

3838

2013-2014 Regular Sessions

I N S E N A T E

February 21, 2013

Introduced by Sen. FARLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the real property actions and proceedings law, in relation to foreclosure of mortgages by power of sale

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The real property actions and proceedings law is amended by
2 adding a new article 14 to read as follows:

3 ARTICLE 14

4 FORECLOSURE OF MORTGAGE BY POWER OF SALE
5 SECTION 1401. WHEN MORTGAGE MAY BE FORECLOSED.

6 1402. NOTICE OF INTENTION TO FORECLOSE.

7 1403. NOTICE OF PENDENCY OF NON-JUDICIAL PROCEEDING FOR FORECLO-
8 SURE BY POWER OF SALE.

9 1404. CONTENTS OF NOTICE OF SALE.

10 1405. NOTICE OF SALE; HOW GIVEN.

11 1406. NOTICE OF SALE; HOW SERVED.

12 1407. SALE; HOW POSTPONED.

13 1408. SALE; HOW CONDUCTED.

14 1409. MORTGAGEE OR SUCCESSOR IN INTEREST MAY PURCHASE.

15 1410. RIGHT TO REDEEM OF MORTGAGOR, SUBORDINATE LIENOR, OR HOLD-
16 ER OF SUBORDINATE INTERESTS.

17 1411. EFFECT OF SALE.

18 1412. CONVEYANCE.

19 1413. DISTRIBUTION OF PROCEEDS OF SALE.

20 1414. REPORT OF SALE.

21 1415. FILING OF REPORT OF SALE.

22 1416. MULTIPLE COLLATERAL; DESIGNATION OF ORDER OF SALE OF
23 PARCELS.

24 1417. COSTS AND EXPENSES ALLOWED.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD08833-01-3

1 1418. APPLICATION FOR SURPLUS.

2 1419. DEFICIENCY JUDGMENT.

3 1420. RECEIVER.

4 1421. RIGHT TO SEEK JUDICIAL INTERVENTION; MORTGAGEE'S LIABILITY
5 FOR FAILURE TO COMPLY WITH THIS ARTICLE.

6 S 1401. WHEN MORTGAGE MAY BE FORECLOSED. 1. A MORTGAGE UPON REAL PROP-
7 ERTY SITUATED WITHIN THE STATE, EXCEPTING A MORTGAGE ON REAL PROPERTY
8 IMPROVED SOLELY BY (A) A RESIDENTIAL BUILDING CONTAINING LESS THAN SIX
9 DWELLING UNITS, INCLUDING STRUCTURES AND IMPROVEMENTS APPURTENANT THERE-
10 TO, OR (B) A RESIDENTIAL CONDOMINIUM UNIT IN A RESIDENTIAL BUILDING
11 OWNED IN A CONDOMINIUM FORM OF OWNERSHIP, OR (C) A RESIDENTIAL BUILDING,
12 INCLUDING STRUCTURES AND IMPROVEMENTS APPURTENANT THERETO, OWNED BY A
13 QUALIFIED COOPERATIVE APARTMENT CORPORATION, OR (D) A BUILDING LOCATED
14 IN A CITY WITH A POPULATION OF ONE MILLION OR MORE WHERE THE NUMBER OF
15 UNITS OCCUPIED BY RESIDENTIAL TENANTS IS EQUAL TO OR GREATER THAN
16 SIXTY-FIVE PER CENTUM OF THE TOTAL NUMBER OF UNITS IN THE BUILDING,
17 CONTAINING A PROVISION THAT, UPON A DEFAULT OF THE MORTGAGE, OR THE
18 NOTE, BOND OR OTHER OBLIGATION SECURED THEREBY, THE MORTGAGEE SHALL HAVE
19 THE RIGHT TO SELL THE MORTGAGED PROPERTY, MAY BE FORECLOSED IN THE
20 MANNER PRESCRIBED IN THIS ARTICLE FOR A NON-JUDICIAL PROCEEDING FOR
21 FORECLOSURE BY POWER OF SALE, WHERE THE FOLLOWING REQUISITES OCCUR:

22 (1) DEFAULT HAS OCCURRED UNDER THE MORTGAGE AND THE OUTSTANDING
23 INDEBTEDNESS HAS BEEN DECLARED IMMEDIATELY DUE AND PAYABLE BY WRITTEN
24 NOTICE TO THE MORTGAGOR GIVEN IN THE MANNER REQUIRED BY THE MORTGAGE;

25 (2) AN ACTION HAS NOT BEEN BROUGHT TO RECOVER THE DEBT SECURED BY THE
26 MORTGAGE, OR ANY PART THEREOF, OR TO FORECLOSE THE MORTGAGE UNDER ARTI-
27 CLE THIRTEEN OF THIS CHAPTER; OR, IF AN ACTION ON THE DEBT HAS BEEN
28 BROUGHT, IT HAS BEEN DISCONTINUED OR DISMISSED WITHOUT PREJUDICE AGAINST
29 THE PLAINTIFF, OR AN EXECUTION, ISSUED UPON A JUDGMENT RENDERED THEREIN
30 IN FAVOR OF THE PLAINTIFF, HAS BEEN RETURNED WHOLLY OR PARTLY UNSATIS-
31 FIED;

32 (3) THE MORTGAGE HAS BEEN DULY RECORDED IN ACCORDANCE WITH ARTICLE
33 NINE OF THE REAL PROPERTY LAW IN THE LAND RECORDS IN THE COUNTY WHERE
34 THE PROPERTY IS SITUATED; AND

35 (4) THE FIRST NOTICE OF SALE HAS BEEN PUBLISHED WITHIN THE TIME IN
36 WHICH AN ACTION COULD BE COMMENCED TO FORECLOSE SUCH MORTGAGE.

37 2. NON-JUDICIAL FORECLOSURE BY POWER OF SALE PURSUANT TO THIS ARTICLE
38 SHALL NOT BE AVAILABLE TO A MORTGAGEE HOLDING A MORTGAGE ON PROPERTY
39 CONTAINING RESIDENTIAL APARTMENT UNITS WHERE THE MORTGAGEE SEEKS, IN AND
40 BY THE NON-JUDICIAL FORECLOSURE OF THE MORTGAGED PROPERTY OR AS A RESULT
41 THEREOF, TO FORECLOSE, TERMINATE, MODIFY, OR IMPAIR THE TENANT'S INTER-
42 ESTS IN ANY LEASES FOR RESIDENTIAL UNITS IN THE MORTGAGED PROPERTY OR
43 THE TENANT'S POSSESSORY RIGHTS PURSUANT THERETO.

44 S 1402. NOTICE OF INTENTION TO FORECLOSE. 1. NOT LATER THAN TEN DAYS
45 AFTER COMMENCING THE NON-JUDICIAL PROCEEDING BY FILING THE NOTICE OF
46 PENDENCY PURSUANT TO SECTION FOURTEEN HUNDRED THREE OF THIS ARTICLE, AND
47 NOT LESS THAN TEN DAYS PRIOR TO THE FIRST SERVICE OF THE NOTICE OF SALE
48 PURSUANT TO SECTION FOURTEEN HUNDRED SIX OF THIS ARTICLE, A COPY OF THE
49 NOTICE OF PENDENCY, TOGETHER WITH A NOTICE OF INTENTION TO FORECLOSE, IN
50 A WRITING COMPLYING WITH SUBDIVISION TWO OF THIS SECTION, SHALL BE SENT
51 TO THE MORTGAGOR, THE OBLIGOR ON THE NOTE, BOND, OR OTHER OBLIGATION IF
52 OTHER THAN THE MORTGAGOR, THE OWNER OF THE MORTGAGED PROPERTY, IF OTHER
53 THAN THE MORTGAGOR, AND TO ANY PERSON OR ENTITY HAVING A LIEN OF RECORD
54 UPON THE MORTGAGED PROPERTY, OR INTEREST IN THE MORTGAGED PROPERTY
55 SUBORDINATE TO THE MORTGAGE THAT THE MORTGAGEE SEEKS TO FORECLOSE, AT
56 THE TIME OF THE FILING OF THE NOTICE OF PENDENCY OF WHICH THE MORTGAGEE

1 HAS ACTUAL KNOWLEDGE OR IS ON CONSTRUCTIVE NOTICE, BOTH BY (A) REGIS-
2 TERED MAIL OR CERTIFIED MAIL AND (B) ORDINARY FIRST CLASS MAIL, OR BY
3 PERSONAL SERVICE IN THE SAME MANNER AS SERVICE OF A SUMMONS. SUCH NOTICE
4 SHALL BE SENT TO THE OWNER OF THE MORTGAGED PROPERTY AT THE ADDRESS OF
5 THE PROPERTY OR AT SUCH OTHER ADDRESS THAT IS KNOWN TO THE MORTGAGEE, TO
6 A MORTGAGOR AT THE MORTGAGOR'S ADDRESS SPECIFIED IN THE MORTGAGE OR TO
7 SUCH OTHER PLACE AS MAY HAVE BEEN DIRECTED BY THE MORTGAGOR IN WRITING
8 IN ACCORDANCE WITH THE MORTGAGE, AND TO ANY PERSON OR ENTITY HAVING A
9 LIEN OF RECORD SUBORDINATE TO THE MORTGAGE THAT THE MORTGAGEE SEEKS TO
10 FORECLOSE AT THE ADDRESS SHOWN ON SUCH LIEN. THE NOTICE SHALL BE SENT TO
11 A PERSON OR ENTITY HAVING ANY SUBORDINATE INTEREST IN THE MORTGAGED
12 PROPERTY THAT THE MORTGAGEE SEEKS TO FORECLOSE AND OF WHICH THE MORTGA-
13 GEE HAS SUCH ACTUAL KNOWLEDGE OR CONSTRUCTIVE NOTICE AT SUCH PERSON'S OR
14 ENTITY'S LAST KNOWN PERSONAL OR BUSINESS ADDRESS.

