H.403

Introduced by Representatives Kupersmith of South Burlington and Koch of Barre Town

Referred to Committee on

Date:

Subject: Court procedure; foreclosure of mortgages

Statement of purpose: This bill proposes to update and consolidate statutory provisions regarding foreclosure of mortgages.

An act relating to foreclosure of mortgages

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 12 V.S.A. chapter 172 is added to read:

CHAPTER 172. FORECLOSURE OF MORTGAGES

Subchapter 1. General Provisions

§ 4931. DEFINITIONS

As used in this chapter:

(1) "Agricultural activity" includes the growing, raising, and production of horticultural and silvicultural crops, grapes, berries, trees, fruit, poultry, livestock, grain, hay, and dairy products.

(2) "Dwelling house" means a residential structure or mobile home which contains one to four family housing units, or individual units of

~~condominiums or cooperatives, each of which is used or intended to be used as~~ a residence.

(3) "Farmland" means land devoted primarily to commercial agricultural activities.

(4) "Value" means market value less all reasonable expenses that would be incurred in selling the property. Market value for purposes of this section may be determined based on evidence of market value deemed by the court to be reasonably reliable, which may include grand list valuation and the common level of appraisal used in the town where the property is located, if the court finds such evidence to be reasonably reliable.

§ 4932. VENUE; JOINDER OF PARTIES; RECORDING

(a) Actions to foreclose a mortgage under subchapter 2 or 3 of this chapter shall be brought in the superior court of the county where the land lies, or, if the land described in the mortgage lies in more than one county, then in one of the counties in which the land lies.

(b) The plaintiff shall file a copy of the complaint in the town clerk's office in each town where the mortgaged property is located. The clerk of the town shall minute on the margin of the record of the mortgage that a copy of foreclosure proceedings on the mortgage is filed. The filing shall be sufficient notice of the pendency of the action to all persons who acquire any interest or lien on the mortgaged premises between the dates of filing the copy of

~~foreclosure and the recording of the final judgment in the proceedings.~~ Without further notice or service, those persons shall be bound by the judgment entered in the cause and be foreclosed from all rights or equity in the premises as completely as though they had been parties in the original action.

(c) If the mortgaged property is subject to a residential rental agreement, as defined in 9 V.S.A. § 4451:

(1) The plaintiff shall join as a party defendant any person occupying the mortgaged property pursuant to a residential rental agreement as of the date the copy of the complaint is recorded in the land records. Service of the complaint on the tenant shall be sufficient if mailed to the tenant by first class mail at the address specified in the rental agreement, if the agreement is recorded, or to the "occupant" at the address of the leased premises if the agreement is not recorded.

(2) The summons and complaint served on any person occupying the premises pursuant to a residential rental agreement shall contain the following notice, written in at least 14-point type:

THE PROPERTY IN WHICH YOU LIVE IS BEING FORECLOSED UPON. YOU ARE NAMED AS A DEFENDANT IN THE FORECLOSURE BECAUSE YOUR RIGHT TO REMAIN ON THE PREMISES MAY END WHEN THE FORECLOSURE IS COMPLETED. YOU MUST NOTIFY THE COURT OF YOUR

NAME AND ADDRESS IN ORDER TO BE KEPT INFORMED OF THE STATUS OF THE FORECLOSURE.

(3) Upon receipt of the complaint, the owner of the mortgaged property shall notify each tenant who enters into a residential rental agreement that the premises are the subject of a pending foreclosure action and that, in the event the owner is unable to redeem the premises, the tenant may be required to vacate the premises upon 30 days' notice. The failure of the owner to provide notice under this subsection shall not affect or invalidate the foreclosure action.

(d) All proceedings shall be before the presiding judge alone, and trial shall be without jury.

§ 4933. NOTICE TO COMMISSIONER OF BANKING, INSURANCE, SECURITIES, AND HEALTH CARE ADMINISTRATION

(a) When the mortgage holder files an action under subchapter 2 or 3 of this chapter to foreclose owner-occupied one- to four-family residential property, the mortgage holder shall simultaneously file a notice of foreclosure with the commissioner of the department of banking, insurance, securities, and health care administration. The commissioner may require that the notice of foreclosure be sent in an electronic format. The notice of foreclosure shall include:

(1) the name and current mailing address of the mortgagor;

(2) the address of the property being foreclosed;

(3) the name of the current mortgage holder, along with the address and telephone number of the person or entity responsible for workout negotiations concerning the mortgage;

(4) the name of the original lender, if different;

(5) the name, address, and telephone number of the mortgage servicer, if applicable; and

(6) any other information the commissioner may require.

(b) The court clerk shall not accept a foreclosure complaint for filing without a certification by the plaintiff that the notice of foreclosure has been sent to the commissioner of banking, insurance, securities, and health care administration in accordance with subsection (a) of this section.

(c) Acceptance of a foreclosure complaint by the court clerk that, due to a good faith error or omission by the plaintiff or the clerk, does not contain the certification required in subsection (a) of this section shall not invalidate the foreclosure proceeding, provided that the plaintiff files the required notice with the commissioner within 10 days of obtaining knowledge of the error or omission.

§ 4934. SUPPLEMENTAL JUDGMENT JOINING PARTIES; RECORDING

At any time, without further notice or service on the purchaser or mortgage or lienholder whose interest in the property being foreclosed first arose after the filing of the complaint in the town clerk's office, and upon filing certified

~~copies of the deed, mortgage, or attachment with the clerk of the court by the~~ plaintiff in the foreclosure action, any superior judge may sign a supplemental judgment specifically naming that party. Reference to the deed, mortgage, or lien and the supplemental judgment may be filed in the town clerk's office for record, and it shall have the same force and effect as though that person had been made a party defendant in the original action.

§ 4935. TAXES PAID BY MORTGAGEE

A tax assessed upon mortgaged real estate in this state may be paid by the mortgagee or assignee of the mortgage upon such property. The amount so paid including costs, if any, shall thereupon be added to and become a part of the debt or obligation secured by such mortgage.

§ 4936. FORECLOSURE OF REAL OR PERSONAL PROPERTY

A mortgage or a security agreement constituting a lien on both real and personal property to secure the payment of a debt, whether evidenced by one or more instruments, may be foreclosed in an action under subchapter 2 or 3 of this chapter.

§ 4937. ATTORNEY'S FEES

When a mortgage contains an agreement on the part of the mortgagor to pay the mortgagee, in the event of foreclosure, the attorney's fees incident thereto, and claim is made therefor in the complaint, upon hearing, the court in which the complaint is brought shall allow such fee as in its judgment is just.

~~§ 4938. EFFECT ON BANKRUPTCY PROCEEDINGS~~

Nothing in this chapter shall be construed to supersede any provision of Title 11 of the United States Code.

Subchapter 2. Strict Foreclosure

§ 4941. DECREE FORECLOSING EQUITY OF REDEMPTION; WRIT OF POSSESSION

(a) In any action for foreclosure with regard to any mortgage encumbering property except for a dwelling house of two units or fewer that is currently occupied by the owner as his or her principal residence at the time the plaintiff applies for entry of judgment, or farmland, the court may, if no sale is requested by the plaintiff or ordered by the court pursuant to subsection (b) of this section, issue a judgment and decree of foreclosure without requiring a judicial sale of the premises.

(b) In an action brought under subsection (a) of this section, any party may by written motion request, or the court in its discretion may order, that property be sold at a judicial foreclosure sale, whether or not the mortgage contains a power of sale.

(c) No decree foreclosing the right of redemption without sale shall be issued absent a finding by the court, based on competent evidence, that there is no substantial value in the property in excess of the mortgage debt found by

the court to be due to the plaintiff and any other lienholder, plus assessed but unpaid property taxes due on the property.

(d) If a decree is issued foreclosing the right of redemption without sale, the time of redemption shall be no more than six months from the date of the decree unless a shorter time is ordered, or the mortgagor and mortgagee plaintiff agree to a shorter period. The court shall fix the period of redemption taking into consideration whether there is value in the property in excess of the mortgage debt and debt owed to junior lienholders, any assessed but unpaid property taxes, the condition of the property, and any other equities.

(e) If the premises are not redeemed agreeably to the decree, the clerk of the court shall issue a writ of possession at the plaintiff's request. Such writ shall have the same force and effect and be executed in the same manner as similar writs issued after judgment by a court of law in ejectment proceedings. Where the premises are occupied by a residential tenant, the writ shall be served on the tenant, and no sooner than 30 days after the writ is served, the plaintiff shall be placed in possession of the property without further proceedings.

(f)(1) In an action for foreclosure under this section, if a lien or interest in such realty is held by any person or federal agency which may not be foreclosed by strict foreclosure pursuant to federal law, the court shall proceed in accordance with subchapter 3 of this chapter.

~~(2) In an action for foreclosure, if a lien or interest in such realty is held~~ by any person or federal agency which may not be foreclosed by strict foreclosure pursuant to federal law, a decree may be entered providing for such period of redemption as the court may determine, and providing for a sale of the mortgaged premises at the conclusion of such period if the premises are not redeemed, and for the time, manner, and notice of sale, if required, and the application of any proceeds.

