

## **Part 9**

### **Mortgage Foreclosure**

#### **78B-6-901 Form of action -- Judgment -- Special execution.**

- (1) There is only one action for the recovery of any debt, or the enforcement of any right, secured solely by mortgage upon real estate and that action shall be in accordance with the provisions of this chapter.
- (2) A judgment shall include:
  - (a) the amount due, with costs and disbursements;
  - (b) an order for the sale of mortgaged property, or a portion of it to satisfy the amount and accruing costs;
  - (c) direction to the sheriff to proceed and sell the property according to the provisions of law relating to sales on execution; and
  - (d) a special execution or order of sale shall be issued for that purpose.

Amended by Chapter 146, 2009 General Session

#### **78B-6-901.5 Notice to tenant on residential property to be foreclosed.**

- (1) As used in this section, "residential rental property" means property on which a mortgage was given to secure an obligation the stated purpose of which is to finance residential rental property.
- (2) Within 20 days after filing an action under this part to foreclose property that includes or constitutes residential rental property, the plaintiff in the action shall:
  - (a) post a notice:
    - (i) on the primary door of each dwelling unit on the property that is the subject of the foreclosure action, if the property has fewer than nine dwelling units; or
    - (ii) in at least three conspicuous places on the property that is the subject of the foreclosure action, if the property to be sold has nine or more dwelling units; or
  - (b) mail a notice to the occupant of each dwelling unit on the property that is the subject of the foreclosure action.
- (3) The notice required under Subsection (2) shall:
  - (a) be in at least 14-point font;
  - (b) include the name and address of:
    - (i) the owner of the property;
    - (ii) the trustor or mortgagor, as the case may be, on the instrument creating a security interest in the property;
    - (iii) the trustee or mortgagee, as the case may be, on the instrument; and
    - (iv) the beneficiary, if the instrument is a trust deed;
  - (c) contain the legal description and address of the property; and
  - (d) include a statement in substantially the following form:

"Notice to Tenant

An action to foreclose the property described in this notice has been filed. If the foreclosure action is pursued to its conclusion, the described property will be sold at public auction to the highest bidder unless the default in the obligation secured by this property is cured.

If the property is sold, you may be allowed under federal law to continue to occupy your rental unit until your rental agreement expires, or until 90 days after the sale of the property at

auction, whichever is later. If your rental or lease agreement expires after the 90-day period, you may need to provide a copy of your rental or lease agreement to the new owner to prove your right to remain on the property longer than 90 days after the sale of the property.

You must continue to pay your rent and comply with other requirements of your rental or lease agreement or you will be subject to eviction for violating your rental or lease agreement.

The new owner or the new owner's representative will probably contact you after the property is sold with directions about where to pay rent.

The new owner of the property may or may not want to offer to enter into a new rental or lease agreement with you at the expiration of the period described above."

- (4) The failure to provide notice as required under this section or a defect in that notice may not be the basis for challenging or defending a foreclosure action or for invalidating a sale of the property pursuant to a foreclosure action.

Amended by Chapter 280, 2020 General Session

**78B-6-902 Deficiency judgment -- Execution.**

If it appears that the proceeds of the sale are insufficient and a balance still remains due, the judgment shall be docketed by the clerk and execution may be issued for the balance as in other cases. A general execution may not be issued until after the sale of the mortgaged property and the application of the amount realized to the preceding judgment.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-903 Necessary parties -- Unrecorded rights barred.**

A person holding a conveyance from or under the mortgagor or having a lien on the property, neither of which is properly documented or recorded in the proper office at the time of the commencement of the action, is not required to be made a party to the action. The proceedings and any judgment rendered are conclusive against the party holding the unrecorded conveyance or lien as if the person had been made a party to the action.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-904 Sales -- Disposition of surplus money.**

If there is surplus money remaining after payment of the amount due on the mortgage, lien or encumbrance, with costs, the court may order the amount paid to the person entitled to it. In the meantime the court may direct it to be deposited with the court.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-905 Sales -- When debt due in installments.**

If the debt for which the mortgage, lien, or encumbrance is held is not all due, then as soon as sufficient of the property has been sold to pay the amount due, with costs, the sale must cease. As often as more becomes due on principal or interest, the court may, on motion, order more to be sold. If the property cannot be sold in portions without injury to the parties, the entire parcel may be ordered sold and the entire debt and costs paid. There shall be a rebate of interest where a rebate is proper.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-906 Right of redemption -- Sales by parcels -- Of land and water stock.**

- (1) Sales of real estate under judgments of foreclosure of mortgages and liens are subject to redemption as in case of sales under executions generally.
- (2) In all cases where the judgment directs the sale of land, together with shares of corporate stock evidencing title to a water right used, intended to be used, or suitable for use, on the land, the court shall equitably apportion the water stock to the land. If the court divides the land into individual parcels for sale, the water stock may also be divided and applied to each parcel. The land and water stock in each parcel shall be sold together, and for the purpose of the sale shall be regarded as real estate and subject to redemption as previously specified.
- (3) In all sales of real estate under foreclosure the court may determine the parcels and the order in which the parcels of property shall be sold.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-907 Restraining possessor from injuring property.**

The court or judge may upon a showing of good cause enjoin the party in possession of the property from doing any act to injure the property during the foreclosure of a mortgage on it, or after a sale on execution.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-908 Attorney fees.**

- (1) In all cases of foreclosure when an attorney's fee is claimed by the plaintiff, the amount shall be fixed by the court. No other or greater amount shall be allowed or decreed than the sum which shall appear by the evidence to be actually charged by and to be paid to the attorney for the plaintiff.
- (2) If it shall appear that there is an agreement or understanding to divide the fees between the plaintiff and his attorney, or between the attorney and any other person except an attorney associated with him in the cause, the defendant shall only be ordered to pay the amount to be retained by the attorney or attorneys.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-909 Environmental impairment to real property security interest -- Remedies of lender.**

