

2011 DRAFTING REQUEST

Bill

Received: **05/13/2011**

Received By: **pkahler**

Wanted: **As time permits**

Companion to LRB:

For: **Frank Lasee (608) 266-3512**

By/Representing: **Jon Kruse**

May Contact:

Drafter: **pkahler**

Subject: **Real Estate - miscellaneous**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Lasee@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Administrative foreclosure for time shares

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 05/27/2011	kfollett 06/09/2011		_____			
/P1			rschluet 06/10/2011	_____	ggodwin 06/10/2011		
/P2	pkahler 08/19/2011	kfollett 09/07/2011	phenry 09/07/2011	_____	lparisi 09/07/2011		
/1	pkahler 09/26/2011	kfollett 09/29/2011	phenry 09/29/2011	_____	sbasford 09/29/2011	ggodwin 10/14/2011	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

↳ Not Needed

<END>

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per PJK (Crash!)

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11/5f
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g bph

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/P1		IP2/GF 9/7	rschluet 06/10/2011	9/7 ph/LP	ggodwin 06/10/2011		
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1/?	pkahler	1P11/5f 6/9		pk 6/10			

FE Sent For:

<END>

An Act To Implement Model Time-Share Foreclosure Procedures

1 Be it enacted by the People of the State of Wisconsin as follows:

2
3 707.37(6) is amended to read as follows:

4
5 **ENFORCEMENT OF LIEN.** A lien may be enforced and foreclosed by a
6 managing entity or any other person specified in the project instrument or
7 time-share instrument, ~~in the same manner, and subject to the same~~
8 ~~requirements, as a foreclosure of mortgages on real property in this state or, in~~
9 ~~the case of a time-share license, under chs. 401 to 411~~ as provided in s.
10 707.375(1), and a lien against a time-share license may be foreclosed as
11 provided in s. 707.375(2). The managing entity or other person may recover
12 costs and actual attorney fees. The managing entity or other person may, unless
13 prohibited by the project instrument or time-share instrument, bid on the time
14 share at foreclosure sale and acquire, hold, mortgage and convey the time
15 share. Suit to recover a money judgment for unpaid time-share expenses shall
16 be maintainable without foreclosing or waiving the lien securing the time-share
17 expenses. ~~Suit for any deficiency following foreclosure may be maintained in the~~
18 ~~same proceeding.~~ No action may be brought to foreclose the lien unless brought
19 within 3 years after the recording of the statement of time-share lien ~~and unless~~
20 ~~10 days' prior written notice is given to the time-share owner by registered mail,~~
21 ~~return receipt requested, to the address of the time-share owner shown on the~~
22 ~~books of the managing entity.~~

*Optional
not
get rid
of this*

23
24 Sec. 707.375, Wis. Stat. is enacted to read:

put in sub ch II instead?

25
26 (1) NONJUDICIAL FORECLOSURE OF A TIME-SHARE ESTATE. A time-
27 share owner may grant to a financial institution or other person or entity a

An Act To Implement Model Time-Share Foreclosure Procedures

28 mortgage on that time-share owner's time-share estate, which shall be governed
29 by the terms of this section. The foreclosure of a mortgage or a lien from an
30 assessment created pursuant to s. 707.37 must be conducted pursuant to this
31 section. The provisions of ch. 846 do not apply to any such foreclosure, except
32 as set forth below.

33
34 In the event of a breach of the conditions of the mortgage or the failure of the
35 time-share owner to pay the assessments as and when due and owing the
36 following procedure must be followed.

what? → in the mtg? what regarding assessments?

37
38 (a) Upon default, and after all applicable cure periods have expired, the person
39 or entity seeking to foreclose on the time-share estate shall provide written notice
40 of the default to the time-share owner at the time-share owner's last known
41 address by certified mail, return receipt requested, and by first class mail and
42 provide a reasonable opportunity to cure of not less than 30 days from the date
43 of the mailing of the notice letter. At the same time the person seeking to
44 foreclose gives written notice of default to the time-share owner, the person
45 seeking to foreclose must also give written notice to the time-share owner stating
46 that unless the time-share owner objects in writing to the nonjudicial foreclosure
47 within 30 days as required by this subsection, the person or entity seeking to
48 foreclose will proceed to conduct the foreclosure pursuant to s. 707.375(1). The
49 person seeking to foreclose must explain in the notice that the time-share owner
50 has the right to a judicial foreclosure conducted pursuant to ch. 846 in the same
51 manner and subject to the same requirements as a foreclosure of a mortgage on
52 real property in this state if the time-share owner asserts the objection within the
53 time period specified herein and must include with the notice an objection form
54 together with the address of the person or entity seeking to foreclose. Failure of

An Act To Implement Model Time-Share Foreclosure Procedures

55 a time-share owner to object as required by this subsection in a timely manner is
56 deemed a waiver of the time-share owner's right to a judicial foreclosure
57 pursuant to ch. 846, which may include judicial foreclosure by way of court
58 action.

