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Hannah Hungate
University of Arkansas, Fayetteville

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A-Void-Able Consequences: Void Sales & Subsequent Purchasers Under Arkansas's Statutory Foreclosure Act*

Imagine the following: you have lived in your home for years. A bank holds your mortgage, and you pay promptly every month. One day, out of the blue, you get a notice from the bank claiming that your home has been foreclosed upon and sold to a third party. The notice indicates that the bank determined you to be in default, sold your home without notifying you, and now your home is no longer yours. You rush to court to try to get your home back. The court looks at the Arkansas statute and faces a dilemma. Two results are possible from its language. One assumes that the sale was not valid because it was done in violation of the law, and you can retrieve the deed of your home from the third-party purchaser. However, under the other interpretation, the third party gets your home free and clear. You can perhaps sue the bank, but your home is no longer yours.

This conundrum is exactly the problem posed by Arkansas's Statutory Foreclosure Act. The Statutory Foreclosure Act articulates detailed requirements which must be satisfied before a foreclosure is valid.¹ If a lender forecloses upon a home in violation of these requirements, the borrower has a legal claim against the lender.² However, the process becomes more complex if the home is sold before the borrower can assert the claim. Even after the property is sold, the Statutory Foreclosure Act still permits a borrower to sue a lender if the sale was fraudulent or

* J.D. Candidate, 2021, University of Arkansas School of Law. The Author would like to thank the incredible attorneys at Odom Law Firm for giving me the opportunity to research and explore so many different areas of law, including the topic that is the subject of this Comment. The Author would also like to thank Arkansas Law Notes for all of the time and hard work that went into this publication process. Finally, the Author would like to thank her amazing mom, grandma, and brothers, as well as her friends and colleagues, for the continued love, inspiration, and support throughout her time in law school and beyond.

1. ARK. CODE ANN. §§ 18-50-101 to -117 (2019).

2. See ARK. CODE ANN. § 18-50-116(d)(2).

violated the statutory requirements,³ but it also states that such claim “may not be asserted against a subsequent purchaser for value of the property.”⁴

The question then arises: can there be a “subsequent purchaser for value” when the foreclosure sale was void from the outset? Though the Arkansas Supreme Court has never squarely addressed this issue, this Comment urges the Court to do so and find that there may be no “subsequent purchaser for value” where a sale is void from the moment it is made. Part I explores a brief history of the Statutory Foreclosure Act. It establishes that the General Assembly intended the Act to protect homeowners from the rampant irregularities that result from unregulated nonjudicial foreclosures.

Next, Part II examines the distinction between void and voidable foreclosures of property, positing that Arkansas’s bar of claims against subsequent purchasers for value applies only to voidable (and not void) foreclosures. Part II subsequently reviews the findings of a number of judiciaries which have highlighted this void-voidable distinction in their states’ foreclosure processes and adjusted their rulings accordingly.

Then, Part III examines the proper application of the Statutory Foreclosure Act, specifically its protection of subsequent purchasers for value in light of the statutory purpose, the distinction between void and voidable sales, and the approaches pursued by other courts. Finally, Part III urges the Arkansas Supreme Court to make a formal declaration clarifying the provision and finding that purchasers of property foreclosed upon in a void sale are not “subsequent purchasers for value” under the meaning of the statute.

I. Courtless Chaos: Why Enact the Statutory Foreclosure Act

To understand the purpose of the Statutory Foreclosure Act, one must first understand the two primary foreclosure mechanisms in Arkansas. The first mechanism is a judicial

3. ARK. CODE ANN. § 18-50-116(d)(2)(B).

4. ARK. CODE ANN. § 18-50-116(d)(2)(C)(i).

foreclosure.⁵ Judicial foreclosures have traditionally been considered “the safe plan for all parties.”⁶ Commentators have noted the advantages of judicial foreclosures, with one indicating:

The title produced by a judicial foreclosure is less susceptible to attack than the title produced by a nonjudicial foreclosure. This stability is due to several safeguards. First, many potential infirmities are uncovered and resolved when an informed chancellor oversees the proceedings. Second, the adversarial nature of judicial foreclosure works to flush out defects. Third, the concept of judicial finality solidifies the decree and precludes the prospect of successful post-sale attacks as time passes.⁷

