

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

**1. Power of sale.** Any holder of a mortgage on real estate that is granted by a corporation, partnership, including a limited partnership or a limited liability partnership, limited liability company or trustee of a trust and that contains a power of sale, as described in Title 33, section 501-A, or a person authorized by the power of sale, or an attorney duly authorized by a writing under seal, or a person acting in the name of the holder of such mortgage or any such authorized person, may, upon breach of condition and without action, do all the acts authorized or required by the power; except that a sale under the power is not effectual to foreclose a mortgage unless, previous to the sale, notice has been published once in each of 3 successive weeks, the first publication to be not less than 21 days before the day of the sale in a newspaper of general circulation in the town where the land lies and which notice must comply with the requirements of subsection 3. This provision is implied in every power of sale mortgage in which it is not expressly set forth. For mortgage deeds executed on or after October 1, 1993, the power of sale may be used only if the mortgage deed states that it is given primarily for one or more of the following purposes: business, commercial or agricultural. Any power of sale incorporated into a mortgage is not affected by the subsequent transfer of the mortgaged premises from the corporation, partnership, including a limited partnership or a limited liability partnership, limited liability company or trustee of the trust to any other type of organization or to an individual or individuals. The power of sale may not be used to foreclose a mortgage deed granted by a trustee of a trust if at the time the mortgage deed is given the real estate is used exclusively for residential purposes, the real estate has 4 or fewer residential units and one of the units is the principal residence of the owner of at least 1/2 of the beneficial interest in the trust. If the mortgage deed contains a statement that at the time the mortgage deed is given the real estate encumbered by the mortgage deed is not used exclusively for residential purposes, that the real estate has more than 4 residential units or that none of the residential units is the principal residence of the owner of at least 1/2 of the beneficial interest in the trust, the statement conclusively establishes these facts and the mortgage deed may be foreclosed by the power of sale. The method of foreclosure of real estate mortgages provided by this section is specifically subject to the rights of junior mortgagees set out in section 6205.

[PL 2015, c. 147, §1 (AMD).]

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

[PL 2015, c. 147, §1 (NEW).]

**2. Notice to tenants; effect on title.** In addition to the notices provided pursuant to subsections 1 and 1-A, the mortgagee shall provide a copy of the foreclosure notice to a residential tenant if the mortgagee knows or should know by exercise of due diligence that the property is occupied as a rental unit. Upon request from a mortgagee, the mortgagor or its representative in interest shall provide the name, address and other contact information for any residential tenant. Notice to a residential tenant may be served on the residential tenant by sheriff, may be sent by first class mail at the residential

tenant's last known address or may be posted conspicuously at each entrance to the mortgaged premises. A residential tenant may not be evicted unless a mortgagee institutes an action for forcible entry and detainer pursuant to section 6001 at least 21 days after a mortgagee has served the notice required by this subsection. This subsection may not be construed to prohibit an action for forcible entry and detainer in accordance with section 6001 for a reason that is not related to a foreclosure sale. The failure to provide the notice required by this subsection does not affect the validity of the foreclosure sale.

[PL 2015, c. 147, §1 (AMD).]

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

[PL 2015, c. 147, §1 (NEW).]

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

FORM

Mortgagee's sale of real estate

By virtue of and in execution of the Power of Sale contained in a certain Mortgage Deed given by ..... (Mortgagor) to ..... (Mortgagee) dated ..... and recorded in the ..... County Registry of Deeds, Book ....., Page ....., 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 there will be sold at Public Sale at ..... o'clock, ..... M. on the ..... day of ..... 20....., at ..... (Location of Public Sale), all and singular the premises described in said Mortgages, ....., (in case of partial releases state exceptions).

To wit: "(Description of the real estate encumbered by the Mortgage, which may be incorporated by reference to the book and page number of an instrument of record containing an adequate legal description of the real estate)".

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

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

Other terms to be announced at the sale.

Signed: .....

(Present holder of Mortgage)

..... 20.....

[PL 2015, c. 147, §1 (AMD).]

**4. Notice of sale.** A foreclosure notice published in accordance with this chapter or in accordance with the power in the mortgage together with such other or further notice, if any, as is required by the mortgage, along with notice to the mortgagor and parties in interest whose interest appears of record at the time that the foreclosure notice is recorded in the appropriate registry of deeds, is sufficient notice

of the sale, and the premises are considered to have been sold free and clear of the interest of the mortgagor and of all other parties in interest who have been given notice in compliance with subsection 1-A, except for parties in interest having a superior priority to the foreclosing mortgagee. The deed thereunder must convey the premises subject to and with the benefit of all restrictions, easements, improvements, outstanding tax titles, municipal or other public taxes, assessments, liens or claims in the nature of liens and existing encumbrances of record created prior to the mortgage, whether or not reference to such restrictions, easements, improvements, liens or encumbrances is made in the deed or foreclosure notice. Any other party in interest having a claim to the real estate whose claim is not recorded in the registry of deeds as of the time of recording the foreclosure notice need not be given notice, and any such party has no claim against the real estate after completion of the public sale, in accordance with Title 33, section 501-A. The interests of parties in interest having a superior priority are not affected by the foreclosure.

[PL 2015, c. 147, §1 (AMD).]

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

[PL 2015, c. 147, §1 (AMD).]

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

[PL 2015, c. 147, §1 (NEW).]

#### SECTION HISTORY

PL 1967, c. 396 (NEW). PL 1967, c. 424, §2 (NEW). PL 1967, c. 544, §37 (RP). PL 1971, c. 113 (AMD). PL 1987, c. 667, §14 (AMD). PL 1991, c. 134, §1 (AMD). PL 1991, c. 768, §§1,2 (AMD). PL 1993, c. 277, §§1,2 (AMD). PL 1993, c. 277, §5 (AFF). PL 1995, c. 106, §1 (AMD). PL 2009, c. 402, §16 (AMD). PL 2009, c. 476, Pt. B, §3 (RPR). PL 2009, c. 476, Pt. B, §9 (AFF). PL 2015, c. 147, §1 (AMD).

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