59
60 (b) If, after expiration of the 30-day period under paragraph (a), the time-share
61 owner has not cured the default in the manner prescribed and has not objected
62 to use of nonjudicial foreclosure under s. 707.375(1), then the person or entity
63 seeking to foreclose shall conduct a public auction under the conditions
64 described in this paragraph.

65

66 1. Notice under this paragraph must be given as follows.

67

68 a. Notice of the sale must be published once in each of 3 successive weeks in a
69 newspaper with a general circulation in the county in which the time-share estate
70 is situated. The first publication must be not later than 30 days before the date of
71 the sale, calculated by excluding the date of publication of the first notice and the
72 date of sale.

73

74 b. A written notice of the time, date and place of the auction must be mailed to
75 the last known address of the time-share owner of record by certified mail, return
76 receipt requested, and by first class mail at least 30 days prior to the date of
77 sale. The notice to the time-share owner must include the following language:
78 "You are hereby notified that you have a right to petition the Circuit Court for the
79 county in which the time-share estate is located, with service on the foreclosing
80 person or entity, and upon such bond as the court may require, to enjoin the
81 scheduled foreclosure sale." The notice of sale also must be sent by certified

An Act To Implement Model Time-Share Foreclosure Procedures

82 mail, return receipt requested to all persons having a lien on the time-share
83 estate at least 30 days prior to the date of the foreclosure sale.

84

85 c. The notice must further contain:

86

87 (i) The name of the time-share owner;

88 (ii) The date, time and place of the foreclosure sale;

89 (iii) A general description of the time-share estate; and

90 (iv) The terms of the sale.

91

92 If more than one time-share estate is to be included in the foreclosure sale, all
93 such time-share estates may be combined into one notice of sale, with one
94 property description, as described in subsection (d) or (e).

95

96 d. The notice of foreclosure for foreclosing on the lien for assessments of a
97 time-share estate must be printed in substantially the following form:

98

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

101

102 By virtue of the project instrument of the.....(name and address of
103 time-share property) and Chapter 707 establishing a lien for failure to pay
104 assessments on the time-share estate (or estates, if more than one) held by the
105 time-share owner (or owners, if more than one) listed below, the time-share
106 estate (or estates, if more than one) will be sold at Public Auction commencing at
107 on, 20.. at, Wisconsin. (For each time-share
108 estate, list the name and address of the time-share owner, a general description

is this redundant to form?

An Act To Implement Model Time-Share Foreclosure Procedures

109 of the time-share estate and the recording information for the deed or other
110 instrument vesting the time-share estate in the time-share owner.)

111

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

117

118 Other terms to be announced at the sale.

119

120 Signed.....

121 Lienholder or authorized agent.

122

123 e. For foreclosure of a mortgage lien on a time-share estate, a notice of sale
124 must be printed in substantially the following form:

125

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

128

129 By virtue of Chapter 707 and the rights contained in a certain mortgage (or
130 mortgages, if more than one) on the time-share estate (or estates, if more than
131 one) given by the time-share owner (or owners, if more than one) set forth below
132 for breach of the conditions of said mortgage (or mortgages, if more than one)
133 and for the purpose of foreclosing, the same will be sold at Public Auction
134 commencing at..... on, 20.. at, Wisconsin, being all and
135 singular the premises described in said mortgage (or mortgages, if more than

An Act To Implement Model Time-Share Foreclosure Procedures

136 one). (For each mortgage, list the name and address of the time-share owner, a
137 general description of the time-share estate and the recording information for the
138 mortgage.)

139
140 TERMS OF SALE: (State the deposit amount to be paid by the buyer at the time
141 and place of the sale and the times for payment of the balance or the whole, as
142 the case may be. The time-share estates, if more than one, must be sold in
143 individual lots unless there are no individual bidders, in which case they may be
144 sold as a group.)

