

THE HOUSE OF REPRESENTATIVES
Wednesday, March 31, 2010

Committee Substitute for
ENGROSSED
Senate Bill No. 2154

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 2154 - By: CRAIN of the Senate and SULLIVAN of the House.

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

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

1 SECTION 1. AMENDATORY 12 O.S. 2001, Section 686, is amended to read as
2 follows:
3 Section 686. In actions to enforce a mortgage, deed of trust, or other lien or charge,
4 a personal judgment or judgment or judgments shall be rendered for the amount or
5 amounts due as well to the plaintiff as other parties to the action having liens upon the
6 mortgaged premises by mortgage or otherwise, with interest thereon, and for sale of the
7 property charged and the application of the proceeds; or such application may be
8 reserved for the future order of the court, and the court shall tax the costs, attorney's fees
9 and expenses which may accrue in the action, and apportion the same among the parties
10 according to their respective interests, to be collected on the order of sale or sales issued

1 thereon; when the same mortgage embraces separate tracts of land situated in two or
2 more counties, the sheriff of each county shall make sale of the lands situated in the
3 county of which he or she is sheriff. No real estate shall be sold for the payment of any
4 money or the performance of any contract or agreement in writing, in security for which
5 it may have been pledged or assigned, except in pursuance of a judgment of a court of
6 competent jurisdiction ordering such sale. The court may, in the order confirming a sale
7 of land under order of sale on foreclosure or upon execution, award or order the issuance
8 of a writ of assistance by the clerk of the court to the sheriff of the county where the land
9 is situated, to place the purchaser in full possession of such land, and any resistance of
10 the service of such writ of assistance shall constitute an indirect contempt of the process
11 of such court, and if any person who has been removed from any lands by process of law
12 or writ of assistance or who has removed from any lands pursuant to law or adjudication
13 or direction of any court, tribunal or officer, afterwards, without authority of law, returns
14 to settle or reside upon such land, ~~he~~ the person shall be guilty of an indirect contempt of
15 court, and may be proceeded against and punished for such contempt. Notwithstanding
16 the above provisions, no judgment shall be enforced for any residue of the debt remaining
17 unsatisfied as prescribed by this act after the mortgaged property shall have been sold,
18 except as herein provided. Simultaneously with the making of a motion for an order
19 confirming the sale or in any event within ninety (90) days after the date of the sale, the
20 party to whom such residue shall be owing may make a motion in the action for leave to
21 enter a post-judgment deficiency ~~judgment~~ order upon notice to the party against whom
22 such judgment is sought or the attorney who shall have appeared for such party in such

1 action. Such notice shall be served personally or in such other manner as the court may
2 direct. Upon such motion the court, whether or not the respondent appears, shall
3 determine, upon affidavit or otherwise as it shall direct, the fair and reasonable market
4 value of the mortgaged premises as of the date of sale or such nearest earlier date as
5 there shall have been any market value thereof and shall ~~make an order directing the~~
6 ~~entry of~~ enter a post-judgment deficiency ~~judgment~~ order. Such post-judgment deficiency
7 ~~judgment~~ order shall be for an amount equal to the sum of the amount owing by the
8 party liable as determined by the ~~judgment~~ order with interest, plus costs and
9 disbursements of the action plus the amount owing on all prior liens and encumbrances
10 with interest, less the market value as determined by the court or the sale price of the
11 property whichever shall be the higher. If no motion for a post-judgment deficiency
12 ~~judgment~~ order shall be made as herein prescribed the proceeds of the sale regardless of
13 amount shall be deemed to be in full satisfaction of the mortgage debt and no right to
14 recover any deficiency in any action or proceeding shall exist.

15 In any action pending at the time this act becomes effective or thereafter
16 commenced, other than an action to foreclose a mortgage, to recover a judgment for any
17 indebtedness secured by a mortgage on real property and which originated
18 simultaneously with such mortgage and which is secured solely by such mortgage,
19 against any person or corporation directly or indirectly or contingently liable therefor,
20 any party against whom a money judgment is demanded, shall be entitled to set off the
21 fair and reasonable market value of the mortgaged property less the amounts owing on
22 prior liens and encumbrances. Provided that nothing in this section shall limit or reduce

1 any post-judgment deficiency ~~judgment~~ order in favor of or in behalf of the state for any
2 debts, obligations or taxes due the state, now or hereafter.

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

4 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03-30-10 - DO PASS,
5 As Amended.