

1 H.328

2 Introduced by Representative Flory of Pittsford

3 Referred to Committee on

4 Date:

5 Subject: Court procedure; foreclosure of mortgages

6 Statement of purpose: This bill proposes to update and consolidate statutory  
7 provisions regarding foreclosure of mortgages.

8 An act relating to foreclosure of mortgages

9 It is hereby enacted by the General Assembly of the State of Vermont:

10 Sec. 1. 12 V.S.A. § 4523 is amended to read:

11 § 4523. VENUE; JOINDER OF PARTIES; RECORDING

12 (a) ~~Actions~~ Unless the procedure for nonjudicial sale is followed pursuant  
13 to section 4533 of this title, actions to foreclose a mortgage shall be brought in  
14 the superior court of the county where the land lies, or, if the land described in  
15 the mortgage lies in more than one county, then in one of the counties in which  
16 the land lies.

17 \* \* \*

18 (e) A foreclosure decree issued pursuant to section 4528 or 4532 of this  
19 title shall contain, on the first page, in no less than 10-point bold type, a notice  
20 in substantially the following form:

1                    NOTICE TO BORROWER/MORTGAGOR:

2   If you want to keep your property, you must pay to the Court Clerk the amount  
3   set forth in paragraph \_\_\_\_\_ of this judgment.

4   Your payment must be received by the Clerk of the Superior Court on or  
5   before \_\_\_\_\_, 20\_\_ . THIS IS THE BORROWER'S REDEMPTION  
6   DATE.

7   If you do not pay by the BORROWER'S REDEMPTION DATE, you will lose  
8   your property. If you cannot pay by this date and wish to save your property,  
9   you may wish to consult with an attorney.

10     (f) If the mortgagor has not appeared in the foreclosure action, the plaintiff  
11     shall cause a copy of the foreclosure decree to be served on, or mailed by first  
12     class mail, postage prepaid, to the mortgagor at the mortgagor's last known  
13     address.

14     (g) The plaintiff's filing of a certificate of service with the court shall be  
15     conclusive evidence of compliance with any notice requirement under this  
16     subchapter.

17     Sec. 2. 12 V.S.A. § 4527 is amended to read:

18     § 4527. ATTORNEY'S FEES

19     ~~When~~ In a judicial foreclosure, when a mortgage contains an agreement on  
20     the part of the mortgagor to pay the mortgagee, in the event of foreclosure, the  
21     attorney's fees incident thereto, and claim is made therefor in the complaint,

1 ~~upon~~ after notice to those parties who have appeared and an opportunity for  
2 hearing, the court in which the complaint is brought shall allow such fee as in  
3 its judgment is just.

4 Sec. 3. 12 V.S.A. § 4528 is amended to read:

5 § 4528. DECREE FORECLOSING EQUITY OF REDEMPTION; WRIT OF  
6 POSSESSION

7 ~~(a) If a decree is made foreclosing the right of redemption, the time of~~  
8 ~~redemption shall be six months from the date of the decree unless a shorter~~  
9 ~~time is ordered. The court shall fix the period of redemption taking into~~  
10 ~~consideration whether there is value in the property in excess of the mortgage~~  
11 ~~debt and debt owed to junior lienholders, any assessed but unpaid property~~  
12 ~~taxes, the condition of the property, and any other equities.~~

13 ~~(b) If the premises are not redeemed agreeably to the decree, the clerk of~~  
14 ~~the court shall issue a writ of possession at the plaintiff's request. Such writ~~  
15 ~~shall have the same force and effect and be executed in the same manner as~~  
16 ~~similar writs issued after judgment by a court of law in ejectment proceedings.~~  
17 ~~Where the premises are occupied by a residential tenant, the writ shall be~~  
18 ~~served on the tenant, and no sooner than 30 days after the writ is served, the~~  
19 ~~plaintiff shall be placed in possession of the property without further~~  
20 ~~proceedings. No decree of strict foreclosure shall be issued absent a finding by~~  
21 ~~the court based on competent evidence presented by the party seeking such~~

1 ~~decree that there is no substantial value in the property in excess of the~~  
2 ~~mortgage debt found by the court to be due to the plaintiff, plus assessed but~~  
3 ~~unpaid property taxes due on the property.~~

4 (e) ~~For the purposes of this section, “value” is defined as fair market value~~  
5 ~~less all reasonable expenses that would be incurred in selling the property.~~

6 (a) In any action for foreclosure with regard to any mortgage encumbering  
7 property except for a dwelling house of two units or fewer that is currently  
8 occupied by the owner as his or her principal residence at the time the plaintiff  
9 applies for entry of judgment, or farmland, the court may, if no sale is  
10 requested by the plaintiff or ordered by the court pursuant to subsection (b) of  
11 this section, issue a judgment and decree of foreclosure without requiring a  
12 judicial sale of the premises.

13 (b) In an action brought under subsection (a) of this section, any party may  
14 by written motion request, or the court in its discretion may order, that property  
15 be sold at a judicial foreclosure sale, whether or not the mortgage contains a  
16 power of sale.

17 (c) No decree foreclosing the right of redemption without sale shall be  
18 issued absent a finding by the court, based on competent evidence, that there is  
19 no substantial value in the property in excess of the mortgage debt found by  
20 the court to be due to the plaintiff and any other lienholder, plus assessed but  
21 unpaid property taxes due on the property.

1       (d) If a decree is issued foreclosing the right of redemption without sale,  
2 the time of redemption shall be no more than six months from the date of the  
3 decree unless a shorter time is ordered, or the mortgagor and mortgagee  
4 plaintiff agree to a shorter period. The court shall fix the period of redemption  
5 taking into consideration whether there is value in the property in excess of the  
6 mortgage debt and debt owed to junior lienholders, any assessed but unpaid  
7 property taxes, the condition of the property, and any other equities.

8       (e) If the premises are not redeemed agreeably to the decree, the clerk of  
9 the court shall issue a writ of possession at the plaintiff's request. Such writ  
10 shall have the same force and effect and be executed in the same manner as  
11 similar writs issued after judgment by a court of law in ejectment proceedings.  
12 Where the premises are occupied by a residential tenant, the writ shall be  
13 served on the tenant, and no sooner than 30 days after the writ is served, the  
14 plaintiff shall be placed in possession of the property without further  
15 proceedings.

16       (f)(1) In an action for foreclosure under this section, if a lien or interest in  
17 such realty is held by any person or federal agency which may not be  
18 foreclosed by strict foreclosure pursuant to federal law, the court shall proceed  
19 in accordance with section 4532 of this title.

20       (2) In an action for foreclosure, if a lien or interest in such realty is held  
21 by any person or federal agency which may not be foreclosed by strict

1 foreclosure pursuant to federal law, a decree may be entered providing for such  
2 period of redemption as the court may determine, and providing for a sale of  
3 the mortgaged premises at the conclusion of such period if the premises are not  
4 redeemed, and for the time, manner, and notice of sale, if required, and the  
5 application of any proceeds.

