

7240

I N S E N A T E

May 2, 2012

Introduced by Sen. FARLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

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.

25 1418. APPLICATION FOR SURPLUS.

26 1419. DEFICIENCY JUDGMENT.

27 1420. RECEIVER.

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

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

S 1401. WHEN MORTGAGE MAY BE FORECLOSED. 1. A MORTGAGE UPON REAL PROPERTY SITUATED WITHIN THE STATE, EXCEPTING A MORTGAGE ON REAL PROPERTY IMPROVED SOLELY BY (A) A RESIDENTIAL BUILDING CONTAINING LESS THAN SIX DWELLING UNITS, INCLUDING STRUCTURES AND IMPROVEMENTS APPURTENANT THERETO, OR (B) A RESIDENTIAL CONDOMINIUM UNIT IN A RESIDENTIAL BUILDING OWNED IN A CONDOMINIUM FORM OF OWNERSHIP, OR (C) A RESIDENTIAL BUILDING, INCLUDING STRUCTURES AND IMPROVEMENTS APPURTENANT THERETO, OWNED BY A QUALIFIED COOPERATIVE APARTMENT CORPORATION, OR (D) A BUILDING LOCATED IN A CITY WITH A POPULATION OF ONE MILLION OR MORE WHERE THE NUMBER OF UNITS OCCUPIED BY RESIDENTIAL TENANTS IS EQUAL TO OR GREATER THAN SIXTY-FIVE PER CENTUM OF THE TOTAL NUMBER OF UNITS IN THE BUILDING, CONTAINING 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, 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:

(1) 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;

(2) 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;

(3) 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; AND

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

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

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

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

12 2. THE NOTICE SHALL:

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

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

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

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

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

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

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

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

53 3. AFFIDAVITS OF SERVICE OR MAILING UPON EACH OF THE PERSONS OR ENTI-
54 TIES ENTITLED TO AND SERVED WITH THE NOTICE OF INTENTION TO FORECLOSE
55 SHALL BE FILED PRIOR TO THE DATE OF SALE UNDER THE INDEX NUMBER OF THE

1 NON-JUDICIAL PROCEEDING WITH THE CLERK OF THE COUNTY IN WHICH THE SALE
2 IS TO TAKE PLACE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (A) THE MORTGAGOR;

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

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

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

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

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

48 2. A COPY OF THE NOTICE OF SALE MUST BE PUBLISHED AT LEAST ONCE IN
49 EACH WEEK DURING THE FIVE SUCCESSIVE WEEKS IMMEDIATELY PRECEDING THE
50 DATE OF SALE, OR AT LEAST TWICE IN EACH WEEK DURING THE FOUR SUCCESSIVE
51 WEEKS IMMEDIATELY PRECEDING THE DATE OF SALE, IN A NEWSPAPER OF GENERAL
52 CIRCULATION DISTRIBUTED IN THE COUNTY IN WHICH THE PROPERTY TO BE SOLD,
53 OR ANY PART THEREOF, IS SITUATED, OR IF NO NEWSPAPER IS DISTRIBUTED IN
54 SUCH COUNTY, THEN IN A NEWSPAPER DISTRIBUTED IN AN ADJOINING COUNTY,
55 EXCEPT THAT WHERE SUCH PROPERTY IS LOCATED IN A COUNTY WHOLLY CONTAINED
56 WITHIN A CITY WITH A POPULATION OF ONE MILLION OR MORE, SUCH NOTICE OF

1 SALE SHALL BE PUBLISHED IN THE SAME MANNER AS A NOTICE OF JUDICIAL
2 PROCEEDING IN A NEWSPAPER DISTRIBUTED WITHIN SUCH COUNTY TO BE DESIG-
3 NATED BY THE CLERK OF SUCH COUNTY. ANY PERIOD OF SEVEN SUCCESSIVE DAYS
4 SHALL CONSTITUTE A WEEK UNDER THIS SECTION.

