

Hall of the House of Representatives
84th General Assembly - Regular Session, 2003
Amendment Form

Subtitle of House Bill No. 2829
"AN ACT TO AMEND THE STATUTORY FORECLOSURE STATUTES."

Amendment No. 1 to House Bill No. 2829.

Amend House Bill No. 2829 as originally introduced:

Delete everything after the enacting clause and substitute:

SECTION 1. Arkansas Code § 18-49-103 is amended to read as follows:
18-49-103. Judgment.

(a) It shall not be necessary in any action upon a mortgage or lien to enter an interlocutory judgment or give time for the payment of money, or for doing any other act. In such cases, final judgment may be given in the first instance.

(b)(1) In the foreclosure of a mortgage, a sale of the mortgaged property shall be ordered in all cases.

(2) The mortgagee, trustee, secured party or vendor shall publish a notice of the sale:

(A)(i) In a newspaper of general circulation in the county in which the property is situated and in a newspaper of general statewide daily publication one (1) time a week for four (4) consecutive weeks prior to the date of sale;

(ii) The final publication of which shall be no more than ten (10) days prior to the sale.

(B) By employing a third-party Internet foreclosure sale notice information service provider; and

(C) By employing a third-party posting provider to post a notice at the place at the county courthouse where foreclosure sales are customarily advertised and conducted.

(c) In an action on a mortgage or lien, the judgment may be rendered for the sale of the property and for the recovery of the debt against the defendant personally.

(d) Whenever a mortgagee reasonably believes that mortgaged property has or will be affected by a release or threatened release of any hazardous substance including, but not limited to, those defined by 42 U.S.C. § 9601(14), (22), or § 8-7-403(a)(8), or § 8-7-503(8), the mortgagee may proceed against the mortgagor personally to recover the debt, without need to first seek a sale of the mortgaged property.

SECTION 2. Arkansas Code § 18-49-104 is amended to read as follows:



18-49-104. Sale of property under court order and publication of notice of sales.

(a)(1) Sales of personal property made by order of the court shall be on a credit of three (3) months.

(2) Sales of real property made by court order shall be on a credit of not less than three (3) months nor more than six (6) months, or on installments equivalent to not more than four (4) months' credit on the whole, to be determined by the court.

(b)(1) In all sales on credit, the purchaser shall execute a bond, with good surety, to be approved by the person making the sale, which bond shall have the force of a judgment.

(2) In sales of ~~real~~ property under this section, a lien shall be retained on the property for its price.

~~(c)(1) The mortgagee, trustee, or vendor shall publish a notice of the sale in a newspaper published and having a general circulation in the county in which the property is situated or, if this is not available, then in a newspaper of general statewide daily publication one (1) time.~~

~~(2) The publication shall be at least ten (10) days prior to the sale.~~

(c) The mortgagee, trustee, secured party or vendor shall publish a notice of the sale:

(1)(A) In a newspaper of general circulation in the county in which the property is situated and in a newspaper of general statewide daily publication one (1) time a week for four (4) consecutive weeks prior to the date of sale; and

(B) The final publication of which shall be no more than ten (10) days prior to the sale.

(2) By employing a third-party Internet foreclosure sale notice information service provider.

SECTION 3. Arkansas Code § 18-50-105 is amended to read as follows:
18-50-105. Publication of notice.

The mortgagee, ~~or trustee, or vendor~~ shall publish the notice:

(1) In a newspaper of general circulation in the county in which the ~~trust~~ property is situated ~~or~~ and in a newspaper of general statewide daily publication one (1) time a week for four (4) consecutive weeks prior to the date of sale. The final publication shall be no more than ten (10) days prior to the sale;

(2) By employing a third-party posting provider to post notice at the place at the county courthouse where foreclosure sales are customarily advertised and conducted; and

(3) By employing a third-party Internet foreclosure sale notice information service provider.

SECTION 4. Arkansas Code § 16-113-203 is amended to read as follows:
16-113-203. Injunction bonds.

(a) In every case, the court or judge granting an injunction shall specify in the order ~~therefor~~ an amount, for which the party obtaining it shall give security in a bond to the party enjoined, before the injunction shall become effectual. The amount of the bond shall be sufficient to cover all the probable damages and costs that may be occasioned by the injunction.

(b) The court or judge may prescribe the effect of the bond, so as to

secure to the party enjoined the damages to which he may become entitled if it is finally decided that the injunction ought not to have been granted.

(c)(1) Where the injunction is to stay proceedings upon a judgment or final order for money, the amount for which security is required shall be sufficient to cover, with other damages, the sum enjoined, with five (5) years' interest thereon.

(2) When the injunction is to stay proceedings upon a judgment for property, the amount specified in the order shall be sufficient to cover also the rent, hire, or value of the use thereof for two (2) years; and in case of personal property, its value likewise.

(3)(A) When the injunction is to stay proceedings in a foreclosure initiated under the Statutory Foreclosure Act of 1987, §§ 18-50-101 through 18-50-116, the amount specified in the order shall be sufficient to cover the full amount of reinstatement of the loan, as defined by § 18-50-114.

(B) Should the court or judge grant an injunction, the mortgagor or grantor is required to tender all regular payments due under the security instrument into the registry of the court pending the final resolution of the action.

(d) The order of injunction shall not be issued by the clerk until the bond mentioned in subsections (a)-(c) of this section has been executed in his office by one (1) or more sufficient sureties of the party obtaining the injunction.

(e)(1) Where the injunction is to stay proceedings upon a judgment or final order, the bond shall be to the effect that the party obtaining the injunction will satisfy the judgment or order, or so much of it as is enjoined, to the extent to which the injunction may be dissolved and that he will also satisfy any modified judgment or order that may be rendered or made in lieu of it, or so much of it as exceeds the amount left unenjoined.

(2) In other cases, unless otherwise directed by the court or judge, the bond shall be to the effect that the party giving it will pay to the party enjoined such damages as he may sustain if it is finally decided that the injunction ought not to have been granted.

(f)(1) In case of injunction to stay proceedings upon a judgment or final order, the officer granting the injunction may authorize a bond to be executed to the effect that the party obtaining the injunction will pay to the party enjoined such damages as he may sustain if it is finally decided that the injunction ought not to have been granted.

(2) However, if, at the time the injunction is granted and bond executed, any execution or attachment has been levied upon the property of the party obtaining the injunction, the levy shall not be discharged by reason of the injunction, but it shall remain in full force until the final decision as to the injunction unless the party obtaining the injunction shall give bond in the form prescribed by law.

(g) Sureties in injunction bonds shall be taken by the clerk, under the same responsibilities as in other cases of sureties taken by him.

(h)(1) A party enjoined may, at any time before judgment, upon reasonable notice to the party who has obtained the injunction, move the court for additional security on behalf of the party enjoined.

(2) If it appears on the notice that the surety in the injunction bond has removed from this state, or is insufficient, the court may vacate the order of injunction unless in a reasonable time sufficient

security is given.

The Amendment was read _____
By: Representative Hathorn
PBB/RCK - 031720030959
RCK700 _____ Chief Clerk