

State of Wisconsin



2011 Senate Bill 241

Date of enactment: **December 7, 2011**
Date of publication*: **December 20, 2011**

2011 WISCONSIN ACT 102

AN ACT *to amend* 707.37 (6); and *to create* 707.28 of the statutes; **relating to:** foreclosure of time–share estates and licenses.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 707.28 of the statutes is created to read:

707.28 Foreclosure of time–share estates and licenses. (1) **DEFINITION.** In this section, “foreclosing entity” means a person that holds a mortgage or a lien for assessments under s. 707.37 on a time–share estate and that seeks to foreclose the mortgage or lien.

(2) **AVAILABLE PROCEDURES.** (a) *Time–share estates.* A mortgage or a lien for assessments under s. 707.37 on a time–share estate may be foreclosed in the same manner and subject to the same requirements as a foreclosure of mortgages on real property in this state or in the manner provided under this section.

(b) *Time–share licenses.* A security interest in, or a lien for assessments under s. 707.37 on, a time–share license may be foreclosed under chs. 401 to 411.

(3) **NONJUDICIAL TIME–SHARE ESTATE FORECLOSURE PROCEDURE.** (a) *Notice of default; nonjudicial foreclosure.* 1. To foreclose a mortgage or a lien for assessments under s. 707.37 on a time–share estate under this section, a foreclosing entity shall first provide written notice to the time–share owner in default at the time–share owner’s last–known address by certified mail, with return receipt requested, and by 1st class mail, subject to s. 707.38 (5).

2. The notice shall inform the time–share owner of his or her default and the amount that he or she owes to the foreclosing entity; that he or she has the right to a judicial foreclosure conducted in the manner provided in ch. 846; that, within 30 days from the date on which the notice was mailed under subd. 1., or 30 days from the last date the notice was mailed if the mailings were not on the same date, he or she may cure the default or object in writing to nonjudicial foreclosure; and that, if he or she does not timely cure the default or object to the nonjudicial foreclosure in writing, the foreclosing entity may proceed with a nonjudicial foreclosure.

3. The notice shall include, for use by the time–share owner, a separate form objecting to nonjudicial foreclosure that includes the address of the foreclosing entity.

4. If, within the 30–day period under subd. 2., the time–share owner returns the objection form under subd. 3. or otherwise objects in writing to the use of nonjudicial foreclosure, the foreclosing entity must use the procedure under ch. 846 to foreclose the mortgage or lien. However, if the time–share owner does not, within the 30–day period under subd. 2., object in writing to nonjudicial foreclosure, he or she waives his or her right to foreclosure conducted in the manner provided under ch. 846, and, if he or she does not within that 30–day period cure the default, the foreclosing entity may proceed with a

* Section 991.11, WISCONSIN STATUTES 2009–10 : Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated” by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

foreclosure sale of the time-share estate by public auction as provided in this section.

(b) *Notice of sale; general requirements.* The foreclosing entity shall provide notice of the foreclosure sale under this section as follows:

1. a. Except as provided in subd. 1. b., notice of the sale as provided in par. (c) or (d), whichever is applicable, must be published once in each of 3 successive weeks in a newspaper having general circulation in the county in which the time-share estate is located. The first publication must be no later than 30 days before the date of the sale, excluding the date of that first publication and the date of the sale.

b. In lieu of publishing the notice of sale in a newspaper as provided in subd. 1. a., notice may be given by posting a copy of the notice of sale as provided in par. (c) or (d), whichever is applicable, for 3 successive weeks on the Internet and publishing, once a week for 3 successive weeks in a newspaper having general circulation in the county in which the time-share estate is located, a notice, in at least 10-point boldface type, that states at a minimum that the notice of sale for the foreclosure of the time-share estate is posted on the Internet, the Internet site where the notice is posted, and the name and street address of the property in which the time-share estate exists. The posting on the Internet shall begin on the same date as the first newspaper publication, which date must be no later than 30 days before the date of the sale, excluding the date of that first publication and the date of the sale.