145
146 Other terms to be announced at the sale.

147
148 Signed

149 Holder of Mortgage or authorized agent.

150
151 f. In lieu of publishing a copy of the notice of sale in a newspaper pursuant to
152 the provisions of s. 707.375(1)(b)1, the notice of sale may be given by posting a
153 copy of the notice for 3 successive weeks on an Internet website and publishing
154 3 times, once a week for 3 successive weeks, in a newspaper of general
155 circulation in the county or counties in which the time-share estate is located, a
156 statement, in at least 10-point bold type, which states at a minimum (1) that the
157 notice of sale for the foreclosure of the time share is posted on an Internet
158 website, (2) the Internet address where the notice is posted and (3) the name
159 and street address of the property in which the time-share is located.

160

An Act To Implement Model Time-Share Foreclosure Procedures

161 g. The notice of sale in the forms described in divisions (d) and (e), published in
162 accordance with the provisions of this section, together with such other or further
163 notice, if any, constitutes sufficient notice of the sale.

164

165 2. The foreclosure sale must be conducted pursuant to this subparagraph.

166

167 a. The foreclosure sale must take place on the time-share property or some
168 other location within the same town as the time-share property.

169

170 b. The foreclosure sale must be by public auction, conducted by an auctioneer,
171 or an attorney who is a member of the State Bar of Wisconsin. At the discretion
172 of the auctioneer, or an attorney who is a member of the State Bar of Wisconsin,
173 the reading of the names of the time-share owners, if more than one, the
174 description of time-share estates, if more than one, and the recording
175 information, if more than one instrument, may be dispensed with.

176

177 c. All rights of redemption of the time-share owner shall be extinguished upon
178 sale of a time-share estate.

179

180 d. In addition to third parties, the managing entity, any person specified in the
181 project instrument or time-share instrument, the foreclosing person or any time-
182 share owner may bid at the foreclosure sale. The successful buyer at the
183 foreclosure sale shall be entitled to take title to the time-share estate free and
184 clear of any outstanding assessments owed by the prior time-share owner to the
185 managing entity or other person specified in the project instrument or time-share
186 instrument. A buyer at a sale is not required to complete the purchase if there
187 are liens and encumbrances, other than those included in the notice of sale, that

who?

← the one being foreclosed on?
or anyone?

→ would they know at the sale?

An Act To Implement Model Time-Share Foreclosure Procedures

188 are not stated at the sale and included in the foreclosing person's or entity's
189 contract with the buyer of the time-share estate at the foreclosure sale.

190
191 e. Upon closing, the foreclosing person shall deliver to the successful bidder a
192 foreclosure deed or other appropriate instrument transferring the rights to the
193 time-share estate and an affidavit in recordable form attesting that all
194 requirements described in this section have been met. The time-share estate
195 shall be transferred subject to municipal or other public taxes and to any liens
196 and encumbrances recorded prior to the recording of the mortgage or the lien for
197 assessments.

198
199 f. The buyer shall record the foreclosure deed or other instrument with the
200 appropriate registry of deeds or other entity no more than 30 days after the
201 foreclosure sale date.

202
203 g. Within 30 days after the closing and transfer of the foreclosure deed or other
204 instrument and affidavit, the foreclosing person or entity shall mail a notice
205 detailing the results of the foreclosure sale to the last known address of the
206 former time-share owner and all parties that held a junior interest to that of the
207 foreclosing person.

208
209 3. No more than 30 days after the sale of the time-share, the foreclosing person
210 shall apply the proceeds of the sale as follows:

211
212 a. To the expenses of the sale.

213

any consequences if not?

An Act To Implement Model Time-Share Foreclosure Procedures

214 b. To the amount owed and set forth in the notice as required under s.
215 707.375(1)(a)

216
217 c. If there are parties that hold a junior interest, the foreclosing person may file
218 an action in interpleader, pay the surplus to a court of competent jurisdiction,
219 name the competing parties that hold a junior interest, and ask the court to
220 determine the proper distribution of the surplus. In any interpleader action, the
221 foreclosing person shall recover reasonable attorney's fees and costs.

222
223 d. If there are no parties that hold a junior interest, or if all parties that hold a
224 junior interest have been paid, any surplus shall be paid to the former time-share
225 owner. If the foreclosing person is unable to locate the former time-share owner
226 within 1 year after the sale, the surplus, if any, shall be deposited with the state
227 treasurer under ch. 177.

