

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2423

By: Nichols and **Lawson** of the
House

and

Montgomery of the Senate

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11 COMMITTEE SUBSTITUTE

12 An Act relating to cities and towns; defining terms;
13 providing applicability to all municipalities;
14 providing that the provisions do not apply to owner-
15 occupied property; providing that any fees, penalties
16 and abatement costs imposed against property for
17 violations of a municipality's housing and building
18 codes may be enforced in rem as a lien; providing
19 that municipalities may proceed with judicial in rem
20 foreclosures of municipal code liens by an enactment
21 of an ordinance or resolution of the governing
22 authority of the municipality in which the real
23 property is located; providing requirements for a
24 municipal ordinance authorizing liens and
 foreclosures pursuant to this act; providing this act
 does not constitute an action for personal liability
 for the municipal code liens against the owner or
 owners of the real property; providing that the
 rights and remedies set forth in this act are
 available solely to the governmental entities
 authorized by law to enforce municipal ordinances;
 providing that a municipality that seeks to enforce a
 municipal code lien through the sale of real property
 shall utilize the judicial in rem proceedings of this
 act as the sole remedy; providing that enforcement
 proceedings may be initiated only by the

1 municipality; providing timeframe for filing a
2 petition for judicial in rem foreclosure for a
3 municipal code lien; providing requirements for
4 filing a petition for judicial in rem foreclosure
5 when the property is subject to unpaid taxes;
6 providing notice requirements needed prior to a
7 judicial in rem foreclosure; repealing 11 O.S. 2011,
8 Section 22-111, as amended by Section 1, Chapter 136,
9 O.S.L. 2012 (11 O.S. Supp. 2020, Section 22-111),
10 which relates to clearing and mowing of property;
11 repealing 11 O.S. 2011, Section 22-112, which relates
12 to condemnation of dilapidated buildings; and
13 providing an effective date.

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

15 SECTION 1. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 22-140 of Title 11, unless there
17 is created a duplication in numbering, reads as follows:

18 As used in this act, the following words and phrases shall have
19 the following meanings:

20 1. "Code enforcement director" is an employee of the
21 municipality who is tasked by the municipal governing body with the
22 enforcement of state law or local ordinances related to the
23 condition of real property within the jurisdiction of the
24 municipality;

 2. "Interested party" means:

 a. the person who last appears as owner of the real
 property in the county records,

- 1 b. the current mortgagee of record of the property or
2 assignee of record of the mortgagee,
3 c. the current holder of a beneficial interest in a deed
4 of trust recorded against the real property,
5 d. a tax certificate holder, or
6 e. any party having an interest in the real property, or
7 in any part thereof, legal or equitable, in severalty
8 or as tenant in common, whose identity and addresses
9 are reasonably ascertainable from the records of the
10 municipality or records maintained in the county
11 records or as revealed by a full title search,
12 consisting of fifty (50) years or more.

13 An interested party shall not include the holder of the benefit
14 of an easement which burdens the real property, the holder of the
15 benefit or burden of a real covenant which burdens the real
16 property, or the holder of the benefit of a utility easement which
17 burdens the real property;

18 3. "Minimum bid price" means the price that equals the
19 redemption amount;

20 4. "Municipal code lien" means any lien that has been levied
21 against real property by a municipality that is the result of the
22 nonpayment of any fine, penalty, abatement cost or enforcement cost
23 incurred by a municipality related to the enforcement of state or
24 local housing and building codes. Such lien shall include only

1 those liens which arise out of a failure to comply with any law of
2 the State of Oklahoma, or from the failure to comply with a
3 municipality's ordinances or resolutions.

4 A municipal code lien shall not include any lien that has
5 previously been certified to the tax collector of the county for
6 inclusion on the property tax bill associated with the real
7 property;

8 5. "Municipal code lien payoff" means the principal amount of a
9 municipal code lien, interest accrued at the rate of seven and one-
10 half percent (7.5%) per annum from the date the municipal code lien
11 was filed in the office of county clerk, any fees or costs incurred
12 in the collection of such a lien under this act including, without
13 limitations, the cost of title examinations and publication of
14 notices, and any other penalties allowable under either the laws of
15 the State of Oklahoma or under an ordinance or resolution enacted by
16 the municipality;

17 6. "Owner-occupied" means real property that is lawfully
18 occupied as a principal residence that is any of the following:

- 19 a. a homestead as described in Section 2888 of Title 68
20 of the Oklahoma Statutes,
- 21 b. exempt from ad valorem taxation under Sections 2904
22 through 2911 of Title 68 of the Oklahoma Statutes, and
- 23 c. eligible for the designations listed in subparagraph a
24 or b or this paragraph, but which has not yet been

1 granted such designation and which is lawfully
2 occupied by the family of a deceased individual;

3 7. "Redemption amount" means the sum of:

4 a. the full amount of the municipal code lien payoff for
5 each municipal code lien on which the municipality is
6 seeking to foreclose under this act, and

