

# The Right of Redemption in Alabama

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The right of redemption in the State of Alabama is a statutory right that may be exercised following foreclosure of real property in order to retake title to the property sold.[1] Alabama law permits redemption of real property by certain statutorily defined persons with an interest in the real property if the right of redemption is exercised within one (1) year following the foreclosure sale of the real property and is exercised according to the statutory requirements.[2] Since lenders are frequently purchasers of real property sold at foreclosure sale, this article will discuss the right of redemption in Alabama from a lender's perspective.

### I. Who May Redeem Real Property?

Alabama law[3] allows real estate to be redeemed by the following:

1. Any debtor, including any surety or guarantor;
2. Any mortgagor, even if such mortgagor is not personally liable for payment of a debt;
3. Any junior mortgagee, or its transferee;[4]
4. Judgment creditor, or its transferee;
5. Any transferee of the interests of the debtor or mortgagor, either before or after the sale;
6. The respective spouses of all debtors, mortgagors, or transferees of any interest of the debtor or mortgagor, who are spouses on the day of the execution, judgment or foreclosure sale; and,
7. Children, heirs, or devisees of any debtor or mortgagor.

Any of the above described persons may exercise the right of redemption.[5] However, the right of redemption is a personal privilege for such statutorily defined persons and is not a property right.[6]

### II. When Must the Right of Redemption Be Exercised?

The right of redemption must be exercised within one (1) year of the date of the foreclosure sale selling the real property at issue.[7] If the right is not exercised within this period, the right expires. A lender need not honor any demands for redemption after one (1) year from the date of the foreclosure sale.

### III. What is Required to Redeem?

Specific action must be taken in order to redeem real property, including notice and payment or tender of the required redemption amount. Only if the specific statutorily required action is taken, is a lender required to permit redemption of the property. The required action is as follows:

#### A. Demand for Statement of Lawful Charges to Redeem.

Anyone desiring and entitled to redeem must make a written demand of the purchaser[8] for a statement of the lawful charges required to redeem.[9] Within ten (10) days of such written demand, the purchaser is to provide the person making the demand (the redeeming party) with a written itemized statement of all charges claimed. Upon receipt of the statement of charges, the person seeking to redeem must then pay or tender to the purchaser the amount of the charges stated. If, however, the purchaser fails to provide the statement of charges within ten (10) days, then the purchaser shall forfeit all claims for compensation for improvements to the real property and the party entitled to redeem may file suit for redemption without being required to tender the redemption price. This means that where a lender who has purchased real property at foreclosure sale receives a demand for a statement of itemized charges, the lender must provide that statement within ten (10) days of the demand, or the lender will forfeit all claims it may have for the value of improvements made to the real property since the foreclosure sale.

#### B. Payment of Statutory Redemption Charges.

Alabama law establishes the charges required to be paid for redemption of real property following foreclosure.[10] Payment or tender of the following charges by the redeeming party to the purchaser is required to redeem real property:

1. The purchase price paid at foreclosure sale, plus interest (at the rate allowed to be charged on money judgments, which is currently 12%);
2. Permanent improvements to the real property;[11]
3. Taxes paid or assessed;
4. All insurance premiums paid or owned by the purchaser;
5. Any other valid lien paid or owned by the purchaser, or if the redeeming party is a judgment creditor or junior mortgagee (or any transferee thereof), then all recorded judgments, recorded mortgages and recorded liens having a higher priority in existence at the time of sale which are revived;
6. If the redemption is made from a person who, at the time of redemption, owned the debt for which the property was sold, the redemptioner must also pay the balance due on the debt, with interest; and,
7. All mortgages made on the real property by the purchaser to the extent of the purchase price paid at foreclosure sale.

Regardless of the identity of the redeeming party, the basic elements of the redemption process are the same. To redeem, the redeeming party must pay or tender to the purchaser an amount equal to the "purchase price," plus interest calculated at the rate set for judgments (which is currently 12%),[12] and all other lawful charges" with interest.[13] In the event a lender is the purchaser, these amounts will be due and payable to the lender as a condition of redemption.

