

1 HB90
2 188558-2
3 By Representative Rich
4 RFD: Insurance
5 First Read: 09-JAN-18
6 PFD: 01/08/2018

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2 ENROLLED, An Act,

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

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Section 6-5-248 of the Code of Alabama
12 1975, is amended to read as follows:

13 "§6-5-248.

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

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

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

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

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

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

1 "(6) The respective spouses of all debtors,
2 mortgagors, or transferees of any interest of the debtor or
3 mortgagor, who are spouses on the day of the execution,
4 judgment, or foreclosure sale.

5 "(7) Children, heirs, or devisees of any debtor or
6 mortgagor.

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

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

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

1 "Any lienholder, recorded judgment creditor, or
2 junior mortgagee with a lower recorded priority may redeem
3 from those having a higher recorded priority who have
4 redeemed.

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

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

21 "However, where debtors or mortgagors have conveyed
22 their interests in the property but remain liable on the debt
23 and are debtors at the date of the foreclosure sale, the
24 debtors and mortgagors retain their right of redemption under
25 this article and in the same manner, their spouses, children,

1 heirs, or devisees continue to be entitled to the right of
2 redemption under this article.

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

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

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

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

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 18-JAN-18.

Jeff Woodard
Clerk

Senate

13-FEB-18

Passed