

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: H3/27/13 H4/1/13

A Bill

HOUSE BILL 1844

5 By: Representative Nickels
6

For An Act To Be Entitled

8 AN ACT TO REFORM RESIDENTIAL MORTGAGE FORECLOSURE
9 PROCEDURES AND PRACTICES; TO REQUIRE THAT CIRCUIT
10 CLERKS AS PART OF THEIR OFFICIAL DUTIES CONDUCT
11 JUDICIAL SALES AND STATUTORY FORECLOSURE SALES AND
12 THAT FEES FOR CONDUCTING THE SALES BE DISTRIBUTED TO
13 COUNTY GOVERNMENT; AND FOR OTHER PURPOSES.
14

Subtitle

15
16 AN ACT TO REFORM RESIDENTIAL MORTGAGE
17 FORECLOSURE PROCEDURES AND PRACTICES; AND
18 TO REQUIRE THAT CIRCUIT CLERKS AS PART OF
19 THEIR OFFICIAL DUTIES CONDUCT JUDICIAL
20 SALES AND STATUTORY FORECLOSURE SALES.
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23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 *SECTION 1. DO NOT CODIFY. Findings and legislative intent.*

27 *(a) The General Assembly finds that:*

28 *(1) A resident's home is often one of the resident's most*
29 *valuable and cherished assets;*

30 *(2) Since the establishment of a nonjudicial, statutory*
31 *foreclosure procedure in 1987 that largely operates independently of judicial*
32 *supervision, citizens of the state have been subjected to numerous abuses and*
33 *injustices, including without limitation:*

34 *(A) The lender's imposition of excessive fees and expenses*
35 *that:*

36 *(i) Are not imposed or considered proper in a*



1 judicial foreclosure proceeding;

2 (ii) Often prevent a borrower from reinstating a
3 loan or arranging a private sale of the property;

4 (iii) May force a borrower to file bankruptcy in
5 order to cure the full arrearage that the lender claims is owed; or

6 (iv) In some cases have not yet been incurred by the
7 lender;

8 (B) The inability to ascertain ownership of the borrower's
9 mortgage and engage in meaningful workout discussions because appropriate
10 assignments or other documentation reflecting transfers of the borrower's
11 mortgage and its current holder are not properly filed of record;

12 (C) The inability to resolve good faith errors or other
13 errors in payment records due to the failure of lenders to furnish:

14 (i) Proof of adequate internal controls to ensure
15 the maintenance of good accounting records; or

16 (ii) Evidence of the accurate recording of payments;

17 (D) Lenders disregarding or misinforming borrowers about
18 loan modification agreements, payments, and procedures resulting in the
19 continuation or initiation of foreclosure procedures after legally binding
20 settlement agreements have been reached;

21 (E) Lenders' failure to provide proper notice to
22 homeowners resulting in:

23 (i) A borrower's first learning of foreclosure
24 proceedings when a sheriff serves him or her with a writ of assistance for
25 possession of the property; or

26 (ii) Lenders entering into homes that have not been
27 properly foreclosed or when litigation concerning the home is pending;

28 (F) The failure to give proper notice to interested third
29 parties with a recorded lien upon the subject real property; and

30 (G) Abuses concerning the conduct of statutory foreclosure
31 sales, including without limitation:

32 (i) Canceling or postponing the sale by an
33 announcement at the advertised time and place scheduled for the sale without
34 adequate notice to interested parties;

35 (ii) Recording a deed that:

36 (a) Contains recitals that the property had

1 been sold at the foreclosure sale when in fact the sale was not conducted;
2 and

3 (b) Transfers title to the property to the
4 foreclosing lender or a third party despite the fact a foreclosure sale was
5 not conducted;

6 (iii) Failing to conduct the sale when scheduled;
7 and

8 (iv) Holding or rescheduling a sale without adequate
9 notice, making it difficult or impossible for affected homeowners or other
10 interested parties to bid on foreclosed properties;

11 (3) The loss of filing fees, commissioner fees, recording fees,
12 and transfer tax fees has cost the state and counties millions of dollars in
13 revenue needed to provide better and more efficient state and county
14 government services;

15 (4) The statutory foreclosure sale process:

16 (A) Is conducted without court supervision;

17 (B) Does not require a report of sale or confirmation
18 order from a court; and

19 (C) Does not use elected county officials who are
20 accountable to the citizens of the county and knowledgeable in conducting
21 judicial sales of real property and appropriately documenting real estate
22 transactions and proceedings;

23 (5) Act 53 of 1987, authorizing a statutory, nonjudicial
24 procedure for the enforcement of mortgages was amended by Act 1303 of 2003 to
25 provide that "No person, firm, company, association, fiduciary, or
26 partnership, either domestic or foreign, shall avail themselves of the
27 procedures under this chapter unless authorized to do business in this
28 state";

29 (6) In the emergency clause of Act 1303 of 2003, the General
30 Assembly found that "foreign entities not authorized to do business in the
31 State of Arkansas are availing themselves of the provisions of the Statutory
32 Foreclosure Act of 1987; that often times it is to the detriment of Arkansas
33 citizens; and that this act is immediately necessary because these entities
34 should be authorized to do business in the State of Arkansas before being
35 able to use the Statutory Foreclosure Act of 1987";

36 (7) Even after the passage of the 2003 amendment, many out-of-

1 state national banks:

2 (A) Continued to avail themselves of the statutory
3 foreclosure procedures authorized by Act 53 of 1987, as amended;

4 (B) Disregarded the 2003 amendment requiring registration
5 with the Secretary of State's office to obtain a certificate of authority in
6 order to be authorized to do business in the State of Arkansas properly; and