? where would it go? school fund?

228
229 **(2) FORECLOSURE OF LIEN OR SECURITY INTEREST ON TIME-SHARE**
230 **LICENSE.** In the case of a time-share license, the following actions must be
231 conducted by public or private sale in accordance with the provisions of s.
232 409.610: ← ? why

233
234 (a) The foreclosure of a lien on a time-share license pursuant to s. 707.37 for
235 failure to pay assessments when due; or

236
237 (b) The exercise of the rights of a holder of a security interest in a time-share
238 license for breach of the terms of the instrument granting the security interest.

239

An Act To Implement Model Time-Share Foreclosure Procedures

240 No action may be brought to foreclose a lien or security interest on a time-share
241 license unless 30 days' prior written notice is given to the time-share owner by
242 registered mail, return receipt requested, to the address of the time-share owner
243 shown on the books of the managing entity or person specified in the project
244 instrument. All rights of redemption of a time-share owner shall be extinguished
245 upon the consummation of the sale proceedings. In addition to third parties, the
246 managing entity, any person specified in the project instrument or time-share
247 instrument, the foreclosing person or any time-share owner may bid at the sale
248 or may enter into agreements for the purchase of one or more time-share
249 licenses following the completion of sale proceedings. The successful buyer
250 shall take title to the time-share license free and clear of any outstanding
251 assessments owed by the prior time-share owner to the managing entity or
252 person specified in the project instrument or time-share instrument.

→ who are
these?
- but owner
owns a 3rd
party?

254 **(3) FORFEITURE OF DEFICIENCY CLAIM.** If the holder of the mortgage
255 conducts a nonjudicial foreclosure pursuant to this section, the holder forfeits the
256 holder's right to pursue a claim for any deficiency in the payment of the time-
257 share owner's obligations to the holder resulting from the application of the
258 proceeds of the sale to such obligations.

259
260 If the holder of a security interest in a time-share license conducts a nonjudicial
261 foreclosure pursuant to this section, the holder forfeits the holder's right to
262 pursue a claim for any deficiency in the payment of the time-share owner's
263 obligations to the holder resulting from the application of the proceeds of the sale
264 to such obligations.

265

An Act To Implement Model Time-Share Foreclosure Procedures

266

A suit for any deficiency following a judicial foreclosure of a time-share estate

267

pursuant to ch. 846 may be maintained in the same proceeding.

↓
proceeding under ch 846?
then don't need to say it

see 846.04



Proposal to Create Non-Judicial Foreclosure for Timeshares in Wisconsin Talking Points

Objective:

To establish a non-judicial process for timeshare foreclosures.

Background:

With 28 resorts statewide, thousands of timeshare owners (a majority of whom are also Wisconsin residents) and multiple resort developers, the timeshare industry is an important part of Wisconsin's tourism economy. The economic downturn has increased the number of timeshare owners who are unable or unwilling to pay the financial obligations associated with their timeshare, particularly in older resorts. Consequently, the number of timeshare assessment liens that should be foreclosed has increased. Unfortunately, many owners associations cannot afford the costs. The delays and expenses associated with the court-administered foreclosure process have created a financial burden on fellow owners, associations, and developers. ARDA-Wisconsin, the trade group that represents owners, associations, and developers, is pursuing legislation that will create a non-judicial foreclosure process (NJF) applicable solely to timeshares. This legislation will make timeshare foreclosures less expensive and more efficient while maintaining consumer protections for owners.

The Problem:

- Timeshare foreclosures are very rarely contested. For example, one company with 11 resorts in four states conducted 6,301 assessment lien foreclosures in five years with *none* contested. A large Wisconsin resort had 600 foreclosures of all types, with only *two* contested; another smaller resort had 85 assessment lien foreclosures with *none* contested. Usually the owner has lost interest and moved on. However, when owners "give up" on their timeshare and fail to pay their annual assessments, the remaining owners must shoulder the burden of those costs, including upkeep of common areas. This also results in escalating bad debt for the owners association.
- In Wisconsin, judicial foreclosure is currently the only option for timeshare mortgages and timeshare assessment liens, even if the action is uncontested. The typical foreclosure in Wisconsin can take up to 15 months and can cost anywhere from \$1,500 to \$2,000 – an amount that may be greater than the value of the timeshare itself.
- Because the value of a timeshare is typically far less than a single family home, is used for only a week or two of vacation per year, and is not (and cannot be) a primary residence, owners who owe back association assessments may simply abandon their interest in the timeshare during tough times. When that happens, current owners have to make up the difference which may then create an incentive for *more owners* to abandon their timeshares. This scenario can snowball until a resort development experiences complete failure.
- Judicial foreclosures are too cumbersome, too lengthy and too expensive to be an effective remedy to efficiently foreclose on timeshares that have been abandoned or where the delinquent owner, as

