



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBs0224/1
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**SENATE SUBSTITUTE AMENDMENT 1,
TO 2011 SENATE BILL 241**

October 24, 2011 – Offered by COMMITTEE ON WORKFORCE DEVELOPMENT, SMALL BUSINESS, AND TOURISM.

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

Analysis by the Legislative Reference Bureau

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. Currently, 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 substitute amendment sets out a nonjudicial (administrative) procedure for foreclosing security interests in, and assessment liens against, time-share estates. The substitute amendment provides that a person seeking to foreclose an owner's interest in a time-share estate may use the judicial procedure

or 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 substitute amendment provides that a foreclosing entity that uses the administrative procedure to foreclose an owner's interest in a time-share estate 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.

Nonjudicial (administrative) procedure for time-share estates

To use the administrative procedure 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.

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 and that seeks to foreclose
5 the mortgage or lien.

6 **(2) AVAILABLE PROCEDURES. (a) *Time-share estates.*** A mortgage or a lien for
7 assessments under s. 707.37 on a time-share estate may be foreclosed in the same
8 manner and subject to the same requirements as a foreclosure of mortgages on real
9 property in this state or in the manner provided under this section.

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

12 **(3) NONJUDICIAL TIME-SHARE ESTATE FORECLOSURE PROCEDURE. (a) *Notice of***
13 ***default; nonjudicial foreclosure.*** 1. To foreclose a mortgage or a lien for assessments
14 under s. 707.37 on a time-share estate under this section, a foreclosing entity shall
15 first provide written notice to the time-share owner in default at the time-share
16 owner’s last-known address by certified mail, with return receipt requested, and by
17 1st class mail, subject to s. 707.38 (5).

18 2. The notice shall inform the time-share owner of his or her default and the
19 amount that he or she owes to the foreclosing entity; that he or she has the right to
20 a judicial foreclosure conducted in the manner provided in ch. 846; that, within 30
21 days from the date on which the notice was mailed under subd. 1., or 30 days from

1 the last date the notice was mailed if the mailings were not on the same date, he or
2 she may cure the default or object in writing to nonjudicial foreclosure; and that, if
3 he or she does not timely cure the default or object to the nonjudicial foreclosure in
4 writing, the foreclosing entity may proceed with a nonjudicial foreclosure.

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

8 4. If, within the 30-day period under subd. 2., the time-share owner returns
9 the objection form under subd. 3. or otherwise objects in writing to the use of
10 nonjudicial foreclosure, the foreclosing entity must use the procedure under ch. 846
11 to foreclose the mortgage or lien. However, if the time-share owner does not, within
12 the 30-day period under subd. 2., object in writing to nonjudicial foreclosure, he or
13 she waives his or her right to foreclosure conducted in the manner provided under
14 ch. 846, and, if he or she does not within that 30-day period cure the default, the
15 foreclosing entity may proceed with a foreclosure sale of the time-share estate by
16 public auction as provided in this section.

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

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

24 b. In lieu of publishing the notice of sale in a newspaper as provided in subd.
25 1. a., notice may be given by posting a copy of the notice of sale as provided in par.

1 (c) or (d), whichever is applicable, for 3 successive weeks on the Internet and
2 publishing, once a week for 3 successive weeks in a newspaper having general
3 circulation in the county in which the time-share estate is located, a notice, in at
4 least 10-point boldface type, that states at a minimum that the notice of sale for the
5 foreclosure of the time-share estate is posted on the Internet, the Internet site where
6 the notice is posted, and the name and street address of the property in which the
7 time-share estate exists. The posting on the Internet shall begin on the same date
8 as the first newspaper publication, which date must be no later than 30 days before
9 the date of the sale, excluding the date of that first publication and the date of the
10 sale.

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

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

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

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

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

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

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

12 NOTICE OF SALE OF TIME-SHARE ESTATE OR ESTATES UNDER
13 CHAPTER 707 OF THE WISCONSIN STATUTES

14 By virtue of the (project instrument or time-share instrument, whichever is
15 applicable) of the (name and address of the time-share property), and Chapter
16 707 of the Wisconsin Statutes establishing a lien for failure to pay assessments on
17 the time-share estate (or estates, if more than one) held by the time-share owner (or
18 owners, if more than one) listed below, the time-share estate (or estates, if more than
19 one) will be sold at public auction, commencing at, on, 20., at, Wisconsin.

20 (For each time-share estate, list the name and address of the time-share
21 owner, a general description of the time-share estate, and the recording information
22 for the deed or other instrument vesting the time-share estate in the time-share
23 owner.)

