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Mississippi Code/TITLE 89 REAL AND PERSONAL PROPERTY /CHAPTER 1 LAND AND CONVEYANCES / RELIEF FROM INEQUITABLE MORTGAGE FORECLOSURES, EXECUTION SALES AND THE LIKE AFTER DECLARED EMERGENCY OR DISASTER

RELIEF FROM INEQUITABLE MORTGAGE FORECLOSURES, EXECUTION SALES AND THE LIKE AFTER DECLARED EMERGENCY OR DISASTER

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RELIEF FROM INEQUITABLE MORTGAGE FORECLOSURES, EXECUTION SALES AND THE LIKE AFTER DECLARED EMERGENCY OR DISASTER

§ 89-1-301. Preliminary injunction against foreclosure proceedings; application to dissolve.

The provisions of Sections 89-1-301 to 89-1-329 shall apply only in the event that the President of the United States has declared that an emergency or major disaster exists in this state and shall apply only to persons or property directly damaged in an enemy attack, or a man-made, technological or natural disaster declared by the governor in which Sections 89-1-301 to 89-1-329 was specifically included as a relief measure for those counties covered by such disaster declaration. The provisions of Sections 89-1-301 to 89-1-329 shall apply to any mortgage or deed of trust on real property executed prior to the date of the disaster declaration by the governor, and to any such instruments executed after the date of the disaster declaration by the governor which renewed or extended any mortgage or deed of trust executed prior to the date of the disaster declaration by the governor. When the mortgagee, or owner, or holder, or trustee, or other person having like power shall hereafter determine to foreclose a mortgage or deed of trust on real estate covered by the provisions of Sections 89-1-301 to 89-1-329, he may proceed by bill in chancery, and in the same manner as in proceedings to foreclose under existing statutes in cases where the mortgage or deed of trust contains no provisions for sale by a trustee or otherwise. Any stipulations in the mortgage or deed of trust as to the manner of foreclosure thereunder shall not preclude proceedings to foreclose any mortgage or deed of trust under the provisions of Sections 89-1-301 to 89-1-329. If any mortgagee, holder, owner, trustee, or other person shall attempt to foreclose otherwise than as herein provided, such proceedings may be enjoined by the mortgagor or owner in possession of the mortgaged premises, or anyone claiming under the mortgagor, or anyone liable for the mortgage debt. Upon the filing of a sworn petition which affirmatively sets forth that neither the petitioner nor any other person owning an interest in the legal title to the mortgaged premises is able to pay the sums in arrears on the mortgaged debt, that no such person or persons have been able to secure a refinancing of the mortgaged debt up to the date of the filing of the petition, after diligent effort, and that because of the destruction of or damage to improvements on the mortgaged premises or because of economic conditions brought about by the effects of such an enemy attack or man-made, technological or natural disaster declared by the governor, the mortgaged property has depreciated in value as a proximate result of said disaster in an amount in excess of fifteen percent (15%) of its fair market value prior to said disaster, the chancellor of any chancery court of competent jurisdiction shall issue a preliminary injunction enjoining any foreclosure proceedings which have been commenced. The chancellor shall likewise issue a preliminary injunction enjoining any foreclosure proceedings which have been commenced if a sworn petition shall be filed which affirmatively sets forth that as a direct and proximate result of said disaster the petitioner or any other person owning an interest in the legal title to the mortgaged premises is unable to pay the sums in arrears on the mortgage debt, that the petitioner or such other person or persons have not been able to secure the refinancing of the mortgage debt up to the date of the filing of the petition after diligent effort, and that the petitioner has actually sustained a loss in income derived from the mortgaged property, or is presently threatened with such loss as a proximate result of such disaster, in an amount in excess of fifteen percent (15%) of the average annual income from the mortgaged property for the three (3) years immediately prior to said disaster; provided, however, for mortgages or deeds of trust on real property leased or rented for residential purposes from the mortgagor to a third party or parties, the provisions of Sections 89-1-301 to 89-1-329 shall apply only if the mortgagor or

landlord has made or is making a good-faith effort to rehabilitate the property to a reasonable standard of habitability.

