the online sale, requiring at least one minute to have elapsed from the most recent bid before the sale can be closed, and provides that the amount of each bid must be displayed and made visible to the public on the platform. A motion was made and seconded to adopt Paragraph C, at which time the Council discussed whether the person making the bid would be identified, which may or may not be the case at an in-person sale at the courthouse, as well as whether the online platform would require bidders to register using their name or some sort of number. The Council also discussed when the sale would end if no bids were entered, agreeing to add "or, if no bid is entered, at least one minute has elapsed since online bidding was opened" after "entered" on line 18 of page 4. Members of the Council then discussed whether one minute was a sufficient amount of time between bids, ultimately agreeing to extend this time period to "two minutes." After briefly considering other issues, such as the manner in which the sale starts and the simultaneous sale of multiple properties, which would be done sequentially, the Council adopted Paragraph C as amended.

Next, the Council considered Paragraph D, and Mr. Cromwell noted that this provision is intended to impose requirements similar to those applicable for in-person sales with respect to online sales. After discussing whether to change "online" to "on the platform" on line 23 of page 4, and the possibility that the information could be linked on the sheriff's website, the Council ultimately agreed to delete "online" altogether. One Council member then questioned the timing of the disclosure of this information and whether it would need to take place in advance of the sale if bidders might only have two minutes within which to place their bids. In response, the Council agreed to add "Before the opening of bidding" at the beginning of Paragraph D on line 22 of page 4. A motion was then made and seconded to adopt this provision as amended, and the motion passed with no objection. With respect to Paragraph E, one Council member expressed concern about providing too much discretion to the sheriff and the possibility of the sheriff imposing unduly burdensome restrictions that could lead to litigation. Other Council members suggested that these qualifications should be required to be displayed on the platform in some manner, and the Council agreed to add "These qualifications shall be displayed or otherwise made accessible on the platform." at the end of Paragraph E. The Council then discussed whether some sort of temporal element should be included to ensure that the qualifications are known in advance and can be satisfied, and several suggestions were made, including with the notice of the sale, or at least three days in advance of the sale, or before the opening of bidding. After discussing that posting the qualifications one minute prior to the sale would technically satisfy the last of these suggestions but would not be good practice, the Council ultimately agreed to stay silent with respect to the timing of the posting and to approve Paragraph E as previously discussed.

Mr. Cromwell then directed the Council's attention to Paragraph F, explaining that if the judgment debtor so requests, the sheriff must inform him of a location where he can use a computer to bid at the online auction – which could be one of the sheriff's computers, or a computer in a nearby library, etc. One Council member questioned the meaning of "other accommodation" in this context, and the Reporter explained that an accommodation could be an iPad, tablet, or any similar sort of device that would provide

access to the online platform for bidding, or it could be that one of the sheriff's employees enters bids for the judgment debtor. A motion was made and seconded to adopt Paragraph F as presented, and the motion passed with no objection. Turning to Paragraph G, the Council engaged in a great deal of discussion concerning how the seizing creditor will indicate its presence at the online auction or that it does not intend to bid, including whether the online sale can start without the seizing creditor and whether "indication" requires some sort of affirmative action apart from simply logging in under the seizing creditor's name or identification number. Ultimately, the Council approved Paragraphs G and H as presented, as well as the Comments on pages 4 and 5. Article 2344 as adopted by the Council reads as follows:

Article 2344. Online auctions

A. In lieu of selling the seized property at an auction conducted at a designated place, the sheriff may, with the consent of the seizing creditor, offer the property for sale by an online auction conducted through a computer network or other electronic telecommunications system generally available to the public.

B. Notice of a sale by online auction shall be published in accordance with Article 2331 and in the manner provided by law. In addition to the other requirements of law, the notice shall state that the sale will be conducted through an online auction, shall identify the electronic address of the platform through which bids can be entered, and shall specify the date of the sale and the time when bidding is scheduled to open.

