S T A T E   O F   N E W   Y O R K

8993--A

2009-2010 Regular Sessions

I N A S S E M B L Y

June 17, 2009

Introduced by M. of A. WEINSTEIN -- read once and referred to the Committee on Judiciary -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property actions and proceedings law and the uniform commercial code, in relation to foreclosure of mortgage by power of sale; to repeal article 14 of the real property actions and proceedings law relating thereto; and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. Article 14 of the real property actions and proceedings law is REPEALED and a new article 14 is added to read as follows:

ARTICLE 14

FORECLOSURE OF MORTGAGE BY POWER OF SALE

SECTION 1401. WHEN MORTGAGE MAY BE FORECLOSED.
1402. NOTICE OF INTENTION TO FORECLOSE.
1403. NOTICE OF PENDENCY OF NON-JUDICIAL PROCEEDING FOR FORECLOSURE BY POWER OF SALE.
1404. CONTENTS OF NOTICE OF SALE.
1405. NOTICE OF SALE; HOW GIVEN.
1406. NOTICE OF SALE; HOW SERVED.
1407. SALE; HOW POSTPONED.
1408. SALE; HOW CONDUCTED.
1409. MORTGAGEE OR SUCCESSOR IN INTEREST MAY PURCHASE.
1410. RIGHT TO REDEEM OF MORTGAGOR, SUBORDINATE LIENOR, OR HOLDER OF SUBORDINATE INTERESTS.
1411. EFFECT OF SALE.
1412. CONVEYANCE.
1413. DISTRIBUTION OF PROCEEDS OF SALE.
1414. REPORT OF SALE.

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

LBD14421-06-9

S 1401. WHEN MORTGAGE MAY BE FORECLOSED. 1. THE PROVISIONS OF THIS ARTICLE SHALL APPLY ONLY TO A MORTGAGE OF FIVE MILLION DOLLARS OR MORE SECURED BY REAL PROPERTY SITUATED WITHIN THE STATE, EXCEPTING WHEN SUCH MORTGAGE ON REAL PROPERTY:

(A) IS IMPROVED BY A RESIDENTIAL BUILDING OR BUILDING CONTAINING BOTH RESIDENTIAL AND COMMERCIAL UNITS CONTAINING ONE OR MORE DWELLING UNITS, INCLUDING STRUCTURES AND IMPROVEMENTS APPURTENANT THERETO, OR

(B) IS IMPROVED BY A RESIDENTIAL CONDOMINIUM UNIT IN A RESIDENTIAL BUILDING OWNED IN A CONDOMINIUM FORM OF OWNERSHIP, OR

(C) IS IMPROVED BY A RESIDENTIAL BUILDING, INCLUDING STRUCTURES AND IMPROVEMENTS APPURTENANT THERETO, OWNED BY A QUALIFIED COOPERATIVE APARTMENT CORPORATION, OR

(D) CONTAINS INDIVIDUAL RESIDENTIAL COOPERATIVE DWELLINGS WITHIN SUCH BUILDING, OR

(E) HAS AN OWNER WHO IS DECEASED OR DIES DURING THE PENDENCY OF THE NON-JUDICIAL FORECLOSURE PROCEEDING.

2. IN THE EVENT THAT SUCH MORTGAGE OTHERWISE QUALIFIES PURSUANT TO SUBDIVISION ONE OF THIS SECTION, AND THE MORTGAGE FOR THE BUILDING, CONTAINS A PROVISION THAT, UPON A DEFAULT OF THE MORTGAGE, OR THE NOTE, BOND OR OTHER OBLIGATION SECURED THEREBY, THE MORTGAGEE SHALL HAVE THE RIGHT TO SELL THE MORTGAGED PROPERTY, SUCH PROPERTY MAY BE FORECLOSED IN THE MANNER PRESCRIBED IN THIS ARTICLE FOR A NON-JUDICIAL PROCEEDING FOR FORECLOSURE BY POWER OF SALE, WHERE THE FOLLOWING REQUISITES OCCUR:

(A) DEFAULT HAS OCCURRED UNDER THE MORTGAGE AND THE OUTSTANDING INDEBTEDNESS HAS BEEN DECLARED IMMEDIATELY DUE AND PAYABLE BY WRITTEN NOTICE TO THE MORTGAGOR GIVEN IN THE MANNER REQUIRED BY THE MORTGAGE.

(B) AN ACTION HAS NOT BEEN BROUGHT TO RECOVER THE DEBT SECURED BY THE MORTGAGE, OR ANY PART THEREOF, OR TO FORECLOSE THE MORTGAGE UNDER ARTICLE THIRTEEN OF THIS CHAPTER; OR, IF AN ACTION ON THE DEBT HAS BEEN BROUGHT, IT HAS BEEN DISCONTINUED OR DISMISSED WITHOUT PREJUDICE AGAINST THE PLAINTIFF, OR AN EXECUTION, ISSUED UPON A JUDGMENT RENDERED THEREIN IN FAVOR OF THE PLAINTIFF, HAS BEEN RETURNED WHOLLY OR PARTLY UNSATISFIED.

(C) THE MORTGAGE HAS BEEN DULY RECORDED IN ACCORDANCE WITH ARTICLE NINE OF THE REAL PROPERTY LAW IN THE LAND RECORDS IN THE COUNTY WHERE THE PROPERTY IS SITUATED.

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

3. A MORTGAGE AGREEMENT THAT REQUIRES THAT A MORTGAGOR WAIVE OR OTHERWISE LIMIT IN ANY WAY THE RIGHT TO BE SUBJECT TO FORECLOSURE PURSUANT TO ARTICLE THIRTEEN OF THIS CHAPTER SHALL BE NULL AND VOID.