#### IV. How Are the Terms of the Lawful Charges Defined?

##### A. The Purchase Price.

The "purchase price" is normally the amount actually paid at the foreclosure sale, even when redemption is from a later transferee who paid a different amount than that paid at such sale. [14] An exception to this general rule applies when the purchaser at the foreclosure sale is also the mortgagee (i.e., the lender that is the owner and holder of the mortgage being foreclosed). When a mortgagee buys the property at the foreclosure sale, the purchase price for purposes of redemption is limited to the amount of debt secured by the mortgage.[15] This means that if the lender buys the property at foreclosure sale for more than the debt secured by the mortgage, the lender, as a mortgagee, cannot require payment of the purchase price paid in excess of the debt owed.

##### B. All Other Lawful Charges.

In addition to the purchase price, the redeeming party must also pay or tender interest and "all other lawful charges." These charges include the value of permanent improvements, taxes, insurance, and any other valid lien paid or owned by the purchaser. Also, if the redeeming party is a judgment creditor or junior mortgagee (or any transferee thereof), then all recorded judgments, recorded mortgages and recorded liens having a higher priority in existence at the time of sale which are revived under Ala. Code§6-5-248(c)[16] are deemed to be lawful charges.

##### C. The Value of Permanent Improvements.

The value of permanent improvements is required to be paid to redeem. However, the value of such permanent improvements is often disputed. The dispute process is statutorily mandated. If a redeeming party disagrees with the value of improvements claimed by the purchaser, then the redeeming party must, within ten (10) days of the receipt of the statement of charges from the purchaser, appoint a referee to determine the value of such improvements and notify the purchaser of the disagreement and of the appointment and name of the referee.[17] Within ten (10) days of the notice of the appointment of a referee, the purchaser may appoint his own referee and must notify the redeeming party of this appointment and the identity of the referee. [18] If the two referees cannot agree upon the value, then they are required to appoint an umpire and the three (3) parties jointly make a determination of the value of the permanent improvements.[19]

If the redeeming party fails to appoint a referee within the permitted ten (10) days, the redeeming party must pay the value put on the permanent improvements by the purchaser in order to redeem.[20] Alternatively, if the purchaser fails to appoint a referee in response to the redeeming party's appointment of a referee, then the purchaser forfeits the value of the permanent improvements.[21] Therefore, if a lender, as purchaser of real property at

foreclosure sale, receives notice from a redeeming party of the contest of the value of the permanent improvements and the appointment of a referee, the lender must appoint its own referee within ten (10) days or forfeit the value of all permanent improvements.

#### D. Special Circumstances for Redemption by a Junior Mortgagee or Judgment Creditor.

When any judgment creditor or junior mortgagee (or any transferee of either the judgment creditor or junior mortgagee) redeems under this Article, all recorded judgments, recorded mortgages and recorded liens having a higher recorded priority in existence at the time of the sale are revived against the real estate and become lawful charges required to be paid to redeem the real property.[22] These liens must be paid as a condition of redemption of the real property. This means that if the lender was a junior mortgagee and the property was sold at foreclosure sale by a prior lienholder, thus giving the lender as the junior mortgagee the right to redeem, the lender would have to remit payment of all recorded liens having a higher priority as a condition of redemption.

#### E. Special Circumstances for Redemption by a Debtor, Mortgagor, their Transferees, Respective Spouses, Children, Heirs or Devisees.

When property is redeemed by any debtor, mortgagor, their transferees, their respective spouses, children, heirs, or devisees, then all recorded judgments, recorded mortgages, and recorded liens in existence at the time of the sale, are revived. However, these charges are not required to be paid as a condition of redeeming the property.[23]

The purchaser of the real property at foreclosure sale, including a lender that has purchased the property, has the right to demand payment of all of these charges as a condition of the redemption of the real property. Only if the person seeking to redeem pays (or tenders) these charges, does that person have the right to redeem.

#### V. How May the Right of Redemption Be Forfeited?

The right of redemption may be forfeited if the possession of the land is not delivered to the purchaser within ten (10) days of written demand for possession of the land being made by or on behalf of the purchaser.[24] If the right to redeem is forfeited, a lender is not required to honor any demands for redemption. This is very common where a lender purchases at foreclosure sale and then seeks to market the real property, but the former mortgagor remains in possession of the property. If the former mortgagor does not vacate the property within ten (10) days of notice from the lender, he or she will forfeit the right to redeem the property.

