

1 SENATE BILL 467

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Clemente Sanchez

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10 AN ACT

11 RELATING TO REAL PROPERTY; LIMITING RIGHTS OF REDEMPTION FOR
12 ASSIGNEES OF A DEBTOR.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 39-5-18 NMSA 1978 (being Laws 1931,
16 Chapter 149, Section 2, as amended) is amended to read:

17 "39-5-18. REDEMPTION OF REAL PROPERTY SOLD UNDER JUDGMENT
18 OR DECREE OF FORECLOSURE--NOTICE AND HEARING--REDEMPTION
19 AMOUNT--PRIORITY OF REDEMPTION RIGHTS.--

20 A. After sale of real estate pursuant to the order,
21 judgment or decree of foreclosure in the district court, the
22 real estate may be redeemed by the former defendant owner of
23 the real estate or by any junior mortgagee or other junior
24 lienholder whose rights were judicially determined in the
25 foreclosure proceeding:

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1 (1) by paying to the purchaser, at any time
2 within nine months from the date of sale, the amount paid at
3 the sale, with interest from the date of sale at the rate of
4 ten percent a year, together with all taxes, interest and
5 penalties thereon, and all payments made to satisfy in whole or
6 in part any prior lien or mortgage not foreclosed, paid by the
7 purchaser after the date of sale, with interest on the taxes,
8 interest, penalties and payments made on liens or mortgages at
9 the rate of ten percent a year from the date of payment; or

10 (2) by filing a petition for redemption in the
11 pending foreclosure case in the district court in which the
12 order, judgment or decree of foreclosure was entered and by
13 making a deposit of the amount set forth in Paragraph (1) of
14 this subsection in cash in the office of the clerk of that
15 district court, at any time within nine months from the date of
16 sale. Copies of the petition for redemption shall be served
17 upon the purchaser of the real estate at the judicial
18 foreclosure sale and upon all parties who appeared in the
19 judicial foreclosure case; and

20 (3) the former defendant owner shall have the
21 first priority to redeem the real estate. If the former
22 defendant owner does not redeem the real estate as provided in
23 this subsection, each junior mortgagee or junior lienholder
24 shall have a right to redeem the real estate. The order of
25 priority of such redemption rights shall be the same priority

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1 as the underlying mortgages or liens, as set forth in the court
2 order, judgment or decree of foreclosure or as otherwise
3 determined by the court. All redemptions must be made within
4 the time periods set forth in Paragraphs (1) and (2) of this
5 subsection.

6 B. The purchaser of real estate at a foreclosure
7 sale, upon being served with the petition for redemption of the
8 property, shall answer the petition within thirty days after
9 service of the petition.

10 C. The hearing shall be governed by the rules of
11 civil procedure and shall be set upon the earlier of the filing
12 of a redemption by the former defendant owner or the expiration
13 of the period for filing a redemption. At the hearing, the
14 judge shall determine the amount of money necessary for the
15 redemption, which shall include the money paid at the sale and
16 all taxes, interest, penalties and payments made in
17 satisfaction of liens, mortgages and encumbrances. If more
18 than one redemption is filed, the court shall also determine
19 which redemption has priority pursuant to Subsection A of this
20 section and which party is therefore entitled to redeem the
21 property. At the conclusion of the hearing, the district court
22 may order the clerk of the court to issue the certificate of
23 redemption upon such terms and conditions as it deems just.

24 D. As used in this section, the terms "owner",
25 "junior mortgagee", "junior lienholder" and "purchaser" include

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1 their respective personal representatives, heirs and successors
2 [~~and assigns~~].

3 E. For the purpose of this section, "date of sale"
4 means the date the district court order confirming the special
5 master's report is filed in the office of the clerk of the
6 court.

7 F. The nine-month redemption period provided in
8 this section is subject to modification pursuant to the
9 provisions of Section 39-5-19 NMSA 1978.

10 G. A trustee's sale pursuant to a power of sale in
11 a deed of trust as provided in the Deed of Trust Act is not a
12 sale of real estate pursuant to a judgment or decree of a
13 court. A redemption after a trustee's sale is governed by the
14 Deed of Trust Act."