7 (C) To this day refuse to comply with the existing law for
8 the conduct of statutory foreclosures, contributing to abuses of the
9 foreclosure process, which has been injurious to numerous Arkansas
10 homeowners;

11 (8) Judicial foreclosure proceedings:

12 (A) Have a long history and credibility for the
13 foreclosure of mortgages in this state;

14 (B) Require lenders to provide proof of ownership of a
15 mortgage, proof of default by the homeowner, and proof that the home is the
16 proper collateral for the note;

17 (C) Require lenders to provide the homeowner and all other
18 interested parties notice, a summons, and a forum to appear and raise
19 defenses and seek equity as the facts of a case require;

20 (D) Are supervised by a court of law, are subject to
21 appeal, and provide a full record of the proceedings;

22 (E) Result in a commercially reasonable sale conducted by
23 a reputable county official under the guidance and supervision of the court
24 and return excess proceeds from a sale to appropriate interested parties and
25 homeowners;

26 (F) Require lenders to pay filing fees, recording fees,
27 and transfer tax fees to state and county governments; and

28 (G) Protect the rights of all parties and can be conducted
29 as quickly and inexpensively as statutory foreclosures; and

30 (9) If a nonjudicial, statutory foreclosure procedure should
31 continue to be authorized by the General Assembly, then the procedure should
32 be reformed and numerous safeguards added to protect the rights of Arkansas
33 homeowners.

34 (b) It is the intent of the General Assembly by the enactment of this
35 act to:

36 (1) Reaffirm that it is the public policy of the state to

1 require the regulation and supervision of lenders who seek to foreclose
2 mortgages encumbering one of the most cherished and valuable assets of the
3 residents of this state;

4 (2) Require that the foreclosure of a mortgage, deed of trust,
5 or similar instrument evidencing a lien upon residential real property be
6 appropriately regulated and supervised, and that homeowners be given the
7 right to require, without any requirement for posting bond, mediation and
8 that a foreclosure be conducted exclusively in a judicial proceeding under
9 court supervision; and

10 (3) Require that the circuit clerk of the county where real
11 property is located, as part of the circuit clerk's official duties, be
12 appointed commissioner of the court to conduct all judicial sales and
13 foreclosure sales, and that appropriate commissioner fees be used to defray
14 expenses of the circuit clerk's office and assist the provision of services
15 to the county.

16
17 SECTION 2. Arkansas Code § 18-50-101, concerning definitions applicable
18 to the chapter authorizing a statutory foreclosure procedure, is amended to
19 add additional subdivisions to read as follows:

20 (13) "Allowable expenses" means the amount necessary to
21 reimburse a mortgagee or beneficiary for one (1) or more of the following
22 expenses incurred under the terms of a mortgage or deed of trust, if the
23 mortgagee or beneficiary is obligated to pay the expense at the time a
24 default is cured or a loan is paid off under this subchapter and provides the
25 grantor, mortgagor, or obligor on or before receiving payment a written
26 itemization of the date, amount, and the payee's name, address, and phone
27 number for the expense:

28 (A) Title examination expenses not to exceed two hundred
29 dollars (\$200);

30 (B) Property preservation expenses;

31 (C) The reasonable cost of necessary insurance coverage to
32 protect the interest of the mortgagee or beneficiary;

33 (D) Real estate taxes;

34 (E) Recording fees payable to the county recorder;

35 (F) Filing fees required by a judicial proceeding;

36 (G) To perfect service under Rule 4 of the Arkansas Rules

1 of Civil Procedure, sheriff's fees, process server fees, publication costs,
2 and the cost of postage to perform a required mailing; and

3 (H) Publication costs under §18-50-105;

4 (14) "Allowable attorney fees" means:

5 (A) Unless otherwise provided by a court order in a
6 judicial proceeding, in addition to a fee allowed under subdivision (14)(B)
7 of this section:

8 (i) One hundred twenty five dollars (\$125) if
9 payment to cure a default under a mortgage or deed of trust is received
10 before with respect to the mortgage or deed of trust:

11 (a) A notice of default and intention to sell
12 under § 18-50-104 is filed; or

13 (b) A complaint is filed in a judicial
14 proceeding to foreclose the mortgage or deed of trust; or

15 (ii) Five hundred dollars (\$500) if payment to cure
16 a default under a mortgage or deed of trust is received after the time
17 specified in subdivision (14)(A)(i) of this section but before:

18 (a) The foreclosure sale under this chapter is
19 concluded; or

20 (b) A decree of foreclosure is entered in a
21 judicial proceeding.

22 (B) "Allowable attorney's fees" includes the following
23 additional fees if incurred by a mortgagee or beneficiary in a federal
24 bankruptcy proceeding in order to exercise or preserve a right under a
25 mortgage or deed of trust and for each separate bankruptcy proceeding:

26 (i) Fifty dollars (\$50.00) for:

27 (a) Filing all proofs and amended proofs of
28 the claim of a mortgagee or beneficiary;

29 (b) All filings to obtain relief from the
30 automatic stay; or

31 (c) Obtaining:

32 (1) A signed agreement of a grantor,
33 mortgagor, or obligor to reaffirm the obligations of the mortgage or deed of
34 trust;

35 (2) Without a contested hearing and
36 ruling by the court, an order:

1 (A) Granting relief from the
2 automatic stay; or

3 (B) Confirming a plan of
4 reorganization; and

5 (ii) One hundred fifty dollars (\$150) for obtaining
6 after a contested hearing and ruling by the court an order:

7 (a) Granting relief from the automatic stay;
8 or

9 (b) Confirming a plan of reorganization; and
10 (15)(A) "Title examination expenses" means all expenses incurred

11 to determine the:

12 (i) State of the title to trust property; and

13 (ii) Actions necessary to convey marketable title to
14 a purchaser of the trust property.

