

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 957

By: Maddox

AS INTRODUCED

An Act relating to liens; amending 12 O.S. 2001, Section 686, which relates to foreclosure suits; establishing priority of municipal liens; making language gender neutral; deleting obsolete language; amending 46 O.S. 2001, Section 48, which relates to disposition of sale proceeds; establishing priority of payment of outstanding tax and municipal liens; amending 68 O.S. 2001, Sections 3105, 3106, 3107, 3108, 3118, 3127, 3129, 3130 and 3131, which relate to the sale of real property for delinquent taxes and special assessments; authorizing county treasurer to sell certain real estate for payment of municipal liens; requiring county treasurer to collect certain monies; requiring county treasurer to offer certain real property at public sale; authorizing county treasurer to purchase certain real estate; authorizing person to purchase certain property; providing for certain deeds to be subject to claims of political subdivisions of the state; specifying information to be included in publication of notice of resale of certain real estate; conforming language; requiring certain property to be sold for a certain sum; limiting liability of county to municipality for certain amounts; characterizing certain monies collected by county treasurer; requiring certain monies to be paid to municipality; requiring apportionment of certain sale proceeds; providing for cancellation of certain municipal liens; requiring sale proceeds in excess of any municipal liens to be held in separate fund; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 2001, Section 686, is amended to read as follows:

Section 686. In actions to enforce a mortgage, deed of trust, or other lien or charge, a personal judgment or judgment or judgments shall be rendered for the amount or amounts due as well to the plaintiff as other parties to the action having liens upon the mortgaged premises by mortgage or otherwise, with interest thereon, and for sale of the property charged and the application of the

proceeds; or such application may be reserved for the future order of the court, and the court shall tax the costs, attorney's fees and expenses which may accrue in the action, and apportion the same among the parties according to their respective interests, to be collected on the order of sale or sales issued thereon; ~~when.~~

Provided, municipal liens against the property shall be coequal with any lien for ad valorem taxes and all other taxes and special assessments and shall be prior and superior to all other titles and

liens against the property. When the same mortgage embraces

separate tracts of land situated in two or more counties, the sheriff of each county shall make sale of the lands situated in ~~the~~ that county ~~of which he is sheriff.~~ No real estate shall be sold

for the payment of any money or the performance of any contract or agreement in writing, in security for which it may have been pledged

or assigned, except in pursuance of a judgment of a court of

competent jurisdiction ordering such sale. The court may, in the order confirming a sale of land under order of sale on foreclosure

or upon execution, award or order the issuance of a writ of

assistance by the clerk of the court to the sheriff of the county where the land is situated, to place the purchaser in full

possession of such land, and any resistance of the service of such

writ of assistance shall constitute an indirect contempt of the

process of such court, and if any person who has been removed from

any lands by process of law or writ of assistance or who has removed from any lands pursuant to law or adjudication or direction of any

court, tribunal or officer, afterwards, without authority of law,

returns to settle or reside upon such land, ~~he~~ the person shall be

guilty of an indirect contempt of court, and may be proceeded

against and punished for such contempt. Notwithstanding the above

provisions no judgment shall be enforced for any residue of the debt remaining unsatisfied as prescribed by this act after the mortgaged

property shall have been sold, except as herein provided.

Simultaneously with the making of a motion for an order confirming the sale or in any event within ninety (90) days after the date of the sale, the party to whom such residue shall be owing may make a motion in the action for leave to enter a deficiency judgment upon notice to the party against whom such judgment is sought or the attorney who shall have appeared for such party in such action. Such notice shall be served personally or in such other manner as the court may direct. Upon such motion the court, whether or not the respondent appears, shall determine, upon affidavit or otherwise as it shall direct, the fair and reasonable market value of the mortgaged premises as of the date of sale or such nearest earlier date as there shall have been any market value thereof and shall make an order directing the entry of a deficiency judgment. Such deficiency judgment shall be for an amount equal to the sum of the amount owing by the party liable as determined by the judgment with interest, plus costs and disbursements of the action plus the amount owing on all prior liens and encumbrances with interest, less the market value as determined by the court or the sale price of the property whichever shall be the higher. If no motion for a deficiency judgment shall be made as herein prescribed the proceeds of the sale regardless of amount shall be deemed to be in full satisfaction of the mortgage debt and no right to recover any deficiency in any action or proceeding shall exist.