C. Online auctions shall be conducted only on a day on which the sheriff is permitted by law to conduct judicial sales, beginning at a time set by the sheriff. Online bidding at each sale shall be open until at least two minutes have elapsed since the most recent bid was entered, or if no bid is entered, at least two minutes have elapsed since online bidding was opened. The amount of each bid shall be posted on the platform and made visible to the public contemporaneously with the entering of the bid. The sheriff may set a minimum incremental bid amount for each sale.

D. Before the opening of bidding, the platform on which bidders enter bids for the property shall display or otherwise make accessible the advertisement of the sale, the mortgage certificate, and all other certificates that the sheriff would be required by Article 2334 to read aloud at the time and place designated for a sheriff's sale. The platform shall also display the announcement required by Article 2335.

E. The sheriff may impose reasonable qualifications on bidders other than the seizing creditor and the debtor, including the requirement to pay a deposit or provide proof of available funds before the opening of bidding. These qualifications shall be displayed or otherwise made accessible on the platform.

F. Upon request made by the debtor before the day of the online auction, the sheriff shall inform the debtor of a location where the debtor may, without charge, have use of a computer terminal or other accommodation to bid at the online auction.

G. Entry by a seizing creditor of a bid at an online auction or the seizing creditor's indication on the platform that it is present for the online auction or that it will not enter a bid constitutes presence at the sale for the purposes of Article 2338.

H. Except as otherwise provided in this Article, the online auction shall be conducted as far as practicable in compliance with the requirements of this Chapter and Chapter 3 of this Title.

Comments – 2023

(a) This Article is new. It permits the sheriff to sell seized property through an online auction rather than through an in-person sale, but only with the consent of the seizing creditor. Although the sheriff is granted the flexibility to conduct online auctions, he is not required to do so.

(b) The sheriff may contract with an online auction company in accordance with R.S. 13:4358 to conduct an online auction.

(c) This Article applies not only to a sale conducted under a writ of fieri facias but also to a sale under a writ of seizure and sale issued in an executory proceeding. See Article 2724.

The Reporter then asked the Council to turn to R.S. 13:4358, on page 12 of the materials, explaining that, in Subsection A, the suggestion had been made to substitute “an online” for “a licensed” before “auction company” on line 5. Mr. Cromwell then explained that the rest of this provision sets forth the responsibilities that the sheriff is not permitted to delegate and that online auction companies likely do not want to perform. A motion was made and seconded to adopt Subsection A as amended, and the motion passed with no objection. Moving to Subsections B and C, the Reporter explained that the Committee had been made aware of two different business models used by online auction companies – the fixed fee model in Subsection B, and the buyer’s premium model in Subsection C. One Council member expressed concern that these fees were being paid by the judgment debtor rather than by the seizing creditor or being taken out of the sheriff’s commission, and members of the Council discussed the political ramifications of such a decision as well as the fact that all of the stakeholders were in agreement with these provisions as drafted. After another Council member questioned whether the failure to pay the buyer’s premium to the auction company would nullify the sale, a motion was made and seconded to adopt Subsections B and C as presented, and the motion passed with no objection.

Turning to Subsection D, Mr. Cromwell explained that the Committee had discussed that in certain cases, it may make sense to authorize a fee in excess of \$350, if, for example, the property being sold is a commercial one worth millions of dollars. A motion was made and seconded to adopt Subsection D, at which time one Council member suggested that perhaps Subsection D should apply only in exceptional circumstances, such as for large or otherwise unusual properties. The Council agreed to add “with exceptional circumstances” after “specific case” on line 32 of page 12, and the motion to adopt Subsection D as amended passed with no objection. Next, the Council considered Subsections E and F, and the Reporter explained that these provisions are intended to prevent backroom deals between sheriffs and auction companies and to clarify that the use of vendors to conduct online sales is not intended to be a fee opportunity for the sheriff. A motion was made and seconded to adopt these provisions as presented, and after discussion concerning the ability to discount the fee as long as a rebate is not given to the sheriff, Subsections E and F were approved without objection. The Council then considered Subsections G and H, and after Mr. Cromwell suggested replacing “buyer’s premiums payable in accordance with Subsection C” with “fees earned by the auction company under” on line 1 of page 13, motions were made and seconded to adopt Subsection G as amended and Subsection H as presented, and these motions passed without objection.