15 2. THE NOTICE SHALL:

16 (A) IDENTIFY THE MORTGAGE BY THE PARTIES THERETO, THE DATE AND RECORD-
17 ING DATE THEREOF, AND ANY RECORDED AMENDMENTS AND MODIFICATIONS THEREOF;

18 (B) (1) IF THERE IS A MONETARY DEFAULT, SET FORTH THE AMOUNTS DUE, THE
19 DATE DUE AND ANY LATE CHARGES AND DEFAULT INTEREST; (2) IF THERE IS A
20 NON-MONETARY DEFAULT, SET FORTH THE BASIS THEREOF;

21 (C) STATE THAT THE MORTGAGEE HAS (1) MADE DEMAND TO CURE A DEFAULT IF
22 SUCH DEMAND IS REQUIRED UNDER THE MORTGAGE OR THE NOTE, BOND OR OTHER
23 OBLIGATION SECURED THEREBY, WHICH DEFAULT HAS NOT BEEN CURED WITHIN THE
24 APPLICABLE CURE PERIOD, AND (2) DECLARED THE ENTIRE OBLIGATION SECURED
25 BY THE MORTGAGE TO BE IMMEDIATELY DUE AND PAYABLE BY WRITTEN NOTICE TO
26 THE MORTGAGOR;

27 (D) SET FORTH THE OUTSTANDING PRINCIPAL BALANCE DECLARED DUE AND PAYA-
28 BLE, TOGETHER WITH THE AMOUNT OF INTEREST ACCRUED THEREON AND THE
29 APPROXIMATE AMOUNT OF OTHER SUMS SECURED BY THE MORTGAGE;

30 (E) STATE THAT THE INTEREST IN THE MORTGAGED PROPERTY OF THE MORTGAGOR
31 AND ALL PERSONS OR ENTITIES HAVING AN INTEREST IN THE MORTGAGED PROPERTY
32 SUBORDINATE TO THE MORTGAGE, WHO ARE SERVED WITH A COPY OF THE NOTICE OF
33 INTENTION TO FORECLOSE AND ANY OTHER NOTICES REQUIRED UNDER THIS ARTI-
34 CLE, WILL BE TERMINATED BY FORECLOSURE OF THE MORTGAGE BY POWER OF SALE
35 PURSUANT TO THIS ARTICLE AND THAT THE MORTGAGOR, OWNER, OR SUCH OTHER
36 PERSON OR ENTITY HAVING AN INTEREST IN THE MORTGAGED PROPERTY SUBORDI-
37 NATE TO THE MORTGAGE, MAY THEREUPON BE EVICTED BY JUDICIAL PROCESS;

38 (F) SET FORTH THE RIGHT OF THE MORTGAGOR, OR ANY PERSON OR ENTITY
39 HAVING AN INTEREST IN THE MORTGAGED PROPERTY SUBORDINATE TO THE MORT-
40 GAGE, TO ANY SURPLUS MONEYS OUT OF THE PROCEEDS OF SALE IN ACCORDANCE
41 WITH THE PROVISIONS OF SECTION FOURTEEN HUNDRED EIGHTEEN OF THIS ARTI-
42 CLE; AND, IF A DEFICIENCY JUDGMENT IS PERMITTED, THAT THE MORTGAGEE
43 SHALL HAVE THE RIGHT TO SEEK A DEFICIENCY JUDGMENT PURSUANT TO SECTION
44 FOURTEEN HUNDRED NINETEEN OF THIS ARTICLE;

45 (G) SET FORTH THE RIGHTS AND REMEDIES, AS SPECIFIED IN SECTION FOUR-
46 TEEN HUNDRED TWENTY-ONE OF THIS ARTICLE, WHICH ARE AVAILABLE TO THE
47 MORTGAGOR, OR ANY PERSON OR ENTITY CLAIMING UNDER THE MORTGAGOR OR
48 HAVING AN INTEREST IN OR LIEN UPON THE MORTGAGED PROPERTY WHICH IS
49 SUBORDINATE TO THE MORTGAGE BEING FORECLOSED; AND

50 (H) WHERE THE UNITED STATES OF AMERICA, THE STATE OF NEW YORK, OR ANY
51 MUNICIPALITY, AGENCY OR INSTRUMENTALITY OF ANY OF THEM, IS ENTITLED TO
52 NOTICE, THE NOTICE SHALL SPECIFY WITH PARTICULARITY THE NATURE OF THE
53 INTEREST OR LIEN OF THE GOVERNMENTAL ENTITY. THE NON-JUDICIAL PROCEEDING
54 UNDER THIS ARTICLE SHALL BE DEEMED TO BE AN ACTION, FOR PURPOSES OF
55 STATUTES CONFERRING JURISDICTION OVER GOVERNMENTAL ENTITIES.

1 3. AFFIDAVITS OF SERVICE OR MAILING UPON EACH OF THE PERSONS OR ENTI-
2 TIES ENTITLED TO AND SERVED WITH THE NOTICE OF INTENTION TO FORECLOSE
3 SHALL BE FILED PRIOR TO THE DATE OF SALE UNDER THE INDEX NUMBER OF THE
4 NON-JUDICIAL PROCEEDING WITH THE CLERK OF THE COUNTY IN WHICH THE SALE
5 IS TO TAKE PLACE.

6 S 1403. NOTICE OF PENDENCY OF NON-JUDICIAL PROCEEDING FOR FORECLOSURE
7 BY POWER OF SALE. 1. THE MORTGAGEE SHALL, PRIOR TO THE FIRST SERVICE OF
8 THE NOTICE OF INTENTION TO FORECLOSE, PURCHASE AN INDEX NUMBER IN THE
9 OFFICE OF THE COUNTY CLERK OF THE COUNTY IN WHICH THE SALE IS TO TAKE
10 PLACE AND FILE IN THE CLERK'S OFFICE OF EACH COUNTY WHERE THE MORTGAGED
11 PROPERTY IS SITUATED A NOTICE OF THE PENDENCY OF THE NON-JUDICIAL
12 PROCEEDING FOR FORECLOSURE BY POWER OF SALE WHICH SHALL, IN ADDITION TO
13 THE APPLICABLE REQUIREMENTS OF ARTICLE SIXTY-FIVE OF THE CIVIL PRACTICE
14 LAW AND RULES, SPECIFY THE DATE OF THE MORTGAGE, THE PARTIES THERETO,
15 THE TIME AND PLACE OF RECORDING, THE NAME OF THE RECORD OWNER OF THE
16 MORTGAGED PROPERTY, THE NAMES OF ANY SUBORDINATE LIENORS OR HOLDERS OF
17 SUBORDINATE INTERESTS ENTITLED TO NOTICE OF THE SALE, THE OBJECT OF THE
18 PROCEEDING FOR FORECLOSURE OF THE MORTGAGE BY POWER OF SALE, AND A
19 DESCRIPTION OF THE MORTGAGED PROPERTY, INCLUDING THE NUMBER OF EACH
20 BLOCK AND LOT ON THE LAND MAP OF THE COUNTY WHICH IS AFFECTED BY THE
21 NOTICE. IF THE NOTICE IS FILED IN MORE THAN ONE COUNTY, THE NOTICE SHALL
22 DESIGNATE THE COUNTY IN WHICH THE SALE IS TO TAKE PLACE. THE PROVISIONS
23 OF ARTICLE SIXTY-FIVE OF THE CIVIL PRACTICE LAW AND RULES REQUIRING THE
24 SERVICE AND FILING OF A SUMMONS SHALL NOT BE APPLICABLE TO A NON-JUDI-
25 CIAL PROCEEDING FOR FORECLOSURE BY POWER OF SALE PURSUANT TO THIS ARTI-
26 CLE.

27 2. THE FILING OF THE NOTICE OF PENDENCY SHALL BE DEEMED TO BE THE
28 COMMENCEMENT OF THE NON-JUDICIAL PROCEEDING FOR FORECLOSURE BY POWER OF
29 SALE PURSUANT TO THIS ARTICLE.

30 3. THE NOTICE OF PENDENCY SHALL BE EFFECTIVE FOR A PERIOD OF THREE
31 YEARS FROM THE DATE OF FILING. BEFORE EXPIRATION OF A PERIOD OR EXTENDED
32 PERIOD, THE COURT, UPON MOTION OF THE MORTGAGEE AND UPON SUCH NOTICE AS
33 THE COURT MAY REQUIRE, MAY, FOR GOOD CAUSE SHOWN, GRANT AN EXTENSION FOR
34 AN ADDITIONAL THREE YEAR PERIOD. AN EXTENSION ORDER SHALL BE FILED AND
35 INDEXED BEFORE EXPIRATION OF THE NOTICE OF PENDENCY. IN THE EVENT THE
36 SALE HAS NOT TAKEN PLACE PRIOR TO THE EXPIRATION OF A PENDENCY PERIOD,
37 AND A LAPSE IN EXTENDING THE NOTICE OF PENDENCY HAS OCCURRED, A NEW
38 NOTICE OF PENDENCY MAY BE FILED UPON A COURT ORDER FROM THE SUPREME
39 COURT IN THE COUNTY IN WHICH THE SALE IS TO TAKE PLACE, ON A SHOWING
40 THAT NO PERSON OR ENTITY HAS BEEN PREJUDICED BY THE FAILURE TO EXTEND
41 THE NOTICE OF PENDENCY. IN THE EVENT THAT A PERSON OR ENTITY SHALL HAVE
42 ACQUIRED, AFTER THE EXPIRATION OF A NOTICE OF PENDENCY AND BEFORE ANOTH-
43 ER SHALL BE FILED, AN INTEREST IN OR LIEN UPON THE MORTGAGED PROPERTY
44 WHICH IS SUBORDINATE TO THE MORTGAGE, SUCH PERSON OR ENTITY SHALL BE
45 ENTITLED TO NOTICE OF THE SALE.

46 4. THE FILING OF THE NOTICE OF PENDENCY SHALL BE DEEMED TO BE CONCLU-
47 SIVE RECORD NOTICE TO ANY TENANT OR OCCUPANT WHO TAKES POSSESSION OF ALL
48 OR A PART OF THE MORTGAGED PROPERTY, OR ANY PERSON WHO OR ENTITY WHICH
49 ACQUIRES AN INTEREST IN OR LIEN UPON THE MORTGAGED PROPERTY, OR ANY PART
50 THEREOF, AFTER THE FILING OF THE NOTICE OF PENDENCY AND ALL SUCH PERSONS
51 OR ENTITIES SHALL BE BOUND THEREBY AND BY THE NON-JUDICIAL PROCEEDING
52 PURSUANT TO THIS ARTICLE.

