



Senate

General Assembly

File No. 433

February Session, 2000

Substitute Senate Bill No. 570

Senate, April 5, 2000

The Committee on Judiciary reported through SEN. WILLIAMS of the 29th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

An Act Concerning Foreclosure By Power Of Sale.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (a) If a mortgage of real property or other agreement
2 between the mortgagor and mortgagee authorizes the mortgagee to
3 foreclose by power of sale, the mortgagee, after the mortgagor's default
4 and after giving the mortgagor notice of intention to foreclose by power
5 of sale in accordance with section 2 of this act, may proceed to foreclose
6 the mortgagor's interest in such real property by exercising a power of
7 sale.

8 (b) The provisions of sections 1 to 9, inclusive, of this act shall not be
9 applicable to mortgages of residential real property. "Residential real
10 property" means real property containing at least one but not more than
11 four dwelling units all or a portion of which has been occupied as a
12 residence by the mortgagor, and containing no nonresidential uses,
13 except nonresidential uses by a mortgagor.

14 (c) Nothing in sections 1 to 9, inclusive, of this act shall prevent a
15 mortgagee from foreclosing a mortgage by strict foreclosure or judicial
16 sale as otherwise provided by law.

17 (d) Foreclosure by power of sale as provided for in subsection (a) of
18 this section shall not be permitted if a mortgagee has instituted an action
19 or has previously obtained a judgment for money damages on the
20 underlying obligation which is secured by the mortgage to be foreclosed
21 by power of sale.

22 (e) Foreclosure by power of sale is a bar to any then pending action or
23 any further action upon the mortgage debt, note or obligation against the
24 person or persons who are liable for the payment thereof, provided, if
25 the mortgage debt, note or obligation is secured by more than one
26 mortgage, foreclosure by power of sale of one of the mortgages shall not
27 be a bar to foreclosure by power of sale or otherwise of any of the other
28 mortgages.

29 (f) As used in sections 1 to 9, inclusive, of this act, "mortgagor"
30 includes the mortgagor's successors, assigns or any other person holding
31 title to the mortgaged real property under the mortgagor.

32 Sec. 2. (NEW) (a) Notice of intention to foreclose by power of sale shall
33 be in writing and shall be (1) served upon persons described in
34 subsection (c) of this section in the manner for service of process required
35 under chapter 896 of the general statutes or section 33-929 of the general
36 statutes to commence a civil action, and (2) recorded in the land records
37 of the town in which the real property subject to foreclosure is located.

38 (b) The notice shall state (1) the particular mortgage to be foreclosed
39 by power of sale, (2) the nature of the default claimed, (3) that the
40 mortgagee has accelerated maturity of the debt or that the maturity date
41 of the debt has occurred, (4) if the mortgage is being foreclosed for any
42 reason other than maturity of the debt, that the mortgagor has the right
43 to cure the default either under the mortgage or other agreements or

44 under sections 1 to 9, inclusive, of this act, the amount to be paid or other
45 action necessary to cure, and the time within which the cure is required
46 to take place, and (5) those holders of subordinate interests in the real
47 property, including subordinate leases, that the mortgagee determines
48 will not be affected by the foreclosure by power of sale.

49 (c) A notice of intention to foreclose by power of sale required by this
50 section shall be served upon the person specified by the mortgagor in the
51 mortgage or, if none is specified, to all mortgagors, but notice must be
52 served upon any person in possession of the real property from whom
53 the mortgagee has received a written demand to receive notice of
54 intention to foreclose by power of sale. Notice shall also be served upon
55 any holder of a subordinate interest or person in possession who, on the
56 date of recording of the notice, has an interest in the real property that
57 would be extinguished by a sale pursuant to the foreclosure. For
58 informational purposes only, the mortgagee shall also deliver by
59 certified mail, return receipt requested, a copy of the notice of intention
60 to foreclose to all mortgagees and lien holders, other than the holder of
61 an unrecorded real property tax lien, which are superior in right to the
62 mortgagee delivering such notice, provided the recipients of such notice
63 shall not have any right to participate in or receive further notices or
64 share in the proceeds of the foreclosure by power of sale which is the
65 subject of such notice.

66 (d) A person whose conveyance or encumbrance is executed or
67 recorded or whose interest is obtained by descent or otherwise after
68 notice of intention to foreclose is recorded is a subsequent purchaser or
69 encumbrancer. A subsequent purchaser or encumbrancer is bound by all
70 proceedings taken after the recording of such notice, to the same extent
71 as if such person's interest had preceded the recording of the notice and
72 as if such person had received actual notice of the proceedings. This
73 section shall be construed to apply to mechanic's liens and all other
74 inchoate liens, certificates of which are recorded after the notice is
75 recorded. A sale under sections 1 to 9, inclusive, of this act extinguishes

76 any right to claim an interest in the proceeds of the sale by the holder of
77 any mechanic's lien or other inchoate lien, for which a certificate is
78 recorded after recordation of the notice of intention to foreclose unless,
79 before the sale, that lienholder gives notice of such lienholder's claimed
80 priority to the foreclosing mortgagee and to all persons whom such
81 lienholder alleges are junior to such lienholder's interest and records that
82 notice of a claimed priority in the land records of the municipality in
83 which the real property subject to foreclosure is located. This section
84 shall not affect the priority of real property tax liens that are perfected
85 and continued in accordance with the provisions of chapter 205 of the
86 general statutes.

87 Sec. 3. (NEW) (a) Except as to a mortgage debt that is due and payable
88 as a result of the actual maturity date having occurred, not later than five
89 days before the sale under a power of sale, the mortgagor or the holder
90 of any subordinate mortgage or other interest securing a debt or
91 obligation may cure the mortgagor's default, prevent the sale or other
92 disposition of the real property and reinstate the mortgage by tendering
93 the payment or performance due under the mortgage as provided by
94 subsection (b) of this section.

95 (b) To the extent permitted by subsection (a) of this section, the
96 mortgagor or holder of any subordinate mortgage or other interest
97 securing a debt or obligation may cure the default and avoid operation of
98 any acceleration clause in the mortgage by (1) paying or tendering all
99 sums that would have been due at the time of tender in the absence of
100 any acceleration clause, (2) performing any other obligation the
101 mortgagor would have been bound to perform in the absence of any
102 acceleration clause, and (3) paying or tendering the costs of the
103 proceeding to foreclose reasonably incurred, including reasonable
104 attorneys' fees of the mortgagee.

