

OKLAHOMA STATUTES
TITLE 46. MORTGAGES

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§46-1. Absolute deed as mortgage.

Every instrument purporting to be an absolute or qualified conveyance of real estate or any interest therein, but intended to be defeasible or as security for the payment of money, shall be deemed a mortgage and must be recorded and foreclosed as such either in an action to enforce the mortgage or pursuant to a power of sale as provided for in the Oklahoma Power of Sale Mortgage Foreclosure Act.

R.L. 1910, § 1156; Laws 1986, c. 319, § 10, eff. Nov. 1, 1986.

§46-1.1. Deed of trust subject to mortgage laws.

Every deed of trust on real property, intended as security, shall be subject to all statutory provisions and laws relating to mortgages.

Laws 1980, c. 53, § 1, eff. Oct. 1, 1980.

§46-2. Conveyance by holder of deed intended as security as assignment.

Any conveyance other than as above provided, by one holding under an instrument purporting to be a conveyance, but intended as security, shall be deemed and treated as an assignment and transfer of the mortgage rights of and indebtedness due the maker thereof.

R.L. 1910, § 1159.

§46-3. Form of mortgage.

A mortgage upon real estate may be substantially in the following form, to wit:

Know all men by these Presents: That, and of County, in the of part of the first

part, have mortgaged and hereby mortgage to of County of part the second part, the following described real estate and premises, situated in County, State of Oklahoma, to-wit:, with all the improvements thereon and appurtenances thereunto belonging, and warrant the title to the same; This mortgage is given to secure the principal sum of dollars, with interest thereon at the rate of per centum per annum, payable annually from according to the terms of certain promissory note described as follows, to-wit:

Dated this day of, 19....

R.L. 1910, § 4015.

§46-4. Further agreements - Foreclosure - Waiver of appraisalment - Assignment of rents and profits as additional security.

A. Every instrument in substantial compliance with the form provided for in Section 3 of this title shall be deemed a good and valid mortgage, with all contracts and covenants essential to protect the rights of the holder thereof; but any further lawful contract embodied therein shall be binding upon the parties thereto; and when the words, "and waive the appraisalment" are written or printed therein, the premises mortgaged must be sold without appraisalment, in case of foreclosure and sale thereunder, and in such case no order for such sale shall issue for six (6) months after the date of judgment; likewise nothing in this title or in Sections 10 and 11 of Title 42 of the Oklahoma Statutes, shall be construed to prevent a mortgagor, in a mortgage transaction not involving a consumer loan as said term is defined in Section 3-104 of Title 14A of the Oklahoma Statutes, from mortgaging and assigning the rents and profits from the mortgaged real property as additional security for the debts secured by the mortgage, without regard to whether such assignment provides for the immediate collection, or collection upon a future default of the mortgagor, by the mortgagee, or its successors, assigns or agents, of the rents and profits so assigned as the same become due; provided that nothing herein shall be construed to impair the right under other law of the mortgagee to obtain the appointment of a receiver or to become a mortgagee in possession nor does this provision determine the priority of a mortgagee to rents and profits from the mortgaged property. Any mortgagee taking an assignment of rents and profits as described above shall have the obligation to account and pay to the mortgagor regarding any rents and profits actually collected pursuant to such assignment, which are not applied on the indebtedness owing to the mortgagee; however, the mortgagee shall not be deemed to have other fiduciary obligations to the mortgagor resulting from such assignment or be deemed to be in possession of the mortgaged real property, unless the mortgagee also enters into continued physical

possession of the mortgaged real property and exercises exclusive operating control of the mortgaged real property.

B. This section shall not apply to mortgages securing an extension of credit made primarily for an agricultural purpose as defined in paragraph 4 of Section 1-301 of Title 14A of the Oklahoma Statutes where the mortgagor is either a natural person or a farm or ranching business corporation as defined in Section 951 of Title 18 of the Oklahoma Statutes.

R.L. 1910, § 4016; Laws 1979, c. 41, § 1; Laws 1986, c. 319, § 11, eff. Nov. 1, 1986.

§46-4.1. Mortgages securing extension of credit made primarily for agricultural purposes - Waiver of appraisalment - Assignment of rents and profits as additional security.

The provisions of this section shall only apply to mortgages securing an extension of credit made primarily for an agricultural purpose as defined in paragraph 4 of Section 1-301 of Title 14A of the Oklahoma Statutes where the mortgagor is either a natural person or a farm or ranching business corporation as defined in Section 951 of Title 18 of the Oklahoma Statutes. Every instrument substantially the same as the above shall be deemed a good and valid mortgage, with all contracts and covenants essential to protect the rights of the holder thereof; but any further lawful contract embodied therein shall be binding upon the parties thereto; and when the words, "and waive the appraisalment" are written or printed therein, the premises mortgaged must be sold without appraisalment, in case of foreclosure and sale thereunder, and in such case no order for such sale shall issue for six (6) months after the date of judgment; likewise nothing in this title or in Sections 10 and 11 of Title 42 of the Oklahoma Statutes shall be construed to prevent a mortgagor, in a mortgage transaction not involving a consumer loan as defined in Section 3-104 of Title 14A of the Oklahoma Statutes, from mortgaging and assigning the rents and profits from the mortgaged real property as additional security for the debts secured by the mortgage, where such assignment (i) is made contemporaneously with the execution of the mortgage, either as a provision therein or by separate instrument, and (ii) covers a lease or leases then existing or thereafter executed, including renewals or extension thereof or substitutes therefor, which cover all or any part of the mortgaged real property, and (iii) is an assignment not conditioned upon a future default by the mortgagor, and (iv) provides for the immediate collection by the mortgagee, or its successors, assigns or agents, of the rents and profits so assigned as the same become due. Any mortgagee taking an assignment of rents and profits as described above shall have the obligation to account and pay to the mortgagor regarding any rents and profits actually collected pursuant to such assignment, which are not applied on the indebtedness owing to the

mortgagee; however, the mortgagee shall not be deemed to have other fiduciary obligations to the mortgagor resulting from such assignment or be deemed to be in possession of the mortgaged real property, unless the mortgagee also enters into continued physical possession of the mortgaged real property and exercises exclusive operating control of the mortgaged real property.

Added by Laws 1986, c. 319, § 12, eff. Nov. 1, 1986. Amended by Laws 1987, c. 107, § 1, eff. Nov. 1, 1987.

§46-5. Mortgage follows property passing by succession or will.

When real property, subject to a mortgage, passes by succession or will, the successor or devisee must satisfy the mortgage out of his own property, without resorting to the executor or administrator of the mortgagor, unless there is an express direction in the will of the mortgagor that the mortgage shall be otherwise paid.

R.L. 1910, § 4017.

§46-6. Formalities similar to deeds.

Mortgages of real property may be acknowledged or proved, certified, and recorded in like manner and with like effect as grants thereof.

R.L. 1910, § 4018.

§46-7. Record is notice.

The record of a mortgage duly made, operates as notice to all subsequent purchasers and encumbrancers.

R.L. 1910, § 4019.

§46-8. Grant intended as mortgage recorded as mortgage.

Every grant of real property, or of any estate therein, which appears by any other writing, to be intended as a mortgage within the meaning of this chapter, must be recorded as a mortgage; and if such grant and other writing explanatory of its true character are not recorded together at the same time and place, the grantee can derive no benefit from such record.

R.L. 1910, § 4020.

§46-9. Repealed by Laws 1961, p. 293, § 1.

§46-10. Separate instrument recorded.