After breaking for lunch, the Council returned to page 13 of the materials to consider the Comments to R.S. 13:4358. The Council agreed to add “with exceptional circumstances” after “specific case” on line 19 and to add “licensed” before “auction companies” on line 41. A motion was then made and seconded to adopt the Comments as amended, and the motion passed without objection. R.S. 13:4358 as adopted by the Council reads as follows:

R.S. 13:4358. Online auction companies

A. The sheriff may, in accordance with law, engage a licensed auction company to perform an online auction pursuant to Code of Civil Procedure Article 2344, but the sheriff remains responsible for the performance or nonperformance of the duties delegated to that company. The sheriff shall not delegate the duties to serve notices required by law, to receive and obtain appraisals of the property, to determine the amount of the minimum bid required by law, to ascertain the existence of superior encumbrances, to release inferior encumbrances, to file the proces verbal of the sale or the act of sale in favor of the purchaser, or to distribute the proceeds of the sale.

B. Except as otherwise provided in Subsection C of this Section, the agreement between the sheriff and the auction company shall provide for the payment to the auction company of a fixed fee, which shall be taxed as costs of the sale, in an agreed amount not exceeding three hundred fifty dollars per adjudication.

C. In lieu of a fixed fee in accordance with Subsection B of this Section, the sheriff may, in a specific case and with the consent of the seizing creditor, agree with the auction company that the successful bidder will be charged a buyer's premium in an agreed amount not to exceed one percent of the amount of the successful bid, except that a buyer's premium shall not be charged if the successful bidder is the seizing creditor, the judgment debtor, a lessee of the property sold under a recorded lease, or a person holding a mortgage, privilege, security interest, or other real right burdening the property sold. The amount of any buyer's premium shall be stated conspicuously on the electronic platform on which bidders enter bids for the property. Any buyer's premium shall be remitted directly to the auction company and shall be paid in addition to the amount of the purchase price payable to the sheriff in accordance with Code of Civil Procedure Articles 2374 and 2375. No portion of any buyer's premium shall be taxed as costs or applied to the credit of the writ under which the sale is conducted.

D. Upon motion of the sheriff or either of the parties, the court may, in a specific case with exceptional circumstances and after a hearing, authorize a fee in excess of those provided in Subsections B and C of this Section.

E. The auction company conducting the sale shall not be entitled to any fee or compensation other than the fees authorized by this Section, and the auction company shall not be entitled to reimbursement of any expenses incurred in connection with the sale. Any contrary stipulation shall be absolutely null.

F. Any stipulation by which the auction company agrees to share any portion of its fee or buyer's premium with the sheriff or otherwise provide a financial benefit of any nature to the sheriff shall be absolutely null.

G. The contract by which the sheriff engages an auction company to conduct an online auction under this Section shall contain such requirements as the sheriff may impose concerning data security and liability insurance. If the auction company will receive funds from bidders, other than fees earned by the auction company under this Section, the contract shall require the auction company to furnish a fidelity bond in an amount deemed appropriate by the sheriff.

H. The auction company shall segregate any funds received from bidders, other than fees earned by the auction company under this Section,

from funds of the auction company and shall hold the funds received in a separate escrow or trust account that is identified as such on the books of the depository institution with which the account is maintained.

Comments – 2023

(a) This Section grants the sheriff flexibility to engage an online auction company to conduct online auctions of seized property in accordance with Code of Civil Procedure Article 2344.

(b) The fee arrangements in Subsections B and C are alternatives and cannot be cumulated. In each instance, the amount of the fee stated is a maximum fee; the sheriff is free to contract with an online auction company for a lesser fee. As Subsection D provides, the court may, after a contradictory hearing, authorize a greater fee in a specific case with exceptional circumstances upon motion of the sheriff or either of the parties. The seizing creditor, the defendant, and other interested parties may contest the motion.