In any action ~~pending at the time this act becomes effective or thereafter commenced~~, other than an action to foreclose a mortgage, to recover a judgment for any indebtedness secured by a mortgage on real property and which originated simultaneously with such mortgage and which is secured solely by such mortgage, against any person or corporation directly or indirectly or contingently liable therefor, any party against whom a money judgment is demanded, shall be entitled to set off the fair and reasonable market value of the mortgaged property less the amounts owing on prior liens and

encumbrances. Provided that nothing in this section shall limit or reduce any deficiency judgment in favor of or in behalf of the state for any debts, obligations or taxes due the state, now or hereafter.

SECTION 2. AMENDATORY 46 O.S. 2001, Section 48, is amended to read as follows:

Section 48. A. The mortgagee shall apply the proceeds of the sale in the priority as set out as follows:

1. To the costs and expenses of exercising the power of sale and of sale, including the payment of reasonable attorney's fees actually incurred; and

2. Unless otherwise required by law, to the payment of:

a. any outstanding tax and municipal liens,

b. the contract or indebtedness secured by the mortgage,

c. the payment of all other obligations provided in or secured by the mortgage, and

d. the obligations of any junior lienholders or encumbrancers, in order of their priority as otherwise provided for by law.

After payment in full to all junior lienholders and encumbrancers, payment shall be made to the party who is the owner of the property immediately preceding the sale.

B. The mortgagee may elect to deposit all or any part of the sale proceeds with the clerk of the district court in the county in which the sale took place. Upon deposit of such monies together with a legal description of the property whose sale produced the proceeds, the mortgagee shall be discharged from all responsibility for acts performed in good faith according to the provisions of this act, and the clerk shall deposit the amount with the county treasurer subject to order of the district court in the county upon the application, by civil action, of any interested party.

SECTION 3. AMENDATORY 68 O.S. 2001, Section 3105, is amended to read as follows:

Section 3105. The county treasurer shall in all cases where taxes or municipal liens are a lien upon real property and are unpaid on April 1 of any year proceed, as hereinafter provided, to advertise and sell such real estate for such taxes, municipal liens, special assessments and costs, and shall not be bound before so doing to proceed to collect by sale all personal taxes on personal property which are by this Code made a lien on realty, but shall include such personal tax with that due on the realty, and shall sell the realty for all of ~~said~~ such taxes, municipal liens and special assessments.

SECTION 4. AMENDATORY 68 O.S. 2001, Section 3106, is amended to read as follows:

Section 3106. The county treasurer shall give notice of the sale of real property for delinquent taxes ~~and~~, municipal liens or special assessments by publication of ~~said~~ the sale once a week for the two (2) consecutive weeks immediately prior to the third Friday in September preceding the sale, in some newspaper in the county to be designated by the county treasurer. Such notice shall contain a notification that all lands on which the taxes or municipal liens are delinquent and remain due and unpaid will be sold, the time and place of the sale, a list of the lands to be sold, the name or names of the last owner or owners as reflected by the records in the office of the county treasurer, and the amount of taxes or liens due and delinquent. Such notice shall also contain the following language: "The sale hereby advertised is conditional and subject to a two-year right of redemption by the record owner as provided in Section ~~24323~~ 3118 of Title 68 of the Oklahoma Statutes." If the sale involves property upon which is located a manufactured home the notice shall also contain the following language: "The sale hereby advertised involves a manufactured home which may be subject to the right of a secured party to repossess. A holder of a perfected security interest in such manufactured home may be able to pay ad

valorem taxes based upon the value of the manufactured home apart from the value of real property. If a secured party exercises this right, the holder of the tax sale certificate will be refunded the amount of taxes paid upon the value of the manufactured home." In addition to ~~said the~~ published notice, the county treasurer shall give notice by certified mail by mailing to the owner of ~~said the~~ real property, as shown by the last tax rolls in ~~his~~ the county treasurer's office, a notice of ~~said the~~ sale stating the time and place of ~~said the~~ sale and showing the legal description of the property of the owner being sold. Failure to receive ~~said the~~ notice shall not invalidate ~~said the~~ sale. The county treasurer shall charge and collect, in addition to the taxes, monies owed on municipal liens, interest and penalty, the publication fees as provided by the provisions of Section 121 of Title 28 of the Oklahoma Statutes, and Five Dollars (\$5.00) plus postage for mailing the notice by certified mail, which shall be paid into the county treasury, and the county shall pay the cost of the publication of such notice. ~~But in~~ In no case shall the county be liable for more than the amount charged to the delinquent lands for advertising and the cost of mailing.