15 (B) "Title examination expenses" includes without
16 limitation the cost of a title search, abstract, title commitment, or
17 attorney's opinion letter.

18
19 SECTION 3. Arkansas Code § 18-50-103 is amended to read as follows:
20 18-50-103. Conditions to exercise of power of sale.

21 (a) A beneficiary or mortgagee may not initiate a foreclosure under
22 this chapter unless:

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

25 (2)(A) The beneficiary or mortgagee:

26 (i) Has personal knowledge of the records and
27 information provided under this subdivision ~~(2) (a)(2); and~~

28 (ii) At least ~~ten (10)~~ thirty (30) days before
29 initiating the foreclosure has provided by standard mail to ~~the~~ each grantor,
30 mortgagor, ~~or~~ and obligor at the address of the property encumbered by the
31 mortgage or deed of trust ~~or~~ and the mailing address of the grantor,
32 mortgagor, or obligor:

33 (a) A true and correct copy of the note with
34 all required endorsements, ~~the mortgage, or the deed of trust;~~

35 (b) The name, address, and telephone number of
36 ~~the holder~~ both the current owner of the original note and the mortgage loan

1 servicer;

2 (c) The physical location of the original
3 note;

4 ~~(e)(d)~~ A true and correct copy of the original
5 mortgage or deed of trust and ~~if in the possession of the beneficiary or~~
6 ~~mortgagee,~~ each assignment or allonge of the mortgage or deed of trust;

7 ~~(d)(e)~~ Information, including the applicable
8 telephone number and Internet address, regarding the availability to the
9 grantor, mortgagor, or obligor of each program for loan modification
10 assistance or forbearance assistance offered:

11 (1) Solely by the beneficiary or the
12 mortgagee; or

13 (2) By a government agency if the
14 beneficiary or mortgagee participates in the government agency's program; ~~and~~

15 ~~(e)(f)~~ If ~~the~~ a default ~~is the result~~ exists
16 ~~because~~ of the failure to make payment, a payment history showing ~~the date~~
17 ~~evidence~~ of ~~the~~ default ~~for failure to make payment;~~ ~~and-~~

18 (g)(1) A separate notice mailed and provided
19 in addition to the other information required by this subdivision
20 (a)(2)(A)(ii) that states in at least 20-point type:

21 NOTICE

22 LEGAL ACTION IS BEING TAKEN TO FORECLOSE THE MORTGAGE OR DEED OF TRUST ON
23 YOUR HOME (IDENTIFYING INFORMATION ATTACHED). (1) IF YOU WOULD LIKE THE

24 FORECLOSURE PROCEEDINGS TO BE CONDUCTED BY A JUDGE IN A COURT OF LAW, YOU
25 MUST NOTIFY YOUR LENDER BY CHECKING THE BOX PROVIDED BELOW, SIGNING AND
26 DATING THIS NOTICE, AND RETURNING THE NOTICE AND ATTACHMENT IN THE ENCLOSED

27 POSTAGE-PREPAID ENVELOPE. (2) IF YOU HAVE A PAYMENT DISPUTE, FORBEARANCE,
28 LOAN FORGIVENESS OR LOAN MODIFICATION REQUEST, OR ANOTHER ISSUE WITH YOUR
29 LENDER THAT YOU WOULD LIKE TO ATTEMPT TO RESOLVE THROUGH MEDIATION, AT THE

30 EXPENSE OF THE LENDER, YOU MUST NOTIFY YOUR LENDER BY CHECKING THE BOX
31 PROVIDED BELOW, SIGNING AND DATING THIS NOTICE, AND RETURNING THE NOTICE AND
32 ATTACHMENT IN THE ENCLOSED POSTAGE-PREPAID ENVELOPE.

33 PLEASE ALSO NOTE THAT IF YOU DO NOT CURE THE DEFAULT ON YOUR MORTGAGE WITHIN
34 THIRTY (30) DAYS OF THE DATE OF THIS NOTICE, THE AMOUNT NECESSARY TO CURE THE
35 DEFAULT WILL INCREASE SIGNIFICANTLY DUE TO YOUR OBLIGATION TO REPAY
36 FORECLOSURE EXPENSES AND ATTORNEY'S FEES TO YOUR LENDER.

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I AM EXERCISING MY RIGHT TO REQUIRE THAT THE ENCLOSED MORTGAGE OR DEED OF TRUST BE FORECLOSED IN A JUDICIAL PROCEEDING.

I AM EXERCISING MY RIGHT TO REQUIRE MEDIATION OF A DISPUTE WITH OR REQUEST TO MY LENDER.

SIGNATURE: _____

NAME PRINTED: _____

DATE: _____

(2) The notice required by subdivision (a)(2)(A)(ii)(g)(1) of this section shall be accompanied by a:

(A) Postage prepaid envelope addressed in the manner chosen by the beneficiary or mortgagee to ensure compliance with this subdivision (a)(2)(A)(ii)(g); and

(B) Copy of sufficient pages of the mortgage or deed of trust to provide the:

(i) First page;

(ii) Names, signatures, and acknowledgements of each grantor, mortgagor, and obligor; and

(iii) Legal description.

(3) A grantor, mortgagor, or obligor who elects under subdivision (a)(2)(A)(ii)(g)(1) of this section to require:

(A) A judicial foreclosure or mediation is not required to post a bond or pay a mediation expense other than expenses and attorney's fees to prepare his or her case; and

(B)(i) Mediation shall:

(a) Be furnished by the beneficiary or mortgagee from a roster provided by the Arkansas Alternative Dispute Resolution Commission of mediators who meet the commission's requirements and guidelines for mediating foreclosure cases; and

(b) Select the mediator from the roster furnished.