#### VI. What is the Effect of Redemption?

Once the redeeming party has properly demanded a statement of lawful charges and has paid either (1) all the lawful charges claimed by the purchaser or (2) all the lawful charges established by a referee, within the statutory one (1) year period for redemption, the real property is due to be conveyed to the redeeming party. In the event the purchaser fails or refuses to convey the real property, the redeeming party shall have the right to file a complaint in the circuit court having jurisdiction to enforce his or her rights of redemption.[25] The circuit court shall then determine the rights of the parties.[26]

#### VII. Summary.

There are many pitfalls of which lenders must be aware when dealing with foreclosed real property subject to the rights of redemption. Lenders must be careful to exercise all required action within the statutory time periods established. Failure to act within the prescribed time periods will result in financial loss to the lender by losing the ability to require the payment of certain charges and other loss of rights. For these reasons, lenders and their employees should familiarize themselves with the law of redemption in Alabama.

[1] Ala. Code§ 6-5-247 (Repl.1993) et seq. Please note, the right to redeem applies to realproperty "sold" which is a statutorily defined term that includes "[a]ny execution, judgment or foreclosure sale, whether the sale is made under power of sale in any mortgage or deed of trust or statutory power of sale, or by virtue of any judgment in any court of competent jurisdiction." Ala. Code 6-5-247(l) (Repl. 1993). Although the right to redeem applies in these other circumstances, this article will discuss the concept of redemption only in the context of foreclosure sales. However, the same principles of redemption apply in the other contexts.

[2]Ala. Code§6-5-248 (Repl.1993 ).

[3] Ala. Code § 6-5-248(a)(l)-(7) (Repl. 1993).

[4] A lender may also be in the position of a junior mortgagee and in that capacity, a lender has the right to redeem and may exercise this right as a means of re-taking title to real property where the lender's mortgage interest has been extinguished by the foreclosure of a prior lien.

[5] Although mortgagees and judgment creditors have the right to redeem, this right only exists in their favor until the mortgagee or judgment creditor is paid the amount of the debtor's debt, interest and contractual charges. See Ala. Code§6-5-248 (c) (Repl. 1993).

[6] Ala. Code§6-5-250 (Repl. 1993).

[7] Ala. Code§ 6-5-240(b) (Repl. 1993) states "[a]l1 persons named or enumerated in subdivisions (a)(l) through (a)(7) may exercise the right of redemption granted by this Article within one year from the date of the sale."

[8] The term "purchaser" alone will be used throughout the article to refer to the purchaser at foreclosure sale. However, throughout this article, the term also refers to and applies to any transferee of a purchaser.

[9] Ala. Code§6-5-252(Repl. 1993).

[10] Ala. Code§ 6-5-253 (Repl. 1993).

[11] Please note, "permanent improvements" do not include every improvement made to the real property, but only certain improvements to preserve the property by keeping it in repair for its proper and reasonable use, having due regard for the kind and character of the property, and also valuable and useful additions and improvements to the property suited to its character and use. *Pankey v. Daugette*, 671 So.2d 684 (Ala. Civ. App.1995), r'hrq. den., cert. den. Further, the statute provides that the value of permanent improvements may be challenged. See discussion infra.

[12] Ala. Code, § 8-8-10 (Repl. 1993).

[13] Ala. Code§ 6-5-253(a) (Repl.1993).

[14]*Dicie v. Morris*, 285 Ala. 650, 235 So. 2d 796 (Ala. 1970); *Wilkes v. Hood*, 237 Ala. 72, 185 So. 748 (Ala. 1939).

[15]*Garyich v. Associates Fin. Servs. Co.*, 435 So. 2d 30 (Ala. 1983).

[16]Ala. Code§ 6-5-253(a)(1)-(4) (Repl. 1993). Please note, Ala. Code§ 6-5-248(e) states as follows: When any judgment creditor or junior mortgagee redeems under this article, all recorded judgments, recorded mortgages and recorded liens having a higher recorded priority in existence at the time of the sale are revived against the real estate redeemed and against the redeeming party and such shall become lawful charges pursuant to Section 6-5-5253(a)(4) to be paid off at redemption.

[17] Ala. Code§6-5-254 (Repl. 1993).

[18] Id.

[19] Id.

[20]Ala. Code§6-5-254(b) (Repl. 1993).

[21] Id.

[22] Ala. Code§6-5-248 (c) (Repl. 1993).

[23] Ala. Code§6-5-248(d) (Repl. 1993).

[24] Ala. Code§6-5-251 (Repl. 1993).

[25] Ala. Code§6-5-255 (Repl. 1993).

[26] Ala. Code§6-5-256 (Repl. 1993).

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