(g) In an action for foreclosure under this section, where the time of redemption has expired, the party obtaining the foreclosure shall cause to be recorded in the office where by law a deed of the lands is required to be recorded, within 30 days after the expiration of the time of redemption, a certified copy of the judgment and the certificate of nonredemption.

(h) The expiration of the right of redemption under the decree shall not foreclose the interest of subsequent purchasers, mortgagees, or attaching creditors whose interest in the property being foreclosed first arose after the filing of the complaint for foreclosure in the land records as provided in section 4932 of this chapter, unless the plaintiff complies with subsection (g) of this section.

~~Subchapter 3. Foreclosure by Judicial Sale~~

§ 4945. JUDICIAL SALE FORECLOSURE

(a) All liens and mortgages affecting real property may, on the written motion of any party to any suit for foreclosure of such liens or mortgages, or at the discretion of the court before which the foreclosure proceedings are pending, be foreclosed by a judicial foreclosure sale, even if the mortgage does not contain a sale provision instead of a strict foreclosure.

(b) In an action for foreclosure, if a lien or interest in such realty is held by any person or federal agency which may not be foreclosed by strict foreclosure pursuant to federal law, a decree may be entered providing for such period of redemption as the court may determine, and providing for a sale of the mortgaged premises at the conclusion of such period if said premises are not redeemed, and for the time, manner, and notice of sale, if required, and the application of the proceeds therefrom.

§ 4946. PROCEDURE

(a) Order for judicial sale. Unless strict foreclosure is ordered pursuant to section 4941 of this title, the court shall, upon entry of a decree of foreclosure, order that the mortgaged property be sold at public sale if it is not redeemed within the time period allowed by the court. The time and manner of the sale shall be specified in the notice of sale required by section 4952 of this title.

(b) Time for redemption; owner-occupied dwelling or farmland. If a decree is made foreclosing the right of redemption by judicial sale with respect to farmland or a dwelling house of four units or fewer that is currently occupied by the owner as his or her principal residence at the time the plaintiff applies for entry of judgment, the time of redemption shall be established by the court and shall be no more than six months from the date of the decree. The court shall fix the period of redemption taking into consideration whether there is value in the mortgaged property in excess of the mortgage debt and debt owed to junior lienholders, any assessed but unpaid property taxes, the condition of the mortgaged property, and any other equities. No sale of a dwelling house of four units or fewer when currently occupied by the owner as his or her principal residence at the time the plaintiff applies for entry of judgment may take place within seven months of service of the foreclosure complaint, unless the court orders a shortened redemption period pursuant to this section or the plaintiff and the mortgagor mutually agree to a shorter period after commencement of the action to foreclose the mortgage.

(c) Time for redemption; other property. If a decree is made foreclosing the right of redemption by judicial sale with respect to any property other than farmland or a dwelling house of four units or fewer that is currently occupied by the owner as his or her principal residence at the time the plaintiff applies

~~for entry of judgment, the redemption period shall be eliminated or reduced by~~ the court to no more than 30 days.

(d) Writ of possession. Upon expiration of the period of redemption, if the mortgagor or the mortgagor's successors, heirs, or assigns have not redeemed the mortgage, any remaining rights of the mortgagor to possession shall terminate, and the clerk of the court shall issue a writ of possession at the plaintiff's request. Such writ shall have the same force and effect and be executed in the same manner as similar writs issued after judgment by a court of law in ejectment proceedings. Where the mortgaged property is occupied by a residential tenant, the writ shall be served on the tenant, and no sooner than 30 days after the writ is served, the plaintiff shall be placed in possession of the mortgaged property without further proceedings.

§ 4947. FORECLOSURE OF EQUITY OF REDEMPTION-RECORDING

In an action for foreclosure under this subchapter where the time of redemption has expired, the party obtaining the foreclosure shall cause to be recorded in the office where by law a deed of the lands is required to be recorded, within 30 days after the expiration of the time of redemption, a certified copy of the judgment and the certificate of nonredemption.

§ 4948. REINSTATEMENT OF MORTGAGE PRIOR TO SALE

(a) Upon agreement of the parties, the mortgagor may reinstate the loan after the expiration of the redemption period set forth in the judgment order but

before the public sale. To reinstate the loan, the mortgagee shall execute a waiver of foreclosure and, after receiving court approval, record it in the land records of the city or town where the mortgaged property lies. Upon recording, the waiver of foreclosure shall operate to terminate the foreclosure and restore the parties and all junior lienholders to the positions they held prior to the filing of the foreclosure.

(b) The following form of waiver of foreclosure may be used. Nothing herein shall be construed to prevent the use of other forms or to prevent alteration of the form as circumstances require:

WAIVER OF FORECLOSURE

MORTGAGEE, holder of record of a mortgage deed dated _____, 20____ and of record in Book ___ at Page ____ of the City/Town of _____ Land Records ("the Mortgage") executed and delivered to it by MORTGAGOR(S) covering real estate located in the Town of _____, Vermont hereby acknowledges and agrees:

1. For the breach of the condition of the Mortgage, MORTGAGEE initiated a foreclosure action against MORTGAGOR by Complaint for Foreclosure dated _____, 20____ which is of record in Book _____at Page _____ of the Town of _____ Land Records.

2. That MORTGAGOR(S) has/have now cured the default and requested reinstatement of the Mortgage and the MORTGAGEE agrees to reinstate.

NOW THEREFORE, MORTGAGEE does hereby acknowledge that it has received payment of the arrearages due it under the Mortgage and the promissory note which it secures, and in consideration thereof, does hereby waive the above-entitled foreclosure action and release unto said MORTGAGOR, his/her/its heirs, personal representatives, successors, and assigns, all claims asserted in the foreclosure action. THE MORTGAGE IS NOT DISCHARGED.

This waiver is given pursuant to 12 V.S.A. § 4948. This waiver shall have no effect on the Mortgage referenced above other than to reinstate the same, and the rights of all parties named in the foreclosure action, as well as the rights of any junior lienholders, remain intact as if no foreclosure had been commenced.

IN WITNESS WHEREOF, the said MORTGAGEE has caused this instrument to be executed by its duly authorized agent this ____ day of _____ , 20___.

MORTGAGEE

By: _____

Its Duly Authorized Agent

Printed Name: _____

State of _____

County of _____

At _____ in said County and State, then personally appeared the above-named duly authorized agent who acknowledged the foregoing waiver of foreclosure to be his/her free act and deed and the free act and deed of the MORTGAGEE.

Before me, _____

Printed Name: _____

Notary Public

My Commission expiration _____

****

The request for waiver of foreclosure is SO ORDERED this ____ day of _____, 20 ____.

_____

Superior Court Judge

§ 4949. REDEMPTION PRIOR TO JUDICIAL SALE

(a) The mortgagor is entitled to redeem the premises at any time prior to the sale by paying the full amount due under the judgment order.

(b) Upon agreement of the parties, the mortgagor may redeem the premises at any time prior to the sale by paying less than the full amount due under the judgment order. In such case, the parties to the foreclosure shall, with court approval, amend the redemption amount. Upon payment of the amended

redemption amount, the court shall issue a Supervening Certificate of Redemption as evidence that the judgment amount was redeemed. Upon the recording of a certified copy of the Certificate of Redemption in the land records, the foreclosed mortgage shall be of no further force or effect and any junior lienholder shall return to the position it held prior to the filing of the foreclosure.

§ 4950. DEED IN LIEU OF FORECLOSURE

In lieu of proceeding under section 4946 of this title, the mortgagor may convey the mortgaged property to the mortgagee. In such case, the rights of all parties named in the foreclosure action, as well as the rights of any junior lienholders, remain intact as if no foreclosure had been commenced.

§ 4951. JUDGMENT VACATED

Notwithstanding any provision to the contrary in this chapter or other law, parties who have entered an appearance in the foreclosure may stipulate and move to vacate the judgment at any time prior to the auction. If the court approves the motion, the judgment shall be vacated and the parties, the property, and any lienholders of record in the land records will be restored to their original positions as if no foreclosure had been commenced and no judgment entered. This section will apply retroactively and apply to orders to vacate in existence on the effective date of this section.

~~§ 4952. SALE PROCEDURES~~

(a) Generally. If the mortgaged property is not redeemed, the plaintiff shall sell the mortgaged property in accordance with this section, complying with all court orders and applicable power of sale provisions.

(b) Notice of sale; publication. Notice of sale shall be published once in each of three successive weeks in a newspaper of general circulation in the town where the land lies, the first publication to be no fewer than 21 days before the day of sale.

(c) Notice of sale; service. A copy of the notice of sale shall be mailed by first class mail, postage prepaid, to all parties who appeared in the foreclosure action or to their attorneys of record. If the mortgagor has not appeared in the foreclosure action, a copy of the notice of sale shall also be mailed by first class mail, postage prepaid, to the mortgagor at the mortgagor's last known address. The notice of sale shall be mailed no fewer than 21 days before the date of sale.

(d) Notice of sale; waiver. No foreclosure sale shall be invalid or ineffectual to foreclose a mortgage pursuant to this section if any party entitled to be sent notice, either before or after such foreclosure sale, waives its rights to such notice.