(ii) The mediation shall be conducted according to § 16-7-201 et seq.

~~(B) If a true and correct copy of the original note, mortgage, deed of trust, or an assignment or allonge of the note, mortgage,~~

1 ~~or deed of trust is lost or otherwise unavailable, the beneficiary or~~
2 ~~mortgagee may, instead of providing true and correct copies of the note,~~
3 ~~mortgage, deed of trust, or assignment or allonge of the note, mortgage, or~~
4 ~~deed of trust, provide a statement that the document is lost or otherwise~~
5 ~~unavailable, and shall recite the good faith efforts the beneficiary or~~
6 ~~mortgagee has made to locate the document.~~

7 ~~(G)~~ The duties of the beneficiary or mortgagee to provide
8 information under ~~subdivision (2)~~ this subdivision (a)(2) of this section are
9 not delegable to the beneficiary's trustee or the mortgagee's attorney-in-
10 fact;

11 (3) There is a default by the mortgagor, grantor, or obligor
12 with respect to any provision in the mortgage or deed of trust that
13 authorizes sale in the event of the default ~~of the provision; and~~

14 (4) No action has been instituted to recover the debt or any
15 part of it secured by the mortgage or deed of trust or, if ~~such an~~ an action has
16 been instituted, the action has been dismissed; and

17 (5) A mediation requested under this section or otherwise if
18 requested before a notice of default and intention to sell is recorded under
19 § 18-50-104 is concluded as provided by § 16-7-208.

20 (b) A foreclosure shall not be conducted under this chapter if:

21 (1) The original note, mortgage, deed of trust, or an assignment
22 or allonge of the note, mortgage, or deed of trust is lost, destroyed, or
23 otherwise unavailable; or

24 (2) A grantor, mortgagor, or obligor notifies the mortgagor,
25 beneficiary, or loan servicer within thirty (30) days after the notice
26 required by subdivision (a)(2)(A)(ii)(g) is mailed that the grantor,
27 mortgagor, or obligor is exercising the right of the grantor, mortgagor, or
28 obligor to require that the mortgage or deed of trust be foreclosed in a
29 judicial proceeding.

30
31 SECTION 4. Arkansas Code § 18-50-104(c) and (d), concerning service of
32 notice of default and intention to sell, are amended to read as follows:

33 (c) The mortgagee's or trustee's notice of default and intention to
34 sell shall be ~~mailed~~ served within thirty (30) days of the recording of the
35 notice ~~by certified mail, postage prepaid, and by first class mail, postage~~
36 ~~prepaid, to the address last known to the mortgagee or the trustee or~~

1 ~~beneficiary of~~ in the manner required for perfecting service of a summons
 2 sufficient to obtain a default judgment under Rule 4 of the Arkansas Rules of
 3 Civil Procedure upon the following persons:

4 (1) The mortgagor, grantor, and obligor of the deed of
 5 trust;

6 (2) ~~Any~~ A successor in interest to the mortgagor or
 7 grantor whose interest appears of record or of whose interest the mortgagee
 8 or the trustee or beneficiary has actual notice;

9 (3) ~~Any~~ A person having a lien or interest subsequent to
 10 the interest of the mortgagee or trustee when ~~that~~ the lien or interest
 11 appears of record or when the mortgagee, the trustee, or the beneficiary has
 12 actual notice of the lien or interest; and

13 (4) ~~Any~~ A person requesting notice, as provided in § 18-
 14 50-113.

15 (d) The disability, incapacity, or death of ~~any~~ a person to whom
 16 notice must be given under this section shall not delay or impair ~~in any way~~
 17 the mortgagee's or trustee's right to proceed with a sale, ~~provided that if~~
 18 the notice has been given in the manner required by this section to the
 19 guardian or conservator or to the administrator or executor, as the case may
 20 be.

21
 22 SECTION 5. Arkansas Code § 18-50-105 is amended to read as follows:
 23 18-50-105. Publication of notice - Charges.

24 (a)(1) The mortgagee or trustee shall publish the notice ~~of a~~
 25 foreclosure sale under this chapter

26 ~~(1)~~ In in a newspaper of general circulation in the county
 27 in which the trust property is situated or in a newspaper of general
 28 statewide daily publication one (1) time ~~a~~ per week for four (4) consecutive
 29 weeks ~~prior to~~ before the ~~date of~~ sale.

30 (2) The final publication shall be no more than ten (10) days
 31 ~~prior to~~ before the date of the sale.

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

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

1 **(b) The mortgagee, beneficiary, or trustee may publish or post**
 2 **additional notices of the foreclosure sale but shall not charge a grantor,**
 3 **mortgagor, or obligor a publication or posting charge other than the actual**
 4 **cost of publishing notice of the sale under subsection (a) of this section.**

5
 6 SECTION 6. Arkansas Code § 18-50-106 is amended to read as follows:
 7 18-50-106. Trustee's affidavit.

8 On or before the date the mortgagee or trustee conducts the sale, a
 9 duly acknowledged affidavit of ~~mailing~~ service and publication of the notice
 10 of default and intention to sell shall be filed for record with the recorder
 11 of the county in which the trust property is situated.

12
 13 SECTION 7. Arkansas Code § 18-50-107 is amended to read as follows:
 14 18-50-107. Manner of sale.

