

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

# A Bill

SENATE BILL 1120

4  
5 By: Senator Hendren  
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7

## For An Act To Be Entitled

8  
9 AN ACT TO AMEND THE STATUTORY FORECLOSURE ACT;  
10 AND FOR OTHER PURPOSES.  
11

### Subtitle

12  
13 AN ACT TO AMEND THE STATUTORY  
14 FORECLOSURE ACT.  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
18

19 SECTION 1. Arkansas Code § 18-50-103 is amended to read as follows:  
20 18-50-103. Conditions to exercise of power.

21 A trustee or mortgagee may not sell the trust property unless:

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

24 (2) There is a default by the mortgagor, grantor, or other  
25 person owing an obligation, the performance of which obligation is secured by  
26 the mortgage or deed of trust or by their successors in interest with respect  
27 to any provision in the mortgage or deed of trust that authorizes sale in the  
28 event of default of the provision;

29 (3) The mortgagee, trustee, or beneficiary has filed for record  
30 with the recorder of the county in which the trust property is situated a  
31 duly acknowledged notice of default and intention to sell containing the  
32 information required by § 18-50-104;

33 (4) No action has been instituted to recover the debt or any  
34 part of it secured by the mortgage or deed of trust or, if such action has  
35 been instituted, the action has been dismissed; and

36 (5) A period of at least ~~sixty (60)~~ one hundred (100) days has



1 elapsed since the recording of the notice of default and intention to sell.

2  
 3 SECTION 2. Arkansas Code § 18-50-104 is amended to read as follows:  
 4 18-50-104. Contents of notice - Persons to receive notice.

5 (a) The mortgagee's or trustee's notice of default and intention to  
 6 sell shall set forth:

7 (1) The names of the parties to the mortgage or deed of trust;

8 (2) A legal description of the trust property and, if  
 9 applicable, the street address of the property;

10 (3) The book and page numbers where the mortgage or deed of  
 11 trust is recorded or the recorder's document number;

12 (4) The default for which foreclosure is made;

13 (5) The mortgagee's or trustee's intention to sell the trust  
 14 property to satisfy the obligation, including in conspicuous type a warning  
 15 as follows: "YOU MAY LOSE YOUR PROPERTY IF YOU DO NOT TAKE IMMEDIATE ACTION";  
 16 and

17 (6) The time, date, and place of sale.

18 (b) The mortgagee's or trustee's notice of default and intention to  
 19 sell shall be mailed within thirty (30) days of the recording of the notice  
 20 by certified mail, postage prepaid and by first class mail, postage prepaid,  
 21 to the address last known to the mortgagee or the trustee or beneficiary of  
 22 the following persons:

23 ~~(1) The mortgagor or grantor of the deed of trust;~~

24 ~~(2)~~(1) Any successor in interest to the mortgagor or grantor  
 25 whose interest appears of record or whose interest the mortgagee or the  
 26 trustee or beneficiary has actual notice;

27 ~~(3)~~(2) Any person having a lien or interest subsequent to the  
 28 interest of the mortgagee or trustee when that lien or interest appears of  
 29 record or when the mortgagee, the trustee, or the beneficiary has actual  
 30 notice of the lien or interest; and

31 ~~(4)~~(3) Any person requesting notice, as provided in § 18-50-113.

32 (c)(1) The mortgagee's or trustee's notice of default and intention to  
 33 sell shall be mailed to the mortgagor or grantor of the deed of trust within  
 34 thirty (30) days of the recording of the notice by:

35 (A) Any form of mail or third party commercial delivery  
 36 addressed to the mortgagor or grantor of the deed of trust requiring a signed

1 receipt by the mortgagor or grantor;

2 (B) Leaving a copy of the notice at the dwelling or usual  
 3 place of abode of the mortgagor or grantor with a resident who is at least  
 4 fourteen (14) years of age; or

5 (C) Delivering a copy of the notice to an agent authorized  
 6 by appointment or by law to receive service of notice.

7 (2) The notice shall also be sent by first class mail, postage  
 8 prepaid, to the last address of the mortgagor or grantor of the deed of trust  
 9 known to the mortgagee or the trustee or beneficiary.

10 (3) The refusal of the receipt of notice under subdivision  
 11 (c)(1) of this section constitutes receipt of the notice under this  
 12 subsection (c).

13 (4)(A) If service under this subsection (c) is unsuccessful,  
 14 then a third party commercial delivery service or third party posting  
 15 provider shall post the notice of default and intention to sell upon the  
 16 premises of the trust property.

17 (B) A third-party commercial delivery service or third-  
 18 party posting provider shall not be liable for any trespass in connection  
 19 with the entry upon the premises for the purpose of posting the required  
 20 notice.

21 ~~(e)~~(d) The disability, incapacity, or death of any 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 the  
 24 notice has been given in the manner required by this section to the guardian  
 25 or conservator or to the administrator or executor, as the case may be.

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 27 SECTION 3. Arkansas Code § 18-50-106 is amended to read as follows:

28 18-50-106. Trustee's affidavit.

29 ~~On or before the date the mortgagee or trustee conducts the sale,~~  
 30 Before any trustee's or mortgagee's deed is recorded a duly acknowledged  
 31 affidavit of mailing, service, and publication of the notice of default and  
 32 intention to sell shall be filed for record with the recorder of the county  
 33 in which the trust property is situated.

34  
 35 SECTION 4. Arkansas Code § 18-50-107 is amended to read as follows:

36 18-50-107. Manner of sale.

1 (a) The sale shall be held on the date and at the time and place  
2 designated in the notice of default and intention to sell, except that the  
3 sale shall:

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

5 (2) Be held either at the premises of the trust property or at  
6 the front door of the county courthouse of the county in which the trust  
7 property is situated; and

8 (3) Not be held on a Saturday, Sunday, or a legal holiday.

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

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

13 (2) The mortgagee or trustee shall engage a third party to  
14 conduct the sale and act at the sale as the auctioneer of the mortgagee or  
15 trustee.

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

18 (c)(1) The person conducting the sale may postpone the sale from time  
19 to time.

20 (2)(A) In every such case, notice of postponement shall be given  
21 by:

22 (i) Public proclamation thereof by that person; or

23 (ii) Written notice of postponement posted at the  
24 time and place last appointed for the sale.

25 (B)(i) No other notice of the postponement need be given  
26 unless the sale is postponed for longer than thirty (30) days beyond the date  
27 designated in the notice.

28 (ii) In ~~that~~ the event, that a sale does not occur  
29 within thirty (30) days of the date designated in the notice of default and  
30 intention to sell, a notice of cancellation shall be filed in the real estate  
31 records of the county of the trust property. ~~notice thereof shall be given~~  
32 pursuant to § 18-50-104.

33 (d)(1) Unless otherwise agreed to by the trustee or mortgagee, the  
34 purchaser shall pay at the time of sale the price bid.

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

1           (3) ~~Within ten (10)~~ No more than forty-five (45) days after the  
2 sale, the mortgagee or trustee shall execute and deliver the trustee's deed  
3 or mortgagee's deed to the purchaser.

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

6                       (A) The amount representing the unpaid principal owed;

7                       (B) Accrued interest as of the date of the sale;

8                       (C) Advances for the payment of taxes, insurance, and  
9 maintenance of the trust property; and

10                      (D) Costs of the sale, including reasonable trustee's and  
11 attorney's fees.

12           (e)(1) The purchaser at the sale shall be entitled to immediate  
13 possession of the property.

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

18                      (B) Alternatively, the purchaser may bring an action for  
19 forcible entry and detainer pursuant to § 18-60-301 et seq.

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

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