105 (c) After default, a mortgagor or any holder of a subordinate
106 mortgage or other interest entitled to cure under this section may release

107 the right to cure in writing.

108 (d) At any time up to the time of the sale, a mortgagor may redeem
109 the mortgage by paying the entire indebtedness and other sums due
110 under the mortgage and all costs incurred in connection with the
111 proceeding to foreclose, including reasonable attorney's fees of the
112 mortgagee.

113 Sec. 4. (NEW) (a) The mortgagee, after the mortgagor's default and
114 upon compliance with sections 1 to 9, inclusive, of this act, may sell any
115 or all of the real property that is subject to the mortgage. The sale shall be
116 free and clear of the interest of the mortgage being foreclosed and of all
117 interests subordinate in right thereto except for those interests which the
118 mortgagee has determined will not be affected by the foreclosure as set
119 forth in the notice of foreclosure by power of sale which is recorded on
120 the land records in the town where the real property is located. The sale
121 may be by public sale or by private negotiation, by one or more
122 contracts, as a unit or in parcels, at any time and place, and on any terms
123 including sale on credit. The sale shall be conducted by a Commissioner
124 of the Superior Court appointed by the mortgagee who is not an
125 employee of the mortgagee. Every aspect of the sale, including the
126 method, advertising, time, place, deposit and terms shall be reasonable,
127 but a sale complying with the requirements of subsection (c) of this
128 section shall be deemed to be reasonable. The mortgagee shall give to
129 persons entitled to notice under subsection (c) of section 2 of this act
130 reasonable written notice of the time and place of any public sale or, if a
131 private sale is intended, reasonable notice of intention to enter into a
132 contract to sell the real property and of the time after which a private
133 disposition may be made. Such notice must also be sent to any other
134 person who, on the date of notice, has a recorded interest in the real
135 property that would be extinguished by the sale. The notice required by
136 this section shall be sent not less than five weeks prior to any sale
137 pursuant to sections 1 to 9, inclusive, of this act. Notice required by this
138 section shall either be served in accordance with subsection (a) of section

139 2 of this act or shall be sent by both certified mail and ordinary first class
140 mail. All notices required by this section shall be deemed given and
141 complete either upon being served in the manner required by subsection
142 (a) of section 2 of this act or three days after being posted in the United
143 States mail with postage prepaid. The sale may not be held until five
144 weeks after the sending of the notice required by this subsection. If the
145 mortgagee gives the notice required for exercising a power of sale under
146 this section as part of the notice of intention to foreclose by power of sale
147 under section 2 of this act, the minimum time required by this section
148 commences when the mortgagee gives such notice of intention to
149 foreclose by power of sale. The mortgagee may not purchase the real
150 property at a private sale.

151 (b) At the time of acceptance of a bid at a public sale, the successful
152 bidder, other than the foreclosing mortgagee, shall pay the required
153 deposit to the commissioner conducting the sale and execute and deliver
154 to the commissioner conducting the sale a contract to purchase the real
155 property, which may be a bond for deed. If the successful bidder fails to
156 make such deposit on acceptance, or to purchase the property within five
157 weeks after acceptance, the mortgagee may specifically enforce the
158 contract to purchase such property or resell the real property under
159 subsection (a) of this section. If the contract is not specifically enforced,
160 the deposit of such bidder may be retained or recovered as liquidated
161 damages. Any sums retained or recovered by the mortgagee shall be
162 applied to the payment of the debt secured by the mortgage in the same
163 manner as the proceeds of a completed sale.

164 (c) A sale under this section shall be deemed reasonable if: (1) The
165 person appointed to conduct the sale complies with all relevant notice
166 and sale provisions of sections 1 to 9, inclusive, of this act; (2) notice of
167 the sale, including the address of the property to be sold, the date, place
168 and time of the sale, a description of the current use of the property, the
169 amount of the deposit required at the sale, and the name and telephone
170 number of the commissioner conducting the sale, is posted on the

171 property not less than three weeks before the sale; and (3) the sale is
172 advertised in a newspaper of general circulation in the area of the sale at
173 least once in each of three successive weeks before the sale in
174 substantially the form customarily used for notices of judicial sale of real
175 property including the address of the property to be sold, the date, place
176 and time of the sale, a description of the current use of the property, the
177 amount of the deposit required at the sale and the name and telephone
178 number of the commissioner conducting the sale. A mortgagee, after
179 serving the notice required by section 2 of this act, is authorized to enter
180 upon the real property for the purpose of posting the notice of sale
181 described in this subsection.

182 (d) Before the recording of a deed delivered pursuant to subsection (b)
183 of section 8 of this act, the foreclosing mortgagee shall record an affidavit
184 on the land records in the town in which the property is located. Such
185 affidavit shall contain: (1) The authority of the individual executing the
186 affidavit; (2) the names of the original mortgagor and mortgagee, as
187 stated in the mortgage being foreclosed, as well as the volume and page
188 of the mortgage and the parties and recording information of the
189 assignment, if any, to the foreclosing mortgagee; (3) a statement that the
190 mortgagee has complied with the notice requirements of this section and
191 section 2 of this act, together with the names of the persons upon whom
192 notice has been served; (4) a statement that the mortgagor and any
193 holder of a subordinate mortgage or other interest failed to reinstate the
194 mortgage and that the mortgagor failed to redeem the property from the
195 mortgage being foreclosed; and (5) in the case of an individual
196 mortgagor, a statement setting forth facts showing that the mortgagor is
197 not in the military or naval service, provided a separate affidavit of such
198 nonmilitary service may be attached to the affidavit in lieu of such
199 statement.

200 (e) Before the recording of a deed delivered pursuant to subsection (b)
201 of section 8 of this act, the commissioner appointed to sell the real
202 property shall cause to be recorded on the land records in the town in

203 which the property is located an affidavit containing: (1) The name of the
204 foreclosing mortgagee by whom the commissioner was appointed and
205 the names of the original mortgagor and mortgagee as stated in the
206 mortgage being foreclosed, as well as the volume and page of the
207 mortgage, and the parties and recording information of the assignment,
208 if any, to the foreclosing mortgagee; and (2) a statement that the
209 commissioner appointed to conduct the sale in accordance with this
210 section has complied with all requirements for the sale of the real
211 property.

