An Act

ENROLLED SENATE
BILL NO. 798

By: Jolley of the Senate

and

Russ and Hoskin of the House

An Act relating to mortgaged property; authorizing remedy for abandoned or vacated property pending foreclosure proceedings; providing procedure for motion, notice, hearing and determination of abandonment or occupancy; prohibiting denial of certain order without certain appearance at hearing; requiring demonstration of proof to court's satisfaction; requiring sheriff to inspect and post certain notice within certain time; providing for service of certain notice on occupant; providing for sheriff service fee; authorizing sheriff to designate deputy or reserve deputy for certain duties; requiring a return of inspection and posting of notice; allowing additional method of notification; stating term of publication for certain notice; directing notice to legal counsel; stating style of notice; requiring statement to appear at certain hearing; requiring testimony at hearing; stating content of inquiry at hearing; requiring the court to review return of inspection; prohibiting requiring in person presence as condition to granting certain order; providing for non litigant to appear at certain hearing; stating criteria to deny certain motion; allowing additional orders to protect and preserve property; making certain violation contempt of court; providing consequences for failure to appear at hearing; stating authority of certain order; directing certain inventory; granting immunity from certain liability under court order; providing for writ of assistance in certain circumstance;

authorizing certain order to be vacated at any time; stating proof to vacate certain order; construing effect of certain order on property right, title and interest and for litigation purposes; providing for codification; and providing an effective date.

SUBJECT: Mortgaged property

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 302 of Title 46, unless there is created a duplication in numbering, reads as follows:

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 an 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.

SECTION 2. This act shall become effective November 1, 2011.

Passed the Senate the 18th day of May, 2011.

Presiding Officer of the Senate

Passed the House of Representatives the 19th day of May, 2011.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 20th
day of May, **20** 11,
at 11:32 **o'clock** AM.

By: Jessica R. Ryan

Approved by the Governor of the State of Oklahoma the 26 **day of**
May, **20** 11, **at** 2:26 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this
26th **day of** May, **20** 11,
at 6:01 **o'clock** P. **M.**

By: Michelle R. Day