



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

From
Lasee's
office

1 AN ACT *to amend* 707.3
2 nonjudicial foreclosure

ites; relating to:

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, or a security interest in, a time-share license,
8 and that seeks to foreclose the mortgage, lien, or security interest.

Summary of Comments on 11-2090/P1


This page contains no comments


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. Subject to s. 707.38 (5), a foreclosing entity shall first
 6 provide written notice to the time-share owner in default at the time-share owner's
 7 last-known address by certified mail, with return receipt requested, and by 1st class
 8 mail.

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

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

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


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

-
- ✓ Number: 1 Author: 20576 Subject: Sticky Note Date: 7/7/2011 8:00:57 AM
Section 2 and 3 should be swapped in their order.


 - ✓ Number: 2 Author: 20576 Subject: Sticky Note Date: 7/7/2011 8:03:05 AM
This should reflect that the 30 days begin running on the date on which the "last" notice was mailed to cure the default.

 - ✓ Number: 3 Author: 20576 Subject: Line Date: 7/7/2011 8:07:23 AM


 - ✓ Number: 4 Author: 20576 Subject: Typewritten Text Date: 7/7/2011 8:07:07 AM
to the use of nonjudicial foreclosure

1 the manner provided under ch. 846, and, if he or she does not within that 30-day
2 period cure the default, the foreclosing entity may proceed with a foreclosure sale of
3 the time-share estate by public auction as provided in this section. 


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

6 1. a. Except as provided in subd. 1. b., notice of the date, time, and place of the
7 sale must be published once in each of 3 successive weeks in a newspaper having
8 general circulation in the county in which the time-share estate is located. The first
9 publication must be no later than 30 days before the date of the sale, excluding the
10 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.

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

✓ Number: 1 Author: 20576 Subject: Sticky Note Date: 7/7/2011 8:08:57 AM

The references herein to subd. 3 will have to be changed to subd. 2 given the swapping of sections 2 and 3.

✓ Number: 2 Author: 20576 Subject: Sticky Note Date: 7/7/2011 8:12:46 AM

Yes. The noticed referenced within this section is the notice set forth in par. (c) or (d).

✓ Number: 3 Author: 20576 Subject: Sticky Note Date: 7/7/2011 8:18:24 AM


The notice published in the newspaper and on the Internet shall be posted simultaneously. We would suggest using the same time-line set forth in (b)1.a, as pasted below.

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.

✓ Number: 4 Author: 20576 Subject: Sticky Note Date: 7/7/2011 8:19:29 AM

Yes, the form posted on the Internet shall be the same as is located in par. (c) or (d). The notice posted in the newspaper in this instance will be different however.

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 must be mailed to all of the
3 following:

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

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

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

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


14 ~~² 1. Every notice provided under subd. 2. shall include all of the following:~~


15 ~~³ a. The name of the time share owner.~~

16 ~~b. The date, time, and place of the foreclosure sale.~~


17 ~~c. A general description of the time share estate.~~

18 ~~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 under par. (c) or (d) gets sent to the time-share
owner and lienholders, the four items above are redundant and subd. 4. is unnecessary. 

19 5. If more than one time-share estate ~~will~~⁵ be sold at the foreclosure sale, all
20 such time-share estates may be combined into one notice of sale, with one property
21 description, as described in par. (c) or (d).  in the same time-share property ⁶

- ✓ Number: 1 Author: 20576 Subject: Sticky Note Date: 7/7/2011 8:30:23 AM
This is just a copy of the notice under par. (c) or (d).
- ✓ Number: 2 Author: 20576 Subject: Cross-Out Date: 7/7/2011 8:31:29 AM
- ✓ Number: 3 Author: 20576 Subject: Cross-Out Date: 7/7/2011 8:31:35 AM
- ✓ Number: 4 Author: 20576 Subject: Sticky Note Date: 7/7/2011 8:31:07 AM
Agreed. Subd. 4 can be deleted given that it is restated within the notice forms.
- ✓ Number: 5 Author: 20576 Subject: Line Date: 7/7/2011 8:48:53 AM
- ✓ Number: 6 Author: 20576 Subject: Typewritten Text Date: 7/7/2011 8:49:20 AM
in the same time-share property

****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. 

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

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

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

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


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

21 Other terms to be announced at the sale.

22 Signed

23 Holder of the lien or authorized agent.

Number: 1 Author: 20576 Subject: Sticky Note Date: 7/7/2011 8:49:58 AM
See revision above.


