

# Arkansas (AR) Foreclosure Laws

When you develop a definite plan of action with well-time, well-informed steps, you can stop the foreclosure process and save your home. We have outlined the foreclosure process for the state of Arkansas.

**Judicial Foreclosure Available:**yes

**Non-judicial Foreclosure Available:**yes

Under Arkansas law, a residential real property mortgage held by a bank, savings, and loan or mortgage company may be foreclosed under a power of sale clause in the mortgage. Agricultural real property or construction loans operate by different rules.

## **Power of Sale Foreclosure**

### **Preliminary Notice**

### **Contents of Notice**

The Notice of default and Intention to sell must name the deed of trust parties, give recordings information, describe the default and the amount due on the loan and state the trustees or lenders intention to undertake a foreclosure sale. The notice must include in conspicuous type the following warning:

**"YOU MAY LOSE YOUR PROPERTY IF YOU DO NOT TAKE IMMEDIATE ACTION."**

### **Advertising**

The notice of default and intention to sell must be published once a week for four consecutive weeks prior to the date of the sale in a newspaper of general circulation in the county where the property is located. The final publication must be no more than ten days before the sale.

### **Mailing**

The notice must be mailed to the borrower by certified mail to the last address the lender knows of writing ten days after recording the notice. This includes any borrower of record or of whom the lender has actual notice. The notice must also be mailed to anyone who records a Request for Notice that specifically described the mortgagee including its recording information.

### **Recording**

The lender must record a copy of the Notice of Default and Intention to Sell.

### **Special Procedures - Reinstatement Rights**

An appraisal of the property must be made before foreclosure day. The justice of the peace for the county in which the property is located must appoint three disinterested householders of the county where the property is located. The appraisers must take an oath that they will well and truly view and appraise the property that may be shown to them. The appraisers must then view and appraise the property, and then all or any two of them must write an appraisal report and deliver the same to the person holding the foreclosure sale. The person conducting the sale must make it available to any interested party. For their services, the appraisers are paid \$1 which comes from the proceeds of the foreclosure.

In any foreclosure under a mortgage or deed of trust in Arkansas, the property must sell for not less than two-thirds of the appraised value. If it does not, then it may be offered for sale within 12 months. The second sale may be to the highest bidder without reference to the appraisal.

### **Sale Procedures**

The attorney for the mortgage or trustee may conduct the sale and act as the auctioneer. The foreclosure sale must take place at the time, date and place specified in the notice of Default and Intention to Sell, but the sale must be within certain limits.

### **Time**

It must be held between 9:00 a.m. and 4:00 p.m. on a week day, and not on a Saturday, Sunday or legal holiday.

### **Place**

It must be held at either the property being foreclosed on or the front door of the county courthouse where the property is located.

### **Manner**

Any person including the mortgagee (lender) may bid at the sale, except the trustee, who may bid on the behalf of the beneficiary (lender) but not for himself or herself in deed of trust sales. The high bidder must pay the price bid at the time of sale, or within ten days. The lender may bid by canceling out what it is owed on the loan, including unpaid taxes, insurance, costs or sale and maintenance, but for cash for any higher price. The mortgage or trustee will execute and deliver a trustees deed to the high bid purchaser.

## **Postponement**

The sale may be postponed by public proclamation at the time, place and date last appointed for sale, up to seven days past the original date, but if for a longer time, then the whole notice procedure must be performed a second time, including the 60-day wait.

## **Post-Sale Procedures**

The purchaser may obtain possession once the deed is recorded. The occupant of the foreclosed premises becomes a tenant at sufferance against whom the purchaser may use a writ of assistance, if necessary, to effect the eviction. The proceeds of the sale will be applied as follows: (1) to pay the expenses of the sale; (2) to the debt owed; (3) to any recorded lien holders in the order of their priority, and; (4) to the original borrower. Within ten days after the sale, the trustee or mortgagee will file an affidavit stating that a sale was made in accordance with the law, including the time, place and date of the sale, and the purchase price. A copy must be mailed to all persons entitled to receive notice of the foreclosure as described earlier.

## **Judicial Foreclosure**

In judicial foreclosure, a court decrees the amount of the indebtedness of the borrower and gives him or her a short time to pay. If the borrower fails to pay within that time, then the clerk of the court, as commissioner, advertises the property for sale. Sales of real property under court order will be on a credit of not less than three months not more than six months, or on installments to not more than four months credit overall. To secure payment, a lien will be retained on the property for its price. The purchaser must further give a bond with surety for the purchase price. The lender may bid at the sale. The lender can bid by crediting a portion (or all) of the amount the court found was owed to the lender against the sales price of the property purchased at the foreclosure sale. Of the real estate does not sell for an amount equal to what's due on the mortgage loan, then the lender may seize other property from the borrower as in an ordinary judgment.

## **Deficiency**

The lender may sue the borrower for a deficiency within 12 months of a power of sale clause foreclosure. The lender may sue for (1) the difference between the foreclosure sale price and the balance due on the loan, or (2) the balance due on the loan minus the fair market value of the property, whichever is less.

## **Redemption**

When property is sold under a chancery court order, the borrower has one year from the date of the sale to redeem the property by payment of the amount for which the property was sold plus interest. However, the mortgagor may waive the right of redemption in a mortgage or deed of trust. In the case of a deed of trust or mortgagees sale under a power of sale clause, as described earlier, the borrower is not entitled to a right of redemption.