SECTION 5. AMENDATORY 68 O.S. 2001, Section 3107, is amended to read as follows:

Section 3107. On the first Monday in October in each year between the hours of 9:00 a.m. and 4:00 p.m., the treasurer shall offer at public sale at ~~his~~ the county treasurer's office where by law the taxes are made payable, all lands, town lots or other real property which shall be liable for taxes and municipal liens of any description for the preceding year, or years, and which shall remain due and unpaid.

SECTION 6. AMENDATORY 68 O.S. 2001, Section 3108, is amended to read as follows:

Section 3108. The first person who offers to pay the full amount due on any parcel of land shall be considered to be the successful purchaser. In the event that more than one such person shall so appear at the same time the county treasurer shall decide the issue by fair and impartial drawing. Parcels of land shall be sold to prospective purchasers on a first-come, first-served basis. The county treasurer is hereby authorized at all tax and municipal lien sales made under the laws of this state, in case there are no other purchasers offering the amount due, to purchase all or any real estate offered at the sale for the amount of taxes, ~~penalty~~ municipal liens, penalties, interest and costs due and unpaid thereon, in the name of the county in which the sale takes place, the county acquiring all the rights both legal and equitable that any other purchaser could acquire by reason of the purchase. Whenever the county treasurer of any county shall purchase any real estate in the name of the county, the county treasurer shall note the purchase upon the sale record and show the same in the return of sale.

If any person is desirous of purchasing the interest of the county in the real estate, the person shall have an absolute right to purchase a certificate by paying to the county treasurer the amount of all the taxes, municipal liens, penalties, interest and costs of sale and transfer, for the year or years so purchased, up to the date of the purchase; and thereupon the treasurer shall issue, assign and deliver to the purchaser a certificate of purchase to the real estate which assignment and transfer shall convey to the purchaser all the rights and interest of the county as fully as if the purchaser had been the original purchaser at the tax sale. The county treasurer shall note the assignment on the tax sale record.

SECTION 7. AMENDATORY 68 O.S. 2001, Section 3118, is amended to read as follows:

Section 3118. A. If no person shall redeem such lands within two (2) years, at any time after the expiration thereof, and on production of the certificate of purchase, the county treasurer of the county in which the sale of such land took place shall execute to the purchaser, or the heirs or assigns of the purchaser, a deed for land remaining unredeemed. The deed shall vest in the grantee an absolute estate in fee simple in the lands, subject however, to all claims which the state or any of its political subdivisions may have on the lands for taxes or other liens or encumbrances and shall extinguish the rights of any mortgagee of record of the lands to whom notice was sent as provided for by law. However, before any holder of a certificate of purchase issued at any tax sale of real estate shall be entitled to a deed as provided in this section, the holder of a certificate of purchase shall cause a written notice signed by such holder to be served upon the owner of the land if the owner is within the state, upon the person in possession of the land, if the same be occupied, and upon all mortgagees of record of the land, which notice shall recite the sale of the lands, specifying the date of such sale and notifying such person that unless redemption is made from such sale within sixty (60) days after the date of the service of such notice, a tax deed will be demanded and will issue as provided by law. If the real property to be sold is listed as homestead property on the last tax rolls, then in addition to all other notification requirements, the applicant shall also cause the notice of sale to be posted on the front door of the property by the county sheriff at least thirty (30) days prior to such deed being issued. The cost of the posting of the notice shall be added to the amount necessary to redeem the property from sale.

B. If it shall be made to appear by the return of the service of such notice that the owner or any mortgagee of record of such land cannot be found in the county in which such land is situated,

such holder of a certificate of purchase shall cause such notice to be mailed to the last-known address of the owner and any mortgagee of record of such land, with return receipt requested. If it shall be made to further appear by the affidavit of the holder of the tax certificate or ~~his~~ the holder's agent, filed in the office of the county clerk, that the owner or any mortgagee of record of the real estate are nonresidents of the state, or that the residence or place of business of such owner or any mortgagee of record is not known to the holder of such tax certificate, and cannot be ascertained by any means within the control of such holder of the tax certificate, and that the holder of such tax certificate cannot by the exercise of reasonable diligence make service upon such owner or any mortgagee of record within the state, then in such cases, service shall be made by publication for three (3) successive weeks in some newspaper of general circulation published at the county seat of the county in which such real estate is situated, and the sixty (60) days shall begin to run from the date of the first publication of such notice. Until the expiration of the sixty (60) days, redemption may be made by any person authorized by law to redeem. All service and return shall be made in the same manner as that of summons in courts of record. The notice, with the tax sale certificate, after being duly served or published, or both, shall be returned and filed in the office of the county clerk, who shall make notation of its date and the date of service on the delinquent sale record, and the fee for such service and publication shall be the same as for like service of summons, and shall be added to the amount necessary to redeem such sales. The notice provided for in this section may be served at any time after a date not exceeding sixty (60) days prior to the expiration of two (2) years subsequent to the day of sale. Neither failure to send notice to any mortgagee of record of said land nor failure to receive notice as provided for by this section shall invalidate the certificate tax sale, but the certificate tax sale