6 (g) In an action for foreclosure under this section, where the time of  
7 redemption has expired, the party obtaining the foreclosure shall cause to be  
8 recorded in the office where by law a deed of the lands is required to be  
9 recorded, after the expiration of the time of redemption, a certified copy of the  
10 judgment.

11 (h) The expiration of the right of redemption under the decree shall not  
12 foreclose the interest of subsequent purchasers, mortgagees, or attaching  
13 creditors whose interest in the property being foreclosed first arose after the  
14 filing of the complaint for foreclosure in the land records as provided in section  
15 4523 of this chapter, unless the plaintiff complies with subsection (g) of this  
16 section.

17 (i) As used in this section:

18 (1) "Farmland" means land devoted primarily to commercial  
19 agricultural activities, including the growing, raising, and production of  
20 horticultural and silvicultural crops, grapes, berries, trees, fruit, poultry,  
21 livestock, grain, hay, and dairy products.

1           (2) “Value” means market value less all reasonable expenses that would  
2 be incurred in selling the property. Market value for purposes of this section  
3 may be determined based on evidence of market value deemed by the court to  
4 be reasonably reliable, which may include grand list valuation and the common  
5 level of appraisal used in the town where the property is located, if the court  
6 finds such evidence to be reasonably reliable.

7 Sec. 4. 12 V.S.A. § 4529 is amended to read:

8 ~~§ 4529. FORECLOSURE OF EQUITY OF REDEMPTION RECORDING~~

9       ~~In the foreclosure of the equity of redemption in lands, where the time of~~  
10 ~~redemption has expired, the party obtaining the foreclosure shall cause to be~~  
11 ~~recorded in the office where by law a deed of the lands is required to be~~  
12 ~~recorded, within thirty days after the expiration of the time of redemption, a~~  
13 ~~certified copy of the judgment.~~

14 Sec. 5. 12 V.S.A. § 4530 is amended to read:

15 ~~§ 4530. REDEMPTION IF COPY NOT RECORDED~~

16       ~~(a) The expiration of the right of redemption under the decree shall not~~  
17 ~~foreclose the interest of subsequent purchasers, mortgagees, or attaching~~  
18 ~~creditors whose interest in the property being foreclosed first arose after the~~  
19 ~~filing of the complaint for foreclosure in the land records as provided in section~~  
20 ~~4523 of this chapter, unless the plaintiff complies with section 4529 of this title~~  
21 ~~or records in the land records a certified copy of the judgment, prior to the~~

1 ~~acquiring of any interest in or lien on the lands by a purchaser, mortgagee, or~~  
2 ~~attaching creditor.~~

3       ~~(b) If the certified copy of the judgment is not recorded within the time~~  
4 ~~period specified in section 4529 of this chapter or prior to the acquisition of an~~  
5 ~~interest in the lands being foreclosed, upon motion by a plaintiff or a party~~  
6 ~~intervening in the action to assert a right of redemption as a result of the late~~  
7 ~~recording of the certified copy of the judgment, the court before which the~~  
8 ~~foreclosure is proceeding may establish a right of redemption for the party~~  
9 ~~asserting a right under this subsection. No party whose right to redeem has~~  
10 ~~expired under the terms of the judgment shall be granted an additional right to~~  
11 ~~redeem, nor shall any previously expired right of redemption be reinstated in a~~  
12 ~~proceeding under this section.~~

13 Sec. 6. 12 V.S.A. § 4531 is amended to read:

14 ~~§ 4531. STRICT FORECLOSURE EXCEPTION~~

15       ~~(a) All liens and mortgages affecting real property may, on the written~~  
16 ~~motion of any party to any suit for foreclosure of such liens or mortgages, or at~~  
17 ~~the discretion of the court before which the foreclosure proceedings are~~  
18 ~~pending, be foreclosed by a judicial foreclosure sale, even if the mortgage does~~  
19 ~~not contain a sale provision instead of a strict foreclosure.~~

20       ~~(b) In an action for foreclosure, if a lien or interest in such realty is held by~~  
21 ~~any person or federal agency which may not be foreclosed by strict foreclosure~~



1 pursuant to federal law, a decree may be entered providing for such period of  
2 redemption as the court may determine, and providing for a sale of the  
3 mortgaged premises at the conclusion of such period if said premises are not  
4 redeemed, and for the time, manner, and notice of sale, if required, and the  
5 application of the proceeds therefrom.

6 Sec. 7. 12 V.S.A. § 4531a is amended to read:

7 ~~§ 4531a. FORECLOSURE; POWER OF SALE~~

8 (a) ~~When a power of sale is contained in a mortgage and the plaintiff in the~~  
9 ~~foreclosure complaint, or the defendant in his or her answer requests a sale, the~~  
10 ~~court may upon entry of judgment of foreclosure order that if the property is~~  
11 ~~not redeemed within the time period allowed by the court, the property be sold~~  
12 ~~pursuant to such power and the court may further determine the time and~~  
13 ~~manner of the sale. If a sale is ordered with respect to any property other than~~  
14 ~~farmland or a dwelling house of two units or less when currently occupied by~~  
15 ~~the owner as his or her principal residence, the redemption period shall be~~  
16 ~~eliminated or reduced by the court to no more than 30 days. If the property is~~  
17 ~~not redeemed, the plaintiff shall thereupon execute the power of sale and do all~~  
18 ~~things required by it or by the court. No sale of a dwelling house of two units~~  
19 ~~or less when currently occupied by the owner as his or her principal residence~~  
20 ~~may take place within seven months of service of the foreclosure complaint,~~

1 ~~unless the court finds that the occupant is making waste of the property or the~~  
2 ~~parties mutually agree after suit to a shorter period.~~

3 ~~(b) When a power of sale is contained in a mortgage relating to any~~  
4 ~~property except for a dwelling house of two units or less that is occupied by the~~  
5 ~~owner as a principal residence, or farmland, instead of a suit and decree of~~  
6 ~~foreclosure, the mortgagee or assignee may, upon breach of mortgage~~  
7 ~~condition, exercise the power of sale without first commencing a foreclosure~~  
8 ~~action or obtaining a foreclosure decree, and may give notices and do all such~~  
9 ~~acts as are authorized or required by the power, including the giving of a~~  
10 ~~foreclosure deed upon the completion of the foreclosure sale; but no sale under~~  
11 ~~and by virtue of a power of sale shall be valid and effectual to foreclose the~~  
12 ~~mortgage unless the conditions of sections 4532 and 4533a of this title are~~  
13 ~~complied with.~~