in nearly all cases, does not wish to contest the foreclosure. A more efficient remedy would allow the delinquent owners to be replaced more quickly and at less cost, helping to preserve the health of the resort by preventing an increasing number of "free riders" who have little incentive to pay their mortgage or assessments.

The Solution:

- Enact legislation that will allow the foreclosure of mortgages and association assessment liens to proceed in a timely and cost-effective manner, without court supervision (a "non-judicial foreclosure").
- This process would be triggered when an owner fails to pay the timeshare mortgage and is in default as defined by the mortgage agreement or when the owner fails to pay the annual assessments owed to the owners association.
- The proposed legislation requires owners who are in default to be notified by certified mail that they have 30 days to cure their default to avoid non-judicial foreclosure. In addition, delinquent owners are notified that they have 30 days to contest the non-judicial foreclosure and opt for the court-supervised process currently provided by Chapter 846.
- Notice of the sale is required to be placed in local newspapers for three weeks. Alternatively, a notice that directs the public to a website which contains detailed foreclosure information may be published in the local papers for three weeks. Internet publication of the foreclosure sales would reach a larger audience of potential purchasers, including out-of-state buyers.
- The sale of the timeshare interest is conducted by public auction, with all liens extinguished after the sale. Title is immediately transferred to the new owner.
- The entire non-judicial process would take approximately 90-120 days rather than 6 – 12 months for the judicial process, saving owners associations and owners both time and money, while replacing empty timeshares with new timeshare owners faster.

Why this Makes Sense:

- Current foreclosure law was never designed – and is poorly equipped – to address the unique nature of timeshare. This proposal modernizes foreclosure procedures for timeshares by recognizing the need for an expedited process.
- There are 24 jurisdictions nationally that allow non-judicial foreclosure for timeshares (and many states allow it for other types of properties as well).
- Non-judicial foreclosure procedures for timeshare mortgages and/or assessment liens have been added in Illinois in 2009, in Florida and Massachusetts in 2010 and in Arizona and Maine within the past four years.
- The non-judicial foreclosure process for either timeshare mortgages and/or assessment liens (as well as other forms of property) also exists in California, District of Columbia, Hawaii, Idaho,

Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia and Washington.

- Non-judicial foreclosures do not require court supervision and are therefore less expensive, faster and more efficient, saving valuable court resources.
- The legislation preserves the right of a delinquent timeshare owner to choose a judicial foreclosure, thereby protecting the rights of any owner who wants to contest the foreclosure in a court of law. However, the reality is that nearly every delinquent owner does not contest the timeshare foreclosure.



PI
GF

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note
(in 5-27)

you cut

1 AN ACT ^x; relating to: nonjudicial foreclosure of time-share estates and
2 licenses.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

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

4 **707.28 Foreclosure of time-share estates and licenses.** (1) DEFINITION.

5 In this section, "foreclosing entity" means a person that holds a mortgage or a lien

6 for assessments under s. 707.37 on a time-share estate, or a person that holds a lien

7 for assessments under s. 707.37 on a security interest in a time-share license, and

8 that seeks to foreclose the mortgage, lien, or security interest.

1 (2) EXCLUSIVE PROCEDURE. A mortgage or a lien for assessments under s. 707.37
2 on a time-share estate, or a security interest in[✓] or a lien for assessments under s.
3 707.37 on[✓] a time-share license, may be foreclosed only as provided in this section.

4 (3) TIME-SHARE ESTATE FORECLOSURE PROCEDURE. (a) Notice of default;
5 nonjudicial foreclosure. 1. A foreclosing entity shall first provide written notice to
6 the time-share owner in default at the time-share owner's last-known address by
7 certified mail, with return receipt requested, and by ^{1st} first class mail.

