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2 88th General Assembly
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4

As Engrossed: H3/23/11

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.
12
13

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

20 ~~(10)(11)~~ (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 of sale*.

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)(A) The beneficiary or mortgagee:

31 (i) Has personal knowledge of the records and
 32 information provided under this subdivision (2); and

33 (ii) At least ten (10) days before initiating the
 34 foreclosure has provided by standard mail to the grantor, mortgagor, or
 35 obligor at the address of the property encumbered by the mortgage or deed of
 36 trust or the mailing address of the grantor, mortgagor, or obligor:

1 (a) A true and correct copy of the note with
 2 all required endorsements, the mortgage, or the deed of trust;

3 (b) The name of the holder and the physical
 4 location of the original note;

5 (c) A true and correct copy of the original
 6 mortgage or deed of trust and if in the possession of the beneficiary or
 7 mortgagee, each assignment or allonge of the mortgage or deed of trust;

8 (d) Information, including the applicable
 9 telephone number and Internet address, regarding the availability to the
 10 grantor, mortgagor, or obligor of each program for loan modification
 11 assistance or forbearance assistance offered;

12 (1) Solely by the beneficiary or the
 13 mortgagee; or

14 (2) By a government agency if the
 15 beneficiary or mortgagee participates in the government agency's program; and

16 (e) If the default is the result of the
 17 failure to make payment, a payment history showing the date of default.

18 (B) If a true and correct copy of the original note, mortgage, deed of
 19 trust, or an assignment or allonge of the note, mortgage, or deed of trust is
 20 lost or otherwise unavailable, the beneficiary or mortgagee may instead of
 21 providing true and correct copies of the note, mortgage, deed of trust, or
 22 assignment or allonge of the note, mortgage, or deed of trust, provide a
 23 statement that the document is lost or otherwise unavailable, and shall
 24 recite the good faith efforts the beneficiary or mortgagee has made to locate
 25 the document.

26 (C) The duties of the beneficiary or mortgagee to provide
 27 information under subdivision (2) of this section are not delegable to the
 28 beneficiary's trustee or the mortgagee's attorney-in-fact.

29 ~~(2)(3)~~ There is a default by the mortgagor, grantor, or other
 30 person owing an obligation, the performance of which obligation is secured by
 31 the mortgage or deed of trust or by their successors in interest obligor with
 32 respect to any provision in the mortgage or deed of trust that authorizes
 33 sale in the event of default of the provision; and

34 ~~(3)~~ The mortgagee, trustee, or beneficiary has filed for record
 35 with the recorder of the county in which the trust property is situated a
 36 duly acknowledged notice of default and intention to sell containing the

1 ~~information required by § 18-50-104,~~

2 (4) No action has been instituted to recover the debt or any
3 part of it secured by the mortgage or deed of trust or, if such action has
4 been instituted, the action has been *dismissed; and.*

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

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

9 18-50-104. Prerequisites for foreclosure sale – Contents of notice of
10 sale – Persons to receive notice.

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

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

16 (2) A period of at least sixty (60) days has elapsed since the
17 recording of the notice of default and intention to sell; and

18 (3)(A)(i) The beneficiary or mortgagee has certified to its
19 trustee or attorney-in-fact under § 18-50-102 that each mortgagor, grantor,
20 or obligor who applied for loan modification or forbearance assistance has
21 been notified that the mortgagor, grantor, or obligor does not meet the
22 criteria for loan modification or forbearance assistance under any program
23 offered by:

24 (a) The beneficiary or mortgagee; or

25 (b) A government agency if the beneficiary or
26 mortgagee participates in the government agency's program.

27 (ii) The notice shall be sent to the property
28 address or mailing address of the mortgagor, grantor, or obligor by certified
29 and first class mail at least ten (10) business days before the sale.

30 (B) The duties of the beneficiary or mortgagee under
31 subdivision (a)(3)(A) of this section are not delegable to the beneficiary's
32 trustee or the mortgagee's attorney-in-fact.

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

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

36 (2) A legal description of the trust property and, if

1 applicable, the street address of the property;

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

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

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

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

10 (7) The name, address, and telephone number of the party
11 initiating foreclosure.

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

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

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

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

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

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

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32 SECTION 4. Arkansas Code § 18-50-107 is amended to read as follows:
33 18-50-107. Manner of sale.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (4) The mortgagee or beneficiary shall receive a credit on its

1 bid for:

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

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

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

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

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

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

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

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

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19 /s/T. Rogers

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22 **APPROVED: 03/31/2011**

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