15 **SECTION 2.** Section 48-10-16 NMSA 1978 (being Laws 2006,
16 Chapter 32, Section 6, as amended) is amended to read:

17 "48-10-16. REDEMPTION.--

18 A. Except as otherwise provided in Subsection E of
19 this section, the redemption period after a trustee's sale
20 shall be nine months, or the period provided in the deed of
21 trust, whichever is the lesser period, and shall begin to run
22 from the date of the trustee's sale. In the deed of trust, the
23 parties may shorten the redemption period to not less than one
24 month.

25 B. After the sale of trust real estate pursuant to

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1 Section 48-10-13 NMSA 1978, the trust real estate may be
2 redeemed by the trustor or any junior encumbrancer:

3 (1) by paying to the purchaser at any time
4 within the redemption period, the amount paid at the sale, with
5 interest from the date of sale at the rate of ten percent a
6 year, together with all taxes, interest and penalties thereon,
7 and all payments made to satisfy in whole or in part any prior
8 lien or mortgage not foreclosed, paid by the purchaser after
9 the date of sale, with interest on the taxes, interest,
10 penalties and payments made on liens or mortgages at the rate
11 of ten percent a year from the date of payment; or

12 (2) by filing a petition for redemption in the
13 district court in the county where the trustee's sale was held
14 and by making a deposit of the amount set forth in Paragraph
15 (1) of this subsection in cash in the office of the clerk of
16 that district court at any time within the redemption period.
17 Copies of the petition for redemption shall be served upon the
18 purchaser of real estate under a trustee's sale; and

19 (3) the trustor shall have the first priority
20 to redeem the real estate sold under a trustee's sale. If the
21 trustor does not redeem the real estate as provided in this
22 section, each junior encumbrancer shall have a right to redeem
23 the real estate. The order of priority of such redemption
24 rights shall be the same priority as the underlying junior
25 encumbrances, as agreed by the parties or as otherwise

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1 determined by the court. All redemptions must be made within
2 the redemption period.

3 C. The purchaser of real estate under a trustee's
4 sale, upon being served with the petition for redemption of the
5 property, shall answer the petition within thirty days after
6 service of the petition.

7 D. The hearing shall be governed by the rules of
8 civil procedure. After the case is filed, the hearing shall be
9 set upon the earlier of the filing of a petition for redemption
10 by the trustor or the expiration of the redemption period. At
11 the hearing, the judge shall determine the amount of money
12 necessary for the redemption, which shall include the money
13 paid at the sale and all taxes, interest, penalties and
14 payments made in satisfaction of liens, mortgages and
15 encumbrances. If more than one redemption is filed, the court
16 shall also determine which redemption has priority pursuant to
17 the provisions of Subsection B of this section and which party
18 is therefore entitled to redeem the property. At the
19 conclusion of the hearing, the district court may order the
20 clerk of the court to issue the certificate of redemption upon
21 such terms and conditions as the district court deems just.

22 E. A junior encumbrancer who does not have actual
23 notice or knowledge of the trustee's sale and who has been
24 otherwise omitted from the trustee's sale proceeding shall be
25 entitled to redeem the trust real estate by petitioning the

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1 district court in the county where the trustee's sale was held
2 and making a deposit of the amount set forth in Paragraph (1)
3 of Subsection B of this section. The action shall proceed as
4 provided in Subsections C and D of this section. The purchaser
5 of the trust real estate at the trustee's sale may petition the
6 district court to terminate the right of redemption of an
7 omitted junior encumbrancer. In any action commenced pursuant
8 to the provisions of this subsection by or against an omitted
9 junior encumbrancer, the redemption period shall be the period
10 provided in Subsection A of this section, except that the
11 redemption period shall begin to run from the date the final
12 judgment is filed in the action, or from such later date as may
13 be ordered by a court having jurisdiction:

14 (1) if enforcement of a judgment affecting the
15 redemption is stayed on appeal; or

16 (2) for other good cause shown.

17 F. As used in this section, the terms "trustor",
18 "beneficiary", "junior encumbrancer" and "purchaser" include
19 their respective personal representatives, heirs and successors
20 [~~and assigns~~]."