(c) The fixed fee provided in Subsection B applies separately to each adjudication. Thus, if in the execution of a single writ directed to the sheriff, two properties are exposed to online auction and adjudicated separately, the fixed fee is earned for each of the properties. If, on the other hand, two properties are offered and adjudicated as a single lot, only one fixed fee is earned. If property exposed to online auction is not sold at the first offering for lack of a sufficient bid and is later reoffered and adjudicated at a second offering in accordance with Code of Civil Procedure Article 2336, only one fixed fee is earned, as there was only one adjudication.

(d) Where the auction company agrees to be compensated by a buyer's premium in accordance with Subsection C but the property is adjudicated to a purchaser who cannot be charged a buyer's premium under the terms of Subsection C, the auction company earns no compensation; it cannot under those circumstances receive a fixed fee under Subsection B.

(e) A lease that has become effective against third persons through the recordation of a notice of lease in accordance with R.S. 9:2742 is a "recorded lease" for purposes of Subsection C.

(f) As the sheriff remains responsible for the performance or nonperformance of the duties delegated to the auction company, Subsection G affords the sheriff great latitude in determining the qualifications of licensed auction companies, the requirements they will have to satisfy, and the amount of any fidelity bond that may be required. Where an auction company will receive funds other than fees it has earned, a fidelity bond in an amount deemed appropriate by the sheriff is mandatory.

The Council then turned to R.S. 13:4360, on page 14, and Mr. Cromwell explained that the changes in Subsections A, C, and D were stylistic in nature. Subsection B is intended to set forth the specific requirements concerning payment, which must take place no later than 4:30 p.m. on the first day following the online auction that is not a legal holiday. One Council member questioned the inclusion of deposit, since there may or may not be a deposit in advance of the online auction, and the Reporter responded that this language mirrors the language used for in-person sales in Subsection A. Another Council member questioned the consequence of failing to pay the buyer's premium, and after discussion, the Council agreed to add "and any buyer's premium" after "adjudication price" on line 14 of page 14. A motion was then made and seconded to adopt R.S. 13:4360 as amended, and the motion passed with no objection. The adopted proposal reads as follows:

R.S. 13:4360. Resale if required payment not made; resale if adjudicatee fails to pay balance

A. If the terms of the sale provide for the full payment of the adjudication price at the moment of the adjudication, or if the terms provide for a deposit, and the purchaser fails to make ~~such~~ the full payment or deposit, the seizing creditor may direct the officer conducting the sale either to ~~re-offer~~ reoffer the property immediately; or ~~re-advertise~~ to readvertise the property for sale as provided in ~~Sub-section C~~ Subsection D of this Section. If the property is ~~re-offered~~ reoffered for sale immediately, the first purchaser is relieved of any liability. This Subsection does not apply to a sale conducted by online auction in accordance with Code of Civil Procedure Article 2344.

B. In the case of a sale conducted by online auction in accordance with Code of Civil Procedure Article 2344, the purchaser shall pay the adjudication price and any buyer's premium, or the deposit if the terms of the sale provide for a deposit, by 4:30 p.m. on the first day following the sale exclusive of legal holidays as provided in R.S. 1:55(E)(3). If the purchaser fails to do so, the seizing creditor may direct the officer conducting the sale either to adjudicate the property to the bidder who submitted the second highest bid at the online auction, if that bidder is still willing to purchase the property for the amount of his bid, or to readvertise the property for sale as provided in Subsection D of this Section. If the property is adjudicated to the second highest bidder, the first purchaser is relieved of any liability.

C. If the purchaser makes the deposit required by the terms of the sale, and fails to pay the entire purchase price within thirty days after the adjudication, on demand of any interested party, the officer conducting the sale shall ~~re-advertise~~ readvertise the property for sale as provided in Subsection D ~~G~~ of this Section.

