



**SENATE SUBSTITUTE AMENDMENT 1,
TO 2011 SENATE BILL 241**

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

Analysis by the Legislative Reference Bureau

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 and that seeks to foreclose
7 the mortgage or lien.

8 **(2) AVAILABLE PROCEDURES. (a) Time–share estates.** A mortgage or a lien for
9 assessments under s. 707.37 on a time–share estate may be foreclosed in the same

1 manner and subject to the same requirements as a foreclosure of mortgages on real
2 property in this state or in the manner provided under this section.

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

5 (3) NONJUDICIAL TIME-SHARE ESTATE FORECLOSURE PROCEDURE. (a) *Notice of*
6 *default; nonjudicial foreclosure.* 1. To foreclose a mortgage or a lien for assessments
7 under s. 707.37 on a time-share estate under this section, a foreclosing entity shall
8 first provide written notice to the time-share owner in default at the time-share
9 owner's last-known address by certified mail, with return receipt requested, and by
10 1st class mail, subject to s. 707.38 (5).

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

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

22 4. If, within the 30-day period under subd. 2., the time-share owner returns
23 the objection form under subd. 3. or otherwise objects in writing to the use of
24 nonjudicial foreclosure, the foreclosing entity must use the procedure under ch. 846
25 to foreclose the mortgage or lien. However, if the time-share owner does not, within

1 the 30–day period under subd. 2., object in writing to nonjudicial foreclosure, he or
2 she waives his or her right to foreclosure conducted in the manner provided under
3 ch. 846, and, if he or she does not within that 30–day period cure the default, the
4 foreclosing entity may proceed with a foreclosure sale of the time–share estate by
5 public auction as provided in this section.

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

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

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

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

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

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

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

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

19 5. The notice of sale as provided in par. (c) or (d), whichever is applicable;
20 published, or posted and published, and mailed in accordance with the requirements
21 under this subsection; together with such other or further notice, if any; constitutes
22 sufficient notice of the sale.

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

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.

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 under this section shall be in
23 substantially the following form:

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

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

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

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

17 Other terms to be announced at the sale.

18 Signed

19 Holder of the mortgage or authorized agent.

20 (e) *Sale procedure.* 1. The foreclosure sale must take place on the time–share
21 property in which the time–share estate exists or at another location in the same
22 county in which that time–share property is located. The sale must be by public
23 auction, conducted by an auctioneer registered under ch. 480 or by an attorney who
24 is a member of the State Bar of Wisconsin. At his or her discretion, the auctioneer
25 or attorney may dispense with the reading of the names of the time–share owners

1 if there is more than one time–share owner, of the descriptions of the time–share
2 estates if there is more than one time–share estate, and of the recording information
3 if there is more than one instrument.

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

17 3. No later than 10 days after the foreclosure sale date, the foreclosing entity
18 shall deliver to the successful bidder a foreclosure deed or other appropriate
19 instrument transferring title to the time–share estate and an affidavit in recordable
20 form attesting that all requirements described in this section have been met. Within
21 30 days after the delivery of the foreclosure deed or other instrument of transfer and
22 affidavit, the buyer shall record the foreclosure deed or other instrument of transfer
23 and affidavit with the register of deeds of the county in which the time–share estate
24 is located.

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

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

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

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

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