8 2. The notice shall include, for use by the time-share owner, a separate form
9 objecting to nonjudicial foreclosure that includes the address of the foreclosing[✓] entity.

10 3. The notice shall inform the time-share owner of his or her default and the
11 amount that he or she owes to the foreclosing entity; that he or she has the right to
12 a judicial foreclosure conducted in the manner provided in ch. 846; that he or she has
13 30 days from the date on which the notice was mailed to cure the default or object
14 in writing to nonjudicial foreclosure; and that, if he or she does not timely cure the
15 default or object^{to nonjudicial foreclosure} in writing, the foreclosing entity may proceed with a nonjudicial
16 foreclosure.

X *****NOTE: If the time-share owner gets both the certified mailing and the ^{1st} first class mailing but they weren't mailed on the same day, which one starts the timing for curing the default or objecting?

17 4. If, within the 30-day period under subd. 3., the time-share owner returns
18 the objection form or otherwise objects in writing, the foreclosing entity must use the
19 procedure under ch. 846[✓] to foreclose the mortgage or lien. However, if the time-share
20 owner does not, within the 30-day period under subd. 3., object in writing to
21 nonjudicial foreclosure, he or she waives his or her right to foreclosure conducted in
22 the manner provided under ch. 846, and, if he or she does not within that 30-day

Subject to s. 707.38(5),

1 period cure the default, the foreclosing entity may proceed with a foreclosure sale of
2 the time-share estate by public auction as provided in this section.

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

5 1. a. Except as provided in subd. 1. b., notice of the date, time, and place of the
6 sale must be published once in each of 3 successive weeks in a newspaper having
7 general circulation in the county in which the time-share estate is located. The first
8 publication must be no later than 30 days before the date of the sale, excluding the
9 date of that first publication and the date of the sale.

***NOTE: Is the notice that must be published the form set out in par. (c) or (d)?
If so, reference could be made to that form.

10 b. In lieu of publishing the notice of sale in a newspaper as provided in subd.
11 1. a., notice may be given by posting a copy of the notice of sale for 3 successive weeks
12 on the Internet and publishing, once a week for three³ successive weeks in a
13 newspaper having general circulation in the county in which the time-share estate
14 is located, a notice, in at least 10-point boldface type, that states at a minimum that
15 the notice of sale for the foreclosure of the time-share estate is posted on the Internet,
16 the Internet site where the notice is posted, and the name and street address of the
17 property in which the time-share estate is located → *exists*

***NOTE: Do you want to specify how far in advance of the sale this notice must
be given? Also, do you want to specify the temporal relationship between the Internet
posting and the newspaper publication so that the newspaper publication does not
commence after the Internet posting is finished, for example?

***NOTE: Is the notice that must be posted online the form set out in par. (c) or (d)?
If so, reference could be made to that form.

18 2. At least 30 days before the date of the sale, excluding the date of the sale,
19 written notice of the date, time, and place of the sale must be mailed to all of the
20 following:

Subject to s. 707.38(5),

****NOTE: Is this a separate written notice or just a copy of the notice that gets published? under par. (c) or (d) ✓

1 a. The time-share owner at the time-share owner's last-known address by certified mail, with return receipt requested, and by first class mail.

2
3 b. All persons having a lien of record on the time-share estate by certified mail, with return receipt requested.

4
5 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
6 Circuit Court for _____ County (the county in which the time-share estate is
7 located), with service on _____ (the foreclosing entity) and upon such bond as the
8 Court may require, to enjoin the scheduled foreclosure sale."
9

10 4. Every notice provided under subd. 2. shall include all of the following:

- 11 a. The name of the time-share owner.
- 12 b. The date, time, and place of the foreclosure sale.
- 13 c. A general description of the time-share estate.
- 14 d. The terms of the sale.

✓ ****NOTE: Are the items set forth above to be included in the notices under subd. 2. b. only? Regardless, if the notice of sale that gets published also gets sent to the time-share owner and lienholders, the four items above are redundant and subd. 4. is unnecessary.

15 5. If more than one time-share estate will be sold at the forelclosure sale, all
16 such time-share estates may be combined into one notice of sale, with one property
17 description, as described in par. (c) or (d).

****NOTE: May only multiple time-share estates in the *same* time-share property be sold together? Whether yes or no, that should be made clear.