The second foreclosure mechanism is a power of sale—a foreclosure in which the property is offered for sale privately, without involvement of the court.⁸ While judicial foreclosures have been lauded,⁹ powers of sale (i.e., nonjudicial foreclosures) have long been met with distrust.¹⁰ In 1882, the Arkansas Supreme Court indicated that “[d]eeds of trust and mortgages, with powers to be executed [out of court], belong to a class of instruments which are watched with much jealousy by [the courts]. . . . [T]he [courts] have been used to interfere to prevent any unnecessary sacrifice, or unfair disregard of the rights of the debtor.”¹¹

Prior to the late 1980s, the abuses of the nonjudicial foreclosure system caused courts to “scrutinize[] . . . with great care” all powers of sale and set aside any sales not “conducted with all fairness, regularity, and scrupulous integrity.”¹² Sales were so often “opened up for failure to appraise, for irregularity

5. See Edward H. Schieffler, *Nonjudicial Foreclosure in Arkansas with the Statutory Foreclosure Act of 1987*, 41 ARK. L. REV. 373, 373-74 (1988).

6. See *id.* at 377 (quoting *Littell v. Grady*, 38 Ark. 584, 589, 1882 WL 1518, at *3).

7. *Id.* at 376 (footnote omitted).

8. *Id.* at 373-74.

9. See Lynn Foster, *Statutory Foreclosures in Arkansas: The Law and Recent Developments*, 66 ARK. L. REV. 111, 114 (2013) (“There are, however, attorneys who never use the statutory-foreclosure statute, preferring the judicial process because of its guarantee of due process and good title . . . backed by a court decree.”).

10. See Schieffler, *supra* note 5, at 376-78.

11. *Littell*, 38 Ark. at 589, 1882 WL 1518, at *3; see also Schieffler, *supra* note 5, at 377-78.

12. *Littell*, 38 Ark. at 589-90, 1882 WL 1518, at *3-4 (emphasis omitted) (internal quotations omitted); see Schieffler, *supra* note 5, at 377-78.

in the appraisal, want of notice, and other defects” that a purchaser could not be sure of his title until he had occupied the property long enough to qualify as an adverse possessor.¹³ Such foreclosures were also considered by courts to be “harsh” towards borrowers and had the potential to be “oppressive, unjust, and unfair.”¹⁴

After years of mismanaged nonjudicial foreclosures, the Arkansas General Assembly sought to restrict the common law power of sale by enacting the Statutory Foreclosure Act of 1987.¹⁵ In the Assembly’s own words, the Act purported to “provide an efficient and fair procedure for the liquidation of defaulted mortgage loans to the benefit of both the homeowner and the mortgage lender.”¹⁶

The Statutory Foreclosure Act aspired to create a fair foreclosure process by elucidating very specific requirements for a foreclosure to be deemed valid.¹⁷ Among other things, the Act places particularized limitations on the entities which may initiate a foreclosure,¹⁸ the components of a legally effective notice of default,¹⁹ and the manner of the foreclosure sale.²⁰ Most notably for the purposes of this Comment, the Act grants a borrower a cause of action when a lender does not strictly comply with the statutory provisions.²¹

Despite its lofty aims of fairness and protection, the Statutory Foreclosure Act has been met with heavy criticism

13. Schieffler, *supra* note 5, at 377 (quoting A. HUGHES, ARKANSAS MORTGAGES, § 323 (1930)).

14. *See id.* (quoting *Littell*, 38 Ark. at 589-90, 1882 WL 1518, at *3-4).

15. *See id.* at 378 & n.23 (quoting Statutory Foreclosure Act of 1987, 1987 Ark. Acts 121, § 19). *See generally* Statutory Foreclosure Act of 1987, 1987 Ark. Acts 121. The Statutory Foreclosure Act intended to establish “a system of nonjudicial foreclosure proceedings as an alternative to judicial foreclosures.” *Dickinson v. Suntrust Nat’l Mortg. Inc.*, 2014 Ark. 513, at 3, 451 S.W.3d 576, 579.