15 (a) ~~The~~ A foreclosure sale under this chapter shall be conducted by
 16 the circuit clerk acting as commissioner under § 21-6-412 and held on the
 17 date and at the time and place selected by the commissioner and designated in
 18 the notice of default and intention to sell, except that the sale shall:

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

20 (2) ~~Be held either at the premises of the trust property~~
 21 ~~or at the front door of~~ At the county courthouse of the county in which the
 22 trust property is situated; and

23 (3) ~~Not be held on~~ On a day other than a Saturday, Sunday,
 24 or a legal holiday.

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

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

29 (2) ~~The mortgagee or trustee shall engage a third party~~
 30 ~~that is licensed to sell real estate under the Real Estate License Law, § 17-~~
 31 ~~42-101 et seq., and licensed to act as an auctioneer under the Auctioneer's~~
 32 ~~Licensing Act, § 17-17-101 et seq., to conduct the sale and act at the sale~~
 33 ~~as the auctioneer.~~

34 ~~(3)~~ No bid shall be accepted that is less than two-thirds
 35 (2/3) of the entire indebtedness due at the ~~date~~ time of sale.

36 (c)(1) ~~The person conducting the sale~~ commissioner may postpone the

1 ~~sale from time to time.~~

2 ~~(2)(A) In every such case, for no more than thirty (30)~~

3 days by:

4 (A) Announcing notice of the postponement shall be given

5 ~~by:~~

6 ~~(i) Public proclamation thereof by that~~

7 ~~person; or~~

8 ~~(ii) Written notice of postponement posted and~~

9 the new sale date at the time and place last appointed for the sale; and

10 (B) Posting notice of the new sale date conspicuously in

11 the county courthouse.

12 ~~(B)(i) (2) No other notice of the postponement need~~

13 ~~be given unless If the sale is postponed for longer than thirty (30) days~~

14 ~~beyond the date designated in the initial notice.~~

15 ~~(ii) In that event, of default and intention~~

16 to sell, then notice thereof of the new foreclosure sale date shall be given

17 pursuant to § 18-50-104.

18 (d) ~~The sale is concluded when the highest bid is accepted by the~~

19 ~~person conducting the sale commissioner.~~

20 (e)(1) ~~Unless otherwise agreed to by the trustee beneficiary or~~

21 ~~mortgagee, the purchaser shall pay at the time of sale the price bid.~~

22 (2) ~~Interest shall accrue on any unpaid balance of the~~

23 ~~price bid at the rate specified in the note secured by the mortgage or deed~~

24 ~~of trust.~~

25 (3) ~~Within ten (10) days after the sale, the mortgagee or~~

26 ~~trustee shall execute and deliver the trustee's deed or mortgagee's deed to~~

27 ~~the purchaser.~~

28 (4) ~~The mortgagee or beneficiary shall receive a credit on~~

29 ~~its bid for:~~

30 (A) ~~The amount representing the unpaid principal~~

31 balance owed;

32 (B) ~~Accrued interest as of the date of the sale; and~~

33 (C) ~~Advances for the payment of taxes, insurance,~~

34 ~~and maintenance of the trust property; and~~

35 (D) ~~Costs of the sale, including reasonable~~

36 ~~trustee's and Allowable expenses and allowable attorney's fees.~~

1 ~~(f)(1)~~ The purchaser at the sale shall be entitled to immediate
2 possession of the property.

3 ~~(2)(A)~~ Possession may be obtained by filing a complaint in
4 the circuit court of the county in which the property is situated and
5 attaching a copy of the recorded trustee's or mortgagee's deed, whereupon the
6 purchaser shall be entitled to an ex parte writ of assistance.

7 ~~(B)~~ Alternatively, the purchaser and may bring an action
8 for forcible entry and detainer under § 18-60-301 et seq.

9 ~~(C)~~ In either event, the provisions of § 18-50-
10 ~~116(d)~~ shall apply.

11
12 SECTION 8. Arkansas Code § 18-50-109 is amended to read as follows:
13 18-50-109. Disposition of proceeds of sale.

14 The trustee or mortgagee shall apply the proceeds of the sale as
15 follows:

16 (1) ~~To the~~ First, to allowable expenses ~~of the sale,~~
17 ~~including compensation of the trustee or mortgagee and a reasonable fee by~~
18 ~~the attorney~~ and allowable attorney's fees;

19 (2) ~~To~~ Second, to the indebtedness owed;

20 (3) ~~To~~ Third, to all persons having recorded liens
21 ~~subsequent to the interest of the trustee or mortgagee as their interests may~~
22 ~~appear~~ the record owner of a lien recorded after the foreclosed mortgage or
23 deed of trust in the order of ~~the~~ each lien's priority; and

24 (4) The surplus, if any, to the grantor, ~~of the trust deed~~
25 ~~or mortgagor,~~ ~~to~~ or the successor in interest of the grantor or mortgagor
26 entitled to the surplus.

27
28 SECTION 9. Arkansas Code § 18-50-111(a)(1), concerning a trustee's
29 deed or mortgagee's deed, is amended to read as follows:

30 (a)(1) The trustee's or mortgagee's deed shall contain recitals of
31 compliance with the requirements of this chapter relating to the exercise of
32 the power of sale and sale of the trust property, including recitals
33 concerning ~~mailing~~ service and publication of notice of default and intention
34 to sell and the conduct of the sale.

35
36 SECTION 10. Arkansas Code § 18-50-112 is amended to read as follows:

1 18-50-112. Deficiency judgment not permitted.

