



General Assembly

January Session, 2005

Raised Bill No. 6958

LCO No. 4612

04612_____JUD

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) (*Effective October 1, 2005*) (a) As used in sections 1 to
2 9, inclusive, of this act, "mortgagor" includes the mortgagor's successors
3 and assigns or any other person holding title to mortgaged real property
4 under the mortgagor.

5 (b) If a mortgage of real property or other agreement between the
6 mortgagor and mortgagee authorizes the mortgagee to foreclose by
7 power of sale, the mortgagee, after the mortgagor's default and after
8 giving the mortgagor notice of intention to foreclose by power of sale in
9 accordance with section 2 of this act, may proceed to foreclose the
10 mortgagor's interest in such real property by exercising a power of sale
11 as provided in sections 1 to 9, inclusive, of this act.

12 (c) The provisions of sections 1 to 9, inclusive, of this act shall not
13 apply to mortgages of residential real property. For the purposes of this
14 subsection, "residential real property" means real property containing at
15 least one but not more than four dwelling units, all or a portion of which
16 has been occupied as a residence by the mortgagor, and containing no

17 nonresidential uses, except nonresidential uses by a mortgagor.

18 (d) Nothing in sections 1 to 9, inclusive, of this act shall prevent a
19 mortgagee from foreclosing a mortgage by strict foreclosure or judicial
20 sale as otherwise provided by law.

21 (e) Foreclosure by power of sale shall not be permitted if a mortgagee
22 has instituted an action or has previously obtained a judgment for
23 money damages on the underlying obligation which is secured by the
24 mortgage to be foreclosed by power of sale.

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

32 Sec. 2. (NEW) (*Effective October 1, 2005*) (a) A notice of intention to
33 foreclose by power of sale required by subsection (b) of section 1 of this
34 act shall be (1) in writing and in accordance with subsection (b) of this
35 section, (2) served upon persons described in subsection (c) of this
36 section in the manner for service of process required under chapter 896
37 of the general statutes or section 33-929 of the general statutes to
38 commence a civil action, and (3) recorded in the land records of the town
39 in which the real property subject to foreclosure by power of sale is
40 located.

41 (b) A notice of intention to foreclose by power of sale shall state: (1)
42 The particular mortgage to be foreclosed by power of sale; (2) the nature
43 of the default claimed; (3) that the mortgagee has accelerated maturity of
44 the debt or that the maturity date of the debt has occurred; (4) if the
45 mortgage is being foreclosed for any reason other than maturity of the
46 debt, (A) that the mortgagor has the right to cure the default under the
47 mortgage or other agreements or under sections 1 to 9, inclusive, of this

48 act, (B) the amount to be paid or other action necessary to cure the
49 default, and (C) the time within which such cure is required to take
50 place; and (5) those holders of subordinate interests in the real property,
51 including subordinate leases, that the mortgagee determines will not be
52 affected by the foreclosure by power of sale.

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

70 (d) For the purposes of sections 1 to 9, inclusive, of this act, a person
71 whose conveyance or encumbrance of the real property subject to
72 foreclosure by power of sale is executed or recorded, or whose interest in
73 such real property is obtained by descent or otherwise, after notice of
74 intention to foreclose by power of sale is recorded under subsection (a) of
75 this section is a subsequent purchaser or encumbrancer. A subsequent
76 purchaser or encumbrancer is bound by all proceedings taken in the
77 foreclosure by power of sale after the recording of such notice to the
78 same extent as if the interest of the subsequent purchaser or
79 encumbrancer had preceded the recording of such notice and as if the
80 subsequent purchaser or encumbrancer had received actual notice of the

81 proceedings. The provisions of this section shall apply to mechanic's
82 liens and all other inchoate liens, certificates of which are recorded after
83 the notice of intention to foreclose by power of sale is recorded. A sale
84 under sections 1 to 9, inclusive, of this act extinguishes any right to claim
85 an interest in the proceeds of the sale by the holder of any mechanic's
86 lien or other inchoate lien for which a certificate is recorded after
87 recordation of the notice of intention to foreclose by power of sale unless,
88 before the sale, such lienholder gives notice of such lienholder's claimed
89 priority to the foreclosing mortgagee and to all persons whom such
90 lienholder alleges are junior to such lienholder's interest and records
91 such notice of a claimed priority in the land records of the town in which
92 the real property subject to foreclosure by power of sale is located. This
93 section shall not affect the priority of real property tax liens that are
94 perfected and continued in accordance with the provisions of chapter
95 205 of the general statutes.

