

AN ACT CONCERNING FORECLOSURE BY COMMERCIAL POWER OF SALE.

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

Section 1. (NEW) (*Effective October 1, 2016*) (a) As used in this section, sections 2 to 7, inclusive, of this act and section 12-498 of the general statutes, as amended by this act, "statutory power of sale" means a clause that is written into any mortgage deed or incorporated by reference into any mortgage deed granted by a corporation, partnership, including a limited partnership or a limited liability partnership, or limited liability company, that gives the mortgagee the power to foreclose nonjudicially upon a mortgage.

(b) The statutory power of sale may not be used to foreclose a mortgage granted by a religious corporation organized under the provisions of section 33-264a of the general statutes or to foreclose a mortgage that encumbers real estate improved by a one-to-four family dwelling if, at the time the mortgage deed is given, one of the units is the principal residence of an individual who is personally obligated on the debt that is secured by the mortgage deed. If a mortgage deed contains a statement, at the time the mortgage deed is given, that the mortgagor is not a religious corporation organized under the provisions of section 33-264a of the general statutes and the real estate encumbered by the mortgage deed is not improved by a one-to-four family dwelling that is used, in whole or in part, as a principal residence of an individual who is personally obligated on the debt that is secured by the mortgage deed, then such statement shall conclusively establish the facts contained therein.

(c) In any mortgage deed in which a statutory power of sale is permitted to be used in accordance with this section, the use of the words "statutory power of sale", or similar language in a mortgage deed, shall mean that the mortgage deed provides for a statutory power of sale enforceable by the mortgagee in accordance with the provisions of this section, sections 2 to 7, inclusive, of this act and section 12-498 of the general statutes, as amended by this act. Upon any default in the performance or the observance of the conditions on or requirements of the mortgage deed, including, but not limited to, any obligations to repay the debt that is secured by the mortgage deed the mortgagee or the mortgagee's executors, administrators, successors or assigns, acting by and through a duly authorized attorney in his or her capacity as a commissioner of the Superior Court admitted to practice in the state, may sell, by way of a public sale, the mortgaged premises, or, in the event of any partial release of such mortgage deed, the portion of the mortgaged premises that remains subject to the mortgage deed, either as a whole or in parcels, together with any improvements to the mortgaged premises. Such public sale shall take place (1) in the town where the mortgaged premises is located, (2)

if more than one parcel is subject to such mortgage deed, then in the town where one of such parcels is located, or (3) in any other place designated in the mortgage deed. Such sale of the mortgaged premises or portion of the mortgaged premises shall comply with the terms of the mortgage deed and the provisions of this section, sections 2 to 7, inclusive of this act, and section 12-498 of the general statutes, as amended by this act. The mortgagee or the mortgagee's executors, administrators, successors or assigns or the agent or attorney of the mortgagee or the mortgagee's executors, administrators, successors or assigns may convey the mortgaged premises by proper deed or deeds to the purchaser or purchasers in fee simple. Such sale of the mortgaged premises forever bars the mortgagor and all persons claiming under the mortgagor from all rights and interests at law or in equity in the mortgaged premises.

(d) In the case of a mortgage deed that does not originally include, or incorporate by reference, the statutory power of sale, a mortgagor may subsequently execute an addendum to the mortgage deed that includes, or incorporates by reference, the statutory power of sale.

(e) Nothing in this section or sections 2 to 7, inclusive, of this act shall prevent a mortgagee from foreclosing a mortgage deed by strict foreclosure or foreclosure by sale as otherwise provided by law.

(f) If a mortgage deed containing a statutory power of sale secures a debt or other obligation that is secured by more than one mortgage deed, foreclosure by statutory power of sale of one of the mortgages shall not be a bar to foreclosure of any of the other mortgages by statutory power of sale or by other means permitted by law.

(g) The foreclosure of a mortgage deed by statutory power of sale shall be ineffective to foreclose the interests of a tenant who (1) is not the mortgagor or owner of the property, and (2) is occupying all or a portion of the property for residential purposes.

