

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 H3/31/03

A Bill

HOUSE BILL 2829

5 By: Representative Hathorn
6
7

For An Act To Be Entitled

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

Subtitle

13 AN ACT TO AMEND THE STATUTORY
14 FORECLOSURE STATUTES.
15
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

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) One (1) time a week for four (4) consecutive weeks*
30 *prior to the date of sale in at least two (2) newspapers: one (1) of general*
31 *circulation in the county in which the property is situated and one (1) of*
32 *general statewide daily publication;*

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.

13
 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) One (1) time a week for four (4) consecutive weeks prior

1 to the date of sale in at least two (2) newspapers: one (1) of general
2 circulation in the county in which the property is situated and one (1) of
3 general statewide daily publication; 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.

8
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 in a newspaper of general statewide daily~~
14 ~~publication one (1) time a week for four (4) consecutive weeks prior to the~~
15 ~~date of sale. The final publication shall be no more than ten (10) days prior~~
16 ~~to the sale~~ One (1) time a week for four (4) consecutive weeks prior to the
17 date of sale in at least two (2) newspapers: one (1) of general circulation
18 in the county in which the property is situated and one (1) of general
19 statewide daily publication;

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

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

25
26 SECTION 4. Arkansas Code § 16-113-203 is amended to read as follows:
27 16-113-203. Injunction bonds.

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

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

36 (c)(1) Where the injunction is to stay proceedings upon a judgment or

1 final order for money, the amount for which security is required shall be
2 sufficient to cover, with other damages, the sum enjoined, with five (5)
3 years' interest thereon.

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

8 (3)(A) When the injunction is to stay proceedings in a
9 foreclosure initiated under the Statutory Foreclosure Act of 1987, §§ 18-50-
10 101 through 18-50-116, the amount specified in the order shall be sufficient
11 to cover the full amount of reinstatement of the loan, as defined by § 18-50-
12 114.

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

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

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

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

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

36 (2) However, if, at the time the injunction is granted and bond

