

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

INTERIM STUDY PROPOSAL 2013-102

State of Arkansas  
89th General Assembly  
Regular Session, 2013

As Engrossed: H3/27/13 H4/1/13

# A Bill

HOUSE BILL 1844

By: Representative Nickels

Filed with: Interim House Committee on Judiciary  
pursuant to A.C.A. §10-3-217.

## For An Act To Be Entitled

AN ACT TO REFORM RESIDENTIAL MORTGAGE FORECLOSURE  
PROCEDURES AND PRACTICES; TO REQUIRE THAT CIRCUIT  
CLERKS AS PART OF THEIR OFFICIAL DUTIES CONDUCT  
JUDICIAL SALES AND STATUTORY FORECLOSURE SALES AND  
THAT FEES FOR CONDUCTING THE SALES BE DISTRIBUTED TO  
COUNTY GOVERNMENT; AND FOR OTHER PURPOSES.

## Subtitle

AN ACT TO REFORM RESIDENTIAL MORTGAGE  
FORECLOSURE PROCEDURES AND PRACTICES; AND  
TO REQUIRE THAT CIRCUIT CLERKS AS PART OF  
THEIR OFFICIAL DUTIES CONDUCT JUDICIAL  
SALES AND STATUTORY FORECLOSURE SALES.

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

*SECTION 1. DO NOT CODIFY. Findings and legislative intent.*

*(a) The General Assembly finds that:*

*(1) A resident's home is often one of the resident's most  
valuable and cherished assets;*

*(2) Since the establishment of a nonjudicial, statutory  
foreclosure procedure in 1987 that largely operates independently of judicial  
supervision, citizens of the state have been subjected to numerous abuses and  
injustices, including without limitation:*

1                   (A) The lender's imposition of excessive fees and expenses  
2 that:

3                   (i) Are not imposed or considered proper in a  
4 judicial foreclosure proceeding;

5                   (ii) Often prevent a borrower from reinstating a  
6 loan or arranging a private sale of the property;

7                   (iii) May force a borrower to file bankruptcy in  
8 order to cure the full arrearage that the lender claims is owed; or

9                   (iv) In some cases have not yet been incurred by the  
10 lender;

11                   (B) The inability to ascertain ownership of the borrower's  
12 mortgage and engage in meaningful workout discussions because appropriate  
13 assignments or other documentation reflecting transfers of the borrower's  
14 mortgage and its current holder are not properly filed of record;

15                   (C) The inability to resolve good faith errors or other  
16 errors in payment records due to the failure of lenders to furnish:

17                   (i) Proof of adequate internal controls to ensure  
18 the maintenance of good accounting records; or

19                   (ii) Evidence of the accurate recording of payments;

20                   (D) Lenders disregarding or misinforming borrowers about  
21 loan modification agreements, payments, and procedures resulting in the  
22 continuation or initiation of foreclosure procedures after legally binding  
23 settlement agreements have been reached;

24                   (E) Lenders' failure to provide proper notice to  
25 homeowners resulting in:

26                   (i) A borrower's first learning of foreclosure  
27 proceedings when a sheriff serves him or her with a writ of assistance for  
28 possession of the property; or

29                   (ii) Lenders entering into homes that have not been  
30 properly foreclosed or when litigation concerning the home is pending;

31                   (F) The failure to give proper notice to interested third  
32 parties with a recorded lien upon the subject real property; and

33                   (G) Abuses concerning the conduct of statutory foreclosure  
34 sales, including without limitation:

1                   (i) Canceling or postponing the sale by an  
2 announcement at the advertised time and place scheduled for the sale without  
3 adequate notice to interested parties;

4                   (ii) Recording a deed that:

5                               (a) Contains recitals that the property had  
6 been sold at the foreclosure sale when in fact the sale was not conducted;  
7 and

8                               (b) Transfers title to the property to the  
9 foreclosing lender or a third party despite the fact a foreclosure sale was  
10 not conducted;

11                   (iii) Failing to conduct the sale when scheduled;  
12 and

13                   (iv) Holding or rescheduling a sale without adequate  
14 notice, making it difficult or impossible for affected homeowners or other  
15 interested parties to bid on foreclosed properties;

16                   (3) The loss of filing fees, commissioner fees, recording fees,  
17 and transfer tax fees has cost the state and counties millions of dollars in  
18 revenue needed to provide better and more efficient state and county  
19 government services;

20                   (4) The statutory foreclosure sale process:

21                               (A) Is conducted without court supervision;

22                               (B) Does not require a report of sale or confirmation  
23 order from a court; and

24                               (C) Does not use elected county officials who are  
25 accountable to the citizens of the county and knowledgeable in conducting  
26 judicial sales of real property and appropriately documenting real estate  
27 transactions and proceedings;

28                   (5) Act 53 of 1987, authorizing a statutory, nonjudicial  
29 procedure for the enforcement of mortgages was amended by Act 1303 of 2003 to  
30 provide that "No person, firm, company, association, fiduciary, or  
31 partnership, either domestic or foreign, shall avail themselves of the  
32 procedures under this chapter unless authorized to do business in this  
33 state";

34                   (6) In the emergency clause of Act 1303 of 2003, the General  
35 Assembly found that "foreign entities not authorized to do business in the  
36 State of Arkansas are availing themselves of the provisions of the Statutory

1 Foreclosure Act of 1987; that often times it is to the detriment of Arkansas  
2 citizens; and that this act is immediately necessary because these entities  
3 should be authorized to do business in the State of Arkansas before being  
4 able to use the Statutory Foreclosure Act of 1987";