16. *See* Schieffler, *supra* note 5, at 378 n.23 (quoting Statutory Foreclosure Act of 1987, 1987 Ark. Acts 121, § 19).

17. *See id.* at 381 (“The mechanics of the sale are designed to prevent abuses that courts were worried about when there was lack of judicial involvement.”). The Statutory Foreclosure Act and the requirements thereof are laid out in ARK. CODE ANN. §§ 18-50-101 to -117 (2019).

18. ARK. CODE ANN. § 18-50-103.

19. ARK. CODE ANN. § 18-50-104.

20. ARK. CODE ANN. § 18-50-107.

21. ARK. CODE ANN. § 18-50-116(d)(2).

based on its application in practice.²² Critics even made a diligent attempt to repeal the Act during the regular session of the Arkansas General Assembly in 2013.²³ The critics claimed “that statutory foreclosure in Arkansas [has] facilitated hasty and unjust foreclosures.”²⁴ These criticisms—and the “hasty and unjust foreclosures” produced by the current legislation—raise the question still unanswered by the Arkansas judiciary: what recourse do borrowers have against third-party buyers when a lender wholly ignores the requirements of the Statutory Foreclosure Act?

II. A-Void-Able Consequences: Void vs. Voidable Sales

In determining the effects that foreclosure illegalities may have on subsequent purchasers, an important clarification must be made. While this Comment posits that there can be no subsequent purchasers following void sales, it does not make the same assertion when the sale is merely voidable.²⁵ Void sales arise where adherence to statutes and fair notice are so wholly absent that no title can pass.²⁶ Voidable sales, on the other hand, usually involve substantial but not strict compliance with the applicable statute.²⁷ Irregularities that might render a sale voidable include a confusing title description, a published notice of sale that omits the year, or “[a] sale at the east front door instead of the west front door as prescribed by the deed of trust.”²⁸ In voidable sales, title

22. See Statutory Foreclosure Act of 1987, 1987 Ark. Acts 121, § 19; H.B. 1847, 89th Gen. Assemb., Reg. Sess. (Ark. 2013).

23. Nate Coulter, *2013-14 University of Arkansas School of Law Student-Run Clinics Yield Policy Insights and Practical Foreclosure Advice to Homeowners*, 68 ARK. L. REV. 551, 585 (2015) (citing H.B. 1847, 89th Gen. Assemb., Reg. Sess. (Ark. 2013)).

24. *Id.*

25. Any argument that voidable sales could not create bona fide purchasers would be futile, as the Arkansas Supreme Court has already stated: “The general rule is that a sale to a bona fide purchaser, under a voidable execution, is valid.” *Youngblood v. Cunningham*, 38 Ark. 571, 577, 1882 WL 1516, at *4 (emphasis omitted).

26. See *Foster*, *supra* note 9, at 133; *Byers v. Fowler*, 12 Ark. 218, 274, 1851 WL 450, at *27 (“A party to a void process could acquire no title under it.”).

27. See *City Nat’l Bank v. De Baum*, 166 Ark. 18, 20-21, 265 S.W. 648, 648 (1924) (“It is admitted that the company did not comply with the provisions of the statute . . . , and the notes are voidable for that reason.”).

28. Schieffler, *supra* note 5, at 391 n.98 (citing *Graham v. Oliver*, 659 S.W.2d 601, 604 (Mo. Ct. App. 1983) (citations omitted)).

passes to the purchaser, but that sale may be set aside if: (1) there were irregularities in the foreclosure proceeding, and (2) the purchaser of the property does not take the property for new value, in good faith, and without notice of prior interests in the property.²⁹

However, if a good faith purchaser buys the property at the foreclosure sale, the title remains with that purchaser, even if the sale is later set aside as “voidable.”³⁰ This Comment acknowledges that the transfer of title to “subsequent purchasers for value” is not disrupted if the sale is merely voidable for failure to strictly comply with the provisions of the Statutory Foreclosure Act.³¹