Every instrument explanatory of any deed or other writing purporting to be a conveyance but intended to be defeasible or as security for the payment of money, shall be deemed a part thereof, and must be filed and recorded therewith; and unless such instruments are so filed and recorded together, they and each of them shall have no other effect than an unrecorded mortgage, and the

recording of the principal instrument shall secure no rights to the holder thereof.

R.L. 1910, § 1157.

§46-11. Defeasance must be recorded.

When a grant of real property purports to be an absolute conveyance, but is intended to be defeasible on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his heirs or devisees or persons having actual notice, unless an instrument of defeasance, duly executed and acknowledged, shall have been recorded in the office of the register of deeds of the county where the property is situated.

R.L. 1910, § 4021.

§46-12. Assignment - Unrecorded - Payment.

In cases where assignments of real estate mortgages are made after the passage of this act, if such assignments are not recorded, the mortgagor, his heirs, personal representatives, or assigns, may pay all matured interest or the principal debt secured thereby, prior to the recording of such assignment to the mortgagee, or if any assignment of such mortgage has been made that duly appears of record, then such payment may be made to the last assignee whose assignment is recorded in accordance with the provisions of this act, and such payment shall be effectual to extinguish the debt secured by such mortgage and all claims against such mortgagor, his heirs, personal representatives, and assigns, for or on account of such interest or such principal indebtedness; and no transfer of any note, bond or other evidence of indebtedness, by endorsement or otherwise, where such indebtedness is secured by mortgage on real estate within this state, shall prevent or operate to defeat the defense of payment of such interest or principal by the mortgagor, his heirs, personal representatives, or assigns, where such payment has been made to the mortgagee or to the assignee whose assignment appears last of record under the provisions of this act: Provided, however, that in all such cases the assignee who may hold such unrecorded assignment shall have a right of action against his assignor to recover the amount of any such payment of interest or principal made to such assignor as upon an account for money had and received for the use of such assignee: Provided, this section applies only to mortgages which have been on record six (6) months or more.

Laws 1931, p. 207, § 1.

§46-13. Assignments of existing mortgages - Recording within four months - Mortgages on record for six months.

All assignments of mortgages at present existing, bearing date prior to the taking effect of this act, shall within four (4) months next succeeding the taking effect of this act be recorded in the proper county of this state, in accordance with the provisions of Section 1, of this act, whether such assignments be acknowledged or not, and in case such assignments are not recorded within the time herein provided, the payment of any interest or principal on the debts secured by such mortgages to the mortgagees or the assignees whose assignments appear last of record after the expiration of the time herein provided, and before the recording of such assignments, shall be and constitute a complete defense to any action on such mortgage or note or other evidence of indebtedness secured thereby as against the mortgagor, his heirs, personal representatives, or assigns: Provided, however, that the last assignee of an unrecorded assignment shall have a right of action against the assignor to whom such interest or principal is paid; and provided further, that where the mortgagor, his heirs, personal representatives, or assigns have actual notice or knowledge of such assignment or transfer, then in such case such payment shall constitute no defense, and none of the provisions of this act shall apply. Provided, this section applies only to mortgages which have been on record six (6) months or more. Laws 1931, p. 208, § 2.

§46-14. Release by attorney.

Any agent or attorney duly authorized to collect the debt secured thereby shall have power and authority to release a mortgage.

R.L. 1910, § 4022; Laws 1977, c. 156, § 1, eff. Oct. 1, 1977.

§46-15. Holder must release - Penalty - Definitions.

A. Any mortgage or judgment lien on real estate shall be released by the holder of any such mortgage or judgment lien within thirty (30) days of the payment of the debt secured by the mortgage or judgment lien and the holder of the mortgage or judgment lien shall file the release of the mortgage or judgment lien with the county clerk where the mortgage or judgment lien is recorded. If, at the end of the thirty-day period, the holder has failed to release the mortgage or judgment lien, the mortgagor or debtor, or the agent representing the mortgagor or debtor, may at any time request in writing the holder of the mortgage or judgment lien to release the mortgage or judgment lien and the holder of the mortgage or judgment lien shall have ten (10) days from the date of the request to release such mortgage or judgment lien. If the holder of the mortgage or judgment lien fails to release the mortgage or judgment lien by the end of such ten-day period, the mortgage or judgment lien holder shall then forfeit and pay to the mortgagor or debtor a penalty of one percent (1%) of the principal debt not to

exceed One Hundred Dollars (\$100.00) per day each day the release is not recorded after the ten-day period has expired and the penalty may be recovered in a civil action in any court having jurisdiction thereof, but the request for the release shall be in writing and describe the mortgage or judgment lien and premises with reasonable certainty. Provided that, the total penalty shall not exceed one hundred percent (100%) of the total principal debt.

B. A title insurance company attorney may bring action on behalf of the mortgagor or debtor to recover the penalty described in subsection A of this section.

C. For purposes of this section:

1. "Mortgagor" shall include any subsequent purchaser of the mortgaged real estate; and

2. "Title insurance company" shall mean a corporation or other business entity authorized and licensed to transact business of insuring titles to interests in real property in this state.

R.L. 1910, § 4023. Amended by Laws 1977, c. 156, § 2, eff. Oct. 1, 1977; Laws 1978, c. 92, § 1, eff. Oct. 1, 1978; Laws 1987, c. 4, § 1, eff. Nov. 1, 1987; Laws 2015, c. 175, § 1, eff. Nov. 1, 2015; Laws 2016, c. 210, § 19, emerg. eff. April 26, 2016; Laws 2021, c. 250, § 1, eff. Nov. 1, 2021.

NOTE: Laws 2015, c. 177, § 1 repealed by Laws 2016, c. 210, § 20, emerg. eff. April 26, 2016.

§46-16. How released.

A mortgage on real property may be released by written instrument, duly signed and acknowledged and recorded in the office of the county clerk as register of deeds.

R.L. 1910, § 4024; Laws 1953, p. 178, § 1; Laws 1977, c. 156, § 3, eff. Oct. 1, 1977; Laws 1978, c. 92, § 2, eff. Oct. 1, 1978.

§46-17. Mortgages, deeds of trust, etc. made by certain corporations covering real or personal property - Filing in Office of Secretary of State - Refiling - Fees.

Every mortgage, deed of trust, and instruments supplementary thereto or amendatory thereof, or satisfaction thereof, covering any real or personal property situated in this state, made to secure the payment of bonds or notes issued or to be issued thereafter by any corporation which is an interstate gas pipeline company, or by any public service corporation, as defined in Section 34, Article IX of the Constitution of Oklahoma, or by any rural water, gas or sewer district organized pursuant to Sections 1324.1 through 1324.26 of Title 82 of the Oklahoma Statutes, or by any nonprofit rural water, gas or sewer company organized pursuant to Sections 851 through 864 of Title 18 of the Oklahoma Statutes, or by any public trust created under the laws of this state for water, sewer or gas purposes where a municipality or county is the beneficiary thereof, and every

mortgage, deed of trust, and instruments supplementary thereto or amendatory thereof, or satisfaction thereof, covering any real or personal property situated in this state made to secure any indebtedness incurred under the Rural Electrification Act of 1936, as amended (U.S. Code, Title 7, Chapter 31), shall be executed and acknowledged in the same manner as are conveyances of real estate and shall be filed in the Office of the Secretary of State, who shall endorse thereon his certificate specifying the day and hour of the instrument's receipt and filing, which shall be evidence of such facts. Any description of personal or real property in such mortgage shall be sufficient whether or not it is specific if it reasonably identifies what is described and interests in real property created by an instrument previously recorded in the office of a county clerk of this state may be incorporated therein by reference. Except as hereinafter provided filing of such instrument in the Office of the Secretary of State shall be notice to all subsequent purchasers and encumbrancers of the rights and interests of the parties thereto as to property described in the filed instrument and property acquired subsequent to the execution thereof if the instrument so provides and except as hereinafter provided no other filing of any such instrument shall be necessary, notwithstanding the provisions of any other statute. Provided that in order to impart notice as to real property, instruments issued by a rural water, gas or sewer district, a nonprofit rural water, gas or sewer company or a public trust created for water, sewer or gas purposes where a municipality or county is the beneficiary, must be filed in the office of the county clerk of the county wherein the real property is located, as well as in the Office of the Secretary of State. Any such mortgage, deed of trust, and instruments supplementary thereto or amendatory thereof, heretofore recorded or filed in the office of county clerk of any county in this state may be refiled in the Office of the Secretary of State in the manner above provided and such refiling shall thereafter as to any property not previously released from such mortgage or deed of trust be of the same effect as if the instrument had been originally filed in said Office of the Secretary of State.

