



# 127th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2015

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Legislative Document

No. 276

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H.P. 194

House of Representatives, February 5, 2015

### An Act Regarding Maine's Power of Sale Foreclosure Law

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Reference to the Committee on Judiciary suggested and ordered printed.

*Robert B. Hunt*  
ROBERT B. HUNT  
Clerk

Presented by Representative FREDETTE of Newport.

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

2 **Sec. 1. 14 MRSA §6203-A**, as repealed and replaced by PL 2009, c. 476, Pt.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

4 **§6203-A. Power of sale; procedure; notice; form**

5 **1. Power of sale.** Any holder of a mortgage on real estate that is granted by a  
6 corporation, partnership, including a limited partnership or a limited liability partnership,  
7 limited liability company or trustee of a trust and that contains a power of sale, as  
8 described in Title 33, section 501-A, or a person authorized by the power of sale, or an  
9 attorney duly authorized by a writing under seal, or a person acting in the name of the  
10 holder of such mortgage or any such authorized person, may, upon breach of condition  
11 and without action, do all the acts authorized or required by the power; except that a sale  
12 under the power is not effectual to foreclose a mortgage unless, previous to the sale,  
13 notice has been published once in each of 3 successive weeks, the first publication to be  
14 not less than 21 days before the day of the sale in a newspaper of general circulation in  
15 the town where the land lies and which notice must ~~prominently state the street address of~~  
16 ~~the real estate encumbered by the mortgage deed, if any, and the book and page number~~  
17 ~~of the mortgage, if any~~ comply with the requirements of subsection 3. This provision is  
18 implied in every power of sale mortgage in which it is not expressly set forth. For  
19 mortgage deeds executed on or after October 1, 1993, the power of sale may be used only  
20 if the mortgage deed states that it is given primarily for a business, commercial or  
21 agricultural purpose. ~~A copy of the notice must, at least 21 days before the date of the~~  
22 ~~sale under the power in the mortgage, be recorded in each registry of deeds in which the~~  
23 ~~mortgage deed is or by law ought to be recorded and must be served on the mortgagor or~~  
24 ~~its representative in interest, or may be sent by registered mail addressed to the mortgagor or~~  
25 ~~or the mortgagor's representative at the mortgagor's last known address, or to the person~~  
26 ~~and to the address as may be agreed upon in the mortgage, at least 21 days before the date~~  
27 ~~of the sale under the power in the mortgage.~~ Any power of sale incorporated into a  
28 mortgage is not affected by the subsequent transfer of the mortgaged premises from the  
29 corporation, partnership, including a limited partnership or a limited liability partnership,  
30 limited liability company or trustee of the trust to any other type of organization or to an  
31 individual or individuals. The power of sale may not be used to foreclose a mortgage  
32 deed granted by a trustee of a trust if at the time the mortgage deed is given the real estate  
33 is used exclusively for residential purposes, the real estate has 4 or fewer residential units  
34 and one of the units is the principal residence of the owner of at least 1/2 of the beneficial  
35 interest in the trust. If the mortgage deed contains a statement that at the time the  
36 mortgage deed is given the real estate encumbered by the mortgage deed is not used  
37 exclusively for residential purposes, that the real estate has more than 4 residential units  
38 or that none of the residential units is the principal residence of the owner of at least 1/2  
39 of the beneficial interest in the trust, the statement conclusively establishes these facts and  
40 the mortgage deed may be foreclosed by the power of sale. The method of foreclosure of  
41 real estate mortgages provided by this section is specifically subject to the ~~order of~~  
42 ~~priority~~ rights of junior mortgagees set out in section 6205.

43 **1-A. Notice to mortgagor and parties in interest; definition.** At least 21 days  
44 before the date of the sale under the power in a mortgage, a copy of the foreclosure notice

1 must be served on the mortgagor or its representative in interest, or may be sent by  
2 registered or certified mail addressed to the mortgagor or the mortgagor's representative  
3 at the mortgagor's last known address, or to the person and to the address as may be  
4 agreed upon in the mortgage or to the address as may be provided in writing by the  
5 mortgagee. In addition, a copy of the foreclosure notice must be sent by  
6 first-class mail, postmarked at least 21 days prior to the public sale, to all other parties in  
7 interest, except for parties in interest having a superior priority to the foreclosing  
8 mortgagee, at the address, if any, listed in the instrument evidencing the interest, and, if  
9 none is listed, to the registered agent for the party in interest, or to any other address that  
10 may be readily available to the mortgagee. For the purposes of this section, "parties in  
11 interest" means those parties having a claim to the real estate whose claim is recorded in  
12 the registry of deeds as of the time of recording the notice of foreclosure. Failure to  
13 notify any party in interest, other than the mortgagor, does not invalidate the foreclosure  
14 as to other parties in interest who were given notice.