(h) Notwithstanding the provisions of section 49-1 of the general statutes, the foreclosure of a mortgage deed by statutory power of sale shall not be a bar to any further action upon the mortgage debt, note or other obligation against the person or persons who are liable for the payment of such debt, note or obligation to recover any deficiency resulting from the exercise of the statutory power of sale.

Sec. 2. (NEW) (*Effective October 1, 2016*) (a) A notice of intention to foreclose by statutory power of sale required by subsection (c) of section 1 of this act shall be (1) in writing and contain the provisions required under subsection (b) of this section, (2) served upon persons described in subsection (c) of this section in the manner for service of process required under chapter 896 of the general statutes or section 33-929 of the general statutes to commence a civil action, and (3) recorded in the land records of the town in which the real property subject to foreclosure by statutory power of sale is located.

(b) A notice of intention to foreclose by statutory power of sale shall state: (1) The property encumbered by the mortgage deed to be foreclosed by statutory power of sale; (2) the default or defaults; (3) the action required to cure the default or defaults; (4) a date, not less than sixty days from the date notice is given to the mortgagor, by which the default or defaults must be cured in order to avoid the sale; and (5) whether the mortgagee has accelerated maturity of the debt or the maturity date of the debt has occurred.

(c) Notice of the intention to foreclose by statutory power of sale shall be served on:

(1) The mortgagor or a representative in interest of the mortgagor, except such notice may be sent by registered or certified mail (A) addressed to the mortgagor or the mortgagor's representative at the mortgagor's last known address, (B) to any person and to any address agreed upon in the mortgage deed, or (C) to any address provided in writing by the mortgagor to the mortgagee.

(2) Any residential tenant of the property if the mortgagee knows or should know by exercise of due diligence that the property is occupied as a residential rental unit. Upon request from a mortgagee, the mortgagor or its representative in interest shall provide the name, address and other contact information for any residential tenant. Notice to a residential tenant may be served on the residential tenant by marshal, sent by first class mail to the residential tenant's last known address or posted conspicuously at each entrance to the mortgaged premises. The failure to provide the notice required by this subdivision does not affect the validity of the foreclosure by statutory power of sale.

(3) All other parties in interest, except for parties in interest having superior priority to the foreclosing mortgagee or a claim to the subject property that is recorded in the land records of the town in which the real property subject to foreclosure by statutory power of sale is located at the time of recording of the notice of intention to foreclose by statutory power of sale. The notice shall be sent to the address, if any, listed in the instrument evidencing the interest, and, if none is listed, to the registered agent for the party in interest or to any other address that may be readily available to the mortgagee. Failure to notify any party in interest, other than the mortgagor, does not invalidate the foreclosure as to other parties in interest to whom notice was given.

Sec. 3. (NEW) (*Effective October 1, 2016*) (a) The mortgagor may cure a default or defaults in the performance of the conditions or requirements of a mortgage deed, prevent the foreclosure by statutory power of sale or other disposition of the mortgaged premises and reinstate the mortgage deed by tendering the payment or performance due under the mortgage deed as provided in subsection (b) of this section, except as to a mortgage debt that is due and payable as a result of the maturity date having occurred not later than fifteen days prior to the sale under a foreclosure by statutory power of sale.

(b) To the extent permitted by subsection (a) of this section, the mortgagor may cure the default or defaults and avoid the operation of any acceleration clause in the mortgage deed by: (1) Paying all sums that would have been due at the time of payment in the absence of any acceleration clause; (2) performing any other obligation the mortgagor would have been bound to perform in the absence of any acceleration clause; and (3) paying the costs of the proceeding to foreclose that are reasonably incurred by the mortgagee, including, but not limited to, reasonable attorney's fees of the mortgagee.

(c) At any time after receiving notice of the default or defaults, the mortgagor may waive such right to cure in writing.

