

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H2/20/03

A Bill

HOUSE BILL 1615

5 By: Representative Borhauer
6
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For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS SECTIONS OF THE STATUTORY
10 FORECLOSURE LAW TO PROVIDE PROPER NOTICE TO THE
11 RESIDENTS OF THE TRUST PROPERTY; AND FOR OTHER
12 PURPOSES.
13

Subtitle

15 AN ACT TO AMEND VARIOUS SECTIONS OF THE
16 STATUTORY FORECLOSURE LAW TO PROVIDE
17 PROPER NOTICE TO THE RESIDENTS OF THE
18 TRUST PROPERTY.
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20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code § 18-50-104(b), concerning persons to receive
24 notice in statutory foreclosure actions, is amended to read as follows:

25 (b) The mortgagee's or trustee's notice of default and intention to
26 sell shall be:

27 (1) Served upon the residents of the trust property, within
28 thirty (30) days of the recording of the notice, by personally serving a
29 resident person on the premises of the trust property in the same manner as a
30 summons, if the trust property is inhabited; and

31 (2) mailed ~~Mailed~~ within thirty (30) days of the recording of the
32 notice by certified mail, postage prepaid and by first class mail, postage
33 prepaid, to the address last known to the mortgagee or the trustee or
34 beneficiary of the following persons:

35 ~~(1)~~(A) The mortgagor or grantor of the deed of trust;

36 ~~(2)~~(B) Any successor in interest to the mortgagor or



1 grantor whose interest appears of record or whose interest the mortgagee or
2 the trustee or beneficiary has actual notice;

3 ~~(3)~~(C) Any person having a lien or interest subsequent to
4 the interest of the mortgagee or trustee where that lien or interest appears
5 of record or where the mortgagee, the trustee, or the beneficiary has actual
6 notice of the lien or interest; and

7 ~~(4)~~(D) Any person requesting notice, as provided in
8 § 18-50-113.

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10 SECTION 2. Arkansas Code § 18-50-105 is amended to read as follows:
11 18-50-105. Publication of notice.

12 The mortgagee or trustee shall publish the notice:

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

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

21 (3)(A) By employing a third-party posting provider to post the
22 notice upon the premises of the trust property; and

23 (B) A third-party posting provider shall not be liable for
24 any trespass in connection with the entry upon the premises for the purpose
25 of posting the required notice.

26 ~~(3)~~(4) By employing a third-party Internet foreclosure sale
27 notice information service provider.

28
29 SECTION 3. Arkansas Code § 18-50-116(d), concerning miscellaneous
30 provisions under the statutory foreclosure law, is amended to read as
31 follows:

32 (d) Nothing in this chapter shall be construed to:

33 (1) Create an implied right of redemption in favor of any
34 person; or

35 (2)(A) Impair the right of any person or entity to assert his
36 legal and equitable rights in a court of competent jurisdiction.

1 (B) Provided, however, that any such claim or defense,
2 except lack of notice by a person entitled to notice under § 18-50-104, shall
3 be asserted prior to the sale or be forever barred and terminated.
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5 SECTION 4. Arkansas Code Title 18, Chapter 50, Subchapter 1 is amended
6 to add an additional section to read as follows:

7 18-50-117. Action to void sale.

8 Any person entitled to notice under § 18-50-104, but not given notice
9 within the time limits provided, shall have the right, upon receiving notice
10 of the foreclosure, to bring an action in court to halt the foreclosure of a
11 mortgage under this chapter, or to void the sale of the trust property within
12 one (1) year of the sale.

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14 /s/ Borhauer
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