

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1707

By: McDaniel

6 AS INTRODUCED

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

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

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

19 Section 759. A. When a general execution is issued and placed
20 in the custody of a sheriff for levy, a certified copy of the
21 execution shall be filed in the office of the county clerk of the
22 county whose sheriff holds the execution and shall be indexed in the
23 same manner as judgments. At the time the execution is filed, the
24 court clerk shall collect from the party seeking a general execution

1 all fees necessary for the payment ~~of the disinterested persons for~~
2 ~~their services in appraising of the subject property~~ to obtain
3 service or services from an unassociated and disinterested outside
4 party or parties which shall make a determination of the current
5 market value of the subject property pursuant to the requirements of
6 subsection B of this section.

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

1 ~~their estimate of the real value~~ the appraised current market values
2 of the property are returned to the sheriff.

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

- 9 1. A general execution upon the judgment;
- 10 2. A notice of renewal of judgment;
- 11 3. A garnishment summons issued against the judgment debtor; or
- 12 4. A notice of income assignment sent to a payor of the
13 judgment debtor.

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

16 Section 762. If, upon such return, as aforesaid, it appear, by
17 the inquisition, that two-thirds (2/3) of the appraised current
18 market value of said lands and tenements, so levied upon is
19 sufficient to satisfy the execution, with costs, the judgment on
20 which such execution issued shall not operate as a lien on the
21 residue of the debtor's estate, to the prejudice of any other
22 judgment creditor; but no such property shall be sold for less than
23 two-thirds (2/3) of the value returned in the inquest; and nothing
24 in this section contained shall, in any wise, extend to affect the

1 sale of lands by the state, but all lands, the property of
2 individuals indebted to the state for any debt or taxes, or in any
3 other manner, shall be sold without valuation, for the discharge of
4 such debt or taxes, agreeably to the laws in such cases made and
5 provided.

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

8 Section 46. A. On the date and at the time, together
9 designated as the property sale deadline, and place, designated as
10 the property sale location, designated in the notice of sale, the
11 mortgagee exercising the power of sale shall cause the property to
12 be sold at public auction to the highest bidder. Bids for such sale
13 may be submitted and accepted electronically, using a designated
14 website or online auction service, by telephone at a designated
15 auction number, or in person at an open public outcry auction, all
16 of which shall be considered in whole as the property sale. To
17 determine the highest bidder, any mortgagor ~~present at~~ participating
18 in the sale may suggest in writing the known lots, parcels, or
19 divisions of the property in which the property should be sold. The
20 mortgagee shall conditionally sell the property under each
21 suggestion, and if the mortgagor offers no suggestion, then in such
22 lots, parcels or divisions as may be determined by the mortgagee,
23 and in addition thereto, shall sell the property as a whole. The
24 mortgagee shall determine which conditional sale or sales result in

1 the highest total price bid for all of the property. An attorney
2 for the mortgagee may ~~conduct~~ finalize the sale, and act ~~at such~~
3 ~~sale~~ as the auctioneer for the mortgagee at the public outcry
4 portion of the sale. Any person, including the mortgagee or
5 mortgagor may submit a bid at during any portion of the sale. Every
6 bid, whether received prior to or at the public outcry portion of
7 the sale, shall be deemed an irrevocable offer, until the sale is
8 completed and the sale shall not be deemed completed until the
9 purchaser pays the price bid in a form satisfactory to the
10 mortgagee. If a purchaser other than the mortgagee, when required
11 by the mortgagee, fails to post cash or certified funds equal to ten
12 percent (10%) of the amount bid for the property within twenty-four
13 (24) hours of the sale, excluding Sundays and legal holidays, or
14 otherwise fails to complete the sale, the mortgagee may proceed with
15 the sale and may accept the next highest bid. The party that fails
16 to make such payment shall be liable to any person who suffers loss
17 or expenses, including attorney's fees, occasioned thereby and the
18 mortgagee may thereafter in any sale of property reject any bid of
19 such person. The ten percent (10%) deposit shall be placed in
20 escrow by the mortgagee and held in escrow pending completion of the
21 sale. In the event a purchaser wrongfully fails to complete the
22 transaction of sale within ten (10) days of the sale or a longer
23 reasonable time permitted by the mortgagee, any deposit shall be
24 applied first to the expenses of the sale and the balance to the

1 debt, and the purchaser shall be liable to any person who suffers
2 loss or expenses, including attorneys fees, occasioned by the resale
3 of the property.

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

21 SECTION 4. REPEALER 12 O.S. 2011, Sections 686 and 761,
22 are hereby repealed.
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SECTION 5. This act shall become effective November 1, 2017.

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