7 b. any tax payoff that may be applicable to the property
8 on which the municipality is seeking to foreclose
9 under this act;

10 8. "Taxes" means those taxes assessed against real property by
11 either by the State of Oklahoma, the county in which the real
12 property is situated, or the municipality that are delinquent, as of
13 the date a proceeding under this act is commenced or at any time
14 before final resolution of the same, and shall also include any
15 taxes assessed against real property that are unpaid from any
16 previous year and any amounts required for redemption. As provided
17 in Section 3103 of Title 68 of the Oklahoma Statutes, a lien for
18 taxes shall be superior to all other liens, including municipal code
19 liens;

20 9. "Tax certificate holder" means any of the following:

21 a. a tax sale purchaser that holds a certificate of
22 purchase,

23 b. the state, where it has accepted and recorded a
24 certificate of purchase obtained at a tax sale,

- c. any party to which a certificate of purchase obtained at a tax sale has been assigned, or
 - d. the purchaser or assignee of a tax lien certificate;
- and

10. "Tax payoff" means any all amounts necessary to satisfy any claims for delinquent taxes assessed against the real property on which the municipality is seeking to foreclosure under this act.

Those amounts shall include:

- a. if the taxes associated with the property are delinquent, but the property has not yet been sold for taxes, the full amount of delinquent taxes, costs, fees and charges due to the county tax collector,
- b. if the property has been sold for taxes to either the state or to a party other than the state, those amounts required for redemption, except for when a municipality is the prevailing bidder, the tax payoff amount shall be the lesser of these amounts, and
- c. if a tax lien has been sold by a county, the amount required for redemption.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-141 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. The provisions of this act shall apply to any municipal governing body that adopts the provisions of this act to be

1 applicable to the collection of municipal code liens as to real
2 property, other than owner-occupied property, in the municipality.

3 B. The provisions of this act shall not apply to owner-occupied
4 property.

5 SECTION 3. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 22-142 of Title 11, unless there
7 is created a duplication in numbering, reads as follows:

8 Notwithstanding any law to the contrary, any fees, penalties and
9 abatement costs imposed against property other than owner-occupied
10 real property for violations of a municipality's housing and
11 building codes adopted pursuant to the statutes of the State of
12 Oklahoma may be enforced in rem as a lien in accordance with this
13 act.

14 Every municipal code lien, as defined in this act, shall be
15 superior to all other liens, except those liens for taxes described
16 or referenced in Section 3103 of Title 68 of the Oklahoma Statutes.

17 SECTION 4. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 22-143 of Title 11, unless there
19 is created a duplication in numbering, reads as follows:

20 A. Any municipality to which this act applies may proceed with
21 judicial in rem foreclosures of municipal code liens in accordance
22 with the provisions of this act by enactment of an ordinance or
23 resolution of the governing authority of the municipality in which
24 the real property is located which ordinance or resolution shall be

1 sufficient authority for use of this act by the municipality to
2 enforce its municipal code liens.

3 B. The ordinance of a municipality authorizing and approving
4 the use of this act shall include all the following matters:

5 1. The initial effective date for application of these
6 procedures;

7 2. If the municipality elects not to apply these procedures to
8 all real properties as of the same future date, then the phase-in of
9 these procedures over a period of time and the manner of
10 determination of which real properties are subject to these
11 procedures;

12 3. The explicit exclusion of owner-occupied properties from the
13 application of the judicial in rem foreclosure procedures authorized
14 in this act;

15 4. The nature and extent of notices, support services, and
16 referrals to be provided to the owners and occupants of owner-
17 occupied properties; and

18 5. Any other matters the municipality specifies to be addressed
19 through administrative regulations and policies.

20 C. Proceedings in accordance with this act are designed solely
21 to enforce the municipal code lien for real property subject to the
22 municipal code lien and shall not constitute an action for personal
23 liability for the municipal code liens against the owner or owners
24 of the real property.

1 D. The rights and remedies set forth in this act are available
2 solely to the governmental entities authorized by law to enforce
3 municipal ordinances and shall not extend to any nongovernmental
4 transferee of municipal code liens.

5 E. A municipality that has adopted the provisions of this act
6 and that seeks to enforce a municipal code lien through the sale of
7 real property shall utilize the judicial in rem proceedings of this
8 act as the sole remedy for the enforcement through the sale of real
9 property.

10 F. The enforcement proceedings authorized by this act may be
11 initiated only by the municipality.

12 SECTION 5. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 22-144 of Title 11, unless there
14 is created a duplication in numbering, reads as follows:

15 A. After a municipal code lien has been recorded with the
16 office of the county clerk of the county in which the real property
17 lies, the code enforcement director may identify those properties on
18 which to commence a judicial in rem foreclosure in accordance with
19 this act, except that those properties the code enforcement director
20 identifies as owner-occupied shall not be subject to judicial in rem
21 foreclosure under this act. The code enforcement director shall not
22 file a petition for judicial in rem foreclosure in accordance with
23 this act for a period of six (6) months following the date upon
24 which the municipal code lien is recorded in the office of the

1 county clerk. A petition for judicial in rem foreclosure may
2 include any other municipal code lien that has been filed prior to
3 the date the petition is filed. After enforcement proceedings have
4 commenced in accordance with this act, the enforcement proceedings
5 may be amended to include any subsequently arising municipal code
6 liens and, if applicable, any and all taxes as defined in this act.

