



2011 ASSEMBLY BILL 328

October 17, 2011 – Introduced by Representatives RIVARD, BIES, BROOKS, HONADEL, A. OTT and TIFFANY, cosponsored by Senators LASEE, GROTHMAN, HOLPERIN and OLSEN. Referred to Committee on Tourism, Recreation and State Properties.

- 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

Nonjudicial (or administrative) 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 (administrative) 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 administrative procedure, except that the owner of a time-share estate may object to the use of the administrative procedure, in which case the foreclosing entity must use the judicial foreclosure procedure. In addition, the bill provides that a foreclosing entity that

ASSEMBLY BILL 328

uses the administrative 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 administrative 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 administrative procedure. If the owner does not timely cure the default or object to the use of the administrative procedure, he or she has waived the right to a judicial foreclosure, and the foreclosing entity may proceed with the administrative 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 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 administrative 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 administrative 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.

ASSEMBLY BILL 328***Procedure for time-share licenses***

Under the bill, the administrative procedure for foreclosing a security interest in, or an assessment lien on, a time-share license is the procedure used under the 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 administrative 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 administrative foreclosure is based.

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

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

2 **707.28 Foreclosure of time-share estates and licenses. (1) DEFINITION.**

3 In this section, "foreclosing entity" means a person that holds a mortgage or a lien
4 for assessments under s. 707.37 on a time-share estate, or a person that holds a lien
5 for assessments under s. 707.37 on, or a security interest in, a time-share license,
6 and that seeks to foreclose the mortgage, lien, or security interest.

7 **(2) EXCLUSIVE PROCEDURE.** A mortgage or a lien for assessments under s. 707.37
8 on a time-share estate, or a security interest in, or a lien for assessments under s.
9 707.37 on, a time-share license, may be foreclosed only as provided in this section.

10 **(3) TIME-SHARE ESTATE FORECLOSURE PROCEDURE. (a) Notice of default;**
11 *nonjudicial foreclosure.* 1. To foreclose a mortgage or a lien for assessments under
12 s. 707.37 on a time-share estate, a foreclosing entity shall first provide written notice
13 to the time-share owner in default at the time-share owner's last-known address

ASSEMBLY BILL 328**SECTION 1**

1 by certified mail, with return receipt requested, and by 1st class mail, subject to s.
2 707.38 (5).

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

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

14 4. If, within the 30-day period under subd. 2., the time-share owner returns
15 the objection form or otherwise objects in writing to the use of nonjudicial foreclosure,
16 the foreclosing entity must use the procedure under ch. 846 to foreclose the mortgage
17 or lien. However, if the time-share owner does not, within the 30-day period under
18 subd. 2., object in writing to nonjudicial foreclosure, he or she waives his or her right
19 to foreclosure conducted in the manner provided under ch. 846, and, if he or she does
20 not within that 30-day period cure the default, the foreclosing entity may proceed
21 with a foreclosure sale of the time-share estate by public auction as provided in this
22 section.

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

ASSEMBLY BILL 328

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

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

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, which may be a copy of the
20 notice under par. (c) or (d), whichever is applicable, must be mailed to all of the
21 following:

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

ASSEMBLY BILL 328**SECTION 1**

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

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

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

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

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

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

21 By virtue of the (project instrument or time-share instrument, whichever is
22 applicable) of the (name and address of the time-share property), and Chapter
23 707 of the Wisconsin Statutes establishing a lien for failure to pay assessments on
24 the time-share estate (or estates, if more than one) held by the time-share owner (or

ASSEMBLY BILL 328

1 owners, if more than one) listed below, the time-share estate (or estates, if more than
2 one) will be sold at public auction, commencing at, on, 20.., at, Wisconsin.

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

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

12 Other terms to be announced at the sale.

13 Signed

14 Holder of the lien or authorized agent.

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

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

20 By virtue of Chapter 707 of the Wisconsin Statutes and the rights contained in
21 a certain mortgage (or mortgages, if more than one) on the time-share estate (or
22 estates, if more than one) given by the time-share owner (or owners, if more than
23 one) set forth below for breach of the conditions of the mortgage (or mortgages, if
24 more than one) and for the purpose of foreclosing, the time-share estate (or estates,

ASSEMBLY BILL 328**SECTION 1**

1 if more than one) will be sold at public auction, commencing at, on, 20.., at,
2 Wisconsin.

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

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

12 Other terms to be announced at the sale.

13 Signed

14 Holder of the mortgage or authorized agent.

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

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

ASSEMBLY BILL 328

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

11 3. No later than 10 days after the foreclosure sale date, the foreclosing entity
12 shall deliver to the successful bidder a foreclosure deed or other appropriate
13 instrument transferring title to the time-share estate and an affidavit in recordable
14 form attesting that all requirements described in this section have been met. Within
15 30 days after the delivery of the foreclosure deed or other instrument of transfer and
16 affidavit, the buyer shall record the foreclosure deed or other instrument of transfer
17 and affidavit with the register of deeds of the county in which the time-share estate
18 is located.

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

24 (f) *Application of sale proceeds.* 1. No later than 30 days after the foreclosure
25 sale, the foreclosing entity shall apply the proceeds of the sale first to the expenses

ASSEMBLY BILL 328**SECTION 1**

1 of the sale and then to the amount owed to the foreclosing entity, as set forth in the
2 notice to the former time-share owner under par. (a).

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

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

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

18 **(4) TIME-SHARE LICENSE FORECLOSURE PROCEDURE.** (a) *Procedure.* If the owner
19 of a time-share license fails to pay assessments when due or breaches the terms of
20 an instrument granting a security interest in the time-share license, a foreclosing
21 entity may foreclose the security interest in, or lien for assessments under s. 707.37
22 on, the time-share license in accordance with s. 409.610, except that “secured party”
23 as used in s. 409.610 means “foreclosing entity” for purposes of this subsection, and
24 “collateral” as used in s. 409.610 means “time-share license” for purposes of this
25 subsection. No proceedings may be brought to foreclose the security interest or lien

ASSEMBLY BILL 328

1 for assessments unless the foreclosing entity provides at least 30 days' prior written
2 notice by registered mail with return receipt requested to the last-known address
3 of the time-share owner as shown on the books or other records of the managing
4 entity or other person specified in the project instrument.

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

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

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

16 707.37 (6) **ENFORCEMENT OF LIEN.** A lien may be enforced and foreclosed by a
17 managing entity, or any other person specified in the time-share instrument, in the
18 same manner, and subject to the same requirements, as a foreclosure of mortgages
19 ~~on real property in this state or, in the case of a time-share license, under chs. 401~~
20 ~~to 411 provided in s. 707.28.~~ The managing entity may recover costs and actual
21 attorney fees. The managing entity may, unless prohibited by the project instrument
22 or time-share instrument, bid on the time share at foreclosure sale and acquire, hold,
23 mortgage, and convey the time share. Suit to recover a money judgment for unpaid
24 time-share expenses shall be maintainable without foreclosing or waiving the lien
25 securing the time-share expenses. ~~Suit for any deficiency following foreclosure may~~

ASSEMBLY BILL 328**SECTION 2**

1 ~~be maintained in the same proceeding.~~ No action may be brought to foreclose the lien
2 unless brought within 3 years after the recording of the statement of time-share lien
3 ~~and unless 10 days' prior written notice is given to the time-share owner by~~
4 ~~registered mail, return receipt requested, to the address of the time-share owner~~
5 ~~shown on the books of the managing entity.~~

6 **SECTION 3. Initial applicability.**

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

10 (END)