(c) Notice of sale; form. The following form of notice of sale may be used and may be altered as circumstances require, but nothing herein shall be construed to prevent the use of other forms:

By virtue and in execution of the Power of Sale contained in a certain mortgage given by _____ to _____dated _____ and recorded in Volume _____, Page _____ of the land records of the municipality of _____, of which mortgage the undersigned is the present holder (if by assignment, or in any fiduciary capacity, give reference) for breach of the conditions of said mortgage and for the purpose of foreclosing the same will be sold at Public Auction at _____ (place) at _____ o'clock , ___M. on the _____day of _____, 20____ all and singular the premises described in said mortgage,

(In case of partial releases, state exceptions.)

To wit: (Legal description of the premises.)

Terms of sale: (State here the amount, if any, to be paid in cash by the purchaser at the time of the sale, and the schedule for payment of the balance and other terms of sale.)

The mortgagor is entitled to redeem the premises at any time prior to the sale by paying the full amount due under the mortgage, including the costs and expenses of the sale.

Other terms to be announced at the sale or inquire at _____

Signed: _____

Mortgagee (may be signed by mortgagee's attorney)

Dated: _____, 20____.

§ 4953. CONDUCT AND LOCATION OF SALE

(a) Location. The sale shall be held at the mortgaged property unless another place for sale is directed by the court. At the sale, the mortgaged property shall be sold to the highest bidder in conformance with the terms of sale set forth in the notice of sale.

(b) Adjournments. The public sale may be adjourned one or more times for a total time not exceeding 30 days, without further court order, and without publication or service of a new notice of sale, by announcement of the new sale date to those present at each adjournment or by posting notice of the adjournment in a conspicuous place at the location of the sale. The public sale may be adjourned for a period of time in excess of 30 days by agreement of the mortgagor and mortgagee or by order of the court.

(c) Permitted bidders. Permitted bidders at the sale may include, without limitation, the mortgagee, the mortgagor, or any lien holder. All bidders, except for the mortgagee plaintiff, must meet the requirements set forth in the notice of sale in order to bid at the sale.

§ 4954. PROCEDURE FOLLOWING SALE

(a) Confirmation order. Following the sale, the plaintiff shall file with the court a report on oath of the sale, together with a request for confirmation of the sale, which shall include an accounting of the sale proceeds, and a proposed order confirming the sale. Copies of the report of the sale and request for confirmation shall be mailed by first class mail, postage prepaid, to all parties who appeared in the foreclosure action or to their attorneys of record and to the mortgagor at the mortgagor's last known address. If no objections to the request for confirmation are filed within 15 days after it is filed, the court may issue an order of confirmation of the sale without hearing, unless the court in its discretion determines that a hearing is necessary. The order of the court confirming the sale shall be conclusive evidence as against all persons that the foreclosure and sale were conducted in accordance with this section.

(b) Transfer of title. The confirmation order shall be recorded in the land records of the town where the mortgaged property is located and shall transfer title to the mortgaged property to the purchaser upon recording.

(c) Disbursement of proceeds. In the event that the proceeds of the sale, after first deducting the reasonable expenses incurred in making the sale, exceed the amounts due to the plaintiff at the time of sale, the confirmation order shall provide for the payment of the surplus to other lienholders of record in the order of the priority of their liens. In the event that the proceeds of the

sale exceed the amount due to the plaintiff and the amount due to the other defendants, the excess shall be paid to the defendant mortgagor. If the plaintiff is the high bidder at the sale, and the plaintiff's bid exceeds the amount due to the plaintiff at the time of the sale, the plaintiff shall not be required to pay any surplus to the other lienholders or to the defendant mortgagor.

(d) Deficiency. Unless the mortgaged property is farmland as defined in subdivision 4931(3) of this title or a dwelling house of two units or fewer that is currently occupied by the owner as his or her principal residence, the plaintiff may request a deficiency judgment in the foreclosure complaint. The court shall assess a judgment against the mortgagor for the deficiency if the proceeds of sale are insufficient to meet the expenses incurred in making the sale and the amount due to the plaintiff. Nothing in this section shall preclude the plaintiff from maintaining a subsequent action against the mortgagor for the deficiency if a deficiency judgment is not requested in the foreclosure complaint or if the request is withdrawn without prejudice prior to, or at the same time as, the request for confirmation of the sale.

(e) Failure of sale; resale. In the event that the purchaser fails to pay the balance of the purchase price according to the terms of the sale, then, upon the request of the plaintiff, the down payment shall be forfeited, the foreclosure sale shall be void, the court shall issue an order vacating the confirmation

order, and the plaintiff shall conduct a new sale in accordance with this subchapter.

Subchapter 4. Foreclosure by Nonjudicial Sale

§ 4961. POWER OF NONJUDICIAL SALE

Whether or not a power of sale is contained in a mortgage relating to any property, except for farmland or a dwelling house of four units or less when currently occupied, at the time of service of the notice of sale pursuant to section 4964 of this title, by the owner as his or her principal residence, instead of a suit and decree of foreclosure, the mortgagee may, upon breach of mortgage condition, foreclose upon the property without first commencing a foreclosure action or obtaining a foreclosure decree by complying with the terms of this subchapter. No sale under and by virtue of a nonjudicial power of sale shall be valid and effectual to foreclose the mortgage unless the conditions of this subchapter are complied with.

§ 4962. NOTICE OF INTENTION TO FORECLOSE

(a) At least 30 days prior to service of a notice of sale pursuant to subsection 4952(c) of this title, notice of intention to foreclose in a writing complying with this section shall be sent to the mortgagor by registered or certified mail at his or her last known address.

(b) The writing required by this section shall state, in a manner calculated to make the mortgagor aware of the situation:

(1) the mortgage to be foreclosed;

(2) the mortgage condition claimed to have been breached;

(3) that the mortgagee has accelerated maturity of the debt secured by the mortgage, if that is the case;

(4) the amount to be paid or other action necessary to cure, and the time within which the cure must take place, which shall be not less than 30 days after the date of the notice of intention to foreclose;

(5) the intention of the mortgagee to foreclose by exercising the power of sale contained in the mortgage, if the breach of the mortgage condition is not cured within the time and in the manner specified in the notice; and

(6) that the mortgagor will be entitled to be sent notice of the foreclosure sale at least 60 days prior to the sale and to redeem the mortgaged property at any time prior to the sale by paying the full amount due under the mortgage, including the costs and expenses of the sale.

(c)(1) The following notice of intent to foreclose form may be used and may be altered as circumstances require:

PLEASE TAKE NOTICE that you have defaulted under Loan No. _____ by [mortgage condition breached] required by your Promissory Note dated _____, 20___. This default also constitutes a breach of the Mortgage, dated _____, 20___, recorded in Volume ____ at Page ____ of the Land Records, which secures the Loan. As a result of your default, we

have accelerated the maturity of all indebtedness due on the Loan and secured by the Mortgage, totaling $_____ as of today's date. In order to cure this default, you must pay to us on or before _____ [a date not less than thirty (30) days after the date of this Notice] the sum of $_____, plus interest at the rate of $_____ per day to the date of payment. If you do not cure this default by making the payments required, it is our intention to foreclose by exercising the power of sale contained in the above Mortgage. You will be sent notice of the foreclosure sale at least sixty (60) days prior to the sale, and you will be entitled to redeem your interest in the mortgaged property at any time prior to the sale by paying the full amount due under the Mortgage, including the costs and expenses of the sale. If you do not cure the default or redeem your interest, your ownership of the mortgaged property will be terminated.

(2) This subsection shall not be construed to prevent the use of other forms except that all notices shall comply with the provisions of subsection (b) of this section.

§ 4963. PUBLICATION OF NOTICE OF SALE

Notice of a sale conducted pursuant to this subchapter shall be published once in each of three successive weeks, in a newspaper of general circulation in the town where the land lies, the first publication to be not less than 21 days before the day of sale.

§ 4964. RECORDING

The mortgagee shall record the notice of sale in the land records of the town or city where the land lies not less than 60 days prior to the sale. The filing of the notice of the sale shall be in lieu of filing a foreclosure complaint under section 4932 of this title and shall be sufficient notice of the pendency of the nonjudicial foreclosure by power of sale to all persons who acquire any interest or lien in the mortgaged property between the dates of recording the notice of sale and recording the foreclosure deed. Without further notice or service, those persons shall be bound by the power of sale and the foreclosure deed and shall be foreclosed from all rights or equity in the mortgaged property.

§ 4965. SERVICE; FORM

(a)(1) In all cases, unless service is waived under subsection 4966(g) of this title, a copy of the notice of sale shall be served on the mortgagor or his or her representative in interest by:

(A) sending the notice by registered or certified mail addressed to the mortgagor or such representative at his or her last known address, or to such person and address as may be agreed upon in said mortgage, at least 60 days before said sale; or

(B) serving the notice in any manner authorized by the Vermont Rules of Civil Procedure.

(2) As used in the section, "mortgagor" shall mean the mortgagor or the

~~then record owner of the mortgaged property.~~

(b)(1) A copy of the notice of sale shall be sent to any tenant lawfully occupying the mortgaged property and to any person having a recorded interest in the mortgaged property of record which will be foreclosed by the sale, provided that the interest is recorded in the applicable land records prior to the recording of the notice of sale. The notice required by this subsection shall be sent not less than 60 days before the sale. Notice to a tenant shall be sufficient if mailed to the tenant by first class mail at the address specified in the lease, if recorded, or to the occupant at the address of the mortgaged property, if the lease is not recorded.