53 S 1404. CONTENTS OF NOTICE OF SALE. THE NOTICE OF SALE SHALL SPECIFY:
54 1. THE NAMES OF THE MORTGAGOR AND RECORD OWNER, IF OTHER THAN THE
55 MORTGAGOR, THE MORTGAGEE, AND OF EACH ASSIGNEE OF THE MORTGAGEE;

1 2. THE DATE OF THE MORTGAGE, THE DATE WHEN AND THE PLACE WHERE IT WAS
2 RECORDED, AND THE BOOK AND PAGE OR INDEX IN WHICH IT IS RECORDED AND THE
3 DATES AND RECORDING INFORMATION PERTAINING TO EACH ASSIGNMENT OF THE
4 MORTGAGE;

5 3. THE IDENTITY OF HOLDERS, IF ANY, OF SUBORDINATE INTERESTS IN THE
6 MORTGAGED PROPERTY WHICH THE MORTGAGEE SEEKS TO FORECLOSE WHICH ARE
7 RECORDED OR OF WHICH THE MORTGAGEE HAS ACTUAL OR CONSTRUCTIVE NOTICE AT
8 THE TIME OF THE FILING OF THE NOTICE OF PENDENCY, AND THE NATURE OF SUCH
9 SUBORDINATE INTERESTS;

10 4. THE OUTSTANDING PRINCIPAL SUM CLAIMED BY THE MORTGAGEE TO BE DUE
11 UPON THE MORTGAGE, TOGETHER WITH ACCRUED INTEREST THEREON, LATE CHARGES,
12 OTHER SUMS DUE UNDER THE MORTGAGE, AND SUMS ADVANCED BY THE MORTGAGEE
13 RECOVERABLE UNDER THE MORTGAGE INCLUDING THE COSTS OF SALE AND REASON-
14 ABLE ATTORNEYS' FEES AND DISBURSEMENTS, AT THE TIME OF THE FIRST PUBLI-
15 CATION OF THE NOTICE;

16 5. A LEGAL DESCRIPTION OF THE MORTGAGED PROPERTY, THE STREET ADDRESS,
17 AND THE BLOCK AND LOT OR OTHER TAX OR TAX MAP IDENTIFICATION;

18 6. IF THE MORTGAGED PROPERTY CONSISTS OF TWO OR MORE DISTINCT PARCELS,
19 UNLESS THE MORTGAGE PROVIDES THAT THE PARCELS SHALL BE SOLD AS ONE
20 PARCEL, THE NOTICE OF SALE SHALL SPECIFY THE ORDER IN WHICH THE PARCELS
21 SHALL BE SOLD;

22 7. THAT THE OWNER HAS THE RIGHT, UP TO AND INCLUDING THE TIME OF THE
23 SALE, TO REDEEM THE MORTGAGED PROPERTY UPON PAYMENT TO THE MORTGAGEE OF
24 THE OUTSTANDING PRINCIPAL BALANCE SECURED BY THE MORTGAGE, TOGETHER WITH
25 INTEREST ACCRUED THEREON, AND ALL OTHER SUMS DUE THEREUNDER, INCLUDING
26 THE COSTS OF SALE AND REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS; AND

27 8. THE DATE, PLACE AND TIME OF SALE.

28 S 1405. NOTICE OF SALE; HOW GIVEN. NOTICE THAT THE MORTGAGE WILL BE
29 FORECLOSED BY A SALE OF THE MORTGAGED PROPERTY, OR A PART THEREOF, AT A
30 TIME AND PLACE SPECIFIED IN THE NOTICE, SHALL BE GIVEN IN THE FOLLOWING
31 MANNER:

32 1. A COPY OF THE NOTICE SHALL BE SERVED, AS PRESCRIBED IN SECTION
33 FOURTEEN HUNDRED SIX OF THIS ARTICLE, UPON:

34 (A) THE MORTGAGOR;

35 (B) THE OBLIGOR ON THE NOTE, BOND OR OTHER OBLIGATION, IF OTHER THAN
36 THE MORTGAGOR;

37 (C) THE OWNER OF THE MORTGAGED PROPERTY, IF OTHER THAN THE MORTGAGOR;

38 (D) ANY OTHER PERSON OR ENTITY IN THE MORTGAGE DESIGNATED TO RECEIVE
39 NOTICE;

40 (E) A SUBSEQUENT LIENOR OF THE MORTGAGED PROPERTY THAT THE MORTGAGEE
41 SEEKS TO FORECLOSE WHOSE INTEREST WAS RECORDED OR DOCKETED IN THE PROPER
42 OFFICE FOR RECORDING OR FILING IN THE COUNTY IN WHICH THE MORTGAGED
43 PROPERTY IS LOCATED AT THE TIME OF THE FILING OF THE NOTICE OF PENDENCY;
44 AND

45 (F) ANY PERSON HAVING A LIEN UPON OR INTEREST IN THE MORTGAGED PROPER-
46 TY, OR ANY PART THEREOF, AT THE TIME OF THE FILING OF THE NOTICE OF
47 PENDENCY THAT IS SUBORDINATE TO THE MORTGAGE AND THAT THE MORTGAGEE
48 SEEKS TO FORECLOSE. AFFIDAVITS OF SERVICE OR MAILING UPON EACH OF THE
49 PERSONS OR ENTITIES ENTITLED TO NOTICE OF THE SALE SHALL BE FILED PRIOR
50 TO THE DATE OF SALE UNDER THE INDEX NUMBER OF THE NON-JUDICIAL PROCEED-
51 ING WITH THE CLERK OF THE COUNTY IN WHICH THE SALE IS TO TAKE PLACE.

52 2. A COPY OF THE NOTICE OF SALE MUST BE PUBLISHED AT LEAST ONCE IN
53 EACH WEEK DURING THE FIVE SUCCESSIVE WEEKS IMMEDIATELY PRECEDING THE
54 DATE OF SALE, OR AT LEAST TWICE IN EACH WEEK DURING THE FOUR SUCCESSIVE
55 WEEKS IMMEDIATELY PRECEDING THE DATE OF SALE, IN A NEWSPAPER OF GENERAL
56 CIRCULATION DISTRIBUTED IN THE COUNTY IN WHICH THE PROPERTY TO BE SOLD,

OR ANY PART THEREOF, IS SITUATED, OR IF NO NEWSPAPER IS DISTRIBUTED IN SUCH COUNTY, THEN IN A NEWSPAPER DISTRIBUTED IN AN ADJOINING COUNTY, EXCEPT THAT WHERE SUCH PROPERTY IS LOCATED IN A COUNTY WHOLLY CONTAINED WITHIN A CITY WITH A POPULATION OF ONE MILLION OR MORE, SUCH NOTICE OF SALE SHALL BE PUBLISHED IN THE SAME MANNER AS A NOTICE OF JUDICIAL PROCEEDING IN A NEWSPAPER DISTRIBUTED WITHIN SUCH COUNTY TO BE DESIGNATED BY THE CLERK OF SUCH COUNTY. ANY PERIOD OF SEVEN SUCCESSIVE DAYS SHALL CONSTITUTE A WEEK UNDER THIS SECTION.

3. A COPY OF THE NOTICE OF SALE MUST BE FILED ON OR BEFORE THE DAY OF FIRST PUBLICATION OF THE NOTICE OF SALE WITH THE CLERK OF EACH COUNTY WHEREIN THE MORTGAGED PROPERTY, OR ANY PART THEREOF, IS SITUATED.

4. THE PUBLICATION PROVISIONS OF THIS SECTION SHALL BE FOLLOWED IN LIEU OF THE PROVISIONS OF SECTION TWO HUNDRED THIRTY-ONE OF THIS CHAPTER RESPECTING THE PUBLICATION OF A NOTICE OF SALE.

S 1406. NOTICE OF SALE; HOW SERVED. SERVICE OF NOTICE OF THE SALE AS PRESCRIBED IN SUBDIVISION ONE OF SECTION FOURTEEN HUNDRED FIVE OF THIS ARTICLE SHALL BE MADE UPON A PERSON OR ENTITY DESCRIBED IN SUBDIVISION ONE OF SECTION FOURTEEN HUNDRED FIVE OF THIS ARTICLE THAT THE MORTGAGEE SEEKS TO FORECLOSE AS FOLLOWS:

1. AT LEAST THIRTY DAYS BEFORE THE DATE OF SALE, BY DELIVERING A COPY OF THE NOTICE, IN THE MANNER PRESCRIBED BY ARTICLE THREE OF THE CIVIL PRACTICE LAW AND RULES FOR PERSONAL SERVICE OF A COPY OF A SUMMONS IN A CIVIL ACTION IN A COURT OF RECORD, TO THE PERSON OR ENTITY TO BE SERVED, AND BY MAILING AN ADDITIONAL COPY THEREOF TO SUCH PERSON OR ENTITY BY FIRST CLASS MAIL IN AN ENVELOPE BEARING THE LEGEND "PERSONAL AND CONFIDENTIAL" AND NOT INDICATING ON THE OUTSIDE THEREOF, BY RETURN ADDRESS OR OTHERWISE, THAT THE COMMUNICATION IS FROM AN ATTORNEY OR CONCERNS AN ACTION OR PROCEEDING AGAINST THE PERSON OR ENTITY TO BE SERVED. IF SUCH PERSON OR ENTITY IS A FOREIGN CORPORATION, OR IS NOT A RESIDENT OF OR WITHIN THE STATE, THEN SERVICE THEREOF MAY BE MADE UPON IT IN LIKE MANNER WITHOUT THE STATE, AT LEAST FORTY DAYS BEFORE THE DATE OF SALE.

2. SERVICE OF A COPY OF THE NOTICE OF SALE UPON THE MORTGAGOR, THE MORTGAGOR'S SUCCESSORS OR ASSIGNS, OR A SUBSEQUENT GRANTEE OF THE PROPERTY FROM THE MORTGAGOR, IN THE MANNER PRESCRIBED IN THE MORTGAGE SHALL BE GOOD, VALID AND EFFECTIVE SERVICE HEREUNDER.

3. SERVICE OF A COPY OF THE NOTICE OF SALE UPON THE UNITED STATES OF AMERICA, ITS AGENCIES OR INSTRUMENTALITIES, SHALL BE IN ACCORDANCE WITH APPLICABLE FEDERAL STATUTE.

S 1407. SALE; HOW POSTPONED. 1. THE SALE MAY BE POSTPONED BY THE MORTGAGEE FOR A PERIOD OF TIME NOT TO EXCEED FIVE WEEKS. NOTICE OF POSTPONEMENT OF THE SALE SHALL BE PUBLISHED AT LEAST ONCE NOT LESS THAN FIVE DAYS PRIOR TO THE NEW DATE OF THE SALE IN THE NEWSPAPER IN WHICH THE ORIGINAL NOTICE WAS PUBLISHED, AND SHALL BE SERVED IN THE MANNER SET FORTH IN SECTION FOURTEEN HUNDRED SIX OF THIS ARTICLE UPON EACH PERSON UPON WHOM OR ENTITY UPON WHICH THE ORIGINAL NOTICE OF SALE WAS SERVED.

2. THE SALE MAY ALSO BE POSTPONED IF THE PERSON DESIGNATED TO CONDUCT THE SALE DOES NOT APPEAR ON THE DATE SCHEDULED FOR THE SALE, IN WHICH CASE NOTICE OF THE ADJOURNED DATE SHALL BE PUBLISHED AND SERVED AS PROVIDED IN SUBDIVISION ONE OF THIS SECTION.

3. IF THE SALE IS STAYED BY APPLICATION OF ANY OTHER LAW, THEN AT SUCH TIME AS THE STAY SHALL BE VACATED OR LIFTED, AN ADJOURNED SALE MAY BE SCHEDULED BY THE MORTGAGEE AND PUBLICATION OF THE NOTICE OF SALE SHALL BE MADE AS PRESCRIBED IN SUBDIVISION TWO OF SECTION FOURTEEN HUNDRED FIVE OF THIS ARTICLE.

