

HOUSE BILL NO. HB0112

Foreclosure sale proceeds.

Sponsored by: Representative(s) Illoway, Buchanan, Lubnau and Simpson and Senator(s) Hanes, Nicholas and Ross

A BILL

for

1 AN ACT relating to real property; providing for the
2 distribution of monies upon mortgage foreclosure sales;
3 making conforming amendment for state farm loans;
4 specifying applicability of the act; and providing for an
5 effective date.

6

7 *Be It Enacted by the Legislature of the State of Wyoming:*

8

9 **Section 1.** W.S. 1-18-113 and 1-18-114 are created to
10 read:

11

12 **1-18-113. Payment of proceeds.**

13

14 After any sale of real estate as provided in this chapter,
15 proceeds from the sale shall be paid over by the officer or

1 other person making the sale in accordance with W.S.
2 34-4-113.

3

4 **1-18-114. Omitted parties; definitions.**

5

6 (a) For purposes of this section:

7

8 (i) "Omitted party" means any person who:

9

10 (A) Subsequent to the recording of a
11 mortgage, deed of trust or other lien instrument pursuant
12 to which a foreclosure sale has been conducted, has either
13 acquired a record interest in the property subject to a
14 mortgage foreclosure, deed of trust or execution sale, or
15 has obtained a valid possessory interest and is in actual
16 possession of the property; and

17

18 (B) Is not included as a party defendant in
19 a judicial foreclosure action or, if included, is not
20 served with process, or was not mailed notice of the
21 execution sale or is not notified pursuant to W.S. 34-4-104
22 of a mortgage foreclosure sale.

23

1 (ii) "Interested person" means any holder of a
2 certificate of purchase or certificate of redemption issued
3 pursuant to W.S. 1-18-102 and 1-18-106 or any owner of the
4 property by virtue of a sheriff's or public trustee's deed
5 or person claiming through such owner.

6
7 (b) The interest of an omitted party in the property
8 which is the subject of a mortgage foreclosure, execution
9 or sheriff's or trustee's sale may be terminated in a civil
10 action commenced by any interested person within four (4)
11 years after the date of the sale, if the omitted party is
12 afforded rights of redemption upon terms as the district
13 court for the district in which the property is located may
14 deem just under the circumstances, which terms shall not,
15 however, be more favorable than the person's statutory
16 rights had the person been provided notice of the sale.

17
18 (c) For purposes of this section, the mortgage,
19 judgment or other lien which is the subject of the sale
20 shall not be extinguished by merger with the title to the
21 property acquired upon issuance and delivery of the
22 sheriff's deed until the interest of any omitted party has
23 been terminated as provided in subsection (b) of this
24 section or by operation of law.

1

2 **Section 2.** W.S. 1-18-101, 11-34-123(a), 34-4-104,
3 34-4-106, 34-4-108, 34-4-109 and 34-4-113 are amended to
4 read:

5

6 **1-18-101. Sale to be at public vendue; hours of sale;**
7 **notice required; mortgagee, judgment creditor or lienor**
8 **must be present or waive; penalty.**

9

10 (a) No lands or tenements shall be sold by virtue of
11 any execution or decree of foreclosure unless:

12

13 (i) The sale is by public vendue between the
14 hours of 10:00 a.m. and 5:00 p.m. of the same day; ~~nor~~
15 ~~unless~~

16

17 (ii) The time and place of holding the sale was
18 previously advertised for four (4) consecutive weeks in the
19 county newspaper in the county where the lands and
20 tenements are situate; ~~and~~

21

22 (iii) The foreclosing mortgagee, judgment
23 creditor, other foreclosing lienor or an authorized agent
24 of the foreclosing party is present at the sale or has

1 previously waived to the sheriff conducting the sale the
2 right to appear and bid at the sale. The sheriff
3 conducting the sale shall not be considered to be the
4 authorized agent of the foreclosing party unless the
5 foreclosing party has given the sheriff a specified
6 opening bid to be presented by the sheriff on behalf of
7 the foreclosing party and the sheriff actually presents
8 the opening bid. Any foreclosure sale conducted without
9 complying with the terms of this section is void, in which
10 case the mortgage, power of sale, judgment or other lien
11 which is the subject of the voided sale is not
12 extinguished or exhausted, but may be properly foreclosed
13 in a subsequent foreclosure sale in compliance with
14 applicable law.

15

16 (b) The notice shall state the names of the plaintiff
17 and defendant in the action, and the time and place of
18 sale. In all notices the lands or tenements to be sold
19 shall be described with reasonable certainty by
20 appropriate description. If any officer sells any lands or
21 tenements by virtue of any execution or decree, otherwise
22 than as provided, the officer so offending shall forfeit
23 and pay fifty dollars (\$50.00) for every offense, to be

1 recovered with costs in any court of record in this state
2 by the person whose lands were advertised and sold.