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

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

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

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

13 (For each time-share estate, list the name and address of the time-share
14 owner, a general description of the time-share estate, the recording information for
15 the deed or other instrument vesting the time-share estate in the time-share owner,
16 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. 


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

22 Other terms to be announced at the sale.


<input checked="" type="checkbox"/>	Number: 1	Author: 20576	Subject: Sticky Note	Date: 7/7/2011 8:57:25 AM
	Yes.			
<input checked="" type="checkbox"/>	Number: 2	Author: 20576	Subject: Sticky Note	Date: 7/7/2011 8:58:48 AM
	Yes.			

1 Signed


2 Holder of the mortgage or authorized agent.


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

3 (e) *Sale procedure.* 1. The foreclosure sale must take place on the time-share
4 property in which the time-share estate² exists or at another location in the same
5 town³ in which that time-share property is located.
county⁴


****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.) 

6 2. The sale must be by public auction, conducted by an auctioneer registered
7 under ch. 480 or by an attorney who is a member of the State Bar of Wisconsin. At
8 his or her discretion, the auctioneer or attorney may dispense with the reading of the
9 names of the time-share owners if there is more than one time-share owner, of the
10 descriptions of the time-share estates if there is more than one time-share estate,
11 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? 


12 3. Upon the sale of the time-share estate, the time-share owner's right to
13 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? 

14 4. The successful buyer at the foreclosure sale takes title to the time-share
15 estate free and clear of any outstanding assessments owed by the previous
16 time-share owner to the managing entity or other person specified in the project
17 instrument or time-share instrument, but subject to municipal or other taxes and

- ✓ Number: 1 Author: 20576 Subject: Sticky Note Date: 7/7/2011 8:59:19 AM
Yes.
- ✓ Number: 2 Author: 20576 Subject: Sticky Note Date: 7/7/2011 10:43:57 AM
We should re-insert the section in our suggested language which states "The notice of sale in the forms described in par. (c) or (d), published in accordance with the provisions of this section, together with such other or further notice, if any, constitutes sufficient notice of the sale."
- ✓ Number: 3 Author: 20576 Subject: Cross-Out Date: 7/7/2011 8:59:36 AM
- ✓ Number: 4 Author: 20576 Subject: Cross-Out Date: 7/7/2011 8:59:34 AM
- ✓ Number: 5 Author: 20576 Subject: Typewritten Text Date: 7/7/2011 8:59:56 AM
county
- ✓ Number: 6 Author: 20576 Subject: Sticky Note Date: 7/7/2011 9:00:09 AM
See changes above.
- ✓ Number: 7 Author: 20576 Subject: Sticky Note Date: 7/7/2011 9:01:38 AM
Yes.
- ✓ Number: 8 Author: 20576 Subject: Sticky Note Date: 7/7/2011 9:02:52 AM
This is fine. The timeshare owner and foreclosing entity are allowed to bid. However, the time-share owner is not entitled to have the amounts owed eliminated as a result of the foreclosure and subsequent purchaser of the interest through this process.
- ✓ Number: 9 Author: 20576 Subject: Sticky Note Date: 7/7/2011 9:03:40 AM
We can provide that the time-share owner can redeem up until the auction, however this is not necessary.

1 to any liens and encumbrances that were recorded prior to the recording of the
 2 mortgage or the assessment lien. A buyer at a foreclosure sale is not required to
 3 complete the purchase if the time-share estate is subject to outstanding liens and
 4 encumbrances, other than those included in the notice of sale, that are not stated at
 5 the sale ¹ ~~and included in the foreclosing entity's contract with the buyer of the~~
 6 ~~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 ⁴ 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? 

No more than 10 days after the foreclosure sale date, the ⁶

7 ⁷ ~~5.~~ ⁸ The foreclosing entity shall deliver to the successful bidder a foreclosure deed
 8 or other appropriate instrument transferring title to the time-share estate and an
 9 affidavit in recordable form attesting that all requirements described in this section
 10 have been met. Within 30 days after ¹⁰ ~~the foreclosure sale date,~~ the buyer shall record
 11 the foreclosure deed or other instrument of transfer and affidavit with the register
 12 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)?