S 1402. NOTICE OF INTENTION TO FORECLOSE. 1. NOT LATER THAN TEN DAYS AFTER COMMENCING THE NON-JUDICIAL PROCEEDING BY FILING THE NOTICE OF PENDENCY PURSUANT TO SECTION FOURTEEN HUNDRED THREE OF THIS ARTICLE, AND NOT LESS THAN TEN DAYS PRIOR TO THE FIRST SERVICE OF THE NOTICE OF SALE PURSUANT TO SECTION FOURTEEN HUNDRED SIX OF THIS ARTICLE, A COPY OF THE

NOTICE OF PENDENCY, TOGETHER WITH A NOTICE OF INTENTION TO FORECLOSE, IN A WRITING COMPLYING WITH SUBDIVISION TWO OF THIS SECTION, SHALL BE SENT TO THE MORTGAGOR, THE OBLIGOR ON THE NOTE, BOND, OR OTHER OBLIGATION IF OTHER THAN THE MORTGAGOR, THE OWNER OF THE MORTGAGED PROPERTY, IF OTHER THAN THE MORTGAGOR, AND TO ANY PERSON OR ENTITY HAVING A LIEN OF RECORD UPON THE MORTGAGED PROPERTY, OR INTEREST IN THE MORTGAGED PROPERTY SUBORDINATE TO THE MORTGAGE THAT THE MORTGAGEE SEEKS TO FORECLOSE, AT THE TIME OF THE FILING OF THE NOTICE OF PENDENCY OF WHICH THE MORTGAGEE HAS ACTUAL KNOWLEDGE OR IS ON CONSTRUCTIVE NOTICE, BOTH BY (A) REGISTERED MAIL OR CERTIFIED MAIL AND (B) ORDINARY FIRST CLASS MAIL, OR BY PERSONAL SERVICE IN THE SAME MANNER AS SERVICE OF A SUMMONS. SUCH NOTICE SHALL BE SENT TO THE OWNER OF THE MORTGAGED PROPERTY AT THE ADDRESS OF THE PROPERTY OR AT SUCH OTHER ADDRESS THAT IS KNOWN TO THE MORTGAGEE, TO A MORTGAGOR AT THE MORTGAGOR'S ADDRESS SPECIFIED IN THE MORTGAGE OR TO SUCH OTHER PLACE AS MAY HAVE BEEN DIRECTED BY THE MORTGAGOR IN WRITING IN ACCORDANCE WITH THE MORTGAGE, AND TO ANY PERSON OR ENTITY HAVING A LIEN OF RECORD SUBORDINATE TO THE MORTGAGE THAT THE MORTGAGEE SEEKS TO FORECLOSE AT THE ADDRESS SHOWN ON SUCH LIEN. THE NOTICE SHALL BE SENT TO A PERSON OR ENTITY HAVING ANY SUBORDINATE INTEREST IN THE MORTGAGED PROPERTY THAT THE MORTGAGEE SEEKS TO FORECLOSE AND OF WHICH THE MORTGAGEE HAS SUCH ACTUAL KNOWLEDGE OR CONSTRUCTIVE NOTICE AT SUCH PERSON'S OR ENTITY'S LAST KNOWN PERSONAL OR BUSINESS ADDRESS.

2. THE NOTICE SHALL:

(A) IDENTIFY THE MORTGAGE BY THE PARTIES THERETO, THE DATE AND RECORDING DATE THEREOF, AND ANY RECORDED AMENDMENTS AND MODIFICATIONS THEREOF;

(B) (1) IF THERE IS A MONETARY DEFAULT, SET FORTH THE AMOUNTS DUE, THE DATE DUE AND ANY LATE CHARGES AND DEFAULT INTEREST;

(2) IF THERE IS A NON-MONETARY DEFAULT, SET FORTH THE BASIS THEREOF;

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

(D) SET FORTH THE OUTSTANDING PRINCIPAL BALANCE DECLARED DUE AND PAYABLE, TOGETHER WITH THE AMOUNT OF INTEREST ACCRUED THEREON AND THE APPROXIMATE AMOUNT OF OTHER SUMS SECURED BY THE MORTGAGE;

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

(F) SET FORTH THE RIGHT OF THE MORTGAGOR, OR ANY PERSON OR ENTITY HAVING AN INTEREST IN THE MORTGAGED PROPERTY SUBORDINATE TO THE MORTGAGE, TO ANY SURPLUS MONEYS OUT OF THE PROCEEDS OF SALE IN ACCORDANCE WITH THE PROVISIONS OF SECTION FOURTEEN HUNDRED EIGHTEEN OF THIS ARTICLE; AND, IF A DEFICIENCY JUDGMENT IS PERMITTED, THAT THE MORTGAGEE SHALL HAVE THE RIGHT TO SEEK A DEFICIENCY JUDGMENT PURSUANT TO SECTION FOURTEEN HUNDRED NINETEEN OF THIS ARTICLE;

(G) SET FORTH THE RIGHTS AND REMEDIES, AS SPECIFIED IN SECTION FOURTEEN HUNDRED TWENTY-ONE OF THIS ARTICLE, WHICH ARE AVAILABLE TO THE MORTGAGOR, OR ANY PERSON OR ENTITY CLAIMING UNDER THE MORTGAGOR OR