4. THE SALE MAY BE POSTPONED BY THE MORTGAGEE MORE THAN ONCE. THE MANNER OF THE POSTPONEMENT AND THE PUBLICATION AND SERVICE OF NOTICE

1 THEREOF SHALL BE EFFECTED IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVI-
2 SION ONE OF THIS SECTION.

3 S 1408. SALE; HOW CONDUCTED. 1. THE SALE SHALL BE AT PUBLIC AUCTION
4 BY A LICENSED AUCTIONEER, SHERIFF, MARSHAL, OR COURT APPOINTED OFFICIAL
5 FOR SUCH PURPOSE, DURING REASONABLE BUSINESS HOURS, ON A DAY OTHER THAN
6 SATURDAY, SUNDAY OR A PUBLIC HOLIDAY, IN THE COUNTY IN WHICH THE MORT-
7 GAGED PROPERTY, OR A PART THEREOF, IS SITUATED, AT ANY COURTHOUSE
8 LOCATED IN THE COUNTY, OR IF IN A COUNTY WITHIN THE CITY OF NEW YORK, AT
9 THE COURTHOUSE OF THE SUPREME COURT IN SUCH COUNTY.

10 2. IF PUBLICATION OF THE NOTICE OF SALE IS FOR FOUR WEEKS, SUCH SALE
11 SHALL TAKE PLACE ON ANY DAY ON OR AFTER THE TWENTY-EIGHTH DAY AND ON OR
12 BEFORE THE THIRTY-FIFTH DAY AFTER THE DAY OF THE FIRST PUBLICATION; AND
13 IF PUBLICATION OF THE NOTICE OF SALE IS FOR FIVE WEEKS, SUCH SALE SHALL
14 TAKE PLACE ON ANY DAY ON OR AFTER THE THIRTY-FIFTH DAY AND ON OR BEFORE
15 THE FORTY-SECOND DAY AFTER THE DAY OF THE FIRST PUBLICATION. ANY PERIOD
16 OF SEVEN SUCCESSIVE DAYS SHALL CONSTITUTE A WEEK UNDER THIS SECTION.

17 3. THE PERSON CONDUCTING THE SALE SHALL ANNOUNCE THE TERMS THEREOF AT
18 THE OUTSET OF THE AUCTION. A COPY OF THE TERMS OF SALE SHALL BE MADE
19 AVAILABLE BY THE MORTGAGEE OR PERSON CONDUCTING THE SALE AT OR PRIOR
20 THERETO.

21 4. ON ACCEPTANCE OF A BID AT THE SALE, THE BIDDER, OTHER THAN THE
22 MORTGAGEE, SHALL DEPOSIT WITH THE PERSON CONDUCTING THE SALE AT LEAST
23 TEN PERCENT OF THE BID PRICE IN CASH, CERTIFIED CHECK OR A BANK CHECK
24 DRAWN ON A BANK, TRUST COMPANY, SAVINGS BANK OR SAVINGS AND LOAN ASSOCI-
25 ATION HAVING OFFICES IN THIS STATE. A MEMORANDUM OF THE SALE, WHICH
26 SHALL INCORPORATE THE TERMS OF THE SALE, SHALL BE EXECUTED BY THE PERSON
27 CONDUCTING THE SALE AND THE SUCCESSFUL BIDDER THEREAT, INCLUDING THE
28 FORECLOSING MORTGAGEE. THE MEMORANDUM SHALL STATE THE IDENTITY OF THE
29 PURCHASER, THE AMOUNT OF THE SUCCESSFUL BID, THE AMOUNT OF THE DEPOSIT
30 WHICH, PENDING THE CONVEYANCE OF TITLE, SHALL BE RETAINED BY THE PERSON
31 CONDUCTING THE SALE IN A SEPARATE ACCOUNT IN A COMMERCIAL BANK OR
32 SAVINGS BANK LOCATED IN THE STATE OF NEW YORK, THE DATE, TIME AND PLACE
33 OF CLOSING OF TITLE AND THAT THE TERMS OF THE SALE ARE INCORPORATED
34 THEREIN. THE MEMORANDUM OF SALE SHALL NOT BE AMENDED OR MODIFIED.

35 5. IF THE SUCCESSFUL BIDDER FAILS TO MAKE THE DEPOSIT ON ACCEPTANCE,
36 OR TO COMPLETE THE TRANSACTION WITHIN THIRTY DAYS AFTER ACCEPTANCE, THE
37 MORTGAGEE MAY RESELL THE MORTGAGED PROPERTY. THE BIDDER'S DEPOSIT MAY BE
38 RETAINED OR RECOVERED BY THE MORTGAGEE AS LIQUIDATED DAMAGES REGARDLESS
39 OF THE AMOUNT BID AND PAID ON THE RESALE OF THE MORTGAGED PROPERTY.

40 6. IF THE MORTGAGED PROPERTY CONSISTS OF TWO OR MORE DISTINCT PARCELS,
41 THEY SHALL BE SOLD SEPARATELY IN THE ORDER SPECIFIED IN THE NOTICE OF
42 SALE UNLESS OTHERWISE PROVIDED IN THE MORTGAGE OR ANY INSTRUMENT EXTEND-
43 ING, AMENDING OR MODIFYING THE MORTGAGE. AS MANY OF THE PARCELS SHALL BE
44 SOLD AS IT IS NECESSARY TO SELL IN ORDER TO SATISFY THE AMOUNT DUE AT
45 THE TIME OF THE SALE, AND THE COSTS AND EXPENSES ALLOWED BY SECTION
46 FOURTEEN HUNDRED SEVENTEEN OF THIS ARTICLE. WHERE TWO OR MORE BUILDINGS
47 ARE SITUATED IN THE SAME CITY LOT OR LOCAL TAX LOT, THEY SHALL BE SOLD
48 TOGETHER.

49 S 1409. MORTGAGEE OR SUCCESSOR IN INTEREST MAY PURCHASE. THE MORTGA-
50 GEE, OR ITS ASSIGNEE, OR THE LEGAL REPRESENTATIVE OF EITHER, MAY
51 PURCHASE THE MORTGAGED PROPERTY, OR ANY PART THEREOF, AT THE SALE AND
52 SHALL BE ENTITLED TO BID. UPON ANY SUCH BID UP TO THE FULL AMOUNT OF THE
53 INDEBTEDNESS SECURED BY THE MORTGAGE, INCLUDING UNPAID INTEREST, LATE
54 CHARGES, COSTS OF SALE, REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS,
55 AND ADVANCES MADE TO PROTECT THE LIEN OF THE MORTGAGE, THE MORTGAGEE, OR
56 ITS ASSIGNEE, OR THE LEGAL REPRESENTATIVE OF EITHER, SHALL NOT BE

1 REQUIRED TO MAKE ANY DEPOSIT AT THE SALE OR ANY PAYMENT OF THE AMOUNT OF
2 THE SUCCESSFUL BID UP TO THE FULL AMOUNT OF THE INDEBTEDNESS SECURED BY
3 THE MORTGAGE, UPON THE DELIVERY OF THE POWER OF SALE DEED.

4 S 1410. RIGHT TO REDEEM OF MORTGAGOR, SUBORDINATE LIENOR, OR HOLDER OF
5 SUBORDINATE INTERESTS. 1. AT ANY TIME BEFORE THE COMMENCEMENT OF THE
6 BIDDING AT THE SALE, THE MORTGAGOR, OR THE RECORD OWNER OF THE MORTGAGED
7 PROPERTY, OR THE HOLDER OF ANY SUBORDINATE SECURITY INTEREST IN OR OTHER
8 LIEN UPON THE MORTGAGED PROPERTY, MAY PREVENT THE SALE BY PAYMENT TO THE
9 MORTGAGEE, IN GOOD FUNDS, OF ALL SUMS DUE UNDER THE MORTGAGE, OR THE
10 NOTE, BOND OR OTHER OBLIGATION SECURED THEREBY, TOGETHER WITH ACCRUED
11 INTEREST THEREON, AND ALL OTHER SUMS DUE THEREUNDER, INCLUDING THE COSTS
12 OF SALE AND REASONABLE ATTORNEYS' FEES. AS BETWEEN OR AMONG HOLDERS OF
13 SECURITY INTERESTS, THE TENDER OF REDEMPTION BY THE HOLDER ENTITLED TO
14 PRIORITY PREVAILS OVER THE TENDER OF REDEMPTION BY THE HOLDER OF A
15 SUBORDINATE INTEREST.

16 2. IF A MORTGAGOR, RECORD OWNER, OR HOLDER OF ANY SUBORDINATE SECURITY
17 INTEREST IN OR OTHER LIEN UPON THE MORTGAGED PROPERTY IS ENTITLED TO
18 REDEEM UNDER THIS SECTION, THE MORTGAGOR, RECORD OWNER, OR THE HOLDER OF
19 ANY SUBORDINATE SECURITY INTEREST OR LIEN, MAY, UPON SUCH REDEMPTION,
20 REQUIRE THE MORTGAGEE, UPON FULL PAYMENT OF THE OBLIGATION, IN LIEU OF
21 THE CERTIFICATE OF DISCHARGE UNDER SECTION TWO HUNDRED SEVENTY-FIVE OF
22 THE REAL PROPERTY LAW, TO ASSIGN THE DEBT AND THE MORTGAGE WITHOUT
23 RECOURSE OR WARRANTY TO ANY PERSON OR ENTITY DESIGNATED BY THE PAYOR
24 PROVIDED THAT SUCH PERSON OR ENTITY IS NOT THE MORTGAGOR OR A PERSON OR
25 ENTITY ACTING AS A NOMINEE OF THE MORTGAGOR, AND THE MORTGAGEE IS OBLI-
26 GATED TO DO SO, PROVIDED THE PAYOR EXECUTES THE AFFIDAVIT REQUIRED UNDER
27 SECTION TWO HUNDRED SEVENTY-FIVE OF THE REAL PROPERTY LAW. THE RIGHTS
28 UNDER THIS SUBDIVISION MAY BE ENFORCED BY THE HOLDER OF ANY SUBORDINATE
29 SECURITY INTEREST IN OR LIEN UPON THE MORTGAGED PROPERTY EVEN THOUGH IT
30 IS A SUBORDINATE SECURITY INTEREST OR LIEN. THE ASSIGNMENT OF THE MORT-
31 GAGE, AND THE INDEBTEDNESS SECURED THEREBY, SHALL BE DEEMED TO BE AN
32 ASSIGNMENT OF A BONA FIDE OBLIGATION WITHIN THE MEANING OF SECTION TWO
33 HUNDRED SEVENTY-FIVE OF THE REAL PROPERTY LAW.