Upon the issuance of any such preliminary injunction, the mortgagee may file a motion to dissolve said injunction, which motion shall be heard in termtime or in vacation, at a time to be fixed by the court not less than thirty (30) days from the date of the filing thereof. The mortgagor may implead any and all persons owning or claiming an interest in the legal title to said property and all persons who may be primarily or secondarily liable on the mortgaged indebtedness. Process shall be issued for all parties so impleaded in the manner now provided by law in suits to confirm titles and the cause shall be triable five (5) days after completion of service of process on all parties. The court may grant such continuances as may be necessary for the completion of service of process on all parties.

Upon the hearing of the motion to dissolve, unless the petitioner shall prove all of the material allegations of his petition by a preponderance of the evidence, the preliminary injunction shall be dissolved. No injunction bond shall be required for the issuance of the preliminary injunction. If the court shall find the petition was filed solely for the purpose of hindering and delaying collection of the mortgaged debt and without reasonable grounds therefor, reasonable attorney's fees shall be allowed as in other cases upon dissolution of preliminary injunctions, but not otherwise.

If, upon hearing of the motion to dissolve, it shall be determined that said motion should not be granted, then the hearing shall continue in the same manner as provided for in Section 89-1-303, and the court shall enter its order granting the relief provided for by Sections 89-1-301 to 89-1-329 in the case of bills to foreclose. All the terms and provisions of Sections 89-1-301 to 89-1-329 relating to the proceedings had on, or to relief granted under, bills to foreclose shall be applicable.

Provided, however, if a deed of trust be foreclosed according to the provisions therein contained, and the sale be actually consummated without the mortgagor or his heirs or assigns availing themselves of the right to enjoin said sale as provided in Sections 89-1-301 to 89-1-329, the foreclosure and the title resting thereon, if otherwise regular, shall not be controverted on account of any of the provisions of Sections 89-1-301 to 89-1-329, and this limitation shall also apply to minors and all others under legal disability. The provisions of this section shall apply to advertisements for sales already published at the time of the disaster declaration by the governor in which he specifically included the relief provided for in Sections 89-1-301 to 89-1-329, but in which the sale has not been made; provided that in such case the costs of the advertisement be tendered in cash with the bill for injunction.

Sources: Laws, 1980, ch. 371, § 1, eff from and after passage (approved April 25, 1980).

§ 89-1-303. Hearing; determination of carrying charge payments.

Suits for the foreclosure of mortgages and deeds of trust shall be deemed ready for final hearing at any time after the expiration of thirty (30) days from the completion of the service of legal process on all parties. On the hearing, the court or chancellor in vacation shall receive evidence tending to establish the reasonable, normal, actual value of the mortgaged property, may fix a minimum price or reasonable and equitable price thereon, and shall determine the reasonable value of the income on said property, if any. If it has no income, then the court or chancellor in vacation shall determine the reasonable rental value, and in lieu of a present order of sale shall direct and require the mortgagor or those interested therein to pay all or a reasonable part of said income or rental value to be used for the payment of taxes, insurance and interest on the mortgage indebtedness, together with a reasonable sum for the upkeep of said property. Said payments shall

be made at such times and in such manner as shall be fixed and determined and ordered by the court or chancellor in vacation which, according to the circumstances, may appear just and equitable for a term not to extend beyond two (2) years from the date of the disaster declaration by the governor in which he specifically included the relief provided for in Sections 89-1-301 to 89-1-329. After the expiration of two (2) years from the date of the disaster declaration by the governor in which he specifically included the relief provided for in Sections 89-1-301 to 89-1-329, if any past due principal, interest, taxes and the like have not been paid, a final order for sale may be made.

Sources: Laws, 1980, ch. 371, § 2, eff from and after passage (approved April 25, 1980).

§ 89-1-305. Effect of default; explanation and remedy; revocation of extension on final order of sale due to changed circumstances.