5 (7) Even after the passage of the 2003 amendment, many out-of-  
6 state national banks:

7 (A) Continued to avail themselves of the statutory  
8 foreclosure procedures authorized by Act 53 of 1987, as amended;

9 (B) Disregarded the 2003 amendment requiring registration  
10 with the Secretary of State's office to obtain a certificate of authority in  
11 order to be authorized to do business in the State of Arkansas properly; and

12 (C) To this day refuse to comply with the existing law for  
13 the conduct of statutory foreclosures, contributing to abuses of the  
14 foreclosure process, which has been injurious to numerous Arkansas  
15 homeowners;

16 (8) Judicial foreclosure proceedings:

17 (A) Have a long history and credibility for the  
18 foreclosure of mortgages in this state;

19 (B) Require lenders to provide proof of ownership of a  
20 mortgage, proof of default by the homeowner, and proof that the home is the  
21 proper collateral for the note;

22 (C) Require lenders to provide the homeowner and all other  
23 interested parties notice, a summons, and a forum to appear and raise  
24 defenses and seek equity as the facts of a case require;

25 (D) Are supervised by a court of law, are subject to  
26 appeal, and provide a full record of the proceedings;

27 (E) Result in a commercially reasonable sale conducted by  
28 a reputable county official under the guidance and supervision of the court  
29 and return excess proceeds from a sale to appropriate interested parties and  
30 homeowners;

31 (F) Require lenders to pay filing fees, recording fees,  
32 and transfer tax fees to state and county governments; and

33 (G) Protect the rights of all parties and can be conducted  
34 as quickly and inexpensively as statutory foreclosures; and

35 (9) If a nonjudicial, statutory foreclosure procedure should  
36 continue to be authorized by the General Assembly, then the procedure should

1 be reformed and numerous safeguards added to protect the rights of Arkansas  
2 homeowners.

3 (b) It is the intent of the General Assembly by the enactment of this  
4 act to:

5 (1) Reaffirm that it is the public policy of the state to  
6 require the regulation and supervision of lenders who seek to foreclose  
7 mortgages encumbering one of the most cherished and valuable assets of the  
8 residents of this state;

9 (2) Require that the foreclosure of a mortgage, deed of trust,  
10 or similar instrument evidencing a lien upon residential real property be  
11 appropriately regulated and supervised, and that homeowners be given the  
12 right to require, without any requirement for posting bond, mediation and  
13 that a foreclosure be conducted exclusively in a judicial proceeding under  
14 court supervision; and

15 (3) Require that the circuit clerk of the county where real  
16 property is located, as part of the circuit clerk's official duties, be  
17 appointed commissioner of the court to conduct all judicial sales and  
18 foreclosure sales, and that appropriate commissioner fees be used to defray  
19 expenses of the circuit clerk's office and assist the provision of services  
20 to the county.

21  
22 SECTION 2. Arkansas Code § 18-50-101, concerning definitions applicable  
23 to the chapter authorizing a statutory foreclosure procedure, is amended to  
24 add additional subdivisions to read as follows:

25 (13) "Allowable expenses" means the amount necessary to  
26 reimburse a mortgagee or beneficiary for one (1) or more of the following  
27 expenses incurred under the terms of a mortgage or deed of trust, if the  
28 mortgagee or beneficiary is obligated to pay the expense at the time a  
29 default is cured or a loan is paid off under this subchapter and provides the  
30 grantor, mortgagor, or obligor on or before receiving payment a written  
31 itemization of the date, amount, and the payee's name, address, and phone  
32 number for the expense:

33 (A) Title examination expenses not to exceed two hundred  
34 dollars (\$200);

35 (B) Property preservation expenses;

1                   (C) The reasonable cost of necessary insurance coverage to  
2 protect the interest of the mortgagee or beneficiary;

3                   (D) Real estate taxes;

4                   (E) Recording fees payable to the county recorder;

5                   (F) Filing fees required by a judicial proceeding;

6                   (G) To perfect service under Rule 4 of the Arkansas Rules  
7 of Civil Procedure, sheriff's fees, process server fees, publication costs,  
8 and the cost of postage to perform a required mailing; and

9                   (H) Publication costs under §18-50-105;

10                  (14) "Allowable attorney fees" means:

11                   (A) Unless otherwise provided by a court order in a  
12 judicial proceeding, in addition to a fee allowed under subdivision (14)(B)  
13 of this section:

14                                 (i) One hundred twenty five dollars (\$125) if  
15 payment to cure a default under a mortgage or deed of trust is received  
16 before with respect to the mortgage or deed of trust:

17   (a) A notice of default and intention to sell  
18 under § 18-50-104 is filed; or

19   (b) A complaint is filed in a judicial  
20 proceeding to foreclose the mortgage or deed of trust; or

21   (ii) Five hundred dollars (\$500) if payment to cure  
22 a default under a mortgage or deed of trust is received after the time  
23 specified in subdivision (14)(A)(i) of this section but before:

24   (a) The foreclosure sale under this chapter is  
25 concluded; or

26   (b) A decree of foreclosure is entered in a  
27 judicial proceeding.