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

Sec. 4. (NEW) (*Effective October 1, 2016*) (a) The mortgagee, after the mortgagor's default and upon compliance with the provisions of sections 1 to 7, inclusive, of this act, may sell all or any part of the mortgaged premises that is subject to the mortgage deed. A sale under a foreclosure by statutory power of sale shall convey title to the property free and clear of the interest of the mortgagor and of all other parties in interest who have been given notice in accordance with the provisions of subsection (c) of section 2 of this act. The sale may be by public sale, as a unit or in parcels, at any time and place and on any terms, including, but not limited to, sale on credit. The sale shall be conducted by a commissioner of the Superior Court admitted to practice in the state appointed by the mortgagee who is not an employee of the mortgagee. Every aspect of the sale, including the method, advertising, time, place, deposit and terms shall be commercially reasonable, provided a sale that complies with the requirements of subsection (c) of this section shall be deemed to be commercially reasonable. The mortgagee shall give to persons entitled to notice under subsection (c) of section 2 of this act written notice of the time and place of the sale. The notice of a foreclosure by statutory sale shall be given not less than thirty days prior to any sale. Such notice shall either be served in accordance with subsection (a) of section 2 of this act or be delivered by both certified mail, return receipt requested, and first class mail. The notice required by this subsection shall be deemed given and complete upon being served in accordance with subsection (a) of section 2 of this act or three days after being deposited in the United States mail with postage prepaid, as applicable. The sale may not be held earlier than thirty days after giving the notice required by this subsection. A mortgagee may bid on and purchase any real property sold at such sale, provided the mortgagee is the highest bidder.

(b) At the time of acceptance of a bid at a public sale under this section, the successful bidder, other than the foreclosing mortgagee, shall pay the required deposit to the commissioner of the Superior Court conducting the sale and execute and deliver to such commissioner a contract to purchase the real property, which may be a bond for deed. If the highest bidder fails to perform on the agreement, not later than thirty days after the date of sale, the commissioner of the Superior Court conducting the sale may execute a purchase and sale agreement with the next highest bidder and the deposit of the highest bidder may be retained or recovered as liquidated damages. If the foreclosing mortgagee is the highest bidder or becomes the highest bidder by failure of a bidder to perform a purchase and sale agreement, a purchase and sale agreement need not be executed. Any sums retained or recovered by the mortgagee under this subsection shall be applied to the payment of the debt secured by the mortgage deed in the same manner as the proceeds of a completed sale.

(c) A sale under this section shall be deemed commercially reasonable if: (1) The commissioner of the Superior Court appointed to conduct the sale complies with all applicable requirements for notice and sale as provided in sections 1 to 7, inclusive, of this act; (2) notice of the sale, including the address of the real property to be sold, the date, place and time of the sale, the amount of the deposit required at the sale and the name and telephone number of the commissioner of the Superior Court conducting the sale, is posted at the location of the real property not less than thirty days before the date of sale; and (3) the sale is advertised in a newspaper of general circulation in the town where the real property is located, at least once each week for three successive weeks before the sale, in substantially the form customarily used for notices of judicial sale of real property and includes the address of the real property to be sold, the date, place and time of the sale, the amount of the deposit required at the sale and the name and telephone number of the commissioner of the Superior Court conducting the sale. A mortgagee, after serving a notice of intention to foreclose by statutory power of sale under section 2 of this act, is authorized to enter upon the real property for the purpose of posting the notice of sale required under this subsection.

(d) The commissioner shall convey title by a mortgagee statutory power of sale deed as provided in the applicable contract for sale and as provided in section 7 of this act.

(e) Before the recording of the deed conveyed pursuant to subsection (d) of this section, the commissioner of the Superior Court appointed to sell the real property in accordance with this section shall cause to be recorded on the land records of the town in which the real property subject to foreclosure by statutory power of sale is located a certificate of foreclosure of mortgage by statutory power of sale containing: (1) The name of the foreclosing mortgagee by whom such commissioner was appointed, the names of the original mortgagor and mortgagee as stated in the mortgage deed being foreclosed by statutory power of sale, the volume and page of the land records where such mortgage deed is recorded and, if applicable, the parties and recording

information of any assignment of such mortgage deed to the foreclosing mortgagee; and (2) a statement that such commissioner has complied with all applicable requirements for the sale of the real property.