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

- ✓ Number: 1 Author: 20576 Subject: Cross-Out Date: 7/7/2011 9:04:18 AM

- ✓ Number: 2 Author: 20576 Subject: Sticky Note Date: 7/7/2011 9:08:26 AM
Yes. The previous owner does not take free and clear.

- ? Number: 3 Author: 20576 Subject: Cross-Out Date: 7/7/2011 9:08:32 AM

- Number: 4 Author: 20576 Subject: Cross-Out Date: 7/7/2011 9:08:32 AM

- ← Number: 5 Author: 20576 Subject: Sticky Note Date: 7/7/2011 9:15:33 AM
A buyer at a foreclosure sale should have 5 days after the auction to determine if the timeshare interest is subject to outstanding liens and encumbrances, other than those included in the notice of sale or that are not stated at the sale. After that time, the buyer may not rescind the purchase of the timeshare interest.

- ✓ Number: 6 Author: 20576 Subject: Typewritten Text Date: 7/7/2011 9:13:18 AM
No more than 10 days after the foreclosure sale date, the..

- ✓ Number: 7 Author: 20576 Subject: Line Date: 7/7/2011 9:13:43 AM

- ✓ Number: 8 Author: 20576 Subject: Cross-Out Date: 7/7/2011 9:13:27 AM


- ✓ Number: 9 Author: 20576 Subject: Typewritten Text Date: 7/7/2011 9:14:42 AM
delivery of the foreclosure deed or other...


- ✓ Number: 10 Author: 20576 Subject: Cross-Out Date: 7/7/2011 9:12:22 AM

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

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

7 a. If there are any parties that held a lien or security interest junior to that of
8 the foreclosing entity, the foreclosing entity may bring an action of interpleader, turn
9 the surplus over to the court, name the parties with the junior liens or security
10 interests, and ask the court to determine the proper distribution of the surplus. The
11 foreclosing entity shall recover reasonable attorney fees in any interpleader action
12 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 as drafted, based on the
drafting instructions. What happens to the surplus if there are other lienholders but the
foreclosing entity doesn't bring such an action? 

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

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

20 (5) Waiver OF DEFICIENCY. Any foreclosing entity that forecloses a mortgage,
21 lien, or security interest under this section waives the right to bring an action for any

Number: 1 Author: 20576 Subject: Sticky Note Date: 7/7/2011 9:16:28 AM

✓ Yes. There is no need for an interpleader in that circumstance.

Number: 2 Author: 20576 Subject: Sticky Note Date: 7/7/2011 9:17:42 AM


✓ The foreclosing entity would then be liable for the equitable and proper distribution of those excess funds to the other lienholders. This is a risk the foreclosing entity would take if they so choose.

Number: 3 Author: 20576 Subject: Sticky Note Date: 7/7/2011 9:18:06 AM

What happened to this Section?

1 deficiency that may remain due to the foreclosing entity after the sale of the
2 time-share estate or license.

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

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

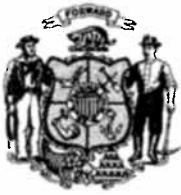
19 (END)

Number: 1 Author: 20576 Subject: Sticky Note Date: 7/7/2011 10:40:36 AM

This eliminates the ability of the lienholder to choose whether to use foreclosure under 846 (for time-share estates) or 401-411 (for time-share licenses). As a result, we would suggest revising section 707.28(2) to reflect that in addition to the rights of foreclosure set forth above (i.e. 846 and 401-411), the lienholder may use the nonjudicial foreclosure process.

?
I thought they could not use that procedure unless the owner objected

Can they choose either one?



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2090/11
PJK:kjf:re

P2

r m is run

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Today

(in 8-19)
D-note

Regen

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

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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, or a security interest in, a time-share license,
8 and that seeks to foreclose the mortgage, lien, or security interest.

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

(3) TIME-SHARE ESTATE FORECLOSURE PROCEDURE. (a) Notice of default; nonjudicial foreclosure. 1. Subject to s. 707.38 (5) 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)*

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.

