

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: H3/19/03

A Bill

HOUSE BILL 2829

5 By: Representative Hathorn
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7

For An Act To Be Entitled

9 AN ACT TO AMEND THE STATUTORY FORECLOSURE
10 STATUTES; AND FOR OTHER PURPOSES.
11

Subtitle

12 AN ACT TO AMEND THE STATUTORY
13 FORECLOSURE STATUTES.
14
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16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 *SECTION 1. Arkansas Code § 18-49-103 is amended to read as follows:*
20 *18-49-103. Judgment.*

21 *(a) It shall not be necessary in any action upon a mortgage or lien to*
22 *enter an interlocutory judgment or give time for the payment of money, or for*
23 *doing any other act. In such cases, final judgment may be given in the first*
24 *instance.*

25 *(b)(1) In the foreclosure of a mortgage, a sale of the mortgaged*
26 *property shall be ordered in all cases.*

27 *(2) The mortgagee, trustee, secured party or vendor shall*
28 *publish a notice of the sale:*

29 *(A)(i) In a newspaper of general circulation in the county*
30 *in which the property is situated and in a newspaper of general statewide*
31 *daily publication one (1) time a week for four (4) consecutive weeks prior to*
32 *the date of sale;*

33 *(ii) The final publication of which shall be no more*
34 *than ten (10) days prior to the sale.*

35 *(B) By employing a third-party Internet foreclosure sale*
36 *notice information service provider; and*



1 (C) By employing a third-party posting provider to post a
 2 notice at the place at the county courthouse where foreclosure sales are
 3 customarily advertised and conducted.

4 (c) In an action on a mortgage or lien, the judgment may be rendered
 5 for the sale of the property and for the recovery of the debt against the
 6 defendant personally.

7 (d) Whenever a mortgagee reasonably believes that mortgaged property has or
 8 will be affected by a release or threatened release of any hazardous
 9 substance including, but not limited to, those defined by 42 U.S.C. §
 10 9601(14), (22), or § 8-7-403(a)(8), or § 8-7-503(8), the mortgagee may
 11 proceed against the mortgagor personally to recover the debt, without need to
 12 first seek a sale of the mortgaged property.

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 14 SECTION 2. Arkansas Code § 18-49-104 is amended to read as follows:

15 18-49-104. Sale of property under court order and publication of notice
 16 of sales.

17 (a)(1) Sales of personal property made by order of the court shall be
 18 on a credit of three (3) months.

19 (2) Sales of real property made by court order shall be on a
 20 credit of not less than three (3) months nor more than six (6) months, or on
 21 installments equivalent to not more than four (4) months' credit on the
 22 whole, to be determined by the court.

23 (b)(1) In all sales on credit, the purchaser shall execute a bond,
 24 with good surety, to be approved by the person making the sale, which bond
 25 shall have the force of a judgment.

26 (2) In sales of ~~real~~ property under this section, a lien shall
 27 be retained on the property for its price.

28 ~~(c)(1) The mortgagee, trustee, or vendor shall publish a notice of the~~
 29 ~~sale in a newspaper published and having a general circulation in the county~~
 30 ~~in which the property is situated or, if this is not available, then in a~~
 31 ~~newspaper of general statewide daily publication one (1) time.~~

32 ~~(2) The publication shall be at least ten (10) days prior to the~~
 33 ~~sale.~~

34 (c) The mortgagee, trustee, secured party or vendor shall publish a
 35 notice of the sale:

36 (1)(A) In a newspaper of general circulation in the county in

1 which the property is situated and in a newspaper of general statewide daily
2 publication one (1) time a week for four (4) consecutive weeks prior to the
3 date of sale; and

4 (B) The final publication of which shall be no more than
5 ten (10) days prior to the sale.

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

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9 SECTION 3. Arkansas Code § 18-50-105 is amended to read as follows:
10 18-50-105. Publication of notice.

11 The mortgagee, ~~or~~ trustee, or vendor shall publish the notice:

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

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

20 (3) By employing a third-party Internet foreclosure sale notice
21 information service provider.

22
23 SECTION 4. Arkansas Code § 16-113-203 is amended to read as follows:
24 16-113-203. Injunction bonds.

25 (a) In every case, the court or judge granting an injunction shall
26 specify in the order ~~therefor~~ an amount, for which the party obtaining it
27 shall give security in a bond to the party enjoined, before the injunction
28 shall become effectual. The amount of the bond shall be sufficient to cover
29 all the probable damages and costs that may be occasioned by the injunction.

30 (b) The court or judge may prescribe the effect of the bond, so as to
31 secure to the party enjoined the damages to which he may become entitled if
32 it is finally decided that the injunction ought not to have been granted.

33 (c)(1) Where the injunction is to stay proceedings upon a judgment or
34 final order for money, the amount for which security is required shall be
35 sufficient to cover, with other damages, the sum enjoined, with five (5)
36 years' interest thereon.

1 (2) When the injunction is to stay proceedings upon a judgment
2 for property, the amount specified in the order shall be sufficient to cover
3 also the rent, hire, or value of the use thereof for two (2) years; and in
4 case of personal property, its value likewise.

5 (3)(A) When the injunction is to stay proceedings in a
6 foreclosure initiated under the Statutory Foreclosure Act of 1987, §§ 18-50-
7 101 through 18-50-116, the amount specified in the order shall be sufficient
8 to cover the full amount of reinstatement of the loan, as defined by § 18-50-
9 114.

10 (B) Should the court or judge grant an injunction, the
11 mortgagor or grantor is required to tender all regular payments due under the
12 security instrument into the registry of the court pending the final
13 resolution of the action.

14 (d) The order of injunction shall not be issued by the clerk until the
15 bond mentioned in subsections (a)-(c) of this section has been executed in
16 his office by one (1) or more sufficient sureties of the party obtaining the
17 injunction.

18 (e)(1) Where the injunction is to stay proceedings upon a judgment or
19 final order, the bond shall be to the effect that the party obtaining the
20 injunction will satisfy the judgment or order, or so much of it as is
21 enjoined, to the extent to which the injunction may be dissolved and that he
22 will also satisfy any modified judgment or order that may be rendered or made
23 in lieu of it, or so much of it as exceeds the amount left unenjoined.

24 (2) In other cases, unless otherwise directed by the court or
25 judge, the bond shall be to the effect that the party giving it will pay to
26 the party enjoined such damages as he may sustain if it is finally decided
27 that the injunction ought not to have been granted.

28 (f)(1) In case of injunction to stay proceedings upon a judgment or
29 final order, the officer granting the injunction may authorize a bond to be
30 executed to the effect that the party obtaining the injunction will pay to
31 the party enjoined such damages as he may sustain if it is finally decided
32 that the injunction ought not to have been granted.

33 (2) However, if, at the time the injunction is granted and bond
34 executed, any execution or attachment has been levied upon the property of
35 the party obtaining the injunction, the levy shall not be discharged by
36 reason of the injunction, but it shall remain in full force until the final

1 decision as to the injunction unless the party obtaining the injunction shall
2 give bond in the form prescribed by law.

3 (g) Sureties in injunction bonds shall be taken by the clerk, under
4 the same responsibilities as in other cases of sureties taken by him.

5 (h)(1) A party enjoined may, at any time before judgment, upon
6 reasonable notice to the party who has obtained the injunction, move the
7 court for additional security on behalf of the party enjoined.

8 (2) If it appears on the notice that the surety in the
9 injunction bond has removed from this state, or is insufficient, the court
10 may vacate the order of injunction unless in a reasonable time sufficient
11 security is given.

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/s/ Hathorn