96 Sec. 3. (NEW) (*Effective October 1, 2005*) (a) Except as to a mortgage
97 debt that is due and payable as a result of the maturity date having
98 occurred, not later than five days before the sale under a foreclosure by
99 power of sale, the mortgagor or a holder of any subordinate mortgage or
100 other interest securing a debt or obligation may cure the mortgagor's
101 default, prevent the sale or other disposition of the real property and
102 reinstate the mortgage by tendering the payment or performance due
103 under the mortgage as provided in subsection (b) of this section.

104 (b) To the extent permitted by subsection (a) of this section, the
105 mortgagor or a holder of any subordinate mortgage or other interest
106 securing a debt or obligation may cure the mortgagor's default and avoid
107 the operation of any acceleration clause in the mortgage by: (1) Paying or
108 tendering all sums that would have been due at the time of tender in the
109 absence of any acceleration clause; (2) performing any other obligation
110 the mortgagor would have been bound to perform in the absence of any
111 acceleration clause; and (3) paying or tendering the costs of the
112 proceeding to foreclose reasonably incurred, including reasonable
113 attorney's fees of the mortgagee.

114 (c) After the mortgagor's default, the mortgagor or a holder of any
115 subordinate mortgage or other interest securing a debt or obligation who
116 is entitled to cure under this section may release such mortgagor's or
117 holder's right to cure in writing.

118 (d) At any time up to the time of the sale under a foreclosure by
119 power of sale, the mortgagor may redeem the real property from the
120 mortgage being foreclosed by power of sale by paying the entire
121 indebtedness and other sums due under the mortgage and all costs
122 reasonably incurred in connection with the proceeding to foreclose,
123 including reasonable attorney's fees of the mortgagee.

124 Sec. 4. (NEW) (*Effective October 1, 2005*) (a) The mortgagee, after the
125 mortgagor's default and upon compliance with the provisions of sections
126 1 to 9, inclusive, of this act, may sell all or any part of the real property
127 that is subject to the mortgage. A sale under a foreclosure by power of
128 sale shall be free and clear of the interest of the mortgage being
129 foreclosed and of all interests subordinate in right thereto, except for
130 those subordinate interests that the mortgagee has determined will not
131 be affected by the foreclosure by power of sale as set forth in the notice of
132 intention to foreclose by power of sale in accordance with subsection (b)
133 of section 2 of this act. The sale may be by public sale or by private sale
134 or disposition, by one or more contracts, as a unit or in parcels, at any
135 time and place and on any terms, including sale on credit. The sale shall
136 be conducted by a commissioner of the Superior Court appointed by the
137 mortgagee who is not an employee of the mortgagee. Every aspect of the
138 sale, including the method, advertising, time, place, deposit and terms
139 shall be reasonable, provided a sale that complies with the requirements
140 of subsection (c) of this section shall be deemed to be reasonable. The
141 mortgagee shall give to persons entitled to notice under subsection (c) of
142 section 2 of this act reasonable written notice of the time and place of any
143 public sale or, if a private sale is intended, reasonable notice of intention
144 to enter into a contract to sell the real property and of the time after
145 which a private sale may be made. Such notice shall also be given to any
146 other person who, on the date of the notice, has a recorded interest in the

147 real property that would be extinguished by the sale. The notice required
148 by this subsection shall be given not less than five weeks prior to any sale
149 under a foreclosure by power of sale pursuant to sections 1 to 9,
150 inclusive, of this act. Such notice shall either be served in accordance
151 with subsection (a) of section 2 of this act or be delivered by both
152 certified mail, return receipt requested, and first class mail. The notice
153 required by this subsection shall be deemed given and complete upon
154 being served in accordance with subsection (a) of section 2 of this act or
155 three days after being deposited in the United States mail with postage
156 prepaid, as applicable. The sale may not be held earlier than five weeks
157 after giving the notice required by this subsection, provided, if the
158 mortgagee gives such notice as part of the notice of intention to foreclose
159 by power of sale under section 2 of this act, such five-week time period
160 commences when the mortgagee serves the notice of intention to
161 foreclose by power of sale. The mortgagee may not purchase the real
162 property at a private sale under this section.

