

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 85th General Assembly
3 Regular Session, 2005
4

A Bill

HOUSE BILL 2543

5 By: Representative Borhauer
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For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE § 18-50-105; TO
10 AMEND ARKANSAS CODE § 18-50-116 TO PROVIDE THAT A
11 FORECLOSURE SALE WITHOUT PROPER NOTICE MAY BE
12 VOID; AND FOR OTHER PURPOSES.
13

Subtitle

15 TO AMEND THE STATUTORY FORECLOSURE LAW
16 TO REQUIRE THE POSTING OF SALE NOTICES
17 ON THE PREMISES AND TO PROVIDE THAT A
18 FORECLOSURE SALE WITHOUT PROPER NOTICE
19 MAY BE VOID.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. Arkansas Code § 18-50-105 is amended to read as follows:
25 18-50-105. Publication of notice.

26 (a) The mortgagee or trustee shall publish the notice:

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

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

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



1 (b)(1) The mortgagee or trustee shall employ a third-party posting
 2 provider to post notice of the sale on the premises of the trust property no
 3 more than ten (10) days before the sale.

4 (2) If the trust property is single-family housing, the notice
 5 shall be affixed to the outside of the house in a manner that will reasonably
 6 apprise the occupants of the housing of the pending sale and shall not be
 7 placed as a yard sign or affixed to a fence, mailbox, or other similar
 8 structure.

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 10 SECTION 2. Arkansas Code § 18-50-116 is amended to read as follows:
 11 18-50-116. Miscellaneous provisions.

12 (a) The procedures set forth in this chapter for the foreclosure of a
 13 mortgage or deed of trust shall not ~~impair~~:

14 (1) Impair or otherwise affect the right to bring a judicial
 15 action to foreclose a mortgage or deed of trust; or

16 (2) Impair the right of a person entitled to notice and not
 17 given notice to bring a judicial action to halt or void the sale of the trust
 18 property under this chapter.

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

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

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

28 (1) Create an implied right of redemption in favor of any
 29 person; or

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

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

36 (e) At any time prior to the delivery of the trustee's or mortgagee's

1 deed, the trustee or mortgagee shall be authorized to set aside a sale
2 conducted pursuant to this chapter by declaring the sale null and void and
3 returning the purchase price to the highest bidder without any further
4 liability to the bidder. In this event, the trustee or mortgagee shall file
5 an affidavit declaring the sale null and void with the recorder of the county
6 in which the trust property is located, and all terms and provisions of the
7 mortgage or deed of trust shall be revived and reinstated as if no sale had
8 occurred.

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

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

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

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

16 (A) To enjoin the procedures in this chapter for the
17 foreclosure of a mortgage or deed of trust; or

18 (B) To void the sale of the trust property if the action
19 is filed within one (1) year of the sale.

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