

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 798

By: Jolley of the Senate

and

Russ of the House

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9 COMMITTEE SUBSTITUTE

10 An Act relating to mortgaged property; authorizing
11 remedy for abandoned or vacated property pending
12 foreclosure proceedings; providing procedure for
13 motion, notice, hearing and determination of
14 abandonment or occupancy; prohibiting denial of
15 certain order without certain appearance at hearing;
16 requiring demonstration of proof to court's
17 satisfaction; requiring sheriff to inspect property
18 and post certain notice within certain time;
19 providing for service of certain notice on occupant;
20 providing for sheriff service fee; authorizing
21 sheriff to designate deputy or reserve deputy for
22 certain duties; requiring a return of inspection and
23 posting of notice; allowing additional method of
24 notification; stating term of publication for certain
notice; directing notice to legal counsel; stating
style of notice; requiring statement to appear at
certain hearing; requiring testimony at hearing;
stating content of inquiry at hearing; requiring the
court to review return of inspection; prohibiting
requiring in-person presence as condition to granting
certain order; providing for nonlitigant to appear at
certain hearing; stating criteria to deny certain
motion; allowing additional orders to protect and
preserve property; making certain violation contempt
of court; providing consequences for failure to
appear at hearing; stating authority of certain
order; directing certain inventory; providing for
bailment when certain court order is issued; stating

1 liability for bailee; providing for writ of
2 assistance in certain circumstance; authorizing
3 certain order to be vacated at any time; stating
4 proof to vacate certain order; construing effect of
5 certain order on property right, title and interest
6 and for litigation purposes; providing for
7 codification; and providing an effective date.

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

9 SECTION 1. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 302 of Title 46, unless there is
11 created a duplication in numbering, reads as follows:

12 A. Upon commencement of a suit, action or proceeding to
13 foreclose or otherwise enforce the remedies in any mortgage,
14 contract for deed or deed of trust in a court of competent
15 jurisdiction, if the plaintiff/mortgagee believes, knows, or has
16 reason to know, that the subject property is abandoned or vacated
17 and, as a result of such abandonment:

18 1. Physical deterioration and devaluation of the property is
19 occurring or has occurred;

20 2. There exists a risk to the health, safety or welfare of the
21 public, or any adjoining or adjacent property owners, due to
22 potential or actual acts of vandalism, loitering, criminal conduct
23 or the physical destruction or deterioration of the property; or

24 3. There exists a risk of additional legal process for
violation of law, ordinance, unpaid taxes or accrual of liens,

1 the plaintiff/mortgagee may seek a court order to protect and
2 preserve the property pending the disposition of the suit, action or
3 proceeding before the court.

4 B. A motion to protect and preserve an abandoned or vacated
5 property subject to a suit, action or proceeding to foreclose or
6 otherwise enforce the remedies in the mortgage, contract for deed or
7 deed of trust shall be filed and heard in accordance with court
8 rules and statutory civil procedures for motions. The court shall
9 not deny a plaintiff/mortgagee an order to protect and preserve a
10 property subject to foreclosure or enforcement of remedies in the
11 mortgage, contract or deed or deed of trust, unless the defendant
12 named in the litigation appears in person or through legal counsel
13 at the motion hearing and demonstrates to the satisfaction of the
14 court that the subject property is not abandoned or vacated, and is
15 not at risk of deterioration, devaluation, or additional legal
16 process. Further, the defendant must satisfy the court that he or
17 she personally, or by a designated representative, agrees to and is
18 capable of protecting and preserving the property during the pending
19 litigation before the court.

20 C. The plaintiff/mortgagee, after filing a motion to protect
21 and preserve property in the pending litigation before the court,
22 and having received from the court a date, time and location to hear
23 the motion, shall present a certified copy of the motion and hearing
24 notice to the sheriff in the county in which the property is

1 located. The sheriff, upon receiving a written request to post a
2 motion and hearing notice on a property within his or her
3 jurisdiction, shall within three (3) days of the receipt of such
4 request, physically inspect the subject property and determine
5 whether or not the property is abandoned or occupied. At the time
6 of the physical inspection of the property, the sheriff shall either
7 post a copy of the motion and hearing notice in a conspicuous place
8 on the property or shall physically serve an occupant of the
9 property as required by the provisions of this section. The sheriff
10 shall receive from the plaintiff/mortgagee a sheriff's service fee
11 of One Hundred Fifty Dollars (\$150.00) for the inspection of each
12 property and may designate a deputy or reserve deputy to perform the
13 inspection and posting or service specified in this section.

14 D. Upon physical inspection, if the sheriff determines the
15 property to be abandoned or vacated, the sheriff shall post the
16 required motion and hearing notice on the property and make a return
17 of inspection and posting to the plaintiff/mortgagee at the address
18 provided by the plaintiff/mortgagee. In the event the property is
19 occupied or appears to be occupied in the judgment of the sheriff,
20 the sheriff shall attempt actual service of the motion and hearing
21 notice on an occupant of the property as provided for service of
22 summons, and if a person is not available to accept service or
23 cannot be found, the sheriff shall post the motion and hearing
24 notice in a conspicuous place on the property and make a written

1 return of inspection and service to the plaintiff/mortgagee at the
2 address provided by the plaintiff/mortgagee.

3 E. The sheriff's written return of inspection and posting or
4 return of inspection and service shall be made within three (3) days
5 of the date of actual inspection. The return shall be deposited
6 into the regular U.S. mail, postage prepaid, and the return document
7 shall certify that:

8 1. The motion and hearing notice was either served in person
9 upon an occupant of the property or physically posted on the
10 property and the exact date of service or posting;

11 2. A physical inspection and observation of the property was
12 conducted; and

13 3. In the best judgment and belief of the sheriff, or designee,
14 the property was abandoned and vacated or occupied by the
15 defendant/mortgagor or a lawful tenant or other person, and any
16 reason or belief for that determination.

