

Title 14: COURT PROCEDURE -- CIVIL
Chapter 713: MISCELLANEOUS PROVISIONS RELATING
TO FORECLOSURE OF REAL PROPERTY MORTGAGES

Table of Contents

Part 7. PARTICULAR PROCEEDINGS.....

- Subchapter 1. GENERAL PROVISIONS..... 3
 - Section 6101. ATTORNEY'S FEES..... 3
 - Section 6102. MORTGAGE AS ASSET OF DECEDENT'S ESTATE..... 3
 - Section 6103. JUDICIAL DETERMINATION OF BREACH OF CONDITION..... 3
 - Section 6104. LIMITATION OF ACTION ON UNDISCHARGED MORTGAGE..... 4
 - Section 6105. OWNERS IN SEVERALTY MAY JOIN IN COMPLAINT..... 4
 - Section 6106. LIMITATION ON UNDISCHARGED MORTGAGE TO SECURE
CONTINGENT LIABILITY..... 4
 - Section 6107. DESCRIPTION OF UNKNOWN MORTGAGEES; SERVICE OF
COMPLAINT..... 4
 - Section 6108. COURT HAS JURISDICTION OVER ALL DEFENDANTS..... 4
 - Section 6109. DECREE BARS CLAIMS..... 5
 - Section 6110. TENDER TO GUARDIAN OF MORTGAGEE; DISCHARGE..... 5
 - Section 6111. NOTICE OF MORTGAGOR'S RIGHT TO CURE..... 5
 - Section 6112. STATEWIDE OUTREACH..... 7
- Subchapter 2. STATE MORTGAGES..... 8
 - Section 6151. DISCHARGE OR FORECLOSURE BY TREASURER..... 8
 - Section 6152. CIVIL ACTION FOR REDEMPTION FILED AGAINST STATE..... 8
 - Section 6153. NOTICE AND PROCEEDINGS..... 8
- Subchapter 3. FORECLOSURE PROCEEDING..... 8
 - Section 6201. FORECLOSURE BY POSSESSION (REPEALED)..... 8
 - Section 6202. -- REDEMPTION IN ONE YEAR (REPEALED)..... 8
 - Section 6203. FORECLOSURE WITHOUT POSSESSION (REPEALED)..... 9
 - Section 6203-A. POWER OF SALE; PROCEDURE; NOTICE; FORM..... 9
 - Section 6203-B. COPY OF NOTICE; AFFIDAVIT; RECORDING; EVIDENCE..... 11
 - Section 6203-C. CONVEYANCE BY MORTGAGOR; EFFECT..... 12
 - Section 6203-D. LIMITATION OF ACTIONS..... 12
 - Section 6203-E. LIABILITY FOR DEFICIENCY ON SALE; NECESSITY OF NOTICE;
FORM; AFFIDAVIT..... 12
 - Section 6203-F. FORECLOSURE OF BOND FOR DEED AND CONTRACTS FOR SALE
OF REAL ESTATE..... 13
 - Section 6203-G. ASSIGNMENT OF MORTGAGE..... 14
 - Section 6204. REDEMPTION IN ONE YEAR (REPEALED)..... 14
 - Section 6204-A. DISPOSITION OF PROCEEDS OF FORECLOSURE SALE
(REPEALED)..... 14
 - Section 6204-B. DISPOSITION OF PROCEEDS OF SALE AFTER FORECLOSURE
(REPEALED)..... 15
 - Section 6205. RIGHTS OF JUNIOR MORTGAGEE..... 15

Section 6206. JUDGMENT WHERE NOTHING DUE.....	15
Section 6207. ACTION BY EXECUTOR OR ADMINISTRATOR.....	15
Section 6208. PROPER PARTY DEFENDANT.....	15
Section 6209. REAL ACTION AGAINST MORTGAGEE IN POSSESSION AFTER MORTGAGE PAID.....	15
Subchapter 4. ACTION FOR POSSESSION.....	16
Section 6251. FORM OF COMPLAINT.....	16
Section 6252. FORM OF CONDITIONAL JUDGMENT.....	16
Subchapter 5. REDEMPTION.....	16
Section 6301. ACCOUNTING REQUIRED.....	16
Section 6302. DEATH OF MORTGAGEE OR SUCCESSOR (REPEALED).....	16
Section 6303. DEATH OF MORTGAGOR OR SUCCESSOR (WHOLE SECTION TEXT EFFECTIVE UNTIL 7/1/19).....	16
Section 6303. DEATH OF MORTGAGOR OR SUCCESSOR (WHOLE SECTION TEXT EFFECTIVE 7/1/19).....	17
Section 6304. EFFECT OF PAYMENT OR TENDER.....	17
Section 6305. MORTGAGEE OUT OF STATE.....	17
Section 6306. -- PAYMENT TO CLERK OF COURT.....	17
Section 6307. FRAUDULENT MORTGAGE.....	18
Section 6308. NOTICE BY PUBLICATION.....	18
Section 6309. LIMITATION OF CIVIL ACTION.....	18
Section 6310. JOINDER OF OTHERS AS DEFENDANTS; NOTICE.....	18
Section 6311. JOINT OR SEVERAL EXECUTION.....	18
Section 6312. DEDUCTION OF RENTS AND PROFITS; STATEMENT OF AMOUNT DUE.....	18
Section 6313. REDEMPTION OF ESTATE FROM PURCHASER OF EQUITY.....	19
Subchapter 6. FORECLOSURE PROCEEDINGS BY CIVIL ACTION.....	19
Section 6321. COMMENCEMENT OF FORECLOSURE BY CIVIL ACTION.....	19
Section 6321-A. FORECLOSURE MEDIATION PROGRAM.....	20
Section 6321-B. EXPEDITED FINAL HEARING IN CERTAIN FORECLOSURE CASES.....	23
Section 6322. HEARING AND JUDGMENT.....	24
Section 6322-A. NOTICE TO TENANTS OF FORECLOSURE JUDGMENT.....	25
Section 6323. SALE FOLLOWING EXPIRATION OF PERIOD OF REDEMPTION.....	25
Section 6324. PROCEEDS OF SALE.....	26
Section 6325. EXCEPTIONS.....	27
Section 6326. ORDER OF ABANDONMENT FOR RESIDENTIAL PROPERTIES IN FORECLOSURE.....	27

Maine Revised Statutes

Title 14: COURT PROCEDURE -- CIVIL

Chapter 713: MISCELLANEOUS PROVISIONS RELATING TO FORECLOSURE OF REAL PROPERTY MORTGAGES

Subchapter 1: GENERAL PROVISIONS

§6101. ATTORNEY'S FEES

For the foreclosure of a mortgage by any method authorized by this chapter, if the mortgagee prevails, the mortgagee or the person claiming under the mortgagee may charge a reasonable attorney's fee which is a lien on the mortgaged estate, and must be included with the expense of publication, service and recording in making up the sum to be tendered by the mortgagor or the person claiming under the mortgagor in order to be entitled to redeem, provided the sum has actually been paid in full or partial discharge of an attorney's fee. If the mortgagee does not prevail, or upon evidence that the action was not brought in good faith, the court may order the mortgagee to pay the mortgagor's reasonable court costs and attorney's fees incurred in defending against the foreclosure or any proceeding within the foreclosure action and deny in full or in part the award of attorney's fees and costs to the mortgagee. For purposes of this section, "does not prevail" does not mean a stipulation of dismissal entered into by the parties, an agreed-upon motion to dismiss without prejudice to facilitate settlement or successful mediation of the foreclosure action pursuant to section 6321-A. [2011 , c. 269 , §1 (AMD) .]

SECTION HISTORY

1967, c. 424, §1 (AMD). 1981, c. 429, §1 (AMD). 2011, c. 269, §1 (AMD).

§6102. MORTGAGE AS ASSET OF DECEDENT'S ESTATE

Lands mortgaged to secure the payment of debts or the performance of any collateral engagement, and the debts so secured are, on the death of the mortgagee or person claiming under him, assets in the hands of his executors or administrators. They shall have the control of them as of a personal pledge. When they recover seizin and possession thereof, it shall be for the use of the widow and heirs, or devisees or creditors of the deceased, as the case may be. When redeemed, they may receive the money, and give effectual discharges therefor, and releases of the mortgaged premises.

§6103. JUDICIAL DETERMINATION OF BREACH OF CONDITION

In all cases where a debtor has mortgaged real and personal estate to secure the performance of a collateral agreement or undertaking, other than the payment of money, and proceedings have been commenced to foreclose said mortgage for alleged breach of the conditions thereof, but the time of redemption has not expired, any person having any claim against the mortgagor and having attached said mortgagor's interest in said estate on said claim may file a complaint in the Superior Court in the county where such agreement has to be performed, where the owner of such mortgage resides or where the property mortgaged is situated, alleging such facts and praying for relief. Said court may examine into the facts and ascertain whether there has been a breach of the conditions of said mortgage, and if such is found to be the fact, may assess the damages arising therefrom, and may make such orders and decrees in the premises as will secure the rights of said mortgagee or his assignee, so far as the same can be reasonably accomplished, and enable the creditor, by fulfilling such requirements as the court may impose, to hold said property, or such right or interest as may remain therein by virtue of such attachment, for the satisfaction of his claim. Such claim may include possession of the property by the mortgagee for such time as the court deems just and equitable. Pending such proceedings, the right of redemption shall not expire by any attempted foreclosure of such mortgage.

§6104. LIMITATION OF ACTION ON UNDISCHARGED MORTGAGE

When the record title of real estate is encumbered by an undischarged mortgage, and the mortgagor and those having his estate in the premises have been in uninterrupted possession of such real estate for 20 years after the expiration of the time limited in the mortgage for the full performance of the conditions thereof, he or they, or any person having a freehold estate, vested or contingent in possession, reversion or remainder, in the land originally subject to the mortgage or in any undivided or any aliquot part thereof, or any interest therein which may eventually become a freehold estate, or any person who has conveyed such land or any such interest therein with covenants of title or warranty, may apply to the Superior Court in the county where the whole or any part of the mortgaged premises is situated, by complaint setting forth the facts and asking for a decree as hereinafter provided. If after notice to all persons interested as provided in section 6107, no evidence is offered of any payment within said 20 years or of any other act within said time, in recognition of its existence as a valid mortgage, the Superior Court upon hearing may enter a decree setting forth such facts and its findings in relation thereto, which decree shall within 30 days be recorded in the registry of deeds where the mortgage is recorded. Thereafter no action shall be brought by any person to enforce a title under said mortgage.