(2) Compliance with this subsection shall be sufficient with respect to persons entitled to receive notice under subdivision (1) of this subsection, and the failure to give additional notice shall not be grounds to invalidate the sale. Any mortgagor or junior lienholder who refuses to accept or claim mailed or served notice or who frustrates attempts by the mortgagee to give notice of the sale by failing to give or leave a forwarding address or by other acts or omissions shall be deemed to be notified of the sale, provided that such mortgagee shall have made a good faith effort to provide such notice.

(c)(1) The following notice of sale form may be used and may be altered as circumstances require:

By virtue and in execution of the Power of Sale contained in a certain

mortgage given by _____ to _____ dated _____ and recorded in Volume _____ Page _____ of the land records of the town of _____, of which mortgage the undersigned is the present holder, (if by assignment, or in any fiduciary capacity, give reference) for breach of the conditions of said mortgage and for the purpose of foreclosing the same will be sold at Public Auction at _____ o'clock, ___ M. on the _____ day of _____ 20____, (place) _____ at the mortgaged property.

To wit: (Legal description of the mortgaged property and in case of partial releases, state exceptions.)

Terms of sale: (State here the amount, if any, to be paid in cash by the purchaser at the time of the sale, and the schedule for payment of the balance.)

The mortgagor and all junior lienholders are entitled to redeem the mortgaged property at any time prior to the sale by paying the full amount due under the mortgage, including the costs and expenses of the sale.

Other terms to be announced at the sale or inquire at _____

(Signed) _____

Mortgagee (may be signed by mortgagee's attorney)

_____ 20__

(2) This subsection shall not be construed to prevent the use of other forms. A notice of sale shall be sufficient if it fully sets forth the date, time

~~and place of sale; the town, county, street or highway and street number, if~~ any, of the mortgaged premises; the date of the mortgage; the volume and page of the recording of the mortgage; the terms of the sale; the statement language required by subdivision (d)(1) of this section; and notice of the right to redeem.

(d)(1) The notice of the sale shall include the following statement: "The mortgagor and all junior lienholders are hereby notified that at any time before the foreclosure sale, the mortgagor and all junior lienholders have a right to petition the superior court for the county in which the mortgaged property is situated, with service upon the mortgagee, and upon such bond as the court may require, to enjoin the scheduled foreclosure sale. Failure to institute such petition and complete service upon the foreclosing party, or the party's agent, conducting the sale prior to sale shall thereafter bar any action or right of action of the mortgagor or any junior lienholder based on the validity of the foreclosure, the right of the mortgagee to conduct the foreclosure sale, or compliance by the mortgagee with the notice requirements and other conditions of this section. An action to recover damages resulting from the sale of the mortgaged property on the date of the sale may be commenced at any time within one year following the date of the sale, but not thereafter."

(2) The mortgagor and all junior lienholders shall have the rights contained in the notice provided for in this subsection.

~~§ 4966. CONDUCT AND LOCATION OF SALE~~

(a) The sale shall be held at the mortgaged property except that it may be held elsewhere if agreed to in writing by the mortgagor and the mortgagee not less than 60 days nor more than 90 days before the sale. At the sale, the mortgaged property shall be sold to the highest bidder in conformance with the terms of sale set forth in the foreclosure notice.

(b) The mortgagor shall be entitled to redeem the mortgaged property at any time prior to the sale by paying to the mortgagee the full amount due under the mortgage, including the costs and expenses of the sale.

(c) The public sale may be adjourned one or more times for a total time not exceeding 60 days by announcement of the new sale date to those present at each adjournment or by posting notice of the adjournment in a conspicuous place at the location of the sale. Written notice of the new sale date shall also be given by first class mail, postage prepaid, to any person who received notice of the sale pursuant to section 4965 of this title.

(d) Permitted bidders at the sale shall include, without limitation, the mortgagee, the mortgagor, or any subsequent lien holder. All bidders, except for the mortgagee, shall meet the requirements set forth in the notice of sale in order to bid at the sale.

(e) In the event that the proceeds of sale, after first deducting the reasonable expenses incurred in making the sale, exceed the amounts due to

the mortgagee at the time of sale, the surplus shall be paid to other lien holders of record in the order of the priority of their liens. In the event that the proceeds of sale exceed the amount due to the mortgagee and the amounts due to the other lien holders, the excess shall be paid to the mortgagor. The mortgagee or person conducting the sale may interplead any sale proceeds in excess of the indebtedness and expenses secured by the mortgage in the event there are any liens of record against the real estate.

(f) This section shall not preclude the mortgagee from maintaining a subsequent action against the mortgagor for any deficiency.

(g) No foreclosure sale shall be invalid or ineffectual to foreclose a mortgage under this section if, before or after the foreclosure sale, a party entitled to receive notice of the sale waives his or her right to such notice. A waiver of notice authorized or validated under this section shall be recorded in the land records in the town or city where the property is located.

§ 4967. RECORDING FOLLOWING SALE

(a) Within 90 days after the sale, the mortgagee selling pursuant to the power shall cause the foreclosure deed and an accompanying affidavit to be recorded in the land records of the town where the property is situated. The affidavit setting forth fully and particularly the mortgagee's acts with respect to the sale of the mortgaged property, including the dates that notices of the sale were published, and shall set forth facts showing that no person in interest is in

the military service as defined in the Service Members Civil Relief Act of 2003. The affidavit or a duly certified copy thereof shall be admissible in evidence on the issue of whether the power of sale was duly executed.

(b) If the recording required by this section is prevented by an order or stay of any court, the time for such recording shall be extended until 10 days after the expiration or removal of such order or stay.

(c) If the recording required by this section is made more than 60 days after the sale, the affidavit shall state why the recording was not made earlier.

(d) Failure to record the deed and affidavit within the statutory period required by this subsection shall render the sale void and of no effect only as to liens or other encumbrances of record intervening between the day of the sale and the time of recording of said deed and affidavit.

(e) Correction of error. In case of an alleged error or omission in the affidavit, the court, on petition and after notice to interested parties, may validate the affidavit or authorize the recording of an affidavit amending, correcting or in substitution for an affidavit so recorded, and the affidavit so authorized to be recorded or a certified copy of the record thereof shall have the same effect and shall be admitted in evidence as if it had been recorded within the 90-day period required by this section.

§ 4968. TRANSFER OF TITLE

Title to the foreclosed mortgaged property under this section shall not pass

~~to the purchaser until the time of the recording of the deed and affidavit. Upon~~ such recording, title to the mortgaged property shall pass to the purchaser free and clear of all interests and encumbrances which do not have priority over such mortgage.

§ 4969. FAILURE OF SALE, RESALE

If the purchaser does not pay the balance of the purchase price according to the terms of the sale, and at the option of the mortgagee, the down payment, if any, shall be forfeited and the foreclosure sale shall be void.

§ 4970. FORM AND EFFECT OF FORECLOSURE DEED

(a) The foreclosure deed shall be in substantially the following form:

_____ of _____ County, _____ State of _____, holder of a mortgage from _____ to _____ dated _____, recorded in _____ Book___ at Page___ of the Town of ____ Land Records, by the power conferred by said mortgage and every other power, for___ dollars paid, grant to _____, (complete mailing address) _____, of _____Street, Town (City) of _____, _____ County, State of _____, the premises conveyed by said mortgage.

(Here add acknowledgment)

(b) A deed substantially in the form set forth in subsection (a) of this section shall, when duly executed and delivered, have the force and effect of a deed in fee simple to the grantee, heirs, successors and assigns, to their own

use, with covenants on the part of the mortgagee, for himself or herself, that, at the time of the delivery of such deed, the mortgagee was duly authorized to make sale of the mortgaged property; that in all of the mortgagee's proceedings in the sale thereof, the mortgagee has complied with the requirements of this subchapter; and that the mortgagee will warrant and defend the same to the grantee, heirs, successors, and assigns against the lawful claims of all persons claiming by, from, or under him or her.

Sec. 2. REPEAL

Subchapter 6 of Chapter 163 of Title 12 (foreclosure of mortgages) is repealed.

Sec. 3. EFFECTIVE DATE; APPLICABILITY

This act shall take effect on July 1, 2011 and shall apply to any mortgage foreclosure proceeding instituted after that date.

Sec. 1. 12 V.S.A. chapter 172 is added to read:

CHAPTER 172. FORECLOSURE OF MORTGAGES

Subchapter 1. General Provisions

§ 4931. DEFINITIONS

As used in this chapter:

(1) "Agricultural activity" includes the growing, raising, and production of horticultural and silvicultural crops, grapes, berries, trees, fruit, poultry, livestock, grain, hay, and dairy products.

(2) "Dwelling house" means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives, each of which is used or intended to be used as a residence.

(3) "Farmland" means land devoted primarily to commercial agricultural activities.

(4) "Value" means market value less all reasonable expenses that would be incurred in selling the property. Market value for purposes of this section may be determined based on evidence of market value deemed by the court to be reasonably reliable, which may include grand list valuation and the common level of appraisal used in the town where the property is located, if the court finds such evidence to be reasonably reliable.

