

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

SENATE BILL 673

5 By: Senator A. Clark
6 By: Representative Dalby
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE STATUTORY FORECLOSURE ACT OF
10 1987; AND FOR OTHER PURPOSES.
11

Subtitle

14 TO AMEND THE STATUTORY FORECLOSURE ACT OF
15 1987.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. DO NOT CODIFY. Legislative findings and intent.

21 The General Assembly finds that:

22 (1) There is a compelling public interest to establish a date of
23 finality in real property sales to avoid creating a cloud on titles to real
24 property in the State of Arkansas;

25 (2) The decision of the Supreme Court in Davis v. Pennymac,
26 2020 Ark. 180, has resulted in instability and uncertainty in the real estate
27 market as it relates to the sale of properties subject to or following a
28 statutory foreclosure; and

29 (3) It is the intent of the General Assembly that this act be
30 applied to all foreclosure sales held since the enactment of Act 885 of 2011
31 as that act created substantial consumer protection obligations on the
32 parties availing themselves of the Statutory Foreclosure Act of 1987.
33

34 SECTION 2. Arkansas Code § 18-50-116 is amended to read as follows:
35 18-50-116. Miscellaneous provisions.

36 (a) The procedures ~~set forth~~ in this chapter for the foreclosure of a



1 mortgage or deed of trust shall not impair or otherwise affect the right to
2 bring a judicial action to foreclose a mortgage or deed of trust.

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

6 (c)(1) The procedures ~~set forth~~ in this chapter shall apply only if
7 the mortgagee or beneficiary is a mortgage company as defined in § 18-50-101
8 or is a bank or savings and loan.

9 (2) This chapter shall not apply to a mortgage or a deed of
10 trust encumbering trust property used primarily for agricultural purposes.

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

12 (1) Create an implied right of redemption in favor of any
13 person; or

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

16 (B) However, a claim or defense ~~of a person or entity~~
17 ~~asserting his or her or its legal and equitable rights~~ shall be asserted
18 ~~before~~ prior to the sale or ~~it is~~ the claim or defense is ~~be~~ forever barred
19 and terminated, except the mortgagor may assert the following against either
20 the mortgagee or trustee:

21 (i) Fraud by any party; or

22 (ii) Failure to strictly comply with the provisions
23 of this ~~chapter, including without limitation subsection (c) of this section~~
24 act.

25 (C)~~(i) The~~ Any of the above claims or defenses ~~described in~~
26 ~~subdivision (d)(2)(B) of this section~~ may not be asserted against a
27 subsequent purchaser for value of the property.

28 ~~(ii) For purposes of this section, "purchaser for~~
29 ~~value" does not include the mortgagee or the trustee.~~

30 (D) Any claims or defenses for a violation of subdivision
31 (d)(2)(B)(ii) of this section shall be asserted within thirty (30) days of
32 the foreclosure sale to ensure the finality of sales that substantially
33 comply with this chapter.

34 (e)(1) At any time prior to the delivery of the trustee's or
35 mortgagee's deed, the trustee or mortgagee ~~shall be authorized to~~ may set
36 aside a sale conducted pursuant to this chapter by declaring the sale null

1 and void and returning the purchase price to the highest bidder without
2 any further liability to the bidder.

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

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9 SECTION 3. DO NOT CODIFY. Retroactivity.

10 This act applies retroactively to March 31, 2011.

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