2 ~~(a)(1) At any time within twelve (12) months after a sale under this~~
3 ~~chapter, a money judgment may be sought for the balance due upon the~~
4 ~~obligation for which a mortgage or deed of trust was given as security.~~

5 ~~(2) In such action, the plaintiff shall set forth in his~~
6 ~~or her complaint, and shall have the burden of proving, the entire amount of~~
7 ~~indebtedness which was secured by the mortgage or deed of trust, the amount~~
8 ~~for which the trust property was sold, and the fair market value of the trust~~
9 ~~property at the date of sale, together with interest from the date of sale,~~
10 ~~costs, and attorney's fees.~~

11 ~~(b) Judgment shall not exceed the lesser of the following:~~

12 ~~(1) The amount for which the indebtedness due at the date~~
13 ~~of sale, with interest from the date of sale, costs, and trustee's and~~
14 ~~attorney's fees, exceeds the fair market value of the trust property; or~~

15 ~~(2) The amount for which the indebtedness due at the date~~
16 ~~of sale, with interest from the date of sale, costs, and trustee's and~~
17 ~~attorney's fees, exceeds the amount for which the trust property was sold.~~

18 A mortgagee or beneficiary that forecloses a mortgage or deed of trust
19 under this chapter waives the right to obtain a deficiency judgment against a
20 grantor, mortgagor, or obligor.

21
22 SECTION 11. Arkansas Code § 18-50-114 is amended to read as follows:

23 18-50-114. Reinstatement or payment of mortgage or deed of trust
24 encumbering residential real property - Allowable expenses and attorney's
25 fees - Penalties.

26 ~~(a)(1) Whenever all or a portion of the principal sum of any~~
27 ~~obligation If the debt secured by a mortgage or deed of trust, prior to the~~
28 ~~maturity date fixed in such obligation, encumbering residential real property~~
29 ~~has become due or has been declared due by reason of a breach or default in~~
30 ~~the performance of any an obligation secured by the mortgage or deed of~~
31 ~~trust, including a default in the payment of interest or of any installment~~
32 ~~of principal, or by reason of a failure of the grantor to pay, in accordance~~
33 ~~with the terms of the mortgage or deed of trust, taxes, assessments, premiums~~
34 ~~for insurance, or advances made by the mortgagee or beneficiary in accordance~~
35 ~~with the terms of such obligation or of such mortgage or deed of trust, then~~
36 ~~the a mortgagor, obligor, or grantor, or their successors a successor in~~

1 ~~interest of the mortgagor, obligor, or grantor in the trust property may pay,~~
2 ~~cure the default at any time subsequent to the filing for record of a notice~~
3 ~~of default and intention to sell and prior to before the foreclosure sale, by~~
4 ~~paying to the mortgagee or beneficiary or their successor in interest the~~
5 ~~entire amount then due under the terms of such mortgage or deed of trust,~~
6 ~~including costs and expenses actually incurred in enforcing the terms of the~~
7 ~~obligation and mortgage or deed of trust, and trustee's and attorney's fees~~
8 ~~other than that portion of the principal which would not then be due had no~~
9 ~~default occurred, and thereby cure the default theretofore existing.~~

10 ~~(2) Thereupon, all proceedings under this chapter~~
11 ~~theretofore had or instituted shall be dismissed or discontinued, and the~~
12 ~~obligation and mortgage or deed of trust shall be reinstated and shall be and~~
13 ~~remain in force and effect, the same as if no acceleration had occurred,~~
14 ~~allowable expenses and allowable attorney's fees plus:~~

15 ~~(1) To reinstate the mortgage or deed of trust, all unpaid~~
16 ~~monthly payments and late charges through the date that payment is received;~~
17 ~~or~~

18 ~~(2) To pay off the mortgage or deed of trust, all unpaid~~
19 ~~principal, interest, and late charges through the date that payment is~~
20 ~~received.~~

21 ~~(b) A limitation imposed by this section for an allowable expense or~~
22 ~~an allowable attorney's fee that may be charged to a grantor, mortgagor, or~~
23 ~~obligor does not limit the amount of an expense or fee that may be negotiated~~
24 ~~with a mortgagor or beneficiary.~~

25 ~~(c)(1) If a grantor, mortgagor, or obligor requests a quote to~~
26 ~~reinstate or pay off a debt secured by a mortgage or deed of trust upon~~
27 ~~residential real property, the mortgagee, beneficiary, or trustee shall~~
28 ~~promptly provide a quote that:~~

29 ~~(A) Itemizes all payments, principal, interest, late~~
30 ~~charges, allowable expenses, and allowable attorney's fees that have accrued~~
31 ~~or have been incurred and must be paid to reinstate or pay off the mortgage~~
32 ~~or deed of trust;~~

33 ~~(B)(i) Discloses the ownership interest of a trustee or~~
34 ~~mortgagee in an entity that incurs an:~~

35 ~~(a) Allowable expense; or~~

36 ~~(b) Expense authorized by a mortgage or deed~~

1 of trust.

2 (ii) As used in subdivision (c)(1)(B)(i) of this
3 section, "ownership interest" means:

4 (a) A financial interest in a business; or

5 (b) The right to participate in a decision
6 concerning the management of a business other than as a paid consultant or
7 attorney; and

8 (C) Provides the:

9 (i) Date through which the quote to reinstate or pay
10 off the mortgage or deed of trust shall be honored; and

11 (ii) Estimated date that an existing or new
12 allowable expense or allowable attorney's fee is expected to increase the
13 quote and the amount of the increase.

14 (2) Upon receipt of a payment sufficient to cure a default under
15 the mortgage or deed of trust, the mortgagee, beneficiary, or trustee shall
16 cancel and, if collected, refund each allowable expense and allowable
17 attorney's fee that has not yet been incurred.