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

under par. (c) or (d) ✓ ✓

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

3 By virtue of the (project instrument or time-share instrument, whichever is
4 applicable) of the (name and address of the time-share property), and Chapter
5 707 of the Wisconsin Statutes establishing a lien for failure to pay assessments on
6 the time-share estate (or estates, if more than one) held by the time-share owner (or
7 owners, if more than one) listed below, the time-share estate (or estates, if more than
8 one) will be sold at public auction, commencing at, on, 20.., at, Wisconsin.

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

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

18 Other terms to be announced at the sale.

19 Signed

20 Holder of the lien or authorized agent.

****NOTE: Does this notice get published *and* get sent to the time-share owner and
lienholders?

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

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

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

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

****NOTE: May only multiple time-share estates in the *same* time-share property
be sold together? Whether yes or no, that should be made clear.

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

19 Other terms to be announced at the sale.

20 Signed

21 Holder of the mortgage or authorized agent.

****NOTE: Does this notice get published *and* get sent to the time-share owner and
lienholders?

exists
↑

1 (e) *Sale procedure.* 1. The foreclosure sale must take place on the time-share
2 property in which the time-share estate is located or at another location in the same
3 town in which that time-share property is located.

****NOTE: Property is located in a city, village, or town within a county, so not all properties are in a town. How do you want to change "town" in the subdivision above? (It should be either: 1) city, village, or town, or 2) county.)

4 2. The sale must be by public auction, conducted by an auctioneer registered
5 under ch. 480 or by an attorney who is a member of the State Bar of Wisconsin. At
6 his or her discretion, the auctioneer or attorney may dispense with the reading of the
7 names of the time-share owners if there is more than one time-share owner, of the
8 descriptions of the time-share estates if there is more than one time-share estate,
9 and of the recording information if there is more than one instrument.

****NOTE: I required the auctioneer to be registered under ch. 480. Okay?

****NOTE: I did not include the list of who may bid at the foreclosure sale "in addition to third parties." Who is not a third party, just the time-share owner and the foreclosing entity? Is anyone prohibited from bidding? Are the time-share owner and foreclosing entity prohibited from bidding?

10 3. Upon the sale of the time-share estate, the time-share owner's right to
11 redeem the time-share estate is extinguished.

→ ****NOTE: It isn't clear that the time-share owner has a right to redeem the time-share up to the time of the sale, only that he or she may cure the default within 30 days after the notice of default is mailed. Do you want to specifically provide that the time-share owner may redeem the time-share estate up to the time of the sale?

12 4. The successful buyer at the foreclosure sale takes title to the time-share
13 estate free and clear of any outstanding assessments owed by the previous
14 time-share owner to the managing entity or other person specified in the project
15 instrument or time-share instrument, but subject to municipal or other taxes and
16 to any liens and encumbrances that were recorded prior to the recording of the
17 mortgage or the assessment lien. A buyer at a foreclosure sale is not required to
18 complete the purchase if the time-share estate is subject to outstanding liens and

1 encumbrances, other than those included in the notice of sale, that are not stated at
2 the sale and included in the foreclosing entity's contract with the buyer of the
3 time-share estate at the foreclosure sale.

****NOTE: Should taking title free and clear of any outstanding assessments apply only to successful buyers who are not the previous time-share owner? (This assumes that the owner being foreclosed is not prohibited from bidding at the sale.)

****NOTE: I don't understand the last sentence. By when is the buyer not required to complete the sale? How long does he or she have to find out about these other liens and encumbrances? May the buyer rescind the sale at some possibly very distant time in the future if he or she finds out about some lien that was not recorded at the time of the sale? What contract between the foreclosing entity and the buyer is being referred to? Is a contract required in addition to the deed?

4 ~~5~~ A. The foreclosing entity shall deliver to the successful bidder a foreclosure deed
5 or other appropriate instrument transferring title to the time-share estate and an
6 affidavit in recordable form attesting that all requirements described in this section
7 have been met. Within 30 days after the foreclosure sale date, the buyer shall record
8 the foreclosure deed or other instrument of transfer and affidavit with the register
9 of deeds of the county in which the time-share estate is located.

****NOTE: Do you want to specify how much time after the sale the foreclosing entity has to deliver the deed and affidavit (since the buyer is required to record them within 30 days after the sale)?