163 (b) At the time of acceptance of a bid at a public sale under this
164 section, the successful bidder, other than the foreclosing mortgagee, shall
165 pay the required deposit to the commissioner of the Superior Court
166 conducting the sale and execute and deliver to such commissioner a
167 contract to purchase the real property, which may be a bond for deed. If
168 such bidder fails to pay the required deposit at the time of such
169 acceptance, or to purchase the real property within five weeks after such
170 acceptance, the mortgagee may specifically enforce the contract to
171 purchase such real property or resell the real property under subsection
172 (a) of this section. If such contract is not specifically enforced, the deposit
173 of such bidder may be retained or recovered as liquidated damages. Any
174 sums retained or recovered by the mortgagee under this subsection shall
175 be applied to the payment of the debt secured by the mortgage in the
176 same manner as the proceeds of a completed sale.

177 (c) A sale under this section shall be deemed reasonable if: (1) The
178 commissioner of the Superior Court appointed to conduct the sale
179 complies with all applicable requirements for notice and sale as provided

180 in sections 1 to 9, inclusive, of this act; (2) notice of the sale, including the
181 address of the real property to be sold, the date, place and time of the
182 sale, a description of the current use of the real property, the amount of
183 the deposit required at the sale, and the name and telephone number of
184 the commissioner of the Superior Court conducting the sale, is posted on
185 the real property not less than three weeks before the sale; and (3) the
186 sale is advertised in a newspaper of general circulation in the area where
187 the real property is located, at least once each week for three successive
188 weeks before the sale, in substantially the form customarily used for
189 notices of judicial sale of real property and including the address of the
190 real property to be sold, the date, place and time of the sale, a description
191 of the current use of the real property, the amount of the deposit
192 required at the sale, and the name and telephone number of the
193 commissioner of the Superior Court conducting the sale. A mortgagee,
194 after serving a notice of intention to foreclose by power of sale under
195 section 2 of this act, is authorized to enter upon the real property for the
196 purpose of posting the notice of sale described in this subsection.

197 (d) Before the recording of a deed delivered pursuant to section 8 of
198 this act, the foreclosing mortgagee shall record an affidavit on the land
199 records of the town in which the real property subject to foreclosure by
200 power of sale is located. Such affidavit shall contain: (1) The authority of
201 the individual executing the affidavit; (2) the names of the original
202 mortgagor and mortgagee, as stated in the mortgage being foreclosed by
203 power of sale, the volume and page of the land records where such
204 mortgage is recorded and, if applicable, the parties and recording
205 information of any assignment of such mortgage to the foreclosing
206 mortgagee; (3) a statement that the mortgagee has complied with the
207 notice requirements of this section and section 2 of this act, together with
208 the names of the persons upon whom notice has been served; (4) a
209 statement that the mortgagor and any holder of a subordinate mortgage
210 or other interest failed to reinstate the mortgage being foreclosed by
211 power of sale and that the mortgagor failed to redeem the real property
212 from such mortgage; and (5) in the case of an individual mortgagor, a
213 statement setting forth facts showing that the mortgagor is not in the

214 military or naval service, provided a separate affidavit to that effect may
215 be attached to the affidavit required by this subsection in lieu of such
216 statement.

217 (e) Before the recording of a deed delivered pursuant to section 8 of
218 this act, the commissioner of the Superior Court appointed to sell the real
219 property in accordance with this section shall cause to be recorded on the
220 land records of the town in which the real property subject to foreclosure
221 by power of sale is located an affidavit containing: (1) The name of the
222 foreclosing mortgagee by whom such commissioner was appointed, the
223 names of the original mortgagor and mortgagee, as stated in the
224 mortgage being foreclosed by power of sale, the volume and page of the
225 land records where such mortgage is recorded and, if applicable, the
226 parties and recording information of any assignment of such mortgage
227 to the foreclosing mortgagee; and (2) a statement that such commissioner
228 has complied with all applicable requirements for the sale of the real
229 property.

