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## Recent Developments Concerning the Right of Redemption Relating to Homestead Property: Act of Apr. 23, 2015, Alabama Senate Bill No. 124, Ala. Acts, 2015-79

Under current Alabama law, an interested party (*e.g.*, mortgagor, junior mortgagor, judgment creditor) may redeem real property sold at foreclosure within one (1) year of the date of the foreclosure sale. *See* ALA. CODE §§ 6-5-248, 6-5-252. The current redemption law does not require the foreclosing entity to provide notice to the owner of a homestead property (or any type of property for that matter) being foreclosed that the owner may be able to redeem the property from foreclosure.

On April 23, 2015, the Alabama legislature enacted a new right of redemption law, Act of Apr. 23, 2015, Alabama Senate Bill No. 124, Ala. Acts, 2015-79 (codified as amended at ALA. CODE §§ 6-5-248, 6-5-252), which reduces the redemption period for homestead properties (other types of property are unaffected by this new law) from one (1) year to 180 days from the date of the foreclosure sale, provided the requisite notice is given. This new law goes into effect on January 1, 2016. The specific changes found in the new redemption law are outlined below.

Under newly adopted § 6-5-252:

Tender or suit shall be made or filed *within 180 days from foreclosure* for residential property on which a homestead exemption was claimed in the tax year during which the foreclosure occurred, or within one year from foreclosure for all other property.

Act of Apr. 23, 2015, Alabama Senate Bill No. 124, Ala. Acts, 2015-79 (codified as amended at ALA. CODE § 6-5-252.) (emphasis added). Similarly, newly adopted § 6-5-248 provides as follows:

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

Act of Apr. 23, 2015, Alabama Senate Bill No. 124, Ala. Acts, 2015-79 (codified as amended at ALA. CODE § 6-5-248.) (emphasis added). The timing change found in the new redemption law appears simple enough—the time for redeeming a homestead property is reduced from one (1) year to 180 days. However, one caveat exists. Newly adopted § 6-5-248 also includes a notice requirement:

The mortgagee who forecloses residential property on which a homestead exemption was claimed in the tax year during which the sale occurred shall give notice to the mortgagor who signed the mortgage in substance as follows:

"Alabama law gives some persons who have an interest in property the right to redeem the property under certain circumstances. Programs may also exist that help persons avoid or delay the foreclosure process. An attorney should be consulted to help you understand these rights and programs as a part of the foreclosure process."

This notice shall be mailed to the mortgagor at the address of the property subject to foreclosure at least 30 days prior to the foreclosure date by certified mail with proof of mailing. This notice shall be included in the notice required pursuant to Section 35-10-3 [which is applicable only to judicial, as opposed to non-judicial, foreclosure sales]. For foreclosed residential property on which a homestead exemption was claimed in the tax year during which the sale occurred, the period of time during which a right of redemption may be exercised *shall not begin until notice is given* in accordance with this subsection. A defective notice, or the failure to give notice, will not affect the validity of the foreclosure, including the transfer of title to the property. All actions related to the notice requirement must be brought *within two years after the date of foreclosure*, or the action shall be barred.

*Id.* (emphasis added). Accordingly, when foreclosing on homestead property, the proper procedure under the new redemption law is to provide the required notice (outlined above) to the mortgagee thirty (30) days prior to the date of the foreclosure sale. If this notice is provided, then the period for redeeming the foreclosed homestead property is 180 days from the date of the foreclosure sale thereof. However, the statute is clear that if such notice is not provided prior to the foreclosure sale, then the failure to provide this notice will not affect the validity of the foreclosure sale. Rather, failure to provide the aforementioned notice, as required by the newly amended redemption status, will only serve to delay the commencement of the period during which the homestead property may be redeemed until the requisite notice is provided. In the event the requisite notice is not provided to the mortgagor, the mortgagee (or any other interested entity) may seek to redeem the property within two (2) years of the date of the foreclosure sale.

## Conclusion

The newly adopted right of redemption statute, which goes into effect on January 1, 2016, reduces the redemption period for homestead properties from one year from the date of foreclosure sale to 180 days from the date of foreclosure sale, assuming the requisite notice was given to the mortgagor prior to foreclosure. If sufficient notice is not provided to the mortgagor prior to the foreclosure sale, then the mortgagor will have 180 days to redeem the homestead property from the date the requisite notice is provided to the mortgagor or two years from the date of foreclosure sale if notice was never provided. Defective notice does not impair the foreclosure, it merely affects when the 180-day-redemption period is triggered. For non-homestead properties, the redemption period remains one year from the date of foreclosure sale.

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