2. At least 30 days before the date of the sale, excluding the date of the sale, written notice of the date, time, and place of the sale, which may be a copy of the notice under par. (c) or (d), whichever is applicable, must be mailed to all of the following:

a. Subject to s.707.38 (5), the time-share owner at the time-share owner's last-known address by certified mail, with return receipt requested, and by 1st class mail.

b. All persons having a lien of record on the time-share estate by certified mail, with return receipt requested.

3. The notice provided to the time-share owner under subd. 2. a. must include the following language: "You are hereby notified that you have a right to petition the Circuit Court for _____ County (the county in which the time-share estate is located), with service on _____ (the foreclosing entity) and upon such bond as the Court may require, to enjoin the scheduled foreclosure sale."

4. If more than one time-share estate in the same time-share property will be sold at the foreclosure sale, all such time-share estates may be combined into one notice of sale, with one property description, as described in par. (c) or (d), whichever is applicable.

5. The notice of sale as provided in par. (c) or (d), whichever is applicable; published, or posted and published, and mailed in accordance with the requirements

under this subsection; together with such other or further notice, if any; constitutes sufficient notice of the sale.

(c) *Form of notice to foreclose lien for assessments.* The notice of foreclosure sale for foreclosing a lien for assessments under s. 707.37 on a time-share estate under this section shall be in substantially the following form:

NOTICE OF SALE OF TIME-SHARE ESTATE OR ESTATES UNDER CHAPTER 707 OF THE WISCONSIN STATUTES

By virtue of the (project instrument or time-share instrument, whichever is applicable) of the (name and address of the time-share property), and Chapter 707 of the Wisconsin Statutes establishing a lien for failure to pay assessments on the time-share estate (or estates, if more than one) held by the time-share owner (or owners, if more than one) listed below, the time-share estate (or estates, if more than one) will be sold at public auction, commencing at, on, 20.., at, Wisconsin.

(For each time-share estate, list the name and address of the time-share owner, a general description of the time-share estate, and the recording information for the deed or other instrument vesting the time-share estate in the time-share owner.)

TERMS OF SALE: (State the deposit amount to be paid by the buyer at the time and place of the sale and the times for payment of the balance or the whole, as the case may be. The time-share estates, if more than one, must be sold in individual lots unless there are no individual bidders, in which case they may be sold as a group.)

Other terms to be announced at the sale.

Signed

Holder of the lien or authorized agent.

(d) *Form of notice to foreclose mortgage lien.* The notice of foreclosure sale for foreclosing a mortgage lien on a time-share estate under this section shall be in substantially the following form:

NOTICE OF SALE OF TIME-SHARE ESTATE OR ESTATES UNDER CHAPTER 707 OF THE WISCONSIN STATUTES

By virtue of Chapter 707 of the Wisconsin Statutes and the rights contained in a certain mortgage (or mortgages, if more than one) on the time-share estate (or estates, if more than one) given by the time-share owner (or owners, if more than one) set forth below for breach of the conditions of the mortgage (or mortgages, if more than one) and for the purpose of foreclosing, the time-share estate (or estates, if more than one) will be sold at public auction, commencing at, on, 20.., at, Wisconsin.

(For each time-share estate, list the name and address of the time-share owner, a general description of the time-share estate, the recording information for the deed or other instrument vesting the time-share estate in the time-share owner, and the recording information for the mortgage.)

TERMS OF SALE: (State the deposit amount to be paid by the buyer at the time and place of the sale and the times for payment of the balance or the whole, as the case may be. The time-share estates, if more than one, must be sold in individual lots unless there are no individual bidders, in which case they may be sold as a group.)

Other terms to be announced at the sale.

Signed

Holder of the mortgage or authorized agent.

(e) *Sale procedure.* 1. The foreclosure sale must take place on the time-share property in which the time-share estate exists or at another location in the same county in which that time-share property is located. The sale must be by public auction, conducted by an auctioneer registered under ch. 480 or by an attorney who is a member of the State Bar of Wisconsin. At his or her discretion, the auctioneer or attorney may dispense with the reading of the names of the time-share owners if there is more than one time-share owner, of the descriptions of the time-share estates if there is more than one time-share estate, and of the recording information if there is more than one instrument.