230 Sec. 5. (NEW) (*Effective October 1, 2005*) (a) A mortgagor or any other
231 person entitled to notice of intention to foreclose by power of sale under
232 subsection (c) of section 2 of this act may apply to the Superior Court for
233 a protective order as provided in this subsection. An application under
234 this subsection shall be placed on the short calendar for a hearing. The
235 court shall order reasonable notice of the date and time of the hearing to
236 be given to all interested persons not less than four days before the
237 hearing. If any person entitled to such notice is not a resident of this
238 state, such notice shall be given by personal service, registered or
239 certified mail, publication or such other method as the court directs. The
240 entry fee, procedures and rights to appeal for an application for an order
241 under this subsection shall be the same as provided for an application for
242 an order of ejectment and execution of ejectment under section 6 of this
243 act. After such hearing, the court may order that a sale of real property
244 under a foreclosure by power of sale, or the disposition of the proceeds
245 from such sale, be restrained or carried out in accordance with such
246 terms and conditions as the court may determine if it is established by

247 the mortgagor or any other person entitled to notice under subsection (c)
248 of section 2 of this act that: (1) The underlying obligation which is
249 secured by the mortgage to be foreclosed by power of sale is invalid; (2)
250 the mortgagor is not in default or has cured the default; (3) the
251 mortgagee or other person exercising a power of sale under section 4 of
252 this act is not complying or is not likely to comply with the provisions of
253 sections 1 to 9, inclusive, of this act; or (4) the proceeds from such sale are
254 not being applied or are not likely to be applied as required by section 8
255 of this act.

256 (b) A mortgagee may apply to the Superior Court for an order in aid
257 of the mortgagee's rights under sections 1 to 9, inclusive, of this act,
258 including, but not limited to, an order allowing the mortgagee and other
259 interested persons reasonable access to the real property subject to
260 foreclosure by power of sale for purposes of rehabilitation, preparation
261 for sale, repair, maintenance, inspection, posting of notice and
262 conducting the sale. An application under this subsection shall be placed
263 on the short calendar for a hearing. The court shall order reasonable
264 notice of the date and time of the hearing to be given to all interested
265 persons not less than four days before the hearing. If any person entitled
266 to such notice is not a resident of this state, such notice shall be given by
267 personal service, registered or certified mail, publication or such other
268 method as the court directs. The entry fee, procedures and rights to
269 appeal for an application for an order under this subsection shall be the
270 same as provided for an application for an order of ejectment and
271 execution of ejectment under section 6 of this act.

272 (c) After a sale of real property under a foreclosure by power of sale, a
273 proceeding to set aside such sale may be undertaken only pursuant to
274 subsection (d) of this section. If no action to set aside such sale is brought
275 under subsection (d) of this section, the facts asserted in the affidavits
276 required by subsections (d) and (e) of section 4 of this act with respect to
277 such sale shall be conclusively presumed to be true and accurate, except
278 in an action for damages under subsection (a) of section 8 of this act.

279 (d) If the mortgagee failed to comply with the procedural
280 requirements of sections 1 to 9, inclusive, of this act, the mortgagor or
281 any other person entitled to notice of intention to foreclose by power of
282 sale under subsection (c) of section 2 of this act may seek to set aside a
283 sale of real property under a foreclosure by power of sale by
284 commencing a civil action in the Superior Court not later than twenty
285 days after the date on which such sale was held, except as otherwise
286 provided in section 8 of this act. The foreclosing mortgagee and the
287 owner of record shall be necessary parties to such action, and process in
288 such action shall be served upon them within five days after the date of
289 issuance of the complaint, but not later than twenty-five days following
290 the date of such sale. No such action may be maintained unless the
291 plaintiff causes a notice of lis pendens to be recorded in the land records
292 of the town in which the real property is located within five days after
293 the date of issuance of the complaint, but not later than twenty-five days
294 following the date of such sale. The notice of lis pendens shall comply
295 with the provisions of section 52-325 of the general statutes and shall be
296 served on the foreclosing mortgagee, the commissioner of the Superior
297 Court appointed to conduct such sale and the owner of record not later
298 than five days after the commencement of the action. Actions brought
299 under this subsection shall be privileged cases to be heard by the court as
300 soon after the return day as is practicable.

