# HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

HOUSE BILL 1707 By: McDaniel of the House

and

Stanislawski of the Senate

AS INTRODUCED

An Act relating to property subject to forced sale; amending 12 O.S. 2011, Sections 759 and 762, which relate to property subject to judgment lien; modifying procedure for appraisal of property; requiring oath of impartiality; requiring appraisals to be based on current market value; amending 46 O.S. 2011, Section 46, which relates to the Oklahoma Power of Sale Mortgage Foreclosure Act; modifying sale and bidding procedures; repealing 12 O.S. 2011, Section 686, which relates to judgments in foreclosure actions; repealing 12 O.S. 2011, Section 761, which relates to appraisal of property subject to execution; and providing an effective date.

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

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 same manner as judgments. At the time the execution is filed, the court clerk shall collect from the party seeking a general execution all fees necessary for the payment ~~of the disinterested persons for their services in appraising of the subject property~~ to obtain service or services from an unassociated and disinterested outside party or parties which shall make a determination of the current market value of the subject property pursuant to the requirements of subsection B of this section.

B. If a general or special execution is levied upon lands and tenements, the sheriff shall endorse on the face of the writ the legal description and shall ~~have three disinterested persons who have taken an oath to impartially appraise the property levied on, upon actual view; and the disinterested persons~~ obtain from an unassociated and disinterested outside party or parties estimates of the appraised current market value of the subject property. The estimates shall be obtained by the outside party or parties using at least three independent, disparate and credible sources, each of which has estimated the current market value of the subject property independently from one another. The outside party or parties shall return to the officer their signed estimate of the ~~real~~ appraised current market value of the subject property. The outside party or parties shall provide a written oath of impartiality. The ~~disinterested persons~~ outside party or parties shall be paid for their services by the court clerk of the county where the property is located within thirty (30) days of the date that ~~they return their estimate of the real value~~ the appraised current market values of the property are returned to the sheriff.

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

1. A general execution upon the judgment;

2. A notice of renewal of judgment;

3. A garnishment summons issued against the judgment debtor; or

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

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

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

SECTION 3. AMENDATORY 46 O.S. 2011, Section 46, is amended to read as follows:

Section 46. A. On the date and at the time, together designated as the property sale deadline, and place, designated as the property sale location, designated in the notice of sale, the mortgagee exercising the power of sale shall cause the property to be sold at public auction to the highest bidder. Bids for such sale may be submitted and accepted electronically, using a designated website or online auction service, by telephone at a designated auction number, or in person at an open public outcry auction, all of which shall be considered in whole as the property sale. To determine the highest bidder, any mortgagor ~~present at~~ participating in the sale may suggest in writing the known lots, parcels, or divisions of the property in which the property should be sold. The mortgagee shall conditionally sell the property under each suggestion, and if the mortgagor offers no suggestion, then in such lots, parcels or divisions as may be determined by the mortgagee, and in addition thereto, shall sell the property as a whole. The mortgagee shall determine which conditional sale or sales result in the highest total price bid for all of the property. An attorney for the mortgagee may ~~conduct~~ finalize the sale, and act ~~at such sale~~ as the auctioneer for the mortgagee at the public outcry portion of the sale. Any person, including the mortgagee or mortgagor may submit a bid ~~at~~ during any portion of the sale. Every bid, whether received prior to or at the public outcry portion of the sale, shall be deemed an irrevocable offer, until the sale is completed and the sale shall not be deemed completed until the purchaser pays the price bid in a form satisfactory to the mortgagee. If a purchaser other than the mortgagee, when required by the mortgagee, fails to post cash or certified funds equal to ten percent (10%) of the amount bid for the property within twenty-four (24) hours of the sale, excluding Sundays and legal holidays, or otherwise fails to complete the sale, the mortgagee may proceed with the sale and may accept the next highest bid. The party that fails to make such payment shall be liable to any person who suffers loss or expenses, including attorney's fees, occasioned thereby and the mortgagee may thereafter in any sale of property reject any bid of such person. The ten percent (10%) deposit shall be placed in escrow by the mortgagee and held in escrow pending completion of the sale. In the event a purchaser wrongfully fails to complete the transaction of sale within ten (10) days of the sale or a longer reasonable time permitted by the mortgagee, any deposit shall be applied first to the expenses of the sale and the balance to the debt, and the purchaser shall be liable to any person who suffers loss or expenses, including attorneys fees, occasioned by the resale of the property.

B. The person conducting the sale, for any cause deemed in the interest of the mortgagee, the mortgagor, or both, may postpone or continue the sale or change the place of the sale to another location permitted by law, by giving notice, including the new ~~time and place~~ property sale deadline and property sale location at which the open outcry portion of the auction shall take place, by public declaration at the time and place last appointed for the sale and in any other manner reasonable under the circumstances which shall include publication one time at least ten (10) days prior thereto of a notice of the new date, ~~time and place of sale~~ property sale deadline and property sale location, such notice to be directed to the same persons as the original notice of sale, and proof of publication then to be filed in the office of the county clerk of each county wherein the property to be sold is situated any time before the recording of the mortgagee's deed executed pursuant to the sale under this act. No other notice of the postponed, continued, changed or relocated sale is required.

SECTION 4. REPEALER 12 O.S. 2011, Sections 686 and 761, are hereby repealed.

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

COMMITTEE REPORT BY: COMMITTEE ON BANKING, FINANCIAL SERVICES AND PENSIONS, dated 02/14/2017 - DO PASS, As Coauthored.