The Secretary of State shall charge and collect a fee of Twenty-five Dollars (\$25.00) for each mortgage, deed of trust, or instrument amendatory or supplementary thereto, that is filed, or refiled, and for every instrument of satisfaction for said mortgage, deed of trust, or instrument amendatory or supplementary thereto, that is filed, in the Office of the Secretary of State pursuant to the provisions of this section. This fee shall include other fees payable to the Secretary of State as provided for by law for such filings.

Added by Laws 1963, c. 359, § 1. Amended by Laws 1982, c. 124, § 1, emerg. eff. April 9, 1982; Laws 1984, c. 229, § 14, operative July 1, 1984; Laws 1996, c. 69, § 17, eff. Nov. 1, 1996.

§46-18. Certificate of county treasurer.

The Secretary of State shall not receive for record or for filing any mortgage, deed of trust or instruments supplementary thereto or amendatory thereof, described and covered in Section 1 hereof, unless and until the same has thereon the certificate of a county treasurer that the same has been presented to him under the provisions of the Real Estate Mortgage Tax Law, Title 68, Sections 1171 - 1182, O.S.1961, and that any real estate mortgage tax, if any is due, has been paid or that none is due thereon, as the case may be.

Laws 1963, c. 359, § 2.

§46-19. Definitions.

As used in this act:

1. "Buyer" means a person who purchases property through financing, in whole or in part, by a loan secured by the property;
2. "Mortgagee" means a person who provides financing, in whole or in part, to a buyer for the purchase of property and the financing is secured by the property;
3. "Person" means an individual, partnership, corporation, trust or other legal entity;
4. "Property" means real property which is either improved property or unimproved property which is purchased through financing by a loan for construction; and
5. "Title protection document" means a lawyer's title opinion letter, a title certificate, a title insurance policy or other written assurance as to the state of the title to property.

Laws 1979, c. 166, § 1.

§46-20. Issuance of title protection document - Notice - Waiver.

A. If a title protection document will be issued to the mortgagee, the mortgagee shall give to the buyer at the time of loan application written notice containing the following:

1. Whether the title protection document will provide protection to the buyer; and
2. That the buyer should seek independent, competent advice as to whether the buyer should obtain any additional title protection document. In the event said additional title protection is desired, it shall be obtained by the buyer in a timely manner in order to avoid undue delay of the closing under the terms of the contract of sale.

B. The requirements of this section shall not be subject to waiver by the buyer.

Laws 1979, c. 166, § 2.

§46-21. Violation - Penalty.

Any mortgagee who fails to comply with the provisions of this act shall be subject to a penalty in the amount of One Hundred Dollars (\$100.00). The penalty imposed herein shall be recoverable by the buyer, plus all costs of any action, including a reasonable attorney fee, to recover the penalty.

Laws 1979, c. 166, § 3.

§46-31. Repealed by Laws 1980, c. 53, § 2, eff. Oct. 1, 1980.

§46-32. Repealed by Laws 1980, c. 53, § 2, eff. Oct. 1, 1980.

§46-33. Repealed by Laws 1980, c. 53, § 2, eff. Oct. 1, 1980.

§46-34. Repealed by Laws 1980, c. 53, § 2, eff. Oct. 1, 1980.

§46-35. Repealed by Laws 1980, c. 53, § 2, eff. Oct. 1, 1980.

§46-36. Repealed by Laws 1980, c. 53, § 2, eff. Oct. 1, 1980.

§46-37. Repealed by Laws 1980, c. 53, § 2, eff. Oct. 1, 1980.

§46-38. Repealed by Laws 1980, c. 53, § 2, eff. Oct. 1, 1980.

§46-39. Repealed by Laws 1980, c. 53, § 2, eff. Oct. 1, 1980.

§46-40. Short title.

Sections 1 through 9 of this act may be cited as the "Oklahoma Power of Sale Mortgage Foreclosure Act".

Added by Laws 1986, c. 319, § 1, eff. Nov. 1, 1986.

§46-41. Scope of act.

The Oklahoma Power of Sale Mortgage Foreclosure Act shall not apply to:

1. A landlord's lien unless the parties agree in writing that this act applies;

2. A vendor's or vendee's lien pursuant to Sections 26 and 30 of Title 42 of the Oklahoma Statutes unless the lien is specifically created by a writing;

3. A nonconsensual lien, such as a mechanics or materialmans lien pursuant to Sections 142 through 151 of Title 42 of the Oklahoma Statutes, a judgment lien, or a tax lien;

4. An agreement not to convey or encumber;

5. A lien created or regulated and subject to an enforcement procedure specifically applicable to it under another statute of

this state, such as the lien for the unpaid share of common expenses regulated by Section 524 of Title 60 of the Oklahoma Statutes, unless the parties agree in writing that this act applies;

6. A mortgage securing an extension of credit made primarily for an agricultural purpose as defined in paragraph 4 of Section 1-301 of Title 14A of the Oklahoma Statutes where the mortgagor is either a natural person or a farm or ranching business corporation as defined in Section 951 of Title 18 of the Oklahoma Statutes; and

7. A mortgage on the mortgagor's homestead if, after the notice of sale is given to the mortgagor pursuant to subsection B of Section 6 of this act, the mortgagor elects judicial foreclosure in compliance with the provisions of subparagraphs b and c of paragraph 2 of subsection A of Section 4 of this act.

Added by Laws 1986, c. 319, § 2, eff. Nov. 1, 1986.

§46-42. Definitions.

As used in this act:

1. "Date of sale" means the date that the mortgagee conducts the public auction of the property pursuant to Section 46 of this title;

2. "Homestead" means the property that constitutes the mortgagor's homestead according to the provisions of Section 1 of Article XII of the Oklahoma Constitution and statutes enacted pursuant thereto determined at the time the mortgagor makes any election under subsection A of Section 43 of this title;

3. "Mortgage" means an instrument creating a lien upon real estate as security for payment of a debt or other performance of an obligation;

4. "Mortgagee" includes a successor or assignee and, if appropriate in the context, an agent or officer or attorney for the mortgagee;

5. "Mortgagor" means all persons who to the knowledge of the mortgagee owe payment or other performance of the obligation secured by the mortgage, and, for the purpose of receipt of notice, includes a surety, guarantor or co-signer, but if the mortgagor and the owner of the real estate are not the same person, the term means the owner of the real estate, the obligor, or both as the context requires;

6. "Property" means the real estate subject to a mortgage; and

7. "Real estate" means any estate in, over, or under land, including minerals, structures, fixtures, and other things which by custom, usage, or law pass with a conveyance of land though not described or mentioned in the instrument of conveyance.

Added by Laws 1986, c. 319, § 3, eff. Nov. 1, 1986. Amended by Laws 1987, c. 107, § 2, eff. Nov. 1, 1987.