HAVING AN INTEREST IN OR LIEN UPON THE MORTGAGED PROPERTY WHICH IS SUBORDINATE TO THE MORTGAGE BEING FORECLOSED; AND

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

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

S 1403. NOTICE OF PENDENCY OF NON-JUDICIAL PROCEEDING FOR FORECLOSURE BY POWER OF SALE. 1. THE MORTGAGEE SHALL, PRIOR TO THE FIRST SERVICE OF THE NOTICE OF INTENTION TO FORECLOSE, PURCHASE AN INDEX NUMBER IN THE OFFICE OF THE COUNTY CLERK OF THE COUNTY IN WHICH THE SALE IS TO TAKE PLACE AND FILE IN THE CLERK'S OFFICE OF EACH COUNTY WHERE THE MORTGAGED PROPERTY IS SITUATED A NOTICE OF THE PENDENCY OF THE NON-JUDICIAL PROCEEDING FOR FORECLOSURE BY POWER OF SALE WHICH SHALL, IN ADDITION TO THE APPLICABLE REQUIREMENTS OF ARTICLE SIXTY-FIVE OF THE CIVIL PRACTICE LAW AND RULES, SPECIFY THE DATE OF THE MORTGAGE, THE PARTIES THERETO, THE TIME AND PLACE OF RECORDING, THE NAME OF THE RECORD OWNER OF THE MORTGAGED PROPERTY, THE NAMES OF ANY SUBORDINATE LIENORS OR HOLDERS OF SUBORDINATE INTERESTS ENTITLED TO NOTICE OF THE SALE, THE OBJECT OF THE PROCEEDING FOR FORECLOSURE OF THE MORTGAGE BY POWER OF SALE, AND A DESCRIPTION OF THE MORTGAGED PROPERTY, INCLUDING THE NUMBER OF EACH BLOCK AND LOT ON THE LAND MAP OF THE COUNTY WHICH IS AFFECTED BY THE NOTICE. IF THE NOTICE IS FILED IN MORE THAN ONE COUNTY, THE NOTICE SHALL DESIGNATE THE COUNTY IN WHICH THE SALE IS TO TAKE PLACE. THE PROVISIONS OF ARTICLE SIXTY-FIVE OF THE CIVIL PRACTICE LAW AND RULES REQUIRING THE SERVICE AND FILING OF A SUMMONS SHALL NOT BE APPLICABLE TO A NON-JUDICIAL PROCEEDING FOR FORECLOSURE BY POWER OF SALE PURSUANT TO THIS ARTICLE.

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

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

4. THE FILING OF THE NOTICE OF PENDENCY SHALL BE DEEMED TO BE CONCLUSIVE RECORD NOTICE TO ANY TENANT OR OCCUPANT WHO TAKES POSSESSION OF ALL OR A PART OF THE MORTGAGED PROPERTY, OR ANY PERSON WHO OR ENTITY WHICH

ACQUIRES AN INTEREST IN OR LIEN UPON THE MORTGAGED PROPERTY, OR ANY PART THEREOF, AFTER THE FILING OF THE NOTICE OF PENDENCY AND ALL SUCH PERSONS OR ENTITIES SHALL BE BOUND THEREBY AND BY THE NON-JUDICIAL PROCEEDING PURSUANT TO THIS ARTICLE.

5. THE PROVISIONS OF SECTION SIXTY-FIVE HUNDRED SIXTEEN OF THE CIVIL PRACTICE LAW AND RULES SHALL NOT BE APPLICABLE TO ANY NOTICE OF PENDENCY FILED PURSUANT TO THIS SECTION.

S 1404. CONTENTS OF NOTICE OF SALE. THE NOTICE OF SALE SHALL SPECIFY:

1. THE NAMES OF THE MORTGAGOR AND RECORD OWNER, IF OTHER THAN THE MORTGAGOR, THE MORTGAGEE, AND OF EACH ASSIGNEE OF THE MORTGAGEE.

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

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

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

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

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

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

8. THE DATE, PLACE AND TIME OF SALE.

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

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

(A) THE MORTGAGOR;

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

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

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

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

(F) ANY PERSON HAVING A LIEN UPON OR INTEREST IN THE MORTGAGED PROPER- TY, OR ANY PART THEREOF, AT THE TIME OF THE FILING OF THE NOTICE OF PENDENCY THAT IS SUBORDINATE TO THE MORTGAGE AND THAT THE MORTGAGEE

SEEKS TO FORECLOSE. AFFIDAVITS OF SERVICE OR MAILING UPON EACH OF THE PERSONS OR ENTITIES ENTITLED TO NOTICE OF THE SALE SHALL BE FILED PRIOR TO THE DATE OF SALE UNDER THE INDEX NUMBER OF THE NON-JUDICIAL PROCEEDING WITH THE CLERK OF THE COUNTY IN WHICH THE SALE IS TO TAKE PLACE.

2. A COPY OF THE NOTICE OF SALE MUST BE PUBLISHED AT LEAST ONCE IN EACH WEEK DURING THE FIVE SUCCESSIVE WEEKS IMMEDIATELY PRECEDING THE DATE OF SALE, OR AT LEAST TWICE IN EACH WEEK DURING THE FOUR SUCCESSIVE WEEKS IMMEDIATELY PRECEDING THE DATE OF SALE, IN A NEWSPAPER OF GENERAL 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 THEREOF SHALL BE EFFECTED IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION.

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

2. IF PUBLICATION OF THE NOTICE OF SALE IS FOR FOUR WEEKS, SUCH SALE SHALL TAKE PLACE ON ANY DAY ON OR AFTER THE FORTY-THIRD DAY AND ON OR BEFORE THE FIFTIETH DAY AFTER THE DAY OF THE FIRST PUBLICATION; AND IF PUBLICATION OF THE NOTICE OF SALE IS FOR FIVE WEEKS, SUCH SALE SHALL TAKE PLACE ON ANY DAY ON OR AFTER THE FIFTIETH DAY AND ON OR BEFORE THE FIFTY-SEVENTH DAY AFTER THE DAY OF THE FIRST PUBLICATION. ANY PERIOD OF SEVEN SUCCESSIVE DAYS SHALL CONSTITUTE A WEEK UNDER THIS SECTION.