On the other hand, the Arkansas Supreme Court has described a void sale as “a nullity, binding on no one.”³² Defects rendering foreclosures and subsequent sales void have traditionally included forged mortgages, instances where the mortgagor did not actually default, and/or a failure by the seller to follow “fundamental procedural requirements.”³³ For instance, “[s]ome procedural requirements are so fundamental, like the notice provisions, that completely neglecting them would render the sale void.”³⁴

The Statutory Foreclosure Act is ultimately silent on the effect a void sale has upon its miscellaneous provisions.³⁵

29. *Id.* at 390-91 & n.99 (citing 1 GRANT S. NELSON & DALE A. WHITMAN, REAL ESTATE FINANCE LAW §§ 7.20, 7.21, at 557 (2d ed. 1985); *Fargason v. Edrington*, 49 Ark. 207, 214, 4 S.W. 763, 764 (1887) (citation omitted)); *see also* *Matlock v. Lomas Mortg. U.S.A., Inc.*, 154 B.R. 721, 723 (Bankr. E.D. Ark. 1993) (citing *Union Nat’l Bank v. Nichols*, 305 Ark. 274, 807 S.W.2d 36 (1991)); *Bill’s Printing, Inc. v. Carder*, 357 Ark. 242, 249, 161 S.W.3d 803, 807 (2004).

30. *See* Schieffler, *supra* note 5, at 391 & n.99 (citing 1 GRANT S. NELSON & DALE A. WHITMAN, REAL ESTATE FINANCE LAW §§ 7.20, 7.21, at 557 (2d ed. 1985); *Fargason*, 49 Ark. at 214, 4 S.W. at 764 (citation omitted)); *see also* *Home Mut. Bldg. & Loan Ass’n v. Brown*, 188 Ark. 98, 100, 64 S.W.2d 89, 90 (1933) (“The fact that [the decree] was voidable . . . could not affect the rights of an innocent purchaser who acquired the title while the judgment was in full force and effect.”) (citing *Boyd v. Roane*, 49 Ark. 397, 5 S.W. 704 (1887)).

31. *See* ARK. CODE ANN. § 18-50-116(d)(2)(C) (2019).

32. *Fairbank v. Douglas*, 188 Ark. 224, 227, 66 S.W.2d 286, 288 (1933) (quoting *Tallman v. Bd. of Comm’rs*, 185 Ark. 851, 855, 49 S.W.2d 1039, 1041 (1932)), *overruled on other grounds* by *Dowell v. Land*, 208 Ark. 908, 913, 188 S.W.2d 134, 136 (1945).

33. *Foster*, *supra* note 9, at 133 (quoting 1 GRANT S. NELSON & DALE A. WHITMAN, REAL ESTATE FINANCE LAW § 7.20 (5th ed. 2007)).

34. Schieffler, *supra* note 5, at 390.

35. *See* ARK. CODE ANN. § 18-50-116.

Historically in Arkansas, when there has been a foreclosure defect so substantial that it rendered the sale void, no title passed to the so-called “purchaser” of the property.³⁶ In essence, no title could pass because no real sale was conducted.

In *Craig v. Meriwether*, the Arkansas Supreme Court held a sale void where the seller did not conduct an appraisal beforehand, as required by the statute.³⁷ The Court found that “when foreclosure sales of land under mortgages pursuant to power therein conferred are regulated by statute, a sale not in conformity with the statute is invalid.”³⁸ It also held that no title could transfer under the void sale, stating: “[A] sale under the power in the mortgage without complying with the statute is invalid . . . no title can be vested thereunder.”³⁹

In *Ford v. Nesbitt*, the Court held that sales lacking proper notice are void, stating:

One of the material things to be done was to give the notice properly[] . . . The property in the mortgage could not be alienated from the mortgagors except in strict accordance with the power therein conferred by that instrument, nor could a court of equity assume to confirm and make valid a sale not made in strict accordance therewith.⁴⁰