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

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

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

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

28 2. SERVICE OF A COPY OF THE NOTICE OF SALE UPON THE MORTGAGOR, THE
29 MORTGAGOR'S SUCCESSORS OR ASSIGNS, OR A SUBSEQUENT GRANTEE OF THE PROP-
30 ERTY FROM THE MORTGAGOR, IN THE MANNER PRESCRIBED IN THE MORTGAGE SHALL
31 BE GOOD, VALID AND EFFECTIVE SERVICE HEREUNDER.

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

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

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

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

51 4. THE SALE MAY BE POSTPONED BY THE MORTGAGEE MORE THAN ONCE. THE
52 MANNER OF THE POSTPONEMENT AND THE PUBLICATION AND SERVICE OF NOTICE
53 THEREOF SHALL BE EFFECTED IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVI-
54 SION ONE OF THIS SECTION.

55 S 1408. SALE; HOW CONDUCTED. 1. THE SALE SHALL BE AT PUBLIC AUCTION
56 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 TWENTY-EIGHTH DAY AND ON OR BEFORE THE THIRTY-FIFTH 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 THIRTY-FIFTH DAY AND ON OR BEFORE THE FORTY-SECOND 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.

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

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

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

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

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

51 (C) EACH PERSON SO CLAIMING, WHOSE ASSIGNMENT, MORTGAGE, CONVEYANCE,
52 TENANCY, OR OTHER INTEREST WAS NOT DULY RECORDED IN THE PROPER BOOK OR
53 INDEX FOR RECORDING THE SAME IN THE COUNTY IN WHICH THE PROPERTY IS
54 SITUATED, OR WHOSE JUDGMENT OR DECREE WAS NOT DULY DOCKETED IN THE COUN-
55 TY CLERK'S OFFICE, AT THE TIME OF THE FILING OF THE NOTICE OF PENDENCY

1 OF THE SALE PURSUANT TO THIS ARTICLE, AND THE EXECUTOR, ADMINISTRATOR,
2 SUCCESSOR OR ASSIGNEE OF SUCH A PERSON;

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

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

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

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

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

31 POWER OF SALE DEED

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

37 WITNESSETH:

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

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

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

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

52 GRANTOR DOES HEREBY GRANT AND CONVEY TO GRANTEE:

53 (LAND DESCRIPTION OF THE PROPERTY)

54 TOGETHER WITH ALL RIGHT, TITLE AND INTEREST, IF ANY, OF THE GRANTOR IN
55 AND TO ANY STREETS AND ROADS ABUTTING THE ABOVE-DESCRIBED PREMISES TO
56 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;

1 (C) THE NAME OF THE PURCHASER OF EACH DISTINCT PARCEL; AND
2 (D) THE NAME OF EACH PERSON OR ENTITY, COURT OFFICER OR OTHER OFFICER,
3 TO WHOM PROCEEDS OF THE SALE WAS PAID, AND THE SUM THEREOF.

4 2. THE REPORT OF SALE SHALL CONTAIN:

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

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

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

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

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

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

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

44 S 1416. MULTIPLE COLLATERAL; DESIGNATION OF ORDER OF SALE OF PARCELS.
45 WHERE THE INDEBTEDNESS IS SECURED BY MORE THAN ONE MORTGAGE ON MORTGAGED
46 PROPERTY CONSISTING OF MORE THAN ONE FUNCTIONALLY SEPARATE AND DISTINCT
47 PROPERTY, UNLESS OTHERWISE PROVIDED IN THE MORTGAGE OR IN ANY EXTENSION,
48 AMENDMENT OR MODIFICATION THEREOF OR INSTRUMENT AMENDATORY THERETO, EACH
49 PROPERTY SHALL BE SOLD EITHER (A) SEPARATELY IN THE ORDER DESIGNATED BY
50 THE MORTGAGEE (WHICH MAY BE ON A SINGLE SALE DATE, OR ON SEPARATE DATES
51 AS PROVIDED IN THE NOTICE OF SALE), OR (B) AS OTHERWISE DIRECTED BY
52 ORDER OF THE SUPREME COURT FOR THE COUNTY IN WHICH THE SALE IS TO TAKE
53 PLACE, PURSUANT TO A MOTION MADE UNDER THE INDEX NUMBER OF THE NON-JUDI-
54 CIAL PROCEEDING FOR FORECLOSURE OF POWER OF SALE. THE MORTGAGEE SHALL
55 NOT SCHEDULE OR CONDUCT THE SALE OF THE SUBSEQUENT PROPERTY SO DESIG-
56 NATED 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 TWENTY-FIVE HUNDRED DOLLARS. FEES DESIGNATED IN THIS SECTION IN DOLLAR AMOUNTS SHALL BE INDEXED IN ACCORDANCE WITH CHANGES IN THE FEDERAL CONSUMER PRICE INDEX - ALL CONSUMERS, OVER BASE YEAR TWO THOUSAND TWELVE.