§46-43. Power of sale - Requirements - Sale procedure - Deficiency - Redemption - Writ of assistance - Foreclosure.

A. Notwithstanding Sections 10 and 11 of Title 42, Sections 686 and 760 of Title 12; and Sections 1 and 4 of this title, or any other inconsistent law:

1. a power to sell the mortgaged real estate may be conferred by the mortgagor upon the mortgagee in the mortgage under which the mortgaged property and the interests of persons therein may be sold in the manner provided for in Sections 43 through 47 of this title, after a breach or default in performance of the contract or contracts for which the property is granted as security, or a breach or default in the performance of the mortgage; and

2. with respect to any mortgage in which a power of sale is granted:

- a. the mortgage shall state in bold and underlined language, substantially the following:
"A power of sale has been granted in this mortgage. A power of sale may allow the mortgagee to take the mortgaged property and sell it without going to court in a foreclosure action upon default by the mortgagor under this mortgage,"
- b. in a mortgage transaction involving the mortgagor's homestead, if the mortgagor, at least ten (10) days before the property is to be sold under the power of sale, sends written notice by certified mail to the mortgagee stating that the property involved is the mortgagor's homestead and that judicial foreclosure is elected, and files of record a copy of such notice which contains the legal description of the property in the office of the county clerk of the county where the property is located, the mortgagee must pursue any foreclosure by judicial proceeding in a court of competent jurisdiction; provided, however, the mortgagee may contest the mortgagor's claim of homestead in the judicial foreclosure action or in another action such as by declaratory judgment,
- c. in a mortgage transaction that remains subject to this act involving the mortgagor's homestead, if the mortgagor at least ten (10) days before the property is to be sold under the power of sale, sends written notice by certified mail to the mortgagee stating that the property involved is the mortgagor's homestead and that the mortgagor elects against a deficiency judgment, and establishes the property as homestead if contested, no in personam action for a deficiency judgment may be maintained by the mortgagee exercising the power of sale; provided, that mortgagee may enforce any agreed lien against collateral other than the real estate sold; and other mortgagees or holders

of liens inferior to that of the mortgagee exercising the power of sale and who are foreclosed may recover the unpaid amount of their indebtedness in an in personam action for a judgment enforceable against other property of the mortgagor as prescribed by the rules of civil procedure; provided, however, the mortgagee may contest the mortgagor's claim of homestead or seek a deficiency judgment and a judicial determination of homestead by initiating an action therefor within ninety (90) days after the mortgagee's deed is recorded. The prevailing party in such action may recover attorney's fees and costs of the action, and

- d. in a mortgage transaction not involving the mortgagor's homestead, unless otherwise agreed, the mortgagor shall be liable for any deficiency between the amount obtained by the mortgagee from the sale and the amount of the indebtedness, interest, and the costs and expenses of sale including the amount of attorney's fees fixed in the mortgage by agreement, unless a part or all of the fees are waived by the parties or the amount fixed is found by a court to be unconscionable. If such fees are found to be unconscionable or no fees are fixed in the mortgage by agreement a court may allow reasonable attorney's fees. Any action for a deficiency pursuant to the provisions of this subparagraph shall be commenced within ninety (90) days after the date of the sale. If, in such action, the mortgagor shall establish that the fair market value of the property as of the date of the sale exceeded the sale price, then the deficiency otherwise obtainable under this subparagraph shall be reduced by the amount of such excess.

B. Nothing in this act shall be construed to impair the right of the mortgagor or another party to redeem as provided in Sections 18 through 20 of Title 42 of the Oklahoma Statutes, up to the completion of the sale upon payment of the amount owed including all expenses. A mortgagor and mortgagee may agree on the acquisition of the interest of the mortgagor in the real estate by the mortgagee in lieu of foreclosure.

C. The purchaser on foreclosure by power of sale may seek a writ of assistance by application to a court of competent jurisdiction with the same effect as provided in Section 686 of Title 12 of the Oklahoma Statutes.

D. A power of sale must be exercised consistent with this act and in accordance with the agreement of the parties. At the option

of the mortgagee a mortgage containing a power of sale may be foreclosed in the manner provided in Section 686 of Title 12 of the Oklahoma Statutes for the foreclosure of mortgages on real property. Added by Laws 1986, c. 319, § 4, eff. Nov. 1, 1986. Amended by Laws 1987, c. 107, § 3, eff. Nov. 1, 1987.

§46-44. Notice of intent to foreclose by power of sale.

In case of breach or default as determined by the terms of the mortgage, before the same may be used as a basis to foreclose the mortgage by power of sale, the mortgagee must give the mortgagor a written notice of intention to foreclose by power of sale by certified mail addressed to the mortgagor at the last-known address of the mortgagor. The notice shall state the name and address of the mortgagee, the nature of the breach(es) or default(s) claimed with reasonable specificity, that the mortgagor has a right for thirty-five (35) days from the date the notice is sent to cure a breach or default and thus to that extent reinstate the mortgage, the amount of money or action necessary to effect cure, that if the breach or default is not cured the mortgagee may accelerate the debt and give the notice provided for in Section 45 of this title or otherwise foreclose the mortgage, and that the notice contains important information concerning legal rights under the mortgage and Oklahoma law and that if the mortgagor has any questions an attorney should be promptly consulted. If a nonhomestead mortgagor is in default more than three (3) times in a twenty-four-month period and has been notified as provided for above, no right to an additional notice of intent to foreclose will be required prior to acceleration under Section 45 of this title. If a homestead mortgagor is in default more than four (4) times in a twenty-four-month period and has been notified as provided for above, no right to an additional notice of intent to foreclose will be required prior to acceleration under Section 45 of this title. If a mortgagee complies with a contractual provision for notice before acceleration in a Federal National Mortgage Association or Federal Home Loan Mortgage Corporation uniform instrument taken by the mortgagee which is substantially in compliance with or more stringent than the provisions of the notice of intention to foreclose by power of sale, such action by the mortgagee constitutes compliance with this section, but in any event, the requirements of this section shall run concurrently with any contractual provision for notice before acceleration in the mortgage. The notice of sale pursuant to Section 45 of this title may not be given or recorded until the provisions of this section are met.

Added by Laws 1986, c. 319, § 5, eff. Nov. 1, 1986. Amended by Laws 1987, c. 107, § 4, eff. Nov. 1, 1987.

§46-45. Notice of sale - Time and place of sale.

A. If a mortgagee elects to use a power of sale granted in the mortgage, it shall execute a notice of sale in written form directed to the mortgagor, any holder of a prior mortgage or other lien of record, and any person having an interest, claim or lien of record in the property whose interest, claim or lien the mortgagee seeks to foreclose by the exercise of its power of sale. When a notice of intention to foreclose is required by Section 44 of this title, an affidavit stating that such notice has been properly sent shall be attached to the notice of sale; provided, however, if no notice of intention to foreclose is required by Section 44 of this title, an affidavit to that effect shall be attached to the notice of sale. The notice of sale shall state the occurrence of a breach or default of the contract or mortgage, the general nature thereof such as "failure to make a payment due", "failure to pay taxes", "failure to maintain the property" or the like, the election to use the power of sale, the date, time and place when the property will be sold, and the legal description of the property as it appears in the mortgage and any street address of the property. The notice shall advise the mortgagor of the mortgagor's right to redeem the property from foreclosure by paying all principal, interest and other sums secured by the mortgage to the mortgagee prior to the execution and delivery of a deed pursuant to Section 47 of this title, and shall advise all other persons claiming an interest in the property that the property will be sold subject to their claims unless they elect to join the exercise of the power of sale or that the mortgagee claims an interest superior to the claims of such persons and that their interests may be subject to being terminated by the sale unless they take appropriate legal action. The notice shall include, in bold and underlined language, a provision advising the mortgagor that if the mortgage is on the mortgagor's homestead, it shall be sold pursuant to a power of sale without judicial foreclosure unless, at least ten (10) days before the property is to be sold under a power of sale, the mortgagor sends written notice by certified mail to the mortgagee stating that the property involved is the mortgagor's homestead and that judicial foreclosure is elected, and files of record a copy of such notice, which contains a legal description of the property, with the county clerk of the county where the property is situated. The notice shall further advise the mortgagor, in bold and underlined language, that if the property is sold pursuant to a power of sale, the mortgagor may avoid a deficiency judgment by sending a written notice by certified mail to the mortgagee, at least ten (10) days before the property is to be sold under the power of sale, that states that the property involved is the mortgagor's homestead and that the mortgagor elects against a deficiency judgment. The notice shall also contain a provision, in bold and underlined language, to the effect that the notice contains

important information involving the property of the person receiving the same and that they may want to seek legal advice.