While it is worth noting that the rulings in both *Craig* and *Nesbitt* predated the Statutory Foreclosure Act, the Arkansas judiciary has continued to hold defective sales void subsequent to the passage of the Act.⁴¹ In 1991, the Arkansas Supreme Court affirmed an appellate ruling which declared invalid a sale in which notice was mailed after twelve days instead of the statutorily-prescribed ten.⁴² Five years later, the Arkansas Court

36. Foster, *supra* note 9, at 133 (citing 1 GRANT S. NELSON & DALE A. WHITMAN, REAL ESTATE FINANCE LAW § 7.20 (5th ed. 2007)); *see also* Terry K. Haenny, *Validity of a Void Foreclosure Judgment?*, 4 WILLAMETTE L.J. 548, 553 (1967) (finding that, when courts render judgments without proper jurisdiction, “[n]o rights are acquired by virtue of a void judgment, which is no judgment at all”).

37. *Craig v. Meriwether*, 84 Ark. 298, 303-05, 105 S.W. 585, 586-87 (1907).

38. *Id.* at 304, 105 S.W. at 586.

39. *Id.* at 305, 105 S.W. at 587.

40. *Ford v. Nesbitt*, 72 Ark. 267, 269, 79 S.W. 793, 794 (1904).

41. *See, e.g.*, *Henson v. Fleet Mortg. Co.*, 319 Ark. 491, 497, 892 S.W.2d 250, 253 (1995); *Union Nat’l Bank v. Nichols*, 305 Ark. 274, 279-80, 807 S.W.2d 36, 39 (1991).

42. *Nichols*, 305 Ark. at 279-80, 807 S.W.2d at 39.

of Appeals held void a foreclosure and foreclosure sale where process was served by the wrong deputy sheriff.⁴³

Though the Arkansas judiciary has comfortably found a myriad of foreclosure irregularities to render subsequent sales void,⁴⁴ it has not yet made clear its stance regarding whether title may pass to a subsequent purchaser in a void sale. Other judiciaries, however, have clearly addressed the question.⁴⁵ Texas courts have established:

Purchasers of land from a substitute trustee's sale are not relieved from the necessity of inquiring whether the trustee had been empowered to sell. One who bids on property at a foreclosure sale does so "at his peril." Purchasers assume that the trustee has power to make the sale at their peril, and **where he is without power, or there is other defect or irregularity that would render the foreclosure sale void, then the purchaser cannot acquire title to the property.**⁴⁶

The Texas judiciary has ultimately determined that the "effect of 'good faith purchaser for value without notice' does not apply to a purchaser at a void foreclosure sale" because "[a] purchaser at a foreclosure sale obtains only such title as the trustee had authority to convey."⁴⁷

The Massachusetts Supreme Court has established a similar rule, indicating:

There are limits to the protections provided to bona fide purchasers, however, and "[t]he purchaser of an apparently perfect record title is not protected against all adverse claims." . . . Generally, the key question in this regard is whether the transaction is void, in which case it is a nullity

43. *Planters Bank & Tr. Co. v. Smith*, No. CA 95-1156, 1996 WL 663899, at *3 (Ark. Ct. App. Nov. 13, 1996) (citing *Hubbard v. Shores Grp.*, 313 Ark. 498, 855 S.W.2d 924 (1993)).

44. See *supra* notes 41 & 43 and accompanying text.

45. See Ralph L. Straw Jr., *Off-Record Risks for Bona Fide Purchasers of Interests in Real Property*, 72 DICK. L. REV. 35, 44 & n.29 (1967) (citing cases where forged instruments affected bona fide chain of title).

46. *Diversified, Inc. v. Walker*, 702 S.W.2d 717, 723-24 (Tex. App. 1985) (emphasis added) (citation omitted); see Richard E. Flint, *Time to Repair the Chain: Void Deeds, Subsequent Purchasers, and the Texas Recording Statutes*, 48 ST. MARY'S L.J. 1, 35 (2016).

