

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 558 & 641

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

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 [~~any~~] real estate pursuant to [~~any~~
~~such~~] the order, judgment or decree of [~~any~~] foreclosure in the
district court, the real estate may be redeemed by the former
defendant owner of the real estate [~~his heirs, personal~~

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1 ~~representatives or assigns~~] or by any junior mortgagee or other
2 junior lienholder whose rights were judicially determined in
3 the foreclosure proceeding:

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

15 (2) by [~~petitioning~~] filing a petition for
16 redemption in the pending foreclosure case in the district
17 court in which the order, judgment or decree of foreclosure was
18 entered [~~for a certificate of redemption~~] and by making a
19 deposit of the amount set forth in Paragraph (1) of this
20 subsection in cash in the office of the clerk of [~~the~~] that
21 district court, [~~in which the order, judgment or decree under~~
22 ~~which the sale was made was entered~~] at any time within nine
23 months from the date of sale. [~~B.~~] Copies of the petition for
24 redemption shall be served upon the purchaser of the real
25 estate [~~under a~~] at the judicial foreclosure sale [~~or his~~

1 ~~personal representatives or assigns]~~ and upon all parties who
2 appeared in the judicial foreclosure case; and

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

14 ~~[C. Any]~~ B. The purchaser of real estate ~~[under]~~
15 at a foreclosure sale ~~[or his personal representatives or~~
16 ~~assigns]~~, upon being served with the petition for redemption of
17 the property, shall answer the petition within thirty days
18 after service of the petition.

19 ~~[D.]~~ C. The hearing shall be governed by the rules
20 of civil procedure and shall be set upon the earlier of the
21 filing of a redemption by the former defendant owner or the
22 expiration of the period for filing a redemption. At the
23 hearing, the judge shall determine the amount of money
24 necessary for the redemption, which shall include the money
25 paid at the sale and all taxes, interest, penalties and

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1 payments made in satisfaction of liens, mortgages and
2 encumbrances. If more than one redemption is filed, the court
3 shall also determine which redemption has priority pursuant to
4 Subsection A of this section and which party is therefore
5 entitled to redeem the property. At the conclusion of the
6 hearing, the district court may order the clerk of the court to
7 issue the certificate of redemption upon such terms and
8 conditions as it deems just.

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

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1 ~~period, and shall begin to run from the date judgment is~~
2 ~~entered in the action.]~~

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

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

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

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

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

21 "48-10-11. NOTICE OF TRUSTEE'S SALE.--

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

- 25 (1) publication of the notice as provided by

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1 law for foreclosure of mortgages on real estate;

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

5 (3) giving notice as provided in Section
6 48-10-12 NMSA 1978 to the extent applicable.

7 B. The sale shall be held at the time and place
8 designated in the notice of sale on a day other than a
9 Saturday, Sunday or legal holiday [~~or nonbanking day~~] and at
10 the time provided by law for the foreclosure sale of real
11 estate under real estate mortgages on the front steps of the
12 courthouse of the county in which the trust real estate is
13 located. If the trust real estate is located in more than one
14 county, the sale may be held in any county in which part of the
15 trust real estate is located.

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

25 "NOTICE OF TRUSTEE'S SALE

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1 The following legally described trust real estate
 2 will be sold, pursuant to the power of sale as
 3 provided in the deed of trust recorded in book
 4 _____ at page _____, _____
 5 County, New Mexico, records, at public auction to
 6 the highest bidder on the front steps of the county
 7 courthouse in _____ County, New
 8 Mexico, in or near _____,
 9 New Mexico, on _____, 20____, at
 10 _____ o'clock ___m. of that day:

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

14 Dated this _____ day of _____,
 15 20_____.

16 _____
 17 (Name of Trustor)

(Name of Trustee)

18 _____
 19 Signature

20 (Here add Acknowledgment)."."

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

23 "48-10-13. SALE BY PUBLIC AUCTION--POSTPONEMENT OF SALE.--

24 A. On the date and at the time and place designated
 25 in the notice of sale, the trustee shall sell the trust real

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1 estate at public auction for cash to the highest bidder. To
2 determine the highest bidder, the trustor or beneficiary
3 present at the sale may suggest the then existing and legally
4 described and established lots, blocks, tracts or parcels of
5 the trust real estate in which the trust real estate may be
6 sold. The trustee shall ascertain all such suggestions, shall
7 conditionally sell the trust real estate under each suggestion
8 and, in addition, shall sell the trust real estate as a whole.
9 The trustee shall determine which conditional sale results in
10 the highest total price bid for all of the trust real estate.
11 The lawyer for the trustee may conduct the sale and may act at
12 the sale as the auctioneer for the trustee. Any person,
13 including the trustee or beneficiary, may bid at the sale.
14 Only the beneficiary may make a credit bid, instead of cash, at
15 the sale. A junior encumbrancer may bid the amount or value of
16 the obligation secured by the lien, mortgage, encumbrance or
17 real estate contract, as the case may be, owed to the junior
18 encumbrancer, less the amount or value of any prior deeds of
19 trust, mortgages, liens, encumbrances or real estate contracts,
20 if any, instead of cash, at the sale. In appropriate
21 circumstances, the trustee may sell the trust real estate
22 subject to prior deeds of trust, mortgages, liens, encumbrances
23 or real estate contracts that are not being foreclosed. Every
24 bid shall be deemed an irrevocable offer until the sale is
25 completed and the sale shall not be deemed completed until the

