

STATE OF MAINE

—
 IN THE YEAR OF OUR LORD
 TWO THOUSAND AND FIFTEEN

—
 H.P. 194 - L.D. 276

An Act Regarding Maine's Power of Sale Foreclosure Law

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 14 MRSA §6203-A, as repealed and replaced by PL 2009, c. 476, Pt. B, §3 and affected by §9, is amended to read:

§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 ~~prominently state the street address of the real estate encumbered by the mortgage deed, if any, and the book and page number of the mortgage, if any~~ 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 a one or more of the following purposes: business, commercial or agricultural ~~purpose~~. ~~A copy of the notice must, at least 21 days before the date of the sale under the power in the mortgage, be recorded in each registry of deeds in which the mortgage deed is or by law ought to be recorded and must be served on the mortgagor or its representative in interest, or may be sent by registered 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, at least 21 days before the date of the sale under the power in the mortgage.~~ 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 ~~order of priorities~~ rights of junior mortgages set out in section 6205.

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.

2. Notice to tenants; effect on title. In addition to the notices provided pursuant to ~~subsection~~ 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 ~~or~~, may be sent by first class mail ~~and registered 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.

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.

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 exactly as in~~ of the real estate encumbered by the Mortgage, including all which may be incorporated by reference to title, restrictions, encumbrances, etc., as made in the Mortgage 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.....

4. Notice of sale. ~~A foreclosure notice of sale in subsection 3,~~ 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, and the 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; but no purchaser at the sale is bound to complete the purchase if there are encumbrances, other than those named in the mortgage and included in the notice of the sale, that are not stated at the sale and included in the seller's contract with the purchase 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.

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 ~~any other encumbrances on said property~~ 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 ~~said encumbrances~~ 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 ~~person holding an encumbrance~~ 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.

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.

Sec. 2. 14 MRSA §6203-B, as amended by PL 2009, c. 476, Pt. B, §4 and affected by §9, is further amended to read:

§6203-B. Copy of notice; affidavit; recording; evidence

The ~~person selling~~ mortgagee or its agent shall, within 30 days after the sale date of the delivery of the deed to the purchaser or the purchaser's agent, cause a copy of the notice as published and the person's an affidavit, fully and particularly stating the person's

mortgagee's acts, or the acts of the person's principal or ward 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, ~~subsection 1~~ 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 Superior Court, ~~on petition and after such notice as it may order may, if it determines proper, authorize the recording of an affidavit amending, correcting or in substitution for an affidavit so recorded, and the affidavit so authorized to be recorded or a certified copy of the record thereof must have~~ 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.

Sec. 3. 14 MRSA §6203-D, as enacted by PL 1967, c. 424, §2, is amended to read:

§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 ~~which 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, ~~shall must~~, except as otherwise provided, be commenced within 2 years after the date of ~~the foreclosure sale~~ 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 ~~foreclosure sale~~ 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.

Sec. 4. 14 MRSA §6203-E, as amended by PL 1987, c. 736, §17, is further amended to read:

§6203-E. Liability for deficiency on sale; necessity of notice; form; affidavit

No action for a deficiency ~~shall 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 ~~shall have~~ 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 ~~said~~ 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 ~~foreclosure sale~~ date of delivery of the deed to the purchaser or purchaser's agent, of the mailing of ~~such~~ the notice. A notice mailed as aforesaid ~~shall be~~ is a sufficient notice, and such an affidavit made within the time specified ~~shall be~~ is prima facie evidence in such action of the mailing of such notice.

The following form of notice and affidavit may be used and may be altered as circumstances require; but nothing herein ~~shall~~ 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 19
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 ~~which~~ 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 ~~which~~ that was
the person and the address agreed upon in said Mortgage.

Subscribed and sworn to before me this day of 19
20.....

.....

Notary Public

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.

Sec. 5. 14 MRSA §6203-G is enacted to read:

§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.

Sec. 6. 32 MRSA §286, sub-§5, as enacted by PL 1999, c. 146, §5, is amended to read:

5. Mortgage foreclosure sales. This chapter does not apply to any individual conducting a mortgage foreclosure sale ~~pursuant to a court order~~.

Sec. 7. 33 MRSA §501-A, as amended by PL 1995, c. 106, §2, is further amended to read:

§501-A. "Power of sale"

The following "power" is known as "The Statutory Power of Sale" and may be included in any mortgage or incorporated by reference in any mortgage granted by a corporation, partnership, including a limited partnership or a limited liability partnership, limited liability company or trustee of a trust and, if included in the mortgage, the mortgage may be foreclosed pursuant to Title 14, chapter 713, subchapter 3. 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.

POWER

~~But upon~~ Upon any default in the performance or the observance of the foregoing or other condition, the mortgagee or ~~his~~ the mortgagee's executors, administrators, successors or assigns, ~~his or their~~ the agent or attorney of the mortgagee or the mortgagee's executors, administrators, successors or assigns, may sell the mortgaged premises or such portion thereof as may remain subject to the mortgage in case of any partial release thereof, either as a whole or in parcels, together with all improvements that may be thereon, by a public sale ~~on or near the premises in the county where the real estate~~ then subject to the mortgage is situated, or, if more than one parcel is then subject thereto, then ~~on or near in the county where~~ one of said parcels is situated, or at such place as may be designated for the purpose in the mortgage, first complying with the terms of the mortgage and the statutes relating to the foreclosure of mortgage by the exercise of a power of sale, and ~~he or they~~ the mortgagee or the mortgagee's executors, administrators, successors or assigns or the agent or attorney of the mortgagee or the mortgagee's executors, administrators, successors or assigns may convey the same by proper deed or deeds to the purchaser or purchasers absolutely and in fee simple; and such sale ~~shall~~ forever ~~bar~~ bars the mortgagor and all persons claiming under it from all right and interest in the mortgaged premises, whether at law or in equity.