212 Sec. 5. (NEW) (a) Any person entitled to notice under subsection (c) of
213 section 2 of this act may apply to the Superior Court for protective orders
214 as provided in this section. The court shall set a date for a hearing on the
215 application in accordance with short calendar procedures and order
216 reasonable notice thereof to be given to all interested persons. If any
217 person entitled to notice is not a resident of this state, the notice shall be
218 given by personal service, registered or certified mail, publication or
219 such other method as the court directs. Notice must be given to persons
220 entitled to notice at least four days before the hearing. The entry fee,
221 procedures and rights to appeal shall be those provided for on
222 application for execution of ejectment after sale under section 6 of this
223 act. A sale or disposition of proceeds may be ordered or restrained on
224 terms and conditions determined by the court if it is established by the
225 mortgagor or any other person entitled to notice under subsection (c) of
226 section 2 of this act that: (1) The obligation is invalid; (2) the mortgagor is
227 not in default; (3) the mortgagee or other person exercising a power of
228 sale under section 4 of this act is not complying or is not likely to comply
229 with sections 1 to 9, inclusive, of this act; or (4) the proceeds of any sale
230 are not being applied or are not likely to be applied as required by
231 section 8 of this act.

232 (b) The mortgagee may apply to the Superior Court for any orders in
233 aid of or in support of the mortgagee's rights under sections 1 to 9,
234 inclusive, of this act, including, but not limited to, orders allowing the

235 mortgagee and other interested persons reasonable access to the
236 property for purposes of rehabilitation, preparation for sale, repair,
237 maintenance, inspection, posting of the sign and conducting the sale. The
238 court shall set a date for a hearing on the application in accordance with
239 short calendar procedures and order reasonable notice thereof to be
240 given to all interested persons. If any person entitled to notice is not a
241 resident of this state, the notice shall be given by personal service,
242 registered or certified mail, publication or such other method as the court
243 directs. Notice must be given to persons entitled to notice at least four
244 days before the hearing. The entry fee, procedures and rights to appeal
245 shall be those provided for on application for execution of ejection after
246 sale under section 6 of this act.

247 (c) After a sale, a proceeding to set aside the sale may be undertaken
248 only pursuant to subsection (d) of this section.

249 (d) If the mortgagee failed to comply with the procedural
250 requirements of sections 1 to 9, inclusive, of this act, the mortgagor or
251 any other person entitled to notice under subsection (c) of section 2 of
252 this act may seek to set aside the sale within twenty days of the date on
253 which the sale was held by commencing a civil action in the Superior
254 Court, except as otherwise provided in section 8 of this act. Absent any
255 such actions, the facts asserted in the affidavit required by subsections
256 (d) and (e) of section 4 of this act shall be conclusively presumed to be
257 true and accurate except in an action for damages under section 8 of this
258 act. Venue shall be in accordance with the provisions of subsection (b) of
259 section 51-345 of the general statutes, as amended. The foreclosing
260 mortgagee and the owner of record shall be necessary parties to such a
261 proceeding, and service upon them shall be made within five days of the
262 date of issuance of the complaint, but in no event more than twenty-five
263 days following the date of the sale. No such action may be maintained
264 unless the plaintiff causes a notice of lis pendens to be recorded on the
265 land records in the town in which the property is located within five
266 days of the date of issuance of the complaint, but in no event more than

267 twenty-five days following the date of the sale. The notice of lis pendens
268 shall comply with the provisions of section 52-325 of the general statutes,
269 and shall be served on the foreclosing mortgagee, the commissioner
270 appointed to conduct the sale and the owner within five days of the
271 commencement of the action. Actions brought under this section shall be
272 privileged cases to be heard by the court as soon after the return day as is
273 practicable.

274 (e) In a judicial proceeding under this section, the prevailing party, in
275 addition to any other remedy granted, shall be entitled to recover
276 reasonable expenses of litigation including reasonable attorney's fees.

277 Sec. 6. (NEW) (a) If possession of the property is withheld after the
278 commissioner conducting a sale under section 4 of this act conveys the
279 property, the purchaser at the foreclosure sale may apply to the Superior
280 Court for the judicial district in which the property is located for an
281 execution of ejectment pursuant to section 49-22 of the general statutes.
282 The application, which shall be submitted together with a proposed
283 order and summons, shall request that a hearing be held to determine
284 whether the applicant should be granted an execution of ejectment. On
285 filing of the application, the court shall set a date for hearing on the
286 application and order reasonable notice thereof to be given to the person
287 in possession whose interests were foreclosed. If the application was not
288 made by all owners of record of the property, the court shall also order
289 reasonable notice to be given to such other owners. If any person entitled
290 to notice is not a resident of this state, the notice shall be given by
291 personal service, registered or certified mail, publication or such other
292 method as the court directs. The notice shall be given to the persons
293 entitled to notice under this section at least four days before the hearing.

294 (b) The application, order and summons may be in such form as may
295 be prescribed by the Office of the Chief Court Administrator.

296 (c) The clerk of the court, upon receipt of all the documents in
297 triplicate, if the clerk finds them to be in proper form, shall affix a date

298 for hearing on the application and sign the order of hearing and notice.
299 An entry fee of twenty dollars shall be paid to the clerk and copies of the
300 original documents shall be placed in the court file. The clerk shall
301 deliver to the applicant, or the applicant's attorney, the original
302 documents for service. The original documents shall be returned to court
303 with the officer's return.

304 (d) At the hearing held on the application under this section, the
305 applicant shall provide the court with evidence of title to the property.
306 Unless the person in possession thereafter demonstrates a right to
307 possession superior to that of the applicant, the court shall grant the
308 order of ejectment.

309 (e) Any order entered as provided in subsection (d) of this section is a
310 final judgment for the purpose of appeal. No appeal may be taken from
311 the order except within twenty days thereof. The effect of the order shall
312 be automatically stayed for the twenty-day period. If an appeal is taken
313 within the twenty-day period, the party taking the appeal may, within
314 such period, file an application with the clerk of the court requesting a
315 stay of the order pending the appeal and setting forth the reasons for the
316 request. A copy of the application shall be sent to each party by the
317 applicant. Upon the filing of the application, the order shall be stayed
318 until a decision is rendered on the application for stay. A hearing on the
319 application shall be held promptly. The order shall be stayed pending
320 the appeal if the party taking the appeal posts a bond as provided in
321 subsection (f) of this section.