47. Flint, *supra* note 46, at 35 (emphasis omitted) (citing *Diversified, Inc.*, 702 S.W.2d at 721; *Bowman v. Oakley*, 212 S.W. 549, 552 (Tex. Civ. App. 1919)).

such that title never left possession of the original owner⁴⁸

The California Supreme Court has held:

Numerous authorities have established the rule that an instrument wholly void, such as an undelivered deed, a forged instrument, or a deed in blank, cannot be made the foundation of a good title, even under the equitable doctrine of bona fide purchase.⁴⁹

The Nebraska Supreme Court has followed suit, holding:

When a sale is void, “no title, legal or equitable, passes to the sale purchaser or subsequent grantees.” In other words, “adversely affected parties may have the sale set aside even though the property has passed into the hands of a bona fide purchaser.” . . . Further, even if there is a right to exercise the power of sale, an egregious failure to comply with fundamental procedural requirements while exercising the power of sale will render the sale void.⁵⁰

The Pennsylvania Supreme Court has determined that, where fraud occurs, “no title passes thereby, and a bona fide purchaser, for a valuable consideration from the person holding the deed, stands in no better situation than such fraudulent holder.”⁵¹ The Utah Supreme Court found that a deed which is void “does not convey any title to the grantee, or mortgagee, although he may be an innocent purchaser for value without notice.”⁵² Likewise, the Kentucky Court of Appeals stated: “But where the deed is regarded as absolutely void, it is held that even such a purchaser (innocent or bona fide) can obtain no title.”⁵³

48. *Bevilacqua v. Rodriguez*, 955 N.E.2d 884, 896-97 (2011) (quoting *Brewster v. Weston*, 126 N.E. 271, 272 (Mass. 1920)).

49. *Trout v. Taylor*, 32 P.2d 968, 970 (Cal. 1934).

50. *Gilroy v. Ryberg*, 667 N.W.2d 544, 554 (Neb. 2003) (citations omitted); *see also King v. De Tar*, 199 N.W. 847, 848-49 (Neb. 1924) (“From a review of all the evidence it seems clear to us that the deed . . . was fraudulently altered in a material respect and as such it became void, and no person, not even a bona fide purchaser, could take anything by such deed.”).

51. *Smith v. Markland*, 72 A. 1047, 1050 (Pa. 1909) (quoting *Van Amringe v. Morton*, 4 Whart. 382, 382 (Pa. 1839)).

52. *N. M. Long Co. v. Kenwood Co.*, 39 P.2d 1088, 1089 (Utah 1935) (finding that no interest can be acquired by a forged deed).

53. *Curry v. Hinton*, 231 S.W. 217, 218 (1921) (internal quotations omitted).

III. Not Altering but Clarifying Arkansas's Approach to Void Property Conveyances

Arkansas is not wholly removed from the many judiciaries which have found there can be no subsequent purchaser in a void sale. In 1933, the Arkansas Supreme Court cited similar language, stating: “[O]ne purchasing land from a person who obtained his title by forgery cannot be treated as an innocent purchaser.”⁵⁴ How then does this comport with Arkansas’s bar of claims against a “subsequent purchaser for value” in foreclosure proceedings?

This Comment asserts that Arkansas’s perspective on void conveyances has not changed in light of the Statutory Foreclosure Act. Arkansas has always sought to protect property owners.⁵⁵ A reading of the law that would fraudulently divest an unwitting homeowner of his or her home, land, and all the memories contained therein—with no remedy for the homeowner to recover his or her home—would be contrary to the purposes of the Act.⁵⁶

Perhaps reflective on this issue, it is important to note that Arkansas does not recognize subsequent purchasers for value where property is stolen.⁵⁷ Under Arkansas law, stolen property can have no subsequent purchaser, even one who is completely

54. *McCarley v. Carter*, 187 Ark. 282, 285, 59 S.W.2d 596, 597 (1933) (citing *Bird v. Jones*, 37 Ark. 195, 1881 WL 1478); *see also* *Straw Jr.*, *supra* note 45, at 44.

55. Property ownership is so highly regarded by the state that the Arkansas Constitution states: “The right of property is before and higher than any constitutional sanction.” ARK. CONST. art. II, § 22. Much the same, the Statutory Foreclosure Act was enacted, at least in part, to protect property owners from abuse. *See supra* notes 15-17 and accompanying text.