B. The notice of sale shall be:

1. Personally served in the manner of service of process in civil cases prescribed by Section 2004 of Title 12 of the Oklahoma Statutes, other than by publication, at least thirty (30) days prior to the date of the sale. If, by due diligence, personal service cannot be made upon such person or persons or the mortgagee does not know and with due diligence cannot ascertain those matters enumerated in divisions (1) through (5) of subparagraph b of paragraph 3 of subsection C of Section 2004 of Title 12 of the Oklahoma Statutes, the mortgagee shall execute an affidavit to that effect and the publication notice required in paragraph 2 of this subsection shall be deemed sufficient; and

2. Published in a newspaper authorized by law to publish legal notices in each county in which the property to be sold is situated. The notice shall state the name of the mortgagor, any holder of a prior mortgage or other lien of record, and any person having an interest, claim or lien of record in the property whose interest, claim or lien the mortgagee seeks to foreclose by the exercise of its power of sale, and shall designate the person or persons whose unknown successors are being served. The notice shall be published at least one (1) day a week for four (4) consecutive weeks; provided, however, the first date of publication shall be not less than thirty (30) days prior to the date of sale; and

3. Recorded together with the affidavit provided for in subsection A of this section, in the office of the county clerk of each county wherein the property to be sold is situated within ten (10) days after compliance with Section 44 of this title. The recording of the notice of sale pursuant to this paragraph shall serve as notice of the pendency of the procedure to any person acquiring a subsequent interest in the property. To verify compliance with paragraphs 1 and 2 of this subsection, proof of receipt, return of service or affidavit in lieu of personal service, or copies thereof and proof of publication of the notice of sale shall be recorded in the office of the county clerk of each county wherein the property to be sold is situated any time before the recording of the mortgagee's deed executed pursuant to the sale under this act.

C. The sale may be held in any county where part of the property to be sold is situated at the time designated in the notice of sale, or a date to which the sale has been continued as provided by this act, on a day other than a Sunday or legal holiday, between the hours of nine o'clock a.m. and five o'clock p.m. at a specified place on the property, at the courthouse, at another specified place or at a place of business of the mortgagee.

D. If the date of the sale is continued by the mortgagee to a date later than the date specified in the notice pursuant to the provisions of this act, the time requirements contained in this section shall refer to the date the sale is actually held and not the date of sale specified in the notice.

Added by Laws 1986, c. 319, § 6, eff. Nov. 1, 1986. Amended by Laws 1987, c. 107, § 5, eff. Nov. 1, 1987.

§46-46. Sale of property - Postponed, continued, changed or relocated sale.

A. On the date and at the time and place designated in the notice of sale, the mortgagee exercising the power of sale shall cause the property to be sold at public auction to the highest bidder. To determine the highest bidder, any mortgagor present at the sale may suggest in writing the known lots, parcels, or divisions of the property in which the property should be sold. The mortgagee shall conditionally sell the property under each suggestion, and if the mortgagor offers no suggestion, then in such lots, parcels or divisions as may be determined by the mortgagee, and in addition thereto, shall sell the property as a whole. The mortgagee shall determine which conditional sale or sales result in the highest total price bid for all of the property. An attorney for the mortgagee may conduct the sale, and act at such sale as the auctioneer for the mortgagee. Any person, including the mortgagee or mortgagor may bid at the sale. Every bid shall be deemed an irrevocable offer, until the sale is completed and the sale shall not be deemed completed until the purchaser pays the price bid in a form satisfactory to the mortgagee. If a purchaser other than the mortgagee, when required by the mortgagee, fails to post cash or certified funds equal to ten percent (10%) of the amount bid for the property within twenty-four (24) hours of the sale, excluding Sundays and legal holidays, or otherwise fails to complete the sale, the mortgagee may proceed with the sale and may accept the next highest bid. The party that fails to make such payment shall be liable to any person who suffers loss or expenses, including attorney's fees, occasioned thereby and the mortgagee may thereafter in any sale of property reject any bid of such person. The ten percent (10%) deposit shall be placed in escrow by the mortgagee and held in escrow pending completion of the sale. In the event a purchaser wrongfully fails to complete the transaction of sale within ten (10) days of the sale or a longer reasonable time permitted by the mortgagee, any deposit shall be applied first to the expenses of the sale and the balance to the debt, and the purchaser shall be liable to any person who suffers loss or expenses, including attorneys fees, occasioned by the resale of the property.

B. The person conducting the sale, for any cause deemed in the interest of the mortgagee, the mortgagor, or both, may postpone or continue the sale or change the place of the sale to another location permitted by law, by giving notice, including the new time and place, by public declaration at the time and place last appointed for the sale and in any other manner reasonable under the circumstances which shall include publication one time at least ten (10) days prior thereto of a notice of the new date, time and place of sale, such notice to be directed to the same persons as the original notice of sale, and proof of publication then to be filed in the office of the county clerk of each county wherein the property to be sold is situated any time before the recording of the mortgagee's deed executed pursuant to the sale under this act. No other notice of the postponed, continued, changed or relocated sale is required.

Added by Laws 1986, c. 319, § 7, eff. Nov. 1, 1986. Amended by Laws 1987, c. 107, § 6, eff. Nov. 1, 1987.

§46-47. Closing of sale - Deed.

A. The sale shall be closed at a time and under reasonable conditions specified by the mortgagee at the time of the sale. Upon receipt of payment in form satisfactory to the mortgagee, the mortgagee shall execute and deliver a deed, without warranty, to the purchaser that is in substantial compliance with the form for such a deed prepared by the Administrative Director of the Courts with the assistance and approval of the Oklahoma Supreme Court and which identifies the mortgagee's and other interests foreclosed and the parties involved, indicates where the documents evidencing those interests are recorded, and recites that the deed is executed by the mortgagee exercising a power of sale after a breach or default and sale under this act. Signature and title or authority of the person signing the deed as grantor is sufficient proof of the signer's authority to sign. Further proof is not required even though the signer is also named as grantee in the deed. The mortgagee's deed shall raise a presumption of compliance with the requirements of this act regarding the exercise of the power of sale and the sale of the property, including the giving of the notice of intention to foreclose and of sale and the conduct of the sale. Such deed shall constitute conclusive evidence of the meeting of such requirements in favor of purchasers for value and without actual notice so long as the failure to meet those requirements would otherwise render the sale only voidable and, even if the sale is void, after the passage of two (2) years from the date of the recording of the deed.