322 (f) At the hearing on an application for a stay, the court shall: (1) On
323 motion of the party taking the appeal, set a bond with surety for the stay
324 of the order in an amount that the court deems sufficient to indemnify
325 the adverse party for any damages that may result from the stay, in
326 which case the order shall be stayed on posting of the bond; (2) grant the
327 stay; (3) deny the stay; or (4) condition the granting of the stay on the
328 giving of such bond.

329 (g) A lessee whose leasehold interest was not extinguished by the
330 foreclosure by power of sale may not be ejected by an action under this
331 section. In addition, a lessee, tenant or occupant of a dwelling unit, other
332 than the mortgagor and the mortgagor's household, regardless of the
333 number of dwelling units contained in the property, may not be ejected
334 by an action under this section.

335 Sec. 7. (NEW) (a) The proceeds resulting from a sale of real property
336 pursuant to a power of sale under sections 1 to 9, inclusive, of this act
337 shall be held by the commissioner conducting the sale as a trustee for the
338 benefit of the foreclosing mortgagee and all persons who may claim an
339 interest in such proceeds, and such proceeds shall be distributed in the
340 following order:

341 (1) The reasonable expenses of sale;

342 (2) The reasonable expenses of securing possession before sale and
343 holding, maintaining and preparing the real property for sale, including
344 premiums on hazard and liability insurance, and, to the extent provided
345 for in the mortgage and not prohibited by law, reasonable attorney's fees
346 and other legal expenses incurred by the mortgagee;

347 (3) Satisfaction of the indebtedness secured by the mortgage being
348 foreclosed;

349 (4) Satisfaction in the order of priority of any subordinate security
350 interest of record in accordance with the provisions of subsection (b) of
351 this section; and

352 (5) Remittance of any excess to the mortgagor.

353 (b) If, after the payment of the obligations described in subdivisions
354 (1), (2) and (3) of subsection (a) of this section, there remain excess sales
355 proceeds available for distribution to the holders of subordinate security
356 interests, such distribution shall be made in the following manner:

357 (1) Within five days following the transfer of title to the purchaser, the
358 commissioner shall give notice to the holders of all subordinate security
359 interests affected by the foreclosure and to the former owner of the
360 existence and extent of excess proceeds. Such notice shall also set out the
361 names and addresses of all of the holders of subordinate security
362 interests. Such notice shall be sent by certified mail, return receipt
363 requested;

364 (2) Within twenty days of the date of the notice required under
365 subdivision (1) of this subsection, the former owner and all holders of
366 subordinate security interests affected by the foreclosure desiring to
367 make a claim to the excess proceeds shall forward to the commissioner
368 an affidavit of debt setting out the priority and amount being claimed,
369 including a statement of the per diem accrual rate subsequent to the date
370 of the affidavit. Copies of the affidavit shall be mailed to the former
371 owner and to all other holders of subordinate security interests listed in
372 the commissioner's notice;

373 (3) Within ten days following the expiration of the period described in
374 subdivision (2) of this subsection, the commissioner shall prepare a
375 statement of distribution, setting out the proposed order of priorities and
376 payments to the former owner and to each holder of a subordinate
377 security interest to whom a payment is to be made;

378 (4) If, within ten days following the mailing of the statement of
379 distribution, neither the former owner nor the holder of any subordinate
380 security interest affected by the foreclosure has given notice to the
381 commissioner and to all other holders of subordinate security interests of
382 an objection to the commissioner's proposed order of distribution, the
383 commissioner shall forthwith make payment in accordance with the
384 proposed order of distribution;

385 (5) If, within ten days following the mailing of the statement of
386 distribution, the former owner or any holder of any subordinate security
387 interest affected by the foreclosure gives notice to the commissioner and

388 to all other holders of a subordinate security interest of an objection to
389 the proposed order of distribution, the commissioner shall make
390 distribution only to those persons whose interests are unaffected by the
391 objection, and shall pay to the clerk of the court for the judicial district in
392 which the property is located the proceeds at issue, and shall provide
393 notice to the former owner and to every holder of a subordinate security
394 interest affected by the foreclosure, by certified mail, return receipt
395 requested, of the name and address of the court to which the moneys
396 were paid, the person's right to file an application with the court for
397 return of such moneys, and the amount of moneys paid to the court. Any
398 such person may, within ninety days of the date the commissioner paid
399 the moneys to the court, file an application with the court for return of
400 the moneys. Any such person may make an application for payment of
401 moneys deposited in court as provided for in this subdivision to the
402 superior court for the judicial district in which the property that was the
403 subject of the foreclosure is located or, if said court is not in session, to
404 any judge thereof, for a determination of the equities of the parties
405 having an interest in such moneys. Notice of such application shall be
406 served in the same manner as to commence a civil action on all persons
407 having an interest of record in such on the date of recording of the notice
408 of foreclosure, or whose interest arose thereafter, but who has complied
409 with the requirements of subsection (d) of section 2 of this act. The court
410 or judge upon such motion or upon its own motion may appoint a state
411 referee to hear the facts and to make a determination of the equities of
412 the parties in such moneys. Such referee, after providing at least ten
413 days' notice to the parties interested of the time and place of hearing,
414 shall hear the applicant and any parties interested, take such testimony
415 as such referee deems material and determine the equities of the parties
416 and immediately report to the court or judge. The report shall contain a
417 detailed statement of findings by the referee, sufficient to enable the
418 court to determine the consideration upon which the referee based the
419 referee's conclusions. The report may be rejected for any irregular or
420 improper conduct in the performance of the duties of such referee. If the

421 report is rejected, the court or judge shall appoint another referee to
422 make such determination and report. If the report is accepted, such
423 determination of the equities shall be conclusive upon all parties given
424 notice of such hearing, subject to appeal to the appellate court. If no
425 appeal to the appellate court is filed within the time allowed by law, or if
426 an appeal is filed and the proceedings have terminated in a final
427 judgment determining the amount due each party, the clerk shall send a
428 certified copy of the statement of compensation and of the judgment to
429 the prevailing party or parties, as the case may be, and shall pay such
430 parties the amount due.

431 (c) If the real property is sold at a public sale pursuant to a power of
432 sale, or at a private sale under sections 1 to 9, inclusive, of this act, neither
433 a mortgagor nor any comaker or guarantor of the secured indebtedness
434 shall be liable for the deficiency, if any, between the secured
435 indebtedness and the net proceeds delivered to the mortgagee from any
436 such sale.