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 he or she has *within* 30 days from the date on which the notice was mailed *to 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.

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

4. If, within the 30-day period under subd. *2*, the time-share owner returns the objection form or otherwise objects in writing, 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

to the use of nonjudicial foreclosure

more after 2.

as provided in par. (c) or (d), whichever is applicable,

1 the manner provided under ch. 846, and, if he or she does not within that 30-day
2 period cure the default, the foreclosing entity may proceed with a foreclosure sale of
3 the time-share estate by public auction as provided in this section.

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

6 1. a. Except as provided in subd. 1. b., notice of the date, time, and place of the
7 sale must be published once in each of 3 successive weeks in a newspaper having
8 general circulation in the county in which the time-share estate is located. The first
9 publication must be no later than 30 days before the date of the sale, excluding the
10 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.

11 b. In lieu of publishing the notice of sale in a newspaper as provided in subd.

12 1. a., notice may be given by posting a copy of the notice of sale for 3 successive weeks
13 on the Internet and publishing, once a week for 3 successive weeks in a newspaper
14 having general circulation in the county in which the time-share estate is located,
15 a notice, in at least 10-point boldface type, that states at a minimum that the notice
16 of sale for the foreclosure of the time-share estate is posted on the Internet, the
17 Internet site where the notice is posted, and the name and street address of the
18 property in which the time-share estate exists. insert 3-18

****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.

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 must be mailed to all of the following:

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

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

- a. The name of the time-share owner.
- b. The date, time, and place of the foreclosure sale.
- c. A general description of the time-share estate.
- 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 under par. (c) or (d) gets sent to the time-share owner and lienholders, the four items above are redundant and subd. 4. is unnecessary.

4. If more than one time-share estate 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

in the same time-share property

which may be a copy of the notice under par. (c) or (d), whichever is applicable,

Insert 5-1

****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.

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

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

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

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

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

21 Other terms to be announced at the sale.

22 Signed

23 Holder of the lien or authorized agent.

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

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

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

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

13 (For each time-share estate, list the name and address of the time-share
14 owner, a general description of the time-share estate, the recording information for
15 the deed or other instrument vesting the time-share estate in the time-share owner,
16 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.

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

22 Other terms to be announced at the sale.

1 Signed

2 Holder of the mortgage or authorized agent.

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

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

5 *county*
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.)

6 *not* 2. The sale must be by public auction, conducted by an auctioneer registered
7 under ch. 480 or by an attorney who is a member of the State Bar of Wisconsin. At
8 his or her discretion, the auctioneer or attorney may dispense with the reading of the
9 names of the time-share owners if there is more than one time-share owner, of the
10 descriptions of the time-share estates if there is more than one time-share estate,
11 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?

12 *2* Upon the sale of the time-share estate, the time-share owner's right to
13 redeem the time-share estate is extinguished. *Unless the successful buyer is the time-share owner.*

****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?

14 *not* 4. The successful buyer at the foreclosure sale takes title to the time-share
15 estate free and clear of any outstanding assessments owed by the previous
16 time-share owner to the managing entity or other person specified in the project
17 instrument or time-share instrument, but subject to municipal or other taxes and

(move up to end of 2nd sentence above)

the time-share owner.

1 to any liens and encumbrances that were recorded prior to the recording of the
2 mortgage or the assessment lien. A buyer at a foreclosure sale is not required to
3 complete the purchase if the time-share estate is subject to outstanding liens and
4 encumbrances, other than those included in the notice of sale, that are not stated at
5 the sale and included in the foreclosing entity's contract with the buyer of the

6 time-share estate at the foreclosure sale. *insert 8-6*

****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?

7 *3 ←* *→ No later than 10 days after the foreclosure sale date,* The foreclosing entity shall deliver to the successful bidder a foreclosure deed
8 or other appropriate instrument transferring title to the time-share estate and an
9 affidavit in recordable form attesting that all requirements described in this section
10 have been met. Within 30 days after the *insert 8-10* foreclosure sale date, the buyer shall record
11 the foreclosure deed or other instrument of transfer and affidavit with the register
12 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)?