B. The mortgagee's deed, pursuant to compliance with the provisions of this act, shall operate to convey to the purchaser the title, interest and claim of the mortgagee and of the mortgagor and their respective successors in interest, and of all persons claiming

an interest in the property sold which was acquired subsequent to the recording of the mortgage pursuant to which the power of sale is exercised and prior to delivery of the mortgagee's deed, or who join in the exercise of the power of sale. Such conveyance shall be absolute, without right of redemption and clear of all liens, claims, or interests to the extent provided in this section, if the record shows that all necessary parties were duly notified or served with process as provided for herein and except for any statutory right of redemption which may be held by the United States of America under authority of Section 2410 of Title 28 of the United States Code, as amended.

Added by Laws 1986, c. 319, § 8, eff. Nov. 1, 1986.

§46-48. Disposition of sale proceeds.

A. The mortgagee shall apply the proceeds of the sale as follows:

1. To the costs and expenses of exercising the power of sale and of sale, including the payment of reasonable attorney's fees actually incurred; and

2. Unless otherwise required by law, to the payment of the contract or indebtedness secured by the mortgage, the payment of all other obligations provided in or secured by the mortgage, and the obligations of any junior lienholders or encumbrancers, in order of their priority as otherwise provided for by law. After payment in full to all junior lienholders and encumbrancers, payment shall be made to the party who is the owner of the property immediately preceding the sale.

B. The mortgagee may elect to deposit all or any part of the sale proceeds with the clerk of the district court in the county in which the sale took place. Upon deposit of such monies together with a legal description of the property whose sale produced the proceeds, the mortgagee shall be discharged from all responsibility for acts performed in good faith according to the provisions of this act, and the clerk shall deposit the amount with the county treasurer subject to order of the district court in the county upon the application, by civil action, of any interested party.

Added by Laws 1986, c. 319, § 9, eff. Nov. 1, 1986.

§46-49. Termination of power of sale proceeding.

Notwithstanding anything herein to the contrary, the mortgagee may at any time prior to the conduct of any sale under this act, terminate any power of sale proceeding and pursue judicial foreclosure in accordance with the procedures provided for the foreclosure of mortgages.

Added by Laws 1987, c. 107, § 7, eff. Nov. 1, 1987.

- §46-51. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.
- §46-52. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.
- §46-53. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.
- §46-54. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.
- §46-55. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.
- §46-56. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.
- §46-57. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.
- §46-58. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.
- §46-59. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.
- §46-60. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.
- §46-61. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.
- §46-62. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.
- §46-63. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.
- §46-64. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.
- §46-65. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.
- §46-66. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.

§46-67. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.

§46-68. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.

§46-69. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.

§46-70. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.

§46-71. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.

§46-72. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.

§46-73. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.

§46-74. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.

§46-75. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.

§46-91. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.

§46-92. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.

§46-93. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.

§46-94. Repealed by Laws 1961, p. 181, § 10-102 (Uniform Commercial Code, Title 12A, § 10-102), eff. Dec. 31, 1962.

§46-201. Citation.

This act shall be known as the "Indefinite Reference to Mortgages Act".

Laws 1965, c. 122, § 1.

§46-202. Indefinite reference to mortgage in subsequent deed or mortgage - Effect.

No indefinite reference to a mortgage in any subsequent deed or mortgage shall constitute notice of any rights of the mortgagee under such mortgage, nor put any person on inquiry with respect thereto, after the expiration of one (1) year from the date of the recording of the deed or mortgage containing such indefinite reference.

Laws 1965, c. 122, § 2.

§46-203. Indefinite reference defined.

For the purpose of this act, a mortgage shall be considered as indefinitely referred to if unrecorded or if the book number and the page number of the records of the county clerk where such mortgage is recorded are not given in the deed or mortgage containing such reference.

Laws 1965, c. 122, § 3.

§46-204. Application.

This act shall apply to indefinite references to mortgages in deeds and mortgages made before the effective date of this act as well as to those made thereafter, except that this act shall not be effective as to mortgages indefinitely referred to in deeds or mortgages now of record until one (1) year from the effective date of this act.

Laws 1965, c. 122, § 4.

§46-301. Foreclosure - Limitations - Cessation of lien - Extension agreements - Notice - Record marketable title - Application of act.

A. Before November 1, 2001, no suit, action or proceeding to foreclose or otherwise enforce the remedies in any mortgage, contract for deed or deed of trust shall be had or maintained after the expiration of ten (10) years from the date the last maturing obligation secured by such mortgage, contract for deed or deed of trust becomes due as set out therein, and such mortgage, contract for deed or deed of trust shall cease to be a lien, unless the holder of such mortgage, contract for deed or deed of trust either:

1. Before October 1, 1981, has filed or caused to be filed of record a written Notice of Extension as provided in paragraph 1 of subsection D of this section; or

2. After October 1, 1981, and within the above described ten-year period, files or causes to be filed of record a written Notice of Extension as provided in paragraph 1 of subsection D of this section.

B. Beginning November 1, 2001, no suit, action or proceeding to foreclose or otherwise enforce the remedies in any mortgage, contract for deed or deed of trust shall be had or maintained after the expiration of seven (7) years from the date the last maturing obligation secured by such mortgage, contract for deed or deed of

trust becomes due as set out therein, and such mortgage, contract for deed or deed of trust shall cease to be a lien, unless the holder of such mortgage, contract for deed or deed of trust, within the seven-year period, files or causes to be filed of record a written Notice of Extension as provided in paragraph 1 of subsection D of this section.

C. No suit, action or proceeding to foreclose or otherwise enforce the remedies in any mortgage, contract for deed or deed of trust filed of record in the office of the county clerk, in which the due date of the last maturing obligation secured by such mortgage, contract for deed or deed of trust cannot be ascertained from the written terms thereof, shall be had or maintained after the expiration of thirty (30) years from the date of recording of the mortgage, contract for deed or deed of trust, and said mortgage, contract for deed or deed of trust shall cease to be a lien, unless the holder of such mortgage, contract for deed or deed of trust either:

1. Before October 1, 1981, has filed or caused to be filed of record a written Notice of Maturity Date as provided in paragraph 2 of subsection D of this section; or

2. After October 1, 1981, and within the above described thirty-year period, files or causes to be filed of record a written Notice of Maturity Date as provided in paragraph 2 of subsection D of this section.

D. 1. The Notice of Extension required under subsection A or B of this section, to be effective for the purpose of this section, shall show the date of recording, the book and page and the legal description of the property covered by the mortgage, contract for deed or deed of trust and the time for which the payment of the obligation secured thereby is extended, and shall be duly verified by oath and acknowledged by the holder of the mortgage, contract for deed or deed of trust.

2. The Notice of Maturity Date required under subsection C of this section, to be effective for the purpose of this section, shall show the date of recording, the book and page and the legal description of the property covered by the mortgage, contract for deed or deed of trust and the maturity date to which the last maturing obligation secured thereby is extended, and shall be duly verified by oath and acknowledged by the holder of the mortgage, contract for deed or deed of trust.

E. Any mortgage, contract for deed or deed of trust barred under this section shall not be a defect in determining marketable record title.

F. The notice required to be filed of record by this section must be recorded in the office of the county clerk of the county or counties where the mortgage is recorded.

G. Nothing contained in this section shall be construed to revive the lien of any mortgage, contract for deed or deed of trust which has expired by limitation before the effective date of this section.

Added by Laws 1980, c. 294, § 1, eff. Oct. 1, 1980. Amended by Laws 2001, c. 126, § 1, eff. Nov. 1, 2001.

§46-302. Abandoned or vacated property - Motion to protect and preserve - Motion and hearing procedure.