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

304 Sec. 6. (NEW) (*Effective October 1, 2005*) (a) Upon the sale of real
305 property under a foreclosure by power of sale, if possession of the real
306 property is withheld by a person in possession whose interest was
307 foreclosed, after the commissioner of the Superior Court conducting the
308 sale under section 4 of this act conveys the real property to the purchaser
309 thereof, the purchaser of the real property may apply to the Superior
310 Court for an order of ejectment and execution of ejectment pursuant to
311 section 49-22 of the general statutes. An application filed under this

312 section shall include a proposed order and summons and shall request
313 that a hearing be held to determine whether the court should enter such
314 order and issue execution of ejectment. Upon the filing of such
315 application, the court shall order reasonable notice of the date and time
316 of the hearing to be given to the person in possession whose interest was
317 foreclosed and, if such application was not made by all owners of record
318 of the real property, to such other owners of record, not less than four
319 days before the hearing. If any person entitled to such notice is not a
320 resident of this state, such notice shall be given by personal service,
321 registered or certified mail, publication or such other method as the court
322 directs.

323 (b) An application, proposed order and summons filed under
324 subsection (a) of this section may be in such form as may be prescribed
325 by the Office of the Chief Court Administrator.

326 (c) The clerk of the court, upon receipt of an application filed in
327 triplicate under subsection (a) of this section, if the clerk finds the
328 application to be complete and in proper form, shall affix a date for
329 hearing on the application and sign the order of hearing and notice. An
330 entry fee of twenty dollars shall be paid to the clerk and copies of the
331 original application shall be placed in the court file. The clerk shall
332 deliver to the applicant, or the applicant's attorney, the original
333 application for service. The original application shall be returned to court
334 with the officer's return.

335 (d) At the hearing held on an application filed under subsection (a) of
336 this section, the applicant shall provide the court with evidence of the
337 applicant's title to the real property. Unless the person in possession
338 whose interest was foreclosed thereafter demonstrates a right to
339 possession superior to that of the applicant, the court shall enter an order
340 of ejectment and issue execution of ejectment pursuant to section 49-22 of
341 the general statutes and subsection (e) of this section, except as provided
342 in subsection (g) of this section.

343 (e) Any order entered as provided in subsection (d) of this section

344 shall be deemed a final judgment for the purpose of appeal. No appeal
345 may be taken from such order except within twenty days thereof. The
346 effect of such order and execution of ejectment shall be automatically
347 stayed during such twenty-day period. If an appeal is taken within such
348 twenty-day period, the party taking the appeal may, within such period,
349 file an application with the clerk of the court requesting a stay of the
350 order and execution of ejectment pending the appeal and setting forth
351 the reasons for the request. A copy of such application shall be sent to
352 each party by the applicant. Upon the filing of an application for a stay
353 under this subsection, the order and execution of ejectment shall be
354 stayed until a decision is rendered on such application. A hearing on
355 such application shall be held promptly. The order and execution of
356 ejectment shall be stayed pending the appeal if the party taking the
357 appeal posts a bond as provided in subsection (f) of this section.

358 (f) At the hearing held on an application for a stay filed under
359 subsection (e) of this section, the court shall: (1) On motion of the party
360 taking the appeal, set a bond with surety for the stay in an amount that
361 the court deems sufficient to indemnify the adverse party for any
362 damages that may result from the stay; (2) grant the stay; (3) deny the
363 stay; or (4) condition the granting of the stay on the posting of such bond.

364 (g) A lessee whose leasehold interest was not extinguished by a
365 foreclosure by power of sale may not be ejected by an action under this
366 section. A lessee, tenant or occupant of a dwelling unit, other than the
367 mortgagor and the mortgagor's household, regardless of the number of
368 dwelling units contained in the real property subject to foreclosure by
369 power of sale, may not be ejected by an action under this section.

370 Sec. 7. (NEW) (*Effective October 1, 2005*) (a) The proceeds from a sale of
371 real property under a foreclosure by power of sale pursuant to sections 1
372 to 9, inclusive, of this act shall be held by the commissioner of the
373 Superior Court conducting the sale as a trustee for the benefit of the
374 foreclosing mortgagee and all persons who may claim an interest in such
375 proceeds. Such proceeds shall be distributed by such commissioner in

376 the following order:

377 (1) The reasonable expenses of sale;

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

383 (3) Satisfaction of the indebtedness secured by the mortgage being
384 foreclosed by power of sale;

385 (4) Satisfaction in the order of priority of any subordinate security
386 interest of record in accordance with the provisions of subsection (b) of
387 this section; and

