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HOUSE BILL 558

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Al Park

AN ACT

RELATING TO REAL ESTATE DEEDS OF TRUST; AMENDING PROVISIONS OF
THE NMSA 1978; 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.--

A. After sale of [~~any~~] real estate pursuant to [~~any~~
~~such~~] the judgment or decree of [~~any~~] a court, the real estate
may be redeemed by the former defendant owner of the real
estate [~~his~~] or the owner's heirs, personal representatives or
assigns or by any junior mortgagee or other junior lienholder:

(1) by paying to the purchaser [~~his~~] or the

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1 purchaser's personal representatives or assigns, at any time
2 within nine months from the date of sale, the amount paid, with
3 interest from the date of purchase at the rate of ten percent a
4 year, together with all taxes, interest and penalties thereon,
5 and all payments made to satisfy in whole or in part any prior
6 lien or mortgage not foreclosed, paid by the purchaser, with
7 interest on [~~such~~] the taxes, interest, penalties and payments
8 made on liens or mortgages at the rate of ten percent a year
9 from the date of payment; or

10 (2) by petitioning the district court in which
11 the judgment or decree of foreclosure was entered for a
12 certificate of redemption and by making a deposit of the amount
13 set forth in Paragraph (1) of this subsection in cash in the
14 office of the clerk of the district court in which the order,
15 judgment or decree under which the sale was made was entered,
16 at any time within nine months from the date of sale.

17 B. Copies of the petition for redemption shall be
18 served upon the purchaser of real estate under a foreclosure
19 sale or [~~his~~] the purchaser's personal representatives or
20 assigns.

21 C. Any purchaser of real estate under a foreclosure
22 sale or [~~his~~] the purchaser's personal representatives or
23 assigns, upon being served with the petition for redemption of
24 the property, shall answer the petition within thirty days
25 after service of the petition.

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1 D. The hearing shall be governed by the rules of
2 civil procedure. At the hearing, the judge shall determine the
3 amount of money necessary for the redemption, which shall
4 include the money paid at the sale and all taxes, interest,
5 penalties and payments made in satisfaction of liens, mortgages
6 and encumbrances. At the conclusion of the hearing, the
7 district court may order the clerk of the court to issue the
8 certificate of redemption upon such terms and conditions as it
9 deems just.

10 E. A trustee's sale pursuant to a power of sale in
11 a deed of trust as provided in the Deed of Trust Act is not a
12 sale of real estate pursuant to a judgment or decree of a
13 court. ~~[Except as provided in this section as to the rights of~~
14 ~~an omitted junior encumbrancer, no real estate may be redeemed~~
15 ~~from a trustee's sale. A junior encumbrancer who does not have~~
16 ~~actual notice or knowledge of the trustee's sale and who has~~
17 ~~been otherwise omitted from the trustee's sale proceeding shall~~
18 ~~be entitled to redeem the trust real estate by petitioning the~~
19 ~~district court in the county where the trustee's sale was held.~~
20 ~~The action shall proceed as provided in Subsections B through D~~
21 ~~of this section. The purchaser of the trust real estate at the~~
22 ~~trustee's sale or the successors and assigns of the purchaser~~
23 ~~may likewise petition the district court to terminate the right~~
24 ~~of redemption of an omitted junior encumbrancer. In any such~~
25 ~~action, the redemption period shall be nine months or the~~

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1 ~~period provided in the deed of trust, whichever is the lesser~~
2 ~~period, and shall begin to run from the date judgment is~~
3 ~~entered in the action.] A redemption after a trustee's sale is~~
4 ~~governed by the Deed of Trust Act."~~

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

7 "48-10-11. NOTICE OF TRUSTEE'S SALE.--

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

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

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

16 (3) giving notice as provided in Section
17 48-10-12 NMSA 1978 to the extent applicable.

18 B. The sale shall be held at the time and place
19 designated in the notice of sale on a day other than a
20 Saturday, Sunday or legal holiday [~~or nonbanking day~~] and at
21 the time provided by law for the foreclosure sale of real
22 estate under real estate mortgages on the front steps of the
23 courthouse of the county in which the trust real estate is
24 located. If the trust real estate is located in more than one
25 county, the sale may be held in any county in which part of the

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1 trust real estate is located.

