

ENROLLED ACT NO. 125, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

AN ACT relating to real property; providing for the distribution of monies upon mortgage foreclosure sales; amending notice requirements; making conforming amendment for state farm loans; specifying applicability of the act; and providing for an effective date.

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

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

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

After any sale of real estate as provided in this chapter, proceeds from the sale shall be paid over by the officer or other person making the sale in accordance with W.S. 34-4-113.

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

(a) For purposes of this section:

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

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

(B) Is not included as a party defendant in a judicial foreclosure action or, if included, is entitled to notice, but was not served with process, or was not

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mailed notice of the execution sale or is not notified pursuant to W.S. 34-4-104 of a mortgage foreclosure sale.

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

(b) The interest of an omitted party in the property which is the subject of a mortgage foreclosure, execution or sheriff's or trustee's sale may be terminated in a civil action commenced by any interested person if the omitted party is afforded rights of redemption upon terms as the district court for the district in which the property is located may deem just under the circumstances, which terms shall not, however, be more favorable than the person's statutory rights had the person been provided notice of the sale.

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

**Section 2.** W.S. 1-18-101, 11-34-123(a), 34-4-104, 34-4-105(a)(intro), (iv), (v) and by creating a new paragraph (vi), 34-4-106, 34-4-108, 34-4-109 and 34-4-113 are amended to read:

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

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

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

(ii) The time and place of holding the sale was previously advertised for four (4) consecutive weeks in ~~the county newspaper~~ a legal newspaper of general circulation in the county where the lands and tenements are situate: ~~and~~

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

(b) The notice shall state the names of the plaintiff and defendant in the action, and the time and place of sale. In all notices the lands or tenements to be sold shall be described with reasonable certainty by

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appropriate description. The notice shall state "The property being foreclosed upon may be subject to other liens and encumbrances that will not be extinguished at the sale and any prospective purchaser should research the status of title before submitting a bid." If any officer sells any lands or tenements by virtue of any execution or decree, otherwise than as provided, the officer so offending shall forfeit and pay ~~fifty dollars (\$50.00)~~ five hundred dollars (\$500.00) for every offense, to be recovered with costs in any court of record in this state by the person whose lands were advertised and sold.

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

(a) Any foreclosure of any mortgage provided for by this act shall be made in the usual manner, either by civil action or by advertisement as the board may direct. In cases of foreclosure the attorney general shall render all services needed in connection with the foreclosure proceedings, and the costs, fees and expenses may be taxed in like manner and to the same effect as if the state of Wyoming were a natural person. Payment of proceeds upon foreclosure shall be made in accordance with W.S. 34-4-113. All ~~money monies~~ received by the state from sale of the land acquired by foreclosure or by redemption of land sold on foreclosure, in excess of the amount owing to the appropriate permanent fund account and the interest due thereon, shall be credited to the loss reserve account as provided by W.S. 11-34-202(e). The board may extend the time of payment of any interest or installment payment due on any farm loan for as long as the board deems proper, and distribute the defaulted payments including interest, over undue payments in ~~such a~~ manner and under ~~such~~ terms ~~as to~~ the board ~~seems~~ deems just, each loan to be judged on its own merits without regard to any general rule. It is the

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intention of this section to authorize the board to consider and determine whether any mortgages executed by virtue of this act shall be foreclosed or renewed, with or without penalty, but no renewal shall extend beyond the due date of the original loan or any extension of the term by reamortization authorized by W.S. 11-34-113(d).

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

(a) Notice that ~~said the~~ mortgage will be foreclosed by a sale of the mortgaged premises, or some part of them, shall be given by publishing the ~~same notice~~ for four (4) consecutive weeks, at least once in each week, in a newspaper printed in the county where the premises included in the mortgage and intended to be sold, or some part of them, are situated, if there be one; and if no newspaper be printed in ~~such the~~ county, then notice shall be published in a paper printed in the state and of general circulation in ~~said the~~ county. Prior to first date of publication, a copy of the notice shall be served by certified mail with return receipt requested upon the record owner, the person in possession of mortgaged premises, if different than the record owner, and all holders of recorded mortgages and liens subordinate to the mortgage being foreclosed, which appear of record at least twenty-five (25) days before the scheduled foreclosure sale. The notice shall be sent to the last known address for the addressee, which shall be the address set forth in the mortgage or lien filed of record unless another address has been recorded in the real estate records or has been provided to the foreclosing mortgagee or lienholder. Proof of compliance with this section shall be made by affidavit of an authorized representative of the foreclosing mortgagee or lienholder. A person or entity who acts in reliance upon the affidavit without knowledge that the representations contained therein are incorrect shall

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not be liable to any person for so acting and may assume without inquiry the existence of the facts contained in the affidavit.

(b) If there are sale proceeds in excess of the amount necessary to pay the foreclosing mortgagee, judgment creditor or other lienor in full, then within ten (10) business days following the sale of real estate by foreclosure, the foreclosing mortgagee or lienholder shall serve a copy of the sale results to the record owner of the mortgaged premises and all holders of recorded mortgages and liens subordinate to the mortgage or lien being foreclosed. Sale results shall be sent by certified mail with return receipt requested to the last known address for the addressee, which shall be the address set forth in the mortgage or lien filed of record unless another address has been recorded in the real estate records or has been provided in writing to the foreclosing mortgagee or lienholder. The sale results shall include the amount due the foreclosing mortgagee or lienholder as of the date of sale, the name of the successful bidder and the amount of the successful bid. If the certificate of sale awarded to the successful bidder includes the required information, the foreclosing mortgagee or lienholder may comply with this section by serving a copy of the certificate of sale.

**34-4-105. Publication of notice; contents.**

(a) Every such notice shall ~~specify~~ include:

(iv) A description of the mortgaged premises, conforming substantially with that contained in the mortgage; ~~and~~

(v) The time and place of sale; ~~and~~ and

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(vi) A statement that "The property being foreclosed upon may be subject to other liens and encumbrances that will not be extinguished at the sale and any prospective purchaser should research the status of title before submitting a bid."

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

The sale shall be at public vendue, between the hour of ~~nine (9:00)~~ ten (10:00) o'clock in the forenoon, and five (5:00) o'clock in the afternoon, at the front door of the courthouse, or the place of holding the district court of the county within the county in which the premises to be sold, or some part of them, are situated, and shall be made by the person appointed for that purpose in the mortgage or by the sheriff or deputy sheriff of the county, to the highest bidder. The sheriff or deputy sheriff shall not hold the sale unless the foreclosing mortgagee, judgment creditor, other foreclosing lienor or an authorized agent of the foreclosing party is present at the sale or has previously waived to the sheriff conducting the sale the right to appear and bid at the sale. The sheriff conducting the sale shall not be considered to be the authorized agent of the foreclosing party unless the foreclosing party has given the sheriff a specified opening bid to be presented by the sheriff on behalf of the foreclosing party and the sheriff actually presents the opening bid. Any foreclosure sale conducted without complying with the terms of this section is void, in which case the mortgage, power of sale, judgment or other lien which is the subject of the voided sale is not extinguished or exhausted, but may be properly foreclosed in a subsequent foreclosure sale in compliance with applicable law.

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

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

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

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

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

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

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

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

(iii) The satisfaction of obligations secured by any subordinate or junior mortgage or other lien on the real estate sold at the foreclosure sale; and

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

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

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over by the officer or other person making the sale as agreed upon by all parties in interest, or by court order, to the subordinate mortgagees or lienholders in accordance with their priority and to the extent of their interest.

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

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

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

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the House.

\_\_\_\_\_  
Chief Clerk