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

4. ON ACCEPTANCE OF A BID AT THE SALE, THE BIDDER, OTHER THAN THE MORTGAGEE, SHALL DEPOSIT WITH THE PERSON CONDUCTING THE SALE AT LEAST TEN PERCENT OF THE BID PRICE IN CASH, CERTIFIED CHECK OR A BANK CHECK DRAWN ON A BANK, TRUST COMPANY, SAVINGS BANK OR SAVINGS AND LOAN ASSOCIATION HAVING OFFICES IN THIS STATE. A MEMORANDUM OF THE SALE, WHICH SHALL INCORPORATE THE TERMS OF THE SALE, SHALL BE EXECUTED BY THE PERSON CONDUCTING THE SALE AND THE SUCCESSFUL BIDDER THEREAT, INCLUDING THE FORECLOSING MORTGAGEE. THE MEMORANDUM SHALL STATE THE IDENTITY OF THE PURCHASER, THE AMOUNT OF THE SUCCESSFUL BID, THE AMOUNT OF THE DEPOSIT (WHICH, PENDING THE CONVEYANCE OF TITLE, SHALL BE RETAINED BY THE PERSON CONDUCTING THE SALE IN A SEPARATE ACCOUNT IN A COMMERCIAL BANK OR SAVINGS BANK LOCATED IN THE STATE OF NEW YORK), THE DATE, TIME AND PLACE OF CLOSING OF TITLE AND THAT THE TERMS OF THE SALE ARE INCORPORATED THEREIN. THE MEMORANDUM OF SALE SHALL NOT BE AMENDED OR MODIFIED.

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

6. IF THE MORTGAGED PROPERTY CONSISTS OF TWO OR MORE DISTINCT PARCELS, THEY SHALL BE SOLD SEPARATELY IN THE ORDER SPECIFIED IN THE NOTICE OF SALE UNLESS OTHERWISE PROVIDED IN THE MORTGAGE OR ANY INSTRUMENT EXTENDING, AMENDING OR MODIFYING THE MORTGAGE. AS MANY OF THE PARCELS SHALL BE SOLD AS IT IS NECESSARY TO SELL IN ORDER TO SATISFY THE AMOUNT DUE AT THE TIME OF THE SALE, AND THE COSTS AND EXPENSES ALLOWED BY SECTION FOURTEEN HUNDRED SEVENTEEN OF THIS ARTICLE. WHERE TWO OR MORE BUILDINGS

ARE SITUATED IN THE SAME CITY LOT OR LOCAL TAX LOT, THEY SHALL BE SOLD TOGETHER.

S 1409. MORTGAGEE OR SUCCESSOR IN INTEREST MAY PURCHASE. THE MORTGAGEE, OR ITS ASSIGNEE, OR THE LEGAL REPRESENTATIVE OF EITHER, MAY PURCHASE THE MORTGAGED PROPERTY, OR ANY PART THEREOF, AT THE SALE AND SHALL BE ENTITLED TO BID. UPON ANY SUCH BID UP TO THE FULL AMOUNT OF THE INDEBTEDNESS SECURED BY THE MORTGAGE, INCLUDING UNPAID INTEREST, LATE CHARGES, COSTS OF SALE, REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS, AND ADVANCES MADE TO PROTECT THE LIEN OF THE MORTGAGE, THE MORTGAGEE, OR ITS ASSIGNEE, OR THE LEGAL REPRESENTATIVE OF EITHER, SHALL NOT BE REQUIRED TO MAKE ANY DEPOSIT AT THE SALE OR ANY PAYMENT OF THE AMOUNT OF THE SUCCESSFUL BID UP TO THE FULL AMOUNT OF THE INDEBTEDNESS SECURED BY THE MORTGAGE, UPON THE DELIVERY OF THE POWER OF SALE DEED.

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

2. IF A MORTGAGOR, RECORD OWNER, OR HOLDER OF ANY SUBORDINATE SECURITY INTEREST IN OR OTHER LIEN UPON THE MORTGAGED PROPERTY IS ENTITLED TO REDEEM UNDER THIS SECTION, THE MORTGAGOR, RECORD OWNER, OR THE HOLDER OF ANY SUBORDINATE SECURITY INTEREST OR LIEN, MAY, UPON SUCH REDEMPTION, REQUIRE THE MORTGAGEE, UPON FULL PAYMENT OF THE OBLIGATION, IN LIEU OF THE CERTIFICATE OF DISCHARGE UNDER SECTION TWO HUNDRED SEVENTY-FIVE OF THE REAL PROPERTY LAW, TO ASSIGN THE DEBT AND THE MORTGAGE WITHOUT RECOURSE OR WARRANTY TO ANY PERSON OR ENTITY DESIGNATED BY THE PAYOR PROVIDED THAT SUCH PERSON OR ENTITY IS NOT THE MORTGAGOR OR A PERSON OR ENTITY ACTING AS A NOMINEE OF THE MORTGAGOR, AND THE MORTGAGEE IS OBLIGATED TO DO SO, PROVIDED THE PAYOR EXECUTES THE AFFIDAVIT REQUIRED UNDER SECTION TWO HUNDRED SEVENTY-FIVE OF THE REAL PROPERTY LAW. THE RIGHTS UNDER THIS SUBDIVISION MAY BE ENFORCED BY THE HOLDER OF ANY SUBORDINATE SECURITY INTEREST IN OR LIEN UPON THE MORTGAGED PROPERTY EVEN THOUGH IT IS A SUBORDINATE SECURITY INTEREST OR LIEN. THE ASSIGNMENT OF THE MORTGAGE, AND THE INDEBTEDNESS SECURED THEREBY, SHALL BE DEEMED TO BE AN ASSIGNMENT OF A BONA FIDE OBLIGATION WITHIN THE MEANING OF SECTION TWO HUNDRED SEVENTY-FIVE OF THE REAL PROPERTY LAW.