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1 purchaser pays the price bid in immediately collectible or
2 available federal funds. If the purchaser fails to pay the
3 amount bid by the purchaser for the trust real estate struck
4 off to the purchaser at the sale as provided in the Deed of
5 Trust Act, the trustee may accept the next highest bid or
6 proceed with the sale of the trust real estate to the highest
7 bidder. The person who fails to make the payment shall be
8 liable to any person who suffers loss or expenses, including
9 reasonable attorney fees actually incurred by the trustee and
10 beneficiary occasioned by the failure, and the trustee may
11 subsequently in any postponed or continued sale of the trust
12 real estate reject any bid of the person failing to pay the
13 amount bid.

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

21 ~~[C. A sale is not complete if the sale as held is~~
22 ~~contrary to or in violation of any federal statute in effect~~
23 ~~because of an unknown or undisclosed bankruptcy. A sale so~~
24 ~~held is deemed to be continued to a date, time and place~~
25 ~~announced by the trustee at the sale and shall comply with~~

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1 ~~Subsection B of this section or, if not announced, is deemed~~
2 ~~continued to the same place and at the same time twenty-eight~~
3 ~~days later, unless the twenty-eighth day falls on a Saturday,~~
4 ~~Sunday or legal holiday, in which event is deemed continued to~~
5 ~~the first business day thereafter. In the event a sale is~~
6 ~~continued because of an unknown or undisclosed bankruptcy, the~~
7 ~~trustee shall notify by registered or certified mail, with~~
8 ~~postage prepaid, all bidders who provide their names, addresses~~
9 ~~and telephone numbers in writing to the party conducting the~~
10 ~~sale of the continuation of the sale.]"~~

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

13 "48-10-14. PAYMENT OF BID--TRUSTEE'S DEED.--

14 A. The purchaser at the sale, other than the
15 beneficiary or the beneficiary's personal representatives,
16 successors or assigns, to the extent of the credit bid of the
17 purchaser, shall immediately pay the price bid. Upon receipt
18 of payment of the price bid by the trustee in collected federal
19 funds, the trustee shall execute and deliver the trustee's deed
20 to the purchaser. The trustee's deed shall raise the
21 presumption of compliance with the requirements of the Deed of
22 Trust Act relating to the exercise of the power of sale and the
23 sale of the trust real estate, including recording, mailing,
24 publishing and posting of notice of sale and the conduct of
25 sale, in favor of subsequent purchasers, mortgagees or

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1 encumbrancers for value and without actual notice.

2 B. The trustee's deed shall operate to convey to
3 the purchaser the title, interest and claim of the trustee, the
4 trustor, the beneficiary, their respective successors in
5 interest and of all persons claiming the trust real estate sold
6 by or through them, including all interest or claim in the
7 trust real estate acquired after the recording of the deed of
8 trust and before delivery of the trustee's deed. The
9 conveyance shall be ~~[without right of redemption and]~~ clear of
10 the interests of junior encumbrancers in the trust real estate
11 whose interests have been effectively foreclosed by the
12 proceeding."

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

15 "48-10-16. REDEMPTION.--

16 ~~[A. After the sale of trust real estate pursuant to~~
17 ~~Section 48-10-13 NMSA 1978, the trust real estate may be~~
18 ~~redeemed by the beneficiary, or by any junior encumbrancer, by~~
19 ~~paying the purchaser at any time within nine months from the~~
20 ~~date of the sale the amount paid with interest from the date of~~
21 ~~purchase at the rate of ten percent a year, together with all~~
22 ~~taxes, interest and penalties thereon, and all payments made to~~
23 ~~satisfy in whole or in part any prior lien or mortgage not~~
24 ~~foreclosed paid by the purchaser, with interest on such taxes,~~
25 ~~interest, penalties and payments made on liens or mortgages at~~

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1 ~~the rate of ten percent a year from the date of payment.~~

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

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

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

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

23 (2) by filing a petition for redemption in the
24 district court in the county where the trustee's sale was held
25 and by making a deposit of the amount set forth in Paragraph

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1 (1) of this subsection in cash in the office of the clerk of
2 that district court at any time within the redemption period.
3 Copies of the petition for redemption shall be served upon the
4 purchaser of real estate under a trustee's sale; and

5 (3) the trustor shall have the first priority
6 to redeem the real estate sold under a trustee's sale. If the
7 trustor does not redeem the real estate as provided in this
8 section, each junior encumbrancer shall have a right to redeem
9 the real estate. The order of priority of such redemption
10 rights shall be the same priority as the underlying junior
11 encumbrances, as agreed by the parties or as otherwise
12 determined by the court. All redemptions must be made within
13 the redemption period.

