

State of Arkansas  
85th General Assembly  
Regular Session, 2005

# A Bill

SENATE BILL 960

By: Senator Hendren

## For An Act To Be Entitled

AN ACT TO AMEND ARKANSAS CODE § 18-50-105 TO  
REQUIRE THE POSTING OF A NOTICE OF DEFAULT AND  
INTENTION TO SELL ON THE PREMISES OF THE TRUST  
PROPERTY; TO AMEND ARKANSAS CODE § 18-50-116 TO  
PROVIDE THAT A FORECLOSURE SALE WITHOUT PROPER  
NOTICE MAY BE ENJOINED OR VOIDED; AND FOR OTHER  
PURPOSES.

## Subtitle

TO AMEND THE STATUTORY FORECLOSURE LAW  
TO REQUIRE THE POSTING OF SALE NOTICES  
ON THE PREMISES AND TO PROVIDE THAT A  
FORECLOSURE SALE WITHOUT PROPER NOTICE  
MAY BE ENJOINED OR VOIDED.

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

SECTION 1. Arkansas Code § 18-50-105 is amended to read as follows:  
18-50-105. Publication of notice.

The mortgagee or trustee shall publish the notice:

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

(2) By employing a third-party posting provider to post notice;

(A) ~~at~~ At the place at the county courthouse where foreclosure



1 sales are customarily advertised and conducted; and

2 (B) No more than ten (10) or less than five (5) days before the  
 3 sale at the front door or entrance of the trust property; and

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

6  
 7 SECTION 2. Arkansas Code § 18-50-116 is amended to read as follows:  
 8 18-50-116. Miscellaneous provisions.

9 (a) The procedures set forth in this chapter for the foreclosure of a  
 10 mortgage or deed of trust shall not impair or otherwise affect;

11 (1) the The right to bring a judicial action to foreclose a  
 12 mortgage or deed of trust; or

13 (2) The right of a person entitled to notice but not given  
 14 notice to bring a judicial action to enjoin or void the sale of the trust  
 15 property under this chapter.

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

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

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

25 (1) Create an implied right of redemption in favor of any  
 26 person; or

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

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

33 (e)(1) At any time prior to the delivery of the trustee's or  
 34 mortgagee's deed, the trustee or mortgagee shall be authorized to set aside a  
 35 sale conducted pursuant to this chapter by declaring the sale null and void  
 36 and returning the purchase price to the highest bidder without any further

1 liability to the bidder.

2 (2) In this event, the trustee or mortgagee shall file an  
3 affidavit declaring the sale null and void with the recorder of the county in  
4 which the trust property is located, and all terms and provisions of the  
5 mortgage or deed of trust shall be revived and reinstated as if no sale had  
6 occurred.

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

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

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

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

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

16 (B) To void the sale of the trust property within one (1)  
17 year of the sale.