~~G.~~ D.(1) When the property is ~~re-advertised~~ readvertised, it shall be in the manner required by law for the advertisement of the original sale, and the second sale is at the risk and for the account of the first purchaser. Should there be a loss because of the second sale, the first purchaser is liable for ~~such~~ the loss; but should the property bring a higher price at the second sale, the first purchaser has no right to the increase.

(2) The first purchaser ~~may~~ shall not bid at a second sale.

The Reporter then directed the Council's attention to R.S. 13:4369, on page 15 of the materials, concerning the inability to annul an online sale for procedural defects. Members of the Council discussed that this is the rule with respect to one type of in-person sale but not with respect to the other, whereas for online judicial sales, this provision will apply in both cases, if, for example, an online sale is conducted on the wrong day. Mr. Cromwell agreed but also noted that there are certain things that may be done during online sales that would not matter for in-person sales, such as the failure to wait a full two minutes between bids. After additional discussion, a motion was made and seconded to adopt R.S. 13:4369 as presented, and the motion passed with no objection. The adopted proposal reads as follows:

R.S. 13:4369. Actions to set aside or annul online judicial sales

No action shall be instituted to set aside or annul the judicial sale of immovable property through an online auction by reason of noncompliance with the requirements of Code of Civil Procedure Article 2344 or R.S. 13:4358 if the sheriff executing the judicial sale has either filed the proces verbal of the sale or filed the sale for recordation in the conveyance records of the parish. No action shall be instituted to set aside or annul the judicial sale of movable property through an online auction by reason of noncompliance with the requirements of Code of Civil Procedure Article

2344 or R.S. 13:4358 if the sheriff executing the judicial sale has either filed the proces verbal of the sale or has delivered an act of sale to the purchaser.

Next, the Council considered R.S. 13:5530 on page 16 of the materials. A motion was quickly made and seconded to adopt the proposed change to this provision as presented, and the motion passed without objection. The adopted proposal reads as follows:

R.S. 13:5530. Fees in civil matters

A. Sheriffs shall be entitled to no more than the following fees and compensation of office in all civil matters:

* * *

(7)(a) For commission on sales of property made by the sheriffs, three percent shall be allowed on the price of adjudication of immovable property, and six percent shall be allowed on the price of adjudication of movable property. As used herein in this Subparagraph, "the price the "price of adjudication" shall mean the amount of the successful bid price at the sale conducted by the sheriff. The "price of adjudication" shall not include the amount of any buyer's premium payable in the case of a sale through an online auction, and no portion of any buyer's premium shall be deducted from, or credited against, the amount of the commission due to the sheriff.

* * *

Returning to page 1 of the materials, the Council considered Article 2293, and the Reporter explained that the deleted language on lines 11 and 14 and 15 was simply relocated for purposes of clarification. A motion was made and seconded to adopt the provision, at which time one Council member questioned why "or his attorney of record" appears on line 13 but not elsewhere when contemplating serving the judgment debtor. After discussion, the Council ultimately agreed to refer this issue of when an attorney can and cannot be served to the Code of Civil Procedure Committee for future consideration and to otherwise adopt this provision as presented. Next, the Council considered Article 2344, on page 2 of the materials. A motion was quickly made and seconded to adopt the provision as presented, and the motion passed with no objection. The adopted proposal reads as follows:

Article 2334. Reading of advertisement and certificates

A. At the time and place designated for the sale, the sheriff shall read aloud all or part of the advertisement describing the property in such sufficiency as to reasonably provide notice to the public of the property then being offered for sale, which, at a minimum, shall include the lot and subdivision or municipal number or by the section, township, and range, including some identifying mark, if appropriate, and a reference to the conveyance or mortgage recordation. The sheriff shall also read aloud a mortgage certificate and any other certificate required by law or otherwise provide, at least twenty-four hours prior to the sale, a copy of such these certificates to the public by means of public posting, written copies, electronic means, or by any other method.

B. In the case of sale through an online auction in accordance with Article 2344, the requirements of Article 2344(D) apply.