S 1411. EFFECT OF SALE. 1. A SALE, MADE AND CONDUCTED AS PRESCRIBED IN THIS ARTICLE, TO A PURCHASER, INCLUDING THE MORTGAGEE OR THE PERSON TO WHOM OR ENTITY TO WHICH THE PURCHASER OR THE MORTGAGEE ASSIGNS THE TERMS OF SALE AND MEMORANDUM OF SALE BY ASSIGNMENT DULY EXECUTED AND RECORDED, IS EQUIVALENT TO A SALE PURSUANT TO JUDGMENT IN AN ACTION TO FORECLOSE THE MORTGAGE UNDER ARTICLE THIRTEEN OF THIS CHAPTER, AND EXCEPT AS RESPECTS THE INTEREST OF THE UNITED STATES OF AMERICA, WHICH SHALL BE FORECLOSED AS PROVIDED IN SUBDIVISION FOUR OF THIS SECTION, IMMEDIATELY UPON THE EXECUTION OF THE MEMORANDUM OF SALE OF THE PERSON CONDUCTING THE AUCTION, SHALL BAR ANY CLAIM OR EQUITY OF REDEMPTION, UPON, OR WITH RESPECT TO, THE PROPERTY SOLD, OF EACH OF THE FOLLOWING PERSONS OR ENTITIES:

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

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

(C) EACH PERSON SO CLAIMING, WHOSE ASSIGNMENT, MORTGAGE, CONVEYANCE, TENANCY, OR OTHER INTEREST WAS NOT DULY RECORDED IN THE PROPER BOOK OR INDEX FOR RECORDING THE SAME IN THE COUNTY IN WHICH THE PROPERTY IS SITUATED, OR WHOSE JUDGMENT OR DECREE WAS NOT DULY DOCKETED IN THE COUNTY CLERK'S OFFICE, AT THE TIME OF THE FILING OF THE NOTICE OF PENDENCY OF THE SALE PURSUANT TO THIS ARTICLE, AND THE EXECUTOR, ADMINISTRATOR, SUCCESSOR OR ASSIGNEE OF SUCH A PERSON;

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

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

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

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

5. AT ANY TIME WITHIN ONE YEAR AFTER THE RECORDING OF THE DEED EXECUTED AND DELIVERED PURSUANT TO SECTION FOURTEEN HUNDRED TWELVE OF THIS ARTICLE, BUT NOT THEREAFTER, A COURT, UPON SUCH TERMS AS MAY BE JUST, BUT NOT INCONSISTENT WITH OTHER PROVISIONS OF THIS ARTICLE, MAY SET ASIDE THE SALE FOR FAILURE SUBSTANTIALLY TO COMPLY WITH THE REQUIREMENTS HEREIN SET FORTH AS TO NOTICE, TIME, MANNER AND PUBLICATION OF SUCH SALE UPON A FINDING THAT THE FAILURE PREJUDICED A SUBSTANTIAL RIGHT OF ANY PERSON OR ENTITY DESCRIBED IN SUBDIVISIONS ONE, TWO AND FOUR OF THIS SECTION. IN THE EVENT THE SALE HAS BEEN MADE TO A BONA FIDE PURCHASER OTHER THAN THE MORTGAGEE OR THE MORTGAGEE'S NOMINEE OR ASSIGNEE WITHOUT NOTICE OF ANY IRREGULARITY OF THE SALE, THE SALE SHALL NOT BE SET ASIDE UNLESS THERE SHALL BE A RESTITUTION TO SUCH PURCHASER OF THE PURCHASE PRICE PAID.

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

POWER OF SALE DEED

THIS DEED, MADE AS OF THE _______ DAY OF ___________, _____, BETWEEN ______________, IN THE CAPACITY OF AUCTIONEER/SHERIFF/MARSHAL/REFEREE, HAVING AN OFFICE AT _________, ______________, NEW YORK ("GRANTOR") AND ______________, A ____________ HAVING AN ADDRESS AT ____________________, ______________, _____________ ("GRANTEE"),

WITNESSETH:

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

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

THAT THE SALE WAS DULY HELD ON _______________ ___, ____, AND THE MEMORANDUM OF SALE ATTACHED HERETO AS EXHIBIT B WAS EXECUTED AT THE CONCLUSION OF THE SALE;

AND THAT PURSUANT THERETO AND IN CONSIDERATION OF ___________DOLLARS ($_____________) PAID BY GRANTEE, BEING THE HIGHEST SUM BID AT THE SALE, GRANTOR DOES HEREBY GRANT AND CONVEY TO GRANTEE:

(LAND DESCRIPTION OF THE PROPERTY)

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

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

____

(ACKNOWLEDGEMENT)

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

3. THE PURCHASER OF THE MORTGAGED PROPERTY, UPON A SALE CONDUCTED AS PRESCRIBED IN THIS ARTICLE, THEREUPON OBTAINS MARKETABLE TITLE THERETO, IN THE SAME MANNER AS A PURCHASER IN A JUDICIAL FORECLOSURE SALE PURSUANT TO ARTICLE THIRTEEN OF THIS CHAPTER AGAINST ALL PERSONS BOUND BY THE SALE.

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

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

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

(C) TO THE MORTGAGEE, THE AMOUNT OF THE DEBT, ACCRUED INTEREST THEREON, LATE CHARGES, AND ALL OTHER SUMS ADVANCED BY THE MORTGAGEE WHICH ARE RECOVERABLE UNDER THE MORTGAGE, INCLUDING THE COSTS OF SALE AND REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS, OR SO MUCH THEREOF AS THE PROCEEDS WILL PAY. THE PERSON CONDUCTING THE SALE SHALL TAKE THE AFFIDAVIT OF THE MORTGAGEE AS TO ALL OF THE FOREGOING AMOUNTS BEING DUE, AND THE RECEIPT OF THE MORTGAGEE FOR THE AMOUNT SO PAID, AND FILE THE SAME WITH THE REPORT OF SALE.

(D) UPON ENTRY OF AN ORDER PURSUANT TO SECTION FOURTEEN HUNDRED EIGHTEEN OF THIS ARTICLE PROVIDING FOR SAME, TO THE HOLDER OF ANY SUBORDINATE MORTGAGE OR LIEN, OR TO THE OWNER OF THE EQUITY OF REDEMPTION OR ANY PERSON OR ENTITY HAVING FILED A NOTICE OF CLAIM AGAINST THE PROPERTY, FROM THE THEN REMAINING PROCEEDS THE AMOUNT THEN DUE TO SUCH PERSON OR ENTITY, IN THE PRIORITY THEREOF, OR SO MUCH AS THE THEN REMAINING PROCEEDS WILL PAY.