A. Upon commencement of a suit, action or proceeding to foreclose or otherwise enforce the remedies in any mortgage, contract for deed or deed of trust in a court of competent jurisdiction, if the plaintiff/mortgagee believes, knows, or has reason to know, that the subject property is abandoned or vacated and, as a result of such abandonment:

1. Physical deterioration and devaluation of the property is occurring or has occurred;

2. There exists a risk to the health, safety or welfare of the public, or any adjoining or adjacent property owners, due to potential or actual acts of vandalism, loitering, criminal conduct or the physical destruction or deterioration of the property; or

3. There exists a risk of additional legal process for violation of law, ordinance, unpaid taxes or accrual of liens, the plaintiff/mortgagee may seek a court order to protect and preserve the property pending the disposition of the suit, action or proceeding before the court.

B. A motion to protect and preserve an abandoned or vacated property subject to a suit, action or proceeding to foreclose or otherwise enforce the remedies in the mortgage, contract for deed or deed of trust shall be filed and heard in accordance with court rules and statutory civil procedures for motions.

C. The plaintiff/mortgagee, after filing a motion to protect and preserve property in the pending litigation before the court, and having received from the court a date, time and location to hear the motion, shall present a certified copy of the motion and hearing notice to the sheriff in the county in which the property is located. The sheriff, upon receiving a written request to post a motion and hearing notice on a property within his or her jurisdiction, shall within three (3) days of the receipt of such request, physically inspect the subject property and determine whether or not the property is abandoned or occupied. At the time of the physical inspection of the property, the sheriff shall either post a copy of the motion and hearing notice in a conspicuous place on the property or shall physically serve an occupant of the property as required by the provisions of this section. The sheriff shall receive from the plaintiff/mortgagee a sheriff's service fee not to exceed One Hundred Fifty Dollars (\$150.00) for the inspection

of each property and may designate a deputy or reserve deputy to perform the inspection and posting or service specified in this section.

D. Upon physical inspection, if the sheriff determines the property to be abandoned or vacated, the sheriff shall post the required motion and hearing notice on the property and make a return of inspection and posting to the plaintiff/mortgagee at the address provided by the plaintiff/mortgagee. In the event, the property is occupied or appears to be occupied in the judgment of the sheriff, the sheriff shall attempt actual service of the motion and hearing notice on an occupant of the property as provided for service of summons, and if a person is not available to accept service or cannot be found, the sheriff shall post the motion and hearing notice in a conspicuous place on the property and make a written return of inspection and service to the plaintiff/mortgagee at the address provided by the plaintiff/mortgagee.

E. The sheriff's written return of inspection and posting or return of inspection and service shall be made within three (3) days of the date of actual inspection. The return shall be deposited into the regular U.S. mail, postage prepaid, and the return document shall certify that:

1. The motion and hearing notice was either served in person upon an occupant of the property or was physically posted on the property and the exact date of service or posting;

2. A physical inspection and observation of the property was conducted; and

3. In the best judgment and belief of the sheriff, or designee, the property was abandoned and vacated or occupied by the defendant/mortgagor or a lawful tenant or other person, and any reason or belief for that determination.

F. The posting of the motion and hearing notice shall be deemed proper service and sufficient notice to the defendant/mortgagor and all occupants of the property for purposes of holding the hearing and authorizing the court to issue an order to protect and preserve the property pending disposition of the litigation before the court. The court shall not require any additional or alternative notification to the defendant/mortgagor or any occupant. Nothing shall prohibit the plaintiff/mortgagee from notifying, or attempting to notify, the defendant/mortgagor or any potential occupant of the subject property in another manner. If the plaintiff/mortgagee elects notification by publication in addition to the posting required by this section, he or she shall publish a copy of the motion and hearing notice at least twice in the fifteen-day period immediately preceding the hearing date in a publication of general circulation in the jurisdiction in which the property is located. A copy of the motion and hearing notice shall be sent or delivered to the defendant's legal counsel of record as required by court rule

and statutory civil procedure for notifying opposing counsel of motions and hearings.

G. The motion posted or served shall be in the form and style recognized for pleadings filed in the official court case, and shall contain the name of the parties, court case number, the date, time and place of the hearing, and a statement directing the defendant/mortgagor or any occupant of the property to appear in person, or through legal counsel, or be deemed to have abandoned and vacated the property.

H. No hearing shall be held on a motion to protect and preserve the property subject to a suit, action or proceeding to foreclose or enforce remedies in the mortgage, contract for deed or deed of trust, unless at least fifteen (15) days has passed from the date of posting or service of the motion and hearing notice. At the hearing, the court shall hear testimony of the parties present, including any person who claims to be an occupant or tenant of the property and who is not a named litigant in the pending litigation before the court. The testimony shall include inquiry into the property's previous and current condition and the reasons or beliefs supporting or objecting to a determination that the property is abandoned or vacated. The court shall review the sheriff's written return of inspection and posting or the return of inspection and service. The court shall not require the presence of the defendant/mortgagor or defendant's legal counsel to grant an order authorizing the plaintiff/mortgagee to take action to protect and preserve the subject property pending the disposition of the litigation before the court.

1. If the defendant/mortgagor, or an occupant or tenant, appears in person or through legal counsel, and the court is satisfied that the defendant, or person, is physically residing in the property, or if not occupying the property is willing and able to properly protect and preserve the property pending the litigation before the court, the motion shall be denied. However, the court shall enter an order requiring the person to protect and preserve the property under such conditions as the court may determine. Failure of the person to comply with the court order to protect and preserve the property shall be contempt of court.

2. If the defendant/mortgagor, or an occupant or tenant, fails to appear in person, and there exists no compelling reason why the defendant/mortgagor, or person, could not appear in person, and the property appears to be deteriorating or at risk of deteriorating as a result of abandonment, vandalism or any unlawful or intentionally malicious act, the court shall enter an order directing the plaintiff/mortgagee to take action to protect and preserve the property pending and in anticipation of foreclosure or other enforcement of remedies in the mortgage, contract for deed or deed of trust.

3. Upon issuance of an order to protect and preserve property, the court shall direct the plaintiff/mortgagee to inventory, or cause to be inventoried by an independent person, any personal property remaining on or about the subject property and to file such inventory in the court case file.

I. When a court order is issued to protect and preserve property, the plaintiff/mortgagee shall be authorized to take, and shall take, possession and secure the property pending and in anticipation of foreclosure or other enforcement of remedies in the mortgage, contract for deed or deed of trust.

J. An order issued to protect and preserve property pursuant to the provisions of this section may be vacated and set aside at any time by the court upon motion by the defendant/mortgagor, or occupant or tenant, and satisfactory proof that the property is not or was not abandoned or vacated, or was leased or rented and lawfully occupied by a person other than the defendant/mortgagor at the time of issuance of the order, provided, the property was not subjected to intentional malicious acts by the defendant, or person, to deface, destroy or devalue the property.

K. A motion filed, or court order issued, to protect and preserve the property as provided in this section shall not alter, modify, relinquish or release any right, title or interests of any party in or to any property, or alter, modify, relinquish or release any party's position, standing, claims, defenses or objections in the suit, action or proceeding pending before the court to foreclose or enforce any remedy in the mortgage, contract for deed or deed of trust.

Added by Laws 2011, c. 380, § 1, eff. Nov. 1, 2011.

§46-311. Short title - Oklahoma First-Time Home Buyer Savings Account Act.

This act shall be known and may be cited as the "Oklahoma First-Time Home Buyer Savings Account Act".

Added by Laws 2019, c. 186, § 1, eff. Jan. 1, 2020.

§46-312. Definitions.

