

1 ENGROSSED HOUSE
2 BILL NO. 1707

By: McDaniel of the House

3 and

4 Stanislawski of the Senate

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6
7 An Act relating to property subject to forced sale;
8 amending 12 O.S. 2011, Sections 759, 762 and 769,
9 which relate to property subject to judgment lien;
10 modifying procedure for appraisal of property;
11 requiring written affidavit of impartiality;
12 requiring appraisals to be based on current market
13 value; providing procedure for sale of property;
14 providing requirements for bids; amending 46 O.S.
15 2011, Section 46, which relates to the Oklahoma Power
16 of Sale Mortgage Foreclosure Act; modifying sale and
17 bidding procedures; and providing an effective date.

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

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

21 Section 759. A. When a general execution is issued and placed
22 in the custody of a sheriff for levy, a certified copy of the
23 execution shall be filed in the office of the county clerk of the
24 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

1 all fees necessary for the payment ~~of the disinterested persons for~~
2 ~~their services in appraising of the subject property~~ of impartial
3 outside party or parties which shall not be associated with the
4 sheriff, to make a determination of the current market value of the
5 subject property pursuant to the requirements of subsection B of
6 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 the
12 party or parties referred to in subsection A of this section an
13 estimate of the current market value of the property which is
14 subject to such execution. The estimates shall be obtained by the
15 outside party or parties using at least three independent, disparate
16 and credible sources, each of which has estimated the current market
17 value of the subject property independently from one another. The
18 outside party or parties, as appraisers, shall return to the officer
19 their signed ~~estimate~~ appraisal of the ~~real value of the property~~
20 based on the credible sources. The outside party or parties shall
21 provide a written affidavit of impartiality. All objections to the
22 sources used or the impartiality of the appraisers must be raised at
23 the confirmation of the sale or all such objections shall be deemed
24 to have been waived. The ~~disinterested persons~~ outside party or

1 parties shall be paid for their services by the court clerk of the
2 county where the property is located within thirty (30) days of the
3 date that ~~they return their estimate of the real value of the~~
4 property the signed appraisal and written affidavit are returned to
5 the sheriff.

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

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

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

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

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

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

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

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

1 at a designated auction telephone number, in person at an open
2 public outcry auction, or by a combination of these methods, all of
3 which shall be considered in whole as the sale of the property.

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

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

15 To determine the highest bidder, any mortgagor ~~present at~~
16 participating in the sale may suggest in writing the known lots,
17 parcels, or divisions of the property in which the property should
18 be sold. The mortgagee shall conditionally sell the property under
19 each suggestion, and if the mortgagor offers no suggestion, then in
20 such lots, parcels or divisions as may be determined by the
21 mortgagee, and in addition thereto, shall sell the property as a
22 whole. The mortgagee shall determine which conditional sale or
23 sales result in the highest total price bid for all of the property.
24 An attorney for the mortgagee may ~~conduct~~ finalize the sale, and act

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

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1 loss or expenses, including attorneys fees, occasioned by the resale
2 of the property.

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

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

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1 Passed the House of Representatives the 14th day of March, 2017.

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4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2017.

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9 Presiding Officer of the Senate