If the mortgagor or owner of the mortgaged premises, or other interested person for whose relief Sections 89-1-301 to 89-1-329 are enacted, shall make default in the carrying charge payments, or any of them, required in the order mentioned in the foregoing section, or shall commit any waste, his or her right to a further postponement of a final sale shall terminate thirty (30) days after such default, and the mortgagee or trustee or other persons having the right to foreclose shall thereupon be entitled to apply to the court in termtime or vacation for a final decree of sale upon a satisfactory showing to the court that the default aforesaid has occurred; provided that if the default be explained on the grounds of casualty, inevitable accident, or other good reason wholly beyond the control of the defaulter, and be one which in the judgment of the court can be remedied and made good by the defaulter within a reasonably short period to be fixed by the court, then the court or chancellor in vacation shall have power to excuse the default and to make such order in reference thereto as may be just and equitable. The chancellor shall have power in vacation, at any time after the period mentioned in Section 89-1-303, to hear and determine and to order or decree in respect to any matter that shall arise under Sections 89-1-301 to 89-1-329, to the same extent and as fully as the court could do in termtime, legal notice having been given to all parties of the said hearing in vacation. The court or chancellor in vacation shall have power to revoke the period of extension theretofore granted for the making of the final order of sale in case it may be made to appear to the chancellor in vacation, or to the court in termtime, that the occasion for said postponement no longer exists or is no longer just and reasonable; and, in general, the court, or chancellor in vacation, shall have power to alter and revise its orders theretofore made in any respect insofar as the changed circumstances and conditions may require. Provided further, that prior to two (2) years from the date of the disaster declaration by the governor in which he specifically included the relief provided for in Sections 89-1-301 to 89-1-329, no action shall be maintained in this state for a deficiency judgment until the period of time extension allowed in any proceeding begun under the provisions of Sections 89-1-301 to 89-1-329 shall have expired.

Sources: Laws, 1980, ch. 371, § 3, eff from and after passage (approved April 25, 1980).

§ 89-1-307. Reference to master, farm debt adjustment committee or similar agency.

At any hearing, whether in termtime or in vacation, the chancellor shall have power to refer any issue or issues arising under the proceedings authorized by Sections 89-1-301 to 89-1-329 to a master in chancery or to the local farm debt adjustment committee, or any similar federal or state agency, and may prescribe the time within which the master or agency aforesaid shall report. The chancellor shall give consideration to such report with or without exceptions as in his judgment and discretion the same may be entitled.

Sources: Laws, 1980, ch. 371, § 4, eff from and after passage (approved April 25, 1980).

§ 89-1-309. Suspension of statute of limitations.

The statutes of limitation which would otherwise apply to any mortgage or mortgage debt, or to any other cause of action under Sections 89-1-301 to 89-1-329, shall cease to run upon the filing of any legal pleadings in the aforesaid court; and the period during which the same be pending in court under Sections 89-1-301 to 89-1-329 shall be added to the period of statutory limitations which would apply to said debt or mortgage or other obligation in which the cause of action arose.

Sources: Laws, 1980, ch. 371, § 5, eff from and after passage (approved April 25, 1980).

§ 89-1-311. Application to levies and advertisements for sale.

The provisions of Sections 89-1-301 to 89-1-329 shall apply to levies and advertisements for sales under executions, including those under deficiency judgments or decrees where the judgment, decree or account sued on existed prior to the date of the disaster declaration by the governor in which he specifically included the relief provided for in Sections 89-1-301 to 89-1-329; and when an advertisement has been made for a sale under any execution, the judgment debtor or any person interested in the real property levied upon may enjoin the sale under execution, whereupon the plaintiff in execution shall proceed to enforce the same by a cross-bill or by original bill in the same manner as if the plaintiff in execution were the holder of a mortgage. When an original bill has been filed in response to a bill of injunction under Sections 89-1-301 to 89-1-329, the causes may be consolidated for the hearing and for all subsequent proceedings, save as to the pleadings and process.

Sources: Laws, 1980, ch. 371, § 6, eff from and after passage (approved April 25, 1980).

§ 89-1-313. Auxiliary jurisdiction of court.

The court shall have jurisdiction to postpone the enforcement of judgment by execution sale or to order resale or give relief where such judgment is rendered in an action to collect a debt or obligation secured by a real estate mortgage, the foreclosure of which might be affected under the terms of Sections 89-1-301 to 89-1-329.

Sources: Laws, 1980, ch. 371, § 7, eff from and after passage (approved April 25, 1980).

§ 89-1-315. Approval of compromise settlements or compositions of mortgage indebtedness.

In case the parties to any such foreclosure action shall agree in writing upon terms of compromise settlement thereof, or of composition of the mortgage indebtedness, or both, the court shall have jurisdiction and may by its order confirm and approve such settlement or composition, or both, as the case may be.

Sources: Laws, 1980, ch. 371, § 8, eff from and after passage (approved April 25, 1980).

§ 89-1-317. Agreements as to interest or finance charges; right to prepay without penalty.

