

1 HB46
2 185647-1
3 By Representative Rich
4 RFD: Judiciary
5 First Read: 09-JAN-18
6 PFD: 12/13/2017

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8 SYNOPSIS: Under existing law, a person with the right
9 to redeem residential property has 180 days to
10 exercise that right when the property is sold
11 pursuant to any execution, judgment, or foreclosure
12 sale. Notice of a mortgagor's right to redeem
13 residential property in foreclosure must be mailed
14 by the mortgagee at least 30 days prior to the
15 foreclosure date by certified mail with proof of
16 mailing. The 180-day right of redemption period
17 does not begin to run until notice is given in
18 accordance with state law.

19 This bill would provide that a right of
20 redemption cannot be exercised later than one year
21 after the date of foreclosure.

22 This bill would also provide that possession
23 or production of the proof of mailing of the notice
24 would constitute an affirmative defense to any
25 action related to the notice requirement.

26 Existing law also requires all actions
27 related to the notice requirement be brought within

1 two years after the date of foreclosure, or the
2 action is barred.

3 This bill would limit the time frame in
4 which actions related to the notice requirement can
5 be brought to one year after the date of
6 foreclosure.

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8 A BILL
9 TO BE ENTITLED
10 AN ACT

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12 To amend Section 6-5-248, Code of Alabama 1975,
13 relating to the right of redemption on residential property;
14 to further provide for the right of redemption period after a
15 foreclosure; to provide that the proof of mailing of the
16 notice would constitute an affirmative defense to notice
17 requirement actions; and to limit the time frame in which
18 notice requirement actions can be brought.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Section 6-5-248 of the Code of Alabama
21 1975, is amended to read as follows:

22 "§6-5-248.

23 "(a) Where real estate, or any interest therein, is
24 sold the same may be redeemed by:

25 "(1) Any debtor, including any surety or guarantor.

26 "(2) Any mortgagor, even if the mortgagor is not
27 personally liable for payment of a debt.

1 "(3) Any junior mortgagee, or its transferee.

2 "(4) Judgment creditor, or its transferee.

3 "(5) Any transferee of the interests of the debtor
4 or mortgagor, either before or after the sale. A transfer of
5 any kind made by the debtor or mortgagor will accomplish a
6 transfer of the interests of that party.

7 "(6) The respective spouses of all debtors,
8 mortgagors, or transferees of any interest of the debtor or
9 mortgagor, who are spouses on the day of the execution,
10 judgment, or foreclosure sale.

11 "(7) Children, heirs, or devisees of any debtor or
12 mortgagor.

13 "(b) All persons named or enumerated in subdivisions
14 (a) (1) through (a) (7) may exercise the right of redemption
15 granted by this article within 180 days from the date of the
16 sale for residential property on which a homestead exemption
17 was claimed in the tax year during which the sale occurred, or
18 within one year from the date of the sale for all other
19 property.

20 "(c) When any judgment creditor or junior mortgagee
21 or any transferee of a judgment creditor or a junior mortgagee
22 redeems under this article, all recorded judgments, recorded
23 mortgages and recorded liens having a higher recorded priority
24 in existence at the time of the sale are revived against the
25 real estate redeemed and against the redeeming party and such
26 shall become lawful charges pursuant to Section 6-5-253(a) (4)
27 to be paid off at redemption.

1 "Once any lienholder, recorded judgment creditor, or
2 junior mortgagee is paid the amount of the person's debt and
3 any accrued interest and other contractual charges, the person
4 has no further right to redeem.

5 "Any lienholder, recorded judgment creditor, or
6 junior mortgagee with a lower recorded priority may redeem
7 from those having a higher recorded priority who have
8 redeemed.

9 "(d) When any debtor, mortgagor, their transferees,
10 their respective spouses, children, heirs, or devisees redeem,
11 all recorded judgments, recorded mortgages, and recorded liens
12 in existence at the time of the sale, are revived against the
13 real estate redeemed and against the redeeming party and
14 further redemption by some party other than the mortgagor or
15 debtor under this article is precluded.

16 "(e) When any debtor or mortgagor conveys his or her
17 interest in property subject to a mortgage prior to sale
18 wherein they are released from liability for the debt, his or
19 her right of redemption under this article is terminated. In
20 the same manner, the right of redemption granted under this
21 article to the spouses, children, heirs, or devisees of
22 debtors or mortgagors terminates when the debtors or
23 mortgagors have conveyed their interests in the property and
24 are released from liability for the debt.

25 "However, where debtors or mortgagors have conveyed
26 their interests in the property but remain liable on the debt
27 and are debtors at the date of the foreclosure sale, the

1 debtors and mortgagors retain their right of redemption under
2 this article and in the same manner, their spouses, children,
3 heirs, or devisees continue to be entitled to the right of
4 redemption under this article.

5 "(f) A redemption made by any person under this
6 article, other than the debtors or mortgagors, and their
7 respective spouses, children, heirs, or devisees, shall
8 preclude any further redemption by the person.

9 "(g) Subject to subsection (e), a mortgagor and
10 debtor have priority over any other redeeming party and a
11 mortgagor has priority over a debtor.

12 "(h) The mortgagee who forecloses residential
13 property on which a homestead exemption was claimed in the tax
14 year during which the sale occurred shall give notice to the
15 mortgagor who signed the mortgage in substance as follows:

16 "Alabama law gives some persons who have an interest in
17 property the right to redeem the property under certain
18 circumstances. Programs may also exist that help persons avoid
19 or delay the foreclosure process. An attorney should be
20 consulted to help you understand these rights and programs as
21 a part of the foreclosure process." This notice shall be
22 mailed to the mortgagor at the address of the property subject
23 to foreclosure at least 30 days prior to the foreclosure date
24 by certified mail with proof of mailing. This notice also
25 shall be included in the notice required pursuant to Section
26 35-10-13. For foreclosed residential property on which a
27 homestead exemption was claimed in the tax year during which

1 the sale occurred, the period of time during which a right of
2 redemption may be exercised shall not begin until notice is
3 given in accordance with this subsection, provided that under
4 no circumstances may a right of redemption be exercised later
5 than one year after the date of foreclosure. A defective
6 notice, or the failure to give notice, will not affect the
7 validity of the foreclosure, including the transfer of title
8 to the property. Possession or production of the proof of
9 mailing of this notice shall constitute an affirmative defense
10 to any action related to the notice requirement. All actions
11 related to the notice requirement must be brought within ~~two~~
12 ~~years~~ one year after the date of foreclosure, or the action
13 shall be barred."

14 Section 2. This act shall become effective
15 immediately following its passage and approval by the
16 Governor, or its otherwise becoming law.