C. The failure of the sheriff to procure, read aloud, or provide a copy of any certificate as required by this Article, or to comply with the requirements of Article 2344(D) in the case of an online auction, shall not impact the validity of the sale and shall not give rise to any cause of action

against the sheriff, the seizing creditor, or the purchaser arising out of such the failure.

After explaining that the Committee had recommended no revisions to Article 2338, Mr. Cromwell directed the Council's attention to Article 2375, on page 6 of the materials. A motion was made and seconded to adopt this provision as presented, and the motion passed with no objection. The adopted proposal reads as follows:

Article 2375. Purchaser's liability; property subject to inferior mortgages

The Except as otherwise provided in R.S. 13:4358(C), the purchaser is liable for nothing beyond the purchase price. He The purchaser shall pay the full purchase price to the sheriff, despite the existence of a mortgage, lien, or privilege on the property inferior to that of the seizing creditor.

Turning to Article 2721, on page 7 of the materials, the Reporter explained that this provision contained changes similar to Article 2293. One Council member questioned why the notice must contain the date of the online auction but not the time, and after Mr. Cromwell noted that the Committee had discussed including this requirement but ultimately decided against it, the Council member moved to add "and the time when bidding is scheduled to open" after "auction" on line 15 of page 7. The motion passed with no objection, and it was moved and seconded to adopt Article 2721 as amended, which also passed with no objection. The adopted proposal reads as follows:

Article 2721. Seizure of property; notice

A. The sheriff shall seize the property affected by the mortgage, security agreement, or privilege immediately upon receiving the writ of seizure and sale.

B. The sheriff shall serve upon the defendant a written notice of the seizure of the property. ~~Such~~ The notice of seizure shall be accomplished by personal service or domiciliary service. The notice of seizure shall reproduce in full the provisions of Article 2642 and include information concerning ~~the availability of housing counseling services, as well as~~ the time, date, and place of the sheriff's sale, in accordance with the form provided in R.S. 13:3852(B). If the sheriff's sale is to be conducted through an online auction in accordance with Article 2344, the notice of seizure, or a subsequent notice served upon the defendant at least three days before the sale, shall state that the sheriff's sale will be conducted through an online auction, shall specify the date of the online auction and the time when bidding is scheduled to open, and shall identify the electronic address of the platform through which bids can be entered.

C. If the seized property is residential property, the notice of seizure shall include information concerning the availability of housing counseling services, in accordance with the form provided in R.S. 13:3852(B).

D. The sheriff shall have no liability to the debtor or to any third party for wrongful or improper seizure of the debtor's or third party's property of the same general type as described in the debtor's security agreement. If necessary, the sheriff shall request the secured creditor to identify the property subject to the security agreement and shall act pursuant to the secured creditor's instructions. The debtor's and other owner's sole remedy for the wrongful or improper seizure of the property shall be for actual losses sustained under R.S. 10:9-625 against the secured creditor on whose behalf and pursuant to whose instructions the sheriff may act.

Returning briefly to Article 2293 on page 1, the Council agreed to make the same change on line 19 by adding "and the time when bidding is scheduled to open" after "date

of the online auction.” A motion was made and seconded to adopt Article 2293 as amended, and the motion passed with no objection. The adopted proposal reads as follows:

Article 2293. Notice to judgment debtor; appointment of attorney

* * *

B.(1) After the seizure of property, the sheriff shall serve promptly upon the judgment debtor, in the manner provided for service of citation, a written notice of the seizure and a list of the property seized, in the manner provided for service of citation. Such The notice of seizure shall be accomplished by personal service or domiciliary service. If service cannot be made on the judgment debtor or his attorney of record, the court shall appoint an attorney upon whom service may be made. The notice of seizure shall include information concerning the availability of housing counseling services, as well as the time, date, and place of the sheriff's sale, in accordance with the form provided in R.S. 13:3852(B). If the sheriff's sale is to be conducted through an online auction in accordance with Article 2344, the notice of seizure, or a subsequent notice served upon the judgment debtor at least three days before the sale, shall state that the sheriff's sale will be conducted through an online auction, shall specify the date of the online auction and the time when bidding is scheduled to open, and shall identify the electronic address of the platform through which bids can be entered. In the case of seizure of residential property, the notice of seizure shall include information concerning the availability of housing counseling services, in accordance with the form provided in R.S. 13:3852(B).