56. Evaluating the meaning of any statute requires ascertaining the intent behind the legislation. *See State ex rel. Moose v. Trulock*, 109 Ark. 556, 563, 160 S.W. 516, 517 (1913) (citing 2 LEWIS SUTHERLAND ON STATUTORY CONSTRUCTION, § 364) (“‘The intent of a statute being the law,’ said Mr. Sutherland, ‘it necessarily follows that the object of all interpretation is to find out that intent.’”). The Arkansas Supreme Court has held: “It is the duty of every Court, when satisfied of the intention of the legislature, clearly expressed in a constitutional enactment, to give effect to that intention . . . **And any construction should be discarded that would lead to absurd consequences.**” *State v. Smith*, 40 Ark. 431, 432-33, 1883 WL 1165, at *1 (emphasis added). Permitting the hypothetical introduced at the beginning of this Comment to occur can easily be classified as an “absurd consequence[]” under the Arkansas precedent.

57. ARK. CODE ANN. § 16-80-103(a) (2013).

innocent regarding the illegalities.⁵⁸ Arkansas’s statute states: “All property obtained by theft, robbery, or burglary shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his or her right to the property.”⁵⁹ For a lender to illegally seize property which is lawfully vested in one party and transfer that property to another, is this anything other than theft?⁶⁰

Now, this Comment by no means intends to suggest that minor errors in foreclosure proceedings—though the statute does require strict compliance⁶¹—should divest subsequent purchasers of ownership in the property. The finality in transfer of title guaranteed by the Statutory Foreclosure Act is hugely advantageous and should not be uprooted for merely trivial discrepancies, nor would the language of the Statutory Foreclosure Act support such an interpretation.⁶² This Comment simply posits that there can be no subsequent purchaser where there is no valid sale.

IV. Conclusion

It is clear that the protections guaranteed to “subsequent purchasers for value” were not intended to apply where the

58. ARK. CODE ANN. § 16-80-103(a); *see also* *Superior Iron Works v. McMillan*, 235 Ark. 207, 210, 357 S.W.2d 524, 526 (1962) (“[I]t is clear that in this jurisdiction title to stolen property remains in its rightful owner.”).

59. ARK. CODE ANN. § 16-80-103(a).

60. In Arkansas:

(a) A person commits theft of property if he or she knowingly:

(1) Takes or exercises unauthorized control over or makes an unauthorized transfer of an interest in the property of another person with the purpose of depriving the owner of the property; or

(2) Obtains the property of another person by deception or by threat with the purpose of depriving the owner of the property.

ARK. CODE ANN. § 5-36-103 (Supp. 2021).

61. In 1995, the Arkansas Supreme Court held that the Statutory Foreclosure Act requires strict compliance with its provisions. *See Henson v. Fleet Mortg. Co.*, 319 Ark. 491, 497, 892 S.W.2d 250, 253 (1995) (“Any statute which is in derogation of or at variance with the common law must be strictly construed.”). In 2020, the Court reiterated this notion with its decision in *Davis v. Pennymac Loan Services, LLC*, 2020 Ark. 180, at 7, 599 S.W.3d 128, 132.

62. *See supra* notes 15-21 and accompanying text.

foreclosure and subsequent sale were outright void.⁶³ When the court asks whether the unwitting homeowner can recover her home after waking one day to find it unceremoniously ripped away by illegal foreclosure proceedings, the answer should most certainly be in the affirmative. Where the foreclosure sale is wholly void and there is no subsequent purchaser, the true owner of the home is not changed by the void sale.

This Comment implores the Arkansas Supreme Court to clearly declare this standard. In doing so, the Arkansas judiciary will remain true to the purposes of the Statutory Foreclosure Act, rule consistently with well-established precedent, and properly adhere to the fundamental fairness in property that Arkansas has long granted its citizens.

HANNAH HUNGATE

63. *See* ARK. CODE ANN. § 18-50-116(d)(2)(C) (2019).