§595. Foreclosure or commercial sale of timeshare

1. Nonjudicial foreclosure of time-share estate. A time-share owner may grant to a financial institution or other person a mortgage with a power of sale on that owner's time-share estate that is governed by the terms of this section. The foreclosure of a mortgage with a power of sale or a lien from an assessment created pursuant to section 594 must be conducted pursuant to this section. The provisions of Title 14, chapter 713 do not apply to any such foreclosure.

In the event of a breach of the conditions of the power of sale mortgage or the failure of the time-share owner to pay the assessments as and when due and owing the following procedure must be followed.

A. Upon default, and after all applicable cure periods have expired, the person seeking to foreclose shall provide written notice of the default to the time-share owner at the owner's last known address by certified mail, return receipt requested, and by first class mail and provide a reasonable opportunity to cure of not less than 30 days from the date of the mailing of the notice letter. [PL 2005, c. 572, §2 (NEW).]

B. If, after expiration of the 30-day period under paragraph A, the time-share owner has not cured the default in the manner prescribed, the person seeking to foreclose shall conduct a public auction under the conditions described in this paragraph.

(1) Notice under this paragraph must be given as follows.

(a) Notice of the sale must be published once in each of 3 successive weeks in a newspaper with a general circulation in the town in which the time-share property is situated. The first publication must be not later than 30 days before the date of the sale, calculated by excluding the date of publication of the first notice and the date of sale.

(b) A written notice of the time, date and place of the auction must be mailed to the last known address of the time-share owner of record by certified mail, return receipt requested, and by first class mail at least 30 days prior to the date of sale. The notice to the time-share owner must include the following language: "You are hereby notified that you have a right to petition the Superior Court or District Court for the county or district in which the time-share estate is located, with service on the foreclosing person, and upon such bond as the court may require, to enjoin the scheduled foreclosure sale." The notice of sale also must be sent by certified mail, return receipt requested, to all persons having a lien on the time-share estate at least 30 days prior to the date of the foreclosure sale.

(c) The notice must contain:

(i) The name of the time-share owner;

(ii) The date, time and place of the foreclosure sale;

(iii) A general description of the time-share estate; and

(iv) The terms of the sale.

If more than one time-share estate is to be included in the foreclosure sale, all such time-share estates may be combined into one notice of sale, with one property description, as described in division (d) or (e).

(d) The notice of foreclosure for foreclosing on the lien of a time-share estate must be printed in substantially the following form:

NOTICE OF SALE OF TIME-SHARE ESTATE OR ESTATES UNDER TITLE 33, SECTION 595 OF THE MAINE REVISED STATUTES ANNOTATED

By virtue of the project instrument of the .....(name and address of time-share property) and Title 33, section 594 establishing a lien for failure to pay assessments on the

time-share estate (or estates, if more than one) held by the time-share owner (or owners, if more than one) listed below, the time-share estate (or estates, if more than one) will be sold at Public Auction commencing at ..... on ..... , 20.. at ....., Maine. (For each time-share estate, list the name and address of the time-share owner, a general description of the time-share estate and the book and page number of the deed.)

TERMS OF SALE: (State the deposit amount to be paid by the purchaser at the time and place of the sale and the times for payment of the balance or the whole, as the case may be. The time-share estates, if more than one, must be sold in individual lots unless there are no individual bidders, in which case they may be sold as a group.)

Other terms to be announced at the sale.

Signed.....

Lienholder or authorized agent.

(e) For foreclosure of a mortgage lien containing a power of sale on a time-share estate, a notice of sale must be printed in substantially the following form:

NOTICE OF SALE OF TIME-SHARE ESTATE OR ESTATES UNDER TITLE 33, SECTION 595 OF THE MAINE REVISED STATUTES ANNOTATED

By virtue of Title 33, section 595 and in execution of the power of sale contained in a certain mortgage (or mortgages, if more than one) on the time-share estate (or estates, if more than one) given by the time-share owner (or owners, if more than one) set forth below for breach of the conditions of said mortgage (or mortgages, if more than one) and for the purpose of foreclosing, the same will be sold at Public Auction commencing at ..... on ....., 20.. at ....., Maine, being all and singular the premises described in said mortgage (or mortgages, if more than one). (For each mortgage, list the name and address of the time-share owner, a general description of the time-share estate and the book and page number of the mortgage.)

TERMS OF SALE: (State the deposit amount to be paid by the purchaser at the time and place of the sale and the times for payment of the balance or the whole, as the case may be. The time-share estates, if more than one, must be sold in individual lots unless there are no individual bidders, in which case they may be sold as a group.)

Other terms to be announced at the sale.

Signed .....

Holder of Mortgage or authorized agent.

