



General Assembly

February Session, 2000

Raised Bill No. 570

LCO No. 2047

Referred to Committee on Judiciary

Introduced by:
(JUD)

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:

204 (1) The name of the foreclosing mortgagee by whom the
205 commissioner was appointed and the names of the original mortgagor
206 and mortgagee as stated in the mortgage being foreclosed, as well as the
207 volume and page of the mortgage, and the parties and recording
208 information of the assignment, if any, to the foreclosing mortgagee; and

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

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

297 (c) The clerk of the court, upon receipt of all the documents in
298 triplicate, if the clerk finds them to be in proper form, shall affix a date
299 for hearing on the application and sign the order of hearing and notice.
300 An entry fee of twenty dollars shall be paid to the clerk and copies of the
301 original documents shall be placed in the court file. The clerk shall
302 deliver to the applicant, or the applicant's attorney, the original
303 documents for service. The original documents shall be returned to court
304 with the officer's return.

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

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

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

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

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

342 (1) The reasonable expenses of sale;

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

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

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

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

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

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

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

372 owner and to all other holders of subordinate security interests listed in
373 the commissioner's notice;

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

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

386 (5) If, within ten days following the mailing of the statement of
387 distribution, the former owner or any holder of any subordinate security
388 interest affected by the foreclosure gives notice to the commissioner and
389 to all other holders of a subordinate security interest of an objection to
390 the proposed order of distribution, the commissioner shall make
391 distribution only to those persons whose interests are unaffected by the
392 objection, and shall pay to the clerk of the court for the judicial district in
393 which the property is located the proceeds at issue, and shall provide
394 notice to the former owner and to every holder of a subordinate security
395 interest affected by the foreclosure, by certified mail, return receipt
396 requested, of the name and address of the court to which the moneys
397 were paid, the person's right to file an application with the court of
398 return of said money, and the amount of money paid to the court. Any
399 such person may, within ninety days of the date the commissioner paid
400 the moneys to the court, file an application with the court for return of
401 the proceeds. Any such person may make an application for payment of
402 moneys deposited in court as provided for in this subdivision to the
403 superior court for the judicial district in which the property that was the

404 subject of the foreclosure is located or, if said court is not in session, to
405 any judge thereof, for a determination of the equities of the parties
406 having an interest in such moneys. Notice of such application shall be
407 served in the same manner as to commence a civil action on all persons
408 having an interest of record in such on the date of recording of the notice
409 of foreclosure, or whose interest arose thereafter, but who has complied
410 with the requirements of subsection (d) of section 2 of this act. The court
411 or judge upon such motion or upon its own motion may appoint a state
412 referee to hear the facts and to make a determination of the equity of the
413 parties in such moneys. Such referee, after providing at least ten days'
414 notice to the parties interested of the time and place of hearing, shall hear
415 the applicant and any parties interested, take such testimony as such
416 referee deems material and determine the equities of the parties and
417 immediately report to the court or judge. The report shall contain a
418 detailed statement of findings by the referee, sufficient to enable the
419 court to determine the consideration upon which the referee based the
420 referee's conclusions. The report may be rejected for any irregular or
421 improper conduct in the performance of the duties of such referee. If the
422 report is rejected, the court or judge shall appoint another referee to
423 make such determination and report. If the report is accepted, such
424 determination of the equities shall be conclusive upon all parties given
425 notice of such hearing, subject to appeal to the appellate court. If no
426 appeal to the appellate court is filed within the time allowed by law, or if
427 an appeal is filed and the proceedings have terminated in a final
428 judgment determining the amount due each party, the clerk shall send a
429 certified copy of the statement of compensation and of the judgment to
430 the prevailing party or parties, as the case may be, and shall pay such
431 parties the amount due.

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

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

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

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

483 Sec. 9. (NEW) Any mortgagor or other holder of a subordinate
484 interest in real property securing a debt or other obligation affected by
485 the exercise of a power of sale by a mortgagee under sections 1 to 9,
486 inclusive, of this act may pursue in a separate civil action any rights or
487 claims against such mortgagee that could not have been pursued or
488 asserted under sections 1 to 9, inclusive, of this act and that were not
489 extinguished by the exercise of such mortgagee's rights under sections 1
490 to 9, inclusive, of this act or by any determinations of the Superior Court
491 pursuant to sections 1 to 9, inclusive, of this act.

492 Sec. 10. Subsection (a) of section 12-498 of the general statutes, as
493 amended by section 1 of public act 99-231 and section 55 of public act 99-
494 241, is repealed and the following is substituted in lieu thereof:

495 (a) The tax imposed by section 12-494 shall not apply to: (1) Deeds
496 which this state is prohibited from taxing under the constitution or
497 laws of the United States; (2) deeds which secure a debt or other
498 obligation; (3) deeds to which this state or any of its political
499 subdivisions or its or their respective agencies is a party; (4) tax deeds;
500 (5) deeds of release of property which is security for a debt or other
501 obligation; (6) deeds of partition; (7) deeds made pursuant to mergers
502 of corporations; (8) deeds made by a subsidiary corporation to its

503 parent corporation for no consideration other than the cancellation or
504 surrender of the subsidiary's stock; (9) deeds made pursuant to a
505 decree of the Superior Court under section 46b-81, 49-24 or 52-495 or
506 pursuant to a foreclosure by power of sale, as authorized under
507 sections 1 to 9, inclusive, of this act; (10) deeds, when the consideration
508 for the interest or property conveyed is less than two thousand dollars;
509 (11) deeds between affiliated corporations, provided both of such
510 corporations are exempt from taxation pursuant to paragraph (2), (3)
511 or (25) of Section 501(c) of the Internal Revenue Code of 1986, or any
512 subsequent corresponding internal revenue code of the United States,
513 as from time to time amended; (12) deeds made by a corporation
514 which is exempt from taxation pursuant to paragraph (3) of Section
515 501(c) of the Internal Revenue Code of 1986, or any subsequent
516 corresponding internal revenue code of the United States, as from time
517 to time amended, to any corporation which is exempt from taxation
518 pursuant to said paragraph (3) of said Section 501(c); (13) deeds made
519 to any nonprofit organization which is organized for the purpose of
520 holding undeveloped land in trust for conservation or recreation
521 purposes; (14) deeds between spouses; (15) deeds of property for the
522 convention center site, the sportsplex site or the parking facilities site,
523 each as defined in section 32-651; (16) land transfers made on or after
524 July 1, 1998, to a water company, as defined in section 16-1, provided
525 the land is classified as class I or class II land, as defined in section 25-
526 37c, after such transfer; and (17) transfers or conveyances to effectuate
527 a mere change of identity or form of ownership or organization, where
528 there is no change in beneficial ownership.

Statement of Purpose:

To permit foreclosure by sale of mortgages other than mortgages of residential real property.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]