28                   (B) "Allowable attorney's fees" includes the following  
29 additional fees if incurred by a mortgagee or beneficiary in a federal  
30 bankruptcy proceeding in order to exercise or preserve a right under a  
31 mortgage or deed of trust and for each separate bankruptcy proceeding:

32                                 (i) Fifty dollars (\$50.00) for:

33   (a) Filing all proofs and amended proofs of  
34 the claim of a mortgagee or beneficiary;

35   (b) All filings to obtain relief from the  
36 automatic stay; or

(c) Obtaining:

(1) A signed agreement of a grantor, mortgagor, or obligor to reaffirm the obligations of the mortgage or deed of trust;

(2) Without a contested hearing and ruling by the court, an order:

(A) Granting relief from the automatic stay; or

(B) Confirming a plan of reorganization; and

(ii) One hundred fifty dollars (\$150) for obtaining after a contested hearing and ruling by the court an order:

(a) Granting relief from the automatic stay; or

(b) Confirming a plan of reorganization; and

(15)(A) "Title examination expenses" means all expenses incurred to determine the:

(i) State of the title to trust property; and

(ii) Actions necessary to convey marketable title to a purchaser of the trust property.

(B) "Title examination expenses" includes without limitation the cost of a title search, abstract, title commitment, or attorney's opinion letter.

SECTION 3. Arkansas Code § 18-50-103 is amended to read as follows:  
18-50-103. Conditions to exercise of power of sale.

(a) A beneficiary or mortgagee may not initiate a foreclosure under this chapter unless:

(1) The deed of trust or mortgage is filed for record with the recorder of the county in which the trust property is situated;

(2)(A) The beneficiary or mortgagee:

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

(ii) At least ~~ten (10)~~ thirty (30) days before initiating the foreclosure has provided by standard mail to ~~the~~ each grantor, mortgagor, ~~or~~ and obligor at the address of the property encumbered by the

1 mortgage or deed of trust ~~or~~ and the mailing address of the grantor,  
2 mortgagor, or obligor:

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

5 (b) The name, address, and telephone number of  
6 ~~the holder~~ both the current owner of the original note and the mortgage loan  
7 servicer;

8 (c) The physical location of the original  
9 note;

10 ~~(e)(d)~~ (d) A true and correct copy of the original  
11 mortgage or deed of trust and ~~if in the possession of the beneficiary or~~  
12 ~~mortgagee,~~ each assignment or allonge of the mortgage or deed of trust;

13 ~~(d)(e)~~ (e) Information, including the applicable  
14 telephone number and Internet address, regarding the availability to the  
15 grantor, mortgagor, or obligor of each program for loan modification  
16 assistance or forbearance assistance offered:

17 (1) Solely by the beneficiary or the  
18 mortgagor; or

19 (2) By a government agency if the  
20 beneficiary or mortgagee participates in the government agency's program; ~~and~~

21 ~~(e)(f)~~ (f) If the a default is the result exists  
22 because of the failure to make payment, a payment history showing the date  
23 evidence of the default for failure to make payment; and

24 (g)(1) A separate notice mailed and provided  
25 in addition to the other information required by this subdivision

26 (a)(2)(A)(ii) that states in at least 20-point type:

27 NOTICE

28 LEGAL ACTION IS BEING TAKEN TO FORECLOSE THE MORTGAGE OR DEED OF TRUST ON  
29 YOUR HOME (IDENTIFYING INFORMATION ATTACHED). (1) IF YOU WOULD LIKE THE  
30 FORECLOSURE PROCEEDINGS TO BE CONDUCTED BY A JUDGE IN A COURT OF LAW, YOU  
31 MUST NOTIFY YOUR LENDER BY CHECKING THE BOX PROVIDED BELOW, SIGNING AND  
32 DATING THIS NOTICE, AND RETURNING THE NOTICE AND ATTACHMENT IN THE ENCLOSED  
33 POSTAGE-PREPAID ENVELOPE. (2) IF YOU HAVE A PAYMENT DISPUTE, FORBEARANCE,  
34 LOAN FORGIVENESS OR LOAN MODIFICATION REQUEST, OR ANOTHER ISSUE WITH YOUR  
35 LENDER THAT YOU WOULD LIKE TO ATTEMPT TO RESOLVE THROUGH MEDIATION, AT THE  
36 EXPENSE OF THE LENDER, YOU MUST NOTIFY YOUR LENDER BY CHECKING THE BOX



1 PROVIDED BELOW, SIGNING AND DATING THIS NOTICE, AND RETURNING THE NOTICE AND  
2 ATTACHMENT IN THE ENCLOSED POSTAGE-PREPAID ENVELOPE.  
3 PLEASE ALSO NOTE THAT IF YOU DO NOT CURE THE DEFAULT ON YOUR MORTGAGE WITHIN  
4 THIRTY (30) DAYS OF THE DATE OF THIS NOTICE, THE AMOUNT NECESSARY TO CURE THE  
5 DEFAULT WILL INCREASE SIGNIFICANTLY DUE TO YOUR OBLIGATION TO REPAY  
6 FORECLOSURE EXPENSES AND ATTORNEY'S FEES TO YOUR LENDER.

7  
8  I AM EXERCISING MY RIGHT TO REQUIRE THAT THE ENCLOSED MORTGAGE OR DEED OF  
9 TRUST BE FORECLOSED IN A JUDICIAL PROCEEDING.

10  I AM EXERCISING MY RIGHT TO REQUIRE MEDIATION OF A DISPUTE WITH OR  
11 REQUEST TO MY LENDER.

12  
13 SIGNATURE: \_\_\_\_\_  
14 NAME PRINTED: \_\_\_\_\_  
15 DATE: \_\_\_\_\_

16 (2) The notice required by subdivision  
17 (a)(2)(A)(ii)(g)(1) of this section shall be accompanied by a:

18 (A) Postage prepaid envelope  
19 addressed in the manner chosen by the beneficiary or mortgagee to ensure  
20 compliance with this subdivision (a)(2)(A)(ii)(g); and

21 (B) Copy of sufficient pages of  
22 the mortgage or deed of trust to provide the:

- 23 (i) First page;
- 24 (ii) Names, signatures, and
- 25 acknowledgements of each grantor, mortgagor, and obligor; and
- 26 (iii) Legal description.

