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2 88th General Assembly
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4

As Engrossed: H3/22/11 H3/24/11

A Bill

HOUSE BILL 2085

5 By: Representative Hobbs
6 By: Senator M. Lamoureux
7

For An Act To Be Entitled

9 AN ACT TO AMEND PROVISIONS OF THE ARKANSAS CODE
10 RELATED TO STATUTORY FORECLOSURES; AND FOR OTHER
11 PURPOSES.
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Subtitle

14 TO AMEND PROVISIONS OF THE ARKANSAS CODE
15 RELATED TO STATUTORY FORECLOSURES.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 *SECTION 1. Arkansas Code § 18-50-101 is amended to read as follows:*

22 *18-50-101. Definitions.*

23 *As used in this chapter:*

24 (1) *“Beneficiary” means the person named or otherwise designated*
25 *in a deed of trust as the person for whose benefit a deed of trust is given*
26 *or his or her successor in interest;*

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

32 (3) *“Grantor” means the person conveying an interest in real*
33 *property by a mortgage or deed of trust as security for the performance of an*
34 *obligation secured by the mortgage or deed of trust;*

35 (4) *“Mortgage” means the grant of an interest in real property*
36 *to be held as security for the performance of an obligation by the mortgagor*



1 or other person;

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

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

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

11 ~~(7)(8)~~ "Mortgagor" means the person granting an interest in real
12 property as security for the performance of an obligation secured by a
13 mortgage;

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

16 ~~(8)(10)~~ "Sale" means the public auction conducted pursuant to §
17 18-50-107 ~~and shall be deemed concluded when the highest bid is accepted by~~
18 ~~the person conducting the sale;~~

19 ~~(9)(11)~~ "Trust property" means the property encumbered by a
20 mortgage or deed of trust; and

21 ~~(10)(12)~~ "Trustee" means any person or legal entity to whom
22 legal title to real property is conveyed by deed of trust or his or her
23 successor in interest.

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

26 18-50-102. ~~Qualifications of trustee—Appointment of successor~~
27 ~~trustee~~ Parties authorized to foreclose mortgage or deed of trust.

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

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

34 (A) Is located within this state;

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

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

3 (2) ~~Bank or~~ A state-chartered bank, nationally chartered bank,
 4 state-chartered or federally chartered savings and loan association, state-
 5 chartered or federally chartered credit union, or a mortgage loan company
 6 subject to licensing, supervision, and auditing by a federal agency, a
 7 government-sponsored enterprise, and the Bank Commissioner or Securities
 8 Commissioner, as applicable, as an approved mortgage loan servicer authorized
 9 to do business under the laws of the State of Arkansas ~~or those of the United~~
 10 States if the state-chartered bank, nationally chartered bank, state-
 11 chartered or federally chartered savings and loan association, state-
 12 chartered or federally chartered credit union, or mortgage loan company:

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

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

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

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

24 ~~(4)(3) Agency~~ An agency or authority of the State of Arkansas
 25 where not otherwise prohibited by law.

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

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

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

35 (c) The substitution shall identify the deed of trust by stating the
 36 names of the original parties thereto, the date of recordation, and the book

1 and page where recorded or the recorder's document number. The substitution
2 shall also state the name of the new trustee and shall be executed and duly
3 acknowledged by all the beneficiaries or their successors in interest.

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

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

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

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

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

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

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

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

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

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

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

36 (3) No bid shall be accepted that is less than two-thirds (2/3)

1 of the entire indebtedness due at the date of sale.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(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.

/s/Hobbs