3

4 **11-34-123. Foreclosure proceedings; duty of attorney**
5 **general; deed in lieu of foreclosure.**

6

7 (a) Any foreclosure of any mortgage provided for by
8 this act shall be made in the usual manner, either by civil
9 action or by advertisement as the board may direct. In
10 cases of foreclosure the attorney general shall render all
11 services needed in connection with the foreclosure
12 proceedings, and the costs, fees and expenses may be taxed
13 in like manner and to the same effect as if the state of
14 Wyoming were a natural person. Payment of proceeds upon
15 foreclosure shall be made in accordance with W.S. 34-4-113.

16 All money received by the state from sale of the land
17 acquired by foreclosure or by redemption of land sold on
18 foreclosure, in excess of the amount owing to the
19 appropriate permanent fund account and the interest due
20 thereon, shall be credited to the loss reserve account as
21 provided by W.S. 11-34-202(e). The board may extend the
22 time of payment of any interest or installment payment due
23 on any farm loan for as long as the board deems proper, and
24 distribute the defaulted payments including interest, over

1 undue payments in such manner and under such terms as to
2 the board seems just, each loan to be judged on its own
3 merits without regard to any general rule. It is the
4 intention of this section to authorize the board to
5 consider and determine whether any mortgages executed by
6 virtue of this act shall be foreclosed or renewed, with or
7 without penalty, but no renewal shall extend beyond the due
8 date of the original loan or any extension of the term by
9 reamortization authorized by W.S. 11-34-113(d).

10
11 **34-4-104. Publication and service of notices;**
12 **generally.**

13
14 (a) Notice that ~~said~~the mortgage will be foreclosed
15 by a sale of the mortgaged premises, or some part of them,
16 shall be given by publishing the ~~same~~notice for four (4)
17 consecutive weeks, at least once in each week, in a
18 newspaper printed in the county where the premises included
19 in the mortgage and intended to be sold, or some part of
20 them, are situated, if there be one; and if no newspaper be
21 printed in such county, then notice shall be published in a
22 paper printed in the state and of general circulation in
23 ~~said~~the county. Prior to first date of publication, a copy
24 of the notice shall be served by certified mail with return

1 receipt requested upon the record owner, the person in
2 possession of mortgaged premises, if different than the
3 record owner, and all holders of recorded mortgages and
4 liens subordinate to the mortgage being foreclosed, which
5 appear of record at least thirty (30) days before the
6 scheduled foreclosure sale. The notice shall be sent to the
7 last known address for the addressee, which shall be the
8 address set forth in the mortgage or lien filed of record
9 unless another address has been recorded in the real estate
10 records or has been provided to the foreclosing mortgagee or
11 lienholder. Proof of compliance with this section shall be
12 made by affidavit.

13
14 (b) If there are sale proceeds in excess or the amount
15 necessary to pay the foreclosing mortgagee, judgment
16 creditor or other lienor in full, then within ten (10)
17 business days following the sale of real estate by
18 foreclosure, the foreclosing mortgagee or lienholder, or the
19 successful bidder at the sale if different from the
20 foreclosing mortgagee or lienholder, shall serve a copy of
21 the sale results to the record owner of the mortgaged
22 premises and all holders of recorded mortgages and liens
23 subordinate to the mortgage or lien being foreclosed. Sale
24 results shall be sent by certified mail with return receipt

1 requested to the last known address for the addressee, which
2 shall be the address set forth in the mortgage or lien filed
3 of record unless another address has been recorded in the
4 real estate records or has been provided to the foreclosing
5 mortgagee or lienholder. The sale results shall include the
6 amount due the foreclosing mortgagee or lienholder as of the
7 date of sale, the name of the successful bidder and the
8 amount of the successful bid. If the certificate of sale
9 awarded to the successful bidder includes the required
10 information, the foreclosing mortgagee or lienholder may
11 comply with this section by serving a copy of the
12 certificate of sale.

13

14 **34-4-106. Time, place and manner of sale generally;**
15 **mortgagee, judgment creditor or lienor shall be present or**
16 **waive.**

17

18 The sale shall be at public vendue, between the hour of
19 nine (9:00) o'clock in the forenoon, and five (5:00)
20 o'clock in the afternoon, at the front door of the
21 courthouse, or the place of holding the district court of
22 the county within the county in which the premises to be
23 sold, or some part of them, are situated, and shall be made
24 by the person appointed for that purpose in the mortgage or

1 by the sheriff or deputy sheriff of the county, to the
2 highest bidder. The sheriff or deputy sheriff shall not
3 hold the sale unless the foreclosing mortgagee judgment
4 creditor, other foreclosing lienor or an authorized agent
5 of the foreclosing party is present at the sale or has
6 previously waived to the sheriff conducting the sale the
7 right to appear and bid at the sale. The sheriff
8 conducting the sale shall not be considered to be the
9 authorized agent of the foreclosing party unless the
10 foreclosing party has given the sheriff a specified opening
11 bid to be presented by the sheriff on behalf of the
12 foreclosing party and the sheriff actually presents the
13 opening bid. Any foreclosure sale conducted without
14 complying with the terms of this section is void, in which
15 case the mortgage, power of sale, judgment or other lien
16 which is the subject of the voided sale is not extinguished
17 or exhausted, but may be properly foreclosed in a subsequent
18 foreclosure sale in compliance with applicable law.