14 ~~(c) For purposes of this section:~~

15 ~~(1) "Agricultural activity" includes the growing, raising, and production~~  
16 ~~of horticultural and silvicultural crops, grapes, berries, trees, fruit, poultry,~~  
17 ~~livestock, grain, hay, and dairy products.~~

18 ~~(2) "Farmland" means land devoted primarily to commercial~~  
19 ~~agricultural activities.~~

1 Sec. 8. 12 V.S.A. § 4532 is amended to read:

2 § 4532. ~~POWER OF SALE; PROCEDURES; NOTICES; FORMS~~

3 FORECLOSURE; JUDICIAL SALE

4 ~~(a) Notice of intention to foreclose. At least 30 days prior to publication of~~  
5 ~~a notice of sale, notice of intention to foreclose in a writing complying with~~  
6 ~~this section must be sent to the mortgagor by registered or certified mail at his~~  
7 ~~or her last known address. The writing must state, in a manner calculated to~~  
8 ~~make the mortgagor aware of the situation:~~

9 ~~(1) the mortgage to be foreclosed;~~

10 ~~(2) the mortgage condition claimed to have been breached;~~

11 ~~(3) that the mortgage holder has accelerated maturity of the debt secured~~  
12 ~~by the mortgage, if that is the case;~~

13 ~~(4) the amount to be paid or other action necessary to cure, and the time~~  
14 ~~within which the cure must take place, which shall be not less than 30 days~~  
15 ~~after the date of the notice of intention to foreclose;~~

16 ~~(5) the intention of the mortgage holder to foreclose by exercising the~~  
17 ~~power of sale contained in the mortgage, if the breach of the mortgage~~  
18 ~~condition is not cured within the time and in the manner specified in the notice;~~  
19 ~~and~~

20 ~~(6) that the mortgagor will be entitled to be sent notice of the foreclosure~~  
21 ~~sale at least 60 days prior to the sale and to redeem the premises at any time~~

1 ~~prior to the sale by paying the full amount due under the mortgage, including~~  
2 ~~the costs and expenses of the sale.~~

3 (b) ~~Notice of intent to foreclose form. The following form of notice of~~  
4 ~~intent to foreclose may be used and may be altered as circumstances require;~~  
5 ~~but nothing herein shall be construed to prevent the use of other forms except~~  
6 ~~that all notices required under subsection (a) of this section shall comply with~~  
7 ~~the provisions of subsection (a) of this section:~~

8 PLEASE TAKE NOTICE that you have defaulted under Loan No.  
9 \_\_\_\_\_ by [mortgage condition breached] required by your  
10 Promissory Note dated \_\_\_\_\_, 19\_\_\_\_. This default also  
11 constitutes a breach of the Mortgage, dated \_\_\_\_\_, 19\_\_\_\_, recorded  
12 in Volume \_\_\_\_\_ at Page \_\_\_\_\_ of the Land Records, which secures the  
13 Loan. As a result of your default, we have accelerated the maturity of all  
14 indebtedness due on the Loan and secured by the Mortgage, totaling \$  
15 \_\_\_\_\_ as of today's date. In order to cure this default, you must pay to  
16 us on or before \_\_\_\_\_ [a date not less than thirty (30) days after the  
17 date of this Notice] the sum of \$ \_\_\_\_\_, plus interest at the rate of  
18 \$ \_\_\_\_\_ per day to the date of payment. If you do not cure this default by  
19 making the payments required, it is our intention to foreclose by exercising the  
20 power of sale contained in the above Mortgage. You will be sent notice of the  
21 foreclosure sale at least sixty (60) days prior to the sale, and you will be

1 entitled to redeem your interest in the mortgaged property at any time prior to  
2 the sale by paying the full amount due under the Mortgage, including the costs  
3 and expenses of the sale. If you do not cure the default or redeem your  
4 interest, your ownership of the mortgaged property will be terminated.

5 (c) ~~Publication of notice of sale. Notice of sale shall be published once in~~  
6 ~~each of three successive weeks, in a newspaper of general circulation in the~~  
7 ~~town where the land lies, the first publication to be not less than 21 days before~~  
8 ~~the day of sale.~~

9 (d) ~~Recording notice of sale in land records. In the case of a nonjudicial~~  
10 ~~foreclosure by power of sale under section 4531a(b) of this title, the mortgage~~  
11 ~~holder shall record the notice of sale in the land records of the town or city~~  
12 ~~where the land lies not less than 60 days prior to the sale. The filing of the~~  
13 ~~notice of the sale shall be in lieu of filing a foreclosure complaint under section~~  
14 ~~4523 of this title and shall be sufficient notice of the pendency of the~~  
15 ~~nonjudicial foreclosure by power of sale to all persons who acquire any interest~~  
16 ~~or lien in the mortgaged property between the dates of recording the notice of~~  
17 ~~sale and recording the foreclosure deed. Without further notice or service,~~  
18 ~~those persons shall be bound by the power of sale and the foreclosure deed and~~  
19 ~~shall be foreclosed from all rights or equity in the mortgaged property.~~

20 (e) ~~Service of notice of sale. In all cases, a copy of the notice of sale shall~~  
21 ~~be served on the mortgagor or his or her representative in interest, or sent by~~

1 ~~registered or certified mail addressed to the mortgagor or such representative at~~  
2 ~~his or her last known address, or to such person and address as may be agreed~~  
3 ~~upon in said mortgage, at least 60 days before said sale. The term “mortgagor”~~  
4 ~~shall mean the mortgagor or the then record owner of the premises. A copy of~~  
5 ~~the notice of sale shall also be sent to any tenant lawfully occupying the~~  
6 ~~premises and to any person having a recorded interest in the premises of record~~  
7 ~~which will be foreclosed by the sale, provided that the interest is recorded in~~  
8 ~~the applicable land records prior to the recording of the notice of sale in the~~  
9 ~~case of a nonjudicial foreclosure or the recording of the foreclosure complaint~~  
10 ~~in the case of judicial foreclosure. The notice shall be sent not less than 60~~  
11 ~~days before the sale. Notice to a tenant shall be sufficient if mailed to the~~  
12 ~~tenant by first class mail at the address specified in the lease, if recorded, or to~~  
13 ~~the “occupant” at the address of the leased premises, if the lease is not~~  
14 ~~recorded. Compliance with the notice requirements of this section shall be~~  
15 ~~sufficient and the failure to give additional notice shall not be grounds to~~  
16 ~~invalidate the sale.~~

17 ~~(f) Notice of sale form. The following notice of sale form may be used and~~  
18 ~~may be altered as circumstances require; but nothing herein shall be construed~~  
19 ~~to prevent the use of other forms except that all notices relating to property~~  
20 ~~subject to the provisions of section 4531a(b) of this title shall include the~~  
21 ~~language specified in subsection (j) of this section:~~