15 **2. Notice to tenants; effect on title.** In addition to the notices provided pursuant to  
16 subsection ~~4~~ 1-A, the mortgagee shall provide a copy of the foreclosure notice to a  
17 residential tenant if the mortgagee knows or should know by exercise of due diligence  
18 that the property is occupied as a rental unit. Upon request from a mortgagee, the  
19 mortgagor or its representative in interest shall provide the name, address and other  
20 contact information for any residential tenant. Notice to a residential tenant may be  
21 served on the residential tenant by sheriff ~~or~~, may be sent by first class mail ~~and~~  
22 ~~registered mail~~ at the residential tenant's last known address or may be posted  
23 conspicuously at each entrance to the mortgaged premises. A residential tenant may not  
24 be evicted unless a mortgagee institutes an action for forcible entry and detainer pursuant  
25 to section 6001 at least 21 days after a mortgagee has served the notice required by this  
26 subsection. This subsection may not be construed to prohibit an action for forcible entry  
27 and detainer in accordance with section 6001 for a reason that is not related to a  
28 foreclosure sale. The failure to provide the notice required by this subsection does not  
29 affect the validity of the foreclosure sale.

30 **2-A. Recording foreclosure notice.** At least 21 days before the date of a sale under  
31 the power in a mortgage, a copy of the foreclosure notice must be recorded in each  
32 registry of deeds in which the mortgage deed is or by law ought to be recorded in order to  
33 provide constructive notice.

34 **3. Form of foreclosure notice.** A foreclosure notice must identify the mortgagee,  
35 the mortgagor, the terms of the public sale, the location, date and time of the public sale,  
36 the street address, if any, of the real estate encumbered by the mortgage, a description of  
37 the real estate encumbered by the mortgage, which may be incorporated by reference to  
38 the book and page number of an instrument of record containing an adequate legal  
39 description of the real estate, and the book and page number, if any, of the mortgage. The  
40 following form of foreclosure notice may be used and may be altered as circumstances  
41 require; but nothing herein may be construed to prevent the use of other forms.

42 FORM

43 Mortgagee's sale of real estate

1 By virtue of and in execution of the Power of Sale contained in a certain Mortgage  
2 Deed given by ..... (Mortgagor) to ..... (Mortgagee) dated .....  
3 and recorded in the ..... County Registry of Deeds, Book ....., Page ....., of  
4 which Mortgage the undersigned is the present holder, ..... (if by assignment, or  
5 in any fiduciary capacity give reference) ....., for  
6 breach of the conditions of said Mortgage and for the purpose of foreclosing the same  
7 there will be sold at Public Sale at ..... o'clock, ..... M. on the ..... day of .....  
8 20....., at ..... (Location of Public Sale), all and singular the premises described in said  
9 Mortgages, ....., (in case of partial releases state exceptions).

10 To wit: "(Description exactly as in of the real estate encumbered by the Mortgage,  
11 including all which may be incorporated by reference to title, restrictions, encumbrances,  
12 etc., as made in the Mortgage the book and page number of an instrument of record  
13 containing an adequate legal description of the real estate)".

14 Street Address: (Street address, if any, of the real estate encumbered by the  
15 Mortgage).

16 Terms of Sale: (State here the amount, if any, to be paid in cash by the purchaser at  
17 the time and place of the sale, and the time or times for payment of the balance or the  
18 whole as the case may be and any other terms or conditions relating to the sale).

19 Other terms to be announced at the sale.

20 Signed: .....  
21 (Present holder of Mortgage)

22 ..... 20.....

