

AN ACT

RELATING TO REAL ESTATE DEEDS OF TRUST; DESIGNATING PRIORITY AND TIME PERIODS FOR REDEMPTION RIGHTS AFTER JUDICIAL FORECLOSURE; AMENDING THE DEED OF TRUST ACT; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 39-5-18 NMSA 1978 (being Laws 1931, Chapter 149, Section 2, as amended) is amended to read:

"39-5-18. REDEMPTION OF REAL PROPERTY SOLD UNDER JUDGMENT OR DECREE OF FORECLOSURE--NOTICE AND HEARING--REDEMPTION AMOUNT--PRIORITY OF REDEMPTION RIGHTS.--

A. After sale of real estate pursuant to the order, judgment or decree of foreclosure in the district court, the real estate may be redeemed by the former defendant owner of the real estate or by any junior mortgagee or other junior lienholder whose rights were judicially determined in the foreclosure proceeding:

(1) by paying to the purchaser, at any time within nine months from the date of sale, the amount paid at the sale, with interest from the date of sale at the rate of ten percent a year, together with all taxes, interest and penalties thereon, and all payments made to satisfy in whole or in part any prior lien or mortgage not foreclosed, paid by the purchaser after the date of sale, with interest on the

taxes, interest, penalties and payments made on liens or mortgages at the rate of ten percent a year from the date of payment; or

(2) by filing a petition for redemption in the pending foreclosure case in the district court in which the order, judgment or decree of foreclosure was entered and by making a deposit of the amount set forth in Paragraph (1) of this subsection in cash in the office of the clerk of that district court, at any time within nine months from the date of sale. Copies of the petition for redemption shall be served upon the purchaser of the real estate at the judicial foreclosure sale and upon all parties who appeared in the judicial foreclosure case; and

(3) the former defendant owner shall have the first priority to redeem the real estate. If the former defendant owner does not redeem the real estate as provided in this subsection, each junior mortgagee or junior lienholder shall have a right to redeem the real estate. The order of priority of such redemption rights shall be the same priority as the underlying mortgages or liens, as set forth in the court order, judgment or decree of foreclosure or as otherwise determined by the court. All redemptions must be made within the time periods set forth in Paragraphs (1) and (2) of this subsection.

B. The purchaser of real estate at a foreclosure

sale, upon being served with the petition for redemption of the property, shall answer the petition within thirty days after service of the petition.

C. The hearing shall be governed by the rules of civil procedure and shall be set upon the earlier of the filing of a redemption by the former defendant owner or the expiration of the period for filing a redemption. At the hearing, the judge shall determine the amount of money necessary for the redemption, which shall include the money paid at the sale and all taxes, interest, penalties and payments made in satisfaction of liens, mortgages and encumbrances. If more than one redemption is filed, the court shall also determine which redemption has priority pursuant to Subsection A of this section and which party is therefore entitled to redeem the property. At the conclusion of the hearing, the district court may order the clerk of the court to issue the certificate of redemption upon such terms and conditions as it deems just.

D. As used in this section, the terms "owner", "junior mortgagee", "junior lienholder" and "purchaser" include their respective personal representatives, heirs, successors and assigns.

E. For the purpose of this section, "date of sale" means the date the district court order confirming the special master's report is filed in the office of the clerk of the

court.

F. The nine-month redemption period provided in this section is subject to modification pursuant to the provisions of Section 39-5-19 NMSA 1978.

G. A trustee's sale pursuant to a power of sale in a deed of trust as provided in the Deed of Trust Act is not a sale of real estate pursuant to a judgment or decree of a court. A redemption after a trustee's sale is governed by the Deed of Trust Act."

Section 2. Section 48-10-11 NMSA 1978 (being Laws 1987, Chapter 61, Section 11, as amended) is amended to read:

"48-10-11. NOTICE OF TRUSTEE'S SALE.--

A. The trustee shall give written notice of the time and place of sale, legally describing the trust real estate to be sold, by each of the following methods:

(1) publication of the notice as provided by law for foreclosure of mortgages on real estate;

(2) recording of the notice in the office of the clerk of each county in which the trust real estate is situated; and

(3) giving notice as provided in Section 48-10-12 NMSA 1978 to the extent applicable.