437 Sec. 8. (NEW) (a) Whenever real property is sold by a mortgagee
438 under a power of sale, a purchaser for value in good faith acquires the
439 mortgagor's and the mortgagee's rights in the real property, free of the
440 mortgage under which the sale occurred and any subordinate interest,
441 other than those subordinate interests which the notice of foreclosure by
442 power of sale indicated would not be affected by the foreclosure, even
443 though the mortgagee or commissioner conducting the sale fails to
444 comply with the requirements of sections 1 to 9, inclusive, of this act.
445 Notwithstanding that a subordinate mortgage or other security interest
446 is extinguished by the sale, the underlying claim of the holder of the
447 interest against the mortgagor shall be preserved to the extent not
448 satisfied. Any holder whose mortgage or other security interest is
449 extinguished shall have a cause of action against the foreclosing
450 mortgagee for loss of its mortgage or other security interest resulting
451 from any material misstatement or omission made in the affidavit
452 required by subsection (d) of section 4 of this act. No such action may be

453 brought but within one year of the date of the recording of the affidavit.

454 (b) When a mortgage has been foreclosed pursuant to sections 1 to 9,
455 inclusive, of this act and one or more persons owning any interest in or
456 holding an encumbrance on such real property subsequent or
457 subordinate to such mortgage, other than a subordinate mortgage or
458 security interest that is subject to the provisions of subsection (a) of this
459 section, has been omitted or has not been foreclosed of such interest or
460 encumbrance because of improper service of the notice of foreclosure
461 under subsection (c) of section 2 of this act, or for any other reason, all
462 persons foreclosed by the foreclosure shall be bound thereby as fully as if
463 no such omission or defect had occurred and shall not retain any equity
464 or right to redeem such foreclosed real property. Such omission or
465 failure to properly foreclose such person or persons may be completely
466 cured and cleared by deed or foreclosure or other proper legal
467 proceedings to which the only necessary parties shall be the party
468 acquiring such foreclosure title, or such party's successor in title, and the
469 party or parties thus not foreclosed, or their respective successors in title.

470 (c) The Commissioner of the Superior Court conducting a sale under a
471 power of sale shall execute a deed to the purchaser sufficient to convey
472 title, which deed shall identify the mortgage and the parties to the
473 mortgage, indicate where recorded and recite that the deed is executed
474 by the Commissioner of the Superior Court conducting the sale after a
475 default and sale under sections 1 to 9, inclusive, of this act and the
476 commissioner's authority to conduct the sale. Signature and title or
477 authority of such commissioner signing the deed as grantor and a recital
478 of the fact of default and the giving of notices required by sections 1 to 9,
479 inclusive, of this act, together with the affidavits required by subsections
480 (d) and (e) of section 4 of this act, are sufficient proof of the facts recited
481 and of the signer's authority to sign.

482 Sec. 9. (NEW) Any mortgagor or other holder of a subordinate
483 interest in real property securing a debt or other obligation affected by

484 the exercise of a power of sale by a mortgagee under sections 1 to 9,
485 inclusive, of this act may pursue in a separate civil action any rights or
486 claims against such mortgagee that could not have been pursued or
487 asserted under sections 1 to 9, inclusive, of this act and that were not
488 extinguished by the exercise of such mortgagee's rights under sections 1
489 to 9, inclusive, of this act or by any determinations of the Superior Court
490 pursuant to sections 1 to 9, inclusive, of this act.

491 Sec. 10. Subsection (a) of section 12-498 of the general statutes, as
492 amended by section 1 of public act 99-231 and section 55 of public act 99-
493 241, is repealed and the following is substituted in lieu thereof:

494 (a) The tax imposed by section 12-494 shall not apply to: (1) Deeds
495 which this state is prohibited from taxing under the constitution or
496 laws of the United States; (2) deeds which secure a debt or other
497 obligation; (3) deeds to which this state or any of its political
498 subdivisions or its or their respective agencies is a party; (4) tax deeds;
499 (5) deeds of release of property which is security for a debt or other
500 obligation; (6) deeds of partition; (7) deeds made pursuant to mergers
501 of corporations; (8) deeds made by a subsidiary corporation to its
502 parent corporation for no consideration other than the cancellation or
503 surrender of the subsidiary's stock; (9) deeds made pursuant to a
504 decree of the Superior Court under section 46b-81, 49-24 or 52-495 or
505 pursuant to a foreclosure by power of sale, as authorized under
506 sections 1 to 9, inclusive, of this act; (10) deeds, when the consideration
507 for the interest or property conveyed is less than two thousand dollars;
508 (11) deeds between affiliated corporations, provided both of such
509 corporations are exempt from taxation pursuant to paragraph (2), (3)
510 or (25) of Section 501(c) of the Internal Revenue Code of 1986, or any
511 subsequent corresponding internal revenue code of the United States,
512 as from time to time amended; (12) deeds made by a corporation
513 which is exempt from taxation pursuant to paragraph (3) of Section
514 501(c) of the Internal Revenue Code of 1986, or any subsequent
515 corresponding internal revenue code of the United States, as from time

516 to time amended, to any corporation which is exempt from taxation
517 pursuant to said paragraph (3) of said Section 501(c); (13) deeds made
518 to any nonprofit organization which is organized for the purpose of
519 holding undeveloped land in trust for conservation or recreation
520 purposes; (14) deeds between spouses; (15) deeds of property for the
521 convention center site, the sportsplex site or the parking facilities site,
522 each as defined in section 32-651; (16) land transfers made on or after
523 July 1, 1998, to a water company, as defined in section 16-1, provided
524 the land is classified as class I or class II land, as defined in section 25-
525 37c, after such transfer; and (17) transfers or conveyances to effectuate
526 a mere change of identity or form of ownership or organization, where
527 there is no change in beneficial ownership.

Statement of Legislative Commissioners:

Technical changes were made in sections 6, 7 and 8 to ensure consistency in terminology.

JUD Committee Vote: Yea 31 Nay 8 JFS-LCO

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Indeterminate Revenue Loss

Affected Agencies: Judicial Department, Department of Revenue Services

Municipal Impact: None

Explanation

State Impact:

Sections 1 - 9 of the bill establish the procedures and requirements associated with foreclosures by power of sale. Section 10 of the bill exempts from the real estate conveyance tax conveyances made under these transactions. Passage of the bill would result in an indeterminate revenue loss due to the aforementioned exemption. The number of foreclosures by power of sale and the amount of taxable income involved is uncertain at this time.