§6105. OWNERS IN SEVERALTY MAY JOIN IN COMPLAINT

Any 2 or more persons owning in severalty different portions or different interests of the character above described, in the whole or in different portions thereof, may join in one complaint. Two or more defects arising under different mortgages affecting one parcel of land may be set forth in the same complaint. In case of a contest the court shall make such order for separate issues as may be proper.

§6106. LIMITATION ON UNDISCHARGED MORTGAGE TO SECURE CONTINGENT LIABILITY

When the mortgagor of such an undischarged mortgage and those having his estate in the premises have been in uninterrupted possession of such real estate for 20 years from the date thereof, and it shall appear that such mortgage was not given to secure the payment of a sum of money or a debt, but to secure the mortgagee against some contingent liability assumed or undertaken by him, and that such conditional liability has ceased to exist and that the interests of no person will be prejudiced by the discharge of such mortgage, the mortgagor or those having his estate in the premises, or any of the persons to whom a similar remedy is granted in section 6104, may apply to the Superior Court in the county where the whole or any part of the mortgaged premises is situated, by complaint setting forth the facts and asking for a decree as hereinafter provided. If after notice to all persons interested as provided in section 6107, and upon hearing it shall appear that the liability on account of which such mortgage was given has ceased to exist and that such mortgage ought to be discharged, the Superior Court may enter a decree setting forth the facts proved and its findings in relation thereto, which decree shall within 30 days be recorded in the registry of deeds where the mortgage is recorded. Thereafter no action shall be brought to enforce a title under said mortgage.

§6107. DESCRIPTION OF UNKNOWN MORTGAGEES; SERVICE OF COMPLAINT

When it is alleged under oath in the complaint that the mortgagees or persons claiming under them are unknown or that their names are unknown, they may be described generally as claiming by, through or under some person or persons named in the complaint. Service shall be made as in other actions on all known defendants residing either in the State or outside the State, and notice by publication to defendants whose identity or whereabouts are unknown shall be given as in other actions where publication is required.

§6108. COURT HAS JURISDICTION OVER ALL DEFENDANTS

Upon the service of such notice in accordance with the order of the court, the court shall have jurisdiction of all persons made defendants in the manner provided, and shall upon due hearing make such decree upon the complaint and as to costs as it shall deem proper.

§6109. DECREE BARS CLAIMS

The decree of the court determining the validity, nature or extent of any such encumbrance shall operate directly on the land as a proceeding in rem, and shall be effectual to bar all the defendants from any claim thereunder contrary to such determination, and such decree so barring said defendants shall have the same force and effect as a release of such claims executed by the defendants in due form of law. The court may, in its discretion, appoint agents or guardians ad litem to represent minors or other defendants.

§6110. TENDER TO GUARDIAN OF MORTGAGEE; DISCHARGE

When the mortgagee or person holding under him is under guardianship, a tender may be made to the guardian and he shall receive the sum due on the mortgage; and upon receiving it, or on performance of such other condition as the case requires, he shall execute a discharge of the mortgage.

§6111. NOTICE OF MORTGAGOR'S RIGHT TO CURE

1. Notice; payment. With respect to mortgages upon residential property located in this State when the mortgagor is occupying all or a portion of the property as the mortgagor's primary residence and the mortgage secures a loan for personal, family or household use, the mortgagee may not accelerate maturity of the unpaid balance of the obligation or otherwise enforce the mortgage because of a default consisting of the mortgagor's failure to make any required payment, tax payment or insurance premium payment, by any method authorized by this chapter until at least 35 days after the date that written notice pursuant to subsection 1-A is given by the mortgagee to the mortgagor and any cosigner against whom the mortgagee is enforcing the obligation secured by the mortgage at the last known addresses of the mortgagor and any cosigner that the mortgagor has the right to cure the default by full payment of all amounts that are due without acceleration, including reasonable interest and late charges specified in the mortgage or note as well as reasonable attorney's fees. If the mortgagor tenders payment of the amounts before the date specified in the notice, the mortgagor is restored to all rights under the mortgage deed as though the default had not occurred.

[2009, c. 402, §10 (AMD) .]

1-A. Contents of notice. A mortgagee shall include in the written notice under subsection 1 the following:

A. The mortgagor's right to cure the default as provided in subsection 1; [2009, c. 402, §11 (NEW) .]

B. An itemization of all past due amounts causing the loan to be in default and the total amount due to cure the default; [2015, c. 36, §1 (AMD) .]

C. An itemization of any other charges that must be paid in order to cure the default; [2009, c. 476, Pt. B, §2 (AMD); 2009, c. 476, Pt. B, §9 (AFF) .]

D. A statement that the mortgagor may have options available other than foreclosure, that the mortgagor may discuss available options with the mortgagee, the mortgage servicer or a counselor approved by the United States Department of Housing and Urban Development and that the mortgagor is encouraged to explore available options prior to the end of the right-to-cure period; [2009, c. 402, §11 (NEW) .]

E. The address, telephone number and other contact information for persons having authority to modify a mortgage loan with the mortgagor to avoid foreclosure, including, but not limited to, the mortgagee, the mortgage servicer and an agent of the mortgagee; [2009, c. 402, §11 (NEW) .]

F. The name, address, telephone number and other contact information for all counseling agencies approved by the United States Department of Housing and Urban Development operating to assist mortgagors in the State to avoid foreclosure; [2015, c. 36, §1 (AMD) .]

G. Where mediation is available as set forth in section 6321-A, a statement that a mortgagor may request mediation to explore options for avoiding foreclosure judgment; and [2015, c. 36, §1 (AMD) .]

H. A statement that the total amount due does not include any amounts that become due after the date of the notice. [2015, c. 36, §2 (NEW) .]

[2015, c. 36, §§1, 2 (AMD) .]

2. No application to supervised lender or supervised financial organization.

[1995, c. 654, §2 (RP) .]

3. Notice procedure. A mortgagee shall provide notice to a mortgagor and any cosigner under this section to the last known addresses of the mortgagor and cosigner by:

A. Certified mail, return receipt requested. For the purposes of this paragraph, the time when the notice is given to the mortgagor or cosigner is the date the mortgagor or cosigner signs the receipt or, if the notice is undeliverable, the date the post office last attempts to deliver it; or [1997, c. 579, §2 (NEW) .]

B. Ordinary first class mail, postage prepaid. For the purposes of this paragraph, the time when the notice is given to the mortgagor or cosigner is the date when the mortgagor or cosigner receives that notice. A post office department certificate of mailing to the mortgagor or cosigner is conclusive proof of receipt on the 3rd calendar day after mailing. [1997, c. 579, §2 (NEW) .]

[1997, c. 579, §2 (AMD) .]

3-A. Information; Bureau of Consumer Credit Protection. Within 3 days of providing written notice to the mortgagor as required by subsections 1 and 1-A, the mortgagee shall file with the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection, in electronic format as designated by the Bureau of Consumer Credit Protection, information including:

A. The name and address of the mortgagor and the date the written notice required by subsections 1 and 1-A was mailed to the mortgagor and the address to which the notice was sent; [2009, c. 402, §12 (NEW) .]

B. The address, telephone number and other contact information for persons having authority to modify a mortgage loan with the mortgagor to avoid foreclosure, including, but not limited to, the mortgagee, the mortgage servicer and an agent of the mortgagee; and [2009, c. 402, §12 (NEW) .]

C. Other information, as permitted by state and federal law, requested of the mortgagor by the Bureau of Consumer Credit Protection. [2009, c. 402, §12 (NEW) .]

[2009, c. 402, §12 (NEW) .]

3-B. Report. On a quarterly basis, the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall report to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters on the number of notices received pursuant to subsection 3-A. To the extent information is available, the report must also include information on the number of foreclosure filings based on data collected from the court and the Department of Professional and Financial Regulation, Bureau of Financial Institutions and on the types of lenders that are filing foreclosures.

[2009, c. 402, §13 (NEW) .]

4. Notice not required.

[1997, c. 579, §3 (RP) .]

4-A. Letter to mortgagor. Within 3 days of receiving electronic information from the mortgagee as set forth in subsection 3-A, the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall send a written notice to the mortgagor that includes a summary of the mortgagor's rights and available resources, including information concerning the foreclosure mediation program as established in section 6321-A.

[2009, c. 402, §14 (NEW) .]

5. Exceptions.

[2009, c. 476, Pt. A, §2 (RP) .]

SECTION HISTORY

1991, c. 707, §1 (NEW). 1993, c. 373, §1 (AMD). 1995, c. 654, §§1-4 (AMD). 1997, c. 579, §§1-4 (AMD). 2009, c. 402, §§10-14 (AMD). 2009, c. 476, Pt. A, §2 (AMD). 2009, c. 476, Pt. B, §2 (AMD). 2009, c. 476, Pt. B, §9 (AFF). 2015, c. 36, §§1, 2 (AMD).

§6112. STATEWIDE OUTREACH

To the extent resources are available pursuant to subsection 4, the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall engage in the following activities.

[2009, c. 402, §15 (NEW).]

1. Hotline. The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall establish a statewide hotline to facilitate a mortgagor's communication with housing counselors approved by the United States Department of Housing and Urban Development for the purposes of discussing options to avoid foreclosure.

[2009, c. 402, §15 (NEW) .]

2. Outreach; housing counseling services. The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection, in consultation with the Maine State Housing Authority, shall coordinate an outreach program to help families with their housing needs with the intent of expanding the outreach program statewide. The bureau shall use a portion of the funds received pursuant to subsection 4 for contracts with nonprofit organizations that provide housing counseling services and mortgage assistance.

[2009, c. 402, §15 (NEW) .]

3. Form. The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection, after consultation with interested parties, shall develop for use by the Supreme Judicial Court a one-page form notice for making a request for mediation and making an answer to a foreclosure complaint as described in section 6321-A, subsection 2.

[2009, c. 402, §15 (NEW) .]

4. Funding. The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall establish a nonlapsing, dedicated account for the deposit of revenues transferred from the Department of Administrative and Financial Services, Maine Revenue Services pursuant to Title 36, section 4641-B, subsection 6 and for any funds received from any public or private source. The Bureau of Consumer Credit Protection shall use the account to cover the costs of carrying out the duties in this section and section 6111, subsections 3-A, 3-B and 4-A, and the funds in the account may not be used for any other purpose.

[2009, c. 402, §15 (NEW) .]

5. Report. Beginning January 1, 2010, the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall report every 6 months on the revenues received pursuant to subsection 4, the expenditures made to carry out the purposes of this section, any financial orders submitted by the bureau and any updated assumptions related to the bureau's revenues and expenditures in accordance with this section. The report must be submitted to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters.

[2009, c. 402, §15 (NEW) .]