17 F. The posting of the motion and hearing notice shall be deemed
18 proper service and sufficient notice to the defendant/mortgagor and
19 all occupants of the property for purposes of holding the hearing
20 and authorizing the court to issue an order to protect and preserve
21 the property pending disposition of the litigation before the court.
22 The court shall not require any additional or alternative
23 notification to the defendant/mortgagor or any occupant. Nothing
24 shall prohibit the plaintiff/mortgagee from notifying, or attempting

1 to notify, the defendant/mortgagor or any potential occupant of the
2 subject property in another manner. If the plaintiff/mortgagee
3 elects notification by publication in addition to the posting
4 required by this section, he or she shall publish a copy of the
5 motion and hearing notice at least twice in the fifteen-day period
6 immediately preceding the hearing date in a publication of general
7 circulation in the jurisdiction in which the property is located. A
8 copy of the motion and hearing notice shall be sent or delivered to
9 the defendant's legal counsel of record as required by court rule
10 and statutory civil procedure for notifying opposing counsel of
11 motions and hearings.

12 G. The motion posted or served shall be in the form and style
13 recognized for pleadings filed in the official court case, and shall
14 contain the name of the parties, court case number, the date, time
15 and place of the hearing, and a statement directing the
16 defendant/mortgagor or any occupant of the property to appear in
17 person, or through legal counsel, or be deemed to have abandoned and
18 vacated the property.

19 H. No hearing shall be held on a motion to protect and preserve
20 the property subject to a suit, action or proceeding to foreclose or
21 enforce remedies in the mortgage, contract for deed or deed of
22 trust, unless at least fifteen (15) days have passed from the date
23 of posting or service of the motion and hearing notice. At the
24 hearing, the court shall hear testimony of the parties present,

1 including any person who claims to be an occupant or tenant of the
2 property and who is not a named litigant in the pending litigation
3 before the court. The testimony shall include inquiry into the
4 property's previous and current condition and the reasons or beliefs
5 supporting or objecting to a determination that the property is
6 abandoned or vacated. The court shall review the sheriff's written
7 return of inspection and posting or the return of inspection and
8 service. The court shall not require the presence of the
9 defendant/mortgagor or defendant's legal counsel to grant an order
10 authorizing the plaintiff/mortgagee to take action to protect and
11 preserve the subject property pending the disposition of the
12 litigation before the court.

13 1. If the defendant/mortgagor, or an occupant or tenant,
14 appears in person or through legal counsel, and the court is
15 satisfied that the defendant, or person, is physically residing in
16 the property, or if not occupying the property is willing and able
17 to properly protect and preserve the property pending the litigation
18 before the court, the motion shall be denied. However, the court
19 shall enter an order requiring the person to protect and preserve
20 the property under such conditions as the court may determine.
21 Failure of the person to comply with the court order to protect and
22 preserve the property shall be contempt of court.

23 2. If the defendant/mortgagor, or an occupant or tenant, fails
24 to appear in person, and there exists no compelling reason why the

1 defendant/mortgagor, or person, could not appear in person, and the
2 property appears to be deteriorating or at risk of deteriorating as
3 a result of abandonment, vandalism or any unlawful or intentionally
4 malicious act, the court shall enter an order directing the
5 plaintiff/mortgagee to take action to protect and preserve the
6 property pending and in anticipation of foreclosure or other
7 enforcement of remedies in the mortgage, contract for deed or deed
8 of trust.

9 3. Upon issuance of an order to protect and preserve property,
10 the court shall direct the plaintiff/mortgagee to inventory, or
11 cause to be inventoried by an independent person, any personal
12 property remaining on or about the subject property and to file such
13 inventory in the court case file.

14 I. When a court order is issued to protect and preserve
15 property, the plaintiff/mortgagee shall be authorized to take, and
16 shall take, possession and secure the property pending and in
17 anticipation of foreclosure or other enforcement of remedies in the
18 mortgage, contract for deed or deed of trust. The taking of
19 possession of the property authorized by court order as specified in
20 this section shall create a bailment with the plaintiff/mortgagee
21 serving as bailee. The bailee shall be liable for the safekeeping
22 of all property, both real and personal, until reclaimed by the
23 bailor or otherwise ordered by the court. A writ of assistance
24 shall be required if any person is found to be residing in or on the

1 property subsequent to the notice and hearing and issuance of the
2 court order to protect and preserve the property.

3 J. An order issued to protect and preserve property pursuant to
4 the provisions of this section may be vacated and set aside at any
5 time by the court upon motion by the defendant/mortgagor, or
6 occupant or tenant, and satisfactory proof that the property is not
7 or was not abandoned or vacated, or was leased or rented and
8 lawfully occupied by a person other than the defendant/mortgagor at
9 the time of issuance of the order, provided the property was not
10 subjected to intentional malicious acts by the defendant, or person,
11 to deface, destroy or devalue the property.

12 K. A motion filed, or court order issued, to protect and
13 preserve the property as provided in this section shall not alter,
14 modify, relinquish or release any right, title or interests of any
15 party in or to any property, or alter, modify, relinquish or release
16 any party's position, standing, claims, defenses or objections in
17 the suit, action or proceeding pending before the court to foreclose
18 or enforce any remedy in the mortgage, contract for deed or deed of
19 trust.

20 SECTION 2. This act shall become effective November 1, 2011.

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