2. Upon the sale of the time-share estate, the time-share owner's right to redeem the time-share estate is extinguished. Unless the successful buyer is the time-share owner, the successful buyer at the foreclosure sale takes title to the time-share estate free and clear of any outstanding assessments owed by the previous time-share owner to the managing entity or other person specified in the project instrument or time-share instrument, but subject to municipal or other taxes and to any liens and encumbrances that were recorded prior to the recording of the mortgage or the assessment lien. A buyer at a foreclosure sale under this section is not required to complete the purchase if the time-share estate is subject to outstanding liens and encumbrances, other than those included in the notice of sale, that are not stated at the sale. The buyer shall have a period of 5 days from the foreclosure sale date to determine if the time-share estate is subject to any such liens or encumbrances.

3. No later than 10 days after the foreclosure sale date, the foreclosing entity shall deliver to the successful bidder a foreclosure deed or other appropriate instrument transferring title to the time-share estate and an affidavit in recordable form attesting that all requirements described in this section have been met. Within 30 days after the delivery of the foreclosure deed or other instrument of transfer and affidavit, the buyer shall record the foreclosure deed or other instrument of transfer and affidavit with the register of deeds of the county in which the time-share estate is located.

4. Subject to s. 707.38 (5), within 30 days after delivering the foreclosure deed or other instrument of transfer and affidavit to the buyer, the foreclosing entity shall mail by 1st class mail to the last-known address of the former time-share owner and to each party that held a lien or

security interest junior to that of the foreclosing entity a notice detailing the results of the foreclosure sale.

(f) *Application of sale proceeds.* 1. No later than 30 days after the foreclosure sale, the foreclosing entity shall apply the proceeds of the sale first to the expenses of the sale and then to the amount owed to the foreclosing entity, as set forth in the notice to the former time-share owner under par. (a).

2. Any surplus after the payments under subd. 1. are made shall be applied as follows:

a. If there are any parties that held a lien or security interest junior to that of the foreclosing entity, the foreclosing entity may make an equitable and proper distribution of the surplus to those parties, or may bring an action of interpleader, turn the surplus over to the court, name the parties with the junior liens or security interests, and ask the court to determine the proper distribution of the surplus. The foreclosing entity shall recover reasonable attorney fees in any interpleader action under this subd. 2. a.

b. If no party held a lien or security interest junior to that of the foreclosing entity, or if all parties holding junior liens or security interests have been paid, any surplus shall be paid to the former time-share owner. If the foreclosing entity is unable to locate the former time-share owner within one year after the foreclosure sale, the foreclosing entity shall deliver the surplus to the state treasurer as provided under ch. 177.

(4) **WAIVER OF DEFICIENCY.** Any foreclosing entity that forecloses a mortgage or lien under this section waives the right to bring an action for any deficiency that may remain due to the foreclosing entity after the sale of the time-share estate.

SECTION 2. 707.37 (6) of the statutes is amended to read:

707.37 (6) ENFORCEMENT OF LIEN. A lien may be enforced and foreclosed by a managing entity, or any other person specified in the time-share instrument, in the same manner, and subject to the same requirements, as a foreclosure of mortgages on real property in this state or, in the case of a time-share license, under chs. 401 to 411 provided in s. 707.28 (2). The managing entity may recover costs and actual attorney fees. The managing entity may, unless prohibited by the project instrument or time-share instrument, bid on the time share at foreclosure sale and acquire, hold, mortgage, and convey the time share. Suit to recover a money judgment for unpaid time-share expenses shall be maintainable without foreclosing or waiving the lien securing the time-share expenses. ~~Suit~~ Except as provided in s. 707.28 (4), suit for any deficiency following foreclosure may be maintained in the same proceeding. No action may be brought to foreclose the lien unless brought within 3 years after the recording of the statement of time-share lien and, except as provided in s. 707.28 (3) (a) and (b), unless 10 days' prior written notice is given to the time-share

owner by registered mail, return receipt requested, to the address of the time-share owner shown on the books of the managing entity.

SECTION 3. Initial applicability.

(1) This act first applies to foreclosures of mortgage or assessment liens on time-share estates that are commenced on the effective date of this subsection.