27 (3) A grantor, mortgagor, or obligor who  
28 elects under subdivision (a)(2)(A)(ii)(g)(1) of this section to require:

29 (A) A judicial foreclosure or  
30 mediation is not required to post a bond or pay a mediation expense other  
31 than expenses and attorney's fees to prepare his or her case; and

32 (B)(i) Mediation shall:  
33 (a) Be furnished by  
34 the beneficiary or mortgagee from a roster provided by the Arkansas  
35 Alternative Dispute Resolution Commission of mediators who meet the  
36 commission's requirements and guidelines for mediating foreclosure cases; and

1  
2 (b) Select the mediator from the roster furnished.

3 (ii) The mediation shall be  
4 conducted according to § 16-7-201 et seq.

5 ~~(B) If a true and correct copy of the original note,~~  
6 ~~mortgage, deed of trust, or an assignment or allonge of the note, mortgage,~~  
7 ~~or deed of trust is lost or otherwise unavailable, the beneficiary or~~  
8 ~~mortgagee may, instead of providing true and correct copies of the note,~~  
9 ~~mortgage, deed of trust, or assignment or allonge of the note, mortgage, or~~  
10 ~~deed of trust, provide a statement that the document is lost or otherwise~~  
11 ~~unavailable, and shall recite the good faith efforts the beneficiary or~~  
12 ~~mortgagee has made to locate the document.~~

13 ~~(C) The duties of the beneficiary or mortgagee to provide~~  
14 ~~information under ~~subdivision (2)~~ this subdivision (a)(2) of this section are~~  
15 ~~not delegable to the beneficiary's trustee or the mortgagee's attorney-in-~~  
16 ~~fact;~~

17 (3) There is a default by the mortgagor, grantor, or obligor  
18 with respect to any provision in the mortgage or deed of trust that  
19 authorizes sale in the event of the default ~~of the provision; and~~

20 (4) No action has been instituted to recover the debt or any  
21 part of it secured by the mortgage or deed of trust or, if ~~such~~ an action has  
22 been instituted, the action has been dismissed; and

23 (5) A mediation requested under this section or otherwise if  
24 requested before a notice of default and intention to sell is recorded under  
25 § 18-50-104 is concluded as provided by § 16-7-208.

26 (b) A foreclosure shall not be conducted under this chapter if:

27 (1) The original note, mortgage, deed of trust, or an assignment  
28 or allonge of the note, mortgage, or deed of trust is lost, destroyed, or  
29 otherwise unavailable; or

30 (2) A grantor, mortgagor, or obligor notifies the mortgagor,  
31 beneficiary, or loan servicer within thirty (30) days after the notice  
32 required by subdivision (a)(2)(A)(ii)(g) is mailed that the grantor,  
33 mortgagor, or obligor is exercising the right of the grantor, mortgagor, or  
34 obligor to require that the mortgage or deed of trust be foreclosed in a  
35 judicial proceeding.

36

1           SECTION 4. Arkansas Code § 18-50-104(c) and (d), concerning service of  
2 notice of default and intention to sell, are amended to read as follows:

3           (c) The mortgagee's or trustee's notice of default and intention to  
4 sell shall be ~~mailed~~ served within thirty (30) days of the recording of the  
5 notice ~~by certified mail, postage prepaid, and by first class mail, postage~~  
6 ~~prepaid, to the address last known to the mortgagee or the trustee or~~  
7 ~~beneficiary of~~ in the manner required for perfecting service of a summons  
8 sufficient to obtain a default judgment under Rule 4 of the Arkansas Rules of  
9 Civil Procedure upon the following persons:

10                               (1) The mortgagor, grantor, and obligor of the deed of  
11 trust;

12                               (2) ~~Any~~ A successor in interest to the mortgagor or  
13 grantor whose interest appears of record or of whose interest the mortgagee  
14 or the trustee or beneficiary has actual notice;

15                               (3) ~~Any~~ A person having a lien or interest subsequent to  
16 the interest of the mortgagee or trustee when ~~that~~ the lien or interest  
17 appears of record or when the mortgagee, the trustee, or the beneficiary has  
18 actual notice of the lien or interest; and

19                               (4) ~~Any~~ A person requesting notice, as provided in § 18-  
20 50-113.

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

27  
28           SECTION 5. Arkansas Code § 18-50-105 is amended to read as follows:  
29 18-50-105. Publication of notice - Charges.

30           (a)(1) The mortgagee or trustee shall publish the notice+ of a  
31 foreclosure sale under this chapter

32                               ~~(1)~~ In in a newspaper of general circulation in the county  
33 in which the trust property is situated or in a newspaper of general  
34 statewide daily publication one (1) time a per week for four (4) consecutive  
35 weeks ~~prior to~~ before the ~~date of~~ sale.

1           (2) The final publication shall be no more than ten (10) days  
2 prior to before the date of the sale.

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

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

8           (b) The mortgagee, beneficiary, or trustee may publish or post  
9 additional notices of the foreclosure sale but shall not charge a grantor,  
10 mortgagor, or obligor a publication or posting charge other than the actual  
11 cost of publishing notice of the sale under subsection (a) of this section.

