

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED  
5 SENATE BILL NO. 2154

By: Crain of the Senate

and

Sullivan of the House

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9 COMMITTEE SUBSTITUTE

10 An Act relating to civil procedure; amending 12 O.S.  
11 2001, Section 686, which relates to judgment in  
12 foreclosure suit; making language gender neutral;  
13 modifying certain procedure for deficiency judgment;  
14 and providing an effective date.

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

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

18 Section 686. In actions to enforce a mortgage, deed of trust,  
19 or other lien or charge, a personal judgment or judgment or  
20 judgments shall be rendered for the amount or amounts due as well to  
21 the plaintiff as other parties to the action having liens upon the  
22 mortgaged premises by mortgage or otherwise, with interest thereon,  
23 and for sale of the property charged and the application of the  
24 proceeds; or such application may be reserved for the future order

1 of the court, and the court shall tax the costs, attorney's fees and  
2 expenses which may accrue in the action, and apportion the same  
3 among the parties according to their respective interests, to be  
4 collected on the order of sale or sales issued thereon; when the  
5 same mortgage embraces separate tracts of land situated in two or  
6 more counties, the sheriff of each county shall make sale of the  
7 lands situated in the county of which he or she is sheriff. No real  
8 estate shall be sold for the payment of any money or the performance  
9 of any contract or agreement in writing, in security for which it  
10 may have been pledged or assigned, except in pursuance of a judgment  
11 of a court of competent jurisdiction ordering such sale. The court  
12 may, in the order confirming a sale of land under order of sale on  
13 foreclosure or upon execution, award or order the issuance of a writ  
14 of assistance by the clerk of the court to the sheriff of the county  
15 where the land is situated, to place the purchaser in full  
16 possession of such land, and any resistance of the service of such  
17 writ of assistance shall constitute an indirect contempt of the  
18 process of such court, and if any person who has been removed from  
19 any lands by process of law or writ of assistance or who has removed  
20 from any lands pursuant to law or adjudication or direction of any  
21 court, tribunal or officer, afterwards, without authority of law,  
22 returns to settle or reside upon such land, ~~he~~ the person shall be  
23 guilty of an indirect contempt of court, and may be proceeded  
24 against and punished for such contempt. Notwithstanding the above

1 provisions, no judgment shall be enforced for any residue of the  
2 debt remaining unsatisfied as prescribed by this act after the  
3 mortgaged property shall have been sold, except as herein provided.  
4 Simultaneously with the making of a motion for an order confirming  
5 the sale or in any event within ninety (90) days after the date of  
6 the sale, the party to whom such residue shall be owing may make a  
7 motion in the action for leave to enter a post-judgment deficiency  
8 ~~judgment~~ order upon notice to the party against whom such judgment  
9 is sought or the attorney who shall have appeared for such party in  
10 such action. Such notice shall be served personally or in such  
11 other manner as the court may direct. Upon such motion the court,  
12 whether or not the respondent appears, shall determine, upon  
13 affidavit or otherwise as it shall direct, the fair and reasonable  
14 market value of the mortgaged premises as of the date of sale or  
15 such nearest earlier date as there shall have been any market value  
16 thereof and shall ~~make an order directing the entry of~~ enter a post-  
17 judgment deficiency ~~judgment~~ order. Such post-judgment deficiency  
18 ~~judgment~~ order shall be for an amount equal to the sum of the amount  
19 owing by the party liable as determined by the ~~judgment~~ order with  
20 interest, plus costs and disbursements of the action plus the amount  
21 owing on all prior liens and encumbrances with interest, less the  
22 market value as determined by the court or the sale price of the  
23 property whichever shall be the higher. If no motion for a post-  
24 judgment deficiency ~~judgment~~ order shall be made as herein

1 prescribed the proceeds of the sale regardless of amount shall be  
2 deemed to be in full satisfaction of the mortgage debt and no right  
3 to recover any deficiency in any action or proceeding shall exist.

4 In any action pending at the time this act becomes effective or  
5 thereafter commenced, other than an action to foreclose a mortgage,  
6 to recover a judgment for any indebtedness secured by a mortgage on  
7 real property and which originated simultaneously with such mortgage  
8 and which is secured solely by such mortgage, against any person or  
9 corporation directly or indirectly or contingently liable therefor,  
10 any party against whom a money judgment is demanded, shall be  
11 entitled to set off the fair and reasonable market value of the  
12 mortgaged property less the amounts owing on prior liens and  
13 encumbrances. Provided that nothing in this section shall limit or  
14 reduce any post-judgment deficiency ~~judgment~~ order in favor of or in  
15 behalf of the state for any debts, obligations or taxes due the  
16 state, now or hereafter.

17 SECTION 2. This act shall become effective November 1, 2010.

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