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

1 COURT MAY DETERMINE, OF THE DEBT REMAINING UNSATISFIED, AFTER THE SALE
2 OF THE MORTGAGED PROPERTY AND THE APPLICATION OF THE PROCEEDS, THE
3 AMOUNT OF THE DEBT REMAINING UNSATISFIED TO BE DETERMINED BY THE COURT
4 AS HEREIN PROVIDED.

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

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

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

40 2. WHERE THE MORTGAGE PROVIDES THAT A RECEIVER MAY BE APPOINTED WITH-
41 OUT NOTICE OR CONTAINS THE COVENANT SET FORTH IN SUBDIVISION TEN OF
42 SECTION TWO HUNDRED FIFTY-FOUR OF THE REAL PROPERTY LAW, NOTICE OF AN
43 APPLICATION FOR SUCH APPOINTMENT SHALL NOT BE REQUIRED AND THE RECEIVER
44 SHALL BE APPOINTED BY THE COURT PURSUANT TO AN ORDER SUBMITTED BY THE
45 MORTGAGEE SIMULTANEOUSLY WITH, OR AT ANY TIME AFTER, THE FILING OF THE
46 APPLICATION THEREFOR.

47 3. WHERE A RECEIVER HAS BEEN APPOINTED, UPON THE APPLICATION OF THE
48 MORTGAGEE, THE COURT MAY DIRECT THAT THE RECEIVER OF THE RENTS APPLY THE
49 RENTS RECEIVED BY THE RECEIVER TOWARDS THE PAYMENT OF ACCRUED INTEREST
50 ON THE MORTGAGE, PROVIDED DUE PROVISION SHALL HAVE BEEN MADE FOR THE
51 PAYMENT OF TAXES AND ORDINARY AND NECESSARY EXPENSES FOR THE OPERATION,
52 REPAIR AND MAINTENANCE OF THE MORTGAGED PROPERTY AND SUCH OTHER EXPENSES
53 AS THE COURT MAY DIRECT. ANY MONEYS SO PAID OVER BY THE RECEIVER SHALL
54 BE DEDUCTED FROM THE AMOUNT DUE ON THE MORTGAGE, OR THE NOTE, BOND OR
55 OBLIGATION SECURED THEREBY, AND THE MORTGAGEE'S AFFIDAVIT OF THE INDEBT-

EDNESS FILED WITH THE REPORT OF SALE PURSUANT TO SECTION FOURTEEN HUNDRED FOURTEEN OF THIS ARTICLE SHALL SO STATE THE AMOUNTS THEREOF.

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

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

(B) EXPEND RENTS AND INCOME AND PROFITS AS DESCRIBED IN SUBDIVISION THREE OF THIS SECTION, EXCEPT THAT A PRIORITY SHALL BE GIVEN TO THE CORRECTION OF IMMEDIATELY HAZARDOUS AND HAZARDOUS VIOLATIONS OF HOUSING MAINTENANCE LAWS WITHIN THE TIME SET BY ORDERS OF ANY MUNICIPAL DEPARTMENT, OR, IF NOT FEASIBLE, SEEK A POSTPONEMENT OF THE TIME FOR COMPLIANCE.

5. 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

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

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

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

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

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

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

24 S 2. This act shall take effect immediately; provided, however, that
25 any proceeding commenced following the expiration and repeal of former
26 article 14 of the real property actions and proceedings law on July 1,
27 2009, which otherwise would have been eligible under such article shall
28 be eligible under this act, pursuant to an agreement of both parties to
29 the proceeding, upon the effective date of this act.