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2 88th General Assembly
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4

A Bill

HOUSE BILL 1811

5 By: Representative T. Rogers
6

For An Act To Be Entitled

8 AN ACT TO REQUIRE ADDITIONAL INFORMATION AND TO
9 ENCOURAGE LOSS MITIGATION AND LOAN MODIFICATIONS
10 BEFORE INITIATING A STATUTORY FORECLOSURE; AND FOR
11 OTHER PURPOSES.
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Subtitle

14 TO REQUIRE ADDITIONAL INFORMATION AND TO
15 ENCOURAGE LOSS MITIGATION AND LOAN
16 MODIFICATIONS BEFORE INITIATING A
17 STATUTORY FORECLOSURE.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code § 18-50-101 is amended to read as follows:
24 18-50-101. Definitions.

25 As used in this chapter:

26 (1) "Beneficiary" means the person named or otherwise designated
27 in a deed of trust as the person for whose benefit a deed of trust is given
28 or his or her successor in interest;

29 (2) "Deed of trust" means a deed conveying real property in
30 trust to secure the performance of an obligation of the grantor ~~or any other~~
31 ~~person~~ named in the deed or an obligor that is secured by the deed of trust
32 to a beneficiary and conferring upon the trustee a power of sale for breach
33 of an obligation of the grantor or obligor contained in the deed of trust;

34 (3) "Grantor" means the person conveying an interest in real
35 property by a mortgage or deed of trust as security for the performance of an
36 obligation secured by the mortgage or deed of trust;



1 (4) "Mortgage" means the grant of an interest in real property
 2 to be held as security for the performance of an obligation by the mortgagor
 3 or other person;

4 (5) "Mortgage company" means any private, state, or federal
 5 entity ~~which~~ that in the usual course of its business is either the mortgagee
 6 or beneficiary of a deed of trust or mortgage;

7 (6) "Mortgagee" means the person holding an interest in real
 8 property as security for the performance of an obligation secured by a
 9 mortgage or his or her attorney-in-fact appointed pursuant to this chapter;

10 (7) "Mortgagor" means the person granting an interest in real
 11 property as security for the performance of an obligation secured by a
 12 mortgage;

13 (8) "Obligor" means a person owing an obligation that is secured
 14 by a mortgage or deed of trust;

15 ~~(8)(9)~~ "Sale" means the public auction conducted pursuant to §
 16 18-50-107 ~~and shall be deemed concluded when the highest bid is accepted by~~
 17 ~~the person conducting the sale;~~

18 ~~(9)(10)~~ "Trust property" means the property encumbered by a
 19 mortgage or deed of trust; and

20 ~~(10)(11)~~ "Trustee" means any person or legal entity to whom
 21 legal title to real property is conveyed by deed of trust or his or her
 22 successor in interest.

23
 24 SECTION 2. Arkansas Code § 18-50-103 is amended to read as follows:
 25 18-50-103. Conditions to exercise of power.

26 A ~~trustee~~ beneficiary or mortgagee may not ~~sell the trust property~~
 27 initiate a foreclosure under this chapter unless:

28 (1) The deed of trust or mortgage is filed for record with the
 29 recorder of the county in which the trust property is situated;

30 (2) Each transfer of the mortgage or deed of trust is either:

31 (A) Filed for record with the recorder of the county in
 32 which the trust property is situated; or

33 (B) Made available at no cost to each mortgagor, grantor,
 34 and obligor;

35 (3) The identity of the person or entity entitled to payment of
 36 the debt, the holder of the note, and the physical location of the note are

1 made available at no cost to each mortgagor, grantor, and obligor;

2 ~~(2)(4)~~ There is a default by the mortgagor, grantor, or ~~other~~
 3 ~~person owing an obligation, the performance of which obligation is secured by~~
 4 ~~the mortgage or deed of trust or by their successors in interest~~ obligor with
 5 respect to any provision in the mortgage or deed of trust that authorizes
 6 sale in the event of default of the provision;

7 ~~(3)~~ ~~The mortgagee, trustee, or beneficiary has filed for record~~
 8 ~~with the recorder of the county in which the trust property is situated a~~
 9 ~~duly acknowledged notice of default and intention to sell containing the~~
 10 ~~information required by § 18-50-104;~~

11 ~~(4)(5)~~ No action has been instituted to recover the debt or any
 12 part of it secured by the mortgage or deed of trust or, if such action has
 13 been instituted, the action has been dismissed; and

14 ~~(5)~~ ~~A period of at least sixty (60) days has elapsed since the~~
 15 ~~recording of the notice of default and intention to sell.~~

16 (6) An application for loss mitigation or loan modification by a
 17 mortgagor, grantor, or obligor concerning the trust property is not pending.

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 19 SECTION 3. Arkansas Code § 18-50-104 is amended to read as follows:

20 18-50-104. Initiation of foreclosure – Contents of notice – Persons to
 21 receive notice.

22 (a) The trustee or mortgagee may not sell the trust property unless:

23 (1) The mortgagee, trustee, or beneficiary has filed for record
 24 with the recorder of the county in which the trust property is situated a
 25 duly acknowledged notice of default and intention to sell containing the
 26 information required by subsection (b) of this section; and

27 (2) A period of at least sixty (60) days has elapsed since the
 28 recording of the notice of default and intention to sell.