1 ~~By virtue and in execution of the Power of Sale contained in a certain~~  
2 ~~mortgage given by \_\_\_\_\_ to~~  
3 ~~\_\_\_\_\_ dated~~  
4 ~~\_\_\_\_\_ and recorded in Volume~~  
5 ~~\_\_\_\_\_ Page \_\_\_\_\_ of the land~~  
6 ~~records of the town of \_\_\_\_\_, of which mortgage the~~  
7 ~~undersigned is the present holder,~~

8 ~~(If by assignment, or in any fiduciary capacity, give reference.) for~~  
9 ~~breach of the conditions of said mortgage and for the purpose of foreclosing~~  
10 ~~the same will be sold at Public Auction at \_\_\_\_\_~~  
11 ~~o'clock, \_\_\_\_\_ M. on the \_\_\_\_\_ day of A.D. \_\_\_\_\_ 19\_\_\_\_\_~~  
12 ~~, \_\_\_\_\_ (place) \_\_\_\_\_ all and singular the premises~~  
13 ~~described in said mortgage,~~

14 ~~(In case of partial releases, state exceptions.)~~

15 ~~To wit: (Legal description of the premises.)~~

16 ~~Terms of sale: (State here the amount, if any, to be paid in cash by the~~  
17 ~~purchaser at the time of the sale, and the schedule for payment of the balance.)~~

18 ~~The mortgagor is entitled to redeem the premises at any time prior to the~~  
19 ~~sale by paying the full amount due under the mortgage, including the costs and~~  
20 ~~expenses of the sale.~~

1 Other terms to be announced at the sale or inquire at

2 \_\_\_\_\_

3

4 (Signed) \_\_\_\_\_

5 \_\_\_\_\_

6 \_\_\_\_\_

7 \_\_\_\_\_

8

~~Mortgagee (may be signed by~~

9

~~mortgagee's attorney)~~

10

\_\_\_\_\_~~19~~\_\_\_\_\_

11

~~(g) Location of sale. The sale shall be held on the premises where the real~~

12

~~estate is located except it may be held elsewhere if another place for sale is~~

13

~~directed by the court or, in the case of nonjudicial foreclosure, agreed to in~~

14

~~writing by the mortgagor and the mortgagee not less than 60 days nor more~~

15

~~than 90 days before the sale. At the sale, the premises shall be sold to the~~

16

~~highest bidder in conformance with the terms of sale set forth in the~~

17

~~foreclosure notice. The mortgagor is entitled to receive any surplus from the~~

18

~~proceeds of the sale and the mortgagor shall be liable for any deficiency as~~

19

~~determined by a subsequent action for a deficiency judgment. The mortgagee~~

20

~~or person conducting the sale may interplead any sale proceeds in excess of the~~



1 ~~indebtedness and expenses secured by the mortgage in the event there are any~~  
2 ~~liens of record against the real estate.~~

3 ~~(h) Who may be a purchaser. A mortgagee selling under a power contained~~  
4 ~~in the mortgage, the mortgagor or any subsequent lien holder may be a~~  
5 ~~purchaser at the sale.~~

6 ~~(i) Right of redemption by mortgagor. The mortgagor is entitled to redeem~~  
7 ~~the premises at any time prior to the sale by paying the full amount due under~~  
8 ~~the mortgage, including the costs and expenses of the sale.~~

9 ~~(j) Notice of foreclosure sale. In the case of a nonjudicial foreclosure by~~  
10 ~~power of sale subject to section 4531a(b) of this title, notice of the sale as~~  
11 ~~served or mailed shall include the following language: "The mortgagor is~~  
12 ~~hereby notified that at any time before the foreclosure sale, the mortgagor has a~~  
13 ~~right to petition the superior court for the county in which the mortgaged~~  
14 ~~premises are situated, with service upon the mortgagee, and upon such bond as~~  
15 ~~the court may require, to enjoin the scheduled foreclosure sale. Failure to~~  
16 ~~institute such petition and complete service upon the foreclosing party, or their~~  
17 ~~agent, conducting the sale prior to sale shall thereafter bar any action or right~~  
18 ~~of action of the mortgagor based on the validity of the foreclosure, the right of~~  
19 ~~the mortgage holder to conduct the foreclosure sale, or compliance by the~~  
20 ~~mortgage holder with the notice requirements and other conditions of section~~  
21 ~~4532 of Title 12. An action to recover damages resulting from~~

1 ~~the sale of the premises on the date of the sale may be commenced at any time~~  
2 ~~within one year following the date of the sale, but not thereafter.” The~~  
3 ~~mortgagor shall have the rights contained in the notice provided for in this~~  
4 ~~subsection.~~

5 (a) Order for judicial sale. Unless strict foreclosure is ordered pursuant to  
6 section 4528 of this title, the court shall, upon entry of a decree of foreclosure,  
7 order that the mortgaged property be sold at public sale if it is not redeemed  
8 within the time period allowed by the court. The time and manner of the sale  
9 shall be specified in the notice of sale required by subdivision (f)(1) of this  
10 section.

11 (b) Time for redemption—Owner-occupied dwelling or farmland. If a  
12 decree is made foreclosing the right of redemption by judicial sale with respect  
13 to farmland as defined in subsection 4528(a) of this title or a dwelling house of  
14 two units or fewer that is currently occupied by the owner as his or her  
15 principal residence at the time the plaintiff applies for entry of judgment, the  
16 time of redemption shall be established by the court and shall be no more than  
17 six months from the date of the decree. The court shall fix the period of  
18 redemption taking into consideration whether there is value in the mortgaged  
19 property in excess of the mortgage debt and debt owed to junior lienholders,  
20 any assessed but unpaid property taxes, the condition of the mortgaged  
21 property, and any other equities. No sale of a dwelling house of two units or

1 fewer when currently occupied by the owner as his or her principal residence at  
2 the time the plaintiff applies for entry of judgment may take place within seven  
3 months of service of the foreclosure complaint, unless the court orders a  
4 shortened redemption period pursuant to this section or the plaintiff and the  
5 mortgagor mutually agree to a shorter period after commencement of the  
6 action to foreclose the mortgage.

7 (c) Time for redemption—Other property. If a decree is made foreclosing  
8 the right of redemption by judicial sale with respect to any property other than  
9 farmland as defined in subsection 4528(a) of this title or a dwelling house of  
10 two units or fewer that is currently occupied by the owner as his or her  
11 principal residence at the time the plaintiff applies for entry of judgment, the  
12 redemption period shall be eliminated or reduced by the court to no more than  
13 30 days.