(f) The notice of sale in the forms described in divisions (d) and (e), published in accordance with the provisions of this section, together with such other or further notice, if any, constitutes sufficient notice of the sale.

(2) The foreclosure sale must be conducted pursuant to this subparagraph.

(a) The foreclosure sale must take place on the time-share property or some other location within the same town as the time-share property.

(b) The foreclosure sale must be by public auction, conducted by an auctioneer or attorney licensed to practice in the State. At the discretion of the auctioneer or attorney, the reading of the names of the time-share owners, if more than one, the description of time-share estates, if more than one, and the recording information, if more than one instrument, may be dispensed with.

(c) All rights of redemption of the time-share owner are extinguished upon sale of a time-share estate.

(d) The managing entity, the foreclosing person or any time-share owner may bid at the foreclosure sale. The successful buyer at the foreclosure sale takes title to the time-share estate free and clear of any outstanding assessments owed by the prior time-share owner to the managing entity. A purchaser at a sale is not required to complete the purchase if there are liens and encumbrances, other than those included in the notice of sale, that are not stated at the sale and included in the foreclosing person's contract with the purchaser.

(e) Upon closing, the foreclosing person shall provide the buyer with a foreclosure deed or other appropriate instrument transferring the rights to the time-share estate and an affidavit attesting that all requirements of the foreclosure pursuant to this section have been met. The time-share estate is deemed to have been sold, and the instrument conveying the time-share estate must transfer the time-share estate, subject to municipal or other public taxes and to any liens and encumbrances recorded prior to the recording of the mortgage or the lien for assessments.

(f) The buyer shall record the foreclosure deed or other instrument with the appropriate registry of deeds no more than 30 days after the foreclosure sale date.

(g) Within 30 days after the closing and transfer of the foreclosure deed or other instrument and affidavit, the foreclosing person shall mail a notice detailing the results of the foreclosure sale to the last known address of the former time-share owner and all parties that held a junior interest to that of the foreclosing person. [PL 2007, c. 466, Pt. A, §55 (AMD).]

[PL 2007, c. 466, Pt. A, §55 (AMD).]

2. Foreclosure of lien or security interest on time-share license. In the case of a time-share license, the following must be conducted by public or private sale in accordance with the provisions of Title 11, section 9-1610:

A. The foreclosure of a lien on a time-share estate pursuant to section 594 for failure to pay assessments when due; or [PL 2005, c. 572, §2 (NEW).]

B. The exercise of the rights of a holder of a security interest in a time-share license for breach of the terms of the instrument granting the security interest. [PL 2005, c. 572, §2 (NEW).]

All rights of redemption of a time-share owner are extinguished upon the consummation of the sale proceedings. The managing entity, the foreclosing person or any time-share owner may bid at the sale or may enter into agreements for the purchase of one or more time-share licenses following the completion of sale proceedings. The successful buyer takes title to the time-share license free and clear of any outstanding assessments owed by the prior time-share owner to the managing entity.
[PL 2005, c. 572, §2 (NEW).]

3. Foreclosure of mortgage not containing power of sale. In the event of a breach of the conditions of a mortgage on a time-share estate that does not contain a power of sale, the holder of the mortgage may conduct a nonjudicial foreclosure of the interest of the time-share owner in the time-share estate pursuant to subsection 1 if, at the same time the holder gives written notice of default to the time-share owner as provided in subsection 1, paragraph A, the holder also gives written notice to the time-share owner stating that unless the time-share owner objects in writing to the nonjudicial foreclosure within the 30-day period required by subsection 1, paragraph A, the holder will proceed to conduct the foreclosure pursuant to subsection 1. The holder must explain in the notice that the time-share owner has the right to a judicial foreclosure conducted pursuant to Title 14, chapter 713 if the owner asserts the objection within the specified time period and must include with the notice an objection form together with an envelope addressed to the holder. Failure of a time-share owner to

object as required by this subsection in a timely manner is deemed a waiver of the owner's right to a judicial foreclosure pursuant to Title 14, chapter 713, which may include judicial foreclosure by way of court action.
[PL 2005, c. 572, §2 (NEW).]

4. Forfeiture of deficiency claim. If the holder of the mortgage conducts a nonjudicial foreclosure pursuant to this section, the holder forfeits the holder's right to pursue a claim for any deficiency in the payment of the time-share owner's obligations resulting from the application of the proceeds of the sale to such obligations.

If the holder of a security interest in a time-share license conducts a nonjudicial foreclosure pursuant to this section, the holder forfeits the holder's right to pursue a claim for any deficiency in the payment of the time-share owner's obligations resulting from the application of the proceeds of the sale to such obligations.
[PL 2005, c. 572, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 572, §2 (NEW). PL 2007, c. 466, Pt. A, §55 (AMD).

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