Subject to s. 707.38(5),
6 A. Within 30 days after delivering the foreclosure deed or other instrument of

10 transfer and affidavit to the buyer, the foreclosing entity shall mail by ~~first~~ ^{1st} class mail
11 to the last known address of the former time-share owner and to all parties that held
12 a lien or security interest junior to that of the foreclosing entity a notice detailing the
13 results of the foreclosure sale.
14

15 (f) Application of sale proceeds. 1. No later than 30 days after the foreclosure
16 sale, the foreclosing entity shall apply the proceeds of the sale first to the expenses
17 of the sale and then to the amount owed to the foreclosing entity, as set forth in the
18 notice to the former time-share owner under sub. (3)(a). par.

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

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

****NOTE: If there is only one party with a junior lien or security interest of record,
do you want the foreclosing entity just to pay that party without an action of interpleader?

****NOTE: Bringing an action of interpleader is permissive. What happens to the
surplus if there are other lienholders but the foreclosing entity doesn't bring such an
action?

*as drafted, based on the
drafting instructions*

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

15 (4) TIME-SHARE LICENSE FORECLOSURE PROCEDURE. (See drafter's note.)

16 (5) Waiver OF DEFICIENCY. Any foreclosing entity that forecloses a mortgage,
17 lien, or security interest under this section waives the right to bring an action for any
18 deficiency that may remain due to the foreclosing entity after the sale of the
19 time-share estate or license.

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

21 707.37 (6) ENFORCEMENT OF LIEN. A lien may be enforced and foreclosed by a
22 managing entity, or any other person specified in the time-share instrument, in the

1 same manner, and subject to the same requirements, as a foreclosure of mortgages
2 on real property in this state or, in the case of a time-share license, under chs. 401
3 to 411 provided in s. 707.28. The managing entity may recover costs and actual
4 attorney fees. The managing entity may, unless prohibited by the project instrument
5 or time-share instrument, bid on the time share at foreclosure sale and acquire, hold,
6 mortgage, and convey the time share. Suit to recover a money judgment for unpaid
7 time-share expenses shall be maintainable without foreclosing or waiving the lien
8 securing the time-share expenses. ~~Suit for any deficiency following foreclosure may~~
9 ~~be maintained in the same proceeding.~~ No action may be brought to foreclose the lien
10 unless brought within 3 years after the recording of the statement of time-share lien
11 and unless 10 days' prior written notice is given to the time-share owner by
12 registered mail, return receipt requested, to the address of the time-share owner
13 shown on the books of the managing entity.

14 History: 1987 a. 399; 1993 a. 453; 1995 a. 224, 225, 227; 1997 a. 27, 35, 250, 252; 1999 a. 185; 2007 a. 18.

(END)

D-note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2090/dn
PJK: [initials]

Date

In this version, I included the sale notices pretty much verbatim, except for some archaic phrases that didn't seem necessary, such as "being all and singular the premises described in said mortgage," and a few other changes and additions. Is there any way to make the notices more parallel? What does "by virtue of chapter 707" refer to? Is it the foreclosure procedure under ch. 707? The essence of the lien foreclosure notice is "by virtue of the project instrument and chapter 707 establishing a lien for failure to pay assessments, the time-share estate will be sold." The essence of the mortgage foreclosure notice is "by virtue of chapter 707 and the rights contained in a certain mortgage for breach of the conditions of said mortgage and for the purpose of foreclosing, the same will be sold." To make them more parallel, I need to know what each phrase means and what the purpose of each phrase is. Can the concepts be stated more in "plain English" and less in legalese?

minor

same proceeding

Perhaps more punctuation would help.

I left out the language related to maintaining a suit in the same proceeding for any deficiency following a judicial foreclosure under ch. 846. I don't know which proceeding is being referred to. If it is a foreclosure proceeding under ch. 846, the language seems out of place in this draft and is unnecessary because of s. 846.04.

This version of the draft does not include the nonjudicial foreclosure procedure for time-share licenses. Neither I nor the attorney who drafts in ch. 409 understood the provision stating that the foreclosure of a time-share license "must be conducted by public or private sale in accordance with the provisions of s. 409.610." That section, which provides for disposal of collateral after default in a secured transaction, doesn't seem to be relevant. Is the collateral the time-share license? The right to occupy a time-share unit without any interest in the property doesn't seem to fit within the definition of "collateral" in s. 409.102 (1)(cs).

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2090/P1dn
PJK:kjf:rs

June 9, 2011

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