34 S 1411. EFFECT OF SALE. 1. A SALE, MADE AND CONDUCTED AS PRESCRIBED
35 IN THIS ARTICLE, TO A PURCHASER, INCLUDING THE MORTGAGEE OR THE PERSON
36 TO WHOM OR ENTITY TO WHICH THE PURCHASER OR THE MORTGAGEE ASSIGNS THE
37 TERMS OF SALE AND MEMORANDUM OF SALE BY ASSIGNMENT DULY EXECUTED AND
38 RECORDED, IS EQUIVALENT TO A SALE PURSUANT TO JUDGMENT IN AN ACTION TO
39 FORECLOSE THE MORTGAGE UNDER ARTICLE THIRTEEN OF THIS CHAPTER, AND
40 EXCEPT AS RESPECTS THE INTEREST OF THE UNITED STATES OF AMERICA, WHICH
41 SHALL BE FORECLOSED AS PROVIDED IN SUBDIVISION FOUR OF THIS SECTION, OR
42 THOSE RESIDENTIAL TENANTS WHOSE INTEREST MAY NOT BE FORECLOSED, TERMI-
43 NATED, MODIFIED, OR IMPAIRED PURSUANT TO THIS ARTICLE, IMMEDIATELY UPON
44 THE EXECUTION OF THE MEMORANDUM OF SALE OF THE PERSON CONDUCTING THE
45 AUCTION, SHALL BAR ANY CLAIM OR EQUITY OF REDEMPTION, UPON, OR WITH
46 RESPECT TO, THE PROPERTY SOLD, OF EACH OF THE FOLLOWING PERSONS OR ENTI-
47 TIES:

48 (A) THE MORTGAGOR, OR THE MORTGAGOR'S HEIRS, DEVISEES, EXECUTORS,
49 ADMINISTRATORS, SUCCESSORS OR ASSIGNS;

50 (B) EACH PERSON CLAIMING UNDER ANY OF THEM, BY VIRTUE OF A TITLE,
51 LIEN, TENANCY, INTEREST, ENCUMBRANCE, JUDGMENT OR DECREE, SUBSEQUENT TO
52 THE MORTGAGE, UPON WHOM THE NOTICE OF SALE WAS SERVED, AS PRESCRIBED IN
53 THIS ARTICLE;

54 (C) EACH PERSON SO CLAIMING, WHOSE ASSIGNMENT, MORTGAGE, CONVEYANCE,
55 TENANCY, OR OTHER INTEREST WAS NOT DULY RECORDED IN THE PROPER BOOK OR
56 INDEX FOR RECORDING THE SAME IN THE COUNTY IN WHICH THE PROPERTY IS

1 SITUATED, OR WHOSE JUDGMENT OR DECREE WAS NOT DULY DOCKETED IN THE COUN-
2 TY CLERK'S OFFICE, AT THE TIME OF THE FILING OF THE NOTICE OF PENDENCY
3 OF THE SALE PURSUANT TO THIS ARTICLE, AND THE EXECUTOR, ADMINISTRATOR,
4 SUCCESSOR OR ASSIGNEE OF SUCH A PERSON;

5 (D) EVERY OTHER PERSON, CLAIMING UNDER A STATUTORY LIEN OR ENCUM-
6 BRANCE, CREATED, RECORDED OR FILED SUBSEQUENT TO THE FILING OF THE
7 NOTICE OF PENDENCY, ATTACHING TO THE TITLE OR INTEREST OF ANY PERSON,
8 DESIGNATED IN ANY OF THE FOREGOING SUBDIVISIONS OF THIS SECTION.

9 2. NOTHING IN THIS ARTICLE SHALL BAR OR FORECLOSE ANY CLAIM UPON OR
10 INTEREST IN THE MORTGAGED PROPERTY SOLD OF ANY PERSON OR ENTITY WHOSE
11 INTEREST IN OR LIEN UPON THE MORTGAGED PROPERTY AROSE PRIOR TO THE
12 FILING OF THE NOTICE OF PENDENCY AND WHO HAS NOT BEEN SERVED WITH A COPY
13 OF THE NOTICE OF SALE IN THE MANNER PRESCRIBED IN THIS ARTICLE.

14 3. A CONVEYANCE MADE IN ACCORDANCE WITH SECTION FOURTEEN HUNDRED
15 TWELVE OF THIS ARTICLE TO A PURCHASER AT THE FORECLOSURE SALE, INCLUDING
16 THE MORTGAGEE, IS NOT A FRAUDULENT TRANSFER BY REASON OF THE VALUE GIVEN
17 BEING LESS THAN THE VALUE OF THE MORTGAGOR'S INTEREST IN THE MORTGAGED
18 PROPERTY.

19 4. WHERE THE UNITED STATES OF AMERICA, OR ANY OF ITS AGENCIES OR
20 INSTRUMENTALITIES, HAS A SUBORDINATE LIEN OR INTEREST OF RECORD IN THE
21 MORTGAGED PROPERTY AND IS ENTITLED TO NOTICE, THE MORTGAGEE SHALL OBTAIN
22 AN ORDER FROM THE SUPREME COURT IN THE COUNTY IN WHICH THE SALE IS TO
23 TAKE PLACE, AFTER THE TIME FOR THE UNITED STATES OF AMERICA TO APPEAR
24 HAS EXPIRED, FORECLOSING THE LIEN OR INTEREST OF THE UNITED STATES. UPON
25 SUCH ORDER, THE SALE SHALL BE DEEMED TO BE A JUDICIAL SALE FORECLOSING
26 THE LIEN OR INTEREST OF THE UNITED STATES OF AMERICA SUBJECT TO THE
27 RIGHTS OF THE UNITED STATES OF AMERICA PURSUANT TO APPLICABLE STATUTES.

28 S 1412. CONVEYANCE. 1. THE PERSON AUTHORIZED TO CONDUCT THE SALE
29 PURSUANT TO SUBDIVISION ONE OF SECTION FOURTEEN HUNDRED EIGHT OF THIS
30 ARTICLE SHALL, AT THE CLOSING OF TITLE HELD IN ACCORDANCE WITH THE TERMS
31 OF SALE, EXECUTE AND DELIVER A DEED TO THE PURCHASER IN THE FOLLOWING
32 FORM:

33 POWER OF SALE DEED

34 THIS DEED, MADE AS OF THE _____ DAY OF _____, BETWEEN
35 _____, IN THE CAPACITY OF AUCTIONEER/SHERIFF/MARSHAL/REFEREE,
36 HAVING AN OFFICE AT _____, NEW YORK ("GRANTOR") AND
37 _____, A _____ HAVING AN ADDRESS AT
38 _____, _____ ("GRANTEE"),

39 WITNESSETH:

40 THAT _____ ("MORTGAGEE"), THE OWNER AND HOLDER OF THE
41 MORTGAGE DESCRIBED IN EXHIBIT A ATTACHED HERETO ENCUMBERING THE PROPERTY
42 DESCRIBED HEREINBELOW (THE "PROPERTY"), AND THE NOTE, BOND OR OTHER
43 OBLIGATION SECURED THEREBY, HAS FORECLOSED THE LIEN OF SAID MORTGAGE
44 PURSUANT TO ARTICLE FOURTEEN OF THE REAL PROPERTY ACTIONS AND
45 PROCEEDINGS LAW OF THE STATE OF NEW YORK;

46 THAT GRANTOR HAS BEEN DESIGNATED BY MORTGAGEE OR BY THE COURT IN THE
47 COUNTY IN WHICH THE SALE HAS TAKEN PLACE TO CONDUCT THE SALE OF THE
48 PROPERTY;

49 THAT THE SALE WAS DULY HELD ON _____, _____, AND THE
50 MEMORANDUM OF SALE ATTACHED HERETO AS EXHIBIT B WAS EXECUTED AT THE
51 CONCLUSION OF THE SALE;

52 AND THAT PURSUANT THERETO AND IN CONSIDERATION OF _____ DOLLARS
53 (\$ _____) PAID BY GRANTEE, BEING THE HIGHEST SUM BID AT THE SALE,

54 GRANTOR DOES HEREBY GRANT AND CONVEY TO GRANTEE:
55 (LAND DESCRIPTION OF THE PROPERTY)

1 TOGETHER WITH ALL RIGHT, TITLE AND INTEREST, IF ANY, OF THE GRANTOR IN
2 AND TO ANY STREETS AND ROADS ABUTTING THE ABOVE-DESCRIBED PREMISES TO
3 THE CENTER LINES THEREOF; TOGETHER WITH THE APPURTENANCES AND ALL THE
4 ESTATE AND RIGHTS OF THE GRANTOR IN AND TO SAID PREMISES; TO HAVE AND TO
5 HOLD THE PREMISES HEREIN GRANTED TO THE GRANTEE, THE HEIRS OR SUCCESSORS
6 AND ASSIGNS OF THE GRANTEE FOREVER.

7 IN WITNESS WHEREOF, GRANTOR HAS HEREUNTO SET THE GRANTOR'S HAND AND
8 SEAL THE DATE FIRST ABOVE WRITTEN.

9 (ACKNOWLEDGEMENT)

10 2. BEFORE THE DEED IS EXECUTED AND DELIVERED TO THE PURCHASER, THE
11 MORTGAGEE SHALL FILE THE MORTGAGE AND ANY ASSIGNMENT NOT SHOWN TO HAVE
12 BEEN LOST OR DESTROYED IN THE OFFICE OF THE CLERK, UNLESS IT IS IN A
13 FORM WHICH CAN BE RECORDED; IN WHICH CASE IT SHALL BE RECORDED IN THE
14 COUNTY OR COUNTIES WHERE THE MORTGAGED PROPERTY OR PROPERTIES ARE SITU-
15 ATED; THE EXPENSE OF FILING OR RECORDING AND ENTRY SHALL BE ALLOWED IN
16 THE COSTS TO BE RECOVERED BY THE MORTGAGEE PURSUANT TO THIS ARTICLE;
17 AND, IF FILED WITH THE CLERK, HE SHALL ENTER IN THE MINUTES THE TIME OF
18 FILING.

19 3. THE PURCHASER OF THE MORTGAGED PROPERTY, UPON A SALE CONDUCTED AS
20 PRESCRIBED IN THIS ARTICLE, THEREUPON OBTAINS MARKETABLE TITLE THERETO,
21 IN THE SAME MANNER AS A PURCHASER IN A JUDICIAL FORECLOSURE SALE PURSU-
22 ANT TO ARTICLE THIRTEEN OF THIS CHAPTER AGAINST ALL PERSONS BOUND BY THE
23 SALE.