18 ~~(b)~~(d) If the default is cured and the mortgage or deed of trust:

19 (1) Is reinstated or paid off in the manner provided ~~in~~ by this
20 section, the mortgagee, beneficiary, or ~~their successors in interest~~ trustee
21 shall file for record with the recorder of the county in which the trust
22 property is situated a duly acknowledged cancellation of the recorded notice
23 of default and intention to sell ~~under such mortgage or deed of trust~~; and

24 (2) Is reinstated in the manner provided by this section:

25 (A) All proceedings under this chapter therefore shall be
26 dismissed or discontinued; and

27 (B) The obligation and mortgage or deed of trust shall be
28 reinstated and shall remain in force and effect as if no acceleration had
29 occurred.

30 (e) A violation of this section is:

31 (1) A deceptive trade practice under § 4-88-101 et seq.; and

32 (2) Enforceable and punishable as provided by § 4-88-101 et seq.

33 (f) As used in this section, "residential real property" means real
34 property used primarily for single family residential purposes.

35
36 SECTION 12. Arkansas Code § 19-5-1241(b), concerning the Trial Court

1 *Administrative Assistant Fund, is amended to read as follows:*

2 *(b) The Trial Court Administrative Assistant Fund shall consist of*
3 *those moneys transferred from the State Administration of Justice Fund, the*
4 *first twenty-five dollars (\$25.00) of each filing fee collected under § 21-6-*
5 *403(b)(2)(A), and other moneys as authorized by law.*

6
7 *SECTION 13. Arkansas Code § 21-6-403(b)(2), concerning uniform filing*
8 *fees for circuit court clerks, is amended to read as follows:*

9 *(2)(A) For filing a mortgagee's or trustee's notice of default*
10 *and intention to sell pursuant to § 18-50-104 ~~140.00~~ 165.00*

11 *(B) The first twenty-five dollars (\$25.00) of each filing*
12 *fee collected under subdivision (b)(2)(A) of this section shall be paid into*
13 *the Trial Court Administrative Assistant Fund.*

14
15 *SECTION 14. Arkansas Code § 21-6-412 is amended to read as follows:*
16 *21-6-412. Commissioners to sell property.*

17 *(a)(1) As part of his or her official duties, the clerk of the circuit*
18 *court of the county in which real property or personal property is located*
19 *shall be appointed commissioner of the court to conduct:*

20 *(1) A judicial sale of the real property or personal property;*

21 *or*

22 *(2) A statutory foreclosure sale under § 18-50-101 et seq.*

23 *(b)(1) Commissioners A commissioner appointed to make conduct sales a*
24 *sale of real property under judicial decrees this section shall be allowed*
25 *the following fees as compensation for such services as a commissioner's fee:*

26	<i><u>On sales for \$1.00 to \$500</u></i>	<i><u>\$10.00</u></i>
27	<i><u>On sales for 500 to 2,500</u></i>	<i><u>15.00</u></i>
28	<i><u>On sales for 2,500 to 5,000</u></i>	<i><u>20.00</u></i>
29	<i><u>On sales for 5,000 to 10,000</u></i>	<i><u>25.00</u></i>
30	<i><u>On sales for 10,000 to 20,000</u></i>	<i><u>30.00</u></i>
31	<i><u>On sales for 20,000 to 35,000</u></i>	<i><u>35.00</u></i>
32	<i><u>On sales for 35,000 or more, one tenth of one percent (0.1%),</u></i>	

33 *(A) Ten dollars (\$10.00) if the sale price is less than*
34 *five hundred dollars (\$500);*

35 *(B) Fifteen dollars (\$15.00) if the sale price is five*
36 *hundred dollars (\$500) or more but less than two thousand five hundred*

1 dollars (\$2,500);

2 (C) Twenty dollars (\$20.00) if the sale price is two
3 thousand five hundred dollars (\$2,500) or more but less than five thousand
4 dollars (\$5,000);

5 (D) Twenty-five dollars (\$25.00) if the sale price is five
6 thousand dollars (\$5,000) or more but less than ten thousand dollars
7 (\$10,000);

8 (E) Thirty dollars (\$30.00) if the sale price is ten
9 thousand dollars (\$10,000) or more but less than twenty thousand dollars
10 (\$20,000);

11 (F) Thirty-five dollars (\$35.00) if the sale price is
12 twenty thousand dollars (\$20,000) or more but less than thirty-five thousand
13 dollars (\$35,000); or

14 (G) One-tenth of one percent (0.1%) of the sale price if
15 the sale price is thirty-five thousand dollars (\$35,000) or more.

16 (2) ~~Commissioners~~ A commissioner appointed to ~~make sales~~ conduct
17 a sale of personal property under a judicial ~~decrees~~ decree shall be allowed
18 as compensation for ~~such services~~ conducting the sale the fee prescribed by
19 the judge of the court that issued the decree.

20 ~~(b)(c)~~ (c) In lieu of the fees provided for in this section, the court may
21 set reasonable fees for commissioners based upon services rendered on sales
22 under thirty-five thousand dollars (\$35,000).

23 (d)(1) The fees required by this section shall:

24 (A) Be collected by the circuit clerk and paid into the
25 county treasury to the credit of a fund to be known as the "circuit clerk
26 commissioner's fee fund"; and

27 (B) Be used exclusively by the circuit clerk's office for
28 the following purposes and in the following order:

29 (i) To offset administrative costs associated with
30 the performance of the commissioner's duties; and

31 (ii) For general operational expenses of the office
32 of the circuit clerk.

33 (2) Moneys deposited into the fund shall be
34 appropriated and expended for the uses designated in this section by the
35 quorum court at the direction of the circuit clerk.

36 SECTION 15. Arkansas Code Title 16, Chapter 7, Subchapter 2, is

1 amended to add an additional section to read as follows:

2 16-7-208. Foreclosure mediation.