deed shall be ineffective to extinguish any mortgage on the lands of a mortgagee to whom no notice was sent.

SECTION 8. AMENDATORY 68 O.S. 2001, Section 3127, is amended to read as follows:

Section 3127. The county treasurer shall give notice of the resale of such real estate by publication of ~~said~~ the notice once a week for four (4) consecutive weeks preceding such sale, in some newspaper, having been continuously published one hundred four (104) consecutive weeks with admission to the United States mails as second-class mail matter, with paid circulation and published in the county where delivered to the mails, to be designated by the county treasurer; ~~and if~~. If there be is no such paper published in the county, or publication is refused, he the county treasurer shall give notice by written or printed notice posted on the door of the courthouse. Such notice shall contain a description of the real estate to be sold, the name of the owner of ~~said~~ the real estate as shown by the last tax rolls in the office of the county treasurer, the time and place of sale, a statement of the date on which ~~said~~ the real estate was sold to the county for delinquent taxes or municipal liens, the year or years for which taxes have been assessed but remain unpaid and a statement that the same has not been redeemed for the period of two (2) years from the date of sale, the total amount of all delinquent taxes, costs, penalties, municipal liens, if any, and interest accrued, due and unpaid on the same, and a statement that such real estate will be sold to the highest bidder for cash. It shall not be necessary to set forth the amount of taxes, penalties, interest, municipal liens, if any, and costs accrued each year separately, but it shall be sufficient to publish the total amount of all due and unpaid taxes, penalties, interest, municipal liens, if any, and costs. The county treasurer shall, at least thirty (30) days prior to such resale of real estate, give notice by certified mail, by mailing to the owner of

~~said~~ the real estate, as shown by the last tax rolls in ~~his~~ the county treasurer's office, and to all mortgagees of record of ~~said~~ the real estate a notice stating the time and place of ~~said~~ the resale and showing the legal description of the real property to be sold. If the county treasurer does not know and cannot, by the exercise of reasonable diligence, ascertain the address of any mortgagee of record, then the county treasurer shall cause an affidavit to be filed with the county clerk, on a form approved by the State Auditor and Inspector, stating such fact, which affidavit shall suffice, along with publication as provided for by this section, to give any mortgagee of record notice of such resale. Neither failure to send notice to any mortgagee of record of ~~said~~ the real estate nor failure to receive notice as provided for by this section shall invalidate the resale, but the resale tax deed shall be ineffective to extinguish any mortgage on ~~said~~ the real estate of a mortgagee to whom no notice was sent. ~~Beginning on the effective date of this act, no~~ No encumbrancer of real property in this state shall be permitted to file any instrument purporting to encumber real property in any county of the state with any county clerk unless the instrument states on its face the mailing address of such encumbrancer.

SECTION 9. AMENDATORY 68 O.S. 2001, Section 3129, is amended to read as follows:

Section 3129. A. On the day real estate is advertised for resale, the county treasurer shall offer same for sale at the office of the county treasurer between the hours of ~~nine~~ 9:00 a.m. and ~~four~~ 4:00 p.m. and continue the sale thereafter from day to day between such hours until all of the real estate is sold. The real estate shall be sold at public auction to the highest bidder for cash.

B. All property must be sold for a sum not less than two-thirds of the assessed value of such real estate as fixed for the current ~~fiscal~~ year, or for the total amount of taxes, penalties, interest,

liens of municipalities and costs due on such property, whichever is the lesser. If there is no bid equal to or greater than the sum so required, the county treasurer shall bid off the same in the name of the county. All property bid off in the name of the county shall be for the amount of all taxes, municipal liens, penalties, interest and costs due thereon, and the county treasurer shall issue a deed therefor to the board of county commissioners for the use and benefit of the county.