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

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

(A) THE TIME WHEN AND THE PLACE WHERE THE SALE WAS MADE;

(B) THE SUM BID FOR EACH DISTINCT PARCEL SEPARATELY SOLD;

(C) THE NAME OF THE PURCHASER OF EACH DISTINCT PARCEL; AND

(D) THE NAME OF EACH PERSON OR ENTITY, COURT OFFICER OR OTHER OFFICER, TO WHOM PROCEEDS OF THE SALE WAS PAID, AND THE SUM THEREOF.

2. THE REPORT OF SALE SHALL CONTAIN:

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

(B) COPIES OF THE AFFIDAVIT OR AFFIDAVITS, OF THE SERVICE OF COPIES OF THE NOTICE OF INTENTION TO FORECLOSE AND THE NOTICE OF PENDENCY THERETOFORE FILED WITH THE CLERK OF THE COURT; AND

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

3. THE REPORT SHALL SPECIFY THE AMOUNT CLAIMED TO BE DUE BY THE MORTGAGEE ON THE INDEBTEDNESS SECURED BY THE MORTGAGE, TOGETHER WITH ALL OTHER SUMS RECOVERABLE UNDER SECTION FOURTEEN HUNDRED SEVENTEEN OF THIS ARTICLE, THE AMOUNT DISTRIBUTED BY THE PERSON CONDUCTING THE SALE PURSUANT TO SECTION FOURTEEN HUNDRED THIRTEEN OF THIS ARTICLE, AND TO WHOM, AND THE AMOUNT OF THE DEFICIENCY OR SURPLUS AFTER APPLICATION OF THE PROCEEDS OF SALE THERETO. THE REPORT SHALL CONTAIN THE MORTGAGEE'S AFFIDAVIT SPECIFYING THE AMOUNT CLAIMED DUE BY THE MORTGAGEE ON THE INDEBTEDNESS SECURED BY THE MORTGAGE, TOGETHER WITH ALL OTHER SUMS RECOVERABLE UNDER SECTION FOURTEEN HUNDRED SEVENTEEN OF THIS ARTICLE.

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

S 1415. FILING OF REPORT OF SALE. 1. THE REPORT AND AFFIDAVITS SPECIFIED IN SECTION FOURTEEN HUNDRED FOURTEEN OF THIS ARTICLE SHALL BE FILED, IN THE SAME MANNER AS THE FILING OF THE NOTICE OF PENDENCY PURSU-

ANT TO SUBDIVISION TWO OF SECTION FOURTEEN HUNDRED THREE OF THIS ARTICLE, IN THE COUNTY CLERK'S OFFICE IN THE COUNTY WHERE THE SALE TOOK PLACE WITHIN THIRTY DAYS AFTER THE COMPLETION OF THE SALE AND EXECUTION OF THE PROPER CONVEYANCE TO THE PURCHASER, AND, AS SUCH, CONSTITUTE PRESUMPTIVE EVIDENCE OF THE MATTERS OF FACT THEREIN STATED, WITH RESPECT TO ANY MORTGAGED PROPERTY SOLD WHICH IS SITUATED IN THAT COUNTY.

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

S 1416. MULTIPLE COLLATERAL; DESIGNATION OF ORDER OF SALE OF PARCELS. WHERE THE INDEBTEDNESS IS SECURED BY MORE THAN ONE MORTGAGE ON MORTGAGED PROPERTY CONSISTING OF MORE THAN ONE FUNCTIONALLY SEPARATE AND DISTINCT PROPERTY, UNLESS OTHERWISE PROVIDED IN THE MORTGAGE OR IN ANY EXTENSION, AMENDMENT OR MODIFICATION THEREOF OR INSTRUMENT AMENDATORY THERETO, EACH PROPERTY SHALL BE SOLD EITHER (A) SEPARATELY IN THE ORDER DESIGNATED BY THE MORTGAGEE (WHICH MAY BE ON A SINGLE SALE DATE, OR ON SEPARATE DATES AS PROVIDED IN THE NOTICE OF SALE), OR (B) AS OTHERWISE DIRECTED BY ORDER OF THE SUPREME COURT FOR THE COUNTY IN WHICH THE SALE IS TO TAKE PLACE, PURSUANT TO A MOTION MADE UNDER THE INDEX NUMBER OF THE NON-JUDICIAL PROCEEDING FOR FORECLOSURE OF POWER OF SALE. THE MORTGAGEE SHALL NOT SCHEDULE OR CONDUCT THE SALE OF THE SUBSEQUENT PROPERTY SO DESIGNATED UNTIL AFTER THE DEFICIENCY HAS BEEN DETERMINED IN ACCORDANCE WITH SECTION FOURTEEN HUNDRED NINETEEN OF THIS ARTICLE, WHEREUPON IN THE EVENT A DEFICIENCY EXISTS, THE MORTGAGEE MAY SCHEDULE AND CONDUCT THE SALE OF THE SUBSEQUENT PROPERTY IN THE ORDER DESIGNATED BY THE MORTGAGEE UNLESS THE COURT ORDERS OTHERWISE, SUCH SALE TO BE CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

