

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 amending notice requirements; making conforming amendment  
4 for state farm loans; specifying applicability of the act;  
5 and providing for an 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 entitled  
20 to notice, but was not served with process, or was not  
21 mailed notice of the execution sale or is not notified  
22 pursuant to W.S. 34-4-104 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 if the omitted  
11 party is afforded rights of redemption upon terms as the  
12 district court for the district in which the property is  
13 located may deem just under the circumstances, which terms  
14 shall not, however, be more favorable than the person's  
15 statutory rights had the person been provided notice of the  
16 sale. In no event shall the property be redeemed from a  
17 bona fide purchaser for value who purchased the property  
18 without notice of a defect in the foreclosure.

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

1 been terminated as provided in subsection (b) of this  
2 section or by operation of law.

3

4 **Section 2.** W.S. 1-18-101, 11-34-123(a), 34-4-104,  
5 34-4-106, 34-4-108, 34-4-109 and 34-4-113 are amended to  
6 read:

7

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

11

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

14

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

18

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

23

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

18

19           (b) The notice shall state the names of the plaintiff  
20 and defendant in the action, and the time and place of  
21 sale. In all notices the lands or tenements to be sold  
22 shall be described with reasonable certainty by  
23 appropriate description. If any officer sells any lands or  
24 tenements by virtue of any execution or decree, otherwise

1 than as provided, the officer so offending shall forfeit  
2 and pay ~~fifty dollars (\$50.00)~~ five hundred dollars  
3 (\$500.00) for every offense, to be recovered with costs in  
4 any court of record in this state by the person whose lands  
5 were advertised and sold.

6

7 **11-34-123. Foreclosure proceedings; duty of attorney**  
8 **general; deed in lieu of foreclosure.**

9

10 (a) Any foreclosure of any mortgage provided for by  
11 this act shall be made in the usual manner, either by civil  
12 action or by advertisement as the board may direct. In  
13 cases of foreclosure the attorney general shall render all  
14 services needed in connection with the foreclosure  
15 proceedings, and the costs, fees and expenses may be taxed  
16 in like manner and to the same effect as if the state of  
17 Wyoming were a natural person. Payment of proceeds upon  
18 foreclosure shall be made in accordance with W.S. 34-4-113.  
19 All ~~money monies~~ received by the state from sale of the  
20 land acquired by foreclosure or by redemption of land sold  
21 on foreclosure, in excess of the amount owing to the  
22 appropriate permanent fund account and the interest due  
23 thereon, shall be credited to the loss reserve account as  
24 provided by W.S. 11-34-202(e). The board may extend the

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

13

14 **34-4-104. Publication and service of notices;**  
15 **generally.**

16

17 (a) Notice that ~~said~~ the mortgage will be foreclosed  
18 by a sale of the mortgaged premises, or some part of them,  
19 shall be given by publishing the ~~same~~ notice for four (4)  
20 consecutive weeks, at least once in each week, in a  
21 newspaper printed in the county where the premises included  
22 in the mortgage and intended to be sold, or some part of  
23 them, are situated, if there be one; and if no newspaper be  
24 printed in ~~such~~ the county, then notice shall be published

1 in a paper printed in the state and of general circulation  
2 in ~~said~~ the county. Prior to first date of publication, a  
3 copy of the notice shall be served by certified mail with  
4 return receipt requested upon the record owner, the person  
5 in possession of mortgaged premises, if different than the  
6 record owner, and all holders of recorded mortgages and  
7 liens subordinate to the mortgage being foreclosed, which  
8 appear of record at least twenty-five (25) days before the  
9 scheduled foreclosure sale. The notice shall be sent to the  
10 last known address for the addressee, which shall be the  
11 address set forth in the mortgage or lien filed of record  
12 unless another address has been recorded in the real estate  
13 records or has been provided to the foreclosing mortgagee or  
14 lienholder. Proof of compliance with this section shall be  
15 made by affidavit of an authorized representative of the  
16 foreclosing mortgagee or lienholder. A person or entity who  
17 acts in reliance upon the affidavit without knowledge that  
18 the representations contained therein are incorrect shall  
19 not be liable to any person for so acting and may assume  
20 without inquiry the existence of the facts contained in the  
21 affidavit.

22  
23 (b) If there are sale proceeds in excess of the amount  
24 necessary to pay the foreclosing mortgagee, judgment



1 creditor or other lienor in full, then within ten (10)  
2 business days following the sale of real estate by  
3 foreclosure, the foreclosing mortgagee or lienholder, or the  
4 successful bidder at the sale if different from the  
5 foreclosing mortgagee or lienholder, shall serve a copy of  
6 the sale results to the record owner of the mortgaged  
7 premises and all holders of recorded mortgages and liens  
8 subordinate to the mortgage or lien being foreclosed. Sale  
9 results shall be sent by certified mail with return receipt  
10 requested to the last known address for the addressee, which  
11 shall be the address set forth in the mortgage or lien filed  
12 of record unless another address has been recorded in the  
13 real estate records or has been provided in writing to the  
14 foreclosing mortgagee or lienholder. The sale results shall  
15 include the amount due the foreclosing mortgagee or  
16 lienholder as of the date of sale, the name of the  
17 successful bidder and the amount of the successful bid. If  
18 the certificate of sale awarded to the successful bidder  
19 includes the required information, the foreclosing  
20 mortgagee or lienholder may comply with this section by  
21 servicing a copy of the certificate of sale.