7 B. If the property on which the municipality is seeking to
8 foreclose under this act is subject to taxes as defined in this act,
9 then at least sixty (60) days prior to the filing of the petition,
10 the code enforcement director shall notify all other taxing agencies
11 within the jurisdiction of the municipality, and the State of
12 Oklahoma of the code enforcement director's intention to file a
13 petition for judicial in rem foreclosure of the real property on
14 which a municipal code lien exists.

15 C. The code enforcement director in the name of the
16 municipality shall record in the appropriate lis pendens record in
17 the office of the county clerk of the county in which the real
18 property is located, a notice of his or her intent to file a
19 judicial in rem foreclosure action. The notice shall include a
20 legal description of the property, street address of the property if
21 available, a statement that the property is subject to judicial in
22 rem foreclosure proceedings under this act, and a statement that
23 those proceedings may extinguish any legal interests in the
24 property.

1 D. Simultaneous with the filing of his or her notice of intent
2 to file a judicial in rem foreclosure action, the code enforcement
3 director in the name of the municipality shall file a petition with
4 the clerk of the district court for the district in which the real
5 property is located.

6 E. The petition shall be filed against the real property
7 against which the municipal code lien has been recorded and shall
8 provide all of the following:

9 1. The identity of the municipality and the name and address of
10 the code enforcement director;

11 2. The real property address;

12 3. A description of the real property;

13 4. The tax identification number of the real property;

14 5. The municipal code lien which is being foreclosed;

15 6. The principal amount of the municipal code lien together
16 with applicable interest and penalties;

17 7. The principal amount of any additional municipal code liens
18 together with applicable interest and penalties in
19 accordance with subsection A of this section if any;

20 8. The year or years for which the taxes are delinquent, if
21 any;

22 9. The principal amount of the taxes together with interest and
23 penalties, if any;

24

1 10. A statement that upon final sale in accordance with this
2 act and payment of the amounts due for taxes, if applicable, an
3 interested party's rights of redemption shall be extinguished; and

4 11. The names and addresses of all interested parties to whom
5 copies of the petition are to be sent in accordance with subsection
6 F of this section.

7 F. The municipality shall mail copies of the petition by both
8 certified mail, return receipt requested, and by regular mail to all
9 interested parties whose identity and address are reasonably
10 ascertainable. Copies of the petition shall also be mailed by
11 first-class mail to the real property address to the attention of
12 the occupants of the property, if any. In addition, notice shall be
13 physically posted on the real property and shall include the
14 following statement: "THIS PROPERTY IS SUBJECT TO A JUDICIAL IN REM
15 FORECLOSURE ACTION AND MAY BE TRANSFERRED TO [NAME OF MUNICIPALITY]
16 OR ANOTHER PARTY. PERSONS WITH INFORMATION REGARDING THE CURRENT
17 OWNER OF THE PROPERTY ARE REQUESTED TO CONTACT [NAME OF
18 MUNICIPALITY]."

19 G. Within thirty (30) days of the filing of the petition, the
20 municipality shall cause a notice of the filing of the petition to
21 be published once each week for three (3) consecutive weeks in a
22 newspaper of general circulation in the county in which the property
23 is located. Such notice shall specify:

24 1. The name and address of the code enforcement director;

- 1 2. The real property address;
- 2 3. A description of the real property;
- 3 4. The tax identification number of the real property;
- 4 5. Any applicable municipal code lien which is being foreclosed
- 5 upon;
- 6 6. The principal amount of any municipal code lien together
- 7 with interest and penalties;
- 8 7. The applicable period of tax delinquency, if any;
- 9 8. The principal amount of taxes, if any;
- 10 9. Upon deposit with the appropriate parties by the court of
- 11 the tax payoff amounts, if any, any and all rights of redemption
- 12 accorded to interested parties are extinguished; and
- 13 10. The date and place of the filing of the petition;

14 SECTION 6. REPEALER 11 O.S. 2011, Section 22-111, as
15 amended by Section 1, Chapter 136, O.S.L. 2012 (11 O.S. Supp. 2020,
16 Section 22-111), is hereby repealed.

17 SECTION 7. REPEALER 11 O.S. 2011, Section 22-112, is
18 hereby repealed.

19 SECTION 8. This act shall become effective November 1, 2021.

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21 COMMITTEE REPORT BY: COMMITTEE ON COUNTY AND MUNICIPAL GOVERNMENT,
22 dated 02/23/2021 - DO PASS, As Amended and Coauthored.

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