14 (d) Writ of possession. Upon expiration of the period of redemption, if the  
15 mortgagor or the mortgagor's successors, heirs, or assigns have not redeemed  
16 the mortgage, any remaining rights of the mortgagor to possession shall  
17 terminate, and the clerk of the court shall issue a writ of possession at the  
18 plaintiff's request. Such writ shall have the same force and effect and be  
19 executed in the same manner as similar writs issued after judgment by a court  
20 of law in ejectment proceedings. Where the mortgaged property is occupied  
21 by a residential tenant, the writ shall be served on the tenant, and no sooner

1 than 30 days after the writ is served, the plaintiff shall be placed in possession  
2 of the mortgaged property without further proceedings.

3 (e) Reinstatement or redemption prior to sale.

4 (1) The mortgagee, in its sole discretion, may allow the mortgagor to  
5 redeem or reinstate the loan after the expiration of the period of redemption but  
6 before the public sale. Upon such redemption or reinstatement, the mortgagee  
7 shall provide record notice by executing a waiver of foreclosure and recording  
8 it in the land records of the town where the mortgaged property lies. The  
9 waiver of foreclosure shall be effective upon recording.

10 (2) The waiver of foreclosure shall be filed with the court, but no further  
11 court action shall be required. Failure to comply with this subdivision shall not  
12 affect the validity or effectiveness of the waiver.

13 (3) Instead of proceeding under subdivision (1) of this subsection, the  
14 mortgagee may convey the mortgaged property to the mortgagor. In such case,  
15 all other rights of all other parties shall remain as if no foreclosure had been  
16 commenced.

17 (4) The following form of waiver of foreclosure may be used and may  
18 be altered as circumstances require; but nothing herein shall be construed to  
19 prevent the use of other forms:

1                                    WAIVER OF FORECLOSURE

2        KNOW ALL BY THESE PRESENTS, that MORTGAGEE, a  
3 with an office in \_\_\_\_\_ , holder of record of a mortgage deed dated  
4 \_\_\_\_\_ and of record in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the Town of  
5 \_\_\_\_\_ Land Records (“the Mortgage”) executed and delivered to it by  
6 MORTGAGOR of \_\_\_\_\_ covering real estate located in the Town of  
7 \_\_\_\_\_ , Vermont; and

8        For the breach of the condition of said mortgage, MORTGAGEE initiated a  
9 foreclosure action against MORTGAGOR in \_\_\_\_\_ County Superior  
10 Court, Docket No. \_\_\_\_\_ , by Complaint for Foreclosure dated  
11 \_\_\_\_\_ ; which is of record in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the  
12 Town of \_\_\_\_\_ Land Records; and

13        That MORTGAGOR has now cured the defaults and requested  
14 reinstatement of the Mortgage;

15        NOW THEREFORE, MORTGAGEE does hereby acknowledge that it has  
16 received payment of the arrearages due it under the Mortgage and the  
17 promissory note which it secures, and in consideration thereof, does hereby  
18 wave the above-entitled foreclosure action and release unto said  
19 MORTGAGOR, his/her/its heirs, personal representatives, successors, and  
20 assigns, the land in \_\_\_\_\_ , Vermont, subject to the Mortgage.

1        This waiver is given pursuant to 12 V.S.A. § 4532(e) which allows the  
2        mortgagor to reinstate the loan after expiration of the period of redemption, but  
3        before the public sale, at the discretion of the mortgagee.

4        This waiver shall have no effect on the Mortgage referenced above other  
5        than to reinstate the same, and the rights of all the parties remain as if no  
6        foreclosure had been commenced.

7        IN WITNESS WHEREOF, the said MORTGAGEE has caused this  
8        instrument to be executed by \_\_\_\_\_, its \_\_\_\_\_, this    day  
9        of \_\_\_\_\_, 20 .

10       SIGNED, SEALED AND DELIVERED:

11       \_\_\_\_\_ MORTGAGEE

12       \_\_\_\_\_

13       \_\_\_\_\_

14       \_\_\_\_\_ By:

15       \_\_\_\_\_ Its:

16       STATE OF \_\_\_\_\_

17       County of \_\_\_\_\_ Dated: \_\_\_\_\_

18       Then personally appeared the above-named \_\_\_\_\_ and  
19       acknowledged the foregoing instrument to be his/her free act and deed in  
20       his/her said capacity and the free act and deed of said MORTGAGEE

21       \_\_\_\_\_ Before me,

1 \_\_\_\_\_

2 \_\_\_\_\_

3 \_\_\_\_\_ Notary Public

4 \_\_\_\_\_ Printed

5 Name: \_\_\_\_\_

6 \_\_\_\_\_ Commission

7 expiration \_\_\_\_\_.

8 (f) Sale procedures. If the mortgaged property is not redeemed, the  
9 plaintiff shall thereupon sell the mortgaged property in accordance with the  
10 following procedures, and do all things required by the power of sale or by the  
11 court.

12 (1) Notice of sale; publication. Notice of sale shall be published once in  
13 each of three successive weeks in a newspaper of general circulation in the  
14 town where the land lies, the first publication to be no fewer than 21 days  
15 before the day of sale.

16 (2) Notice of sale; service. A copy of the notice of sale shall be mailed  
17 by first class mail, postage prepaid, to all parties who appeared in the  
18 foreclosure action or to their attorneys of record. If the mortgagor has not  
19 appeared in the foreclosure action, a copy of the notice of sale shall also be  
20 mailed by first class mail, postage prepaid, to the mortgagor at the mortgagor's

1 last known address. The notice of sale must be mailed no fewer than 21  
2 calendar days before the date of sale.

3 (3) Notice of sale; waiver. No foreclosure sale shall be invalid or  
4 ineffectual to foreclose a mortgage pursuant to this section if any party entitled  
5 to be sent notice, either before or after such foreclosure sale, waives its rights  
6 to such notice.

7 (4) Notice of sale; form. The following form of notice of sale may be  
8 used and may be altered as circumstances require, but nothing herein shall be  
9 construed to prevent the use of other forms:

10 By virtue and in execution of the Power of Sale contained in a certain

11 mortgage given by \_\_\_\_\_ to \_\_\_\_\_ dated

12 \_\_\_\_\_ and recorded in Volume \_\_\_\_\_ Page

13 \_\_\_\_\_ of the land records of the town of \_\_\_\_\_, of which

14 mortgage the undersigned is the present holder (if by assignment, or in any

15 fiduciary capacity, give reference) for breach of the conditions of said

16 mortgage and for the purpose of foreclosing the same will be sold at Public

17 Auction at \_\_\_\_\_ o'clock, \_\_\_\_\_ M. on the \_\_\_\_\_ day of A.D.

18 \_\_\_\_\_ 20 \_\_\_\_\_, \_\_\_\_\_ (place) \_\_\_\_\_ all and singular the

19 premises described in said mortgage,

20 (In case of partial releases, state exceptions.)