22

1           **34-4-106. Time, place and manner of sale generally;**  
2 **mortgagee, judgment creditor or lienor shall be present or**  
3 **waive.**

4  
5 The sale shall be at public vendue, between the hour of  
6 ~~nine (9:00)~~ ten (10:00) o'clock in the forenoon, and five  
7 (5:00) o'clock in the afternoon, at the front door of the  
8 courthouse, or the place of holding the district court of  
9 the county within the county in which the premises to be  
10 sold, or some part of them, are situated, and shall be made  
11 by the person appointed for that purpose in the mortgage or  
12 by the sheriff or deputy sheriff of the county, to the  
13 highest bidder. The sheriff or deputy sheriff shall not  
14 hold the sale unless the foreclosing mortgagee, judgment  
15 creditor, other foreclosing lienor or an authorized agent  
16 of the foreclosing party is present at the sale or has  
17 previously waived to the sheriff conducting the sale the  
18 right to appear and bid at the sale. The sheriff  
19 conducting the sale shall not be considered to be the  
20 authorized agent of the foreclosing party unless the  
21 foreclosing party has given the sheriff a specified opening  
22 bid to be presented by the sheriff on behalf of the  
23 foreclosing party and the sheriff actually presents the  
24 opening bid. Any foreclosure sale conducted without

1 complying with the terms of this section is void, in which  
2 case the mortgage, power of sale, judgment or other lien  
3 which is the subject of the voided sale is not extinguished  
4 or exhausted, but may be properly foreclosed in a subsequent  
5 foreclosure sale in compliance with applicable law.

6  
7 **34-4-108. Mortgagee may purchase; by whom sale made;**  
8 **mortgagee, judgment creditor or lienor shall be present or**  
9 **waive.**

10  
11 The mortgagee, his assigns, or his or their legal  
12 representatives may fairly and in good faith, purchase the  
13 premises sold upon foreclosure of any mortgage by  
14 advertisement under power of sale or any part thereof, at  
15 ~~such~~the sale; and whenever the mortgage shall provide for  
16 the mortgagee to sell the premises at the foreclosure sale,  
17 notwithstanding ~~such~~the provision, the sale may be made by  
18 the sheriff, or deputy sheriff, or by the mortgagee at the  
19 option of the latter. The sale shall be postponed, if the  
20 foreclosing mortgagee, judgment creditor or other  
21 foreclosing lienor, or an authorized agent of the  
22 foreclosing mortgagee, judgment creditor or other  
23 foreclosing lienor, is not present at the sale or has not

1 previously waived in writing the right to appear and bid at  
2 the sale.

3  
4 **34-4-109. Postponement of sale.**

5  
6 (a) ~~Such~~ A foreclosure sale may be postponed from  
7 time to time by inserting a notice of ~~such~~ the postponement  
8 as soon as practicable in the newspaper in which the  
9 original advertisement was published and continuing ~~such~~  
10 the publication until the time to which the sale shall be  
11 postponed, at the expense of the party requesting ~~such~~ the  
12 postponement, provided that the original advertisement is  
13 published at least once a week, over four (4) consecutive  
14 weeks, and the notice of postponement is published at least  
15 once a week, over two (2) consecutive weeks.

16  
17 **34-4-113. Payment of proceeds.**

18  
19 (a) ~~If~~ After any sale of real estate made as herein  
20 prescribed, ~~there shall remain in the hands of the officer~~  
21 ~~or other person making the sale any surplus money after~~  
22 ~~satisfying the mortgage on which such real estate was sold~~  
23 ~~and payment of the costs and expenses of such foreclosure~~  
24 ~~and sale, the surplus~~ proceeds from the sale shall be paid

1 over by ~~such~~the officer or other person ~~on demand to the~~  
2 ~~mortgagor, his legal representatives or assigns.~~ making the  
3 sale in the following order:

4  
5 (i) Payment of the reasonable expenses of  
6 collection and enforcement and, to the extent provided by  
7 law, reasonable attorney's fees and legal expenses incurred  
8 by the foreclosing mortgagee;

9  
10 (ii) The satisfaction of obligations secured by  
11 the mortgage being foreclosed;

12  
13 (iii) The satisfaction of obligations secured by  
14 any subordinate or junior mortgage or other lien on the real  
15 estate sold at the foreclosure sale as provided by  
16 subsection (b) of this section in the order of their  
17 priority and to the extent of their interest; and

18  
19 (iv) Surplus proceeds on demand to the mortgagor,  
20 his legal representatives or assigns, and if no demand is  
21 made, then the foreclosing mortgagee, officer or other  
22 person making sale may retain the surplus proceeds for  
23 disposition to the mortgagor or may dispose of the surplus  
24 proceeds in accordance with W.S. 34-24-101 et seq.

1

2       (b) If the foreclosing mortgagee receives a demand for  
3 the proceeds accompanied by the materials required by W.S.  
4 1-18-104(c) and signed by the holder of a subordinate or  
5 junior mortgage or other lien within thirty (30) days after  
6 the results of the sale are served in accordance with W.S.  
7 34-4-104, proceeds remaining after distribution under  
8 paragraphs (a)(i) and (ii) of this section shall be paid  
9 over by the officer or other person making the sale as  
10 agreed upon by all parties in interest, or by court order,  
11 to the subordinate mortgagees or lienholders in accordance  
12 with their priority and to the extent of their interest.

13

14       (c) Subject to the other provisions of this section, a  
15 mortgagee shall account to and pay a mortgagor for any  
16 surplus, and the mortgagor is liable for any deficiency.

17

18       **Section 3.** This act shall be applicable to real  
19 estate mortgage foreclosures and execution sales which are  
20 commenced on or after July 1, 2005.

21

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

23

24

(END)