B. The sale shall be held at the time and place designated in the notice of sale on a day other than a Saturday, Sunday or legal holiday and at the time provided by

law for the foreclosure sale of real estate under real estate mortgages on the front steps of the courthouse of the county in which the trust real estate is located. If the trust real estate is located in more than one county, the sale may be held in any county in which part of the trust real estate is located.

C. The notice of sale shall contain the street address, if any, or identifiable location as well as the legal description of the trust real estate. Failure to accurately describe within the notice either the street address or the identifiable location of the trust real estate to be sold shall not be grounds for invalidating the sale if the correct legal description of the trust real estate to be sold was contained in the notice of sale. The notice of sale shall be sufficient if made in substantially the following form:

"NOTICE OF TRUSTEE'S SALE

The following legally described trust real estate will be sold, pursuant to the power of sale as provided in the deed of trust recorded in book \_\_\_\_\_ at page \_\_\_\_\_, \_\_\_\_\_ County, New Mexico, records, at public auction to the highest bidder on the front steps of the county courthouse in \_\_\_\_\_ County, New Mexico, in or near \_\_\_\_\_, New Mexico, on

\_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_

o'clock \_\_\_\_m. of that day:

(street address, if any, or identifiable location  
of trust real estate and legal description of  
trust real estate)

Dated this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Name of Trustor) (Name of Trustee)

\_\_\_\_\_  
Signature

(Here add Acknowledgment)."."

Section 3. Section 48-10-13 NMSA 1978 (being Laws 1987,  
Chapter 61, Section 13, as amended) is amended to read:

"48-10-13. SALE BY PUBLIC AUCTION--POSTPONEMENT OF  
SALE.--

A. On the date and at the time and place  
designated in the notice of sale, the trustee shall sell the  
trust real estate at public auction for cash to the highest  
bidder. To determine the highest bidder, the trustor or  
beneficiary present at the sale may suggest the then existing  
and legally described and established lots, blocks, tracts or  
parcels of the trust real estate in which the trust real  
estate may be sold. The trustee shall ascertain all such  
suggestions, shall conditionally sell the trust real estate

under each suggestion and, in addition, shall sell the trust real estate as a whole. The trustee shall determine which conditional sale results in the highest total price bid for all of the trust real estate. The lawyer for the trustee may conduct the sale and may act at the sale as the auctioneer for the trustee. Any person, including the trustee or beneficiary, may bid at the sale. Only the beneficiary may make a credit bid, instead of cash, at the sale. A junior encumbrancer may bid the amount or value of the obligation secured by the lien, mortgage, encumbrance or real estate contract, as the case may be, owed to the junior encumbrancer, less the amount or value of any prior deeds of trust, mortgages, liens, encumbrances or real estate contracts, if any, instead of cash, at the sale. In appropriate circumstances, the trustee may sell the trust real estate subject to prior deeds of trust, mortgages, liens, encumbrances or real estate contracts that are not being foreclosed. Every bid shall be deemed an irrevocable offer until the sale is completed and the sale shall not be deemed completed until the purchaser pays the price bid in immediately collectible or available federal funds. If the purchaser fails to pay the amount bid by the purchaser for the trust real estate struck off to the purchaser at the sale as provided in the Deed of Trust Act, the trustee may accept the next highest bid or proceed with the sale of the trust real

estate to the highest bidder. The person who fails to make the payment shall be liable to any person who suffers loss or expenses, including reasonable attorney fees actually incurred by the trustee and beneficiary occasioned by the failure, and the trustee may subsequently in any postponed or continued sale of the trust real estate reject any bid of the person failing to pay the amount bid.

B. The person conducting the sale may, for the purpose of verifying the proper amount to be paid or the availability of immediately collectible federal funds, postpone or continue the sale for a reasonable period by giving notice of the new time by public declaration at the time and place last appointed for the sale. No other notice of the postponed or continued sale is required."