21 To wit: (Legal description of the premises.)



1 Terms of sale: (State here the amount, if any, to be paid in cash by the  
2 purchaser at the time of the sale, and the schedule for payment of the balance  
3 and other terms of sale.)

4 Other terms to be announced at the sale or inquire at \_\_\_\_\_

5 (Signed) \_\_\_\_\_

6 \_\_\_\_\_

7 Mortgagee (may be signed by  
8 mortgagee's attorney)

9 \_\_\_\_\_ 20 \_\_\_\_\_

10 (g) Conduct and location of sale. The sale shall be held at the mortgaged  
11 property unless another place for sale is directed by the court. At the sale, the  
12 mortgaged property shall be sold to the highest bidder in conformance with the  
13 terms of sale set forth in the notice of sale.

14 (1) Adjournments. The public sale may be adjourned one or more times  
15 for a total time not exceeding 30 days, without further court order, and without  
16 publication or service of a new notice of sale, by announcement of the new sale  
17 date to those present at each adjournment or by posting notice of the  
18 adjournment in a conspicuous place at the location of the sale. The public sale  
19 may be adjourned for a period of time in excess of 30 days by agreement of the  
20 mortgagor and mortgagee or order of court.

1           (2) Permitted bidders. Permitted bidders at the sale may include,  
2 without limitation, the mortgagee, the mortgagor, or any subsequent lien  
3 holder. All bidders, except for the mortgagee plaintiff, must meet the  
4 requirements set forth in the notice of sale in order to bid at the sale.

5           (h) Procedure following sale.

6           (1) Confirmation order. Following the sale, the plaintiff shall file with  
7 the court a report on oath of the sale, together with a request for confirmation  
8 of the sale, which shall include an accounting of the sale proceeds, and a  
9 proposed order confirming the sale. Copies of the report of the sale and  
10 request for confirmation shall be mailed by first class mail, postage prepaid, to  
11 all parties who appeared in the foreclosure action or to their attorneys of record  
12 and to the mortgagor at the mortgagor's last known address. If no objections  
13 to the request for confirmation are filed within 15 days after it is filed, the  
14 court may issue an order of confirmation of the sale without hearing, unless the  
15 court in its discretion determines that a hearing is necessary. The order of the  
16 court confirming the sale shall be conclusive evidence as against all persons  
17 that the foreclosure and sale were conducted in accordance with this section.

18           (2) Transfer of title. The confirmation order shall be recorded in the  
19 land records of the town where the mortgaged property is located and shall  
20 transfer title to the mortgaged property to the purchaser upon recording.

1           (3) Disbursement of proceeds. In the event that the proceeds of the sale,  
2 after first deducting the reasonable expenses incurred in making the sale,  
3 exceed the amounts due to the plaintiff at the time of sale, the confirmation  
4 order shall provide for the payment of the surplus to other lienholders of record  
5 in the order of the priority of their liens. In the event that the proceeds of the  
6 sale exceed the amount due to the plaintiff and the amount due to the other  
7 defendants, the excess shall be paid to the defendant mortgagor. If the plaintiff  
8 is the high bidder at the sale, and the plaintiff's bid exceeds the amount due to  
9 the plaintiff at the time of the sale, the plaintiff shall not be required to pay any  
10 surplus to the other lienholders or to the defendant mortgagor.

11           (4) Deficiency. Unless the mortgaged property is farmland as defined in  
12 subsection 4528(a) of this title or a dwelling house of two units or fewer that is  
13 currently occupied by the owner as his or her principal residence, the plaintiff  
14 may request a deficiency judgment in the foreclosure complaint. The court  
15 shall assess a judgment against the mortgagor for the deficiency if the proceeds  
16 of sale are insufficient to meet the expenses incurred in making the sale and the  
17 amount due to the plaintiff. Nothing in this section shall preclude the plaintiff  
18 from maintaining a subsequent action against the mortgagor for the deficiency  
19 if a deficiency judgment is not requested in the foreclosure complaint or if the  
20 request is withdrawn without prejudice prior to, or at the same time as, the  
21 request for confirmation of the sale.

1           (5) Failure of sale; resale. In the event that the purchaser fails to pay the  
2 balance of the purchase price according to the terms of the sale, then, upon the  
3 request of the plaintiff, the down payment shall be forfeited, the foreclosure  
4 sale shall be void and the court shall issue an order vacating the confirmation  
5 order. The plaintiff shall conduct a new sale in accordance with subsection (f)  
6 of this section.

7           (i) Bankruptcy. Nothing in this section shall be construed to supersede any  
8 provision of Title 11 of the United States Code.

9       Sec. 9. 12 V.S.A. § 4533 is amended to read:

10       § 4533. ~~PROCEDURE AFTER SALE; JUDICIAL FORECLOSURE~~

11           NONJUDICIAL POWER OF SALE; PROCEDURES; NOTICE;

12           FORMS

13       ~~(a) In the case of a sale following judicial foreclosure subject to the~~  
14 ~~provisions of section 4531a(a) of this title, the person selling shall, within ten~~  
15 ~~days after the sale, file with the court a report on oath of the sale and of his or~~  
16 ~~her doings and the court may confirm the sale or set it aside and order a resale.~~  
17 ~~If the sale is confirmed the court shall issue an order of confirmation after a~~  
18 ~~hearing for that purpose. Any person interested may appear or be summoned~~  
19 ~~and heard on such proceedings, and the order of the court confirming the sale~~  
20 ~~shall be conclusive evidence as against all persons that the power was duly~~  
21 ~~executed.~~

1       ~~(b) Such confirmation order shall be recorded in the land records of the~~  
2 ~~town wherein such real estate is situated and shall effectuate the transfer of title~~  
3 ~~to such real estate upon recording.~~

4       (a) Power of Sale. Whether or not a power of sale is contained in a  
5 mortgage relating to any property, except for farmland or a dwelling  
6 house of two units or fewer when currently occupied by the owner as his or  
7 her principal residence, instead of a suit and decree of foreclosure, the  
8 mortgagee may, upon breach of a mortgage condition, foreclose upon the  
9 property without first commencing a foreclosure action or obtaining a  
10 foreclosure decree by complying with the terms of this section. No sale  
11 under and by virtue of a power of sale shall be valid and effectual to  
12 foreclose the mortgage unless the conditions of this section are  
13 complied with.