24 TERMS OF SALE: (State the deposit amount to be paid by the buyer at the time
25 and place of the sale and the times for payment of the balance or the whole, as the

1 case may be. The time-share estates, if more than one, must be sold in individual
2 lots unless there are no individual bidders, in which case they may be sold as a
3 group.)

4 Other terms to be announced at the sale.

5 Signed

6 Holder of the lien or authorized agent.

7 (d) *Form of notice to foreclose mortgage lien.* The notice of foreclosure sale for
8 foreclosing a mortgage lien on a time-share estate under this section shall be in
9 substantially the following form:

10 NOTICE OF SALE OF TIME-SHARE ESTATE OR ESTATES UNDER
11 CHAPTER 707 OF THE WISCONSIN STATUTES

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

19 (For each time-share estate, list the name and address of the time-share
20 owner, a general description of the time-share estate, the recording information for
21 the deed or other instrument vesting the time-share estate in the time-share owner,
22 and the recording information for the mortgage.)

23 TERMS OF SALE: (State the deposit amount to be paid by the buyer at the time
24 and place of the sale and the times for payment of the balance or the whole, as the
25 case may be. The time-share estates, if more than one, must be sold in individual

1 lots unless there are no individual bidders, in which case they may be sold as a
2 group.)

3 Other terms to be announced at the sale.

4 Signed

5 Holder of the mortgage or authorized agent.

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

15 2. Upon the sale of the time-share estate, the time-share owner's right to
16 redeem the time-share estate is extinguished. Unless the successful buyer is the
17 time-share owner, the successful buyer at the foreclosure sale takes title to the
18 time-share estate free and clear of any outstanding assessments owed by the
19 previous time-share owner to the managing entity or other person specified in the
20 project instrument or time-share instrument, but subject to municipal or other taxes
21 and to any liens and encumbrances that were recorded prior to the recording of the
22 mortgage or the assessment lien. A buyer at a foreclosure sale under this section is
23 not required to complete the purchase if the time-share estate is subject to
24 outstanding liens and encumbrances, other than those included in the notice of sale,
25 that are not stated at the sale. The buyer shall have a period of 5 days from the

1 foreclosure sale date to determine if the time-share estate is subject to any such liens
2 or encumbrances.

3 3. No later than 10 days after the foreclosure sale date, the foreclosing entity
4 shall deliver to the successful bidder a foreclosure deed or other appropriate
5 instrument transferring title to the time-share estate and an affidavit in recordable
6 form attesting that all requirements described in this section have been met. Within
7 30 days after the delivery of the foreclosure deed or other instrument of transfer and
8 affidavit, the buyer shall record the foreclosure deed or other instrument of transfer
9 and affidavit with the register of deeds of the county in which the time-share estate
10 is located.

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

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

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

22 a. If there are any parties that held a lien or security interest junior to that of
23 the foreclosing entity, the foreclosing entity may make an equitable and proper
24 distribution of the surplus to those parties, or may bring an action of interpleader,
25 turn the surplus over to the court, name the parties with the junior liens or security

1 interests, and ask the court to determine the proper distribution of the surplus. The
2 foreclosing entity shall recover reasonable attorney fees in any interpleader action
3 under this subd. 2. a.

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

10 **(4) WAIVER OF DEFICIENCY.** Any foreclosing entity that forecloses a mortgage or
11 lien under this section waives the right to bring an action for any deficiency that may
12 remain due to the foreclosing entity after the sale of the time-share estate.

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

14 707.37 **(6) ENFORCEMENT OF LIEN.** A lien may be enforced and foreclosed by a
15 managing entity, or any other person specified in the time-share instrument, in the
16 same manner, and subject to the same requirements, as a foreclosure of mortgages
17 on real property in this state or, in the case of a time-share license, under chs. 401
18 to 411 provided in s. 707.28 (2). The managing entity may recover costs and actual
19 attorney fees. The managing entity may, unless prohibited by the project instrument
20 or time-share instrument, bid on the time share at foreclosure sale and acquire, hold,
21 mortgage, and convey the time share. Suit to recover a money judgment for unpaid
22 time-share expenses shall be maintainable without foreclosing or waiving the lien
23 securing the time-share expenses. Suit Except as provided in s. 707.28 (4), suit for
24 any deficiency following foreclosure may be maintained in the same proceeding. No
25 action may be brought to foreclose the lien unless brought within 3 years after the

1 recording of the statement of time-share lien and, except as provided in s. 707.28 (3)
2 (a) and (b), unless 10 days' prior written notice is given to the time-share owner by
3 registered mail, return receipt requested, to the address of the time-share owner
4 shown on the books of the managing entity.

5 **SECTION 3. Initial applicability.**

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

8 (END)