12  
13           SECTION 6. Arkansas Code § 18-50-106 is amended to read as follows:  
14           18-50-106. Trustee's affidavit.

15           On or before the date the mortgagee or trustee conducts the sale, a  
16 duly acknowledged affidavit of ~~mailing~~ service and publication of the notice  
17 of default and intention to sell shall be filed for record with the recorder  
18 of the county in which the trust property is situated.

19  
20           SECTION 7. Arkansas Code § 18-50-107 is amended to read as follows:  
21           18-50-107. Manner of sale.

22           (a) The A foreclosure sale under this chapter shall be conducted by  
23 the circuit clerk acting as commissioner under § 21-6-412 and held on the  
24 date and at the time and place selected by the commissioner and designated in  
25 the notice of default and intention to sell, ~~except that the sale shall:~~

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

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

30                   (3) ~~Not be held on~~ On a day other than a Saturday, Sunday,  
31 or a legal holiday.

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

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

1                   (2) ~~The mortgagee or trustee shall engage a third party~~  
 2 ~~that is licensed to sell real estate under the Real Estate License Law, § 17-~~  
 3 ~~42-101 et seq., and licensed to act as an auctioneer under the Auctioneer's~~  
 4 ~~Licensing Act, § 17-17-101 et seq., to conduct the sale and act at the sale~~  
 5 ~~as the auctioneer.~~

6                   ~~(3) No bid shall be accepted that is less than two-thirds~~  
 7 ~~(2/3) of the entire indebtedness due at the ~~date~~ time of sale.~~

8                   (c)(1) ~~The person conducting the sale~~ commissioner may postpone the  
 9 sale from time to time.

10                   ~~(2)(A) In every such case, for no more than thirty (30)~~  
 11 ~~days by:~~

12                   ~~(A) Announcing notice of the postponement shall be given~~  
 13 ~~by:~~

14   ~~(i) Public proclamation thereof by that~~  
 15 ~~person; or~~

16   ~~(ii) Written notice of postponement posted and~~  
 17 ~~the new sale date at the time and place last appointed for the sale; and~~

18                   ~~(B) Posting notice of the new sale date conspicuously in~~  
 19 ~~the county courthouse.~~

20                   ~~(B)(i) (2) No other notice of the postponement need~~  
 21 ~~be given unless If the sale is postponed for longer than thirty (30) days~~  
 22 ~~beyond the date designated in the initial notice.~~

23   ~~(ii) In that event, of default and intention~~  
 24 ~~to sell, then notice thereof of the new foreclosure sale date shall be given~~  
 25 ~~pursuant to § 18-50-104.~~

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

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

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

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

3 (A) ~~The amount representing the unpaid principal~~  
4 balance owed;

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

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

8 (D) ~~Costs of the sale, including reasonable~~  
9 ~~trustee's and Allowable expenses and allowable~~ attorney's fees.

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

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

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

18 (C) ~~In either event, the provisions of § 18-50-~~  
19 ~~116(d) shall apply.~~

20  
21 SECTION 8. Arkansas Code § 18-50-109 is amended to read as follows:  
22 18-50-109. Disposition of proceeds of sale.

23 The trustee or mortgagee shall apply the proceeds of the sale as  
24 follows:

25 (1) ~~To the First, to allowable expenses of the sale,~~  
26 ~~including compensation of the trustee or mortgagee and a reasonable fee by~~  
27 ~~the attorney~~ and allowable attorney's fees;

28 (2) ~~To Second, to the indebtedness owed;~~

29 (3) ~~To Third, to all persons having recorded liens~~  
30 ~~subsequent to the interest of the trustee or mortgagee as their interests may~~  
31 ~~appear~~ the record owner of a lien recorded after the foreclosed mortgage or  
32 deed of trust in the order of the each lien's priority; and

33 (4) The surplus, if any, to the grantor, ~~of the trust deed~~  
34 ~~or mortgagor, to or~~ the successor in interest of the grantor or mortgagor  
35 entitled to the surplus.  
36

1           SECTION 9. Arkansas Code § 18-50-111(a)(1), concerning a trustee's  
2 deed or mortgagee's deed, is amended to read as follows:

3           (a)(1) The trustee's or mortgagee's deed shall contain recitals of  
4 compliance with the requirements of this chapter relating to the exercise of  
5 the power of sale and sale of the trust property, including recitals  
6 concerning mailing service and publication of notice of default and intention  
7 to sell and the conduct of the sale.

8  
9           SECTION 10. Arkansas Code § 18-50-112 is amended to read as follows:  
10 18-50-112. Deficiency judgment not permitted.

11           ~~(a)(1) At any time within twelve (12) months after a sale under this~~  
12 ~~chapter, a money judgment may be sought for the balance due upon the~~  
13 ~~obligation for which a mortgage or deed of trust was given as security.~~

14                         ~~(2) In such action, the plaintiff shall set forth in his~~  
15 ~~or her complaint, and shall have the burden of proving, the entire amount of~~  
16 ~~indebtedness which was secured by the mortgage or deed of trust, the amount~~  
17 ~~for which the trust property was sold, and the fair market value of the trust~~  
18 ~~property at the date of sale, together with interest from the date of sale,~~  
19 ~~costs, and attorney's fees.~~

20           ~~(b) Judgment shall not exceed the lesser of the following:~~

21                         ~~(1) The amount for which the indebtedness due at the date~~  
22 ~~of sale, with interest from the date of sale, costs, and trustee's and~~  
23 ~~attorney's fees, exceeds the fair market value of the trust property; or~~

24                         ~~(2) The amount for which the indebtedness due at the date~~  
25 ~~of sale, with interest from the date of sale, costs, and trustee's and~~  
26 ~~attorney's fees, exceeds the amount for which the trust property was sold.~~

27           A mortgagee or beneficiary that forecloses a mortgage or deed of trust  
28 under this chapter waives the right to obtain a deficiency judgment against a  
29 grantor, mortgagor, or obligor.

