

1 SB533
2 117105-2
3 By Senators Ross and Smitherman
4 RFD: Judiciary
5 First Read: 11-MAR-10

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, in certain
9 circumstances, foreclosure notice consists of
10 publication once a week for three consecutive weeks
11 in a local newspaper.

12 Existing law does not require any additional
13 notice to the borrower prior to foreclosure.

14 This bill would require a foreclosure notice
15 for a residential property also to be mailed to the
16 mortgagor containing the names of the parties to
17 the mortgage, a legal description or street address
18 of the property, the default, and the mortgagee's
19 intent to proceed with foreclosure. This notice
20 requirement would apply only to residential
21 property and would not apply to commercial or
22 agricultural property.

23 This bill would extend the time of the first
24 newspaper publication of the notice of a
25 foreclosure sale until 60 days after the notice is
26 mailed to the mortgagor.

1 Under existing law, the mortgagor must
2 surrender possession of property within 10 days of
3 notice of the foreclosure sale to entitle the
4 mortgagor to redeem real estate from purchasers.

5 This bill would extend the period of time
6 that the possession of the real property must be
7 delivered for purposes of preserving redemption
8 rights to 20 days.

9 Under existing law, a tenant must surrender
10 possession within 10 days of notice of foreclosure
11 sale.

12 This bill would extend the time that the
13 possession of the property must be delivered for
14 purpose of preserving redemption to 60 days.

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT
19

20 To amend Sections 35-10-13, 6-5-251, and 8-1-172 of
21 the Code of Alabama 1975, relating to foreclosure and
22 redemption of real property, to require a foreclosure notice
23 containing specified information to be mailed to the mortgagor
24 for a mortgage on single family residential real property, and
25 to extend the time period that possession of real property
26 must be delivered to preserve redemption rights.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 35-10-13, 6-5-251, and 8-1-172
2 of the Code of Alabama 1975, are amended to read as follows:

3 "§35-10-13.

4 "(a) Notice of ~~said the~~ sale shall be given in the
5 county where ~~said the~~ land is located.

6 "(1) Notice of all sales under this article shall be
7 given by publication once a week for ~~three~~ four successive
8 weeks in a newspaper published in the county or counties in
9 which such land is located.

10 "(2) If there is land under the mortgage in more
11 than one county the publication is to be made in all counties
12 where the land is located. The notice of sale must give the
13 time, place and terms of ~~said the~~ sale, together with a
14 description of the property.

15 "(3) If no newspaper is published in the county
16 where the lands are located, the notice shall be placed in a
17 newspaper published in an adjoining county. The notice shall
18 be published in ~~said the~~ adjoining county for three successive
19 weeks.

20 "(b) With respect to the foreclosure of mortgages on
21 residential properties, no less than 60 days prior to the
22 first publication of the notice described in subsection (a), a
23 notice shall be mailed by certified mail, return receipt
24 requested, to the mortgagor. The mailed notice shall be
25 sufficient if the notice contains, in addition to any
26 requirements of the mortgage or other governing law, the
27 following:

1 "(1) The names of the mortgagee, the mortgagor, and
2 any other parties to the mortgage.

3 "(2) A legal description or street address of the
4 mortgaged property.

5 "(3) A description of the default for which the
6 mortgage may be foreclosed.

7 "(4) The mortgagee's intention to sell the mortgaged
8 property at a foreclosure sale.

9 "(5) That the foreclosure sale may occur at any time
10 after 30 days after the day the notice is mailed.

11 "(c) The notice described in subsection (b) shall be
12 mailed to the mortgagor at one of the following addresses:

13 "(1) The address contained in the mortgage.

14 "(2) The address included in other records of the
15 mortgagee.

16 "(3) The address otherwise provided in writing by
17 the mortgagor to the mortgagee consistent with the provisions
18 of the mortgage.

19 "(d) A person entitled to notice under subsection
20 (a) or (b) shall not have any right, claim, action, or defense
21 based upon the failure to mail the notice on any other defect
22 arising out of or related to the notice unless that person
23 brings an action in the circuit court of the county in which
24 the foreclosure sale is to occur or has occurred prior to one
25 year after the date of the foreclosure sale.

26 "§6-5-251.

1 "(a) The possession of the land must be delivered to
2 the purchaser or purchaser's transferees by the debtor or
3 mortgagor if in their possession or in the possession of
4 anyone holding under them by privity of title, within ~~10~~ 20
5 days after written demand for the possession has been made by,
6 or on behalf of, the purchasers or purchaser's transferees.

7 "(b) If the land is in the possession of a tenant,
8 written notice must be given to the debtor or mortgagor, ~~and~~
9 ~~the debtor or mortgagor must direct the tenant to deliver~~
10 ~~possession or, by the lender or the lender's representative.~~
11 If the tenant can show that he or she has a valid lease and
12 the payments are current on the lease, the tenant shall be
13 allowed to recognize the purchaser as his or her landlord in
14 the event the lease antedates the mortgage, judgment, or levy.
15 ~~If the debtor or mortgagor cannot be found, notice to the~~
16 ~~tenant is sufficient and he must deliver possession within 10~~
17 ~~days~~ the lease does not antedate the mortgage, judgment, or
18 levy, the tenant, upon showing proof that he or she has a
19 valid lease and that payments are current on the lease, must
20 deliver possession within 60 days after receiving notice so
21 long as the tenant remains current on his or her payments.

22 "(c) Failure of the debtor or mortgagor or anyone
23 holding possession under him or her to comply with the
24 provisions of this section forfeits the right of redemption of
25 the debtor or one holding possession under the debtor.

26 "§8-1-172.

1 "(a) When any person shall in good faith take a
2 mortgage on real estate from an insane person without notice
3 of such insanity, ~~such~~ the mortgage deed shall not be void;
4 but ~~such~~ the insane person may redeem the property so
5 mortgaged at any time prior to a foreclosure by paying to the
6 mortgagee the amount actually received by the insane person at
7 the time of executing the mortgage, or any balance due
8 thereon, with interest thereon to the date of redemption.

9 "(b) If the mortgage shall have been foreclosed,
10 ~~such~~ the insane person may redeem from the vendee at such
11 foreclosure sale, or those claiming under ~~him~~ the vendee, at
12 any time within ~~one year thereafter~~ the time period for
13 redemption provided in Section 6-5-248 from the date of the
14 foreclosure sale, by paying to ~~such~~ the vendee, or those
15 claiming under ~~him~~ the vendee, the amount which the vendee at
16 the mortgage foreclosure sale actually paid at ~~such~~ the sale
17 for the property, with interest thereon at the rate of eight
18 percent per annum to the date of redemption, together with all
19 lawful charges as provided for ~~the redemption of property~~
20 ~~under Section 6-5-235~~ by law."

21 Section 2. This act shall become effective on August
22 1, 2011, following its passage and approval by the Governor,
23 or its otherwise becoming law.