OLR Bill Analysis

SB 570

AN ACT ESTABLISHING FORECLOSURE BY POWER OF SALE.**SUMMARY:**

This bill allows lenders and borrowers to agree that a mortgage may be foreclosed by the exercise of a power of sale. This is a nonjudicial process that allows a lender or other mortgage holder to sell the property to satisfy the debt secured by the mortgage. The bill applies to any real estate, except property occupied as a residence by the borrower (mortgagor) containing four or fewer dwelling units and having no nonresidential uses except the borrower's.

The bill requires the foreclosing lender to follow specific procedures. It must provide two notices to the owner: a notice of intention to foreclose and a notice of sale. The lender can give both notices at the same time. He must record the notice of intention to foreclose on the land records of the town where the property is located. The sale must be held at least five weeks after the notice of sale is given. It may be private or public, but the foreclosing lender may not purchase the land if it is a private sale.

The bill allows the owner to challenge the foreclosure in two distinct respects. He can assert claims that amount to a defense, such as the invalidity of the mortgage or the absence of a default. He can also challenge the results of the sale for procedural improprieties.

The bill requires the foreclosing party to give the owner an opportunity to stop the foreclosure and reinstate the mortgage.

The bill specifies that neither the borrower nor any co-maker or guarantor is liable for any deficiency between the amount owed and the amount generated by a foreclosure sale under the bill.

The bill exempts from the real estate conveyance tax conveyances

made under foreclosures by power of sale.

EFFECTIVE DATE: October 1, 2000

WHEN FORECLOSURE BY POWER OF SALE IS AUTHORIZED

The bill authorizes a lender to foreclose by a power of sale if the mortgage or some other agreement between the borrower (mortgager) and lender (mortgagee) authorizes it. But it does not prevent a lender from foreclosing in any other way authorized by law, such as by judicial sale or strict foreclosure.

The bill prohibits a lender from using foreclosure by power of sale if it has already begun a legal action or obtained a judgment for money damages on the underlying debt that the mortgage secures.

Foreclosure by power of sale bars any pending or additional legal proceedings based on the mortgage debt, note, or obligation. But this prohibition does not prevent the lender from foreclosing other mortgages, securing the same mortgage debt, note, or obligation by any method the law or bill authorizes.

NOTICE OF INTENTION TO FORECLOSE

Delivery

The bill requires that the notice of intention to foreclose be in writing and be served in the same manner specified under current law for instituting a lawsuit. The notice must be recorded in the land records of the town where the mortgaged real estate is located.

The notice must also be served on:

1. any person specified by the borrower in the mortgage;
2. all the borrowers, if no such person is specified;
3. any person in possession of the real estate from whom the lender has received a written demand to receive such notices;

4. any holder of a subordinate interest (such as a second mortgage holder); and
5. a person in possession who, on the date of the notice, has a recorded interest in the mortgaged property that would be extinguished by a foreclosure under the bill.

The notice must also be delivered by certified mail, return receipt requested, to all lenders and lien holders that are superior to the foreclosing lender. For example, this would apply to lenders whose mortgage was recorded before the mortgage being foreclosed was recorded. But this duty does not apply to unrecorded real estate tax liens. Those who receive this notice have no right to participate in, receive further notice of, or share in the proceeds of the foreclosure sale. But their interests in the property are not affected by the sale.

If a lender does not comply with the notice requirements, it does not invalidate notice to those who did receive it. Anyone who received actual and timely notice is deemed to have received sufficient notice such that the lender may foreclose his interest even though the lender did not otherwise fully comply with the bill.

Contents

The notice must indicate (1) the specific mortgage to be foreclosed by a power of sale, (2) the notice of the claimed default, (3) that the lender is requiring that the balance is due and payable, (4) the borrower has the right to cure the default, (5) the amount to be paid or other action necessary to cure, (6) the time within which the cure must take place, and (7) those holders of subordinate interests the lender has decided will not be affected by the foreclosure.

EFFECT OF NOTICE ON LAND TITLE

Under the bill, a person (1) whose conveyance or encumbrance is executed or recorded or (2) whose interest in the land is obtained by will or otherwise, after the notice of intention to foreclose is recorded on the land record, takes his interest subject to the rights of the foreclosing lender. This also applies to all inchoate liens, including mechanic's liens. (An inchoate lien is one which is not yet completed or

finished. An example is a lien for succession tax that arises at the time a person dies but which is not complete at that moment because the amount is not yet determined.)

A sale under the bill supersedes or extinguishes these liens unless, before the sale, the lienholder (1) gives notice of his claimed priority to everyone who, he alleges, is junior to his interest and (2) records that notice of a claimed priority in the land records of the municipality in which the mortgaged real estate is located.

The bill specifies that it does not affect the priority of real estate tax liens that are perfected and continued under current law.

RIGHT OF BORROWER AND OTHERS TO HALT FORECLOSURE

The bill gives the borrower or the holder of any subordinate mortgage the right to prevent the sale and reinstate the mortgage by paying all sums that are due, performing any other obligation the borrower was bound to perform, and paying the foreclosure costs reasonably incurred, including reasonable attorney's fees. The right may be exercised any time up to five days before the sale.

A borrower may release or assign his right to halt a foreclosure in writing.

The bill also gives the borrower the right to redeem the mortgage at any time prior to the sale by paying the entire amount owed on the mortgage, including all costs incurred in the foreclosure and reasonable attorney's fees.

PROTECTIVE ORDERS

Anyone entitled to get notice of a lender's intention to foreclose a mortgage, pursuant to the bill, is authorized to apply to Superior Court for protective orders. The court must set a hearing date in accordance with short calendars procedures.

The court must order that reasonable notice of the hearing be given to all interested parties at least four days before the hearing. Nonresidents must be notified by personal service, registered or

certified mail, publication, or such other method as the court directs. The entry fee, procedures, and appeal rights are the same as for an application for execution of ejectment after sale.

The court may order that a sale or disposition of the sale be prevented or that a sale proceeds be on certain terms and conditions if anyone entitled to notice establishes that:

1. the mortgage is invalid;
2. the borrower is not in default;
3. the lender or person controlling the sale is not complying or is not likely to comply with the bill; or
4. the sale proceeds are not being applied or are not likely to be applied as required by the bill.