30  
31           SECTION 11. Arkansas Code § 18-50-114 is amended to read as follows:  
32 18-50-114. Reinstatement or payment of mortgage or deed of trust

33 encumbering residential real property - Allowable expenses and attorney's  
34 fees - Penalties.

35           ~~(a)(1) Whenever all or a portion of the principal sum of any~~  
36 ~~obligation If the debt secured by a mortgage or deed of trust, prior to the~~

1 ~~maturity date fixed in such obligation, encumbering residential real property~~  
 2 ~~has become due or has been declared due by reason of a breach or default in~~  
 3 ~~the performance of any an obligation secured by the mortgage or deed of~~  
 4 ~~trust, including a default in the payment of interest or of any installment~~  
 5 ~~of principal, or by reason of a failure of the grantor to pay, in accordance~~  
 6 ~~with the terms of the mortgage or deed of trust, taxes, assessments, premiums~~  
 7 ~~for insurance, or advances made by the mortgagee or beneficiary in accordance~~  
 8 ~~with the terms of such obligation or of such mortgage or deed of trust, then~~  
 9 ~~the a mortgagor, obligor, or grantor, or their successors a successor in~~  
 10 ~~interest of the mortgagor, obligor, or grantor in the trust property may pay,~~  
 11 ~~cure the default at any time subsequent to the filing for record of a notice~~  
 12 ~~of default and intention to sell and prior to before the foreclosure sale, by~~  
 13 ~~paying to the mortgagee or beneficiary or their successor in interest the~~  
 14 ~~entire amount then due under the terms of such mortgage or deed of trust,~~  
 15 ~~including costs and expenses actually incurred in enforcing the terms of the~~  
 16 ~~obligation and mortgage or deed of trust, and trustee's and attorney's fees~~  
 17 ~~other than that portion of the principal which would not then be due had no~~  
 18 ~~default occurred, and thereby cure the default theretofore existing.~~

19 ~~(2) Thereupon, all proceedings under this chapter~~  
 20 ~~theretofore had or instituted shall be dismissed or discontinued, and the~~  
 21 ~~obligation and mortgage or deed of trust shall be reinstated and shall be and~~  
 22 ~~remain in force and effect, the same as if no acceleration had occurred,~~  
 23 ~~allowable expenses and allowable attorney's fees plus:~~

24 ~~(1) To reinstate the mortgage or deed of trust, all unpaid~~  
 25 ~~monthly payments and late charges through the date that payment is received;~~  
 26 ~~or~~

27 ~~(2) To pay off the mortgage or deed of trust, all unpaid~~  
 28 ~~principal, interest, and late charges through the date that payment is~~  
 29 ~~received.~~

30 ~~(b) A limitation imposed by this section for an allowable expense or~~  
 31 ~~an allowable attorney's fee that may be charged to a grantor, mortgagor, or~~  
 32 ~~obligor does not limit the amount of an expense or fee that may be negotiated~~  
 33 ~~with a mortgagor or beneficiary.~~

34 ~~(c)(1) If a grantor, mortgagor, or obligor requests a quote to~~  
 35 ~~reinstate or pay off a debt secured by a mortgage or deed of trust upon~~



1 residential real property, the mortgagee, beneficiary, or trustee shall  
2 promptly provide a quote that:

3 (A) Itemizes all payments, principal, interest, late  
4 charges, allowable expenses, and allowable attorney's fees that have accrued  
5 or have been incurred and must be paid to reinstate or pay off the mortgage  
6 or deed of trust;

7 (B)(i) Discloses the ownership interest of a trustee or  
8 mortgagee in an entity that incurs an:

9 (a) Allowable expense; or

10 (b) Expense authorized by a mortgage or deed  
11 of trust.

12 (ii) As used in subdivision (c)(1)(B)(i) of this  
13 section, "ownership interest" means:

14 (a) A financial interest in a business; or

15 (b) The right to participate in a decision  
16 concerning the management of a business other than as a paid consultant or  
17 attorney; and

18 (C) Provides the:

19 (i) Date through which the quote to reinstate or pay  
20 off the mortgage or deed of trust shall be honored; and

21 (ii) Estimated date that an existing or new  
22 allowable expense or allowable attorney's fee is expected to increase the  
23 quote and the amount of the increase.

24 (2) Upon receipt of a payment sufficient to cure a default under  
25 the mortgage or deed of trust, the mortgagee, beneficiary, or trustee shall  
26 cancel and, if collected, refund each allowable expense and allowable  
27 attorney's fee that has not yet been incurred.

28 ~~(b)(d)~~ If the default is cured and the mortgage or deed of trust:

29 (1) Is reinstated or paid off in the manner provided ~~in~~ by this  
30 section, the mortgagee, beneficiary, or ~~their successors in interest~~ trustee  
31 shall file for record with the recorder of the county in which the trust  
32 property is situated a duly acknowledged cancellation of the recorded notice  
33 of default and intention to sell ~~under such mortgage or deed of trust~~; and

34 (2) Is reinstated in the manner provided by this section:

35 (A) All proceedings under this chapter therefore shall be  
36 dismissed or discontinued; and

1                    (B) The obligation and mortgage or deed of trust shall be  
2 reinstated and shall remain in force and effect as if no acceleration had  
3 occurred.

