

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

A Bill

SENATE BILL 17

5 By: Senator Hendren
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For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE § 18-50-105 TO
10 REQUIRE THE POSTING OF THE NOTICE OF DEFAULT AND
11 INTENTION TO SELL ON THE PREMISES OF THE TRUST
12 PROPERTY; TO AMEND ARKANSAS CODE § 18-50-116 TO
13 PROVIDE THAT A FORECLOSURE SALE WITHOUT PROPER
14 NOTICE MAY BE VOID; AND FOR OTHER PURPOSES.

Subtitle

15
16 TO AMEND THE STATUTORY FORECLOSURE LAW
17 TO REQUIRE THE POSTING OF SALE NOTICES
18 ON THE PREMISES AND TO PROVIDE THAT A
19 FORECLOSURE SALE WITHOUT PROPER NOTICE
20 MAY BE VOID.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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26 SECTION 1. Arkansas Code § 18-50-105 is amended to read as follows:
27 18-50-105. Publication of notice.

28 The mortgagee or trustee shall publish the notice:

29 (1) In a newspaper of general circulation in the county in which the
30 trust property is situated or in a newspaper of general statewide daily
31 publication one (1) time a week for four (4) consecutive weeks prior to the
32 date of sale. The final publication shall be no more than ten (10) days
33 prior to the sale;

34 (2) By employing a third-party posting provider to post notice at the
35 place at the county courthouse where foreclosure sales are customarily
36 advertised and conducted, and to post notice of default and intention to sell



1 upon the premises of the trust property no more than ten (10) days before the
2 sale; and

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

5
6 SECTION 2. Arkansas Code § 18-50-116 is amended to read as follows:
7 18-50-116. Miscellaneous provisions.

8 (a) The procedures set forth in this chapter for the foreclosure of a
9 mortgage or deed of trust shall not impair or otherwise affect the right to
10 bring a judicial action to foreclose a mortgage or deed of trust, and shall
11 not impair the right of a person entitled to notice and not given notice, to
12 bring a judicial action to halt or void the sale of the trust property under
13 this chapter.

14 (b) A notice of default and intention to sell shall be filed within
15 the time the foreclosure of the mortgage or deed of trust by judicial action
16 could have been commenced.

17 (c) The procedures set forth in this chapter shall apply only if the
18 mortgagee or beneficiary is a mortgage company as defined in § 18-50-101 or
19 is a bank or savings and loan. This chapter shall not apply to a mortgage or
20 a deed of trust encumbering trust property used primarily for agricultural
21 purposes.

22 (d) Nothing in this chapter shall be construed to:

23 (1) Create an implied right of redemption in favor of any
24 person; or

25 (2)(A) Impair the right of any person or entity to assert his
26 legal and equitable rights in a court of competent jurisdiction.

27 (B) Provided, however, that any such claim or defense,
28 except a claim of lack of notice from a person entitled to notice and not
29 given notice, shall be asserted prior to the sale or be forever barred and
30 terminated.

31 (e) At any time prior to the delivery of the trustee's or mortgagee's
32 deed, the trustee or mortgagee shall be authorized to set aside a sale
33 conducted pursuant to this chapter by declaring the sale null and void and
34 returning the purchase price to the highest bidder without any further
35 liability to the bidder. In this event, the trustee or mortgagee shall file
36 an affidavit declaring the sale null and void with the recorder of the county

1 in which the trust property is located, and all terms and provisions of the
2 mortgage or deed of trust shall be revived and reinstated as if no sale had
3 occurred.

4 (f)(1) The sale of trust property under this chapter shall be void if:

5 (A) A person entitled to notice is not given notice; or

6 (B) A person in actual possession of the premises of the
7 trust property is not given notice of the default and intention to sell.

8 (2) If a person entitled to notice is not given notice, or if a
9 person in actual possession of the premises of the trust property is not
10 given notice, the person shall have the right to bring a judicial action:

11 (A) To halt the procedures in this chapter for the
12 foreclosure of a mortgage or deed of trust; or

13 (B) To void the sale of the trust property within one (1)
14 year of the sale.

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