NOTICE OF SALE

The bill requires the foreclosing lender to give everyone entitled to notice of the intention to foreclose reasonable written notice of the time and place of any public sale. If a private sale is planned the lender must give reasonable notice of the intention to enter into a contract to sell it and the time after which the private sale will be made. The lender must also send the notice to anyone else who has a recorded interest that would be foreclosed by the sale. The notice must be either served or sent by both certified mail and ordinary first class mail at least five weeks before the sale.

SALE OF FORECLOSED PROPERTY

After complying with the requirements of the bill, a foreclosing lender may sell the real estate without any court involvement or supervision. The sale is free and clear of the interests of the mortgage being foreclosed and of subordinate interests except for those the lender has determined will not be subject to it as specified in the recorded foreclosure notice.

The sale may be public or private on any terms. It must be conducted

by an attorney appointed by the foreclosing lender. The attorney cannot be the lender's employee.

PUBLIC SALE SPECIAL PROVISIONS

The bill requires that after an acceptance of a bid at a public sale, the successful bidder, other than the lender, must pay the required deposit to the person conducting the sale and sign a contract to purchase the property. If the bidder does not make the deposit or does not purchase the property within five weeks after the bid has been accepted, the foreclosing lender may enforce the contract to purchase it or resell it under the same procedures. If the lender does not enforce the contract, it may retain the bidder's deposit as liquidated damages. The bill requires the lender to apply any sums retained or recovered to the payment of the mortgage debt in the same manner as if the sale had been completed.

SALE MUST BE REASONABLE

Every aspect of the sale, including the advertising, time, place, deposit, and terms must be reasonable. Any sale that meets the following criteria is reasonable:

1. the attorney conducting the sale complies with all relevant notice and sale provisions of the bill;
2. notice of the sale, including the date, place, and time of the sale, a description of its current use, the required deposit, and the attorney's name and telephone number, is posted on the property at least three weeks before the sale; and
3. the sale is advertised in a newspaper of general circulation in the sale area at least once a week for three successive weeks before the sale, in substantially the form normally used for judicial sales of real estate and including the sale information specified for the posted notice of sale.

The bill gives the foreclosing lender the right to go on the property to post the notice of sale after the foreclosure notice has been served.

DEED UPON FORECLOSURE

The bill requires the attorney conducting the sale to execute a deed to the buyer sufficient to convey title to the foreclosed property. The deed must identify the mortgage and the parties to the mortgage. It must indicate where it was recorded, that it is executed by the attorney conducting the sale after the default and sale under the bill's provisions, and the attorney's authority to make the sale.

REQUIRED AFFIDAVITS BY LENDER AND ATTORNEY

Under the bill, before the deed of sale is recorded, the foreclosing lender must record an affidavit on the land records. The affidavit must contain:

1. the authority of the person who executed the deed;
2. the names of the original borrower and lender, as stated in the foreclosed mortgage, including the volume and page of the mortgage, and, for assignments, the parties and the volume and page where recorded;
3. a statement that the lender complied with the bill's notice requirement, together with the names of those receiving notice;
4. a statement that the time set by the bill for curing any default has passed and the borrower has failed to reinstate the mortgage or to redeem the property by paying the debt in full; and
5. in the case of an individual borrower (as opposed to a corporate or business borrower), facts showing that he is not in the military.

A separate affidavit indicating that the borrower is not in the military may be attached, instead of being included in the lender's affidavit.

The bill requires that before the deed of sale is recorded, the attorney who conducted the sale must record on the land records an affidavit indicating:

1. the name of the foreclosing lender who appointed him;

2. the names of the original borrower and lender, the mortgage volume and page, and, for any assignments, the parties and volume and page where recorded; and
3. a statement that the person appointed to conduct the sale has complied with all the bill's sale requirements.

PROCEEDS FROM SALE

The attorney conducting the sale must hold the sale proceeds as a trustee for the foreclosing lender and others who claim an interest in the proceeds. The attorney must distribute the proceeds in the following order:

1. reasonable sale expenses;
2. reasonable expenses of securing possession before sale, including holding, maintaining and preparing it for sale, insurance premiums, and, to the extent provided for in the mortgage and not prohibited by law, reasonable attorney's fees and other legal expenses incurred by the foreclosing lender; and
3. paying off the mortgage loan.

If any proceeds remain, they must be paid to any recorded subordinate security interest holders pursuant to procedures the bill establishes. Any remaining proceeds must be paid to the borrower.

PAYING SUBORDINATE INTERESTS

If any proceeds remain, the bill requires the attorney conducting the sale to pay off recorded subordinate interests in the following manner.

Within five days after the purchaser gets the foreclosed title to the property, the attorney must give notice, by certified mail, return receipt requested, to all subordinate security interest holders affected by the foreclosure and the former owner of the amount of excess proceeds. The notice must specify the names and addresses of the all the holders of these interests.

Within 20 days of the notice, the former owner and interest holders may make a claim to the attorney by affidavit setting out the priority and amount claimed, including a statement of the per diem rate accruing after the date of the affidavit. Copies of each affidavit must be mailed to the former owner and other interest holders specified in the attorney's notice.

Within 30 days of the notice, the attorney must prepare a distribution statement, setting out the order in which each holder of a subordinate security interest and the owner are to be paid from the balance of the foreclosure sale proceeds.

The attorney must distribute the proceeds according to the distribution statement if no one objects within 10 days after he mails it.

If someone does object during the 10-day period by giving notice to the attorney and to the other holders of subordinate security interests, he must make distributions only to those whose interests are unaffected by the objection.

He must also turn over to the court clerk for the judicial district in which the property is located the proceeds at issue. In addition, he must notify the former owner and every affected subordinate security holder by certified mail, return receipt requested, the name and address of the court holding the proceeds, their right to apply to the court for money, and the amount of money turned over to the court.

Anyone receiving this notice has 90 days from the date the commissioner turned the money over to the court to file an application with the court, or if the court is not in session, to any judge assigned to that court, to determine the rights of the parties to the proceeds deposited with it.

Notice of this application must be served on all those having an interest in the proceeds. The court or judge may appoint a state referee to determine the parties' equities. The referee must give the parties at least 10 days notice of the hearing. The referee may take testimony and immediately report to the court or judge.

The report must contain detailed findings sufficient to enable the court to determine how the referee reached his conclusions. The court may reject the report for a referee's irregular or improper conduct. If it rejects it, it must appoint another referee. If it accepts it, the report is binding on all parties given notice, subject to an appeal to the Appellate Court.