13 *4 ←* Subject to s. 707.38 (5), within 30 days after delivering the foreclosure deed
14 or other instrument of transfer and affidavit to the buyer, the foreclosing entity shall
15 mail by 1st class mail to the last-known address of the former time-share owner and
16 to all parties that held a lien or security interest junior to that of the foreclosing entity
17 a notice detailing the results of the foreclosure sale.

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

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

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

Insert 9-8

****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~~ as drafted, based on the drafting instructions. What happens to the surplus if there are other lienholders but the foreclosing entity doesn't bring such an action?

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

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

Insert 9-19

20 (5) Waiver OF DEFICIENCY. Any foreclosing entity that forecloses a mortgage,
21 lien, or security interest under this section waives the right to bring an action for any

1 deficiency that may remain due to the foreclosing entity after the sale of the
2 time-share estate or license.

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

4 707.37 (6) ENFORCEMENT OF LIEN. A lien may be enforced and foreclosed by a
5 managing entity, or any other person specified in the time-share instrument, in the
6 same manner, and subject to the same requirements, as a foreclosure of mortgages
7 on real property in this state or, in the case of a time-share license, under chs. 401
8 to 411 provided in s. 707.28. The managing entity may recover costs and actual
9 attorney fees. The managing entity may, unless prohibited by the project instrument
10 or time-share instrument, bid on the time share at foreclosure sale and acquire, hold,
11 mortgage, and convey the time share. Suit to recover a money judgment for unpaid
12 time-share expenses shall be maintainable without foreclosing or waiving the lien
13 securing the time-share expenses. Suit for any deficiency following foreclosure may
14 be maintained in the same proceeding. No action may be brought to foreclose the lien
15 unless brought within 3 years after the recording of the statement of time-share lien
16 and unless 10 days' prior written notice is given to the time-share owner by
17 registered mail, return receipt requested, to the address of the time-share owner
18 shown on the books of the managing entity.

19

(END)

Insert 10-18

note

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2090/P2ins
PJK:.....

INSERT 2-5

1 ^{w06} To foreclose a mortgage or a lien for assessments under s. 707.37[✓] on a
2 time-share estate

(END OF INSERT 2-5)

INSERT 2-15

3 ^{w06} under subd. 1.,[✓] or 30 days from the last date the notice was mailed if the
4 mailings were not on the same date, he or she may

(END OF INSERT 2-15)

INSERT 3-18

5 ^{w06} The posting on the Internet shall begin on the same date as the first newspaper
6 publication, which date must be no later than 30 days before the date of the sale,
7 excluding the date of that first publication and the date of the sale.

(END OF INSERT 3-18)

INSERT 5-1

8 ^{G4} 5. The notice of sale as provided in par. (c) or (d),^{✓ ✓} whichever is applicable;
9 published, or posted and published, and mailed in accordance with the requirements
10 under this subsection;[✓] together with such other or further notice, if any; constitutes
11 sufficient notice of the sale.

****NOTE: The suggested language does not specifically include mention of mailing the notice. I assumed that was not intentional and included it in the language above. Let me know if mention of mailing should not be included.

(END OF INSERT 5-1)

INSERT 8-6



Insert 8-6

1 *will* The buyer shall have a period of 5 days from the foreclosure sale date to
2 determine if the time-share estate is subject to any such liens or encumbrances.

(END OF INSERT 8-6)

INSERT 8-10

3 *will* delivery of the foreclosure deed - other instrument of transfer and affidavit

(END OF INSERT 8-10)

INSERT 9-8

4 *will* make an equitable and proper distribution of the surplus to those parties, or
5 may

(END OF INSERT 9-8)

INSERT 9-19

6 *will* (a) *Procedure*. If the owner of a time-share license fails to pay assessments
7 when due or breaches the terms of an instrument granting a security interest in the
8 time-share license, a foreclosing entity may foreclose the security interest in, or lien
9 for assessments under s. 707.37 on, the time-share license in accordance with s.
10 409.610, except that "secured party" as used in s. 409.610 means "foreclosing entity"
11 for purposes of this subsection, and "collateral" as used in s. 409.610 means
12 "time-share license" for purposes of this subsection. No proceedings may be brought
13 to foreclose the security interest or lien for assessments unless the foreclosing entity
14 provides at least 30 days' prior written notice by registered mail with return receipt
15 requested to the last-known address of the time-share owner as shown on the books
16 or other records of the managing entity or other person specified in the project
17 instrument.



