

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 2519

By: Kannady

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5  
6 AS INTRODUCED

7 An Act relating to mortgages; declaring legislative  
8 intent; defining terms; disallowing certain actions  
9 by lenders; requiring lenders make certain  
10 deferments; allowing lenders to make certain  
11 adjustments and accountings; stating requirements of  
12 certain notification; disallowing certain actions by  
13 lenders; requiring tolling of certain time frame  
14 during emergency period; allowing certain actions to  
15 resume after certain expiration; disallowing certain  
16 court actions; requiring dismissal of certain  
17 actions; disallowing certain sales; voiding certain  
18 sales; providing for certain court actions; allowing  
19 recovery of certain costs and fees; requiring certain  
20 timely notice; providing certain exceptions;  
21 providing for noncodification; providing for  
22 codification; and providing an effective date.

23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

24 SECTION 1. NEW LAW A new section of law not to be  
codified in the Oklahoma Statutes reads as follows:

The Oklahoma Legislature finds and declares that:

1. The provisions of this act might affect the terms and  
conditions of certain contracts into which residents of this state  
have entered;

1           2. The effects of the provisions of this act are  
2 inconsequential because the provisions have a limited scope and  
3 duration and are necessary to protect the public health, safety and  
4 welfare. For these reasons the provisions do not undermine a  
5 contractual bargain, interfere with a party's reasonable  
6 expectations or prevent said party from safeguarding or reinstating  
7 the party's rights; and

8           3. Even if a provision of this act has the effect of  
9 undermining a contractual bargain, interfering with a party's  
10 reasonable expectations or preventing a party from safeguarding or  
11 reinstating the party's rights, the provision is appropriate and  
12 reasonable as a means by which to implement the significant and  
13 legitimate public purpose of responding to the declaration of a  
14 state of emergency issued by the Governor on March 15, 2020.

15           SECTION 2.           NEW LAW           A new section of law to be codified  
16 in the Oklahoma Statutes as Section 303 of Title 46, unless there is  
17 created a duplication in numbering, reads as follows:

18           A. As used in this section:

19           1. "Borrower" means a mortgagor of real property, a grantor  
20 that conveys an interest in real property by a trust deed as  
21 security for the performance of an obligation, a purchaser in a land  
22 sale contract, a person that enters into a retail installment  
23 contract with, or gives a security interest to, a lender for subject  
24 property and a successor in interest to the mortgagor, grantor,

1 purchaser or person. For the purposes of this paragraph, "successor  
2 in interest" means a person to whom a borrower has transferred an  
3 interest in subject property under any of the following  
4 circumstances:

5 a. the transfer occurs by devise, descent or operation of  
6 law at the borrower's death,

7 b. a relative of the borrower receives the transfer as a  
8 result of the borrower's death,

9 c. the spouse or children of the borrower become owners of  
10 the subject property,

11 d. the transfer results from a decree of dissolution of  
12 marriage, a legal separation agreement or an incidental  
13 separation agreement under which the spouse of the  
14 borrower becomes an owner of the subject property, or

15 e. the transfer does not relate to rights to occupy the  
16 subject property, but the subject property becomes  
17 trust property in an inter vivos trust in which the  
18 borrower remains a beneficiary;

19 2. "Emergency period" means a period that began on March 15,  
20 2020, and ends when Governor's executive orders cease to extend the  
21 emergency;

22 3. "Financing agreement" means:

23 a. a contract under which a borrower must make payments to  
24 a lender to satisfy an obligation that is secured by a

1 mortgage, a trust deed, a land sale contract or a lien  
2 or other security interest in subject property, and  
3 b. a retail installment contract, which is a contract for  
4 the sale of goods under which the buyer makes payments  
5 periodically and the seller retains title to or a  
6 security interest in the goods, for which the subject  
7 matter is personal property that is used as a  
8 residence;

9 4. "Foreclosure avoidance measure" means an agreement between a  
10 beneficiary and a grantor that uses one or more of the following  
11 methods to modify an obligation that is secured by a residential  
12 trust deed:

- 13 a. the beneficiary defers or forbears from collecting one  
14 or more payments due on the obligation,
- 15 b. the beneficiary modifies, temporarily, or permanently,  
16 the payment terms or other terms of the obligation,
- 17 c. the beneficiary accepts a deed in lieu of foreclosure  
18 from the grantor,
- 19 d. the grantor conducts a short sale, or
- 20 e. the beneficiary provides the grantor with other  
21 assistance that enables the grantor to avoid a  
22 foreclosure;