29 ~~(a)(b)~~ The mortgagee's or trustee's notice of default and intention to
 30 sell shall set forth:

31 (1) The names of the parties to the mortgage or deed of trust;

32 (2) A legal description of the trust property and, if
 33 applicable, the street address of the property;

34 (3) The book and page numbers where the mortgage or deed of
 35 trust is recorded or the recorder's document number;

36 (4) The default for which foreclosure is made;

1 (5) The mortgagee's or trustee's intention to sell the trust
 2 property to satisfy the obligation, including in conspicuous type a warning
 3 as follows: "YOU MAY LOSE YOUR PROPERTY IF YOU DO NOT TAKE IMMEDIATE ACTION";
 4 ~~and~~

5 (6) The time, date, and place of sale;

6 (7) The name, address, and telephone number of the party
 7 initiating foreclosure;

8 (8) The telephone number and, if applicable, internet address of
 9 each government-sponsored loss mitigation or loan modification program
 10 available to the mortgagor, grantor, or obligor; and

11 (9) The telephone number and, if applicable, internet address of
 12 each loss mitigation or loan modification program offered by the mortgagee or
 13 beneficiary.

14 ~~(b)~~(c) The mortgagee's or trustee's notice of default and intention to
 15 sell shall be mailed within thirty (30) days of the recording of the notice
 16 by certified mail, postage prepaid and by first class mail, postage prepaid,
 17 to the address last known to the mortgagee or the trustee or beneficiary of
 18 the following persons:

19 (1) The mortgagor, ~~or~~ grantor, and obligor of the deed of trust;

20 (2) Any successor in interest to the mortgagor or grantor whose
 21 interest appears of record or whose interest the mortgagee or the trustee or
 22 beneficiary has actual notice;

23 (3) Any person having a lien or interest subsequent to the
 24 interest of the mortgagee or trustee when that lien or interest appears of
 25 record or when the mortgagee, the trustee, or the beneficiary has actual
 26 notice of the lien or interest; and

27 (4) Any person requesting notice, as provided in § 18-50-113.

28 ~~(e)~~(d) The disability, incapacity, or death of any person to whom
 29 notice must be given under this section shall not delay or impair in any way
 30 the mortgagee's or trustee's right to proceed with a sale, provided that the
 31 notice has been given in the manner required by this section to the guardian
 32 or conservator or to the administrator or executor, as the case may be.

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 34 SECTION 4. Arkansas Code § 18-50-107 is amended to read as follows:
 35 18-50-107. Manner of sale.

36 (a) The sale shall be held on the date and at the time and place

1 designated in the notice of default and intention to sell, except that the
2 sale shall:

3 (1) Be held between 9:00 a.m. and 4:00 p.m.;

4 (2) Be held either at the premises of the trust property or at
5 the front door of the county courthouse of the county in which the trust
6 property is situated; and

7 (3) Not be held on a Saturday, Sunday, or a legal holiday.

8 (b)(1)(A) Any person, including the mortgagee and the beneficiary, may
9 bid at the sale.

10 (B) The trustee may bid for the beneficiary but not for
11 himself or herself.

12 (2) The mortgagee or trustee shall engage a third party to
13 conduct the sale and act at the sale as the auctioneer of the mortgagee or
14 trustee.

15 (3) No bid shall be accepted that is less than two-thirds (2/3)
16 of the entire indebtedness due at the date of sale.

17 (c)(1) The person conducting the sale may postpone the sale from time
18 to time.

19 (2)(A) In every such case, notice of postponement shall be given
20 by:

21 (i) Public proclamation thereof by that person; or

22 (ii) Written notice of postponement posted at the
23 time and place last appointed for the sale.

24 (B)(i) No other notice of the postponement need be given
25 unless the sale is postponed for longer than thirty (30) days beyond the date
26 designated in the notice.

27 (ii) In that event, notice thereof shall be given
28 pursuant to § 18-50-104.

29 (d) The sale is concluded when the highest bid is accepted by the
30 person conducting the sale.

31 ~~(d)(1)~~(e)(1) Unless otherwise agreed to by the trustee or mortgagee,
32 the purchaser shall pay at the time of sale the price bid.

33 (2) Interest shall accrue on any unpaid balance of the price bid
34 at the rate specified in the note secured by the mortgage or deed of trust.

35 (3) Within ten (10) days after the sale, the mortgagee or
36 trustee shall execute and deliver the trustee's deed or mortgagee's deed to

1 the purchaser.

2 (4) The mortgagee or beneficiary shall receive a credit on its
3 bid for:

4 (A) The amount representing the unpaid principal owed;

5 (B) Accrued interest as of the date of the sale;

6 (C) Advances for the payment of taxes, insurance, and
7 maintenance of the trust property; and

8 (D) Costs of the sale, including reasonable trustee's and
9 attorney's fees.

10 ~~(e)-(1)~~(f)(1) The purchaser at the sale shall be entitled to immediate
11 possession of the property.

12 (2)(A) Possession may be obtained by filing a complaint in the
13 circuit court of the county in which the property ~~lies~~ is situated and
14 attaching a copy of the recorded trustee's or mortgagee's deed, whereupon the
15 purchaser shall be entitled to an ex parte writ of assistance.

16 (B) Alternatively, the purchaser may bring an action for
17 forcible entry and detainer ~~pursuant to~~ under § 18-60-301 et seq.

18 (C) In either event, the provisions of § 18-50-116(d)
19 shall apply.

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