§ 4932. VENUE; JOINDER OF PARTIES; RECORDING

(a) Actions to foreclose a mortgage under subchapter 2 or 3 of this chapter shall be brought in the civil division of the superior court for the county where the land lies, or, if the land described in the mortgage lies in more than one county, then in one of the counties in which the land lies.

(b) The plaintiff shall file a copy of the complaint in the town clerk's office in each town where the mortgaged property is located. The clerk of the town shall minute on the margin of the record of the mortgage that a copy of foreclosure proceedings on the mortgage is filed. The filing shall be sufficient

notice of the pendency of the action to all persons who acquire any interest or lien on the mortgaged premises between the dates of filing the copy of foreclosure and the recording of the final judgment in the proceedings. Without further notice or service, those persons shall be bound by the judgment entered in the cause and be foreclosed from all rights or equity in the premises as completely as though they had been parties in the original action.

(c) If the mortgaged property is subject to a residential rental agreement, as defined in 9 V.S.A. § 4451:

(1) The plaintiff shall join as a party defendant any person occupying the mortgaged property pursuant to a residential rental agreement as of the date the copy of the complaint is recorded in the land records. Service of the complaint on the tenant shall be sufficient if mailed to the tenant by first class mail at the address specified in the rental agreement, if the agreement is recorded, or to the "occupant" at the address of the leased premises if the agreement is not recorded.

(2) The summons and complaint served on any person occupying the premises pursuant to a residential rental agreement shall contain the following notice, written in at least 14-point type:

THE PROPERTY IN WHICH YOU LIVE IS BEING FORECLOSED UPON. YOU ARE NAMED AS A DEFENDANT IN THE FORECLOSURE BECAUSE YOUR RIGHT TO REMAIN ON THE

PREMISES MAY END WHEN THE FORECLOSURE IS COMPLETED. YOU MUST NOTIFY THE COURT OF YOUR NAME AND ADDRESS IN ORDER TO BE KEPT INFORMED OF THE STATUS OF THE FORECLOSURE.

(3) Upon receipt of the complaint, the owner of the mortgaged property shall notify each tenant who enters into a residential rental agreement that the premises are the subject of a pending foreclosure action and that, in the event the owner is unable to redeem the premises, the tenant may be required to vacate the premises upon 30 days' notice, or upon such other notice as is required by federal law, whichever is longer. The failure of the owner to provide notice under this subsection shall not affect or invalidate the foreclosure action.

(d) All proceedings shall be before the superior judge alone, and trial shall be without jury.

§ 4933. NOTICE TO COMMISSIONER OF BANKING, INSURANCE, SECURITIES, AND HEALTH CARE ADMINISTRATION

(a) When the mortgage holder files an action under subchapter 2 or 3 of this chapter to foreclose upon an owner-occupied dwelling house, the mortgage holder shall simultaneously file a notice of foreclosure with the commissioner of banking, insurance, securities, and health care

administration. The commissioner may require that the notice of foreclosure be sent in an electronic format. The notice of foreclosure shall include:

(1) the name and current mailing address of the mortgagor;

(2) the address of the property being foreclosed;

(3) the name of the current mortgage holder, along with the address and telephone number of the person or entity responsible for workout negotiations concerning the mortgage;

(4) the name of the original lender, if different;

(5) the name, address, and telephone number of the mortgage servicer, if applicable; and

(6) any other information the commissioner may require.

(b) The court clerk shall not accept a foreclosure complaint for filing without a certification by the plaintiff that the notice of foreclosure has been sent to the commissioner of banking, insurance, securities, and health care administration in accordance with subsection (a) of this section.

(c) Acceptance of a foreclosure complaint by the court clerk that, due to a good faith error or omission by the plaintiff or the clerk, does not contain the certification required in subsection (a) of this section shall not invalidate the foreclosure proceeding, provided that the plaintiff files the required notice with the commissioner within 10 days of obtaining knowledge of the error or omission.

§ 4934. SUPPLEMENTAL JUDGMENT JOINING PARTIES; RECORDING

At any time, without further notice or service on the purchaser or mortgagor or lienholder whose interest in the property being foreclosed first arose after the filing of the complaint in the town clerk's office, and upon filing certified copies of the deed, mortgage, or attachment with the clerk of the court by the plaintiff in the foreclosure action, any superior judge may sign a supplemental judgment specifically naming that party. Reference to the deed, mortgage, or lien and the supplemental judgment may be filed in the town clerk's office for record, and it shall have the same force and effect as though that person had been made a party defendant in the original action.

§ 4935. TAXES PAID BY MORTGAGEE

A tax assessed upon mortgaged real estate in this state may be paid by the mortgagee or assignee of the mortgage upon such property. The amount so paid, including costs, if any, shall thereupon be added to and become a part of the debt or obligation secured by such mortgage.

§ 4936. FORECLOSURE OF REAL OR PERSONAL PROPERTY

A mortgage or a security agreement constituting a lien on both real and personal property to secure the payment of a debt, whether evidenced by one or more instruments, may be foreclosed in an action under subchapter 2 or 3 of this chapter.

§ 4937. ATTORNEY'S FEES

When a mortgage contains an agreement on the part of the mortgagor to pay the mortgagee, in the event of foreclosure, the attorney's fees incident thereto, and claim is made therefor in the complaint, upon hearing, the court in which the complaint is brought shall allow such fee as in its judgment is just.

§ 4938. EFFECT ON BANKRUPTCY PROCEEDINGS

Nothing in this chapter shall be construed to supersede any provision of Title 11 of the United States Code.

§ 4939. APPEALS

When a judgment is for the foreclosure of a mortgage, permission of the court shall be required for review.

Subchapter 2. Strict Foreclosure

§ 4941. DECREE FORECLOSING EQUITY OF REDEMPTION; WRIT OF POSSESSION

(a) In any action for foreclosure with regard to any mortgage encumbering property, the court may, if no sale is requested by the plaintiff or ordered by the court pursuant to subsection (b) of this section, issue a judgment and decree of foreclosure without requiring a judicial sale of the premises.

(b) In an action brought under subsection (a) of this section, any party may by written motion request, or the court in its discretion may order, that

property be sold at a judicial foreclosure sale, whether or not the mortgage contains a power of sale.

(c) No decree foreclosing the right of redemption without sale shall be issued absent a finding by the court that there is no substantial value in the property in excess of the mortgage debt found by the court to be due to the plaintiff and any other lienholder, plus assessed but unpaid property taxes due on the property. The court shall include in its order a summary of the evidence upon which its finding is based.

(d) If a decree is issued foreclosing the right of redemption without sale, the time of redemption shall be six months from the date of the decree unless a shorter time is ordered, or the mortgagor and mortgagee plaintiff agree to a shorter period. The court shall fix the period of redemption taking into consideration whether there is value in the property in excess of the mortgage debt and debt owed to junior lienholders, any assessed but unpaid property taxes, the condition of the property, and any other equities.

(e) If the premises are not redeemed agreeably to the decree, the clerk of the court shall issue a writ of possession at the plaintiff's request. Such writ shall have the same force and effect and be executed in the same manner as similar writs issued after judgment by a court of law in ejectment proceedings. Where the premises are occupied by a residential tenant, the writ shall be served on the tenant, and the plaintiff shall be placed in possession of the

property without further proceedings no sooner than 30 days after the writ is served, or upon such other time as is required by federal law, whichever is longer.

(f)(1) In an action for foreclosure under this section, if a lien or interest in such realty is held by any person or federal agency which may not be foreclosed by strict foreclosure pursuant to federal law, the court shall proceed in accordance with subchapter 3 of this chapter.

(2) In an action for foreclosure, if a lien or interest in such realty is held by any person or federal agency which may not be foreclosed by strict foreclosure pursuant to federal law, a decree may be entered providing for such period of redemption as the court may determine, and providing for a sale of the mortgaged premises at the conclusion of such period if the premises are not redeemed, and for the time, manner, and notice of sale, if required, and the application of any proceeds.

(g) In an action for foreclosure under this section, where the time of redemption has expired, the party obtaining the foreclosure shall cause a certified copy of the judgment and the certificate of nonredemption to be recorded in the office where by law a deed of the lands is required to be recorded.

(h) If the plaintiff complies with subsection (g) of this section, the expiration of the right of redemption under the decree shall foreclose the

interest of subsequent purchasers, mortgagees, or attaching creditors whose interest in the property being foreclosed first arose after the filing of the complaint for foreclosure in the land records as provided in section 4932 of this chapter.

Subchapter 3. Foreclosure by Judicial Sale

§ 4945. JUDICIAL SALE FORECLOSURE

(a) All liens and mortgages affecting real property may, on the written motion of any party to any suit for foreclosure of such liens or mortgages, or at the discretion of the court before which the foreclosure proceedings are pending, be foreclosed by a judicial foreclosure sale, even if the mortgage does not contain a sale provision instead of a strict foreclosure.

(b) In an action for foreclosure, if a lien or interest in such realty is held by any person or federal agency which may not be foreclosed by strict foreclosure pursuant to federal law, a decree may be entered providing for such period of redemption as the court may determine, and providing for a sale of the mortgaged premises at the conclusion of such period if said premises are not redeemed, and for the time, manner, and notice of sale, if required, and the application of the proceeds therefrom.

