# An Act

ENROLLED SENATE
BILL NO. 2154

By: Crain of the Senate

and

Sullivan of the House

An Act relating to civil procedure; amending 12 O.S. 2001, Section 686, which relates to judgment in foreclosure suit; making language gender neutral; modifying certain procedure for deficiency judgment; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 2001, Section 686, is amended to read as follows:

Section 686. In actions to enforce a mortgage, deed of trust, or other lien or charge, a personal judgment or judgment or judgments shall be rendered for the amount or amounts due as well to the plaintiff as other parties to the action having liens upon the mortgaged premises by mortgage or otherwise, with interest thereon, and for sale of the property charged and the application of the proceeds; or such application may be reserved for the future order of the court, and the court shall tax the costs, attorney's fees and expenses which may accrue in the action, and apportion the same among the parties according to their respective interests, to be collected on the order of sale or sales issued thereon; when the same mortgage embraces separate tracts of land situated in two or more counties, the sheriff of each county shall make sale of the lands situated in the county of which he or she is sheriff. No real estate shall be sold for the payment of any money or the performance of any contract or agreement in writing, in security for which it

may have been pledged or assigned, except in pursuance of a judgment of a court of competent jurisdiction ordering such sale. The court may, in the order confirming a sale of land under order of sale on foreclosure or upon execution, award or order the issuance of a writ of assistance by the clerk of the court to the sheriff of the county where the land is situated, to place the purchaser in full possession of such land, and any resistance of the service of such writ of assistance shall constitute an indirect contempt of the process of such court, and if any person who has been removed from any lands by process of law or writ of assistance or who has removed from any lands pursuant to law or adjudication or direction of any court, tribunal or officer, afterwards, without authority of law, returns to settle or reside upon such land, ~~he~~ the person shall be guilty of an indirect contempt of court, and may be proceeded against and punished for such contempt. Notwithstanding the above provisions, no judgment shall be enforced for any residue of the debt remaining unsatisfied as prescribed by this act after the mortgaged property shall have been sold, except as herein provided. Simultaneously with the making of a motion for an order confirming the sale or in any event within ninety (90) days after the date of the sale, the party to whom such residue shall be owing may make a motion in the action for leave to enter a post-judgment deficiency ~~judgment~~ order upon notice to the party against whom such judgment is sought or the attorney who shall have appeared for such party in such action. Such notice shall be served personally or in such other manner as the court may direct. Upon such motion the court, whether or not the respondent appears, shall determine, upon affidavit or otherwise as it shall direct, the fair and reasonable market value of the mortgaged premises as of the date of sale or such nearest earlier date as there shall have been any market value thereof and shall ~~make an order directing the entry of~~ enter a post-judgment deficiency ~~judgment~~ order. Such post-judgment deficiency ~~judgment~~ order shall be for an amount equal to the sum of the amount owing by the party liable as determined by the ~~judgment~~ order with interest, plus costs and disbursements of the action plus the amount owing on all prior liens and encumbrances with interest, less the market value as determined by the court or the sale price of the property whichever shall be the higher. If no motion for a post-judgment deficiency ~~judgment~~ order shall be made as herein prescribed the proceeds of the sale regardless of amount shall be deemed to be in full satisfaction of the mortgage debt and no right to recover any deficiency in any action or proceeding shall exist.

In any action pending at the time this act becomes effective or thereafter commenced, other than an action to foreclose a mortgage, to recover a judgment for any indebtedness secured by a mortgage on real property and which originated simultaneously with such mortgage and which is secured solely by such mortgage, against any person or corporation directly or indirectly or contingently liable therefor, any party against whom a money judgment is demanded, shall be entitled to set off the fair and reasonable market value of the mortgaged property less the amounts owing on prior liens and encumbrances. Provided that nothing in this section shall limit or reduce any post-judgment deficiency ~~judgment~~ order in favor of or in behalf of the state for any debts, obligations or taxes due the state, now or hereafter.

SECTION 2. This act shall become effective November 1, 2010.

Passed the Senate the 28th day of April, 2010.

Presiding Officer of the Senate

Passed the House of Representatives the 12th day of April, 2010.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 29th

day of April, 2010,

at 1:30 o'clock P M.

By: [illegible]

Approved by the Governor of the State of Oklahoma the 4th day of

May, 2010, at 3:39 o'clock P M.

[illegible]

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

5th day of May, 2010,

at 11:18 o'clock A M.

By: [illegible]