Sec. 5. (NEW) (*Effective October 1, 2016*) (a) A mortgagor or any other person entitled to notice of intention to foreclose by statutory power of sale under subsection (c) of section 2 of this act may apply to the Superior Court for a protective order seeking to stay, enjoin or condition the terms of the sale. An application made under this subsection shall be placed on the short calendar for a hearing. The court shall order reasonable notice of the date and time of the hearing to be given to all interested persons not less than four days before the hearing. If any person entitled to such notice is not a resident of this state, such notice shall be given by personal service, registered or certified mail, publication or such other method as the court directs. After such hearing, the court may order that a sale of real property under a foreclosure by statutory power of sale, or the disposition of the proceeds from such sale, be restrained or carried out in accordance with such terms and conditions as the court may determine if it is established by clear and convincing evidence by the mortgagor or any other person entitled to notice under subsection (c) of section 2 of this act that: (1) The underlying obligation that is secured by the mortgage deed to be foreclosed by statutory power of sale is invalid; (2) the mortgagor is not in default or has cured the default; or (3) the mortgagee or other person exercising a statutory power of sale under section 4 of this act has not complied with the provisions of sections 1 to 7, inclusive, of this act.

(b) A mortgagee may apply to the Superior Court for an order in aid of the mortgagee's rights under sections 1 to 7, inclusive, of this act, including, but not limited to, an order allowing the mortgagee and other interested persons reasonable access to the real property subject to foreclosure by statutory power of sale for purposes of rehabilitation, preparation for sale, repair, maintenance, inspection, posting of notice or conducting the sale. The application shall be placed on the short calendar for a hearing. The court shall order reasonable notice of the date and time of the hearing to be given to all interested persons not less than four days before the hearing. If any person entitled to such notice is not a resident of this state, such notice shall be given by personal service, registered or certified mail, publication or such other method as the court directs.

(c) After a sale of real property under a foreclosure by statutory power of sale, a proceeding to set aside such sale may be undertaken only pursuant to subsection (d) of this section. If no action to set aside such sale is brought under subsection (d) of this section within ten days of the date of sale, the facts asserted in the certification required by subsection (e) of section 4 of this act with respect to such sale shall be conclusively presumed to be true and accurate.

(d) If the mortgagee fails to comply with the provisions of sections 1 to 7, inclusive, of this act, the mortgagor or any other person entitled to notice of intention to foreclose by

statutory power of sale under subsection (c) of section 2 of this act may seek to set aside a sale of real property under a foreclosure by statutory power of sale by commencing a civil action in the Superior Court not later than ten days after the date on which such sale was held. The foreclosing mortgagee and the owner of record shall be necessary parties to such action and process in such action shall be served upon them not later than five days after the date of issuance of the complaint, but not later than ten days after the date of such sale. No such action may be maintained unless the plaintiff causes a notice of lis pendens to be recorded in the land records of the town in which the real property is located not later than five days after the date of issuance of the complaint and not later than ten days after the date of such sale. The notice of lis pendens shall comply with the provisions of section 52-325 of the general statutes and be served on the foreclosing mortgagee, the commissioner of the Superior Court appointed to conduct such sale and the owner of record not later than five days after the commencement of the action. Actions brought under this subsection shall be privileged cases to be heard by the court as soon after the return day as is practicable.