14       (b) Notice of intention to foreclose. At least 30 days prior to publication  
15 of a notice of sale, notice of intention to foreclose in a writing complying  
16 with this section must be sent to the mortgagor by registered or certified  
17 mail at his or her last known address. The writing must state, in a  
18 manner calculated to make the mortgagor aware of the situation:

19           (1) the mortgage to be foreclosed;

20           (2) the mortgage condition claimed to have been breached;

1           (3) that the mortgagee has accelerated maturity of the debt secured  
2 by the mortgage, if that is the case;

3           (4) the amount to be paid or other action necessary to cure, and the  
4 time within which the cure must take place, which shall be no fewer than 30  
5 days after the date of the notice of intention to foreclose;

6           (5) the intention of the mortgagee to foreclose by exercising the  
7 power of sale contained in the mortgage, if the breach of the mortgage  
8 condition is not cured within the time and in the manner specified in the  
9 notice; and

10           (6) that the mortgagor will be entitled to be sent notice of the  
11 foreclosure sale at least 60 days prior to the sale and to redeem the  
12 mortgaged property at any time prior to the sale by paying the full  
13 amount due under the mortgage, including the costs and expenses of the sale.

14           (c) Notice of intent to foreclose form. The following form of notice  
15 of intent to foreclose may be used and may be altered as circumstances  
16 require, but nothing herein shall be construed to prevent the use of other  
17 forms except that all notices required under subsection (b) of this section  
18 shall comply with the provisions of subsection (b) of this section:

19           PLEASE TAKE NOTICE that you have defaulted under Loan  
20 No. \_\_\_\_\_ by [mortgage condition breached] required by your Promissory  
21 Note dated \_\_\_\_\_ 19/20 \_\_\_\_\_

1        This default also constitutes a breach of the Mortgage, dated  
2                          19/20                  ,  
3                          recorded in Volume                  at Page                  of the Land Records, which  
4                          secures the Loan. As a result of your default, we have accelerated the  
5                          maturity of all indebtedness due on the Loan and secured by the Mortgage,  
6                          totaling \$                  as of today's date. In order to cure this default, you  
7                          must pay to us on or before                  [a date no fewer than thirty (30)  
8                          days after the date of this Notice] the sum of \$                  , plus interest at the  
9                          rate of \$                  per day to the date of payment. If you do not cure this  
10                         default by making the payments required, it is our intention to foreclose by  
11                         exercising the power of sale contained in the above Mortgage. You will be  
12                         sent notice of the foreclosure sale at least sixty (60) days prior to the sale,  
13                         and you will be entitled to redeem your interest in the mortgaged property  
14                         at any time prior to the sale by paying the full amount due under the  
15                         Mortgage, including the costs and expenses of the sale. If you do not cure  
16                         the default or redeem your interest, your ownership of the mortgaged  
17                         property will be terminated.

18       (d) Publication of notice of sale. Notice of sale shall be published once  
19                         in each of three successive weeks, in a newspaper of general circulation in  
20                         the town where the land lies, the first publication to be no fewer than 21 days  
21                         before the day of sale.

1       (e) Recording notice of sale in land records. The mortgagee shall  
2 record the notice of sale in the land records of the town or city where the  
3 land lies no fewer than 60 days prior to the sale. The filing of the notice of  
4 the sale shall be in lieu of filing a foreclosure complaint under section  
5 4523 of this title and shall be sufficient notice if the pendency of the  
6 nonjudicial foreclosure by power of sale to all persons who acquire any  
7 interest or lien in the mortgaged property between the dates of recording the  
8 notice of sale and recording the foreclosure deed. Without further notice or  
9 service, those persons shall be bound by the power of sale and the  
10 foreclosure deed and shall be foreclosed from all rights or equity in the  
11 mortgaged property.

12       (f) Service of notice of sale. In all cases, a copy of the notice of  
13 sale shall be served on the mortgagor or his or her representative in  
14 interest, or sent by registered or certified mail addressed to the mortgagor or  
15 such representative at his or her last known address, or to such person and  
16 address as may be agreed upon in the mortgage, at least 60 days before the  
17 sale. A copy of the notice of sale shall also be sent to any tenant lawfully  
18 occupying the mortgaged property and to any person having a recorded  
19 interest in the mortgaged property of record which will be foreclosed by the  
20 sale, provided that the interest is recorded in the applicable land records  
21 prior to the recording of the notice of sale. The notice shall be sent no



1 fewer than 60 days before the sale. Notice to a tenant shall be sufficient if  
2 mailed to the tenant by first class mail at the address specified in the lease,  
3 if recorded, or to the “occupant” at the address of the mortgaged property,  
4 if the lease is not recorded. Compliance with the notice requirements of  
5 this section shall be sufficient, and the failure to give additional notice  
6 shall not be grounds to invalidate the sale.

7 (g) Notice of sale form. The following notice of sale form may be used and  
8 may be altered as circumstances require, but nothing herein shall be  
9 construed to prevent the use of other forms except that all notices to the  
10 mortgagor shall include the language specified in subsection (j) of this section:

11 By virtue and in execution of the Power of Sale contained in a  
12 certain mortgage given by \_\_\_\_\_ to \_\_\_\_\_ dated \_\_\_\_\_ and  
13 recorded in Volume \_\_\_\_\_ of the land records of the town of \_\_\_\_\_, of  
14 which mortgage the undersigned is the present holder (If by assignment,  
15 or in any fiduciary capacity, give reference.) for breach of the conditions  
16 of said mortgage and for the purpose of foreclosing the same will be sold  
17 at Public Auction at \_\_\_\_\_ o’clock, \_\_\_\_\_ M. on the \_\_\_\_\_ day  
18 of \_\_\_\_\_ 20 \_\_\_\_\_ (place) \_\_\_\_\_ at the mortgaged property.

19 To wit: (Legal description of the mortgaged property and in case of  
20 partial releases, state exceptions.)

21 Terms of sale: (State here the amount, if any, to be paid in cash by

1 the purchaser at the time of the sale, and the schedule for payment of the  
2 balance.)

3 The mortgagor is entitled to redeem the mortgaged property at any  
4 time prior to the sale by paying the full amount due under the mortgage,  
5 including the costs and expenses of the sale.

6 Other terms to be announced at the sale or inquire at (Signed) \_\_\_\_\_

7 Mortgagee (may be signed by mortgagee's attorney) 20 \_\_\_\_\_.

8 (h) Notice of foreclosure sale. The notice of the sale as served or mailed  
9 shall include the following language: "The mortgagor is hereby notified that at  
10 any time before the foreclosure sale, the mortgagor has a right to petition the  
11 superior court for the county in which the mortgaged property are situated,  
12 with service upon the mortgagee, and upon such bond as the court may require,  
13 to enjoin the scheduled foreclosure sale. Failure to institute such petition and  
14 complete service upon the foreclosing party, or agent, conducting the sale prior  
15 to sale shall thereafter bar any action or right of action of the mortgagor based  
16 on the validity of the foreclosure, the right of the mortgagee to conduct the  
17 foreclosure sale, or compliance by the mortgagee with the notice requirements  
18 and other conditions of section 4533 of Title 9 of the Vermont Statutes. An  
19 action to recover damages resulting from the sale of the mortgaged property on  
20 the date of the sale may be commenced at any time within one year following  
21 the date of the sale, but not thereafter." The mortgagor shall have the rights

1 contained in the notice provided for in this subsection.