3 (a) As used in this section:

4 (1) "Foreclosure mediator" means a mediator approved by the
5 Arkansas Alternative Dispute Resolution Commission to conduct a mediation
6 under this section; and

7 (2) "Grantor", "mortgagor", "obligor", "mortgagee", and
8 "beneficiary" mean the same as defined in § 18-50-101.

9 (b) Except as provided in this section, this subchapter applies to the
10 mediation of a request made under § 18-50-103 or otherwise concerning a:

11 (1) Dispute between a grantor, mortgagor, or obligor and a
12 mortgagee or beneficiary; and

13 (2) Request by a grantor, mortgagor, or obligor to a mortgagee
14 or beneficiary for the forbearance, loan modification, or other restructuring
15 of a debt owed by the grantor, mortgagor, or obligor to the mortgagee or
16 beneficiary.

17 (c) The commission shall:

18 (1) Establish and maintain a roster of mediators who meet the
19 commission's requirements and guidelines for mediating issues related to
20 foreclosure proceedings, including without limitation issues concerning
21 default and requests for loan forgiveness, forbearance, loan modification, or
22 other restructuring of a debt of a grantor, mortgagor, or obligor; and

23 (2) Upon request:

24 (A) Provide the roster to a grantor, mortgagor, obligor,
25 mortgagee, or beneficiary; and

26 (B) Help a grantor, mortgagor, or obligor select an
27 appropriate mediator by using a continuously rolling list from the mediators
28 on the roster if a grantor, mortgagor, or obligor is unable or unwilling to
29 make the selection.

30 (d)(1) The beneficiary or mortgagee shall:

31 (A) Attend the mediation; and

32 (B)(i) Bring to the mediation the original note, mortgage
33 or deed of trust, and each assignment of the note.

34 (ii) If the original note, mortgage or deed of
35 trust, or an assignment of the note is lost, stolen, or destroyed, the
36 beneficiary or mortgagee shall at the beginning of the mediation for each

1 note, mortgage or deed of trust, or assignment that is lost, stolen, or
2 destroyed:

3 (a) Presents a sworn affidavit of lost
4 instrument that:

5 (1) Contains the proof required to
6 enforce the instrument under § 4-3-309; and

7 (2) Provides a detailed explanation of
8 the reasons why the note, mortgage or deed of trust, or assignment is
9 unavailable.

10 (2) A beneficiary or mortgagee shall not be represented at the
11 mediation by another person unless the person has authority or immediate
12 access to a person with the authority to negotiate:

13 (A) A loan forgiveness, forbearance, loan modification, or
14 other restructuring of a debt of a grantor, mortgagor, or obligor; and

15 (B) Any other relief requested by a grantor, mortgagor, or
16 obligor, including without limitation a deed in lieu of foreclosure or
17 another alternative to foreclosure.

18 (e)(1) If the beneficiary or mortgagee fails to attend the mediation,
19 fails to participate in the mediation in good faith, does not bring to the
20 mediation each document required by subsection (d) of this section, or does
21 not have the authority or access to a person with the authority required by
22 subsection (d) of this section, the foreclosure mediator shall make a
23 recommendation concerning the imposition of sanctions against the beneficiary
24 or mortgagee, the representative of the beneficiary or mortgagee, or both.

25 (2) Upon presentation of the foreclosure mediator's
26 recommendation under subdivision (e)(1) of this section to the circuit court
27 of the county in which the presenting grantor, mortgagor, or obligor resides,
28 the court shall grant appropriate relief, including without limitation
29 ordering:

30 (A) Sanctions against the beneficiary or mortgagee, the
31 representative of the beneficiary or mortgagee, or both;

32 (B) The execution of an appropriate loan modification
33 agreement, forbearance agreement, or other debt restructuring; and

34 (C) The execution and acceptance of a deed in lieu of
35 foreclosure.

36 (f) If the grantor, mortgagor, or obligor fails to attend the

1 mediation, the foreclosure mediator shall provide the beneficiary or
2 mortgagee a certificate which states that the mediation requested is not
3 required.

4 (g) If the foreclosure mediator determines that the parties acting in
5 good faith are not able to reach an acceptable compromise, the foreclosure
6 mediator shall:

7 (1) Recommend that the mediation be terminated; and

8 (2) Provide the parties to the mediation a certificate which
9 provides that the mediation required by this section has been completed
10 without reaching an acceptable compromise.

11 (h)(1) The commission shall adopt rules to implement this section.

12 (2) The rules shall include without limitation, guidelines and
13 procedures to:

14 (A) Establish and maintain a roster of qualified
15 foreclosure mediators and select mediators under subsection (c) of this
16 section;

17 (B) Ensure that mediations occur in an orderly and timely
18 manner;

19 (C) Require each party to a mediation to provide the
20 information that the foreclosure mediator requires for the mediation;

21 (D) Protect the mediation process from abuse and to ensure
22 that each party to the mediation acts in good faith; and

23 (E) Establish a total fee of not more than five hundred
24 dollars (\$500) that may be charged and collected by the foreclosure mediator
25 for mediation services under this section.

26 (i) This section does not apply:

27 (1) If the grantor, mortgagor, or obligor has surrendered the
28 property securing the debt of the grantor, mortgagor, or obligor, as
29 evidenced by a letter confirming the surrender or delivery of the keys to the
30 property to the beneficiary or mortgagee; or

31 (2) To the extent that federal bankruptcy law provides a stay of
32 proceedings to collect a debt from a grantor, mortgagor, or obligor unless
33 the grantor, mortgagor, or obligor initiates the mediation.

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/s/Nickels