C. The county shall not be liable to the state, municipality, or any taxing district thereof for any part of the amount for which any property may be sold to such county. All property bid off in the name of the county shall be exempt from ad valorem taxation as long as title is held for the county.

D. 1. The county shall not be civilly liable for any environmental problems or conditions on any property which existed on the property prior to the county's involuntary ownership of the property pursuant to this section, or which may result from such environmental problems or conditions on the property. During the period of the county's involuntary ownership of the property, the person or persons who would be legally liable for the environmental problems or conditions on the property but for the county's ownership shall continue to be liable for such environmental problems or conditions.

2. In addition, the county shall not be subject to civil liability with regard to any actions taken by the county to remediate any problems or conditions on the property resulting from the environmental problems or conditions if the remedial action is not performed in a reckless or negligent manner.

SECTION 10. AMENDATORY 68 O.S. 2001, Section 3130, is amended to read as follows:

Section 3130. Monies received by the county treasurer at resale from individual purchasers, not redemptioners, shall nevertheless be

deemed to be collections of tax and municipal liens, if any, and if no redemption be had before issuance and delivery of a deed therefor, the tax monies so collected, not including excess proceeds to be held for the owner thereof, shall be credited and apportioned as such taxes would have been apportioned had they been paid in the proper time and manner, and the monies so collected representing penalties on ad valorem tax, listing fees and publication costs shall be credited to the "resale property fund" of such county as hereinafter provided. If a municipal lien was filed on the property sold, the amount of the lien shall be paid from monies received by the county treasurer at resale to the treasurer of the municipality.

In instances where vacant lots are offered for sale for both ad valorem taxes, municipal liens and special improvement taxes, but are sold for less than the total sum due, the county treasurer shall, after deducting the listing fees and publication costs, apportion the proceeds of such sale ratably between the ad valorem and special improvement tax accounts, and the municipality in the same ratio such proceeds bear to the total ~~tax~~ amount published as due for such resale.

SECTION 11. AMENDATORY 68 O.S. 2001, Section 3131, is amended to read as follows:

Section 3131. A. Within thirty (30) days after resale of property, the county treasurer shall file in the office of the county clerk a return, and retain a copy thereof in the county treasurer's office, which shall show or include, as appropriate:

1. Each tract or parcel of real estate so sold;
2. The date upon which it was resold;
3. The name of the purchaser;
4. The price paid therefor;
5. A copy of the notice of such resale with an affidavit of its publication or posting; and

6. The complete minutes of sale, and that the same was adjourned from day to day until the sale was completed.

Such notice and return shall be presumptive evidence of the regularity, legality and validity of all the official acts leading up to and constituting such resale. Within such thirty (30) days, the county treasurer shall execute, acknowledge and deliver to the purchaser or the purchaser's assigns, or to the board of county commissioners where such property has been bid off in the name of the county, a deed conveying the real estate thus resold. The issuance of such deed shall effect the cancellation and setting aside of all delinquent taxes, municipal liens, assessments, penalties and costs previously assessed or existing against the real estate, and of all outstanding individual and county tax sale certificates, and shall vest in the grantee an absolute and perfect title in fee simple to the real estate, subject to all claims which the state may have had on the real estate for taxes or other liens or encumbrances. Twelve (12) months after the deed shall have been filed for record in the county clerk's office, no action shall be commenced to avoid or set aside the deed. Provided, that persons under legal disability shall have one (1) year after removal of such disability within which to redeem the real estate.

B. Any number of lots or tracts of land may be included in one deed, for which deed the county treasurer shall collect from the purchaser One Dollar (\$1.00) for the first tract, and ten cents (\$0.10) for each additional tract included therein. The county treasurer shall also charge and collect from the purchaser at such sale an amount in addition to the bid placed on such real estate, sufficient to pay all expenses incurred by the county in preparing, listing and advertising the lot or tract purchased by such bidder, which sums shall be credited and paid into the resale property fund hereinafter provided, to be used to defray to that extent the costs of resale.

C. When any tract or lot of land sells for more than the taxes, penalties, interest, municipal liens, if any, and cost due thereon, the excess shall be held in a separate fund for the prior owner of such land to be withdrawn any time within two (2) years. At the end of two (2) years, if such money has not been withdrawn or collected from the county, it shall be credited to the county resale property fund.

SECTION 12. This act shall become effective November 1, 2002.

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