

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL 1707

By: McDaniel of the House

and

6 Stanislawski of the Senate

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9 COMMITTEE SUBSTITUTE

10 An Act relating to property subject to forced sale;
11 amending 12 O.S. 2011, Sections 759, 762 and 769,
12 which relate to property subject to judgment lien;
13 expanding parties to provide certain appraisal
14 services; requiring appraisals to be based on current
15 market value; establishing procedures for sale of
16 certain property; establishing requirements for
17 submission and acceptance of certain bids; amending
18 46 O.S. 2011, Section 46, which relates to the
19 Oklahoma Power of Sale Mortgage Foreclosure Act;
20 modifying certain sale and bidding procedures;
21 updating statutory reference; and providing an
22 effective date.

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

24 SECTION 1. AMENDATORY 12 O.S. 2011, Section 759, is
amended to read as follows:

Section 759. A. When a general execution is issued and placed
in the custody of a sheriff for levy, a certified copy of the
execution shall be filed in the office of the county clerk of the
county whose sheriff holds the execution and shall be indexed in the

1 same manner as judgments. At the time the execution is filed, the
2 court clerk shall collect from the party seeking a general execution
3 all fees necessary for the payment of the disinterested persons or
4 parties for their services in appraising of the subject property
5 pursuant to the requirements of subsection B of this section.

6 B. If a general or special execution is levied upon lands and
7 tenements, the sheriff shall endorse on the face of the writ the
8 legal description and shall have three disinterested persons or
9 parties who have taken an oath to impartially appraise the property
10 levied on, upon actual view; and the disinterested persons or
11 parties shall return to the officer their signed estimate of the
12 real value of the property. The disinterested persons or parties
13 shall be paid for their services by the court clerk of the county
14 where the property is located within thirty (30) days of the date
15 that they return their estimate of the real value of the property.

16 C. To extend a judgment lien beyond the initial or any
17 subsequent statutory period, prior to the expiration of such period,
18 a certified copy of one of the following must be filed and indexed
19 in the same manner as judgments in the office of the county clerk in
20 the county in which the statement of judgment was filed and the lien
21 thereof is sought to be retained:

- 22 1. A general execution upon the judgment;
- 23 2. A notice of renewal of judgment;
- 24 3. A garnishment summons issued against the judgment debtor; or

1 4. A notice of income assignment sent to a payor of the
2 judgment debtor.

3 SECTION 2. AMENDATORY 12 O.S. 2011, Section 762, is
4 amended to read as follows:

5 Section 762. If, upon such return, as aforesaid, it appear, by
6 the inquisition, that two-thirds (2/3) of the appraised current
7 market value of ~~said~~ the lands and tenements, so levied upon is
8 sufficient to satisfy the execution, with costs, the judgment on
9 which such execution issued shall not operate as a lien on the
10 residue of the debtor's estate, to the prejudice of any other
11 judgment creditor; but no such property shall be sold for less than
12 two-thirds (2/3) of the value returned in the inquest; and nothing
13 in this section contained shall, in any wise, extend to affect the
14 sale of lands by the state, but all lands, the property of
15 individuals indebted to the state for any debt or taxes, or in any
16 other manner, shall be sold without valuation, for the discharge of
17 such debt or taxes, agreeably to the laws in such cases made and
18 provided.

19 SECTION 3. AMENDATORY 12 O.S. 2011, Section 769, is
20 amended to read as follows:

21 Section 769. A. All sales of lands or tenements under
22 execution shall be held at the courthouse in the county in which
23 such lands or tenements are situated, unless some other place within
24 ~~said~~ the county is designated by the judge having jurisdiction in

1 the case. No sheriff or other officer making the sale of property,
2 either personal or real, nor any appraiser of such property, shall
3 either directly or indirectly, purchase the same; and every purchase
4 so made shall be considered fraudulent and void.