If no appeal is filed or if an appeal has terminated in a final judgment, the clerk must send a certified copy of the compensation statement and judgment for the prevailing party or parties and pay them the amount due.

TITLE OF GOOD FAITH PURCHASER

When real estate is sold, under the bill, a good faith purchaser acquires the borrower's and lender's rights in the real estate, free of the foreclosed mortgage and any subordinate interests, other than those the foreclosure notice indicates will not be foreclosed, even if the person conducting the sale does not comply with the bill.

RIGHTS OF THE SUBORDINATE SECURITY HOLDERS

The underlying claim of the holder of a subordinate mortgage or other security interest extinguished by a sale is preserved and may be brought against the borrower whose real estate was foreclosed. For example, a second mortgage holder who lost his security interest in the real estate because of the foreclosure could still sue the borrower on the note.

The holder of these extinguished interests is given the right to sue the foreclosing lender for loss of security interests, if the lender made any material misstatement or omission in the affidavit the bill requires the lender to record. This suit must be initiated within one year of the date the lender's affidavit was reached.

Under the bill, where one or more security interests or other encumbrances have not been foreclosed because of improper service or for any other reason, all those whose interests have been foreclosed are bound by the foreclosure and have no rights in the foreclosed property. The failure to properly foreclose someone may be rectified

by a deed or any other proper legal proceeding. Only the new property owner and the parties who were not foreclosed are parties to such a proceeding. (The bill does not specify how this dispute would be rectified.)

PROCEEDING TO SET ASIDE THE SALE

The bill authorizes the borrower, or anyone else entitled to notice, within 20 days after the sale, to seek to set aside the sale for failing to comply with the bill's procedural requirements by initiating an action in Superior Court. If no such action is initiated, the facts asserted in the foreclosing lender's affidavit are conclusively presumed to be true and accurate. This presumption does not apply in a damage lawsuit the bill allows against the lender for any material misstatement or omission in the affidavit.

The attorney who conducted the sale and the owner of record are necessary parties to this proceeding. They must be served within five days of the date the complaint was issued and within 25 days after the sale.

The plaintiff must record a notice of lis pendens on the land records of the town where the property is located within five days of the issuance of the complaint and within 25 days after the sale. The notice of lis pendens must be served on the foreclosing lender, the attorney who conducted the sale, and the owner within five days of the initiation of the action.

The prevailing party is entitled to recover reasonable litigation expenses including reasonable attorney's fees.

POSSESSION AFTER SALE

The bill authorizes the person who buys the property at the foreclosure sale to apply to Superior Court for an ejectment order if possession is not surrendered to him after the sale. (An ejectment is a court procedure available under law to remove those in possession after a judicially supervised foreclosure of a mortgage or lien.)

The court must set a hearing date and order reasonable notice to those in possession of the property whose interests were foreclosed. If the application is not made by all record owners, the court must also order reasonable notice be given to them. Notice must be given at least four days before the hearing.

The application order and summons must be in the form specified by the chief court administrator. The bill establishes a \$20 court fee.

At the hearing, the applicant must provide the court with evidence of title to the property. The court must order ejectment unless those in possession of the property demonstrate a right to possession which is superior to the applicant's.

An ejectment order is a final judgment and thus may be appealed. But an appeal must be taken within 20 days of the date of the order. The order is automatically postponed for this 20-day period.

The bill allows the person taking the appeal to request that the court order the ejectment postponed until the appeal is decided. The request must specify the reasons. A copy of this application for postponement must be sent to each party. The postponement must be granted as soon as it is requested and lasts until the court renders a decision. The bill requires that a hearing on the issue of postponement of ejectment be promptly held.

At the hearing the court may:

1. on motion of the party that is appealing, set a bond in the amount the court deems sufficient to indemnify the adverse party for any damages that may result from the postponement;
2. grant the postponement;
3. deny the postponement; or
4. condition the granting of the postponement on the giving of such bond.

The bill requires that the ejectment be postponed pending the appeal,

if the party taking the appeal posts the bond specified by the court.

The bill prohibits the ejectment of a lessee, tenant, or occupant of a dwelling unit unless it is the borrower or his household. Also, a lessee whose interest was not extinguished by the foreclosure may not be ejected.

ORDERS TO ENFORCE LENDER'S RIGHTS UNDER THE BILL

The bill authorizes the foreclosing lender to seek a Superior Court order to enforce any of the rights the bill gives it. The court must set a hearing date using short calendar procedures and order reasonable notice of at least four days to be given to those who have an interest in the outcome. Notice to non-residents must be by personal service, registered or certified mail, publication, or by another method the court requires. The entry fee, procedures, and appeal rights are the same as for an application for execution of ejectment. The prevailing party is entitled to reasonable litigation expenses including reasonable attorney's fees.

BACKGROUND

Foreclosure Law

Presently, all foreclosures in Connecticut require that an action be commenced in court. When the case goes to judgment, the court can order strict foreclosure or foreclosure by sale.

In a strict foreclosure, there is no auction. Rather, the court sets a date, known as the "law day," by which the owner can redeem the property from the mortgage being foreclosed. Law day can be as brief as three weeks away or as much as a year, and sometimes even longer. On or before law day, the owner can redeem the property by paying the plaintiff the entire mortgage debt. If the owner does not redeem it on his law day, then subsequent encumbrancers are each given law days on which to redeem. If no one redeems, title becomes absolute in the foreclosing lender on the day after the last law day.

If the court orders a foreclosure by sale, it appoints a person, known as the "committee," to conduct the auction and sell the property. The

court sets the date of sale, as well as the advertising dates and other particulars relating to the sale. After the sale, the committee reports back to the court to advise it about the sale. If the court approves the sale, the committee sets a date for the closing during which he delivers a committee's deed to the purchaser and receives all of the sale proceeds. The money is paid into court and distributed to the encumbrancers on the basis of their order of priority, with any excess being returned to the owner.

In both strict foreclosure and foreclosure by sale, the owner is liable for a deficiency judgment. In a strict foreclosure, the deficiency is the difference between the plaintiff's debt and the appraised value of the property, which is established at a hearing held exclusively for that purpose. In a foreclosure by sale, the deficiency is established on the basis of the difference between the debt and the sale price; the appraised value of the property plays no role in this determination.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Report
Yea 31 Nay 8