§ 4946. PROCEDURE

(a) Order for judicial sale. Upon entry of a decree of judicial sale foreclosure, the court shall order that the mortgaged property be sold at a

public sale if it is not redeemed within the time period allowed by the court. The public sale shall be conducted on or before six months from the expiration of the last redemption date set forth in the decree unless extended by the court or stayed by a bankruptcy filing. The time and manner of the sale shall be specified in the notice of sale required by section 4952 of this title.

(b) Time for redemption; owner-occupied dwelling house or farmland. If a decree is made foreclosing the right of redemption by judicial sale with respect to farmland or a dwelling house that is occupied by the owner as his or her principal residence at the time the plaintiff applies for entry of judgment, the time of redemption shall be established by the court and shall be six months from the date of the decree, unless a shorter time is ordered by the court. The court shall fix the period of redemption taking into consideration whether there is value in the mortgaged property in excess of the mortgage debt and debt owed to junior lienholders, any assessed but unpaid property taxes, the condition of the mortgaged property, and any other equities. No sale of a dwelling house when occupied by the owner as his or her principal residence at the time the plaintiff applies for entry of judgment may take place within seven months of service of the foreclosure complaint, unless the court orders a shortened redemption period pursuant to this section or the plaintiff and the mortgagor mutually agree to a shorter period after commencement of the action to foreclose the mortgage.

(c) Time for redemption; other property. If a decree is made foreclosing the right of redemption by judicial sale with respect to any property other than farmland or a dwelling house that is occupied by the owner as his or her principal residence at the time the plaintiff applies for entry of judgment, the redemption period shall be eliminated or reduced by the court to no more than 30 days.

(d) Writ of possession. Upon expiration of the period of redemption in the decree, other than farmland or a dwelling house when currently occupied by the owner as his or her principal residence, if the mortgagor or the mortgagor's successors, heirs, or assigns have not redeemed the mortgage, any remaining rights of the mortgagor to possession shall terminate, and the clerk of the court shall issue a writ of possession at the plaintiff's request and upon court approval. In the case of farmland or a dwelling house currently occupied by the owner as his or her principal residence when the period of redemption in the decree expires, the clerk shall issue a writ of possession at the plaintiff's request and upon approval of the court. Such writ shall have the same force and effect and be executed in the same manner as similar writs issued after judgment by a court of law in ejectment proceedings. Where the mortgaged property is occupied by a residential tenant, the writ shall be served on the tenant, and the plaintiff shall be placed in possession of the mortgaged property without further proceedings no sooner than 30 days after

the writ is served, or upon such other time as is required by federal law, whichever is longer.

§ 4947. FORECLOSURE OF EQUITY OF REDEMPTION; RECORDING

(a) In an action for foreclosure under this subchapter where the time of redemption has expired, the party obtaining the foreclosure shall cause a certified copy of the judgment and the certificate of nonredemption to be recorded in the office where by law a deed of the lands is required to be recorded.

(b) If the plaintiff complies with subsection (a) of this section, the expiration of the right of redemption under the decree shall foreclose the interest of subsequent purchasers, mortgagees, or attaching creditors whose interest in the property being foreclosed first arose after the filing of the complaint for foreclosure in the land records as provided in section 4932 of this chapter.

§ 4948. REINSTATEMENT OF MORTGAGE PRIOR TO SALE

(a) Upon agreement of the mortgagor and mortgagee, the mortgagor may reinstate or modify the loan after the expiration of the redemption period set forth in the judgment order but before the public sale. Upon reinstatement or modification of the loan, the mortgagee shall execute a waiver of foreclosure and, after receiving court approval, record it in the land records of the city or town where the mortgaged property lies. Upon recording, the waiver of

foreclosure shall operate to terminate the foreclosure and restore the parties and all junior lienholders to the positions they held prior to the filing of the foreclosure, as amended by any modification agreement between the mortgagor and mortgagee.

(b) The following form of waiver of foreclosure may be used. Nothing herein shall be construed to prevent the use of other forms or to prevent alteration of the form as circumstances require:

WAIVER OF FORECLOSURE

MORTGAGEE, holder of record of a mortgage deed dated _____, 20____ and of record in Book ___ at Page _____ of the City/Town of _____ Land Records ("the Mortgage") executed and delivered to it by MORTGAGOR(S) covering real estate located in the Town of _____, Vermont hereby acknowledges and agrees:

1. *For the breach of the condition of the Mortgage, MORTGAGEE initiated a foreclosure action against MORTGAGOR by Complaint for Foreclosure dated _____, 20____ which is of record in Book _____at Page _____ of the Town of _____ Land Records.*
2. *That MORTGAGOR(S) has/have now cured the default and requested reinstatement of the Mortgage and the MORTGAGEE agrees to reinstate the mortgage, as amended by any modification agreement between the mortgagor and mortgagee.*

NOW THEREFORE, MORTGAGEE does hereby acknowledge that it has received payment of the arrearages due it under the Mortgage and the promissory note which it secures, and in consideration thereof, does hereby waive the above-entitled foreclosure action and release unto said MORTGAGOR, his/her/its heirs, personal representatives, successors, and assigns, all claims asserted in the foreclosure action. THE MORTGAGE IS NOT DISCHARGED.

This waiver is given pursuant to 12 V.S.A. § 4948. This waiver shall have no effect on the Mortgage referenced above other than to reinstate the same, as amended by any agreement between the mortgagor and mortgagee, and the rights of all parties named in the foreclosure action, as well as the rights of any junior lienholders, remain intact, except as amended by any agreement between the mortgagor and mortgagee, as if no foreclosure had been commenced.

IN WITNESS WHEREOF, the said MORTGAGEE has caused this instrument to be executed by its duly authorized agent this ____ day of _____ , 20___.

MORTGAGEE

By: _____

Its Duly Authorized Agent

Printed Name: _____

State of _____

County of _____

At _____ in said County and State, then personally appeared the above-named duly authorized agent who acknowledged the foregoing waiver of foreclosure to be his/her free act and deed and the free act and deed of the MORTGAGEE.

Before me, _____

Printed Name:_____

Notary Public

My Commission expiration _____

****

The request for waiver of foreclosure is SO ORDERED this ____ day of _____, 20 ____.

_____

Superior Court Judge

§ 4949. MORTGAGOR'S REDEMPTION PRIOR TO JUDICIAL SALE

(a) The mortgagor is entitled to redeem the premises at any time prior to the public sale by paying the full amount due under the judgment order and such other amounts, including costs and expenses of sale, accruing postjudgment as agreed upon by the mortgagor and mortgagee or ordered by the court.

(b) Upon agreement of the parties, the mortgagor may redeem the premises at any time prior to the public sale by paying less than the full amount due under the judgment order. In such case, the parties to the foreclosure shall, with court approval, amend the redemption amount. Upon payment of the amended redemption amount, the court shall issue a Supervening Certificate of Redemption as evidence that the judgment amount was redeemed. Upon the recording of a certified copy of the Supervening Certificate of Redemption in the land records, the foreclosed mortgage shall be of no further force or effect and any junior lienholder shall return to the position it held prior to the filing of the foreclosure.

(c) The redemption right established by this section shall be in addition to the redemption right set forth in the decree.

§ 4950. [Reserved.]

§ 4951. JUDGMENT VACATED

Notwithstanding any provision to the contrary in this chapter or other law, the mortgagor and mortgagee may stipulate and move to vacate the judgment at any time prior to the public sale. If the court approves the motion, the judgment shall be vacated and all parties, the property, and any lienholders of record in the land records will be restored to their original positions as if no foreclosure had been commenced and no judgment entered. Notwithstanding

any other provision of law, this section will apply retroactively and apply to orders to vacate in existence on the effective date of this section.

§ 4952. SALE PROCEDURES

(a) Generally. If the mortgaged property is not redeemed, the plaintiff shall sell the mortgaged property in accordance with this section, complying with all court orders and applicable power of sale provisions.

(b) Notice of sale; publication. Notice of sale shall be published once in each of three successive weeks in a newspaper of general circulation in the town where the land lies, the first publication to be no fewer than 21 days before the day of sale.

(c) Notice of sale; service. A copy of the notice of sale shall be mailed by first class mail, postage prepaid, to all parties who appeared in the foreclosure action or to their attorneys of record. If the mortgagor has not appeared in the foreclosure action, a copy of the notice of sale shall also be mailed by first class mail, postage prepaid, to the mortgagor at the mortgagor's last known address. The notice of sale shall include the specific date, time, and location of the sale and shall be mailed after the last date of redemption in the decree but no fewer than 30 days before the date of the sale.

(d) Notice of sale; waiver. Any party entitled to be sent notice under this section may, either before or after the foreclosure sale, waive the party's right to receive notice, in which case no foreclosure sale shall be invalid or

ineffectual to foreclose that party's rights under the mortgage. This subsection shall not apply to farmland or to a dwelling house unless approved by the court at or before the confirmation of sale.

