

<DateSubmitted>

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB1707

By: McDaniel of the House and Stanislawski of the Senate

Title: Property subject to forced sale; modifying appraisal, bidding and sale procedures; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action _____ Date _____ Senate Action _____ Date _____

SENATE CONFEREES

Stanislowski _____

Sykes _____

Daniels _____

Standridge _____

Smalley _____

Sparks _____

Floyd _____

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1707

By: McDaniel of the House

and

Stanislawski of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to property subject to forced sale;
amending 12 O.S. 2011, Sections 759, 762 and 769,
which relate to property subject to judgment lien;
modifying procedure for appraisal of property;
requiring written affidavit of impartiality;
requiring appraisals to be based on current market
value; authorizing the Administrative Director of the
Courts to approve certain forms; providing
requirements for certain documentation; providing
procedure for sale of property; providing
requirements for bids; authorizing sheriffs to
implement certain policies and procedures; providing
immunity from liability for technical difficulties;
providing for finality of auction process; amending
46 O.S. 2011, Section 46, which relates to the
Oklahoma Power of Sale Mortgage Foreclosure Act;
modifying sale and bidding procedures; 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:

1 Section 759. A. When a general execution is issued and placed
2 in the custody of a sheriff for levy, a certified copy of the
3 execution shall be filed in the office of the county clerk of the
4 county whose sheriff holds the execution and shall be indexed in the
5 same manner as judgments. At the time the execution is filed, the
6 court clerk shall collect from the party seeking a general execution
7 all fees necessary for the payment of the disinterested persons or a
8 legal entity for ~~their~~ services in appraising ~~of~~ the subject
9 property pursuant to the requirements of subsection B of this
10 section.

11 B. If a general or special execution is levied upon lands and
12 tenements, the sheriff shall endorse on the face of the writ the
13 legal description and shall have three disinterested persons who
14 have ~~taken an oath to impartially~~ or a legal entity which has
15 provided a written affidavit of impartiality appraise the property
16 levied on, ~~upon actual view;~~ and the disinterested persons or legal
17 entity shall return to the officer ~~their~~ a signed estimate of the
18 real value of the property. The estimates shall be obtained from
19 three disinterested persons, independent from one another, or a
20 disinterested legal entity using at least three independent,
21 disparate and credible sources, each of which has estimated the
22 current market value of the subject property independently from one
23 another. The disinterested persons or legal entity shall be paid
24 for ~~their~~ such services by the court clerk of the county where the

1 property is located within thirty (30) days of the date that they
2 return their estimate of the real value of the property. The
3 Administrative Director of the Courts is authorized to approve forms
4 for the written affidavit of impartiality and the signed estimate of
5 the real value of the property. The written affidavit and the
6 signed estimate shall be substantially in the form approved.

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

- 13 1. A general execution upon the judgment;
- 14 2. A notice of renewal of judgment;
- 15 3. A garnishment summons issued against the judgment debtor; or
- 16 4. A notice of income assignment sent to a payor of the
17 judgment debtor.

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

20 Section 762. If, upon such return, as aforesaid, it ~~appear~~
21 appears, by the inquisition, that two-thirds (2/3) of the appraised
22 current market value of ~~said~~ the lands and tenements, so levied upon
23 is sufficient to satisfy the execution, with costs, the judgment on
24 which such execution issued shall not operate as a lien on the

1 residue of the debtor's estate, to the prejudice of any other
2 judgment creditor; but no such property shall be sold for less than
3 two-thirds (2/3) of the value returned in the inquest; and nothing
4 in this section contained shall, in any wise, extend to affect the
5 sale of lands by the state, but all lands, the property of
6 individuals indebted to the state for any debt or taxes, or in any
7 other manner, shall be sold without valuation, for the discharge of
8 such debt or taxes, agreeably to the laws in such cases made and
9 provided.

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

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

20 B. On the date and at the time, together designated as the
21 property sale deadline, and place, designated as the property sale
22 location, designated in the notice of sale, the sheriff shall cause
23 the property to be sold at public auction to the highest bidder.
24 Bids for such sale may be submitted and accepted electronically

1 using a designated website or online auction service, by telephone
2 by calling a designated auction telephone number, in person at an
3 open public outcry auction, or by a combination of these methods,
4 all of which shall be considered in whole as the sale of the
5 property. The sheriff of each county is authorized to implement
6 policies and procedures regarding the use of any method of accepting
7 bids by a person not physically present at the public auction, who
8 shall be referred to as a remote bidder. No sheriff shall be
9 required to accept bids by a remote bidder until such time as these
10 policies and procedures have been implemented. No sheriff or county
11 shall be liable to a remote bidder due to technical difficulties
12 with any method of accepting bids set forth in this section. All
13 auctions shall be considered final and complete when declared closed
14 by the sheriff.

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

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

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

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

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

1 the same persons as the original notice of sale, and proof of
2 publication then to be filed in the office of the county clerk of
3 each county wherein the property to be sold is situated any time
4 before the recording of the mortgagee's deed executed pursuant to
5 the sale under ~~this act~~ the Oklahoma Power of Sale Mortgage
6 Foreclosure Act. No other notice of the postponed, continued,
7 changed or relocated sale is required.

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

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