23 **4. Notice of sale.** A foreclosure notice of sale in subsection 3, published in  
24 accordance with this chapter or in accordance with the power in the mortgage together  
25 with such other or further notice, if any, as is required by the mortgage, along with notice  
26 to the mortgagor and parties in interest whose interest appears of record at the time that  
27 the foreclosure notice is recorded in the appropriate registry of deeds, is sufficient notice  
28 of the sale, and the premises are considered to have been sold, and the free and clear of  
29 the interest of the mortgagor and of all other parties in interest who have been given  
30 notice in compliance with subsection 1-A, except for parties in interest having a superior  
31 priority to the foreclosing mortgagee. The deed thereunder must convey the premises  
32 subject to and with the benefit of all restrictions, easements, improvements, outstanding  
33 tax titles, municipal or other public taxes, assessments, liens or claims in the nature of  
34 liens and existing encumbrances of record created prior to the mortgage, whether or not  
35 reference to such restrictions, easements, improvements, liens or encumbrances is made  
36 in the deed; but no purchaser at the sale is bound to complete the purchase if there are  
37 encumbrances, other than those named in the mortgage and included in the notice of the  
38 sale, that are not stated at the sale and included in the seller's contract with the purchase  
39 or foreclosure notice. Any other party in interest having a claim to the real estate whose  
40 claim is not recorded in the registry of deeds as of the time of recording the foreclosure  
41 notice need not be given notice, and any such party has no claim against the real estate  
42 after completion of the public sale, in accordance with Title 33, section 501-A. The  
43 interests of parties in interest having a superior priority are not affected by the  
44 foreclosure.

1           **5. Public sale.** At the completion of a public sale pursuant to this section, the  
2 foreclosing mortgagee shall execute a purchase and sale agreement with the highest  
3 bidder. The purchase and sale agreement may be assigned by the purchaser. If the  
4 highest bidder fails to perform on the agreement, the foreclosing mortgagee may execute  
5 a purchase and sale agreement with the next highest bidder. If the foreclosing mortgagee  
6 is the highest bidder or becomes the highest bidder by failure of a bidder to perform a  
7 purchase and sale agreement, a purchase and sale agreement need not be executed. A  
8 mortgagee may bid and may purchase any real estate sold at such sale, as long as the  
9 mortgagee is the highest bidder. If the real estate is sold for an amount in excess of the  
10 outstanding balance of the mortgage together with all interest and costs, said excess must  
11 be used to satisfy any other encumbrances on said property the claims of parties in  
12 interest whose interests were extinguished by the foreclosure in the order of priority that  
13 existed prior to the foreclosure and, after all said encumbrances of those parties in interest  
14 are satisfied together with all interest and costs, any excess then remaining must be paid  
15 to the mortgagor. If the mortgagor or any person holding an encumbrance such party in  
16 interest cannot be found after a diligent search, the money must be paid into the Superior  
17 Court in the county where the land lies for the benefit of the mortgagor or the holder of  
18 any such encumbrance.

19           **6. Continuation of sale.** A public sale pursuant to this section may be adjourned,  
20 for any time not exceeding 30 days and from time to time until a sale is made, by  
21 announcement to those present at each adjournment.

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

24           **§6203-B. Copy of notice; affidavit; recording; evidence**

25           The person selling mortgagee or its agent shall, within 30 days after the sale date of  
26 the delivery of the deed to the purchaser or the purchaser's agent, cause a copy of the  
27 notice as published and the person's an affidavit, fully and particularly stating the person's  
28 mortgagee's acts, or the acts of the person's principal or ward mortgagee's agent, along  
29 with a copy of the foreclosure notice as published, to be recorded in the registry of deeds  
30 for the county where the land lies. The affidavit must identify the mortgagee and  
31 mortgagor and include the street address, if any, of the real estate encumbered by the  
32 mortgage; a description of the real estate encumbered by the mortgage, which may be  
33 incorporated by reference to the book and page number of an instrument of record  
34 containing an adequate legal description of the real estate; the book and page number, if  
35 any, of the mortgage; the dates of publication and the name of the publishing entity of the  
36 public notice required by section 6203-A, subsection 1; the recipients and mailing or  
37 service dates of notices provided pursuant to section 6203-A, subsections 1 and 1-A and  
38 section 6203-E; the final purchaser under the agreement described in section 6203-A,  
39 subsection 5; and the date of delivery of the deed to the purchaser or the purchaser's  
40 agent. If the affidavit shows that the requirements of the power of sale and section  
41 6203-A, subsection 1 have in all respects been complied with, the affidavit or a certified  
42 copy of the record thereof must be admitted as evidence that the power of sale was duly  
43 executed. In case of an error or omission in the affidavit recorded as aforesaid, the  
44 Superior Court, on petition and after such notice as it may order may, if it determines