S 1417. COSTS AND EXPENSES ALLOWED. THE MORTGAGEE SHALL BE ENTITLED TO RECOVER OUT OF THE PROCEEDS OF SALE, OR UPON APPLICATION FOR A DEFICIENCY JUDGMENT, THE COSTS AND EXPENSES OF: (A) ADVERTISEMENT OF THE NOTICE OF SALE, AS DETERMINED BY PAID RECEIPTS THEREFOR; (B) SERVICE OF THE NOTICE OF INTENTION TO FORECLOSE AND THE NOTICE OF SALE; (C) PREPARATION AND FILING OF THE AFFIDAVITS REQUIRED UNDER THIS ARTICLE, THE POWER OF SALE DEED, AND REPORT OF SALE; (D) THE CONDUCT OF THE SALE, INCLUDING THE FEE OF THE OFFICER CONDUCTING THE SALE, WHICH, EXCEPT AS SHALL BE DIRECTED BY THE COURT, SHALL NOT EXCEED ONE THOUSAND DOLLARS; (E) RECORDING OF THE DEED IF THE MORTGAGEE IS THE PURCHASER AT THE SALE; (F) FILING OR RECORDING THE MORTGAGE IF NOT THERETOFORE PAID FOR BY THE MORTGAGOR; AND (G) THE REASONABLE ATTORNEYS' FEES INCURRED IN CONNECTION WITH THE NON-JUDICIAL PROCEEDING UNDER THIS ARTICLE WHICH, EXCEPT AS SHALL BE DIRECTED BY THE COURT, SHALL NOT EXCEED THE SUM OF THIRTY-FIVE HUNDRED DOLLARS.

S 1418. APPLICATION FOR SURPLUS. 1. ANY PERSON OR ENTITY CLAIMING THE SURPLUS MONEYS ARISING FROM THE SALE OF THE MORTGAGED PROPERTY, OR A PART THEREOF, MAY, WITHIN TWENTY DAYS AFTER THE FILING OF THE REPORT OF THE SALE, FILE UNDER THE INDEX NUMBER ASSIGNED TO THE NON-JUDICIAL PROCEEDING IN THE OFFICE OF THE CLERK OF THE COUNTY WHERE THE SALE TOOK PLACE, A WRITTEN NOTICE OF THE CLAIM, STATING THE NATURE AND EXTENT OF THE CLAIM. THEREAFTER, AN APPLICATION, WITH PROOF OF SERVICE UPON THE MORTGAGOR, THE RECORD OWNER OF THE MORTGAGED PROPERTY, AND ANY OTHER PERSON WHO OR ENTITY WHICH HAS FILED A CLAIM TO THE SURPLUS MONEYS MAY

BE MADE BY ANY PERSON WHO OR ENTITY WHICH HAS FILED A CLAIM TO THE SURPLUS MONEYS, SEEKING AN ORDER DIRECTING PAYMENT THEREOF OUT OF THE SURPLUS MONEYS.

2. UPON SUCH APPLICATION, OR AT ANY TIME WITHIN THREE MONTHS THEREAFTER, ON NOTICE TO ALL PERSONS WHO OR ENTITIES WHICH HAVE BEEN SERVED WITH THE NOTICE OF SALE OR FILED CLAIMS TO THE SURPLUS MONEY, OR ANY PART THEREOF, ON MOTION OF ANY PERSON WHO OR ENTITY WHICH HAS FILED A NOTICE OF CLAIM TO THE SURPLUS MONEY, OR ANY PART THEREOF, THE COURT, BY REFERENCE OR OTHERWISE, SHALL ASCERTAIN AND REPORT THE AMOUNT DUE TO THE APPLICANT, OR TO ANY PERSON WHO OR ENTITY WHICH HAS A LIEN ON OR CLAIM TO SUCH SURPLUS MONEY, OR ANY PART THEREOF, AND THE PRIORITY OF THE SEVERAL LIENS OR CLAIMS THEREON, AND SHALL ORDER DISTRIBUTION OF THE SURPLUS MONEYS BY THE COUNTY TREASURER.

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

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

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

3. IF NO APPLICATION FOR A DEFICIENCY JUDGMENT SHALL BE MADE AS HEREIN PRESCRIBED, THE PROCEEDS OF THE SALE REGARDLESS OF THE AMOUNT THEREOF

SHALL BE DEEMED TO BE IN FULL SATISFACTION OF THE MORTGAGE DEBT, AND NO RIGHT TO RECOVER ANY DEFICIENCY IN ANY ACTION OR PROCEEDING SHALL EXIST.

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

2. WHERE THE MORTGAGE PROVIDES THAT A RECEIVER MAY BE APPOINTED WITHOUT NOTICE OR CONTAINS THE COVENANT SET FORTH IN SUBDIVISION TEN OF SECTION TWO HUNDRED FIFTY-FOUR OF THE REAL PROPERTY LAW, NOTICE OF AN APPLICATION FOR SUCH APPOINTMENT SHALL NOT BE REQUIRED AND THE RECEIVER SHALL BE APPOINTED BY THE COURT PURSUANT TO AN ORDER SUBMITTED BY THE MORTGAGEE SIMULTANEOUSLY WITH, OR AT ANY TIME AFTER, THE FILING OF THE APPLICATION THEREFOR.

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

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

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

2. IF THE MORTGAGEE COMMENCES PROCEEDINGS UNDER THIS ARTICLE TO FORECLOSE A MORTGAGE, OR EXTENSION, AMENDMENT, MODIFICATION OR CONSOLIDATION THEREOF, EXECUTED AFTER THE EFFECTIVE DATE OF THIS ARTICLE, THE MORTGAGOR, NOT LATER THAN FORTY DAYS AFTER THE DATE IT RECEIVES THE NOTICE OF INTENTION TO FORECLOSE AS PROVIDED IN THIS ARTICLE, MAY APPLY, BY ORDER TO SHOW CAUSE, TO THE SUPREME COURT IN THE COUNTY IN WHICH THE MORTGAGED PROPERTY IS LOCATED FOR AN ORDER DIRECTING THAT FURTHER PROCEEDINGS BE CONDUCTED PURSUANT TO ARTICLE THIRTEEN OF THIS CHAPTER, AND FOR A TEMPORARY RESTRAINING ORDER STAYING FURTHER PROCEEDINGS UNDER THIS ARTICLE

PENDING A HEARING OF THE APPLICATION. THE APPLICATION SHALL INCLUDE ONE OR MORE AFFIDAVITS (A) STATING WHETHER A PREVIOUS APPLICATION FOR THE SAME OR SIMILAR RELIEF HAS BEEN MADE, AND IF SO THE OUTCOME THEREOF, AND (B) STATING FACTS TO SUPPORT ONE OR MORE OF THE FOLLOWING ALLEGATIONS:

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

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

(3) THAT THE MORTGAGOR IS NOT IN DEFAULT UNDER THE MORTGAGE OR OTHERWISE HAS A MERITORIOUS DEFENSE TO THE FORECLOSURE THEREOF;

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

(5) THAT UNDER THE FACTS AND CIRCUMSTANCES, ALLOWING THE FORECLOSURE TO PROCEED UNDER THIS ARTICLE WOULD CAUSE AN UNDUE HARDSHIP TO THE MORTGAGOR.

