

Hall of the House of Representatives
88th General Assembly - Regular Session, 2011
Amendment Form

Subtitle of House Bill No. 2085

TO AMEND PROVISIONS OF THE ARKANSAS CODE RELATED TO STATUTORY
FORECLOSURES.

Amendment No. 1 to House Bill No. 2085

Amend House Bill No. 2085 as originally introduced:

Add Senator M. Lamoureux as a cosponsor of the bill

AND

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code § 18-50-101 is amended to read as follows:

18-50-101. Definitions.

As used in this chapter:

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

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

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

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

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

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

(7) "Mortgage loan servicer" means an entity that holds itself out as being able to service loans secured by liens or mortgages encumbering real property;



~~(7)~~(8) "Mortgagor" means the person granting an interest in real property as security for the performance of an obligation secured by a mortgage;

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

~~(8)~~(10) "Sale" means the public auction conducted pursuant to § 18-50-107 ~~and shall be deemed concluded when the highest bid is accepted by the person conducting the sale;~~

~~(9)~~(11) "Trust property" means the property encumbered by a mortgage or deed of trust; and

~~(10)~~(12) "Trustee" means any person or legal entity to whom legal title to real property is conveyed by deed of trust or his or her successor in interest.

SECTION 2. Arkansas Code § 18-50-102 is amended to read as follows:

18-50-102. ~~Qualifications of trustee — Appointment of successor trustee~~ Parties authorized to foreclose mortgage or deed of trust.

(a) ~~A trustee of a deed of trust shall be any~~ Parties authorized to foreclose a mortgage or deed of trust under this chapter are limited to:

(1) ~~Attorney~~ A trustee or attorney-in-fact who is an active licensed member of the Bar of the Supreme Court of the State of Arkansas or a law firm among whose members includes such an attorney if the attorney or law firm maintains an office that:

(A) Is located within this state;

(B) Is accessible to the public during regular business hours; and

(C) Has the ability to accept funds from a grantor, mortgagor, or obligor to reinstate or pay off a mortgage or deed of trust;

(2) ~~Bank or~~ A state-chartered bank, nationally chartered bank, state-chartered savings and loan association, or a mortgage loan company subject to licensing, supervision, and auditing by a federal agency, a government-sponsored entity, and the Bank Commissioner or Securities Commissioner as applicable, as an approved mortgage loan servicer authorized to do business under the laws of the State of Arkansas or those of the United States if the state-chartered bank, nationally chartered bank, state-chartered savings and loan association, or mortgage loan company:

(A) Has a physical business location open for business for normal banking hours located within the State of Arkansas;

(B) Is either the holder or the loan servicer for the holder of a note secured by a mortgage or deed of trust; and

(C) Does not collect a fee or cost for any action taken under this chapter unless authorized by a court order;

~~(3) Corporation which is an affiliate of a bank or savings and loan association authorized to do business under the laws of Arkansas or those of the United States, which is either an Arkansas bank or a registered out-of-state bank, as the terms are defined under § 23-45-102, which maintains a branch in the State of Arkansas; or~~

~~(4)~~(3) Agency An agency or authority of the State of Arkansas where not otherwise prohibited by law.

(b)(1) The beneficiary may appoint a successor trustee at any time by filing a substitution of trustee for record with the recorder of the county in which the trust property is situated.

(2) The new trustee shall succeed to all the power, duties, authority, and title of the original trustee and any previous successor trustee.

(3) The beneficiary ~~may~~, by express provision in the substitution of a trustee, may ratify and confirm actions taken on its behalf by the new trustee prior to the recording of the substitution of the trustee.

(c) The substitution shall identify the deed of trust by stating the names of the original parties thereto, the date of recordation, and the book and page where recorded or the recorder's document number. The substitution shall also state the name of the new trustee and shall be executed and duly acknowledged by all the beneficiaries or their successors in interest.

(d) A mortgagee may delegate his or her powers and duties under this chapter to an attorney-in-fact, whose acts shall be done in the name of and on behalf of the mortgagee. ~~The qualifications for an attorney-in-fact shall be the same as those for a trustee.~~

(e) The appointment of an attorney-in-fact by a mortgagee shall be made by a duly executed, acknowledged, and recorded power of attorney, ~~which~~ that shall identify the mortgage by stating the names of the original parties thereto, the date of recordation, and the book and page where recorded or the recorder's document number.

(f) A substitution of trustee or power of attorney shall be recorded before any trustee's or mortgagee's deed executed by the substituted trustee or attorney-in-fact is recorded.

SECTION 3. Arkansas Code § 18-50-107 is amended to read as follows:
18-50-107. Manner of sale.

(a) The sale shall be held on the date and at the time and place designated in the notice of default and intention to sell, except that the sale shall:

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

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

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

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

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

(2) The mortgagee or trustee shall engage a third party that is licensed to sell real estate under the Real Estate License Law, § 17-42-101 et seq., and licensed to act as an auctioneer under the Auctioneer's Licensing Act, § 17-17-101 et seq., to conduct the sale and act at the sale as the auctioneer ~~of the mortgagee or trustee.~~

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

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

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

(i) Public proclamation thereof by that person; or

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

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

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

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

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

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

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

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

(A) The amount representing the unpaid principal owed;

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

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

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

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

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

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

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

The Amendment was read
By: Representative Hobbs
DLP/DLP - 03/21/11 05:17
DLP201

Chief Clerk