In any modification or refinancing of a debt secured by a mortgage or deed of trust on real property subject to Sections 89-1-301 to 89-1-329, the borrower and lender may contract and agree that all or any part of the accrued interest or interest to accrue or earned finance charge which has not been paid on the existing debt may be added to the unpaid principal balance thereof, and the borrower may contract for and agree to pay interest on the principal balance as modified as otherwise provided by law; provided, any such borrower shall have the right to prepay the original balance or the modified balance of the debt without penalty.

Sources: Laws, 1980, ch. 371, § 9, eff from and after passage (approved April 25, 1980).

§ 89-1-319. Suspension of inconsistent laws; application to renewed or extended mortgages.

Every law and all the provisions thereof now in force insofar as inconsistent with the provisions of Sections 89-1-301 to 89-1-329 are hereby suspended for two (2) years from the date of the disaster declaration by the governor in which he specifically included the relief provided for in Sections 89-1-301 to 89-1-329. No postponement of sale shall be ordered or allowed under Sections 89-1-301 to 89-1-329 which would have the effect of extending the period for redemption beyond two (2) years from the date of the disaster declaration by the governor in which he specifically included the relief provided for in Sections 89-1-301 to 89-1-329.

Sections 89-1-301 to 89-1-329, as to mortgage foreclosure, shall apply only to mortgages made prior to the date of the disaster declaration by the governor in which he specifically included the relief provided for in Sections 89-1-301 to 89-1-329, but shall not apply to mortgages made prior to the date of the disaster declaration by the governor in which he specifically included the relief provided for in Sections 89-1-301 to 89-1-329, which shall hereafter be renewed or extended for: (a) a period ending more than one (1) year after the date of the disaster declaration by the governor in which he specifically included the relief provided for in Sections 89-1-301 to 89-1-329, or (b) which shall be extended by agreement so as to be payable in monthly installments extending over a period of more than three (3) years. During the period of time of postponement granted under the terms of Sections 89-1-301 to 89-1-329 the several statutes of limitation be and they are hereby suspended insofar as any right or obligation may be affected by Sections 89-1-301 to 89-1-329.

Sources: Laws, 1980, ch. 371, § 10, eff from and after passage (approved April 25, 1980).

§ 89-1-321. Construction of terms.

The words "mortgagor," "mortgagee," "judgment creditor," "judgment debtor" and "purchaser," whenever used in Sections 89-1-301 to 89-1-329, shall be construed to include the plural as well as the singular and also to include their personal representatives, successors and assigns, and the word "mortgage" shall be construed to include deeds of trust and vendors' liens; and for purposes of Sections 89-1-301 to 89-1-329, deeds of trust and any instrument executed as security for an indebtedness shall be treated as a mortgage.

Sources: Laws, 1980, ch. 371, § 11, eff from and after passage (approved April 25, 1980).

§ 89-1-323. Exclusion of mortgages held by United States and mortgages securing payment of public debts or funds.

The provisions of Sections 89-1-301 to 89-1-329 shall not apply to any mortgage while such mortgage is held by the United States or agency thereof as security or pledge of the maker, its successors or assigns, nor shall the provisions of Sections 89-1-301 to 89-1-329 apply to any mortgage held as security or pledge to secure payment of a public debt or to secure payment of the deposit of public funds.

Sources: Laws, 1980, ch. 371, § 12, eff from and after passage (approved April 25, 1980).

§ 89-1-325. Postponement or extension shall not substantially diminish value of contract or obligation.

No postponement or extension shall be ordered under conditions which, under the temporary emergency, would substantially diminish or impair the value of the contract or obligation of the person against whom the relief is sought without reasonable allowance to justify the exercise of the police power hereby authorized.

Sources: Laws, 1980, ch. 371, § 13, eff from and after passage (approved April 25, 1980).

§ 89-1-327. Provisions are severable.

The provisions of Sections 89-1-301 to 89-1-329 are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect, impair or abrogate any of the remaining provisions, but the remaining provisions thereof shall be and remain in full force and effect without regard to that phrase, clause or portion invalidated.

Sources: Laws, 1980, ch. 371, § 14, eff from and after passage (approved April 25, 1980).

§ 89-1-329. Expiration of relief.

Except for the cases pending in court, the relief provided for in Sections 89-1-301 to 89-1-329 shall expire two (2) years from the date of any disaster declaration by the governor in which Sections 89-1-301 to 89-1-329 were specifically included as a relief measure for those counties covered by such disaster declaration.

Sources: Laws, 1980, ch. 371, § 15, eff from and after passage (approved April 25, 1980).