Section 4. Section 48-10-14 NMSA 1978 (being Laws 1987, Chapter 61, Section 14) is amended to read:

"48-10-14. PAYMENT OF BID--TRUSTEE'S DEED.--

A. The purchaser at the sale, other than the beneficiary or the beneficiary's personal representatives, successors or assigns, to the extent of the credit bid of the purchaser, shall immediately pay the price bid. Upon receipt of payment of the price bid by the trustee in collected federal funds, the trustee shall execute and deliver the trustee's deed to the purchaser. The trustee's deed shall raise the presumption of compliance with the requirements of



the Deed of Trust Act relating to the exercise of the power of sale and the sale of the trust real estate, including recording, mailing, publishing and posting of notice of sale and the conduct of sale, in favor of subsequent purchasers, mortgagees or encumbrancers for value and without actual notice.

B. The trustee's deed shall operate to convey to the purchaser the title, interest and claim of the trustee, the trustor, the beneficiary, their respective successors in interest and of all persons claiming the trust real estate sold by or through them, including all interest or claim in the trust real estate acquired after the recording of the deed of trust and before delivery of the trustee's deed. The conveyance shall be clear of the interests of junior encumbrancers in the trust real estate whose interests have been effectively foreclosed by the proceeding."

Section 5. Section 48-10-16 NMSA 1978 (being Laws 2006, Chapter 32, Section 6) is amended to read:

"48-10-16. REDEMPTION.--

A. Except as otherwise provided in Subsection E of this section, the redemption period after a trustee's sale shall be nine months, or the period provided in the deed of trust, whichever is the lesser period, and shall begin to run from the date of the trustee's sale. In the deed of trust, the parties may shorten the redemption period to not less than

one month.

B. After the sale of trust real estate pursuant to Section 48-10-13 NMSA 1978, the trust real estate may be redeemed by the trustor or any junior encumbrancer:

(1) by paying to the purchaser at any time within the redemption period, the amount paid at the sale, with interest from the date of sale at the rate of ten percent a year, together with all taxes, interest and penalties thereon, and all payments made to satisfy in whole or in part any prior lien or mortgage not foreclosed, paid by the purchaser after the date of sale, with interest on the taxes, interest, penalties and payments made on liens or mortgages at the rate of ten percent a year from the date of payment; or

(2) by filing a petition for redemption in the district court in the county where the trustee's sale was held and by making a deposit of the amount set forth in Paragraph (1) of this subsection in cash in the office of the clerk of that district court at any time within the redemption period. Copies of the petition for redemption shall be served upon the purchaser of real estate under a trustee's sale; and

(3) the trustor shall have the first priority to redeem the real estate sold under a trustee's sale. If the trustor does not redeem the real estate as provided in this section, each junior encumbrancer shall have a right to redeem the real estate. The order of priority of

such redemption rights shall be the same priority as the underlying junior encumbrances, as agreed by the parties or as otherwise determined by the court. All redemptions must be made within the redemption period.

C. The purchaser of real estate under a trustee's sale, upon being served with the petition for redemption of the property, shall answer the petition within thirty days after service of the petition.

D. The hearing shall be governed by the rules of civil procedure. After the case is filed, the hearing shall be set upon the earlier of the filing of a petition for redemption by the trustor or the expiration of the redemption period. At the hearing, the judge shall determine the amount of money necessary for the redemption, which shall include the money paid at the sale and all taxes, interest, penalties and payments made in satisfaction of liens, mortgages and encumbrances. If more than one redemption is filed, the court shall also determine which redemption has priority pursuant to the provisions of Subsection B of this section and which party is therefore entitled to redeem the property. At the conclusion of the hearing, the district court may order the clerk of the court to issue the certificate of redemption upon such terms and conditions as the district court deems just.