24 S 1413. DISTRIBUTION OF PROCEEDS OF SALE. 1. THE PROCEEDS OF THE SALE
25 SHALL BE DISTRIBUTED AND PAID BY THE PERSON CONDUCTING THE SALE IN THE
26 FOLLOWING ORDER:

27 (A) ALL TAXES, WATER RATES, SEWER RENTS AND ASSESSMENTS THAT ARE LIENS
28 UPON THE REAL PROPERTY SOLD, AND ANY LIENS OR ENCUMBRANCES PLACED BY A
29 CITY AGENCY OR A MUNICIPALITY UPON THE REAL PROPERTY THAT HAVE PRIORITY
30 OVER THE FORECLOSED MORTGAGE.

31 (B) THE COSTS AND EXPENSES OF THE SALE, PURSUANT TO SECTION FOURTEEN
32 HUNDRED SEVENTEEN OF THIS ARTICLE.

33 (C) TO THE MORTGAGEE, THE AMOUNT OF THE DEBT, ACCRUED INTEREST THERE-
34 ON, LATE CHARGES, AND ALL OTHER SUMS ADVANCED BY THE MORTGAGEE WHICH ARE
35 RECOVERABLE UNDER THE MORTGAGE, INCLUDING THE COSTS OF SALE AND REASON-
36 ABLE ATTORNEYS' FEES AND DISBURSEMENTS, OR SO MUCH THEREOF AS THE
37 PROCEEDS WILL PAY. THE PERSON CONDUCTING THE SALE SHALL TAKE THE AFFIDA-
38 VIT OF THE MORTGAGEE AS TO ALL OF THE FOREGOING AMOUNTS BEING DUE, AND
39 THE RECEIPT OF THE MORTGAGEE FOR THE AMOUNT SO PAID, AND FILE THE SAME
40 WITH THE REPORT OF SALE.

41 (D) UPON ENTRY OF AN ORDER PURSUANT TO SECTION FOURTEEN HUNDRED EIGH-
42 TEEN OF THIS ARTICLE PROVIDING FOR SAME, TO THE HOLDER OF ANY SUBORDI-
43 NATE MORTGAGE OR LIEN, OR TO THE OWNER OF THE EQUITY OF REDEMPTION OR
44 ANY PERSON OR ENTITY HAVING FILED A NOTICE OF CLAIM AGAINST THE PROPER-
45 TY, FROM THE THEN REMAINING PROCEEDS THE AMOUNT THEN DUE TO SUCH PERSON
46 OR ENTITY, IN THE PRIORITY THEREOF, OR SO MUCH AS THE THEN REMAINING
47 PROCEEDS WILL PAY.

48 2. ALL SURPLUS MONEYS ARISING FROM THE SALE AFTER PAYMENT OF THE
49 AMOUNTS DUE UNDER PARAGRAPHS (A), (B) AND (C) OF SUBDIVISION ONE OF THIS
50 SECTION SHALL BE PAID TO THE COUNTY TREASURER FOR THE COUNTY IN WHICH
51 THE SALE TOOK PLACE BY THE PERSON CONDUCTING THE SALE WITHIN FIVE DAYS
52 AFTER THE SAME SHALL BE RECEIVED, IN LIKE MANNER AND WITH LIKE EFFECT AS
53 IF THE PROCEEDING TO FORECLOSE THE MORTGAGE OCCURRED PURSUANT TO ARTICLE
54 THIRTEEN OF THIS CHAPTER.

1 S 1414. REPORT OF SALE. 1. WITHIN FIFTEEN DAYS AFTER COMPLETING THE
2 SALE AND EXECUTING THE PROPER CONVEYANCE TO THE PURCHASER, THE PERSON
3 CONDUCTING THE SALE SHALL MAKE A REPORT OF THE SALE, WHICH SHALL STATE:

4 (A) THE TIME WHEN AND THE PLACE WHERE THE SALE WAS MADE;
5 (B) THE SUM BID FOR EACH DISTINCT PARCEL SEPARATELY SOLD;
6 (C) THE NAME OF THE PURCHASER OF EACH DISTINCT PARCEL; AND
7 (D) THE NAME OF EACH PERSON OR ENTITY, COURT OFFICER OR OTHER OFFICER,
8 TO WHOM PROCEEDS OF THE SALE WAS PAID, AND THE SUM THEREOF.

9 2. THE REPORT OF SALE SHALL CONTAIN:

10 (A) AFFIDAVIT OF THE PUBLICATION OF THE NOTICE OF SALE, AND OF THE
11 NOTICE OR NOTICES OF POSTPONEMENT, IF ANY, BY THE PUBLISHER OR PRINTER
12 OF THE NEWSPAPER IN WHICH THEY WERE PUBLISHED, OR BY THE PUBLISHER'S
13 FOREMAN OR PRINCIPAL CLERK;

14 (B) COPIES OF THE AFFIDAVIT OR AFFIDAVITS, OF THE SERVICE OF COPIES OF
15 THE NOTICE OF INTENTION TO FORECLOSE AND THE NOTICE OF PENDENCY THERETO-
16 FORE FILED WITH THE CLERK OF THE COURT; AND

17 (C) THE TERMS OF SALE AND EXECUTED MEMORANDUM OF SALE.

18 3. THE REPORT SHALL SPECIFY THE AMOUNT CLAIMED TO BE DUE BY THE MORT-
19 GAGEE ON THE INDEBTEDNESS SECURED BY THE MORTGAGE, TOGETHER WITH ALL
20 OTHER SUMS RECOVERABLE UNDER SECTION FOURTEEN HUNDRED SEVENTEEN OF THIS
21 ARTICLE, THE AMOUNT DISTRIBUTED BY THE PERSON CONDUCTING THE SALE PURSU-
22 ANT TO SECTION FOURTEEN HUNDRED THIRTEEN OF THIS ARTICLE, AND TO WHOM,
23 AND THE AMOUNT OF THE DEFICIENCY OR SURPLUS AFTER APPLICATION OF THE
24 PROCEEDS OF SALE THERETO. THE REPORT SHALL CONTAIN THE MORTGAGEE'S AFFI-
25 DAVIT SPECIFYING THE AMOUNT CLAIMED DUE BY THE MORTGAGEE ON THE INDEBT-
26 EDNESS SECURED BY THE MORTGAGE, TOGETHER WITH ALL OTHER SUMS RECOVERABLE
27 UNDER SECTION FOURTEEN HUNDRED SEVENTEEN OF THIS ARTICLE.

28 4. THE MATTERS REQUIRED TO BE CONTAINED IN ANY OR ALL OF THE AFFIDA-
29 VITS SPECIFIED HEREIN MAY BE CONTAINED IN ONE AFFIDAVIT, WHERE THE SAME
30 PERSON DEPOSES WITH RESPECT TO THEM. A COPY OF THE NOTICE OF SALE SHALL
31 BE ANNEXED TO EACH AFFIDAVIT.

32 S 1415. FILING OF REPORT OF SALE. 1. THE REPORT AND AFFIDAVITS SPECI-
33 FIED IN SECTION FOURTEEN HUNDRED FOURTEEN OF THIS ARTICLE SHALL BE
34 FILED, IN THE SAME MANNER AS THE FILING OF THE NOTICE OF PENDENCY PURSU-
35 ANT TO SUBDIVISION TWO OF SECTION FOURTEEN HUNDRED THREE OF THIS ARTI-
36 CLE, IN THE COUNTY CLERK'S OFFICE IN THE COUNTY WHERE THE SALE TOOK
37 PLACE WITHIN THIRTY DAYS AFTER THE COMPLETION OF THE SALE AND EXECUTION
38 OF THE PROPER CONVEYANCE TO THE PURCHASER, AND, AS SUCH, CONSTITUTE
39 PRESUMPTIVE EVIDENCE OF THE MATTERS OF FACT THEREIN STATED, WITH RESPECT
40 TO ANY MORTGAGED PROPERTY SOLD WHICH IS SITUATED IN THAT COUNTY.

41 2. EACH COUNTY CLERK IN THIS STATE IN WHOSE OFFICE REPORTS OF THE
42 FORECLOSURE OF MORTGAGES BY POWER OF SALE HAVE BEEN OR SHALL BE FILED
43 PURSUANT TO THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION, IS HEREBY
44 AUTHORIZED TO DELIVER CERTIFIED COPIES OF THE SAME TO THE PURCHASER OF
45 THE MORTGAGED PROPERTY ON THE FORECLOSURE SALE OR TO ANY MORTGAGOR,
46 OBLIGOR ON THE NOTE OR BOND, OWNER OF, OR ANY OTHER PERSON OR ENTITY
47 HAVING A SUBORDINATE INTEREST IN OR LIEN UPON, THE MORTGAGED PROPERTY
48 WHICH WAS FORECLOSED BY THE SALE, UPON REQUEST THEREFORE.

49 S 1416. MULTIPLE COLLATERAL; DESIGNATION OF ORDER OF SALE OF PARCELS.
50 WHERE THE INDEBTEDNESS IS SECURED BY MORE THAN ONE MORTGAGE ON MORTGAGED
51 PROPERTY CONSISTING OF MORE THAN ONE FUNCTIONALLY SEPARATE AND DISTINCT
52 PROPERTY, UNLESS OTHERWISE PROVIDED IN THE MORTGAGE OR IN ANY EXTENSION,
53 AMENDMENT OR MODIFICATION THEREOF OR INSTRUMENT AMENDATORY THERETO, EACH
54 PROPERTY SHALL BE SOLD EITHER (A) SEPARATELY IN THE ORDER DESIGNATED BY
55 THE MORTGAGEE (WHICH MAY BE ON A SINGLE SALE DATE, OR ON SEPARATE DATES
56 AS PROVIDED IN THE NOTICE OF SALE), OR (B) AS OTHERWISE DIRECTED BY

1 ORDER OF THE SUPREME COURT FOR THE COUNTY IN WHICH THE SALE IS TO TAKE
2 PLACE, PURSUANT TO A MOTION MADE UNDER THE INDEX NUMBER OF THE NON-JUDI-
3 CIAL PROCEEDING FOR FORECLOSURE OF POWER OF SALE. THE MORTGAGEE SHALL
4 NOT SCHEDULE OR CONDUCT THE SALE OF THE SUBSEQUENT PROPERTY SO DESIG-
5 NATED UNTIL AFTER THE DEFICIENCY HAS BEEN DETERMINED IN ACCORDANCE WITH
6 SECTION FOURTEEN HUNDRED NINETEEN OF THIS ARTICLE, WHEREUPON IN THE
7 EVENT A DEFICIENCY EXISTS, THE MORTGAGEE MAY SCHEDULE AND CONDUCT THE
8 SALE OF THE SUBSEQUENT PROPERTY IN THE ORDER DESIGNATED BY THE MORTGAGEE
9 UNLESS THE COURT ORDERS OTHERWISE, SUCH SALE TO BE CONDUCTED IN ACCORD-
10 ANCE WITH THE PROVISIONS OF THIS ARTICLE.