19

20 **34-4-108. Mortgagee may purchase; by whom sale made;**
21 **mortgagee, judgment creditor or lienor shall be present or**
22 **waive.**

23

1 The mortgagee, his assigns, or his or their legal
2 representatives may fairly and in good faith, purchase the
3 premises sold upon foreclosure of any mortgage by
4 advertisement under power of sale or any part thereof, at
5 ~~such~~the sale; and whenever the mortgage shall provide for
6 the mortgagee to sell the premises at the foreclosure sale,
7 notwithstanding ~~such~~the provision, the sale may be made by
8 the sheriff, or deputy sheriff, or by the mortgagee at the
9 option of the latter. The sale shall be postponed, if the
10 foreclosing mortgagee, judgment creditor or other
11 foreclosing lienor, or an authorized agent of the
12 foreclosing mortgagee, judgment creditor or other
13 foreclosing lienor, is not present at the sale or has not
14 previously waived in writing the right to appear and bid at
15 the sale.

16

17 **34-4-109. Postponement of sale.**

18

19 (a) ~~Such~~A foreclosure sale may be postponed from
20 time to time by inserting a notice of ~~such~~the postponement
21 as soon as practicable in the newspaper in which the
22 original advertisement was published and continuing ~~such~~
23 the publication until the time to which the sale shall be
24 postponed, at the expense of the party requesting ~~such~~the

1 postponement, provided that the number of times the original
2 advertisement is published, plus the number of times the
3 notice of postponement is published, shall be no fewer than
4 four (4) times, at least once a week, over four (4)
5 consecutive weeks, with the last publication being no sooner
6 than twenty (20) days before the date of sale.

7
8 **34-4-113. Payment of proceeds.**

9
10 (a) If After any sale of real estate made as herein
11 ~~prescribed, there shall remain in the hands of the officer~~
12 ~~or other person making the sale any surplus money after~~
13 ~~satisfying the mortgage on which such real estate was sold~~
14 ~~and payment of the costs and expenses of such foreclosure~~
15 ~~and sale, the surplus~~ proceeds from the sale shall be paid
16 over by ~~such~~ the officer or other person ~~on demand to the~~
17 ~~mortgagor, his legal representatives or assigns.~~ making the
18 sale in the following order:

19
20 (i) Payment of the reasonable expenses of
21 collection and enforcement and, to the extent provided by
22 law, reasonable attorney's fees and legal expenses incurred
23 by the foreclosing mortgagee;

24

1 (ii) The satisfaction of obligations secured by
2 the mortgage being foreclosed;

3
4 (iii) The satisfaction of obligations secured by
5 any subordinate or junior mortgage or other lien on the real
6 estate sold at the foreclosure sale as provided by
7 subsection (b) of this section in the order of their
8 priority and to the extent of their interest; and

9
10 (iv) Surplus proceeds on demand to the mortgagor,
11 his legal representatives or assigns, and if no demand is
12 made, then the foreclosing mortgagee, officer or other
13 person making sale may retain the surplus proceeds or may
14 dispose of the surplus proceeds in accordance with W.S.
15 34-24-101 et seq.

16
17 (b) If the foreclosing mortgagee receives a demand for
18 the proceeds accompanied by the materials required by W.S.
19 1-18-104(c) and signed by the holder of a subordinate or
20 junior mortgage or other lien within thirty (30) days after
21 the results of the sale are served in accordance with W.S.
22 34-4-104, proceeds remaining after distribution under
23 paragraphs (a)(i) and (ii) of this section shall be paid
24 over by the officer or other person making the sale as

1 directed by the foreclosing mortgagee to the subordinate
2 mortgagees or lienholders in accordance with their priority
3 and to the extent of their interest.

4
5 (c) Subject to the other provisions of this section, a
6 mortgagee shall account to and pay a mortgagor for any
7 surplus, and the mortgagor is liable for any deficiency.

8
9 **Section 3.** This act shall be applicable to real
10 estate mortgage foreclosures and execution sales which are
11 commenced on or after July 1, 2005.

12
13 **Section 4.** This act is effective July 1, 2005.

14
15 (END)