Ins 9-19 cont'd (1)

* ****NOTE: Section 409.610 (1) doesn't really foreclose an interest, it disposes of collateral after default. Section 409.610 states that after default, a secured party may sell, license, or otherwise dispose of collateral. Section 409.610 (2) states that disposition of collateral must be commercially reasonable and that a secured party may dispose of collateral by public or private proceedings. Are you equating "disposal" with "foreclosure"? What information does the notice provide, that the time-share license will be disposed of in 30 days?

1 *CH* (b) *Consequences of sale.* Upon the sale of the time-share license, the
2 time-share owner's right to redeem the time-share license is extinguished. Unless
3 the successful buyer is the time-share owner, the successful buyer takes title to the
4 time-share license free and clear of any outstanding assessments owed by the
5 previous time-share owner to the managing entity or other person specified in the
6 project instrument or time-share instrument.

****NOTE: As for time-share estates, I did not provide a list of who may purchase the time-share license because it does not appear that anyone is prohibited from doing so.

(END OF INSERT 9-19)

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2090/P2ins
PJK:.....

INSERT 10-18

1 **SECTION 1. Initial applicability.**

2 (1) This act first applies to foreclosures of mortgage, security interest, or
3 assessment liens on time-share estates or time-share licenses that are commenced
4 on the effective date of this subsection. ✓

(END OF INSERT 10-18)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2090/P2dn

PJK...*tf*

Date

I did not modify proposed s. 707.28 (2) to reflect that a lienholder may use judicial foreclosure procedures in addition to nonjudicial foreclosure procedures. Proposed s. 707.28 (2) states that a time-share mortgage or lien may be foreclosed only as provided in s. 707.28. Under s. 707.28, a lienholder must use nonjudicial foreclosure procedure unless the lienholder objects in writing to the use of nonjudicial foreclosure, in which case but the lienholder must use judicial foreclosure procedure. Let me know if this is not how you intended for it to work, or if there is a specific modification that you think needs to be made.

to s. 707.28(2)

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

Do you want to delay the effective date for a bit to allow parties to prepare for this change?

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2090/P2dn
PJK:kjf:ph

September 7, 2011

I did not modify proposed s. 707.28 (2) to reflect that a lienholder may use judicial foreclosure procedures in addition to nonjudicial foreclosure procedures. Proposed s. 707.28 (2) states that a time-share mortgage or lien may be foreclosed only as provided in s. 707.28. Under s. 707.28, a lienholder must use nonjudicial foreclosure procedures unless the lienholder objects in writing to the use of nonjudicial foreclosure, in which case the lienholder must use judicial foreclosure procedures. Let me know if this is not how you intended for it to work, or if there is a specific modification to s. 707.28 (2) that you think needs to be made.

Do you want to delay the effective date for a bit to allow parties to prepare for this change?

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

Barman, Mike

From: LRB.Legal
Sent: Monday, September 12, 2011 12:03 PM
To: Kovach, Robert
Cc: Sen.Lasee
Subject: Requested PDF (LRB-2090/P2)

Attachments: 11-2090/P2; 11-2090/P2dn



11-2090P2.pdf
(55 KB)



11-2090P2dn.pdf
(12 KB)

Mike Barman (Lead Program Assistant)
State of Wisconsin - Legislative Reference Bureau
Legal Section - Front Office
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(608) 266-3561 / mike.barman@legis.wisconsin.gov



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2090/12
PJK:kjt:pt

r m i r u n

Friday

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

SOON
(in 9-26)

Regen

1 AN ACT to amend 707.37 (6); and to create 707.28 of the statutes; relating to:
2 nonjudicial foreclosure of time-share estates and 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, or a security interest in, a time-share license,
8 and that seeks to foreclose the mortgage, lien, or security interest.

Insert A

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. To foreclose a mortgage or a lien for assessments under
6 s. 707.37 on a time-share estate, a foreclosing entity shall first provide written notice
7 to the time-share owner in default at the time-share owner's last-known address
8 by certified mail, with return receipt requested, and by 1st class mail, subject to s.
9 707.38 (5).