* * *

Next, the Council turned to Article 2724, on page 8 of the materials, and the Reporter explained that the Committee thought it prudent to clarify that the new article concerning online auctions will apply to sales of property under writs of seizure and sale. A motion was made and seconded to adopt the proposed changes as presented, and the motion passed with no objection. The adopted proposal reads as follows:

Article 2724. Articles relating to sales under fieri facias applicable

A. The provisions of ~~Paragraphs A through C of Article~~ Articles 2293(A) through (C), Articles 2333 through 2335, and Articles 2337 through 2344, and Articles 2371 through 2381, relating to a sale of property under the writ of fieri facias, shall apply to a sale of property under the writ of seizure and sale.

B. The provisions of Article 2336 shall also apply to a sale of property under the writ of seizure and sale, unless appraisal has been waived, as provided in Article 2723.

Turning to R.S. 13:3852, on page 9 of the materials, Mr. Cromwell explained that the form for notice had been revised at the suggestion of Committee member Mike Rubin for purposes of increasing readability by using plain language, and that the clarification in Subsection C was requested by representatives of the sheriffs. A motion was made and seconded to adopt the proposed changes as presented, and the motion passed with no objection. The adopted proposal reads as follows:

R.S. 13:3852. 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~~ that 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 to the sheriff in accordance with R.S. 13:3851, the fact that the sheriff is seizing the described property in accordance with Code of Civil Procedure Article 2293, information as provided in Subsection B of this Section concerning the property owner's rights and the availability of housing counseling services, and the date of the first scheduled sale of the property. The initial sheriff's sale date shall not be scheduled any earlier than sixty days after the date of the signed court order commanding the issuance of the writ. If the immovable property to be seized is owned by more than one party, the sheriff shall make an additional notice for each additional party. No other notice of seizure shall be required.

B. The following form shall be used for these notices by the sheriff:

~~"Notice is hereby given that I am this day seizing, in accordance with the provisions of R.S. 13:3851 through 13:3861, the following described immovable _____ property, to _____ wit: _____ as the property of _____, under a writ of _____, issued on the _____ day of _____, _____, by the _____ District Court for the Parish of _____, in the matter entitled _____ versus _____, No. _____ of its docket, to satisfy a claim of \$ _____, interest and costs, this _____ day of _____, _____.~~ This is formal notice that today, this _____ day of _____, _____, I am seizing the property of _____ described _____ as: _____ . This seizure is pursuant to Louisiana law, including R.S. 13:3851 through 3861. This seizure is a result of a writ of _____, issued on the _____ day of _____, _____, by the _____ Court. The writ was issued in _____ versus _____, Docket No. _____ . This seizure is to satisfy a claim of \$ _____, plus interest and costs.

This matter is scheduled for sheriff's sale as follows [COMPLETE ONLY ONE OF THE FOLLOWING ALTERNATIVES AS APPROPRIATE]:

A sheriff's sale is scheduled to be conducted on the _____ day of _____, _____, at _____ A.M./P.M. a.m./p.m. at _____.

A sheriff's sale is scheduled to be conducted through an online auction on the _____ day of _____, _____, beginning at _____ A.M./P.M. a.m./p.m., and bids may be entered on the platform having the following electronic address: _____.

Please be aware that the sheriff's sale date or the manner in which the sale will be conducted may change. You may contact the sheriff's office to find out the new date when the property is scheduled to be sold. The new sale date will also be published in the local newspaper in accordance with R.S. 43:203. If the sale is conducted through an online auction, the sheriff will, upon your request made before the day of the online auction, inform you of a location where you may, without charge, have use of a computer terminal or other accommodation to bid at the online auction.