4            (e) A violation of this section is:

5                    (1) A deceptive trade practice under § 4-88-101 et seq.; and

6                    (2) Enforceable and punishable as provided by § 4-88-101 et seq.

7            (f) As used in this section, "residential real property" means real  
8 property used primarily for single family residential purposes.

9  
10            SECTION 12. Arkansas Code § 19-5-1241(b), concerning the Trial Court  
11 Administrative Assistant Fund, is amended to read as follows:

12            (b) The Trial Court Administrative Assistant Fund shall consist of  
13 those moneys transferred from the State Administration of Justice Fund, the  
14 first twenty-five dollars (\$25.00) of each filing fee collected under § 21-6-  
15 403(b)(2)(A), and other moneys as authorized by law.

16  
17            SECTION 13. Arkansas Code § 21-6-403(b)(2), concerning uniform filing  
18 fees for circuit court clerks, is amended to read as follows:

19            (2)(A) For filing a mortgagee's or trustee's notice of default  
20 and intention to sell pursuant to § 18-50-104 . . . . . ~~140.00~~ 165.00

21                    (B) The first twenty-five dollars (\$25.00) of each filing  
22 fee collected under subdivision (b)(2)(A) of this section shall be paid into  
23 the Trial Court Administrative Assistant Fund.

24  
25            SECTION 14. Arkansas Code § 21-6-412 is amended to read as follows:  
26 21-6-412. Commissioners to sell property.

27            (a)~~(1)~~ As part of his or her official duties, the clerk of the circuit  
28 court of the county in which real property or personal property is located  
29 shall be appointed commissioner of the court to conduct:

30                    (1) A judicial sale of the real property or personal property;

31 or

32                    (2) A statutory foreclosure sale under § 18-50-101 et seq.

33            (b)(1) ~~Commissioners~~ A commissioner appointed to ~~make~~ conduct sales a  
34 sale of real property under judicial decrees this section shall be allowed  
35 the following fees as compensation for such services as a commissioner's fee:  
36 On sales for \$1.00 to \$500 . . . . . \$10.00

1        ~~On sales for 500 to 2,500 . . . . . 15.00~~  
2        ~~On sales for 2,500 to 5,000 . . . . . 20.00~~  
3        ~~On sales for 5,000 to 10,000 . . . . . 25.00~~  
4        ~~On sales for 10,000 to 20,000 . . . . . 30.00~~  
5        ~~On sales for 20,000 to 35,000 . . . . . 35.00~~  
6        ~~On sales for 35,000 or more, one tenth of one percent (0.1%).~~

7                    (A) Ten dollars (\$10.00) if the sale price is less than  
8 five hundred dollars (\$500);

9                    (B) Fifteen dollars (\$15.00) if the sale price is five  
10 hundred dollars (\$500) or more but less than two thousand five hundred  
11 dollars (\$2,500);

12                    (C) Twenty dollars (\$20.00) if the sale price is two  
13 thousand five hundred dollars (\$2,500) or more but less than five thousand  
14 dollars (\$5,000);

15                    (D) Twenty-five dollars (\$25.00) if the sale price is five  
16 thousand dollars (\$5,000) or more but less than ten thousand dollars  
17 (\$10,000);

18                    (E) Thirty dollars (\$30.00) if the sale price is ten  
19 thousand dollars (\$10,000) or more but less than twenty thousand dollars  
20 (\$20,000);

21                    (F) Thirty-five dollars (\$35.00) if the sale price is  
22 twenty thousand dollars (\$20,000) or more but less than thirty-five thousand  
23 dollars (\$35,000); or

24                    (G) One-tenth of one percent (0.1%) of the sale price if  
25 the sale price is thirty-five thousand dollars (\$35,000) or more.

26                    (2) Commissioners A commissioner appointed to make sales conduct  
27 a sale of personal property under a judicial ~~decrees~~ decree shall be allowed  
28 as compensation for ~~such services~~ conducting the sale the fee prescribed by  
29 the judge of the court that issued the decree.

30                    ~~(b)(c)~~ In lieu of the fees provided for in this section, the court may  
31 set reasonable fees for commissioners based upon services rendered on sales  
32 under thirty-five thousand dollars (\$35,000).

33                    (d)(1) The fees required by this section shall:

34                    (A) Be collected by the circuit clerk and paid into the  
35 county treasury to the credit of a fund to be known as the "circuit clerk  
36 commissioner's fee fund"; and

1                   (B) Be used exclusively by the circuit clerk's office for  
2 the following purposes and in the following order:

3                   (i) To offset administrative costs associated with  
4 the performance of the commissioner's duties; and

5                   (ii) For general operational expenses of the office  
6 of the circuit clerk.           (2) Moneys deposited into the fund shall be  
7 appropriated and expended for the uses designated in this section by the  
8 quorum court at the direction of the circuit clerk.

9  
10           SECTION 15. Arkansas Code Title 16, Chapter 7, Subchapter 2, is  
11 amended to add an additional section to read as follows:

12           16-7-208. Foreclosure mediation.

13           (a) As used in this section:

14                   (1) "Foreclosure mediator" means a mediator approved by the  
15 Arkansas Alternative Dispute Resolution Commission to conduct a mediation  
16 under this section; and

17                   (2) "Grantor", "mortgagor", "obligor", "mortgagee", and  
18 "beneficiary" mean the same as defined in § 18-50-101.