11 S 1417. COSTS AND EXPENSES ALLOWED. THE MORTGAGEE SHALL BE ENTITLED
12 TO RECOVER OUT OF THE PROCEEDS OF SALE, OR UPON APPLICATION FOR A DEFICI-
13 CIENCY JUDGMENT, THE COSTS AND EXPENSES OF:

14 1. ADVERTISEMENT OF THE NOTICE OF SALE, AS DETERMINED BY PAID RECEIPTS
15 THEREFOR;

16 2. SERVICE OF THE NOTICE OF INTENTION TO FORECLOSE AND THE NOTICE OF
17 SALE;

18 3. PREPARATION AND FILING OF THE AFFIDAVITS REQUIRED UNDER THIS ARTI-
19 CLE, THE POWER OF SALE DEED, AND REPORT OF SALE;

20 4. THE CONDUCT OF THE SALE, INCLUDING THE FEE OF THE OFFICER CONDUCT-
21 ING THE SALE, WHICH, EXCEPT AS SHALL BE DIRECTED BY THE COURT, SHALL NOT
22 EXCEED ONE THOUSAND DOLLARS;

23 5. RECORDING OF THE DEED IF THE MORTGAGEE IS THE PURCHASER AT THE
24 SALE;

25 6. FILING OR RECORDING THE MORTGAGE IF NOT THERETOFORE PAID FOR BY THE
26 MORTGAGOR; AND

27 7. THE REASONABLE ATTORNEYS' FEES INCURRED IN CONNECTION WITH THE
28 NON-JUDICIAL PROCEEDING UNDER THIS ARTICLE WHICH, EXCEPT AS SHALL BE
29 DIRECTED BY THE COURT, SHALL NOT EXCEED THE SUM OF TWENTY-FIVE HUNDRED
30 DOLLARS.

31 FEES DESIGNATED IN THIS SECTION IN DOLLAR AMOUNTS SHALL BE INDEXED IN
32 ACCORDANCE WITH CHANGES IN THE FEDERAL CONSUMER PRICE INDEX - ALL
33 CONSUMERS, OVER BASE YEAR TWO THOUSAND THIRTEEN.

34 S 1418. APPLICATION FOR SURPLUS. 1. ANY PERSON OR ENTITY CLAIMING THE
35 SURPLUS MONEYS ARISING FROM THE SALE OF THE MORTGAGED PROPERTY, OR A
36 PART THEREOF, MAY, WITHIN TWENTY DAYS AFTER THE FILING OF THE REPORT OF
37 THE SALE, FILE UNDER THE INDEX NUMBER ASSIGNED TO THE NON-JUDICIAL
38 PROCEEDING IN THE OFFICE OF THE CLERK OF THE COUNTY WHERE THE SALE TOOK
39 PLACE, A WRITTEN NOTICE OF THE CLAIM, STATING THE NATURE AND EXTENT OF
40 THE CLAIM. THEREAFTER, AN APPLICATION, WITH PROOF OF SERVICE UPON THE
41 MORTGAGOR, THE RECORD OWNER OF THE MORTGAGED PROPERTY, AND ANY OTHER
42 PERSON WHO OR ENTITY WHICH HAS FILED A CLAIM TO THE SURPLUS MONEYS MAY
43 BE MADE BY ANY PERSON WHO OR ENTITY WHICH HAS FILED A CLAIM TO THE
44 SURPLUS MONEYS, SEEKING AN ORDER DIRECTING PAYMENT THEREOF OUT OF THE
45 SURPLUS MONEYS.

46 2. UPON SUCH APPLICATION, OR AT ANY TIME WITHIN THREE MONTHS THEREAFT-
47 ER, ON NOTICE TO ALL PERSONS WHO OR ENTITIES WHICH HAVE BEEN SERVED WITH
48 THE NOTICE OF SALE OR FILED CLAIMS TO THE SURPLUS MONEY, OR ANY PART
49 THEREOF, ON MOTION OF ANY PERSON WHO OR ENTITY WHICH HAS FILED A NOTICE
50 OF CLAIM TO THE SURPLUS MONEY, OR ANY PART THEREOF, THE COURT, BY REFER-
51 ENCE OR OTHERWISE, SHALL ASCERTAIN AND REPORT THE AMOUNT DUE TO THE
52 APPLICANT, OR TO ANY PERSON WHO OR ENTITY WHICH HAS A LIEN ON OR CLAIM
53 TO SUCH SURPLUS MONEY, OR ANY PART THEREOF, AND THE PRIORITY OF THE
54 SEVERAL LIENS OR CLAIMS THEREON, AND SHALL ORDER DISTRIBUTION OF THE
55 SURPLUS MONEYS BY THE COUNTY TREASURER.

1 3. THE OWNER OF THE EQUITY OF REDEMPTION, OR ANY PERSON WHO OR ENTITY
2 WHICH HAS RESPONDED TO THE APPLICATION, OR ANY PERSON WHO OR ENTITY
3 WHICH FILES A NOTICE OF CLAIM OR HAS A RECORDED LIEN AGAINST THE MORT-
4 GAGED PROPERTY SHALL BE GIVEN NOTICE BY MAIL OR IN SUCH OTHER MANNER AS
5 THE COURT SHALL DIRECT, TO ATTEND ANY HEARING ON DISPOSITION OF THE
6 SURPLUS MONEYS AND SHALL HAVE THE RIGHT TO RECEIVE DISTRIBUTION OF THE
7 SURPLUS MONEYS, OR ANY PORTION THEREOF, IN ANY MANNER DIRECTED BY THE
8 COURT.

9 S 1419. DEFICIENCY JUDGMENT. 1. UNLESS OTHERWISE AGREED BY THE MORT-
10 GAGOR AND THE MORTGAGEE IN THE MORTGAGE, A PERSON WHO OR ENTITY WHICH
11 OWES PAYMENT OF AN OBLIGATION SECURED BY THE MORTGAGE FORECLOSED UNDER
12 THIS ARTICLE IS LIABLE FOR THE WHOLE RESIDUE, OR SO MUCH THEREOF AS THE
13 COURT MAY DETERMINE, OF THE DEBT REMAINING UNSATISFIED, AFTER THE SALE
14 OF THE MORTGAGED PROPERTY AND THE APPLICATION OF THE PROCEEDS, THE
15 AMOUNT OF THE DEBT REMAINING UNSATISFIED TO BE DETERMINED BY THE COURT
16 AS HEREIN PROVIDED.

17 2. NOT LATER THAN NINETY DAYS AFTER THE DELIVERY TO THE PURCHASER OF
18 THE POWER OF SALE DEED TO THE MORTGAGED PROPERTY, THE PERSON TO WHOM OR
19 ENTITY TO WHICH SUCH RESIDUE SHALL BE OWING MAY MAKE AN APPLICATION
20 UNDER THE INDEX NUMBER ASSIGNED THE NON-JUDICIAL PROCEEDING, IN THE
21 SUPREME COURT FOR THE COUNTY IN WHICH THE MORTGAGED PROPERTY IS LOCATED,
22 OR IN A COUNTY IN WHICH THE SALE HAS TAKEN PLACE FOR A DEFICIENCY JUDG-
23 MENT AGAINST THE PERSONS OR ENTITIES LIABLE THEREFOR UPON NOTICE TO SUCH
24 PERSONS OR ENTITIES. SUCH NOTICE SHALL BE SERVED PERSONALLY OR IN SUCH
25 OTHER MANNER AS THE COURT MAY DIRECT. UPON SUCH APPLICATION, THE COURT,
26 WHETHER OR NOT THE PERSON OR ENTITY CLAIMED TO BE LIABLE FOR THE RESIDUE
27 APPEARS, SHALL DETERMINE, UPON REASONABLE APPRAISAL BY A REAL ESTATE
28 APPRAISER LICENSED IN THE STATE OF NEW YORK, OR OTHERWISE AS IT SHALL
29 DIRECT, THE FAIR AND REASONABLE MARKET VALUE OF THE MORTGAGED PROPERTY
30 AS OF THE DATE THE MORTGAGED PROPERTY WAS BID ON AT AUCTION OR SUCH
31 NEAREST EARLIER DATE AS THERE SHALL HAVE BEEN ANY MARKET VALUE THEREOF
32 AND SHALL MAKE AN ORDER DIRECTING THE ENTRY OF A DEFICIENCY JUDGMENT
33 AGAINST THE PERSON OR ENTITY LIABLE THEREFOR. SUCH DEFICIENCY JUDGMENT
34 SHALL BE FOR AN AMOUNT EQUAL TO THE AGGREGATE AMOUNT OF THE INDEBTEDNESS
35 DUE TO THE MORTGAGEE, TOGETHER WITH ALL OTHER SUMS RECOVERABLE UNDER
36 SECTION FOURTEEN HUNDRED SEVENTEEN OF THIS ARTICLE AS SUCH SHALL BE SET
37 FORTH IN THE REPORT OF SALE PURSUANT TO SUBDIVISION THREE OF SECTION
38 FOURTEEN HUNDRED FOURTEEN OF THIS ARTICLE LESS THE HIGHER OF: (A)
39 MARKET VALUE OF THE MORTGAGED PROPERTY AS DETERMINED BY THE COURT OR (B)
40 THE SALES PRICE OF THE MORTGAGED PROPERTY AT THE PUBLIC SALE.

41 3. IF NO APPLICATION FOR A DEFICIENCY JUDGMENT SHALL BE MADE AS HEREIN
42 PRESCRIBED, THE PROCEEDS OF THE SALE REGARDLESS OF THE AMOUNT THEREOF
43 SHALL BE DEEMED TO BE IN FULL SATISFACTION OF THE MORTGAGE DEBT, AND NO
44 RIGHT TO RECOVER ANY DEFICIENCY IN ANY ACTION OR PROCEEDING SHALL EXIST.

45 S 1420. RECEIVER. 1. WHERE THE MORTGAGE PROVIDES THAT THE MORTGAGEE IS
46 ENTITLED TO THE APPOINTMENT OF A RECEIVER FOR THE MORTGAGED PROPERTY,
47 THE MORTGAGEE SHALL HAVE THE RIGHT AT ANY TIME AFTER THE FILING OF THE
48 NOTICE OF PENDENCY PURSUANT TO SECTION FOURTEEN HUNDRED THREE OF THIS
49 ARTICLE TO MAKE AN APPLICATION UNDER THE INDEX NUMBER ASSIGNED TO THE
50 NON-JUDICIAL PROCEEDING, IN THE SUPREME COURT IN THE COUNTY IN WHICH THE
51 SALE TAKES PLACE, FOR THE APPOINTMENT OF A RECEIVER.