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

11 "NOTICE OF TRUSTEE'S SALE

12 The following legally described trust real estate
13 will be sold, pursuant to the power of sale as
14 provided in the deed of trust recorded in book
15 _____ at page _____,
16 County, New Mexico, records, at public auction to
17 the highest bidder on the front steps of the county
18 courthouse in _____ County, New
19 Mexico, in or near _____,
20 New Mexico, on _____, 20____, at
21 _____ o'clock ___m. of that day:

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

25 Dated this _____ day of _____,

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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 .165412.3

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1 the sale. A junior encumbrancer may bid the amount or value of
2 the obligation secured by the lien, mortgage, encumbrance or
3 real estate contract, as the case may be, owed to the junior
4 encumbrancer, less the amount or value of any prior deeds of
5 trust, mortgages, liens, encumbrances or real estate contracts,
6 if any, instead of cash, at the sale. In appropriate
7 circumstances, the trustee may sell the trust real estate
8 subject to prior deeds of trust, mortgages, liens, encumbrances
9 or real estate contracts that are not being foreclosed. Every
10 bid shall be deemed an irrevocable offer until the sale is
11 completed and the sale shall not be deemed completed until the
12 purchaser pays the price bid in immediately collectible or
13 available federal funds. If the purchaser fails to pay the
14 amount bid by the purchaser for the trust real estate struck
15 off to the purchaser at the sale as provided in the Deed of
16 Trust Act, the trustee may accept the next highest bid or
17 proceed with the sale of the trust real estate to the highest
18 bidder. The person who fails to make the payment shall be
19 liable to any person who suffers loss or expenses, including
20 reasonable attorney fees actually incurred by the trustee and
21 beneficiary occasioned by the failure, and the trustee may
22 subsequently in any postponed or continued sale of the trust
23 real estate reject any bid of the person failing to pay the
24 amount bid.

25 B. The person conducting the sale may, for the

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1 purpose of verifying the proper amount to be paid or the
2 availability of immediately collectible federal funds, postpone
3 or continue the sale for a reasonable period by giving notice
4 of the new time by public declaration at the time and place
5 last appointed for the sale. No other notice of the postponed
6 or continued sale is required.

7 ~~[G. A sale is not complete if the sale as held is~~
8 ~~contrary to or in violation of any federal statute in effect~~
9 ~~because of an unknown or undisclosed bankruptcy. A sale so~~
10 ~~held is deemed to be continued to a date, time and place~~
11 ~~announced by the trustee at the sale and shall comply with~~
12 ~~Subsection B of this section or, if not announced, is deemed~~
13 ~~continued to the same place and at the same time twenty-eight~~
14 ~~days later, unless the twenty-eighth day falls on a Saturday,~~
15 ~~Sunday or legal holiday, in which event is deemed continued to~~
16 ~~the first business day thereafter. In the event a sale is~~
17 ~~continued because of an unknown or undisclosed bankruptcy, the~~
18 ~~trustee shall notify by registered or certified mail, with~~
19 ~~postage prepaid, all bidders who provide their names, addresses~~
20 ~~and telephone numbers in writing to the party conducting the~~
21 ~~sale of the continuation of the sale.]"~~

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

24 "48-10-14. PAYMENT OF BID--TRUSTEE'S DEED.--

25 A. The purchaser at the sale, other than the

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1 beneficiary or the beneficiary's personal representatives,
2 successors or assigns, to the extent of the credit bid of the
3 purchaser, shall immediately pay the price bid. Upon receipt
4 of payment of the price bid by the trustee in collected federal
5 funds, the trustee shall execute and deliver the trustee's deed
6 to the purchaser. The trustee's deed shall raise the
7 presumption of compliance with the requirements of the Deed of
8 Trust Act relating to the exercise of the power of sale and the
9 sale of the trust real estate, including recording, mailing,
10 publishing and posting of notice of sale and the conduct of
11 sale, in favor of subsequent purchasers, mortgagees or
12 encumbrancers for value and without actual notice.