SECTION HISTORY

2009, c. 402, §15 (NEW).

Subchapter 2: STATE MORTGAGES

§6151. DISCHARGE OR FORECLOSURE BY TREASURER

When a mortgage is made or assigned to the State, the Treasurer of State may demand and receive the money due thereon and discharge it by his deed of release. After breach of the condition, he may, in person or by his agent, make use of the like means for the purpose of foreclosure, which an individual mortgagee might, as prescribed in section 6321. [1975, c. 552, §3 (AMD).]

All mortgages in the name of the State and made under the Revised Statutes of 1944, chapter 30 shall be collected, discharged or foreclosed in accordance with this section.

SECTION HISTORY

1975, c. 552, §3 (AMD).

§6152. CIVIL ACTION FOR REDEMPTION FILED AGAINST STATE

If the Treasurer of State and the person applying to redeem any lands mortgaged to the State disagree as to the sum due thereon, such person may bring a civil action against the State for the redemption thereof in the Superior Court.

§6153. NOTICE AND PROCEEDINGS

The court shall order notice to be served on the Treasurer of State in the usual form, and shall hear the cause and decide what sum is due to the State on said mortgage, and award costs as it deems equitable. The treasurer shall accept the sum adjudged by the court to be due and discharge the mortgage.

Subchapter 3: FORECLOSURE PROCEEDING

§6201. FORECLOSURE BY POSSESSION

(REPEALED)

SECTION HISTORY

1981, c. 279, §7 (AMD). 1987, c. 736, §16 (AMD). 2007, c. 391, §1 (RP).

§6202. -- REDEMPTION IN ONE YEAR

(REPEALED)

SECTION HISTORY

2007, c. 391, §2 (RP).

§6203. FORECLOSURE WITHOUT POSSESSION

(REPEALED)

SECTION HISTORY

1965, c. 116, (AMD). 1965, c. 513, §§28-A (AMD). 1969, c. 291, §§1,2 (AMD). 1973, c. 625, §84 (AMD). 1987, c. 667, §13 (AMD). 2007, c. 391, §3 (RP).

§6203-A. POWER OF SALE; PROCEDURE; NOTICE; FORM

1. Power of sale. Any holder of a mortgage on real estate that is granted by a corporation, partnership, including a limited partnership or a limited liability partnership, limited liability company or trustee of a trust and that contains a power of sale, as described in Title 33, section 501-A, or a person authorized by the power of sale, or an attorney duly authorized by a writing under seal, or a person acting in the name of the holder of such mortgage or any such authorized person, may, upon breach of condition and without action, do all the acts authorized or required by the power; except that a sale under the power is not effectual to foreclose a mortgage unless, previous to the sale, notice has been published once in each of 3 successive weeks, the first publication to be not less than 21 days before the day of the sale in a newspaper of general circulation in the town where the land lies and which notice must comply with the requirements of subsection 3. This provision is implied in every power of sale mortgage in which it is not expressly set forth. For mortgage deeds executed on or after October 1, 1993, the power of sale may be used only if the mortgage deed states that it is given primarily for one or more of the following purposes: business, commercial or agricultural. Any power of sale incorporated into a mortgage is not affected by the subsequent transfer of the mortgaged premises from the corporation, partnership, including a limited partnership or a limited liability partnership, limited liability company or trustee of the trust to any other type of organization or to an individual or individuals. The power of sale may not be used to foreclose a mortgage deed granted by a trustee of a trust if at the time the mortgage deed is given the real estate is used exclusively for residential purposes, the real estate has 4 or fewer residential units and one of the units is the principal residence of the owner of at least 1/2 of the beneficial interest in the trust. If the mortgage deed contains a statement that at the time the mortgage deed is given the real estate encumbered by the mortgage deed is not used exclusively for residential purposes, that the real estate has more than 4 residential units or that none of the residential units is the principal residence of the owner of at least 1/2 of the beneficial interest in the trust, the statement conclusively establishes these facts and the mortgage deed may be foreclosed by the power of sale. The method of foreclosure of real estate mortgages provided by this section is specifically subject to the rights of junior mortgagees set out in section 6205.

[2015, c. 147, §1 (AMD) .]

1-A. Notice to mortgagor and parties in interest; definition. At least 21 days before the date of the sale under the power in a mortgage, a copy of the foreclosure notice must be served on the mortgagor or its representative in interest, or may be sent by registered or certified mail addressed to the mortgagor or the mortgagor's representative at the mortgagor's last known address, or to the person and to the address as may be agreed upon in the mortgage or to the address as may be provided in writing by the mortgagor to the mortgagee. In addition, a copy of the foreclosure notice must be sent by first-class mail, postmarked at least 21 days prior to the public sale, to all other parties in interest, except for parties in interest having a superior priority to the foreclosing mortgagee, at the address, if any, listed in the instrument evidencing the interest, and, if none is listed, to the registered agent for the party in interest, or to any other address that may be readily available to the mortgagee. For the purposes of this section, "parties in interest" means those parties having a claim to the real estate whose claim is recorded in the registry of deeds as of the time of recording the notice of foreclosure. Failure to notify any party in interest, other than the mortgagor, does not invalidate the foreclosure as to other parties in interest who were given notice.

[2015, c. 147, §1 (NEW) .]

2. Notice to tenants; effect on title. In addition to the notices provided pursuant to subsections 1 and 1-A, the mortgagee shall provide a copy of the foreclosure notice to a residential tenant if the mortgagee knows or should know by exercise of due diligence that the property is occupied as a rental unit. Upon request from a mortgagee, the mortgagor or its representative in interest shall provide the name, address and other contact information for any residential tenant. Notice to a residential tenant may be served on the residential tenant by sheriff, may be sent by first class mail at the residential tenant's last known address or may be posted conspicuously at each entrance to the mortgaged premises. A residential tenant may not be evicted unless a mortgagee institutes an action for forcible entry and detainer pursuant to section 6001 at least 21 days after a mortgagee has served the notice required by this subsection. This subsection may not be construed to prohibit an action for forcible entry and detainer in accordance with section 6001 for a reason that is not related to a foreclosure sale. The failure to provide the notice required by this subsection does not affect the validity of the foreclosure sale.

[2015, c. 147, §1 (AMD) .]

2-A. Recording foreclosure notice. At least 21 days before the date of a sale under the power in a mortgage, a copy of the foreclosure notice must be recorded in each registry of deeds in which the mortgage deed is or by law ought to be recorded in order to provide constructive notice.

[2015, c. 147, §1 (NEW) .]

3. Form of foreclosure notice. A foreclosure notice must identify the mortgagee, the mortgagor, the terms of the public sale, the location, date and time of the public sale, the street address, if any, of the real estate encumbered by the mortgage, a description of the real estate encumbered by the mortgage, which may be incorporated by reference to the book and page number of an instrument of record containing an adequate legal description of the real estate, and the book and page number, if any, of the mortgage. The following form of foreclosure notice may be used and may be altered as circumstances require; but nothing herein may be construed to prevent the use of other forms.

FORM

Mortgagee's sale of real estate

By virtue of and in execution of the Power of Sale contained in a certain Mortgage Deed given by (Mortgagor) to (Mortgagee) dated and recorded in the County Registry of Deeds, Book, Page, of which Mortgage the undersigned is the present holder, (if by assignment, or in any fiduciary capacity give reference), for breach of the conditions of said Mortgage and for the purpose of foreclosing the same there will be sold at Public Sale at o'clock, M. on the day of 20....., at (Location of Public Sale), all and singular the premises described in said Mortgages,, (in case of partial releases state exceptions).

To wit: "(Description of the real estate encumbered by the Mortgage, which may be incorporated by reference to the book and page number of an instrument of record containing an adequate legal description of the real estate)".

Street Address: (Street address, if any, of the real estate encumbered by the Mortgage).

Terms of Sale: (State here the amount, if any, to be paid in cash by the purchaser at the time and place of the sale, and the time or times for payment of the balance or the whole as the case may be and any other terms or conditions relating to the sale).

Other terms to be announced at the sale.

Signed:
(Present holder of Mortgage)

..... 20.....

[2015, c. 147, §1 (AMD) .]

4. Notice of sale. A foreclosure notice published in accordance with this chapter or in accordance with the power in the mortgage together with such other or further notice, if any, as is required by the mortgage, along with notice to the mortgagor and parties in interest whose interest appears of record at the time that the foreclosure notice is recorded in the appropriate registry of deeds, is sufficient notice of the sale, and the premises are considered to have been sold free and clear of the interest of the mortgagor and of all other parties in interest who have been given notice in compliance with subsection 1-A, except for parties in interest having a superior priority to the foreclosing mortgagee. The deed thereunder must convey the premises subject to and with the benefit of all restrictions, easements, improvements, outstanding tax titles, municipal or other public taxes, assessments, liens or claims in the nature of liens and existing encumbrances of record created prior to the mortgage, whether or not reference to such restrictions, easements, improvements, liens or encumbrances is made in the deed or foreclosure notice. Any other party in interest having a claim to the real estate whose claim is not recorded in the registry of deeds as of the time of recording the foreclosure notice need not be given notice, and any such party has no claim against the real estate after completion of the public sale, in accordance with Title 33, section 501-A. The interests of parties in interest having a superior priority are not affected by the foreclosure.

[2015, c. 147, §1 (AMD) .]

5. Public sale. At the completion of a public sale pursuant to this section, the foreclosing mortgagee shall execute a purchase and sale agreement with the highest bidder. The purchase and sale agreement may be assigned by the purchaser. If the highest bidder fails to perform on the agreement, the foreclosing mortgagee may execute a purchase and sale agreement with the next highest bidder. If the foreclosing mortgagee is the highest bidder or becomes the highest bidder by failure of a bidder to perform a purchase and sale agreement, a purchase and sale agreement need not be executed. A mortgagee may bid and may purchase any real estate sold at such sale, as long as the mortgagee is the highest bidder. If the real estate is sold for an amount in excess of the outstanding balance of the mortgage together with all interest and costs, said excess must be used to satisfy the claims of parties in interest whose interests were extinguished by the foreclosure in the order of priority that existed prior to the foreclosure and, after all of those parties in interest are satisfied together with all interest and costs, any excess then remaining must be paid to the mortgagor. If the mortgagor or any such party in interest cannot be found after a diligent search, the money must be paid into the Superior Court in the county where the land lies for the benefit of the mortgagor or the holder of any such encumbrance.

[2015, c. 147, §1 (AMD) .]

6. Continuation of sale. A public sale pursuant to this section may be adjourned, for any time not exceeding 30 days and from time to time until a sale is made, by announcement to those present at each adjournment.