1 proper, authorize the recording of an affidavit amending, correcting or in substitution for  
2 an affidavit so recorded, and the affidavit so authorized to be recorded or a certified copy  
3 of the record thereof must have mortgagee or its agent shall record an amended affidavit  
4 correcting the error or omission and the amended affidavit so recorded has the same  
5 effect and must be admitted in evidence, as if it had been recorded within said 30 days,  
6 but such subsequent affidavit does not prejudicially affect any title or interest in land that  
7 may have arisen or have been created between the recording of the original and of the  
8 subsequent affidavit.

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

11 **§6203-D. Limitation of actions**

12 Actions on mortgage notes, whether witnessed or not, or on other obligations to pay a  
13 debt secured by a mortgage of real estate, to recover judgments for deficiencies after  
14 foreclosure by sale under a power contained in the mortgage, and actions on such notes or  
15 other obligations ~~which that~~ are subject to a prior mortgage, to recover the amount due  
16 thereon after the foreclosure sale of such prior mortgage under the power contained  
17 therein, ~~shall must~~, except as otherwise provided, be commenced within 2 years after the  
18 date of ~~the foreclosure sale~~ delivery of the deed to the purchaser or the purchaser's agent  
19 or, if the principal of the note or other obligation does not become payable until after the  
20 ~~foreclosure sale~~ date of delivery of the deed to the purchaser or the purchaser's agent, then  
21 within 2 years after the time when the cause of action for the principal accrues.

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

24 **§6203-E. Liability for deficiency on sale; necessity of notice; form; affidavit**

25 No action for a deficiency ~~shall may~~ be brought by the holder of the mortgage note or  
26 other obligation secured by mortgage of real estate after foreclosure by exercise of the  
27 power of sale, unless a notice in writing of the mortgagee's intention to foreclose the  
28 mortgage ~~shall have~~ has been served on the mortgagor or its representative in interest or  
29 the same has been sent by registered or certified mail with return receipt requested at its  
30 last address then known to the mortgagee, to such address as may be agreed upon in ~~said~~  
31 the mortgage, together with a naming of liability for the deficiency, in substantially the  
32 form below, at least 21 days before the date of the sale under the power in the mortgage,  
33 and an affidavit has been signed and sworn to, within 30 days after the ~~foreclosure sale~~  
34 date of delivery of the deed to the purchaser or purchaser's agent, of the mailing of ~~such~~  
35 the notice. A notice mailed as aforesaid ~~shall be~~ is a sufficient notice, and such an  
36 affidavit made within the time specified ~~shall be~~ is prima facie evidence in such action of  
37 the mailing of such notice.

38 The following form of notice and affidavit may be used and may be altered as  
39 circumstances require; but nothing herein ~~shall may~~ be construed to prevent the use of  
40 other forms:

41 FORM

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Notice of Intention to Foreclose and of Liability for Deficiency After Foreclosure of Mortgage

To: A. B. of ..... Street, Town of ..... County of ..... and State of .....

You are hereby notified in accordance with the statute, of my intention, on ..... (date of sale), to foreclose by sale under the Power of Sale for breach of condition, the Mortgage held by me on property located on ..... Street, Town of ....., County of ..... and State of ..... dated ..... and recorded in the ..... County Registry of Deeds, Book ....., Page ....., to secure a note (or other obligation) signed by you, for the whole, or any part, of which you may be liable to me and in case of a deficiency in the proceeds of the Foreclosure Sale to hold you liable for the whole or any part thereof still remaining unpaid.

Very truly yours,

.....