E. A junior encumbrancer who does not have actual notice or knowledge of the trustee's sale and who has been

otherwise omitted from the trustee's sale proceeding shall be entitled to redeem the trust real estate by petitioning the district court in the county where the trustee's sale was held and making a deposit of the amount set forth in Paragraph (1) of Subsection B of this section. The action shall proceed as provided in Subsections C and D of this section. The purchaser of the trust real estate at the trustee's sale may petition the district court to terminate the right of redemption of an omitted junior encumbrancer. In any action commenced pursuant to the provisions of this subsection by or against an omitted junior encumbrancer, the redemption period shall be the period provided in Subsection A of this section, except that the redemption period shall begin to run from the date the final judgment is filed in the action, or from such later date as may be ordered by a court having jurisdiction:

(1) if enforcement of a judgment affecting the redemption is stayed on appeal; or

(2) for other good cause shown.

F. As used in this section, the terms "trustor", "beneficiary", "junior encumbrancer" and "purchaser" include their respective personal representatives, heirs, successors and assigns."

Section 6. Section 48-10-17 NMSA 1978 (being Laws 1987, Chapter 61, Section 17, as amended) is amended to read:

"48-10-17. ACTION TO RECOVER BALANCE AFTER SALE OR

FORECLOSURE ON TRUST REAL ESTATE AS PROVIDED IN DEED OF TRUST--ACTION TO RECOVER BALANCE PROHIBITED ON LOANS SECURED BY LOW-INCOME HOUSEHOLDS.--

A. Except as provided in Subsections D and E of this section, within six years after the date of a trustee's sale of trust real estate under a deed of trust as provided in the Deed of Trust Act, a separate civil action may be commenced to recover a deficiency judgment for the balance due on the contract for which the deed of trust was given as security. The deficiency judgment shall be for an amount equal to the sum of the total amount owing the beneficiary or the beneficiary's personal representatives, successors or assigns as of the date of the sale, as determined by the court, and, if applicable, the amount owing on all prior mortgages, deeds of trust, liens and encumbrances and real estate contracts with interest less the sale price at the sale by the trustee of the trust real estate. Any deficiency judgment recovered shall include interest on the amount of the deficiency from the date of the sale at the rate provided in the deed of trust or contract, together with any costs of the action.

B. If no action is commenced for a deficiency judgment as provided in Subsection A of this section, the proceeds of the sale, regardless of amount, shall be deemed to be in full satisfaction of the debt and no right to recover a

deficiency in any separate civil action shall exist.

C. Except as provided in Subsections D and E of this section, the Deed of Trust Act does not preclude a beneficiary or a trustee or their respective personal representatives, successors or assigns from foreclosing a deed of trust in the same manner provided by law for the foreclosure of mortgages on real estate.

D. A deed of trust may prohibit the recovery of any balance due after the trust real estate is sold at a trustee's sale or after the deed of trust is foreclosed in the manner provided by law for the foreclosure of mortgages on real estate.

E. No deficiency judgment shall be sought or obtained under any deed of trust securing a residential loan made to a low-income household.

F. No deficiency in recovery of any balance due after the sale at a trustee's sale or a judicial foreclosure sale of trust real estate under a deed of trust securing a residential loan made to a low-income household shall be reported to any credit reporting agencies or disclosed to any person other than the trustor or the trustor's personal representatives, unless the disclosure is required by law.

G. For the purposes of Subsections D, E and F of this section:

(1) "low-income household" means a

household in which the current annual income is at or below eighty percent of the area median income adjusted for family size as determined by the United States department of housing and urban development and calculated pursuant to the United States department of housing and urban development part 5 guidelines; and

(2) "residential loan" means a loan the primary purpose of which is the purchase or finance of a permanent dwelling located in New Mexico and which is primarily secured by a deed of trust encumbering the dwelling and related trust real estate.

H. The determination of whether a household is a low-income household and whether a loan is a residential loan shall be made as of the time the loan is made on the basis of information obtained during the loan application process."

Section 7. APPLICABILITY.--

A. The provisions of Laws 2006, Chapter 32 shall apply to deeds of trust executed on or after May 17, 2006.

B. The provisions of this act shall apply to deeds of trust executed on or after the effective date of this act.

Section 8. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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