[2015, c. 147, §1 (NEW) .]

SECTION HISTORY

1967, c. 396, (NEW). 1967, c. 424, §2 (NEW). 1967, c. 544, §37 (RP). 1971, c. 113, (AMD). 1987, c. 667, §14 (AMD). 1991, c. 134, §1 (AMD). 1991, c. 768, §§1,2 (AMD). 1993, c. 277, §§1,2 (AMD). 1993, c. 277, §5 (AFF). 1995, c. 106, §1 (AMD). 1995, c. 106, §1 (AMD). 2009, c. 402, §16 (AMD). 2009, c. 476, Pt. B, §9 (AFF). 2009, c. 476, Pt. B, §3 (RPR). 2015, c. 147, §1 (AMD).

§6203-B. COPY OF NOTICE; AFFIDAVIT; RECORDING; EVIDENCE

The mortgagee or its agent shall, within 30 days after the date of the delivery of the deed to the purchaser or the purchaser's agent, cause an affidavit, fully and particularly stating the mortgagee's acts, or the acts of the mortgagee's agent, along with a copy of the foreclosure notice as published, to be recorded in the

registry of deeds for the county where the land lies. The affidavit must identify the mortgagee and mortgagor and include the street address, if any, of the real estate encumbered by the mortgage; a description of the real estate encumbered by the mortgage, which may be incorporated by reference to the book and page number of an instrument of record containing an adequate legal description of the real estate; the book and page number, if any, of the mortgage; the dates of publication and the name of the publishing entity of the public notice required by section 6203-A, subsection 1; the recipients and mailing or service dates of notices provided pursuant to section 6203-A, subsections 1 and 1-A and section 6203-E; the final purchaser under the agreement described in section 6203-A, subsection 5; and the date of delivery of the deed to the purchaser or the purchaser's agent. If the affidavit shows that the requirements of the power of sale and section 6203-A have in all respects been complied with, the affidavit or a certified copy of the record thereof must be admitted as evidence that the power of sale was duly executed. In case of an error or omission in the affidavit recorded as aforesaid, the mortgagee or its agent shall record an amended affidavit correcting the error or omission and the amended affidavit so recorded has the same effect and must be admitted in evidence, as if it had been recorded within said 30 days, but such subsequent affidavit does not prejudicially affect any title or interest in land that may have arisen or have been created between the recording of the original and of the subsequent affidavit. [2015, c. 147, §2 (AMD).]

SECTION HISTORY

1967, c. 424, §2 (NEW). 2009, c. 476, Pt. B, §4 (AMD). 2009, c. 476, Pt. B, §9 (AFF). 2015, c. 147, §2 (AMD).

§6203-C. CONVEYANCE BY MORTGAGOR; EFFECT

A sale or transfer by the mortgagor shall not impair or annul any right or power of attorney given in the mortgage to the mortgagee to sell or to transfer the land as attorney or agent of the mortgagor. [1967, c. 424, §2 (NEW).]

SECTION HISTORY

1967, c. 424, §2 (NEW).

§6203-D. LIMITATION OF ACTIONS

Actions on mortgage notes, whether witnessed or not, or on other obligations to pay a debt secured by a mortgage of real estate, to recover judgments for deficiencies after foreclosure by sale under a power contained in the mortgage, and actions on such notes or other obligations that are subject to a prior mortgage, to recover the amount due thereon after the foreclosure sale of such prior mortgage under the power contained therein, must, except as otherwise provided, be commenced within 2 years after the date of delivery of the deed to the purchaser or the purchaser's agent or, if the principal of the note or other obligation does not become payable until after the date of delivery of the deed to the purchaser or the purchaser's agent, then within 2 years after the time when the cause of action for the principal accrues. [2015, c. 147, §3 (AMD).]

SECTION HISTORY

1967, c. 424, §2 (NEW). 2015, c. 147, §3 (AMD).

§6203-E. LIABILITY FOR DEFICIENCY ON SALE; NECESSITY OF NOTICE; FORM; AFFIDAVIT

No action for a deficiency may be brought by the holder of the mortgage note or other obligation secured by mortgage of real estate after foreclosure by exercise of the power of sale, unless a notice in writing of the mortgagee's intention to foreclose the mortgage has been served on the mortgagor or its representative in interest or the same has been sent by registered or certified mail with return receipt requested at its last address then known to the mortgagee, to such address as may be agreed upon in the mortgage, together with a naming of liability for the deficiency, in substantially the form below, at least 21 days before the date of the

sale under the power in the mortgage, and an affidavit has been signed and sworn to, within 30 days after the date of delivery of the deed to the purchaser or purchaser's agent, of the mailing of the notice. A notice mailed as aforesaid is a sufficient notice, and such an affidavit made within the time specified is prima facie evidence in such action of the mailing of such notice. [2015, c. 147, §4 (AMD).]

The following form of notice and affidavit may be used and may be altered as circumstances require; but nothing herein may be construed to prevent the use of other forms:

FORM

Notice of Intention to Foreclose and of Liability for Deficiency After Foreclosure of Mortgage

To: A. B. of Street, Town of County of and State of

You are hereby notified in accordance with the statute, of my intention, on (date of sale), to foreclose by sale under the Power of Sale for breach of condition, the Mortgage held by me on property located on Street, Town of, County of and State of dated and recorded in the County Registry of Deeds, Book, Page, to secure a note (or other obligation) signed by you, for the whole, or any part, of which you may be liable to me and in case of a deficiency in the proceeds of the Foreclosure Sale to hold you liable for the whole or any part thereof still remaining unpaid.

Very truly yours,

.....
(Name of holder of said Mortgage)

Affidavit

I hereby certify on oath that on the day of 20....., I mailed by registered or certified mail with return receipt requested, the notice a copy of which is hereinabove set forth, direct to such person or persons at the address therein named that was the last address of such person known to me at the time of mailing or to such person or persons at the address therein named that was the person and the address agreed upon in said Mortgage.

Subscribed and sworn to before me this day of 20..... .

.....
Notary Public

[2015, c. 147, §4 (AMD).]

In the event that the mortgagee is the purchaser at the public sale, any deficiency is limited to the difference between the fair market value of the premises at the time of the sale, as established by an independent appraisal, and the sum due the mortgagee with interest plus the expenses incurred in making the sale. [2015, c. 147, §4 (NEW).]

SECTION HISTORY

1967, c. 424, §2 (NEW). 1987, c. 736, §17 (AMD). 1987, c. 736, §17 (AMD). 2015, c. 147, §4 (AMD).

§6203-F. FORECLOSURE OF BOND FOR DEED AND CONTRACTS FOR SALE OF REAL ESTATE

1. Foreclosure procedure. If the purchaser of real estate under a contract for the sale of real estate, including a bond for a deed, is in default of any of the terms of that contract, the seller or the seller's heirs or assigns may foreclose the rights of the purchaser in the contract not less than 30 days after giving the notice required by subsection 2 by any of the means provided by law for the foreclosure of mortgages, except that the redemption period is 60 days. Within the redemption period, the purchaser or a person claiming under the purchaser may apply to any Justice of the Supreme Judicial Court or Superior Court for an extension of

time to redeem, and after such notice as the court may order, for good cause shown, the court may extend the redemption period to a maximum of one year. An extension order is not binding against any person without actual notice of the order unless, within the 60-day period, a written notice describing the land, identifying the instrument under which foreclosure proceedings have been brought and setting forth the fact that application for extension of the redemption period has been made, is recorded in the registry of deeds in the county in which the land is located. This section may not be construed to extend the life of options with an ascertainable time of termination. The remedy afforded by this section supplements other legal remedies that may be available to the seller.

[1991, c. 707, §2 (NEW) .]

2. Notice of right to cure; application. Before foreclosing the rights of the purchaser described in subsection 1, the seller or the seller's heirs or assigns must give written notice to the purchaser at the last known address of the purchaser that the purchaser has 30 days to cure the default by full payment of all amounts past due including reasonable interest and late charges specified in the contract. If the purchaser tenders payment of the amount before the date specified in the notice, the purchaser is restored to all rights under the contract as though the default had not occurred.

A. A seller gives notice to the purchaser under this section by mailing the notice by certified mail, return receipt requested. If the notice is undeliverable by certified mail, the seller must send the notice to the purchaser by ordinary mail. The time when notice is given is the date the purchaser signs the receipt or, if the notice is undeliverable by certified mail, the date the notice was sent by ordinary mail. [1991, c. 707, §2 (NEW).]

B. This subsection applies only to contracts for the sale of residential real estate located in this State, when the purchaser is in possession of the subject real estate. All other transactions are governed by the terms of the contract and applicable law. [1991, c. 707, §2 (NEW).]

[1991, c. 707, §2 (NEW) .]

SECTION HISTORY

1967, c. 544, §38 (NEW). 1991, c. 707, §2 (RPR).

§6203-G. ASSIGNMENT OF MORTGAGE

The assignment of a mortgage by a foreclosing mortgagee at any time during the foreclosure process does not affect the validity of the foreclosure. Upon the recording of the assignment of mortgage in the registry of deeds where the land lies, the assignee of the mortgage may complete the foreclosure. [2015, c. 147, §5 (NEW).]

SECTION HISTORY

2015, c. 147, §5 (NEW).

§6204. REDEMPTION IN ONE YEAR

(REPEALED)

SECTION HISTORY

1967, c. 424, §3 (AMD). 1991, c. 134, §2 (AMD). 1993, c. 321, §1 (AMD). 2007, c. 391, §4 (RP).

§6204-A. DISPOSITION OF PROCEEDS OF FORECLOSURE SALE

(REPEALED)

SECTION HISTORY

1975, c. 552, §4 (NEW). 1989, c. 829, §1 (RP).

§6204-B. DISPOSITION OF PROCEEDS OF SALE AFTER FORECLOSURE (REPEALED)

SECTION HISTORY

1989, c. 829, §2 (NEW). 2007, c. 391, §5 (RP).