(e) Notice of sale; form. The following form of notice of sale may be used and may be altered as circumstances require, but nothing herein shall be construed to prevent the use of other forms:

By virtue and in execution of the Power of Sale contained in a certain mortgage given by _____ to _____ dated _____ and recorded in Volume _____, Page _____ of the land records of the municipality of _____, of which mortgage the undersigned is the present holder (if by assignment, or in any fiduciary capacity, give reference) for breach of the conditions of said mortgage and for the purpose of foreclosing the same will be sold at Public Auction at _____ (place) at _____ o'clock , ___M. on the _____day of _____, 20____all and singular the premises described in said mortgage,

(In case of partial releases, state exceptions.)

To wit: (Legal description of the premises.)

Terms of sale: (State here the amount, if any, to be paid in cash by the purchaser at the time of the sale, and the schedule for payment of the balance and other terms of sale.)

The mortgagor is entitled to redeem the premises at any time prior to the sale by paying the full amount due under the mortgage, including the costs and expenses of the sale.

Other terms to be announced at the sale or inquire at _____

Signed: _____

Mortgagee (may be signed by mortgagee's attorney)

Dated: _____, 20____.

§ 4953. CONDUCT AND LOCATION OF SALE

(a) Location. The sale shall be held at the mortgaged property unless another place for sale is directed by the court. At the sale, the mortgaged property shall be sold to the highest bidder in conformance with the terms of sale set forth in the notice of sale.

(b) Adjournments. The public sale may be adjourned one or more times for a total time not exceeding 30 days, without further court order, and without publication or service of a new notice of sale, by announcement of the new sale date to those present at each adjournment or by posting notice of the adjournment in a conspicuous place at the location of the sale. Notice of the new sale date shall also be sent by first class mail, postage prepaid, to the mortgagor at the mortgagor's last know address at least five days before the new sale date. The public sale may be adjourned for a period of time in excess

of 30 days by agreement of the mortgagor and mortgagee or by order of the court.

(c) Permitted bidders. Any person may bid at the sale. All bidders, except for the mortgagee plaintiff or designee, shall meet the requirements set forth in the notice of sale in order to bid at the sale.

§ 4954. PROCEDURE FOLLOWING SALE

(a) Confirmation order. Following the sale, the plaintiff shall file with the court a report on oath of the sale, together with a request for confirmation of the sale, which shall include an accounting of the sale proceeds, and a proposed order confirming the sale. Copies of the report of the sale and request for confirmation shall be mailed by first class mail, postage prepaid, to all parties who appeared in the foreclosure action or to their attorneys of record and to the mortgagor at the mortgagor's last known address. The court may issue an order of confirmation of the sale without hearing, unless the court in its discretion determines that a hearing is necessary. The order of the court confirming the sale shall be conclusive evidence as against all persons that the foreclosure and sale were conducted in accordance with this section.

(b) Transfer of title. The confirmation order shall be recorded in the land records of the town where the mortgaged property is located and shall transfer title to the mortgaged property to the purchaser upon recording.

(c) Disbursement of proceeds. In the event that the proceeds of the sale, after first deducting the reasonable expenses incurred in making the sale, exceed the amounts due to the plaintiff at the time of sale, the confirmation order shall provide for the payment of the surplus to other lienholders of record in the order of the priority of their liens. In the event that the proceeds of the sale exceed the amount due to the plaintiff and the amount due to the other defendants, the excess shall be paid to the defendant mortgagor.

(d) Deficiency. The plaintiff may request a deficiency judgment in the foreclosure complaint. The court may assess a judgment against the mortgagor for the deficiency if the proceeds of sale are insufficient to meet the expenses incurred in making the sale and the amount due to the plaintiff. If the plaintiff seeks a deficiency judgment, it shall be requested prior to issuance of the confirmation order. Failure to request a deficiency judgment shall be deemed a waiver of any deficiency judgment against a mortgagor.

(e) Failure of sale; resale. In the event that the purchaser fails to pay the balance of the purchase price according to the terms of the sale, then, upon the request of the plaintiff, the down payment shall be forfeited and the court shall issue an order vacating the confirmation order. Upon motion and after hearing, the court may issue a confirmation order to the second highest bidder.

Subchapter 4. Foreclosure by Nonjudicial Sale

§ 4961. POWER OF NONJUDICIAL SALE

Whether or not a power of sale is contained in a mortgage relating to any property, except for farmland or a dwelling house owned by a natural person, instead of a suit and decree of foreclosure, the mortgagee may, upon breach of mortgage condition, foreclose upon the property without first commencing a foreclosure action or obtaining a foreclosure decree by complying with the terms of this subchapter. No sale under and by virtue of a nonjudicial power of sale shall be valid and effectual to foreclose the mortgage unless the conditions of this subchapter are complied with.

§ 4962. NOTICE OF INTENTION TO FORECLOSE

(a) At least 30 days prior to service of a notice of sale pursuant to subsection 4952(c) of this title, notice of intention to foreclose in a writing complying with this section shall be sent to the mortgagor by registered or certified mail at his or her last known address.

(b) The writing required by this section shall state, in a manner calculated to make the mortgagor aware of the situation:

(1) the mortgage to be foreclosed;

(2) the mortgage condition claimed to have been breached;

(3) that the mortgagee has accelerated maturity of the debt secured by the mortgage, if that is the case;

(4) the amount to be paid or other action necessary to cure, and the time within which the cure must take place, which shall be not less than 30 days after the date of the notice of intention to foreclose;

(5) the intention of the mortgagee to foreclose by exercising the power of sale contained in the mortgage, if the breach of the mortgage condition is not cured within the time and in the manner specified in the notice; and

(6) that the mortgagor will be entitled to be sent notice of the foreclosure sale at least 60 days prior to the sale and to redeem the mortgaged property at any time prior to the sale by paying the full amount due under the mortgage, including the costs and expenses of the sale.

(c)(1) The following notice of intent to foreclose form may be used and may be altered as circumstances require:

PLEASE TAKE NOTICE that you have defaulted under Loan No. _____ by [mortgage condition breached] required by your Promissory Note dated _____, 20___. This default also constitutes a breach of the Mortgage, dated _____, 20___, recorded in Volume ___ at Page ___ of the Land Records, which secures the Loan. As a result of your default, we have accelerated the maturity of all indebtedness due on the Loan and secured by the Mortgage, totaling $_____ as of today's date. In order to cure this default, you must pay to us on or before _____ [a date not less than thirty (30) days after the date of this Notice] the sum of $_____, plus

interest at the rate of $_____ per day to the date of payment. If you do not cure this default by making the payments required, it is our intention to foreclose by exercising the power of sale contained in the above Mortgage. You will be sent notice of the foreclosure sale at least sixty (60) days prior to the sale, and you will be entitled to redeem your interest in the mortgaged property at any time prior to the sale by paying the full amount due under the Mortgage, including the costs and expenses of the sale. If you do not cure the default or redeem your interest, your ownership of the mortgaged property will be terminated.

(2) This subsection shall not be construed to prevent the use of other forms except that all notices shall comply with the provisions of subsection (b) of this section.

§ 4963. PUBLICATION OF NOTICE OF SALE

Notice of a sale conducted pursuant to this subchapter shall be published once in each of three successive weeks, in a newspaper of general circulation in the town where the land lies, the first publication to be not less than 21 days before the day of sale.

§ 4964. RECORDING

The mortgagee shall record the notice of sale in the land records of the town or city where the land lies not less than 60 days prior to the sale. The filing of the notice of the sale shall be in lieu of filing a foreclosure complaint

under section 4932 of this title and shall be sufficient notice of the pendency of the nonjudicial foreclosure by power of sale to all persons who acquire any interest or lien in the mortgaged property between the dates of recording the notice of sale and recording the foreclosure deed. Without further notice or service, those persons shall be bound by the power of sale and the foreclosure deed and shall be foreclosed from all rights or equity in the mortgaged property.

§ 4965. SERVICE; FORM

(a)(1) In all cases, unless service is waived under subsection 4966(g) of this title, a copy of the notice of sale shall be served on the mortgagor or his or her representative in interest by:

(A) sending the notice by registered or certified mail addressed to the mortgagor or such representative at his or her last known address, or to such person and address as may be agreed upon in said mortgage, at least 60 days before said sale; or

(B) serving the notice in any manner authorized by the Vermont Rules of Civil Procedure.

(2) As used in this section, "mortgagor" shall mean the mortgagor or the then record owner of the mortgaged property.

(b)(1) A copy of the notice of sale shall be sent to any tenant lawfully occupying the mortgaged property and to any person having a recorded

interest in the mortgaged property of record which will be foreclosed by the sale, provided that the interest is recorded in the applicable land records prior to the recording of the notice of sale. The notice required by this subsection shall be sent not less than 60 days before the sale. Notice to a tenant shall be sufficient if mailed to the tenant by first class mail at the address specified in the lease, if recorded, or to the occupant at the address of the mortgaged property, if the lease is not recorded.

(2) Compliance with this subsection shall be sufficient with respect to persons entitled to receive notice under subdivision (1) of this subsection, and the failure to give additional notice shall not be grounds to invalidate the sale. Any mortgagor or junior lienholder who refuses to accept or claim mailed or served notice or who frustrates attempts by the mortgagee to give notice of the sale by failing to give or leave a forwarding address or by other acts or omissions shall be deemed to be notified of the sale, provided that such mortgagee shall have made a good faith effort to provide such notice.