3. IF THE APPLICATION IS GRANTED, THE FORECLOSURE SHALL, UNLESS THE COURT SUBSEQUENTLY ORDERS OTHERWISE, PROCEED PURSUANT TO ARTICLE THIRTEEN OF THIS CHAPTER FOR THE JUDICIAL FORECLOSURE OF THE MORTGAGE.

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

5. AT ANY TIME THE MORTGAGEE MAY, WITHOUT PREJUDICE, VOLUNTARILY DISCONTINUE PROCEEDINGS UNDER THIS ARTICLE AND PURSUE SUCH RIGHTS AND REMEDIES AS MAY BE AVAILABLE TO IT UNDER ARTICLE THIRTEEN OF THIS CHAPTER.

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

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

S 1422. DATA COLLECTION AND REPORT. 1. THE SUPERINTENDENT OF BANKS, IN COOPERATION WITH THE OFFICE OF COURT ADMINISTRATION, SHALL DEVELOP A FORM WHICH SHALL BE COMPLETED AND FILED BY THE MORTGAGEE WITH EVERY NOTICE OF PENDENCY FILED UNDER THIS ARTICLE WHICH SHALL INCLUDE:

(A) THE VALUE OF PROPERTY BEING FORECLOSED, IF KNOWN;

(B) THE AMOUNT AND DATE OF MORTGAGE;

(C) THE LOCATION OF THE PROPERTY; AND

(D) THE AMOUNT IN DEFAULT ON THE MORTGAGE.

UPON RECEIPT, SUCH FORM SHALL BE FORWARDED BY THE COUNTY CLERK TO THE SUPERINTENDENT OF BANKS.

2. IN THE EVENT THAT THE PROCEEDING UNDER THIS ARTICLE IS DISCONTINUED, THE SUPERINTENDENT OF BANKS, IN COOPERATION WITH THE OFFICE OF COURT ADMINISTRATION, SHALL DEVELOP A FORM WHICH SHALL BE COMPLETED AND FILED BY THE MORTGAGEE WITH THE DISCONTINUANCE WHICH SHALL INCLUDE THE REASON FOR THE DISCONTINUANCE.

UPON RECEIPT, SUCH FORM SHALL BE FORWARDED BY THE COUNTY CLERK TO THE SUPERINTENDENT OF BANKS.

3. IN THE EVENT THAT THE PROPERTY IS SOLD AT AUCTION, THE SUPERINTENDENT OF BANKS, IN COOPERATION WITH THE OFFICE OF COURT ADMINISTRATION,

SHALL DEVELOP A FORM WHICH SHALL BE COMPLETED AND FILED BY THE MORTGAGEE WITH THE REPORT OF SALE PURSUANT TO SECTION FOURTEEN HUNDRED FIFTEEN OF THIS ARTICLE AND SHALL INCLUDE:

(A) THE AUCTION PRICE OF THE PROPERTY;

(B) THE AMOUNT OF SURPLUS MONEY, IF ANY; AND

(C) THE AMOUNT OF ADDITIONAL MONEY OWED ON THE PROPERTY, IF ANY.

UPON RECEIPT, SUCH FORM SHALL BE FORWARDED BY THE COUNTY CLERK TO THE SUPERINTENDENT OF BANKS.

4. THE SUPERINTENDENT OF BANKS SHALL COMPILE SUCH INFORMATION RECEIVED PURSUANT TO THIS SECTION AND MAKE A REPORT OF FINDINGS TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY, NO LATER THAN JUNE FIRST, TWO THOUSAND TEN.

S 2. Paragraph 1 of subdivision (a) of section 9-601 of the uniform commercial code, as added by chapter 84 of the laws of 2001, is amended to read as follows:

(1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; PROVIDED, HOWEVER, THAT IN THE CASE OF A SECURITY INTEREST IN A COOPERATIVE INTEREST, THE EXCLUSIVE REMEDY TO FORECLOSE OR ENFORCE SUCH CLAIM SHALL BE ARTICLE THIRTEEN OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW; and

S 3. The real property actions and proceedings law is amended by adding a new section 1301-a to read as follows:

S 1301-A. SECURITY INTERESTS IN A COOPERATIVE INTEREST. THIS ARTICLE SHALL EXPRESSLY APPLY TO ACTIONS TO FORECLOSE OR ENFORCE A CLAIM REGARDING A SECURITY INTEREST IN A COOPERATIVE INTEREST ESTABLISHED UNDER ARTICLE NINE OF THE UNIFORM COMMERCIAL CODE. REAL PROPERTY SHALL INCLUDE, FOR PURPOSES OF THIS ARTICLE, THE OWNERSHIP OF SHARES IN A COOPERATIVE INTEREST.

S 4. This act shall take effect July 1, 2009; provided that if this act shall not have become a law on or before July 1, 2009, this act shall take effect immediately and shall be deemed to have been in full force and effect on and after July 1, 2009; article 14 of the real property actions and proceedings law, as added by section one of this act, shall expire and be deemed repealed July 1, 2010, but such article shall continue to apply to any non-judicial proceeding in which the notice of pendency was filed before July 1, 2010.