§6205. RIGHTS OF JUNIOR MORTGAGEE

When proceedings for the foreclosure of any prior mortgage of real estate have been instituted by any method provided by law, the owner of any subsequent mortgage of the same real estate or of any part of the same real estate may, at any time before the right of redemption from such prior mortgage has expired, in writing, request the owner of such prior mortgage to assign the same and the debt thereby secured to him, upon his paying to the owner of such prior mortgage, the full amount, including all interest, costs of foreclosure and such other sums as the mortgagor or person redeeming would be required to pay in order to redeem. If the owner of such prior mortgage neglects or refuses to make such assignment within a reasonable time after such written request, the owner of such subsequent mortgage may bring a civil action in the Superior Court for the purpose of compelling the owner of such prior mortgage to assign the same and the debt thereby secured, to him, the owner of such subsequent mortgage, upon making payment. If the court, upon hearing, shall be of the opinion that the owner of such prior mortgage will not be injured or damaged in his property matters and rights by such assignment, and that such assignment will better protect the rights and interests of the owner of such subsequent mortgage, and that the rights and interests of any other person in and to the same real estate, or any part thereof, will not be prejudiced or endangered thereby, the court, in its discretion, may order and decree that such prior mortgage and the debt thereby secured shall be assigned by the owner thereof to the owner of such subsequent mortgage upon his making payment. The time within which and the place where such payment shall be made shall be fixed by the court, and if the parties are unable to agree upon the amount of such payment, the court shall fix and determine the amount. The court may issue all necessary and needful process or processes to enforce any order or decree made under this section. The owner of any prior mortgage assigned under the provisions hereof shall not be holden on nor liable for the debt secured by such mortgage unless he especially agrees in writing by him signed to be so holden or liable. An appeal from any final decree may be taken as in other civil actions.

§6206. JUDGMENT WHERE NOTHING DUE

If it appears that nothing is due on the mortgage, judgment shall be rendered for the defendant and for his costs, and he shall hold the land discharged of the mortgage.

§6207. ACTION BY EXECUTOR OR ADMINISTRATOR

When a mortgagee or person claiming under him is dead, the same proceedings to foreclose the mortgage may be had by his executor or administrator, declaring on the seizin of the deceased, as he might have had if living.

§6208. PROPER PARTY DEFENDANT

An action on a mortgage deed may be brought against a person in possession of the mortgaged premises. The mortgagor or person claiming under him may, in all cases, be joined with him as a cotenant, whether he then has any interest or not in the premises, but he is not liable for costs when he has no such interest and makes his disclaimer thereto upon the records of the court.

§6209. REAL ACTION AGAINST MORTGAGEE IN POSSESSION AFTER MORTGAGE PAID

When the mortgagee or person claiming under him has taken possession of the mortgaged premises, and the debt secured by the mortgage is paid or released after condition broken and before foreclosure perfected, the mortgagor or person claiming under him may maintain a real action to recover possession of said premises, the same as if paid or released before condition broken.

Subchapter 4: ACTION FOR POSSESSION

§6251. FORM OF COMPLAINT

The mortgagee or person claiming under the mortgagee in an action for possession may declare on the mortgagee's own seizin, in a real action, without naming the mortgage or assignment. If it appears that the plaintiff is entitled to possession and that the condition had been broken when the action was commenced, the court shall, on motion of either party, award the conditional judgment, unless it appears that the tenant is not the mortgagor or a person claiming under the mortgagor, the plaintiff not consenting to such judgment. Unless such judgment is awarded, judgment is entered as at common law. [2007, c. 391, §6 (AMD).]

SECTION HISTORY

2007, c. 391, §6 (AMD).

§6252. FORM OF CONDITIONAL JUDGMENT

The conditional judgment shall be that if the mortgagor, his heirs, executor or administrator pays the sum that the court adjudges to be due and payable, with interest, within 2 months from the time of judgment, and pays such other sums as the court adjudges to be thereafter payable, within 2 months from the time that they fall due, no writ of possession shall issue and the mortgage shall be void. Otherwise it shall issue in due form of law, upon the first failure to pay according to said judgment. If, after 3 years from the rendition of the judgment, the writ of possession has not been served or the judgment wholly satisfied, another conditional judgment may, on motion filed in the name of the mortgagee or assignee, be rendered, and a writ of possession issued as before provided. When the condition is for doing some other act than the payment of money, the court may vary the conditional judgment as the circumstances require. The writ of possession shall issue if the terms of the conditional judgment are not complied with within the 2 months.

Subchapter 5: REDEMPTION

§6301. ACCOUNTING REQUIRED

Any mortgagor or other person having a right to redeem lands mortgaged may demand of the mortgagee or person claiming under the mortgagee a true account of the sum due on the mortgage, and of the rents and profits, and money expended in repairs and improvements, if any. If the mortgagee unreasonably refuses or neglects to render such an account in writing, or in any other way by default prevents the plaintiff from performing or tendering performance of the condition of the mortgage, the mortgagor may bring a civil action for the redemption of the mortgaged premises within the time limited in former section 6204, and therein offer to pay the sum found to be equitably due, or to perform any other condition, as the case may require. Such an offer has the same force as a tender of payment or performance before the commencement of the action. The action must be sustained without such a tender, and thereupon the mortgagor is entitled to judgment for redemption and costs. [2007, c. 391, §7 (AMD).]

SECTION HISTORY

2007, c. 391, §7 (AMD).

§6302. DEATH OF MORTGAGEE OR SUCCESSOR

(REPEALED)

SECTION HISTORY

1979, c. 540, §23 (RP).

§6303. DEATH OF MORTGAGOR OR SUCCESSOR

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 7/1/19)

If a person entitled to redeem a mortgaged estate or an equity of redemption which has been sold on execution, or the right to redeem such right, or the right to redeem lands set off on execution, dies without having made a tender for that purpose, a tender may be made and an action for redemption commenced and prosecuted by his personal representative, or by his heirs or devisees subject to the authority of the personal representative over the administration of the estate under Title 18-A, sections 3-709 and 3-711. If the plaintiff in such action dies pending the action, it may be prosecuted to final judgment by his personal representative, or by his heirs or devisees subject to the same authority of the personal representative. When a mortgagor resides out of the State, any person may, in his behalf, tender to the holder of the mortgage the amount due thereon. The tender shall be as effectual as if made by the mortgagor. [1979, c. 540, §24 (AMD).]

SECTION HISTORY

1979, c. 540, §24 (AMD). 2017, c. 402, Pt. C, §29 (AMD). 2017, c. 402, Pt. F, §1 (AFF).

§6303. DEATH OF MORTGAGOR OR SUCCESSOR

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE 7/1/19)

If a person entitled to redeem a mortgaged estate or an equity of redemption that has been sold on execution, or the right to redeem such right, or the right to redeem lands set off on execution, dies without having made a tender for that purpose, a tender may be made and an action for redemption commenced and prosecuted by the person's personal representative, or by the person's heirs or devisees subject to the authority of the personal representative over the administration of the estate under Title 18-C, sections 3-709 and 3-711. If the plaintiff in such action dies pending the action, it may be prosecuted to final judgment by the plaintiff's personal representative, or by the plaintiff's heirs or devisees subject to the same authority of the personal representative. When a mortgagor resides out of the State, any person may, in the mortgagor's behalf, tender to the holder of the mortgage the amount due thereon. The tender is as effectual as if made by the mortgagor. [2017, c. 402, Pt. C, §29 (AMD); 2017, c. 402, Pt. F, §1 (AFF).]

SECTION HISTORY

1979, c. 540, §24 (AMD). 2017, c. 402, Pt. C, §29 (AMD). 2017, c. 402, Pt. F, §1 (AFF).

§6304. EFFECT OF PAYMENT OR TENDER

When the amount due on a mortgage has been paid or tendered to the mortgagee, or person claiming under him, by the mortgagor or the person claiming under him, within the time so limited, he may bring a civil action for the redemption of the mortgaged premises, and compel the mortgagee, or person claiming under him, by a decree of the Superior Court, to release to him all his right and title therein; although such mortgagee or his assignee has never had actual possession of the premises for breach of the condition; or, without having made a tender before the commencement of the action, he may bring a civil action in the manner prescribed in section 6301, and the cause shall be tried in the same manner.

§6305. MORTGAGEE OUT OF STATE

When a civil action for redemption is brought before an actual entry for breach of the condition, and before payment or tender, if the mortgagee or person claiming under him is out of the State and has not had actual notice, the court shall order proper notice to be given him and continue the cause as long as necessary.

§6306. -- PAYMENT TO CLERK OF COURT

When a mortgagee or person claiming under a mortgagee residing out of the State, or whose residence is unknown to the party entitled to redeem, has commenced proceedings in accordance with this chapter, or when such a mortgagee or claimant having no tenant, agent or attorney in possession on whom service can be made has commenced proceedings in accordance with this chapter, in either case the party entitled to redeem

may bring the civil action, as prescribed in section 6301, and pay at the same time to the clerk of the court and sum due, which payment has the same effect as a tender before the action. The court shall order such a notice to be given of the pendency of the action, as it judges proper. [2007, c. 391, §8 (AMD).]

SECTION HISTORY

2007, c. 391, §8 (AMD).

§6307. FRAUDULENT MORTGAGE

When a mortgage is alleged and proved to be fraudulent, in whole or in part, an innocent assignee of the mortgagor, for a valuable consideration, may bring his action within the time allowed to redeem and be allowed to redeem without a tender.

§6308. NOTICE BY PUBLICATION

When an amount due on a mortgage has been paid or tendered to the mortgagee or person claiming under him before foreclosure of the mortgage, and the mortgagee or his assignee is out of the State and the mortgage is undischarged on the record, the mortgagor or person claiming under him may maintain a civil action for the redemption of the mortgaged premises, as provided in section 6304, or for the discharge of the mortgage. On notice of the pendency of the action, given by publication in a newspaper of general circulation in the county where said premises are situated for 3 weeks successively, the last publication being 30 days before the time of hearing, or in such other way as the Superior Court orders, said court may decree a discharge of such mortgage. The record of such decree in the registry of deeds where said mortgage is recorded is evidence of such discharge. [1987, c. 667, §15 (AMD).]

SECTION HISTORY

1987, c. 667, §15 (AMD).

§6309. LIMITATION OF CIVIL ACTION

No civil action shall be brought for redemption of mortgaged premises, founded on a tender of payment or performance of the condition made before commencement of the action, unless within one year after such tender.

§6310. JOINDER OF OTHERS AS DEFENDANTS; NOTICE

In any action brought for the redemption of mortgaged premises, when it is necessary to the attainment of justice that any other person besides the defendant, claiming an interest in the premises, should be made a party with the original defendant, the court on motion may order him to be served with an attested copy of the complaint amended in such manner as it directs, and on his appearance, the cause shall proceed as though he had been originally joined.

§6311. JOINT OR SEVERAL EXECUTION

The court, when a decree is made for the redemption of mortgaged lands, may award execution jointly or severally as the case requires, and for sums found due for rents and profits over and above the sums reasonably expended in repairing and increasing the value of the estate redeemed.