2 (i) Conduct and location of sale. The sale shall be held at the  
3 mortgaged property except that it may be held elsewhere if agreed to in  
4 writing by the mortgagor and the mortgagee no fewer than 60 days nor  
5 more than 90 days before the sale. At the sale, the mortgaged property  
6 shall be sold to the highest bidder in conformance with the terms of sale set  
7 forth in the foreclosure notice.

8 (j) Right of redemption by mortgagor. The mortgagor is entitled to  
9 redeem the mortgaged property at any time prior to the sale by paying to  
10 the mortgagee the full amount due under the mortgage, including the costs  
11 and expenses of the sale.

12 (k) Adjournment. The public sale may be adjourned one or more  
13 times for a total time of not exceeding 60 days by announcement of the new  
14 sale date to those present at each adjournment or by posting notice of the  
15 adjournment in a conspicuous place at the location of the sale. Written  
16 notice of the new sale date shall also be given by first class mail, postage  
17 prepaid, to those who received notice pursuant to subsection (f) of this  
18 section.

19 (l) Permitted bidders. Permitted bidders at the sale may include the  
20 mortgagee, the mortgagor, any subsequent lien holder, or any other person.  
21 All bidders, except for the mortgagee must meet the requirements set forth in

1 the Notice of Sale in order to bid at the sale.

2 (m) Disbursement of proceeds. In the event that the proceeds of sale,  
3 after first deducting the reasonable expenses incurred in making the sale,  
4 exceed the amounts due to the mortgagee at the time of sale, the surplus  
5 shall be paid to other lienholders of record in the order of the priority of  
6 their liens. In the event that the proceeds of sale exceed the amount due  
7 to the mortgagee and the amounts due to the other lienholders, the excess  
8 shall be paid to the mortgagor. The mortgagee or person conducting the  
9 sale may interplead any sale proceeds in excess of the indebtedness and  
10 expenses secured by the mortgage in the event there are any liens of record  
11 against the real estate.

12 (n) Deficiency. Nothing herein shall preclude the mortgagee from  
13 maintaining a subsequent action against the mortgagor for any deficiency.

14 (o) Waiver of Notice. No foreclosure sale shall be invalid or  
15 ineffectual to foreclose a mortgage pursuant to this section if any party  
16 entitled to be sent notice, either before or after such foreclosure sale,  
17 waives its right to such notice. A waiver of notice authorized or validated  
18 under this section shall be recorded in the land records in the town or city  
19 where the property is located.

20 (p) Recordings following sale. Within 90 days after the sale, the  
21 person selling pursuant to the power of sale shall cause the foreclosure deed

1 and affidavit setting forth fully and particularly their acts with respect to the  
2 sale of the mortgaged property, including the dates of publication, to be  
3 recorded in the land records of the town where the property is situated and  
4 shall include on the affiant's own knowledge, setting forth facts showing that  
5 no person in interest is in the military service as defined in the Service  
6 Members Civil Relief Act of 2003, as may be amended, and such affidavit  
7 or a duly certified copy of the record thereof shall be evidence on the  
8 questions whether the power of sale was duly executed.

9 (q) Failure to record. Failure to record the deed and affidavit within the  
10 statutory period required by this subsection shall render the sale void and of  
11 no effect if there are liens or other encumbrances of record intervening  
12 between the day of sale and the time of recording of the deed and affidavit.

13 (r) Transfer to title. Title to the foreclosed mortgaged property under  
14 this section shall not pass to the purchaser until the time of the recording of  
15 the deed and affidavit. Upon such recording, title to the mortgaged  
16 property shall pass to the purchaser free and clear of all interests and  
17 encumbrances which do not have priority over such mortgage.

18 (s) Failure of sale, resale. If the purchaser does not pay the balance of  
19 the purchase price according to the terms of the sale, at the option of the  
20 mortgagee, the down payment, if any, shall be forfeited, and the  
21 foreclosure sale shall be void. No fewer than 21 days before the day of

1 sale, a notice of sale shall be published pursuant to subsection (d) of this  
2 section and shall be served by first class mail, postage prepaid, upon those  
3 entitled to notice pursuant to subsection (l) of this section.

4 (t) Correction of error. In case of an alleged error or omission in the  
5 affidavit, the superior court, on petition and after such notice as it may  
6 order, may either validate the affidavit or authorize the recording of an  
7 affidavit amending, correcting and substituting for an affidavit so recorded,  
8 and the affidavit so authorized to be recorded or a certified copy of the  
9 record thereof shall have the same effect and shall be admitted in evidence as if  
10 it had been recorded within the 90 day period.

11 (u) Definitions. As used in this section:

12 (1) "Farmland" shall have the same meaning as in subsection 4528(a) of  
13 this title.

14 (2) "Mortgagor" shall mean the mortgagor or the then-record owner of  
15 the mortgaged property.

16 Sec. 10. 12 V.S.A. § 4533a is amended to read:

17 ~~§ 4533a. PROCEDURE AFTER SALE; NONJUDICIAL FORECLOSURE~~

18 ~~(a) In the case of a nonjudicial foreclosure sale subject to the provisions of~~  
19 ~~section 4531a(b) of this title, the person selling pursuant to the power shall,~~  
20 ~~within 90 days after the sale, cause the foreclosure deed, a copy of the notice of~~  
21 ~~the sale, and their affidavit setting forth fully and particularly their acts in the~~

1 ~~premises to be recorded in the land records of the town where the property is~~  
2 ~~situated and shall include on the affidavit's own knowledge, setting forth facts~~  
3 ~~showing that no person in interest is in the military service as defined in~~  
4 ~~Article I of the "Soldiers' and Sailors' Relief Act" of 1940, as amended; and~~  
5 ~~such affidavit or a duly certified copy of the record thereof shall be evidence~~  
6 ~~on the questions whether the power of sale was duly executed.~~

7       ~~(b) Failure to record the deed and affidavit within the statutory period~~  
8 ~~required by this subsection shall render the sale void and of no effect if there~~  
9 ~~are liens or other encumbrances of record intervening between the day of the~~  
10 ~~sale and the time of recording of said deed and affidavit.~~

11       ~~(c) Title to the foreclosed premises under this section shall not pass to the~~  
12 ~~purchaser until the time of the recording of the deed and affidavit. Upon such~~  
13 ~~recording, title to the premises shall pass to the purchaser free and clear of all~~  
14 ~~interests and encumbrances which do not have priority over such mortgage. In~~  
15 ~~the event that the purchaser shall not pay the balance of the purchase price~~  
16 ~~according to the terms of the sale, and at the option of the mortgagee, the down~~  
17 ~~payment, if any, shall be forfeited and the foreclosure sale shall be void.~~