

HOUSE BILL 641

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO REAL PROPERTY; DESIGNATING PRIORITY AND TIME PERIODS FOR REDEMPTION RIGHTS AFTER JUDICIAL FORECLOSURE.

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

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

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

A. After sale of [~~any~~] real estate pursuant to [~~any such~~] the order, judgment or decree of [~~any~~] foreclosure in the district court, the real estate may be redeemed by the former defendant owner of the real estate, [~~his heirs~~] by the owner's personal [~~representatives or assigns~~] representative or by any junior mortgagee or other junior lienholder whose rights were

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1 judicially determined in the foreclosure proceeding:

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

13 (2) by [~~petitioning~~] filing a petition for
14 redemption in the pending foreclosure case in the district
15 court in which the judgment or decree of foreclosure was
16 entered for a certificate of redemption and by making a deposit
17 of the amount set forth in Paragraph (1) of this subsection in
18 cash in the office of the clerk of the district court in which
19 the order, judgment or decree under which the sale was made was
20 entered, at any time within nine months from the date of sale.
21 [~~B.~~] Copies of the petition for redemption shall be served upon
22 the purchaser of the real estate [~~under a~~] at the judicial
23 foreclosure sale or [~~his~~] the purchaser's personal
24 [~~representatives. or assigns~~] representative and all parties
25 who appeared in the judicial foreclosure case; and

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1 (3) the former defendant owner shall have the
2 first priority to redeem the real estate. If the former
3 defendant owner does not redeem the real estate as provided in
4 this subsection, each junior mortgagee or junior lienholder
5 shall have a right to redeem the real estate. The order of
6 priority of such redemption rights shall be the same priority
7 as the underlying mortgages or liens, as set forth in the court
8 order, judgment or decree of foreclosure or as otherwise
9 determined by the court. All redemptions must be made within
10 the time periods set forth in Paragraphs (1) and (2) of this
11 subsection.

12 [~~E.~~] B. Any purchaser of real estate [~~under~~] at a
13 foreclosure sale or [~~his~~] the purchaser's personal
14 [~~representatives or assigns~~] representative, upon being served
15 with the petition for redemption of the property, shall answer
16 the petition within thirty days after service of the petition.

17 [~~D.~~] C. The hearing shall be governed by the rules
18 of civil procedure and shall be set upon the earlier of the
19 filing of a redemption by the former defendant owner or the
20 expiration of the period for filing a redemption. At the
21 hearing, the judge shall determine the amount of money
22 necessary for the redemption, which shall include the money
23 paid at the sale and all taxes, interest, penalties and
24 payments made in satisfaction of liens, mortgages and
25 encumbrances. If more than one redemption is filed, the court

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1 shall also determine which redemption has priority pursuant to
2 Subsection A of this section and which party is therefore
3 entitled to redeem the property. At the conclusion of the
4 hearing, the district court may order the clerk of the court to
5 issue the certificate of redemption upon such terms and
6 conditions as it deems just.

7 D. Redemption rights as provided in Subsection A of
8 this section shall not be assigned, transferred or otherwise
9 conveyed.

10 E. 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. Except as provided in this section as to the rights of
14 an omitted junior encumbrancer, no real estate may be redeemed
15 from a trustee's sale. A junior encumbrancer who does not have
16 actual notice or knowledge of the trustee's sale and who has
17 been otherwise omitted from the trustee's sale proceeding shall
18 be entitled to redeem the trust real estate by petitioning the
19 district court in the county where the trustee's sale was held.
20 The action shall proceed as provided in Subsections [B] A
21 through [D] C of this section. The purchaser of the trust real
22 estate at the trustee's sale or the successors and assigns of
23 the purchaser may likewise petition the district court to
24 terminate the right of redemption of an omitted junior
25 encumbrancer. In any such action, the redemption period shall

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1 be nine months or the period provided in the deed of trust,
2 whichever is the lesser period, and shall begin to run from the
3 date judgment is entered in the action.

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

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