As used in this act:

1. "Account holder" means an individual who establishes, individually or jointly with one or more other individuals, a home buyer savings account as defined in this act;

2. "Allowable closing costs" means a disbursement listed on a settlement statement for the purchase of a single-family residence in Oklahoma by a qualified beneficiary;

3. "Eligible costs" means the down payment and allowable closing costs for the purchase of a single-family residence in this state by a qualified beneficiary;

4. "Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, credit union, or any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in this state;

5. "Home buyer" means an individual who resides in this state and has never purchased, either individually or jointly, a single-family residence in the State of Oklahoma;

6. "Home buyer savings account" or "account" means an account with a financial institution that an account holder designates as a home buyer savings account on the account holder's Oklahoma income tax return for tax year 2020 or any tax year thereafter, pursuant to this act for the purpose of paying or reimbursing eligible costs for the purchase of a single-family residence in this state by a qualified beneficiary;

7. "Qualified beneficiary" means a home buyer who is designated as the qualified beneficiary of an account designated by the account holder as a home buyer savings account;

8. "Settlement statement" means the statement of receipts and disbursements for a transaction related to real estate, including a statement prescribed under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 et seq., as amended, and regulations thereunder; and

9. "Single-family residence" means a single-family residence owned and occupied by a qualified beneficiary as the qualified beneficiary's principal residence, which may include a manufactured home, trailer, mobile home, condominium unit, or cooperative.

Added by Laws 2019, c. 186, § 2, eff. Jan. 1, 2020.

§46-313. Designation of account - Designation of beneficiary.

A. After the effective date of this act, any individual may open an account with a financial institution and designate the account, in its entirety, as a home buyer savings account to be used to pay or reimburse a qualified beneficiary's eligible costs for the purchase of a single-family residence in this state.

B. An account holder shall designate, no later than April 15 of the year following the tax year during which the account is established, a home buyer as the qualified beneficiary of the home buyer savings account. The account holder may designate himself or herself as the qualified beneficiary and may change the designated qualified beneficiary at any time; provided, however, there shall not be more than one qualified beneficiary at any one time.

C. An individual may jointly own a home buyer savings account with another person if the joint account holders file a joint income tax return.

D. An individual may be the account holder of more than one home buyer savings account. However, an account holder cannot have multiple accounts that designate the same qualified beneficiary.

E. An individual may be designated as the qualified beneficiary on more than one home buyer savings account.

F. Only cash and marketable securities may be contributed to a home buyer savings account. Subject to the limitations of subsection B of Section 6 of this act, persons other than the account holder may contribute funds to a home buyer savings account. There is no limitation on the amount of contributions that may be made to or retained in a home buyer savings account.

Added by Laws 2019, c. 186, § 3, eff. Jan. 1, 2020.

§46-314. Duties of account holders.

A. The account holder of a home buyer savings account:

1. Shall not use funds held in a home buyer savings account to pay expenses of administering the account, except that a service fee may be deducted from the account by a financial institution in which the account is held;

2. Shall submit to the Oklahoma Tax Commission, with the account holder's Oklahoma income tax return:

a. on forms prepared by the Oklahoma Tax Commission, detailed information regarding the home buyer savings account, including a list of transactions for the account during the tax year, and

b. The Form 1099 issued by the financial institution for such account; and

3. Shall submit to the Oklahoma Tax Commission, upon a withdrawal of funds from a home buyer savings account, a detailed account of the eligible costs toward which the account funds were applied and a statement of the amount of funds remaining in the account, if any.

B. An account holder may withdraw funds, in whole or in part, from a home buyer savings account and deposit the funds in a new home buyer savings account held by a different financial institution or the same financial institution.

Added by Laws 2019, c. 186, § 4, eff. Jan. 1, 2020.

§46-315. Duties and liabilities of financial institutions.

A. A financial institution shall not be required to:

1. Designate an account as a home buyer savings account, or designate the qualified beneficiaries of an account, in the financial institution's account contracts or systems or in any other way;

2. Track the use of money withdrawn from a home buyer savings account;

3. Allocate funds in a home buyer savings account among joint account holders or multiple qualified beneficiaries; or

4. Report any information to the Oklahoma Tax Commission or any other governmental agency that is not otherwise required by law.

B. A financial institution is not responsible or liable for:

1. Determining or ensuring that an account satisfies the requirements to be a home buyer savings account;

2. Determining or ensuring that funds in a home buyer savings account are used for eligible costs; or

3. Reporting or remitting taxes or penalties related to the use of a home buyer savings account.

C. Upon being furnished proof of the death of the account holder and such other information required by the contract governing the home buyer savings account, a financial institution shall distribute the principal and accumulated interest or other income in the account in accordance with the terms of the contract governing the account.

Added by Laws 2019, c. 186, § 5, eff. Jan. 1, 2020.

§46-316. Deduction from taxable income - Exclusion from taxable income.

A. 1. Except as otherwise provided in and subject to the limitations under this act, there shall be deducted from taxable income of an account holder for Oklahoma income tax purposes the amount contributed to a home buyer savings account during each tax year, subject to the limitations of subsection B of this section, not to exceed Five Thousand Dollars (\$5,000.00) for an account holder who files an individual tax return or Ten Thousand Dollars (\$10,000.00) for joint account holders who file a joint tax return.

2. Except as otherwise provided in this act and subject to the limitations under this section, there shall be excluded from taxable income of an account holder for Oklahoma income tax purposes the amount of earnings, including interest and other income on the principal, from the home buyer savings account during the tax year.

3. An account holder may claim the deduction and exclusion under this subsection:

a. for an aggregate total amount of principal and earnings, not to exceed Fifty Thousand Dollars (\$50,000.00), and

b. only if the principal and earnings of the account remain in the account until a withdrawal is made for eligible costs related to the purchase of a single-family residence by a qualified beneficiary, except as otherwise provided in subsection B of Section 4 of this act.

B. A person other than the account holder who deposits funds in a home buyer savings account shall not be entitled to the deduction and exclusion provided for under subsection A of this section.

C. The deduction and exclusion from taxable income provided for by this act shall apply to any alternative bases for calculating taxable income for Oklahoma income tax purposes.

D. Any funds in a home buyer savings account not expended on eligible costs by December 31 of the last year of a fifteen-year period shall thereafter be included in the account holder's taxable income.

Added by Laws 2019, c. 186, § 6, eff. Jan. 1, 2020.

§46-317. Withdrawal of funds for other purposes - Penalty.

Except as otherwise authorized by subsection B of Section 4 of this act, if the account holder withdraws any funds from a home buyer savings account for a purpose other than eligible costs for the purchase of a single-family residence, such funds shall be included in the account holder's taxable income and the account holder shall pay a penalty to the Oklahoma Tax Commission equal to ten percent (10%) of the amount withdrawn. Such penalty shall not apply to funds withdrawn from an account that were:

1. Withdrawn by reason of the account holder's death or disability;

2. A disbursement of assets of the account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq.; or

3. Transferred from an account established under this act into another account established under this act in accordance with subsection B of Section 4 of this act.

Added by Laws 2019, c. 186, § 7, eff. Jan. 1, 2020.

§46-318. Oklahoma Tax Commission forms.

The Oklahoma Tax Commission shall prepare forms for:

1. The designation of an account with a financial institution to serve as a home buyer savings account;

2. The designation of a qualified beneficiary of a home buyer savings account; and

3. An account holder to annually submit to the Oklahoma Tax Commission detailed information regarding the home buyer savings account, including but not limited to a list of transactions for the account during the tax year, and identifying any supporting documentation that is required to be maintained by the account holder.

Added by Laws 2019, c. 186, § 8, eff. Jan. 1, 2020.