- (1) As used in this section:
  - (a) "Borrower" means:
    - (i) the trustor under a deed of trust, or a mortgagor under a mortgage, when the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation; and
    - (ii) includes any successor-in-interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.
  - (b) "Environmentally impaired" means the estimated costs to clean up and remediate a past or present release of any hazardous matter into, onto, beneath, or from the real property security exceed 25% of the higher of the aggregate fair market value of all security for the loan or extension of credit at the time:

- (i) of the making of the loan or extension of credit;
  - (ii) of the discovery of the release or threatened release by the secured lender; or
  - (iii) an action is brought under this section.
- (c) "Hazardous matter" means:
- (i) any hazardous substance or hazardous material as defined in Section 19-6-302; or
  - (ii) any waste or pollutant as defined in Section 19-5-102.
- (d) "Real property security" means any real property and improvements other than real property that contains only one but not more than four dwelling units, and is solely used for either:
- (i) residential purposes; or
  - (ii) if reasonably contemplated by the parties to the deed of trust or mortgage, residential purposes as well as limited agricultural or commercial purposes incidental to the residential purposes.
- (e) "Release" has the same meaning as in Section 19-6-302.
- (f) "Secured lender" means:
- (i) the trustee, the beneficiary, or both under a deed of trust against the real property security;
  - (ii) the mortgagee under a mortgage against the real property security; and
  - (iii) any successor-in-interest of the trustee, beneficiary, or mortgagee under the deed of trust or mortgage.
- (2) Under this section:
- (a) Estimated costs to clean up and remediate the contamination caused by the release include only those costs that would be incurred reasonably and in good faith.
  - (b) Fair market value is determined without giving consideration to the release, and is exclusive of the amount of all liens and encumbrances against the security that are senior in priority to the lien of the secured lender.
  - (c) Any real property security for any loan or extension of credit secured by a single parcel of real property is considered environmentally impaired if the property is:
    - (i) included in or proposed for the National Priorities List under Section 42 U.S.C. 9605;
    - (ii) any list identifying leaking underground storage tanks under 42 U.S.C. 6991 et seq.; or
    - (iii) in any list published by the Department of Environmental Quality under Section 19-6-311.
- (3) A secured lender may elect between the following when the real property security is environmentally impaired and the borrower's obligations to the secured lender are in default:
- (a)
    - (i) waiver of its lien against:
      - (A) any parcel of real property security or any portion of that parcel that is environmentally impaired; and
      - (B) all or any portion of the fixtures and personal property attached to the parcels; and
    - (ii) exercise of:
      - (A) the rights and remedies of an unsecured creditor, including reduction of its claim against the borrower to judgment; and
      - (B) any other rights and remedies permitted by law; or
  - (b) exercise of:
    - (i) the rights and remedies of a creditor secured by a deed of trust or mortgage and, if applicable, a lien against fixtures or personal property attached to the real property security; and
    - (ii) any other rights and remedies permitted by law, including the right to obtain a deficiency judgment.
  - (c) The provisions of this subsection take precedence over Section 78B-6-901.
- (4)

- (a) Subsection (3) is applicable only if in conjunction with and at the time of the making, renewal, or modification of the loan, extension of credit, guaranty, or other obligation secured by the real property security, the secured lender:
  - (i) did not know or have reason to know of a release of any hazardous matter into, onto, beneath, or from the real property security; and
  - (ii) undertook all appropriate inquiry into the previous ownership and uses of the real property security consistent with good commercial or customary practice in an effort to minimize liability.
- (b) For the purposes of Subsection (4)(a)(ii), the court shall take into account:
  - (i) any specialized knowledge or experience of the secured lender;
  - (ii) the relationship of the purchase price to the value of the real property security if uncontaminated;
  - (iii) commonly known or reasonably ascertainable information about the real property security;
  - (iv) the obviousness of the presence or likely presence of contamination at the real property security; and
  - (v) the ability to detect the contamination by appropriate inspection.
- (5)
  - (a) Before the secured lender may waive its lien against any real property security under Subsection (3)(a) on the basis of environmental impairment the secured lender shall:
    - (i) provide written notice of the default to the borrower; and
    - (ii) bring a valuation and confirmation action against the borrower in a court of competent jurisdiction and obtain an order establishing the value of the subject real property security.
  - (b) The complaint in an action under Subsection (5)(a)(ii) may include causes of action for a money judgment for all or part of the secured obligation, in which case the waiver of the secured lender's liens under Subsection (3)(a) may result only if a final money judgment is obtained against the borrower.
- (6)
  - (a) If a secured lender elects the rights and remedies under Subsection (3)(a) and the borrower's obligations are also secured by other real property security, fixtures, or personal property, the secured lender shall first foreclose against the additional collateral to the extent required by applicable law.
  - (b) Under this subsection the amount of the judgment of the secured lender under Subsection (3)(a) is limited to the remaining balance of the borrower's obligations after the application of the proceeds of the additional collateral.
  - (c) The borrower may waive or modify the foreclosure requirements of this Subsection (6) if the waiver or modification is in writing and signed by the borrower after default.
- (7) This section does not affect any rights or obligations arising under contracts existing before July 1, 1993, and applies only to loans, extensions of credit, guaranties, or other obligations secured by real property security made, renewed, or modified on or after July 1, 1993.

Renumbered and Amended by Chapter 3, 2008 General Session