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

389 (b) If, after the payment of the obligations described in subdivisions
390 (1), (2) and (3) of subsection (a) of this section, there remain excess
391 proceeds available for distribution to the holders of subordinate security
392 interests, such distribution shall be made in the following manner:

393 (1) Not later than five days after the transfer of title to the purchaser,
394 the commissioner of the Superior Court conducting the sale shall give
395 notice to all holders of subordinate security interests affected by the
396 foreclosure by power of sale and to the former owner of the real property
397 of the existence and extent of excess proceeds. Such notice shall list the
398 names and addresses of all such holders and shall be given by certified
399 mail, return receipt requested.

400 (2) Not later than twenty days after the date of the notice required
401 under subdivision (1) of this subsection, the former owner of the real
402 property and all holders of subordinate security interests affected by the
403 foreclosure by power of sale desiring to make a claim to the excess
404 proceeds shall forward to such commissioner an affidavit of debt setting

405 out the priority and amount being claimed, including a statement of the
406 per diem accrual rate subsequent to the date of the affidavit. Copies of
407 the affidavit shall be mailed to the former owner of the real property and
408 to all other holders of subordinate security interests listed in such notice.

409 (3) Not later than ten days after the expiration of the period described
410 in subdivision (2) of this subsection, such commissioner shall prepare a
411 statement of distribution, containing the proposed order of priorities and
412 payments to the former owner of the real property and to each holder of
413 a subordinate security interest to whom a payment is to be made. Copies
414 of the statement of distribution shall be mailed to the former owner of
415 the real property and to all holders of subordinate security interests
416 listed in the notice required under subdivision (1) of this subsection.

417 (4) If, not later than ten days after the mailing of the statement of
418 distribution, neither the former owner of the real property nor the holder
419 of any subordinate security interest affected by the foreclosure by power
420 of sale has given notice to such commissioner and to all other holders of
421 subordinate security interests of an objection to such commissioner's
422 proposed order of priorities and payments as contained in the statement
423 of distribution, the commissioner shall forthwith make payment in
424 accordance with the statement of distribution.

425 (5) If, not later than ten days after the mailing of the statement of
426 distribution, the former owner or any holder of a subordinate security
427 interest affected by the foreclosure by power of sale gives notice to such
428 commissioner and to all other holders of subordinate security interests of
429 an objection to the proposed order of priorities and payments as
430 contained in the statement of distribution, such commissioner shall make
431 distribution only to those persons whose interests are unaffected by the
432 objection, and shall pay to the Superior Court the proceeds at issue, and
433 shall provide notice to the former owner of the real property and to all
434 holders of subordinate security interests affected by the foreclosure by
435 power of sale, by certified mail, return receipt requested, of the address
436 of the court to which the proceeds were paid, the person's right to file an

437 application with the court for return of such proceeds, and the amount of
438 proceeds paid to the court. Any such holder or the former owner of the
439 real property may, not later than ninety days after the date such
440 commissioner paid such proceeds to the court, file an application with
441 the court for return of such proceeds and a determination of the equities
442 of the parties having an interest in such proceeds. Notice of such
443 application shall be served, in the manner for service of process required
444 under chapter 896 of the general statutes or section 33-929 of the general
445 statutes to commence a civil action, upon all persons having an interest
446 of record in the real property on the date of recording of the notice of
447 intention to foreclose by power of sale under subsection (a) of section 2
448 of this act, or whose interest in the real property arose thereafter but who
449 have complied with the requirements of subsection (d) of section 2 of this
450 act. The court, on motion of a party or on its own motion, may appoint a
451 state referee to hear the facts and to make a determination of the equities
452 of the parties in such proceeds. The state referee, after providing at least
453 ten days' notice to the parties interested of the time and place of hearing,
454 shall hear the applicant and any parties interested, take such testimony
455 as the state referee deems material, determine the equities of the parties
456 in such proceeds and immediately report to the court. The report shall
457 contain a detailed statement of findings by the state referee, sufficient to
458 enable the court to determine the consideration upon which the state
459 referee based his or her conclusions. The court may reject the report of
460 the state referee for any irregular or improper conduct in the
461 performance of the duties of the state referee. If the report of the state
462 referee is rejected by the court, the court shall appoint another state
463 referee to make such determination and report. If the report of the state
464 referee is accepted by the court, the determination of the equities of the
465 parties in such proceeds made by the state referee shall be conclusive
466 upon all parties given notice of such hearing, subject to appeal to the
467 Appellate Court. If no appeal to the Appellate Court is filed within the
468 time allowed by law, or if an appeal is filed and the proceedings have
469 terminated in a final judgment determining the amount of such proceeds
470 due each party, the clerk of the court shall send a certified copy of a

471 statement of compensation and of the judgment to the prevailing party
472 or parties, as the case may be, and shall pay such parties the amount of
473 such proceeds due.