§6312. DEDUCTION OF RENTS AND PROFITS; STATEMENT OF AMOUNT DUE

When money is brought into court in an action for redemption of mortgaged premises, the court may deduct therefrom such sum as the defendant is chargeable with on account of rents and profits by him received or costs awarded against him. The person to whom money is tendered to redeem such lands, if he receives a larger sum than he is entitled to retain, shall refund the excess. Any mortgagee or person holding under him when requested by an assignee in insolvency or trustee in bankruptcy to render a statement of the amount due on a mortgage given by the insolvent where there is an equity of redemption shall render a

true statement to the assignee or trustee of the amount due on such mortgage. For any loss resulting to the insolvent estate from any misrepresentation of the amount due, the assignee or trustee shall have a right of action against such person to recover such loss.

§6313. REDEMPTION OF ESTATE FROM PURCHASER OF EQUITY

If the purchaser of an equity of redemption, sold on execution, has satisfied and paid to the mortgagee or those claiming under him the sum due on the mortgage, the mortgagor or those claiming under him, having redeemed the equity of redemption within one year after such sale, may redeem such mortgaged estate from such purchaser or any person claiming under him within the time and in the manner that he might have redeemed it of the mortgagee if there had been no such sale made, and within such time only.

Subchapter 6: FORECLOSURE PROCEEDINGS BY CIVIL ACTION

§6321. COMMENCEMENT OF FORECLOSURE BY CIVIL ACTION

After breach of condition in a mortgage of first priority, the mortgagee or any person claiming under the mortgagee may proceed for the purpose of foreclosure by a civil action against all parties in interest in either the Superior Court or the District Court in the division in which the mortgaged premises or any part of the mortgaged premises is located, regardless of the amount of the mortgage claim. [2007, c. 391, §9 (AMD) .]

After breach of condition of any mortgage other than one of the first priority, the mortgagee or any person claiming under the mortgagee may proceed for the purpose of foreclosure by a civil action against all parties in interest, except for parties in interest having a superior priority to the foreclosing mortgagee, in either the Superior Court or the District Court in the division in which the mortgaged premises or any part of the mortgaged premises is located. Parties in interest having a superior priority may not be joined nor will their interests be affected by the proceedings, but the resulting sale under section 6323 is of the defendant or mortgagor's equity of redemption only. The plaintiff shall notify the priority parties in interest of the action by sending a copy of the complaint to the parties in interest by certified mail. [2007, c. 391, §9 (AMD) .]

The foreclosure must be commenced in accordance with the Maine Rules of Civil Procedure, and the mortgagee shall within 60 days of commencing the foreclosure also record a copy of the complaint or a clerk's certificate of the filing of the complaint in each registry of deeds in which the mortgage deed is or by law ought to be recorded and such a recording thereafter constitutes record notice of commencement of foreclosure. The mortgagee shall further certify and provide evidence that all steps mandated by law to provide notice to the mortgagor pursuant to section 6111 were strictly performed. In order to state a claim for foreclosure upon which relief can be granted, the complaint must contain a certification of proof of ownership of the mortgage note. The mortgagee shall certify proof of ownership of the mortgage note and produce evidence of the mortgage note, mortgage and all assignments and endorsements of the mortgage note and mortgage. The complaint must allege with specificity the plaintiff's claim by mortgage on such real estate, describe the mortgaged premises intelligibly, including the street address of the mortgaged premises, if any, which must be prominently stated on the first page of the complaint, state the book and page number of the mortgage, if any, state the existence of public utility easements, if any, that were recorded subsequent to the mortgage and prior to the commencement of the foreclosure proceeding and without mortgagee consent, state the amount due on the mortgage, state the condition broken and by reason of such breach demand a foreclosure and sale. If a clerk's certificate of the filing of the complaint is presented for recording pursuant to this section, the clerk's certificate must bear the title "Clerk's Certificate of Foreclosure" and prominently state, immediately after the title, the street address of the mortgaged premises, if any, and the book and page number of the mortgage, if any. Service of process on all parties in interest and all proceedings must be in accordance with the Maine Rules of Civil Procedure. "Parties in interest" includes mortgagors, holders of fee interest, mortgagees, lessees pursuant to recorded leases or memoranda thereof, lienors and attaching creditors all as reflected by the indices in the registry of deeds and the documents referred to therein affecting the mortgaged premises, through the time of the recording of the complaint or the clerk's certificate. Failure to join any party in interest does not invalidate the action nor any subsequent proceedings as to those joined. Failure of the mortgagee to join, as a party in interest, the holder of any public utility easement recorded

subsequent to the mortgage and prior to commencement of foreclosure proceedings is deemed consent by the mortgagee to that easement. Any other party having a claim to the real estate whose claim is not recorded in the registry of deeds as of the time of recording of the copy of the complaint or the clerk's certificate need not be joined in the foreclosure action, and any such party has no claim against the real estate after completion of the foreclosure sale, except that any such party may move to intervene in the action for the purpose of being added as a party in interest at any time prior to the entry of judgment. Within 10 days of submitting the complaint for filing with the court, the mortgagee shall provide a copy of the complaint or of the clerk's certificate as submitted to the court that prominently states, immediately after the title, the street address of the mortgaged premises, if any, and the book and page number of the mortgage, if any, to the municipal tax assessor of the municipality in which the property is located and, if the mortgaged premises is manufactured housing as defined in Title 10, section 9002, subsection 7, to the owner of any land leased by the mortgagor. The failure to provide the notice required by this section does not affect the validity of the foreclosure sale. [2015, c. 229, §1 (AMD).]

For purposes of this section, "public utility easements" means any easements held by public utilities, as defined in Title 35-A, section 102; sewer districts, as defined in Title 38, section 1032, subsection 3 or 4; or sanitary districts, as formed under Title 38, chapter 11. [2013, c. 555, §2 (AMD).]

The acceptance, before the expiration of the right of redemption and after the commencement of foreclosure proceedings of any mortgage of real property, of anything of value to be applied on or to the mortgage indebtedness by the mortgagee or any person holding under the mortgagee constitutes a waiver of the foreclosure unless an agreement to the contrary in writing is signed by the person from whom the payment is accepted or unless the bank returns the payment to the mortgagor within 10 days of receipt. The receipt of income from the mortgaged premises by the mortgagee or the mortgagee's assigns while in possession of the premises does not constitute a waiver of the foreclosure proceedings of the mortgage on the premises. [2007, c. 391, §9 (NEW).]

The mortgagee and the mortgagor may enter into an agreement to allow the mortgagor to bring the mortgage payments up to date with the foreclosure process being stayed as long as the mortgagor makes payments according to the agreement. If the mortgagor does not make payments according to the agreement, the mortgagee may, after notice to the mortgagor, resume the foreclosure process at the point at which it was stayed. [2007, c. 391, §9 (NEW).]

SECTION HISTORY

1975, c. 552, §5 (NEW). 1977, c. 564, §69 (AMD). 1981, c. 429, §§2,3 (AMD). 1983, c. 447, §2 (AMD). 1991, c. 744, §§1,2 (AMD). 2007, c. 391, §9 (AMD). 2009, c. 402, §17 (AMD). 2009, c. 476, Pt. B, §5 (AMD). 2009, c. 476, Pt. B, §9 (AFF). 2013, c. 555, §2 (AMD). 2015, c. 229, §1 (AMD).

§6321-A. FORECLOSURE MEDIATION PROGRAM

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Court" means the Supreme Judicial Court. [2009, c. 402, §18 (NEW).]

B. "Program" means the foreclosure mediation program established pursuant to subsection 3. [2009, c. 402, §18 (NEW).]

[2009, c. 402, §18 (NEW) .]

2. Notice; summons and complaint; foreclosure proceedings. When a plaintiff commences an action for the foreclosure of a mortgage on an owner-occupied residential real property of no more than 4 units that is the primary residence of the owner-occupant, the plaintiff shall attach to the front of the foreclosure complaint a one-page form notice to the defendant as developed by the Department of Professional and

Financial Regulation, Bureau of Consumer Credit Protection in accordance with this subsection and section 6112, subsection 3. The form notice must be written in language that is plain and readily understandable by the general public.

At a minimum, the form notice must contain the following:

A. A statement that failure to answer the complaint will result in foreclosure of the property subject to the mortgage; [2009, c. 402, §18 (NEW) .]

B. A sample answer and an explanation that the defendant may fill out the form and return it to the court in the envelope provided as the answer to the complaint. If the debtor returns the form to the court, the defendant does not need to file a more formal answer or responsive pleading and will be scheduled for mediation in accordance with this section; and [2009, c. 402, §18 (NEW) .]

C. A description of the program. [2009, c. 402, §18 (NEW) .]

[2009, c. 402, §18 (NEW) .]

3. Foreclosure mediation program established. Under the authority granted in Title 4, section 18-B, the court shall adopt rules to establish a foreclosure mediation program to provide mediation in actions for foreclosure of mortgages on owner-occupied residential property with no more than 4 units that is the primary residence of the owner-occupant. The program must address all issues of foreclosure, including but not limited to reinstatement of the mortgage, modification of the loan and restructuring of the mortgage debt. Mediations conducted pursuant to the program must use the calculations, assumptions and forms that are established by the Federal Deposit Insurance Corporation and published in the Federal Deposit Insurance Corporation Loan Modification Program Guide as set out on the Federal Deposit Insurance Corporation's publicly accessible website.

[2009, c. 402, §18 (NEW) .]

4. Financial information confidential. Except for financial information included as part of a foreclosure complaint or any answer filed with the court, any financial statement or information provided to the court or to the parties during the course of mediation in accordance with this section is confidential and is not available for public inspection. Any financial statement or information must be made available as necessary, to the court, the attorneys whose appearances are entered in the case and the parties to the mediation. Any financial statement or information designated as confidential under this subsection must be kept separate from other papers in the case and may not be used for purposes other than mediation.

[2009, c. 402, §18 (NEW) .]

5. No waiver of rights. The plaintiff's or defendant's rights in the foreclosure action are not waived by participating in the program.

[2009, c. 402, §18 (NEW) .]

6. Commencement of mediation. When a defendant returns the notice required under subsection 2 or otherwise requests mediation or makes an appearance in a foreclosure action, the court shall refer the plaintiff and defendant to mediation pursuant to this section.

[2009, c. 402, §18 (NEW) .]

7. Provisions of mediation services; filing and fees. The court shall:

A. Assign mediators, including active retired justices and judges pursuant to Title 4, sections 104 and 157-B, who:

(1) Are trained in mediation and relevant aspects of the law related to real estate, mortgage procedures, foreclosure or foreclosure prevention;

- (2) Have knowledge of community-based resources that are available in the judicial districts in which they serve;
- (3) Have knowledge of mortgage assistance programs;
- (4) Are trained in using the relevant Federal Deposit Insurance Corporation forms and worksheets;
- (5) Are knowledgeable in principal loss mitigation and mortgage loan servicing guidelines and regulations; and
- (6) Are capable of facilitating and likely to facilitate identification of and compliance with principal loss mitigation and mortgage loan servicing guidelines and regulations.