13 B. The trustee's deed shall operate to convey to
14 the purchaser the title, interest and claim of the trustee, the
15 trustor, the beneficiary, their respective successors in
16 interest and of all persons claiming the trust real estate sold
17 by or through them, including all interest or claim in the
18 trust real estate acquired after the recording of the deed of
19 trust and before delivery of the trustee's deed. The
20 conveyance shall be [~~without right of redemption and~~] clear of
21 the interests of junior encumbrancers in the trust real estate
22 whose interests have been effectively foreclosed by the
23 proceeding."

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

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1 "48-10-16. REDEMPTION.--

2 ~~[A. After the sale of trust real estate pursuant to~~
3 ~~Section 48-10-13 NMSA 1978, the trust real estate may be~~
4 ~~redeemed by the beneficiary, or by any junior encumbrancer, by~~
5 ~~paying the purchaser at any time within nine months from the~~
6 ~~date of the sale the amount paid with interest from the date of~~
7 ~~purchase at the rate of ten percent a year, together with all~~
8 ~~taxes, interest and penalties thereon, and all payments made to~~
9 ~~satisfy in whole or in part any prior lien or mortgage not~~
10 ~~foreclosed paid by the purchaser, with interest on such taxes,~~
11 ~~interest, penalties and payments made on liens or mortgages at~~
12 ~~the rate of ten percent a year from the date of payment.~~

13 ~~B. The parties may in the deed of trust shorten the~~
14 ~~redemption period to not less than one month.]~~

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

22 B. After the sale of trust real estate pursuant to
23 Section 48-10-13 NMSA 1978, the trust real estate may be
24 redeemed by the trustor, the trustor's personal
25 representatives, successors or assigns or by any junior

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1 encumbrancer:

2 (1) by paying to the purchaser, the
3 purchaser's personal representatives, successors or assigns, at
4 any time within the redemption period, the amount paid, with
5 interest from the date of purchase at the rate of ten percent a
6 year, together with all taxes, interest and penalties thereon,
7 and all payments made to satisfy in whole or in part any prior
8 lien or mortgage not foreclosed, paid by the purchaser, with
9 interest on such taxes, interest, penalties and payments made
10 on liens or mortgages at the rate of ten percent a year from
11 the date of payment; or

12 (2) by petitioning the district court in the
13 county where the trustee's sale was held for a certificate of
14 redemption and by making a deposit of the amount set forth in
15 Paragraph (1) of this subsection in cash in the office of the
16 clerk of that district court at any time within the redemption
17 period.

18 C. Copies of the petition for redemption shall be
19 served upon the purchaser of real estate under a trustee's sale
20 or the purchaser's personal representatives, successors or
21 assigns.

22 D. Any purchaser of real estate under a trustee's
23 sale or the purchaser's personal representatives, successors or
24 assigns, upon being served with the petition for redemption of
25 the property, shall answer the petition within thirty days

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1 after service of the petition.

2 E. The hearing shall be governed by the rules of
3 civil procedure. At the hearing, the judge shall determine the
4 amount of money necessary for the redemption, which shall
5 include the money paid at the sale and all taxes, interest,
6 penalties and payments made in satisfaction of liens, mortgages
7 and encumbrances. At the conclusion of the hearing, the
8 district court may order the clerk of the court to issue the
9 certificate of redemption upon such terms and conditions as the
10 district court deems just.