(Name of holder of said Mortgage)

Affidavit

I hereby certify on oath that on the ..... day of ..... 19  
20....., I mailed by registered or certified mail with return receipt requested, the notice a copy of which is hereinabove set forth, direct to such person or persons at the address therein named ~~which~~ that was the last address of such person known to me at the time of mailing or to such person or persons at the address therein named ~~which~~ that was the person and the address agreed upon in said Mortgage.

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

.....

Notary Public

In the event that the mortgagee is the purchaser at the public sale, any deficiency is limited to the difference between the fair market value of the premises at the time of the sale, as established by an independent appraisal, and the sum due the mortgagee with interest plus the expenses incurred in making the sale.





1 exercise of a power of sale, and ~~he or they~~ the mortgagee or the mortgagee's executors,  
2 administrators, successors or assigns or the agent or attorney of the mortgagee or the  
3 mortgagee's executors, administrators, successors or assigns may convey the same by  
4 proper deed or deeds to the purchaser or purchasers absolutely and in fee simple; and  
5 such sale shall forever ~~bar~~ bars the mortgagor and all persons claiming under it from all  
6 right and interest in the mortgaged premises, whether at law or in equity.

## 7 SUMMARY

8 This bill makes several changes to the power of sale mortgage foreclosure law in  
9 order to clarify certain provisions, improve notice to interested parties and ensure the  
10 marketability of titles. The bill makes the following changes to the power of sale  
11 mortgage foreclosure law.

12 1. It clarifies that the statutory power of sale applies to a mortgage granted by a  
13 limited liability partnership.

14 2. It provides cross-references between the power of sale laws in the Maine Revised  
15 Statutes, Title 14 and those in Title 33.

16 3. It requires that written notice of sale be sent to all parties in interest, not just the  
17 mortgagor.

18 4. It provides that a written foreclosure notice may be given to the mortgagor at an  
19 address provided in writing by the mortgagor to the mortgagee.

20 5. It defines "parties in interest."

21 6. It clarifies that written foreclosure notices may be delivered to the mortgagor by  
22 certified mail in addition to registered mail.

23 7. It provides that a copy of a notice of foreclosure may be provided to a residential  
24 tenant by posting the notice conspicuously at each entrance to the mortgaged premises.

25 8. It clarifies the information that must be included in a foreclosure notice of sale.

26 9. It provides that property may be sold free and clear of the interests of the  
27 mortgagor and other junior parties in interest who have been sent a foreclosure notice of  
28 sale, but specifies that parties in interest having a superior priority are not affected by the  
29 foreclosure.

30 10. It requires a foreclosing mortgagee to execute a purchase and sale agreement  
31 with the highest bidder at a public sale and provides that, if the highest bidder fails to  
32 perform on the agreement, the foreclosing mortgagee may execute an agreement with the  
33 next highest bidder.

34 11. It provides that a foreclosure sale may be adjourned for up to 30 days and from  
35 time to time until a sale is made.

1           12. It clarifies the information relating to a foreclosure that must be included in the  
2 recorded foreclosure affidavit.

3           13. It provides that a foreclosure affidavit must be recorded within 30 days after the  
4 date of delivery of the deed to the purchaser at the foreclosure sale rather than 30 days  
5 after the date of the sale.

6           14. It requires a mortgagee to correct an error in a recorded foreclosure affidavit.  
7 Current law provides for such an error to be corrected by the Superior Court. The bill  
8 retains the provision of current law that provides that the amended affidavit does not  
9 prejudicially affect any title or interest in land that may have arisen or have been created  
10 between the recording of the original and the amended affidavits.

11           15. It provides that, if a mortgagee is the purchaser at a public sale, any deficiency is  
12 limited to the difference between the fair market value of the premises at the time of the  
13 sale, as established by an independent appraisal, and the sum due the mortgagee with  
14 interest plus the expenses incurred in making the sale.

15           16. It provides that the assignment of a mortgage during the foreclosure process does  
16 not affect the validity of the foreclosure and, upon the recording of the assignment of  
17 mortgage, the assignee of the mortgage may complete the foreclosure.

18           17. It exempts individuals conducting mortgage foreclosure sales from auctioneer  
19 licensing requirements of Title 32. Current law exempts only individuals conducting  
20 foreclosure sales pursuant to a court order.

21           18. It provides that a public foreclosure sale must be held in the county where the  
22 real estate is situated rather than on or near the premises.