23 5. "Forfeiture remedy" means the nonjudicial remedy whereby  
24 the seller cancels the contract for default, declares the

1 purchaser's rights under the contract to be forfeited, extinguishes  
2 the debt and retains sums previously paid thereunder by the buyer;

3 6. "Lender" means:

- 4 a. a beneficiary designated in a trust deed as the person  
5 for whose benefit a trust deed is given, or the  
6 person's successor in interest, and who is not the  
7 trustee unless the beneficiary is qualified to be a  
8 trustee under the laws of this state,
- 9 b. a trustee, other than the beneficiary, to whom a trust  
10 deed conveys an interest in real property, or the  
11 person's successor in interest, or an employee of the  
12 beneficiary, if the employee is qualified to be a  
13 trustee under the laws of this state,
- 14 c. a mortgagee whose name and address appear as  
15 mortgagee, beneficiary or assignee in a mortgage of  
16 record or a trust deed of record that is recorded with  
17 the county clerk of the county within which the  
18 property or improvement is located and that has a  
19 valid subsisting mortgage of record or trust deed of  
20 record that secures a loan upon land or upon an  
21 improvement,
- 22 d. a seller in a land sale contract,
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- 1 e. a licensee that has applied for and obtained or  
2 renewed a license to engage in business as a  
3 residential mortgage loan servicer in this stat, or  
4 f. a retail seller engaged in the business of selling  
5 goods or services to retail buyers in a retail  
6 installment contract for subject property or an agent,  
7 affiliate or employee of a beneficiary, trustee,  
8 mortgagee, seller, retail seller or licensee;

9 7. "Subject property" means:

- 10 a. real property located in this state, and  
11 b. personal property that is used as a residence in this  
12 state; and

13 8. "Trust deed" means a deed executed in conformity with the  
14 laws of this state that conveys an interest in real property to a  
15 trustee in trust to secure the performance of an obligation the  
16 grantor or other person named in the deed owes to a beneficiary.

17 B. 1. During the emergency period, a lender may not treat as  
18 a default a borrower's failure to make a periodic installment  
19 payment or to pay any other amount that is due to the lender on or  
20 in connection with an obligation that is subject to a financing  
21 agreement if at any time during the emergency period the borrower  
22 notifies the lender that the borrower will not be able to make the  
23 periodic installment payment. In lieu of treating the failure to  
24 pay as a default, and only if the lender and borrower do not

1 otherwise agree to modify, defer or otherwise mitigate a loan,  
2 including by agreeing to a foreclosure avoidance measure in  
3 accordance with the laws of this state, the lender shall:

- 4 a. defer from collecting the periodic installment payment  
5 during the emergency period, and
- 6 b. permit the borrower to pay an amount the borrower owes  
7 to the lender as a result of a deferral under this  
8 subsection at the scheduled or anticipated date on  
9 which full performance of the obligation is due.

10 2. After an escrow analysis and in accordance with the Real  
11 Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), a lender  
12 may adjust the amount of any escrow impound payment the borrower has  
13 an obligation to make under the financing agreement and may take  
14 into account any shortage or deficiency that results from deferring  
15 payments under this subsection.

16 3. A borrower does not need to provide a notification to a  
17 lender under paragraph 1 of this subsection more than once. If the  
18 subject property is a residence with four or fewer dwelling units,  
19 the notification must attest that the borrower's failure to pay is a  
20 result of a loss of income related to the COVID-19 pandemic. If the  
21 subject property is commercial property or residential property with  
22 more than four dwelling units, the notification must include  
23 financial statements or other evidence that demonstrates a loss of  
24 income related to the COVID-19 pandemic and must disclose any funds

1 the borrower received from the United States Small Business  
2 Administration under the Paycheck Protection Program, as implemented  
3 under the Paycheck Protection Program Flexibility Act of 2020 (P.L.  
4 116-142) or other state or federal relief programs.