11 F. A junior encumbrancer who does not have actual
12 notice or knowledge of the trustee's sale and who has been
13 otherwise omitted from the trustee's sale proceeding, or the
14 personal representatives, successors or assigns of the omitted
15 junior encumbrancer, shall be entitled to redeem the trust real
16 estate by petitioning the district court in the county where
17 the trustee's sale was held and making a deposit of the amount
18 set forth in Paragraph (1) of Subsection B of this section.
19 The action shall proceed as provided in Subsections C through E
20 of this section. The purchaser of the trust real estate at the
21 trustee's sale, or the personal representatives, successors or
22 assigns of the purchaser may petition the district court to
23 terminate the right of redemption of an omitted junior
24 encumbrancer, and the omitted junior encumbrancer's personal
25 representatives, successors and assigns. In any action

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1 commenced pursuant to the provisions of this subsection by or
2 against an omitted junior encumbrancer or the personal
3 representatives, successors and assigns of the omitted junior
4 encumbrancer, or all of them, the redemption period shall be
5 the period provided in Subsection A of this section, except
6 that the redemption period shall begin to run from the date
7 final judgment is entered in the action, or from such later
8 date as may be ordered by a court having jurisdiction:

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

11 (2) for other good cause shown."

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

14 "48-10-17. ACTION TO RECOVER BALANCE AFTER SALE OR
15 FORECLOSURE ON TRUST REAL ESTATE AS PROVIDED IN DEED OF
16 TRUST--ACTION TO RECOVER BALANCE PROHIBITED ON LOANS SECURED BY
17 LOW-INCOME HOUSEHOLDS.--

18 A. Except as provided in Subsections D and E of
19 this section, within six years after the date of a trustee's
20 sale of trust real estate under a deed of trust as provided in
21 the Deed of Trust Act, a separate civil action may be commenced
22 to recover a deficiency judgment for the balance due on the
23 contract for which the deed of trust was given as security.
24 The deficiency judgment shall be for an amount equal to the sum
25 of the total amount owing the beneficiary or the beneficiary's

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1 personal representatives, successors or assigns as of the date
2 of the sale, as determined by the court, and, if applicable,
3 the amount owing on all prior mortgages, deeds of trust, liens
4 and encumbrances and real estate contracts with interest less
5 the sale price at the sale by the trustee of the trust real
6 estate. Any deficiency judgment recovered shall include
7 interest on the amount of the deficiency from the date of the
8 sale at the rate provided in the deed of trust or contract,
9 together with any costs of the action.

10 B. If no action is commenced for a deficiency
11 judgment as provided in Subsection A of this section, the
12 proceeds of the sale, regardless of amount, shall be deemed to
13 be in full satisfaction of the debt and no right to recover a
14 deficiency in any separate civil action shall exist.

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

21 D. A deed of trust [~~not encumbering real estate~~
22 ~~occupied by a low-income household may, by express language,~~
23 ~~validly]~~ may prohibit the recovery of any balance due after the
24 trust real estate is sold at a trustee's sale or after the deed
25 of trust is foreclosed in the manner provided by law for the

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1 foreclosure of mortgages on real estate.

2 E. No deficiency judgment shall be sought or
3 obtained under any deed of trust [~~encumbering real estate~~
4 ~~occupied by a low-income household. A deed of trust~~
5 ~~encumbering real estate occupied by a low-income household~~
6 ~~shall expressly prohibit the recovery of any balance due after~~
7 ~~the trust real estate is sold or after the deed of trust is~~
8 ~~foreclosed in the manner provided by law for the foreclosure of~~
9 ~~mortgages on real estate]~~ securing a residential loan made to a
10 low-income household.

11 F. No deficiency in recovery of any balance due
12 after the sale at a trustee's sale or a judicial foreclosure
13 sale of trust real estate [~~encumbering real estate occupied by~~
14 ~~a low-income]~~ under a deed of trust securing a residential loan
15 made to a low-income household shall be reported to any credit
16 reporting agencies or disclosed to any person other than the
17 trustor or the trustor's personal representatives, unless the
18 disclosure is required by law [~~or regulation~~].

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

21 (1) "low-income household" means a household
22 [~~that the New Mexico mortgage finance authority certifies as~~
23 ~~low income at the time of the closing of the contract]~~ in which
24 the current annual income is at or below eighty percent of the
25 area median income adjusted for family size as determined by

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1 the United States department of housing and urban development
2 and calculated pursuant to the United States department of
3 housing and urban development part 5 guidelines; and

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

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

13 Section 7. APPLICABILITY.--

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

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

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