52 2. WHERE THE MORTGAGE PROVIDES THAT A RECEIVER MAY BE APPOINTED WITH-
53 OUT NOTICE OR CONTAINS THE COVENANT SET FORTH IN SUBDIVISION TEN OF
54 SECTION TWO HUNDRED FIFTY-FOUR OF THE REAL PROPERTY LAW, NOTICE OF AN
55 APPLICATION FOR SUCH APPOINTMENT SHALL NOT BE REQUIRED AND THE RECEIVER
56 SHALL BE APPOINTED BY THE COURT PURSUANT TO AN ORDER SUBMITTED BY THE

1 MORTGAGEE SIMULTANEOUSLY WITH, OR AT ANY TIME AFTER, THE FILING OF THE
2 APPLICATION THEREFOR.

3 3. WHERE A RECEIVER HAS BEEN APPOINTED, UPON THE APPLICATION OF THE
4 MORTGAGEE, THE COURT MAY DIRECT THAT THE RECEIVER OF THE RENTS APPLY THE
5 RENTS RECEIVED BY THE RECEIVER TOWARDS THE PAYMENT OF ACCRUED INTEREST
6 ON THE MORTGAGE, PROVIDED DUE PROVISION SHALL HAVE BEEN MADE FOR THE
7 PAYMENT OF TAXES AND ORDINARY AND NECESSARY EXPENSES FOR THE OPERATION,
8 REPAIR AND MAINTENANCE OF THE MORTGAGED PROPERTY AND SUCH OTHER EXPENSES
9 AS THE COURT MAY DIRECT. ANY MONEYS SO PAID OVER BY THE RECEIVER SHALL
10 BE DEDUCTED FROM THE AMOUNT DUE ON THE MORTGAGE, OR THE NOTE, BOND OR
11 OBLIGATION SECURED THEREBY, AND THE MORTGAGEE'S AFFIDAVIT OF THE INDEBT-
12 EDNESS FILED WITH THE REPORT OF SALE PURSUANT TO SECTION FOURTEEN
13 HUNDRED FOURTEEN OF THIS ARTICLE SHALL SO STATE THE AMOUNTS THEREOF.

14 4. IN A CITY WITH A POPULATION OF ONE MILLION OR MORE PERSONS, AN
15 ORDER APPOINTING A RECEIVER TO RECEIVE THE RENTS AND PROFITS OF A MULTI-
16 PLE DWELLING SHALL PROVIDE THAT THE RECEIVER:

17 (A) REGISTER WITH ANY MUNICIPAL DEPARTMENT AS PROVIDED BY APPLICABLE
18 LAW; AND

19 (B) EXPEND RENTS AND INCOME AND PROFITS AS DESCRIBED IN SUBDIVISION
20 THREE OF THIS SECTION, EXCEPT THAT A PRIORITY SHALL BE GIVEN TO THE
21 CORRECTION OF IMMEDIATELY HAZARDOUS AND HAZARDOUS VIOLATIONS OF HOUSING
22 MAINTENANCE LAWS WITHIN THE TIME SET BY ORDERS OF ANY MUNICIPAL DEPART-
23 MENT, OR, IF NOT FEASIBLE, SEEK A POSTPONEMENT OF THE TIME FOR COMPLI-
24 ANCE.

25 5. THE RECEIVER SHALL BE ENTITLED TO SUCH COMMISSIONS, NOT EXCEEDING
26 FIVE PERCENT OF THE GREATER OF (A) THE SUMS RECEIVED BY THE RECEIVER OR
27 (B) THE SUMS DISBURSED BY THE RECEIVER, AS THE COURT BY WHICH THE
28 RECEIVER IS APPOINTED ALLOWS.

29 S 1421. RIGHT TO SEEK JUDICIAL INTERVENTION; MORTGAGEE'S LIABILITY FOR
30 FAILURE TO COMPLY WITH THIS ARTICLE. 1. IF THE MORTGAGEE COMMENCES
31 PROCEEDINGS UNDER THIS ARTICLE TO FORECLOSE A MORTGAGE, OR EXTENSION,
32 AMENDMENT, MODIFICATION OR CONSOLIDATION THEREOF, EXECUTED PRIOR TO THE
33 EFFECTIVE DATE OF THIS ARTICLE, THE MORTGAGOR MAY BY WRITTEN NOTICE TO
34 THE MORTGAGEE REQUIRE THAT FURTHER FORECLOSURE PROCEEDINGS BE CONDUCTED
35 JUDICIALLY AS PROVIDED IN ARTICLE THIRTEEN OF THIS CHAPTER. SUCH NOTICE
36 MUST BE DELIVERED TO THE MORTGAGEE BY REGISTERED OR CERTIFIED MAIL, OR
37 SUCH OTHER METHOD AS MAY BE SPECIFIED IN THE MORTGAGE, POSTMARKED NOT
38 LATER THAN FORTY DAYS AFTER THE DATE THE MORTGAGOR RECEIVES THE NOTICE
39 OF INTENTION TO FORECLOSE AS PROVIDED IN THIS ARTICLE, AND SHALL STATE
40 (A) THE DATE ON WHICH THE MORTGAGE, OR EXTENSION, AMENDMENT, MODIFICA-
41 TION OR CONSOLIDATION THEREOF, THAT THE MORTGAGEE SEEKS TO FORECLOSE WAS
42 EXECUTED, AND (B) THAT THE MORTGAGOR IS EXERCISING ITS RIGHT UNDER THIS
43 SECTION TO REQUIRE THAT THE FORECLOSURE OF THE MORTGAGE BE CONDUCTED
44 THROUGH THE JUDICIAL PROCESS.

45 2. IF THE MORTGAGEE COMMENCES PROCEEDINGS UNDER THIS ARTICLE TO FORE-
46 CLOSE A MORTGAGE, OR EXTENSION, AMENDMENT, MODIFICATION OR CONSOLIDATION
47 THEREOF, EXECUTED AFTER THE EFFECTIVE DATE OF THIS ARTICLE, THE MORTGA-
48 GOR, NOT LATER THAN FORTY DAYS AFTER THE DATE IT RECEIVES THE NOTICE OF
49 INTENTION TO FORECLOSE AS PROVIDED IN THIS ARTICLE, MAY APPLY, BY ORDER
50 TO SHOW CAUSE, TO THE SUPREME COURT IN THE COUNTY IN WHICH THE MORTGAGED
51 PROPERTY IS LOCATED FOR AN ORDER DIRECTING THAT FURTHER PROCEEDINGS BE
52 CONDUCTED PURSUANT TO ARTICLE THIRTEEN OF THIS CHAPTER, AND FOR A TEMPO-
53 RARY RESTRAINING ORDER STAYING FURTHER PROCEEDINGS UNDER THIS ARTICLE
54 PENDING A HEARING OF THE APPLICATION. THE APPLICATION SHALL INCLUDE ONE
55 OR MORE AFFIDAVITS (A) STATING WHETHER A PREVIOUS APPLICATION FOR THE

1 SAME OR SIMILAR RELIEF HAS BEEN MADE, AND IF SO THE OUTCOME THEREOF, AND
2 (B) STATING FACTS TO SUPPORT ONE OR MORE OF THE FOLLOWING ALLEGATIONS:

3 (1) THAT THE MORTGAGE, OR EXTENSION, AMENDMENT, MODIFICATION OR
4 CONSOLIDATION THEREOF, SOUGHT TO BE FORECLOSED DOES NOT CONTAIN A
5 PROVISION PERMITTING THE FORECLOSURE THEREOF BY POWER OF SALE OR OTHER
6 NON-JUDICIAL MEANS;

7 (2) THAT THE OBLIGATION SECURED BY THE MORTGAGE IS INVALID OR NOT
8 OTHERWISE DUE;

9 (3) THAT THE MORTGAGOR IS NOT IN DEFAULT UNDER THE MORTGAGE OR OTHER-
10 WISE HAS A MERITORIOUS DEFENSE TO THE FORECLOSURE THEREOF;

11 (4) THAT THE MORTGAGEE HAS NOT COMPLIED WITH THE TERMS AND CONDITIONS
12 OF THIS ARTICLE; OR

13 (5) THAT UNDER THE FACTS AND CIRCUMSTANCES, ALLOWING THE FORECLOSURE
14 TO PROCEED UNDER THIS ARTICLE WOULD CAUSE AN UNDUE HARDSHIP TO THE MORT-
15 GAGOR.

16 3. IF THE APPLICATION IS GRANTED, THE FORECLOSURE SHALL, UNLESS THE
17 COURT SUBSEQUENTLY ORDERS OTHERWISE, PROCEED PURSUANT TO ARTICLE THIR-
18 TEEN OF THIS CHAPTER FOR THE JUDICIAL FORECLOSURE OF THE MORTGAGE.

19 4. IF THE APPLICATION IS DENIED, THE SALE MAY PROCEED PURSUANT TO THIS
20 ARTICLE.

21 5. AT ANY TIME THE MORTGAGEE MAY, WITHOUT PREJUDICE, VOLUNTARILY
22 DISCONTINUE PROCEEDINGS UNDER THIS ARTICLE AND PURSUE SUCH RIGHTS AND
23 REMEDIES AS MAY BE AVAILABLE TO IT UNDER ARTICLE THIRTEEN OF THIS CHAP-
24 TER.

25 6. AFTER RECEIVING THE NOTICE OF INTENTION TO FORECLOSE, AN INTERESTED
26 PARTY OTHER THAN THE MORTGAGOR MAY PETITION THE COURT FOR RELIEF ONLY
27 PURSUANT TO THE PROVISIONS OF ARTICLE SIXTY-THREE OF THE CIVIL PRACTICE
28 LAW AND RULES. THE COURT SHALL APPLY THE STANDARDS FOR PRELIMINARY
29 INJUNCTIVE RELIEF AND SHALL CONSIDER WHETHER GRANTING THE RELIEF
30 REQUESTED WILL PREJUDICE THE SUBSTANTIAL RIGHTS OF ANY PARTY OR UNDULY
31 DELAY THE ADJUDICATION OF SUCH RIGHTS.

32 7. ANY PERSON ENTITLED TO RECEIVE NOTICE OF THE INTENTION TO FORECLOSE
33 OR NOTICE OF SALE UNDER THIS ARTICLE MAY RECOVER FROM THE MORTGAGEE ANY
34 DAMAGES CAUSED BY THE FAILURE OF THE MORTGAGEE TO COMPLY WITH THE PROCE-
35 DURES AND CONDITIONS SET FORTH IN THIS ARTICLE.

36 S 2. This act shall take effect immediately; provided, however, that
37 any proceeding commenced following the expiration and repeal of former
38 article 14 of the real property actions and proceedings law on July 1,
39 2009, which otherwise would have been eligible under such article shall
40 be eligible under this act, pursuant to an agreement of both parties to
41 the proceeding, upon the effective date of this act.