19           (b) Except as provided in this section, this subchapter applies to the  
20 mediation of a request made under § 18-50-103 or otherwise concerning a:

21                   (1) Dispute between a grantor, mortgagor, or obligor and a  
22 mortgagee or beneficiary; and

23                   (2) Request by a grantor, mortgagor, or obligor to a mortgagee  
24 or beneficiary for the forbearance, loan modification, or other restructuring  
25 of a debt owed by the grantor, mortgagor, or obligor to the mortgagee or  
26 beneficiary.

27           (c) The commission shall:

28                   (1) Establish and maintain a roster of mediators who meet the  
29 commission's requirements and guidelines for mediating issues related to  
30 foreclosure proceedings, including without limitation issues concerning  
31 default and requests for loan forgiveness, forbearance, loan modification, or  
32 other restructuring of a debt of a grantor, mortgagor, or obligor; and

33                   (2) Upon request:

34                           (A) Provide the roster to a grantor, mortgagor, obligor,  
35 mortgagee, or beneficiary; and

1                   (B) Help a grantor, mortgagor, or obligor select an  
2 appropriate mediator by using a continuously rolling list from the mediators  
3 on the roster if a grantor, mortgagor, or obligor is unable or unwilling to  
4 make the selection.

5           (d)(1) The beneficiary or mortgagee shall:

6                   (A) Attend the mediation; and

7                   (B)(i) Bring to the mediation the original note, mortgage  
8 or deed of trust, and each assignment of the note.

9                   (ii) If the original note, mortgage or deed of  
10 trust, or an assignment of the note is lost, stolen, or destroyed, the  
11 beneficiary or mortgagee shall at the beginning of the mediation for each  
12 note, mortgage or deed of trust, or assignment that is lost, stolen, or  
13 destroyed:

14                   (a) Presents a sworn affidavit of lost  
15 instrument that:

16                                   (1) Contains the proof required to  
17 enforce the instrument under § 4-3-309; and

18                                   (2) Provides a detailed explanation of  
19 the reasons why the note, mortgage or deed of trust, or assignment is  
20 unavailable.

21                   (2) A beneficiary or mortgagee shall not be represented at the  
22 mediation by another person unless the person has authority or immediate  
23 access to a person with the authority to negotiate:

24                                   (A) A loan forgiveness, forbearance, loan modification, or  
25 other restructuring of a debt of a grantor, mortgagor, or obligor; and

26                                   (B) Any other relief requested by a grantor, mortgagor, or  
27 obligor, including without limitation a deed in lieu of foreclosure or  
28 another alternative to foreclosure.

29                   (e)(1) If the beneficiary or mortgagee fails to attend the mediation,  
30 fails to participate in the mediation in good faith, does not bring to the  
31 mediation each document required by subsection (d) of this section, or does  
32 not have the authority or access to a person with the authority required by  
33 subsection (d) of this section, the foreclosure mediator shall make a  
34 recommendation concerning the imposition of sanctions against the beneficiary  
35 or mortgagee, the representative of the beneficiary or mortgagee, or both.

36                   (2) Upon presentation of the foreclosure mediator's

1 recommendation under subdivision (e)(1) of this section to the circuit court  
2 of the county in which the presenting grantor, mortgagor, or obligor resides,  
3 the court shall grant appropriate relief, including without limitation  
4 ordering:

5 (A) Sanctions against the beneficiary or mortgagee, the  
6 representative of the beneficiary or mortgagee, or both;

7 (B) The execution of an appropriate loan modification  
8 agreement, forbearance agreement, or other debt restructuring; and

9 (C) The execution and acceptance of a deed in lieu of  
10 foreclosure.

11 (f) If the grantor, mortgagor, or obligor fails to attend the  
12 mediation, the foreclosure mediator shall provide the beneficiary or  
13 mortgagee a certificate which states that the mediation requested is not  
14 required.

15 (g) If the foreclosure mediator determines that the parties acting in  
16 good faith are not able to reach an acceptable compromise, the foreclosure  
17 mediator shall:

18 (1) Recommend that the mediation be terminated; and

19 (2) Provide the parties to the mediation a certificate which  
20 provides that the mediation required by this section has been completed  
21 without reaching an acceptable compromise.

22 (h)(1) The commission shall adopt rules to implement this section.

23 (2) The rules shall include without limitation, guidelines and  
24 procedures to:

25 (A) Establish and maintain a roster of qualified  
26 foreclosure mediators and select mediators under subsection (c) of this  
27 section;

28 (B) Ensure that mediations occur in an orderly and timely  
29 manner;

30 (C) Require each party to a mediation to provide the  
31 information that the foreclosure mediator requires for the mediation;

32 (D) Protect the mediation process from abuse and to ensure  
33 that each party to the mediation acts in good faith; and

34 (E) Establish a total fee of not more than five hundred  
35 dollars (\$500) that may be charged and collected by the foreclosure mediator  
36 for mediation services under this section.

1           (i) This section does not apply:

2                   (1) If the grantor, mortgagor, or obligor has surrendered the  
3 property securing the debt of the grantor, mortgagor, or obligor, as  
4 evidenced by a letter confirming the surrender or delivery of the keys to the  
5 property to the beneficiary or mortgagee; or

6                   (2) To the extent that federal bankruptcy law provides a stay of  
7 proceedings to collect a debt from a grantor, mortgagor, or obligor unless  
8 the grantor, mortgagor, or obligor initiates the mediation.

9  
10  
11  
12   /s/Nickels  
13  
14

15 Referred by the Arkansas House of Representatives

16 Prepared by: DLP/VJF  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36