Sec. 6. (NEW) (*Effective October 1, 2016*) (a) The proceeds from a sale of real property under a foreclosure by statutory power of sale under sections 1 to 7, inclusive, of this act shall be held by the commissioner of the Superior Court conducting the sale as a trustee for the benefit of the foreclosing mortgagee and all persons who may claim an interest in such proceeds. Such proceeds shall be distributed by such commissioner in the following order:

- (1) The reasonable expenses of sale;
 - (2) The reasonable expenses of securing possession before sale and holding, maintaining and preparing the real property for sale, including, but not limited to, premiums on hazard and liability insurance, and, to the extent provided for in the mortgage deed and not prohibited by law, reasonable attorney's fees and other legal expenses incurred by the mortgagee;
 - (3) Satisfaction of the indebtedness secured by the mortgage deed being foreclosed by statutory power of sale;
 - (4) Satisfaction in the order of priority of any subordinate interest of record entitled to notice under subdivision (3) of subsection (c) of section 2 of this act; and
 - (5) Remittance of any excess to the mortgagor.
- (b) If, after distribution of the proceeds in accordance with subdivisions (1), (2) and (3) of subsection (a) of this section, there remain excess proceeds available for distribution to the holders of the subordinate interests, distribution of such excess proceeds shall be made in the following manner:

(1) Not later than five days after the transfer of title to the purchaser, the commissioner of the Superior Court conducting the sale shall give notice to all holders of such subordinate interests of record and to the former owner of the real property regarding the existence and extent of excess proceeds. Such notice shall list the names and addresses of all such holders and shall be given by certified mail, return receipt requested.

(2) Not later than twenty days after the date of the notice required under subdivision (1) of this subsection, the former owner of the real property and all holders of such subordinate interests of record desiring to make a claim to the excess proceeds shall forward to the commissioner of the Superior Court conducting the sale an affidavit of debt setting out the priority and amount being claimed, including a statement of the per diem accrual rate subsequent to the date of the affidavit. Copies of the affidavit shall be mailed to the former owner of the real property and to all other holders of subordinate interests listed in such notice.

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

(4) If, not later than ten days after the mailing of the statement of distribution, neither the former owner of the real property nor the holder of any such subordinate interest has given notice to the commissioner of the Superior Court conducting the sale and to all other holders of such subordinate interests of an objection to the commissioner's proposed order of priorities and payments contained in the statement of distribution, the commissioner shall forthwith make payment in accordance with the statement of distribution.

(5) If, not later than ten days after the mailing of the statement of distribution, the former owner or any holder of such a subordinate interest of record gives notice to the commissioner of the Superior Court conducting the sale and to all other holders of such subordinate interests of an objection to the proposed order of priorities and payments as contained in the statement of distribution, the commissioner shall (A) make distribution only to those persons whose interests are unaffected by the objection, (B) pay to the Superior Court the proceeds at issue, and (C) provide notice to the former owner of the real property and to all holders of such subordinate interests of record, by certified mail, return receipt requested, of the address of the court to which the proceeds were paid, the person's right to file an application with the court for return of such proceeds and the amount of proceeds paid to the court. Any such holder or the

former owner of the real property may, not later than ninety days after the date the commissioner paid such proceeds to the court, file an application with the court for return of such proceeds and a determination of the equities of the parties having an interest in such proceeds. Notice of such application shall be served, in the manner for service of process required under chapter 896 of the general statutes or section 33-929 of the general statutes to commence a civil action, upon all persons having an interest of record in the real property on the date of recording of the notice of intention to foreclose by statutory power of sale under subsection (a) of section 2 of this act. The court, on motion of a party or on its own motion, may appoint a state referee to hear the facts and to make a determination of the equities of the parties in such proceeds. The state referee, after providing at least ten days' notice to the interested parties of the time and place of hearing, shall hear the applicant and any interested parties, take such testimony as the state referee deems material, determine the equities of the parties in such proceeds and immediately submit a report to the court. The report shall contain a detailed statement of findings by the state referee that is sufficient to enable the court to determine the consideration upon which the state referee based his or her conclusions. The court may reject the report of the state referee for any irregular or improper conduct in the performance of the duties of the state referee. If the report of the state referee is rejected by the court, the court shall appoint another state referee to make findings and submit a report. If the report of the state referee is accepted by the court, the determination of the equities of the parties in such proceeds made by the state referee shall be conclusive upon all parties given notice of such hearing, subject to appeal to the Appellate Court. If no appeal to the Appellate Court is filed within the time allowed by law, or if an appeal is filed and the proceedings have terminated in a final judgment determining the amount of such proceeds due each party, the clerk of the court shall send a certified copy of a statement of compensation and of the judgment to the prevailing party or parties, as the case may be, and shall pay such parties the amount of such proceeds that is due.

