

1 **SENATE FLOOR VERSION**

2 April 12, 2017

3 COMMITTEE SUBSTITUTE
4 ENGROSSED HOUSE
5 BILL NO. 1707

By: McDaniel of the House

and

Stanislowski of the Senate

8 COMMITTEE SUBSTITUTE

9 **[property subject to forced sale - judgment lien -**
10 **Oklahoma Power of Sale Mortgage Foreclosure Act -**
11 **effective date]**

12
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

16 Section 759. A. When a general execution is issued and placed
17 in the custody of a sheriff for levy, a certified copy of the
18 execution shall be filed in the office of the county clerk of the
19 county whose sheriff holds the execution and shall be indexed in the
20 same manner as judgments. At the time the execution is filed, the
21 court clerk shall collect from the party seeking a general execution
22 all fees necessary for the payment of the disinterested persons or
23 parties for their services in appraising of the subject property
24 pursuant to the requirements of subsection B of this section.

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

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

- 17 1. A general execution upon the judgment;
18 2. A notice of renewal of judgment;
19 3. A garnishment summons issued against the judgment debtor; or
20 4. A notice of income assignment sent to a payor of the
21 judgment debtor.

22 SECTION 2. AMENDATORY 12 O.S. 2011, Section 762, is
23 amended to read as follows:
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1 Section 762. If, upon such return, as aforesaid, it appear, by
2 the inquisition, that two-thirds (2/3) of the appraised current
3 market value of ~~said~~ the lands and tenements, so levied upon is
4 sufficient to satisfy the execution, with costs, the judgment on
5 which such execution issued shall not operate as a lien on the
6 residue of the debtor's estate, to the prejudice of any other
7 judgment creditor; but no such property shall be sold for less than
8 two-thirds (2/3) of the value returned in the inquest; and nothing
9 in this section contained shall, in any wise, extend to affect the
10 sale of lands by the state, but all lands, the property of
11 individuals indebted to the state for any debt or taxes, or in any
12 other manner, shall be sold without valuation, for the discharge of
13 such debt or taxes, agreeably to the laws in such cases made and
14 provided.

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

17 Section 769. A. All sales of lands or tenements under
18 execution shall be held at the courthouse in the county in which
19 such lands or tenements are situated, unless some other place within
20 ~~said~~ the county is designated by the judge having jurisdiction in
21 the case. No sheriff or other officer making the sale of property,
22 either personal or real, nor any appraiser of such property, shall
23 either directly or indirectly, purchase the same; and every purchase
24 so made shall be considered fraudulent and void.

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

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

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

21 To determine the highest bidder, any mortgagor ~~present at~~
22 participating in the sale may suggest in writing the known lots,
23 parcels, or divisions of the property in which the property should
24 be sold. The mortgagee shall conditionally sell the property under

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

1 sale. In the event a purchaser wrongfully fails to complete the
2 transaction of sale within ten (10) days of the sale or a longer
3 reasonable time permitted by the mortgagee, any deposit shall be
4 applied first to the expenses of the sale and the balance to the
5 debt, and the purchaser shall be liable to any person who suffers
6 loss or expenses, including ~~attorneys~~ attorney fees, occasioned by
7 the resale of the property.

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

1 Foreclosure Act. No other notice of the postponed, continued,
2 changed or relocated sale is required.

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

4 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM
5 April 12, 2017 - DO PASS AS AMENDED
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