If the seized property is residential property, you may be afforded 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 payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. You are strongly encouraged to seek legal counsel. If you cannot afford to pay an attorney, you may be able to qualify for free legal services. Foreclosure prevention counseling services through a housing counselor, including loss mitigation, are provided free of

charge. To find a local housing counseling agency approved by the U.S. Department of Housing and Urban Development, you may contact the U.S. Department of Housing and Urban Development or the Louisiana Housing Corporation.

THE FOLLOWING PARAGRAPH APPLIES ONLY TO PROPERTY THAT HAS BEEN SEIZED PURSUANT TO A WRIT OF SEIZURE AND SALE ISSUED IN AN EXECUTORY PROCEEDING: As provided in Louisiana Code of Civil Procedure Article 2642, defenses and procedural objections to an executory proceeding may be asserted either through an injunction proceeding to arrest the seizure and sale as provided in Articles 2751 through 2754, or a suspensive appeal from the order directing the issuance of the writ of seizure and sale, or both. A suspensive appeal from an order directing the issuance of a writ of seizure and sale shall be taken within fifteen days of service of the notice of seizure as provided in Article 2721. The appeal is governed by the provisions of Articles 2081 through 2086, 2088 through 2122, and 2124 through 2167, except that the security therefor shall be for an amount exceeding by one-half the balance due on the debt secured by the mortgage or privilege sought to be enforced, including principal, interest to date of the order of appeal, and attorney fees, but exclusive of court costs.

Sheriff

Parish of _____

By: _____"

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

The Reporter then directed the Council's attention to R.S. 13:4341, on page 11 of the materials, concerning the conduct of in-person sales, and explained that Subsection C was added to provide that most of these requirements do not apply in the case of online auctions. A motion was made and seconded to adopt the proposed changes as presented, and the motion passed with no objection. The adopted proposal reads as follows:

R.S. 13:4341. Time and place of sale; adjournments; Orleans Parish excepted

A. All public sales by auction, the parish of Orleans excepted, when made by sheriffs, coroners, constables, auctioneers, or succession representatives shall be advertised to take place at the courthouse, any courthouse annex if located in the same parish as the courthouse but on the opposite side of any navigable river, or at some other public place in the vicinity of the courthouse, on any Monday, Wednesday, Friday, or Saturday of the month, beginning at 10:00 a.m., after the expiration of the time required by law for the advertisement of ~~such~~ these sales; and the sheriff, coroner, constable, auctioneer, or succession representative may adjourn the sale to the following legal day, and then, from day to day, only in case there shall not be time to conclude the sale in one day. However, nothing contained ~~herein~~ in this Subsection shall deprive the defendant of the privilege now enjoyed by him of having his movable property, when it is under seizure, offered for sale at his domicile, upon his giving notice to the proper officer within three days after notice of seizure. In the sales of succession property, consisting of only movable property or of both movable

and immovable property, the succession representative may pray that the sale of the succession movable property be made on the premises.

B. When the sale takes place at the courthouse, courthouse annex, sheriff's office, or other public place in the vicinity of the courthouse, the sheriff or other person conducting the sale may use an empty courtroom, auditorium, or office with sufficient seating for persons attending the sale. The location shall be accessible to the public and reasonably specified in the advertisement of the time and place of sale. The sheriff or other person conducting the sale shall maintain the decorum of proceedings during the sale and may use a microphone or amplified sound system for recitals required by the sale. The provisions of this Subsection are applicable to all parishes in the state. If the sale is held under the provisions of this Subsection at a location other than the steps of the courthouse, on the date of sale, a notice of the time and location of the sale shall be posted at the main entrance to the courthouse.

C. A sale conducted by online auction in accordance with Code of Civil Procedure Article 2344 shall take place on one of the days specified in Subsection A of this Section but shall not otherwise be subject to the provisions of this Section.

Finally, a motion was made and seconded to adopt the draft report in response to Senate Resolution No. 152 of the 2022 Regular Session, which will be submitted to the legislature along with these proposed revisions. The motion passed with no objection, and there being no additional business, Mr. Cromwell concluded his presentation. The March 2023 Council meeting was then adjourned.



Mallory C. Waller