(c)(1) The following notice of sale form may be used and may be altered as circumstances require:

By virtue and in execution of the Power of Sale contained in a certain mortgage given by _____ to _____ dated _____ and recorded in Volume _____ Page _____ of the land records of the town of _____, of which mortgage the undersigned is the present holder,

(if by assignment, or in any fiduciary capacity, give reference) for breach of the conditions of said mortgage and for the purpose of foreclosing the same will be sold at Public Auction at _____ o'clock, ____ M. on the _____ day of _____ 20____, (place) _____ at the mortgaged property.

To wit: (Legal description of the mortgaged property and in case of partial releases, state exceptions.)

Terms of sale: (State here the amount, if any, to be paid in cash by the purchaser at the time of the sale, and the schedule for payment of the balance.)

The mortgagor and all junior lienholders are entitled to redeem the mortgaged property at any time prior to the sale by paying the full amount due under the mortgage, including the costs and expenses of the sale.

Other terms to be announced at the sale or inquire at _____

(Signed) _____

Mortgagee (may be signed by mortgagee's attorney)

_____ 20__

(2) This subsection shall not be construed to prevent the use of other forms. A notice of sale shall be sufficient if it fully sets forth the date, time, and place of sale; the town, county, street or highway and street number, if any, of the mortgaged premises; the date of the mortgage; the volume and page of the recording of the mortgage; the terms of the sale; the statement language

required by subdivision (d)(1) of this section; and notice of the right to redeem.

(d)(1) The notice of the sale shall include the following statement: "The mortgagor and all junior lienholders are hereby notified that at any time before the foreclosure sale, the mortgagor and all junior lienholders have a right to petition the civil division of the superior court for the county in which the mortgaged property is situated, with service upon the mortgagee, and upon such bond as the court may require, to enjoin the scheduled foreclosure sale. Failure to institute such petition and complete service upon the foreclosing party, or the party's agent, conducting the sale prior to sale shall thereafter bar any action or right of action of the mortgagor or any junior lienholder based on the validity of the foreclosure, the right of the mortgagee to conduct the foreclosure sale, or compliance by the mortgagee with the notice requirements and other conditions of this section. An action to recover damages resulting from the sale of the mortgaged property on the date of the sale may be commenced at any time within one year following the date of the sale, but not thereafter."

(2) The mortgagor and all junior lienholders shall have the rights contained in the notice provided for in this subsection.

§ 4966. CONDUCT AND LOCATION OF SALE

(a) The sale shall be held at the mortgaged property except that it may be held elsewhere if agreed to in writing by the mortgagor and the mortgagee not

less than 60 days nor more than 90 days before the sale. At the sale, the mortgaged property shall be sold to the highest bidder in conformance with the terms of sale set forth in the foreclosure notice.

(b) The mortgagor shall be entitled to redeem the mortgaged property at any time prior to the sale by paying to the mortgagee the full amount due under the mortgage, including the costs and expenses of the sale.

(c) The public sale may be adjourned one or more times for a total time not exceeding 60 days by announcement of the new sale date to those present at each adjournment or by posting notice of the adjournment in a conspicuous place at the location of the sale. Written notice of the new sale date shall also be given by first class mail, postage prepaid, to any person who received notice of the sale pursuant to section 4965 of this title.

(d) Any person may bid at the sale. All bidders, except for the mortgagee plaintiff or designee, shall meet the requirements set forth in the notice of sale in order to bid at the sale.

(e) In the event that the proceeds of sale, after first deducting the reasonable expenses incurred in making the sale, exceed the amounts due to the mortgagee at the time of sale, the surplus shall be paid to other lien holders of record in the order of the priority of their liens. In the event that the proceeds of sale exceed the amount due to the mortgagee and the amounts due to the other lien holders, the excess shall be paid to the mortgagor. The

mortgagee or person conducting the sale may interplead any sale proceeds in excess of the indebtedness and expenses secured by the mortgage in the event there are any liens of record against the real estate.

(f) This section shall not preclude the mortgagee from maintaining a subsequent action against the mortgagor for any deficiency.

(g) Any party entitled to be sent notice under this section may, either before or after the foreclosure sale, waive the party's right to receive notice, in which case no foreclosure sale shall be invalid or ineffectual to foreclose that party's rights under the mortgage. A waiver of notice authorized or validated under this section shall be recorded in the land records in the town or city where the property is located.

§ 4967. RECORDING FOLLOWING SALE

(a) Within 90 days after the sale, the mortgagee selling pursuant to the power shall cause the foreclosure deed and an accompanying affidavit to be recorded in the land records of the town where the property is situated. The affidavit setting forth fully and particularly the mortgagee's acts with respect to the sale of the mortgaged property, including the dates that notices of the sale were published, shall set forth facts showing that no person in interest is in the military service as defined in the Service Members Civil Relief Act of 2003. The affidavit or a duly certified copy thereof shall be admissible in evidence on the issue of whether the power of sale was duly executed.

(b) If the recording required by this section is prevented by an order or stay of any court, the time for such recording shall be extended until 10 days after the expiration or removal of such order or stay.

(c) If the recording required by this section is made more than 60 days after the sale, the affidavit shall state why the recording was not made earlier.

(d) Failure to record the deed and affidavit within the statutory period required by this subsection shall render the sale void and of no effect only as to liens or other encumbrances of record intervening between the day of the sale and the time of recording of said deed and affidavit.

(e) Correction of error. In case of an alleged error or omission in the affidavit, the court, on petition and after notice to interested parties, may validate the affidavit or authorize the recording of an affidavit amending, correcting or in substitution for an affidavit so recorded, and the affidavit so authorized to be recorded or a certified copy of the record thereof shall have the same effect and shall be admitted in evidence as if it had been recorded within the 90-day period required by this section.

§ 4968. TRANSFER OF TITLE

Title to the foreclosed mortgaged property under this section shall not pass to the purchaser until the time of the recording of the deed and affidavit. Upon such recording, title to the mortgaged property shall pass to the purchaser free and clear of all interests and encumbrances which do not have priority over

such mortgage.

§ 4969. FAILURE OF SALE; RESALE

If the purchaser does not pay the balance of the purchase price according to the terms of the sale, and at the option of the mortgagee, the down payment, if any, shall be forfeited and the foreclosure sale shall be void.

§ 4970. FORM AND EFFECT OF FORECLOSURE DEED

(a) The foreclosure deed shall be in substantially the following form:

_____ of _____ County, _____ State of _____, holder of a mortgage from _____ to _____ dated _____, recorded in _____ Book___ at Page___ of the Town of ____ Land Records, by the power conferred by said mortgage and every other power, for___ dollars paid, grant to _____, (complete mailing address) _____, of _____Street, Town (City) of _____, _____ County, State of _____, the premises conveyed by said mortgage.

(Here add acknowledgment)

(b) A deed substantially in the form set forth in subsection (a) of this section shall, when duly executed and delivered, have the force and effect of a deed in fee simple to the grantee, heirs, successors and assigns, to their own use, with covenants on the part of the mortgagee, for himself or herself, that, at the time of the delivery of such deed, the mortgagee was duly authorized to make sale of the mortgaged property; that in all of the mortgagee's

proceedings in the sale thereof, the mortgagee has complied with the requirements of this subchapter; and that the mortgagee will warrant and defend the same to the grantee, heirs, successors, and assigns against the lawful claims of all persons claiming by, from, or under him or her.

Sec. 2. REPEAL

12 V.S.A. chapter 163, subchapter 6 (foreclosure of mortgages) is repealed.

~~*Sec. 3. EFFECTIVE DATE; APPLICABILITY*~~

~~*This act shall take effect on July 1, 2012 and shall apply to any mortgage foreclosure proceeding instituted after that date.*~~

Sec. 3. [DELETED]

Sec. 4. 12 V.S.A. § 2903(b) is amended to read:

(b) A judgment which is renewed or revived pursuant to section 506 of this title shall constitute a lien on real property for eight years from the issuance of the renewed or revived judgment if recorded in accordance with this chapter. The renewed or revived judgment ~~and~~ shall relate back to the date on which the original lien was first recorded if a copy of the complaint to renew the judgment was recorded in the land records where the property lies within eight years after the rendition of the judgment, and the renewed or revived judgment is subsequently recorded in accordance with this chapter.

Sec. 5. 27 V.S.A. § 612(b) is amended to read:

(b) A purchaser shall have the right to terminate a binding contract for the sale of real estate if, prior to closing, the purchaser determines and gives written notice to the seller that land development has occurred on the real estate without a required municipal land use permit or in violation of an existing municipal land use permit. Following the receipt of written notice, the seller shall have 30 days, unless the parties agree to a shorter or longer period, either to obtain the required municipal land use permits or to comply with existing municipal land use permits. If the seller does not obtain the required municipal land use permits or comply with existing municipal land use permits, the purchaser may terminate the contract if, as an owner or occupant of the real estate, the purchaser may be subject to an enforcement action under ~~24 V.S.A. § 4496~~ 24 V.S.A. § 4454.

Sec. 6. EFFECTIVE DATES; APPLICABILITY

(a) Secs. 1 and 2 of this act shall take effect on July 1, 2012 and shall apply to any mortgage foreclosure proceeding instituted after that date.

(b) This section and Secs. 3, 4, and 5 of this act shall take effect on passage.

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