Sec. 7. (NEW) (*Effective October 1, 2016*) The commissioner of the Superior Court conducting a sale of real property under section 4 of this act shall execute a deed to the purchaser of such real property that is sufficient to convey title and that identifies the mortgage deed foreclosed by statutory power of sale and the parties to the mortgage deed, indicate the volume and page of the land records where such mortgage deed is recorded and recite that the deed is executed by the commissioner of the Superior Court conducting the sale after a default and sale under sections 1 to 7, inclusive, of this act and pursuant to commissioner's authority to conduct the sale. The signature and title or authority of such commissioner signing the deed as grantor, together with the certificate required by subsection (e) of section 4 of this act, are sufficient proof of the facts recited in the deed and of the signer's authority to sign the deed.

Sec. 8. Subsection (a) of section 12-498 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2016*):

(a) The tax imposed by section 12-494 shall not apply to: (1) Deeds which this state is prohibited from taxing under the Constitution or laws of the United States; (2) deeds which secure a debt or other obligation; (3) deeds to which this state or any of its political subdivisions or its or their respective agencies is a party; (4) tax deeds; (5) deeds of release of property which is security for a debt or other obligation; (6) deeds of partition; (7) deeds made pursuant to mergers of corporations; (8) deeds made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of the subsidiary's stock; (9) deeds made pursuant to a decree of the Superior Court under section 46b-81, 49-24 or 52-495, [or] pursuant to a judgment of foreclosure by market sale under section 49-24 or pursuant to foreclosure by statutory power of sale under sections 1 to 7, inclusive, of this act; (10) deeds, when the consideration for the interest or property conveyed is less than two thousand dollars; (11) deeds between affiliated corporations, provided both of such corporations are exempt from taxation pursuant to paragraph (2), (3) or (25) of Section 501(c) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended; (12) deeds made by a corporation which is exempt from taxation pursuant to paragraph (3) of Section 501(c) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, to any corporation which is exempt from taxation pursuant to said paragraph (3) of said Section 501(c); (13) deeds made to any nonprofit organization which is organized for the purpose of holding undeveloped land in trust for conservation or recreation purposes; (14) deeds between spouses; (15) deeds of property for the Adriaen's Landing site or the stadium facility site, for purposes of the overall project, each as defined in section 32-651; (16) land transfers made on or after July 1, 1998, to a water company, as defined in section 16-1, provided the land is classified as class I or class II land, as defined in section 25-37c, after such transfer; (17) transfers or conveyances to effectuate a mere change of identity or form of ownership or organization, where there is no change in beneficial ownership; (18) conveyances of residential property which occur not later than six months after the date on which the property was previously conveyed to the transferor if the transferor is (A) an employer which acquired the property from an employee pursuant to an employee relocation plan, or (B) an entity in the business of purchasing and selling residential property of employees who are being relocated pursuant to such a plan; (19) deeds in lieu of foreclosure that transfer the transferor's principal residence; and (20) any instrument transferring a transferor's principal residence where the gross purchase price is insufficient to pay the sum of (A) mortgages encumbering the property transferred, and (B) any real property taxes and municipal utility or other charges for which the municipality may place a lien on the property and which have priority over the mortgages encumbering the property transferred.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2016</i>	New section
Sec. 2	<i>October 1, 2016</i>	New section
Sec. 3	<i>October 1, 2016</i>	New section
Sec. 4	<i>October 1, 2016</i>	New section
Sec. 5	<i>October 1, 2016</i>	New section
Sec. 6	<i>October 1, 2016</i>	New section
Sec. 7	<i>October 1, 2016</i>	New section
Sec. 8	<i>October 1, 2016</i>	12-498(a)

Statement of Purpose:

To authorize foreclosure of mortgages, other than mortgages of owner-occupied residential real property, by statutory power of sale.

[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.]