474 (c) If real property subject to foreclosure by power of sale is sold,
475 pursuant to the exercise of a power of sale, at a public sale or at a private
476 sale in accordance with the provisions of sections 1 to 9, inclusive, of this
477 act, neither the mortgagor nor any comaker or guarantor of the secured
478 indebtedness shall be liable for the deficiency, if any, between the
479 secured indebtedness and the net proceeds delivered to the mortgagee
480 from any such sale.

481 Sec. 8. (NEW) (*Effective October 1, 2005*) (a) Whenever real property
482 subject to foreclosure by power of sale is sold by a mortgagee pursuant
483 to the exercise of a power of sale, a purchaser for value in good faith
484 acquires the mortgagor's and the mortgagee's rights in the real property,
485 free of the mortgage under which the sale occurred and any subordinate
486 interests in the real property, other than those subordinate interests that
487 the mortgagee has determined will not be affected by the foreclosure by
488 power of sale as set forth in the notice of intention to foreclose by power
489 of sale in accordance with subsection (b) of section 2 of this act, even
490 though the mortgagee or the commissioner of the Superior Court
491 conducting the sale fails to comply with the requirements of sections 1 to
492 9, inclusive, of this act. Notwithstanding that a subordinate mortgage or
493 other security interest is extinguished by the sale, the underlying claim of
494 the holder of the subordinate mortgage or other security interest against
495 the mortgagor shall be preserved to the extent not satisfied. Any holder
496 whose subordinate mortgage or other security interest is extinguished
497 shall have a cause of action against the foreclosing mortgagee for loss of
498 such holder's mortgage or other security interest resulting from any
499 material misstatement or omission made in the affidavit required by
500 subsection (d) of section 4 of this act. No such action may be brought but
501 within one year of the date of the recording of such affidavit.

502 (b) Whenever a mortgage has been foreclosed by power of sale

503 pursuant to sections 1 to 9, inclusive, of this act and one or more persons
504 owning any interest in or holding an encumbrance on the real property
505 subsequent or subordinate to such mortgage, other than a subordinate
506 mortgage or other security interest that is subject to the provisions of
507 subsection (a) of this section, have been omitted or have not been
508 foreclosed of such interest or encumbrance because of improper service
509 of the notice of intention to foreclose by power of sale under subsection
510 (c) of section 2 of this act, or for any other reason, all other persons
511 foreclosed by such foreclosure by power of sale shall be bound thereby
512 as fully as if no such omission or defect had occurred and shall not retain
513 any equity or right to redeem the foreclosed real property. Such omission
514 or failure to properly foreclose such person or persons may be
515 completely cured and cleared by deed or foreclosure or other proper
516 legal proceedings to which the only necessary parties shall be the person
517 acquiring title to the real property pursuant to the foreclosure by power
518 of sale and the person or persons that have not been foreclosed, or their
519 respective successors in title.

520 (c) The commissioner of the Superior Court conducting a sale of real
521 property under section 4 of this act shall execute a deed to the purchaser
522 of such real property sufficient to convey title, which deed shall identify
523 the mortgage foreclosed by power of sale and the parties to the
524 mortgage, indicate the volume and page of the land records where such
525 mortgage is recorded and recite that the deed is executed by the
526 commissioner of the Superior Court conducting the sale after a default
527 and sale under sections 1 to 9, inclusive, of this act and such
528 commissioner's authority to conduct the sale. The signature and title or
529 authority of such commissioner signing the deed as grantor and a recital
530 of the fact of default and the giving of notices required by sections 1 to 9,
531 inclusive, of this act, together with the affidavits required by subsections
532 (d) and (e) of section 4 of this act, are sufficient proof of the facts recited
533 and of the signer's authority to sign.