10 2. 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, within 30
13 days from the date on which the notice was mailed under subd. 1., or 30 days from
14 the last date the notice was mailed if the mailings were not on the same date, he or
15 she may cure the default or object in writing to nonjudicial foreclosure; and that, if
16 he or she does not timely cure the default or object to the nonjudicial foreclosure in
17 writing, the foreclosing entity may proceed with a nonjudicial foreclosure.

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

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

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

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

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

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

24 2. At least 30 days before the date of the sale, excluding the date of the sale,
25 written notice of the date, time, and place of the sale, which may be a copy of the

1 notice under par. (c) or (d), whichever is applicable, must be mailed to all of the
2 following:

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

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

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

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

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

****NOTE: The suggested language does not specifically include mention of mailing
the notice. I assumed that was not intentional and included it in the language above.
Let me know if mention of mailing should not be included.

21 (c) *Form of notice to foreclose lien for assessments.* The notice of foreclosure sale
22 for foreclosing a lien for assessments under s. 707.37 on a time-share estate shall be
23 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 shall be in substantially the
23 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 is not required to
12 complete the purchase if the time-share estate is subject to outstanding liens and
13 encumbrances, other than those included in the notice of sale, that are not stated at
14 the sale. The buyer shall have a period of 5 days from the foreclosure sale date to
15 determine if the time-share estate is subject to any such liens or encumbrances.

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

24 4. Subject to s. 707.38 (5), within 30 days after delivering the foreclosure deed
25 or other instrument of transfer and affidavit to the buyer, the foreclosing entity shall

1 mail by 1st class mail to the last-known address of the former time-share owner and
2 to all parties that held a lien or security interest junior to that of the foreclosing entity
3 a notice detailing the results of the foreclosure sale.

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

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

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

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

23 (4) **TIME-SHARE LICENSE FORECLOSURE PROCEDURE.** (a) *Procedure.* If the owner
24 of a time-share license fails to pay assessments when due or breaches the terms of
25 an instrument granting a security interest in the time-share license, a foreclosing

1 entity may foreclose the security interest in, or lien for assessments under s. 707.37
 2 on, the time-share license in accordance with s. 409.610, except that "secured party"
 3 as used in s. 409.610 means "foreclosing entity" for purposes of this subsection, and
 4 "collateral" as used in s. 409.610 means "time-share license" for purposes of this
 5 subsection. No proceedings may be brought to foreclose the security interest or lien
 6 for assessments unless the foreclosing entity provides at least 30 days' prior written
 7 notice by registered mail with return receipt requested to the last-known address
 8 of the time-share owner as shown on the books or other records of the managing
 9 entity or other person specified in the project instrument.

****NOTE: Section 409.610 (1) doesn't really foreclose an interest, it disposes of collateral after default. Section 409.610 (1) states that after default, a secured party may sell, license, or otherwise dispose of collateral. Section 409.610 (2) states that disposition of collateral must be commercially reasonable and that a secured party may dispose of collateral by public or private proceedings. Are you equating "disposal" with "foreclosure"? What information does the notice provide, that the time-share license will be disposed of in 30 days?

10 (b) *Consequences of sale.* Upon the sale of the time-share license, the
 11 time-share owner's right to redeem the time-share license is extinguished. Unless
 12 the successful buyer is the time-share owner, the successful buyer takes title to the
 13 time-share license free and clear of any outstanding assessments owed by the
 14 previous time-share owner to the managing entity or other person specified in the
 15 project instrument or time-share instrument.

****NOTE: As for time-share estates, I did not provide a list of who may purchase the time-share license because it does not appear that anyone is prohibited from doing so.

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:

(or administrative) INSERT A

Nonjudicial/foreclosure of time shares ✓

Under current law, a time-share estate is defined as a right to occupy a real property unit during at least four separated periods over at least four years, together with a property interest in the real property unit. A time-share license is defined as a right to occupy a unit, or any of several units, under a license or lease agreement during at least four separated periods over at least four years, without a property interest in the real property unit. A person's interest in a time-share estate may be foreclosed in a court proceeding (judicial foreclosure) in the same manner as an interest in real property is foreclosed if the person defaults in payments to a creditor that has a security interest in the time-share estate, or if the person does not pay assessments that were imposed for time-share expenses and that have become a lien. Current law specifies that a lien for assessments against a time-share license may be foreclosed as provided under the Uniform Commercial Code (UCC). This bill sets out nonjudicial procedures for foreclosing security interests in, and assessment liens against, time-share estates and time-share licenses. The bill provides that a person seeking to foreclose an owner's interest in a time-share estate or a time-share license (foreclosing entity) must use the ~~nonjudicial~~ procedure, except that the owner of a time-share estate may object to the use of the ~~nonjudicial~~ procedure, in which case the foreclosing entity must use the judicial foreclosure procedure. In addition, the bill provides that a foreclosing entity that uses the ~~nonjudicial~~ procedure to foreclose an owner's interest in either a time-share estate or time-share license waives the right to a deficiency if the proceeds of the sale in the ~~nonjudicial~~ procedure do not cover what is owed to the foreclosing entity.

Procedure for time-share estates

To foreclose an owner's interest in a time-share estate, the foreclosing entity must first send notice to the owner, informing the owner of the default, of the amount of the default, and that he or she may, within 30 days, cure the default or object to the use of the ~~nonjudicial~~ procedure. If the owner does not timely cure the default or object to the use of the ~~nonjudicial~~ procedure, he or she has ~~the~~ waived the right to a judicial foreclosure, and the foreclosing entity may proceed with the ~~nonjudicial~~ foreclosure, which includes sale by public auction. The foreclosing entity must publish notice of the foreclosure sale in a newspaper having general circulation in the county in which the time-share estate is located. The notice must be published once in each of three successive weeks, and the first publication must be at least 30 days before the date of the sale. In lieu of publishing the full notice three times in a newspaper, the foreclosing entity may post the full notice on an Internet site for three successive weeks and publish the Internet site in a newspaper once in each of three successive weeks. In addition to publishing notice of the sale, the foreclosing entity must mail written notice of the date, time, and place of the sale to the time-share estate owner and all persons having a lien of record on the time-share estate.

The foreclosure sale must take place on the time-share estate property or at another location in the county where the time-share estate is located and must be

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conducted by a registered auctioneer or an attorney who is a member of the State Bar of Wisconsin. The successful buyer at the foreclosure sale, which extinguishes the former owner's right to redeem, takes the time-share estate free and clear of any assessments owed by the former owner. The time-share estate is still subject, however, to any outstanding taxes and to any liens or other encumbrances that were recorded before the mortgage or assessment lien on which the nonjudicial foreclosure is based. The foreclosing entity must: 1) within 10 days after the foreclosure sale, deliver to the buyer a deed or other instrument transferring title and an affidavit attesting that all requirements under the statutes for nonjudicial foreclosure have been met; 2) within 30 days after delivering the deed or other instrument and the affidavit, mail the former owner and all persons holding liens that were junior to that of the foreclosing entity a notice that details the results of the sale; and 3) within 30 days after the foreclosure sale, apply the sale proceeds first to the expenses of the sale and then to the amount owed to the foreclosing entity. If there are any surplus proceeds after that, the foreclosing entity may pay the junior lienholders or may turn the surplus proceeds over to the court and ask the court to determine the proper distribution. If there are no junior lienholders or if they have all been paid, the foreclosing entity must pay any surplus to the former owner, or to the state treasurer if the foreclosing entity is unable to locate the former owner within one year after the sale.

Procedure for time-share licenses

Under the bill, the nonjudicial procedure for foreclosing a security interest in, or an assessment lien on, a time-share license is the procedure used under the Uniform Commercial Code (UCC) when a default occurs in a secured transaction. Under this procedure, the foreclosing entity may sell, lease, or otherwise dispose of the time-share license by private or public proceedings. The method, manner, time, place, and other terms of the disposal must be commercially reasonable. The bill requires that the foreclosing entity must send at least 30 days' written notice to the time-share owner before any proceedings may be brought. As with nonjudicial foreclosure of an owner's interest in a time-share estate, disposal of the time-share license by private or public proceedings extinguishes the former owner's right to redeem and the buyer takes the time-share license free and clear of any assessments owed by the former owner but subject to any outstanding taxes and to any liens or other encumbrances that were recorded before the security interest or assessment lien on which the nonjudicial foreclosure is based.

(END OF INSERT A)

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