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

18 D. The hearing shall be governed by the rules of
19 civil procedure. After the case is filed, the hearing shall be
20 set upon the earlier of the filing of a petition for redemption
21 by the trustor or the expiration of the redemption period. At
22 the hearing, the judge shall determine the amount of money
23 necessary for the redemption, which shall include the money
24 paid at the sale and all taxes, interest, penalties and
25 payments made in satisfaction of liens, mortgages and

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1 encumbrances. If more than one redemption is filed, the court
2 shall also determine which redemption has priority pursuant to
3 the provisions of Subsection B of this section and which party
4 is therefore entitled to redeem the property. At the
5 conclusion of the hearing, the district court may order the
6 clerk of the court to issue the certificate of redemption upon
7 such terms and conditions as the district court deems just.

8 E. A junior encumbrancer who does not have actual
9 notice or knowledge of the trustee's sale and who has been
10 otherwise omitted from the trustee's sale proceeding shall be
11 entitled to redeem the trust real estate by petitioning the
12 district court in the county where the trustee's sale was held
13 and making a deposit of the amount set forth in Paragraph (1)
14 of Subsection B of this section. The action shall proceed as
15 provided in Subsections C and D of this section. The purchaser
16 of the trust real estate at the trustee's sale may petition the
17 district court to terminate the right of redemption of an
18 omitted junior encumbrancer. In any action commenced pursuant
19 to the provisions of this subsection by or against an omitted
20 junior encumbrancer, the redemption period shall be the period
21 provided in Subsection A of this section, except that the
22 redemption period shall begin to run from the date the final
23 judgment is filed in the action, or from such later date as may
24 be ordered by a court having jurisdiction:

25 (1) if enforcement of a judgment affecting the

1 redemption is stayed on appeal; or

2 (2) for other good cause shown.

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

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

9 "48-10-17. ACTION TO RECOVER BALANCE AFTER SALE OR
10 FORECLOSURE ON TRUST REAL ESTATE AS PROVIDED IN DEED OF
11 TRUST--ACTION TO RECOVER BALANCE PROHIBITED ON LOANS SECURED BY
12 LOW-INCOME HOUSEHOLDS.--

13 A. Except as provided in Subsections D and E of
14 this section, within six years after the date of a trustee's
15 sale of trust real estate under a deed of trust as provided in
16 the Deed of Trust Act, a separate civil action may be commenced
17 to recover a deficiency judgment for the balance due on the
18 contract for which the deed of trust was given as security.
19 The deficiency judgment shall be for an amount equal to the sum
20 of the total amount owing the beneficiary or the beneficiary's
21 personal representatives, successors or assigns as of the date
22 of the sale, as determined by the court, and, if applicable,
23 the amount owing on all prior mortgages, deeds of trust, liens
24 and encumbrances and real estate contracts with interest less
25 the sale price at the sale by the trustee of the trust real

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1 estate. Any deficiency judgment recovered shall include
2 interest on the amount of the deficiency from the date of the
3 sale at the rate provided in the deed of trust or contract,
4 together with any costs of the action.

5 B. If no action is commenced for a deficiency
6 judgment as provided in Subsection A of this section, the
7 proceeds of the sale, regardless of amount, shall be deemed to
8 be in full satisfaction of the debt and no right to recover a
9 deficiency in any separate civil action shall exist.

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

16 D. A deed of trust [~~not encumbering real estate~~
17 ~~occupied by a low-income household may, by express language,~~
18 ~~validly~~] may prohibit the recovery of any balance due after the
19 trust real estate is sold at a trustee's sale or after the deed
20 of trust is foreclosed in the manner provided by law for the
21 foreclosure of mortgages on real estate.

22 E. No deficiency judgment shall be sought or
23 obtained under any deed of trust [~~encumbering real estate~~
24 ~~occupied by a low-income household. A deed of trust~~
25 ~~encumbering real estate occupied by a low-income household~~

1 ~~shall expressly prohibit the recovery of any balance due after~~
2 ~~the trust real estate is sold or after the deed of trust is~~
3 ~~foreclosed in the manner provided by law for the foreclosure of~~
4 ~~mortgages on real estate] securing a residential loan made to a~~
5 ~~low-income household.~~

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

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

16 (1) "low-income household" means a household
17 [~~that the New Mexico mortgage finance authority certifies as~~
18 ~~low income at the time of the closing of the contract]~~ in which
19 the current annual income is at or below eighty percent of the
20 area median income adjusted for family size as determined by
21 the United States department of housing and urban development
22 and calculated pursuant to the United States department of
23 housing and urban development part 5 guidelines; and

24 (2) "residential loan" means a loan the
25 primary purpose of which is the purchase or finance of a

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1 permanent dwelling located in New Mexico and which is primarily
2 secured by a deed of trust encumbering the dwelling and related
3 trust real estate.

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

8 Section 7. APPLICABILITY.--

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

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

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