5 B. On the date and at the time, together designated as the
6 property sale deadline, and place, designated as the property sale
7 location, designated in the notice of sale, the sheriff shall cause
8 the property to be sold at public auction to the highest bidder.
9 Bids for such sale may be submitted and accepted electronically
10 using a designated website or online auction service, by telephone
11 at a designated auction telephone number, in person at an open
12 public outcry auction, or by a combination of these methods, all of
13 which shall be considered in whole as the sale of the property.

14 SECTION 4. AMENDATORY 46 O.S. 2011, Section 46, is
15 amended to read as follows:

16 Section 46. A. On the date and at the time, together
17 designated as the property sale deadline, and place, designated as
18 the property sale location, designated in the notice of sale, the
19 mortgagee exercising the power of sale shall cause the property to
20 be sold at public auction to the highest bidder. Bids for such sale
21 may be submitted and accepted electronically, using a designated
22 website or online auction service, by telephone at a designated
23 auction number, or in person at an open public outcry auction, all
24 of which shall be considered in whole as the sale of the property.

1 To determine the highest bidder, any mortgagor ~~present at~~
2 participating in the sale may suggest in writing the known lots,
3 parcels, or divisions of the property in which the property should
4 be sold. The mortgagee shall conditionally sell the property under
5 each suggestion, and if the mortgagor offers no suggestion, then in
6 such lots, parcels or divisions as may be determined by the
7 mortgagee, and in addition thereto, shall sell the property as a
8 whole. The mortgagee shall determine which conditional sale or
9 sales result in the highest total price bid for all of the property.
10 An attorney for the mortgagee may ~~conduct~~ finalize the sale, and act
11 ~~at such sale~~ as the auctioneer for the mortgagee at the public
12 outcry portion of the sale. Any person, including the mortgagee or
13 mortgagor may submit a bid at during any portion of the sale. Every
14 bid, whether received prior to or at the public outcry portion of
15 the sale, shall be deemed an irrevocable offer, until the sale is
16 completed and the sale shall not be deemed completed until the
17 purchaser pays the price bid in a form satisfactory to the
18 mortgagee. If a purchaser other than the mortgagee, when required
19 by the mortgagee, fails to post cash or certified funds equal to ten
20 percent (10%) of the amount bid for the property within twenty-four
21 (24) hours of the sale, excluding Sundays and legal holidays, or
22 otherwise fails to complete the sale, the mortgagee may proceed with
23 the sale and may accept the next highest bid. The party that fails
24 to make such payment shall be liable to any person who suffers loss

1 or expenses, including attorney's fees, occasioned thereby and the
2 mortgagee may thereafter in any sale of property reject any bid of
3 such person. The ten percent (10%) deposit shall be placed in
4 escrow by the mortgagee and held in escrow pending completion of the
5 sale. In the event a purchaser wrongfully fails to complete the
6 transaction of sale within ten (10) days of the sale or a longer
7 reasonable time permitted by the mortgagee, any deposit shall be
8 applied first to the expenses of the sale and the balance to the
9 debt, and the purchaser shall be liable to any person who suffers
10 loss or expenses, including ~~attorneys~~ attorney fees, occasioned by
11 the resale of the property.

12 B. The person conducting the sale, for any cause deemed in the
13 interest of the mortgagee, the mortgagor, or both, may postpone or
14 continue the sale or change the place of the sale to another
15 location permitted by law, by giving notice, including the new ~~time~~
16 ~~and place~~ property sale deadline and property sale location at which
17 the open outcry portion of the auction shall take place, by public
18 declaration at the time and place last appointed for the sale and in
19 any other manner reasonable under the circumstances which shall
20 include publication one time at least ten (10) days prior thereto of
21 a notice of the new date, ~~time and place of sale~~ property sale
22 deadline and property sale location, such notice to be directed to
23 the same persons as the original notice of sale, and proof of
24 publication then to be filed in the office of the county clerk of

1 each county wherein the property to be sold is situated any time
2 before the recording of the mortgagee's deed executed pursuant to
3 the sale under ~~this act~~ the Oklahoma Power of Sale Mortgage
4 Foreclosure Act. No other notice of the postponed, continued,
5 changed or relocated sale is required.

6 SECTION 5. This act shall become effective November 1, 2017.

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