5 4. A lender may not, with respect to a financing agreement  
6 that is subject to paragraph 1 or 2 of this subsection:

7 a. impose or collect charges, fees, penalties, attorney  
8 fees or other amounts that, but for the provisions of  
9 this section, the lender might have imposed or  
10 collected from a borrower for failing, during the  
11 emergency period, to make a periodic installment  
12 payment or pay another amount due on or in connection  
13 with the borrower's obligation,

14 b. impose a default rate of interest that, but for the  
15 provisions of this section, the lender might have  
16 imposed or collected from a borrower for failing,  
17 during the emergency period, to make a periodic  
18 installment payment or pay another amount due on or in  
19 connection with the borrower's obligation,

20 c. treat in any manner the borrower's failure during the  
21 emergency period to make a periodic installment  
22 payment or pay another amount due on or in connection  
23 with the obligation as an ineligibility for a  
24 foreclosure avoidance measure,



- 1           d.    require or charge for an inspection, appraisal or a  
2               broker opinion of value, not otherwise permitted in  
3               the absence of a default,  
4           e.    initiate cash management not already in existence  
5               before the effective date of this act,  
6           f.    implement lockbox procedures not already in existence  
7               before the effective date of this act,  
8           g.    take control of the operating revenue from real  
9               property secured by the financing document unless the  
10              control was established before the effective date of  
11              this act, or  
12           h.    declare a default based on the failure of a borrower  
13               to meet financial covenants due to inadequate  
14               operating revenue resulting from the COVID-19  
15               pandemic.

16           C.    Except as provided in subsection I of this section, a  
17 lender may not at any time during the emergency period:

- 18           1.    Foreclose a trust deed by advertisement and sale;  
19           2.    Bring an action or suit to foreclose a mortgage or trust  
20 deed or to enforce an obligation under a retail installment contract  
21 for subject property;  
22           3.    Enforce a forfeiture remedy; or  
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1           4. Bring an action or suit to foreclose a lien or other  
2 security interest on, or petition for an order of foreclosure by  
3 advertisement and sale of, subject property.

4           D. Except as provided in subsection I of this section, if a  
5 lender initiated a foreclosure with respect to subject property  
6 before the effective date of this act, the period of time that must  
7 elapse between the time a lender initiated the foreclosure and the  
8 time at which a trustee's sale, forfeiture remedy or other  
9 foreclosure may occur is tolled during the emergency period. After  
10 the emergency period expires, a trustee's sale, forfeiture remedy or  
11 other foreclosure proceeding may continue as if uninterrupted if the  
12 lender complies with the provisions of such a sale under the laws of  
13 this state.

14           E. Except as provided in subsection I of this section, during  
15 the emergency period a court may not enter a judgment of foreclosure  
16 and sale or issue a writ of execution with respect to subject  
17 property. A court shall dismiss without prejudice any action or  
18 suit commenced during the emergency period to foreclose a lien upon  
19 subject property.

20           F. 1. Except as provided in subsection I of this section, a  
21 trustee's sale may not occur during the emergency period. Any  
22 purported trustee's sale during the emergency period is void and  
23 does not transfer or foreclose any rights to subject property.

1           2. Except as provided in subsection I of this section, an  
2 execution sale of subject property may not occur during the  
3 emergency period. Any purported execution sale of subject property  
4 during the emergency period is void and does not transfer or  
5 foreclose any rights to the subject property.

6           G. A borrower that suffers an ascertainable loss of money or  
7 property because a lender took an action prohibited under subsection  
8 B of this section may bring an action in the appropriate county  
9 court of this state to recover the borrower's actual damages. A  
10 borrower who prevails in the action may also recover the borrower's  
11 court costs and attorney fees.

12           H. Within sixty (60) days following the effective date of this  
13 act, each lender authorized to do business in this state must  
14 provide written notice by mail to all of the lender's borrowers of a  
15 borrower's rights for accommodation under this section.

16           I. This section does not:

- 17           1. Apply to judgments of foreclosure and sale, writs of  
18 execution or notices of a trustee's sale that:
- 19           a. were issued or given before the emergency period  
20           began,
  - 21           b. occur in connection with a tax foreclosure proceeding  
22           under the laws of this state, or
  - 23           c. occur after a person has recorded a notice of intent  
24           to abandon real property or a judicial order that

1                   authorizes an abandonment of real property under the  
2                   laws of this state; or

3           2.   Relieve a borrower of the duty to repay the full amount of  
4 any obligation that is subject to a waiver, deferral, modification  
5 or forbearance under the provisions of this section.

6           SECTION 3.   This act shall become effective November 1, 2021.

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8           58-1-5017           JBH           12/08/20  
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