534 Sec. 9. (NEW) (*Effective October 1, 2005*) (a) Any mortgagor or other
535 holder of a subordinate interest in real property securing a debt or other

536 obligation affected by the exercise of a power of sale by a mortgagee
537 under sections 1 to 9, inclusive, of this act may pursue in a separate civil
538 action any rights or claims against such mortgagee that could not have
539 been pursued or asserted under sections 1 to 9, inclusive, of this act and
540 that were not extinguished by the exercise of such mortgagee's rights
541 under sections 1 to 9, inclusive, of this act or by any determinations of
542 the Superior Court pursuant to sections 1 to 9, inclusive, of this act.

543 (b) Venue for any action or proceeding in the Superior Court under
544 sections 1 to 9, inclusive, of this act shall be in accordance with
545 subsection (b) of section 51-345 of the general statutes.

546 Sec. 10. Subsection (a) of section 12-498 of the general statutes is
547 repealed and the following is substituted in lieu thereof (*Effective October*
548 *1, 2005*):

549 (a) The tax imposed by section 12-494 shall not apply to: (1) Deeds
550 which this state is prohibited from taxing under the Constitution or
551 laws of the United States; (2) deeds which secure a debt or other
552 obligation; (3) deeds to which this state or any of its political
553 subdivisions or its or their respective agencies is a party; (4) tax deeds;
554 (5) deeds of release of property which is security for a debt or other
555 obligation; (6) deeds of partition; (7) deeds made pursuant to mergers
556 of corporations; (8) deeds made by a subsidiary corporation to its
557 parent corporation for no consideration other than the cancellation or
558 surrender of the subsidiary's stock; (9) deeds made pursuant to a
559 decree of the Superior Court under section 46b-81, 49-24 or 52-495 or
560 pursuant to a foreclosure by power of sale under sections 1 to 9,
561 inclusive, of this act; (10) deeds, when the consideration for the interest
562 or property conveyed is less than two thousand dollars; (11) deeds
563 between affiliated corporations, provided both of such corporations
564 are exempt from taxation pursuant to paragraph (2), (3) or (25) of
565 Section 501(c) of the Internal Revenue Code of 1986, or any subsequent
566 corresponding internal revenue code of the United States, as from time
567 to time amended; (12) deeds made by a corporation which is exempt

568 from taxation pursuant to paragraph (3) of Section 501(c) of the
 569 Internal Revenue Code of 1986, or any subsequent corresponding
 570 internal revenue code of the United States, as from time to time
 571 amended, to any corporation which is exempt from taxation pursuant
 572 to said paragraph (3) of said Section 501(c); (13) deeds made to any
 573 nonprofit organization which is organized for the purpose of holding
 574 undeveloped land in trust for conservation or recreation purposes; (14)
 575 deeds between spouses; (15) deeds of property for the Adriaen's
 576 Landing site or the stadium facility site, for purposes of the overall
 577 project, each as defined in section 32-651; (16) land transfers made on
 578 or after July 1, 1998, to a water company, as defined in section 16-1,
 579 provided the land is classified as class I or class II land, as defined in
 580 section 25-37c, after such transfer; (17) transfers or conveyances to
 581 effectuate a mere change of identity or form of ownership or
 582 organization, where there is no change in beneficial ownership; and
 583 (18) conveyances of residential property which occur not later than six
 584 months after the date on which the property was previously conveyed
 585 to the transferor if the transferor is (A) an employer which acquired the
 586 property from an employee pursuant to an employee relocation plan,
 587 or (B) an entity in the business of purchasing and selling residential
 588 property of employees who are being relocated pursuant to such a
 589 plan.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2005</i>	New section
Sec. 2	<i>October 1, 2005</i>	New section
Sec. 3	<i>October 1, 2005</i>	New section
Sec. 4	<i>October 1, 2005</i>	New section
Sec. 5	<i>October 1, 2005</i>	New section
Sec. 6	<i>October 1, 2005</i>	New section
Sec. 7	<i>October 1, 2005</i>	New section
Sec. 8	<i>October 1, 2005</i>	New section
Sec. 9	<i>October 1, 2005</i>	New section
Sec. 10	<i>October 1, 2005</i>	12-498(a)

Statement of Purpose:

To authorize foreclosure by power of 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.]