The court may establish an orientation program for mediators and require that mediators receive such orientation prior to being appointed; [2013, c. 521, Pt. F, §1 (AMD).]

B. Report annually to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters and the joint standing committee of the Legislature having jurisdiction over judiciary matters on:

- (1) The performance of the program, including numbers of homeowners who are notified of mediation, who attend mediation and who receive legal counseling or legal assistance; and
- (2) The results of the mediation process, including the number of loans restructured, number of principal write-downs, interest rate reductions and number of homeowners who default on mortgages within a year after restructuring, to the extent the court has available information; [2009, c. 402, §18 (NEW).]

C. Notwithstanding subsection 10, establish a fee upon a foreclosure filing made on or after June 15, 2009 to support mediation services to be paid for by the plaintiff; and [2009, c. 402, §18 (NEW).]

D. Make recommendations for any changes to the program to the Legislature. [2009, c. 402, §18 (NEW).]

[2013, c. 521, Pt. F, §1 (AMD).]

8. Referral to mortgage assistance programs. At any time during the mediation process, the mediator may refer the defendant to housing counseling or mortgage assistance programs.

[2009, c. 402, §18 (NEW).]

9. No entry of judgment. For any foreclosure complaint filed after January 1, 2010 that is scheduled for mediation in accordance with this section, a final judgment may not issue until a mediator's report has been completed pursuant to subsection 13.

[2009, c. 402, §18 (NEW).]

10. Application of mediation provisions to ongoing foreclosure proceedings. The requirements of this section apply to foreclosures filed after January 1, 2010. The court may in its discretion require mediation for an owner-occupied residential property that is the primary residence of the owner-occupant and that is in the foreclosure process but not scheduled for sale before January 1, 2010 and an owner-occupied residential property with no more than 4 units that is the primary residence of the owner-occupant and that is scheduled for sale before that date.

[2009, c. 402, §18 (NEW).]

11. Parties to mediation. A mediator shall include in the mediation process under this section any person the mediator determines is necessary for effective mediation. Mediation and appearance in person is mandatory for:

A. The mortgagee, who has the authority to agree to a proposed settlement, loan modification or dismissal of the action, except that the mortgagee may participate by telephone or electronic means as long as that mortgagee is represented with authority to agree to a proposed settlement; [2009, c. 476, Pt. B, §6 (AMD); 2009, c. 476, Pt. B, §9 (AFF).]

B. The defendant; [2009, c. 402, §18 (NEW).]

C. Counsel for the plaintiff; and [2009, c. 402, §18 (NEW).]

D. Counsel for the defendant, if represented. [2009, c. 402, §18 (NEW).]

[2009, c. 476, Pt. B, §6 (AMD); 2009, c. 476, Pt. B, §9 (AFF) .]

12. Good faith effort. Each party and each party's attorney, if any, must be present at mediation as required by this section and shall make a good faith effort to mediate all issues. If any party or attorney fails to attend or to make a good faith effort to mediate, the court may impose appropriate sanctions.

[2009, c. 402, §18 (NEW) .]

13. Report. A mediator must complete a report for each mediation conducted under this section. The mediator's report must indicate in a manner as determined by the court that the parties completed in full the Net Present Value Worksheet in the Federal Deposit Insurance Corporation Loan Modification Program Guide or other reasonable determination of net present value. If the mediation did not result in the settlement or dismissal of the action, the report must include the outcomes of the Net Present Value Worksheet or other determination of net present value. As part of the report, the mediator may notify the court if, in the mediator's opinion, either party failed to negotiate in good faith. The mediator's report must also include a statement of all agreements reached at mediation, with sufficient specificity to put all parties on notice of their obligations under agreements reached at mediation, including but not limited to a description of all documents that must be completed and provided pursuant to the agreements reached at mediation and the time frame during which all actions are required to be taken by the parties, including decisions and determinations of eligibility for all loss mitigation options.

[2013, c. 521, Pt. F, §2 (AMD) .]

14. Records. The court shall maintain records or other information relating to the program as necessary to meet the reporting requirements in subsection 7, paragraph B.

[2009, c. 402, §18 (NEW) .]

SECTION HISTORY

2009, c. 402, §18 (NEW). 2009, c. 476, Pt. B, §§6, 7 (AMD). 2009, c. 476, Pt. B, §9 (AFF). 2013, c. 521, Pt. F, §§1, 2 (AMD).

§6321-B. EXPEDITED FINAL HEARING IN CERTAIN FORECLOSURE CASES

1. Request. The court shall schedule an expedited final hearing pursuant to section 6322 if a plaintiff in an action brought pursuant to section 6321 files with the clerk a request for an expedited final hearing on a form prescribed by the Supreme Judicial Court indicating:

A. That mediation conducted pursuant to section 6321-A did not result in the settlement or dismissal of the action and that all of the defendants and all of the parties in interest who have appeared in the action have consented to an expedited final hearing pursuant to section 6322; or [2015, c. 243, §1 (NEW) .]

B. That the defendant has not filed an answer to the complaint as provided by the Maine Rules of Civil Procedure and section 6321-A and that all of the parties who have filed an answer in the action have consented to an expedited final hearing. [2015, c. 243, §1 (NEW).]

[2015, c. 243, §1 (NEW) .]

2. Consent. The request filed under subsection 1 must be accompanied by a consent form, as prescribed by the Supreme Judicial Court, that informs defendants that they may consult with an attorney or a housing counselor before consenting to an expedited hearing.

A. For a request filed under subsection 1, paragraph A, the consent form must be signed by all of the defendants and all of the parties in interest who have appeared in the action. [2015, c. 243, §1 (NEW).]

B. For a request filed under subsection 1, paragraph B, the consent form must be signed by all of the parties who have appeared in the action and all of the parties who have filed an answer in the action. [2015, c. 243, §1 (NEW).]

[2015, c. 243, §1 (NEW) .]

3. Scheduling. The court, upon receiving a request for an expedited final hearing filed in accordance with subsection 1, shall, as the interests of justice permit, set the expedited final hearing not less than 45 days after the request is filed.

[2015, c. 243, §1 (NEW) .]

4. Final hearing. An expedited final hearing held pursuant to this section must be conducted in accordance with section 6322 and this subsection.

A. Notwithstanding that a default may have been entered against the defendant by the clerk pursuant to the Maine Rules of Civil Procedure, Rule 55, the defendant may appear and defend at the expedited final hearing held pursuant to this section. [2015, c. 243, §1 (NEW).]

B. The burden of proof and legal requirements for entry of a judgment of foreclosure are the same as in other actions pursuant to section 6321, including the requirement that a judgment of foreclosure specify the priority and those amounts, if any, that may be due to the parties in interest that have appeared in the action. [2015, c. 243, §1 (NEW).]

C. After the expedited final hearing, the court shall issue a written judgment of foreclosure, dismissal with or without prejudice or judgment for the defendant as expeditiously as the interests of justice permit. [2015, c. 243, §1 (NEW).]

[2015, c. 243, §1 (NEW) .]

SECTION HISTORY

2015, c. 243, §1 (NEW).

§6322. HEARING AND JUDGMENT

After hearing, the court shall determine whether there has been a breach of condition in the plaintiff's mortgage, the amount due thereon, including reasonable attorney's fees and court costs, the order of priority and those amounts, if any, that may be due to other parties that may appear and whether any public utility easements held by a party in interest survive the proceedings. For purposes of this section, "public utility easements" has the same meaning as set forth in section 6321. [1991, c. 744, §3 (AMD).]

If the court determines that such a breach exists, a judgment of foreclosure and sale must issue providing that if the mortgagor or the mortgagor's successors, heirs and assigns do not pay the sum that the court adjudges to be due and payable, with interest within the period of redemption, the mortgagee shall proceed

with a sale as provided. Notwithstanding section 6704, for property described in section 6111, a writ of possession may not issue until the expiration of the period of redemption provided for in this section, except that this section does not impair the right of a mortgagee to exercise rights set forth in the mortgage or security instrument to protect the mortgaged property. If the mortgagor or the mortgagor's successors, heirs and assigns pay to the mortgagee the sum that the court adjudges to be due and payable to the mortgagee with interest within the period of redemption, then the mortgagee shall forthwith discharge the mortgage and file a dismissal of the action for foreclosure with the clerk of the court. [2017, c. 133, §1 (AMD).]

On mortgages executed prior to October 1, 1975, unless the mortgage contains language to the contrary, the period of redemption shall be one year from the date of the judgment. On mortgages executed on or after October 1, 1975, the period of redemption shall be 90 days from the date of the judgment. In either case, the redemption period shall begin to run upon entry of the judgment of foreclosure, provided that no appeal is taken. [1983, c. 447, §3 (AMD).]

SECTION HISTORY

1975, c. 552, §5 (NEW). 1977, c. 618, (RPR). 1983, c. 447, §3 (AMD). 1991, c. 744, §3 (AMD). RR 2013, c. 2, §27 (COR). 2017, c. 133, §1 (AMD).

§6322-A. NOTICE TO TENANTS OF FORECLOSURE JUDGMENT

The mortgagee shall, after entry of final judgment in favor of the mortgagee, provide a copy of the foreclosure judgment to any residential tenant of the premises. Upon request from a mortgagee, the mortgagor shall provide the name, address and other contact information for any residential tenant. A residential tenant who receives written notice under this section is not required to file any responsive pleadings and must receive written notice of all subsequent proceedings including all matters through and including sale of the property. The mortgagee shall provide written notice to the residential tenant if the mortgagee knows or should know by exercise of due diligence that the property is occupied as a residential rental unit. Notice may be provided to a residential tenant by first class mail and registered mail at the residential tenant's last known address only after the mortgagee has made 2 good faith efforts to provide written notice to the residential tenant in person. A residential tenant may not be evicted unless a mortgagee institutes an action for forcible entry and detainer pursuant to section 6001 after providing the notice required by this section and after the expiration of the redemption period. This section may not be construed to prohibit an action for forcible entry and detainer in accordance with section 6001 for a reason that is not related to a judicial foreclosure action. The failure to provide the notice required by this section does not affect the validity of the foreclosure sale. [2009, c. 476, Pt. B, §8 (AMD); 2009, c. 476, Pt. B, §9 (AFF).]

SECTION HISTORY

2009, c. 402, §19 (NEW). 2009, c. 476, Pt. B, §8 (AMD). 2009, c. 476, Pt. B, §9 (AFF).

§6323. SALE FOLLOWING EXPIRATION OF PERIOD OF REDEMPTION

1. Procedures for all civil actions. Upon expiration of the period of redemption, if the mortgagor or the mortgagor's successors, heirs or assigns have not redeemed the mortgage, any remaining rights of the mortgagor to possession terminate, and the mortgagee shall cause notice of a public sale of the premises stating the time, place and terms of the sale to be published once in each of 3 successive weeks in a newspaper of general circulation in the county in which the premises are located, the first publication to be made not more than 90 days after the expiration of the period of redemption. Except when otherwise required under 12 Code of Federal Regulations, Section 1024.41 or any successor provision, the public sale must be held not less than 30 days nor more than 45 days after the first date of that publication. Except for sales of premises that the court has determined to be abandoned pursuant to section 6326, the public sale may be adjourned, for any time not exceeding 7 days and from time to time until a sale is made, by announcement to those present at each adjournment. For sales of premises that the court has determined to be abandoned

pursuant to section 6326, the public sale may be adjourned once for any time not exceeding 7 days, except that the court may permit one additional adjournment for good cause shown. Adjournments may also be made in accordance with the requirements of 12 Code of Federal Regulations, Section 1024.41 or any successor provision. The mortgagee, in its sole discretion, may allow the mortgagor to redeem or reinstate the loan after the expiration of the period of redemption but before the public sale. The mortgagee may convey the property to the mortgagor or execute a waiver of foreclosure, and all other rights of all other parties remain as if no foreclosure had been commenced. The mortgagee shall sell the premises to the highest bidder at the public sale and deliver a deed of that sale and the writ of possession, if a writ of possession was obtained during the foreclosure process, to the purchaser. The deed conveys the premises free and clear of all interests of the parties in interest joined in the action. The mortgagee or any other party in interest may bid at the public sale. If the mortgagee is the highest bidder at the public sale, there is no obligation to account for any surplus upon a subsequent sale by the mortgagee. Any rights of the mortgagee to a deficiency claim against the mortgagors are limited to the amount established as of the date of the public sale. The date of the public sale is the date on which bids are received to establish the sales price, no matter when the sale is completed by the delivery of the deed to the highest bidder. If the property is conveyed by deed pursuant to a public sale in accordance with this subsection, a copy of the judgment of foreclosure and evidence of compliance with the requirements of this subsection for the notice of public sale and the public sale itself must be attached to or included within the deed, or both, or otherwise be recorded in the registry of deeds.

[2013, c. 521, Pt. C, §1 (AMD) .]

2. Additional notice requirements for civil actions commenced on or after January 1, 1995. In foreclosures by civil action commenced on or after January 1, 1995, the mortgagee shall cause notice of the public sale to be mailed by ordinary mail to all parties who appeared in the foreclosure action or to their attorneys of record. The notice must be mailed no less than 30 calendar days before the date of sale. Failure to provide notice of the public sale to any party who appeared does not affect the validity of the sale.

[1993, c. 544, §1 (NEW) .]

3. Extension of deadline. Upon a showing of good cause, the court may extend a deadline established by this section for the publication of the notice of sale or conducting the public sale.

[2009, c. 402, §20 (NEW) .]

SECTION HISTORY

1975, c. 552, §5 (NEW). 1983, c. 447, §4 (RPR). 1993, c. 373, §2 (AMD).
1993, c. 544, §1 (RPR). 2005, c. 291, §1 (AMD). 2007, c. 103, §1 (AMD).
2009, c. 402, §20 (AMD). 2013, c. 521, Pt. C, §1 (AMD).

§6324. PROCEEDS OF SALE

After first deducting the expenses incurred in making the sale, the mortgagee shall disburse the remaining proceeds in accordance with the provisions of the judgment. The mortgagee shall file a report of the sale and the disbursement of the proceeds therefrom with the court and shall mail a copy to the mortgagor at the mortgagor's last known address. This report need not be accepted or approved by the court, provided that the mortgagor or any other party in interest may contest the accounting by motion filed within 30 days of receipt of the report, but any such challenge may be for money only and does not affect the title to the real estate purchased by the highest bidder at the public sale. Any deficiency must be assessed against the mortgagor and an execution must be issued by the court therefor. In the event the mortgagee has been the purchaser at the public sale, any deficiency is limited to the difference between the fair market value of the premises at the time of the public sale, as established by an independent appraisal, and the sum due the mortgagee as established by the court with interest plus the expenses incurred in making the sale. Any surplus must be paid to the mortgagor, the mortgagor's successors, heirs or assigns in the proceeding. If the mortgagor has not appeared personally or by an attorney, the surplus must be paid to the clerk of courts, who shall hold

the surplus in escrow for 6 months for the benefit of the mortgagor, the mortgagor's successors, heirs or assigns and, if the surplus remains unclaimed after 6 months, the clerk shall pay the surplus to the Treasurer of State to be credited to the General Fund until it becomes unclaimed under the Uniform Unclaimed Property Act, and report and pay it to the State in accordance with that Act. [2003, c. 20, Pt. T, §10 (AMD).]

SECTION HISTORY

1975, c. 552, §5 (NEW). 1983, c. 447, §5 (AMD). 1987, c. 691, §2 (AMD). 1997, c. 508, §B4 (AMD). 1997, c. 508, §A3 (AFF). 2003, c. 20, §T10 (AMD).

§6325. EXCEPTIONS

The method of foreclosure set forth in sections 6321 to 6324 may be used for the foreclosure of all real property mortgages, except for railroad mortgages, so called, or for indentures or deeds of trust securing bond issues of corporations wherein the method of foreclosure or sale is provided in the indenture or deed of trust or any similar instrument; provided that any such railroad mortgage, corporate indenture, deed of trust or similar instrument executed subsequent to January 1, 1976, shall be subject to this subchapter unless the applicability of this chapter is expressly negated in such instrument. The method of foreclosure set forth in sections 6321 to 6324 shall not apply to tax lien mortgages created under Title 36. [1981, c. 698, §87 (AMD).]

SECTION HISTORY

1975, c. 552, §5 (NEW). 1977, c. 564, §70 (AMD). 1981, c. 698, §87 (AMD).

§6326. ORDER OF ABANDONMENT FOR RESIDENTIAL PROPERTIES IN FORECLOSURE

1. Plaintiff request. The plaintiff in a judicial foreclosure action may present evidence of abandonment as described in subsection 2 and may request a determination pursuant to subsection 3 that the mortgaged premises have been abandoned if:

A. More than 50% of the mortgaged premises is used for residential purposes; and [2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF).]

B. The mortgaged premises are the subject of an uncontested foreclosure action or an uncontested foreclosure judgment has been issued with respect to the premises and a foreclosure sale with respect to the premises is pending pursuant to this subchapter. An action or judgment is uncontested if:

(1) The mortgagor has not appeared in the action to defend against foreclosure;

(2) There has been no communication from or on behalf of the mortgagor to the plaintiff for at least 90 days showing any intent of the mortgagor to continue to occupy the premises or there is a document of conveyance or other written statement, signed by the mortgagor, that indicates a clear intent to abandon the premises; and

(3) Either all mortgagees with interests that are junior to the interests of the plaintiff have waived any right of redemption pursuant to section 6322 or the plaintiff has obtained or has moved to obtain a default judgment against such junior mortgagees. [2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF).]

[2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF) .]

2. Evidence of abandonment. For the purposes of this section, evidence of abandonment showing that the mortgaged premises are vacant and the occupant has no intent to return may include, but is not limited to, the following:

A. Doors and windows on the mortgaged premises are continuously boarded up, broken or left unlocked; [2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF).]

B. Rubbish, trash or debris has observably accumulated on the mortgaged premises; [2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF).]

C. Furnishings and personal property are absent from the mortgaged premises; [2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF).]

D. The mortgaged premises are deteriorating so as to constitute a threat to public health or safety; [2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF).]

E. A mortgagee has changed the locks on the mortgaged premises and neither the mortgagor nor anyone on the mortgagor's behalf has requested entrance to, or taken other steps to gain entrance to, the mortgaged premises; [2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF).]

F. Reports of trespassers, vandalism or other illegal acts being committed on the mortgaged premises have been made to local law enforcement authorities; [2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF).]

G. A code enforcement officer or other public official has made a determination or finding that the mortgaged premises are abandoned or unfit for occupancy; [2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF).]

H. The mortgagor is deceased and there is no evidence that an heir or personal representative has taken possession of the mortgaged premises; and [2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF).]

I. Other reasonable indicia of abandonment. [2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF).]

[2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF) .]

3. Court determination of abandonment; vacation of order. The plaintiff may at any time after commencement of a foreclosure action under section 6321 file with the court a motion to determine that the mortgaged premises have been abandoned.

A. If the court finds by clear and convincing evidence, based on testimony or reliable hearsay, including affidavits by public officials and other neutral nonparties, that the mortgaged premises have been abandoned, the court may issue an order granting the motion and determining that the premises are abandoned. [2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF).]

B. The court may not grant the motion if the mortgagor or a lawful occupant of the mortgaged premises appears and objects to the motion. [2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF).]

C. The court shall vacate the order under paragraph A if the mortgagor or a lawful occupant of the mortgaged premises appears in the action and objects to the order prior to the entry of judgment. [2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF).]

[2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF) .]

4. Effect of court determination of abandonment. Upon the issuance of an order of abandonment under subsection 3 determining that the mortgaged premises are abandoned:

A. The foreclosure action may be advanced on the docket and receive priority over other cases as the interests of justice require; [2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF).]

B. The period of redemption provided for in section 6322 is shortened to 45 days from the later of the issuance of the judgment of foreclosure and the order of abandonment; [2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF).]

C. If the mortgaged premises include dwelling units occupied by tenants as their primary residence, the plaintiff shall assume the duties of landlord for the rental units as required by chapter 709 upon the later of the issuance of the judgment of foreclosure and the order of abandonment; and [2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF).]

D. The plaintiff shall notify the municipality in which the premises are located and shall record the order of abandonment in the appropriate registry of deeds within 30 days from the later of the issuance of the judgment of foreclosure and the order of abandonment. [2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF).]

[2013, c. 521, Pt. B, §1 (NEW); 2013, c. 521, Pt. B, §2 (AFF) .]

SECTION HISTORY

2013, c. 521, Pt. B, §1 (NEW). 2013, c. 521, Pt. B, §2 (AFF).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Special Session of the 128th Maine Legislature and is current through November 1, 2018. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.
--