

MAINE STATE LEGISLATURE

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EIGHTIETH LEGISLATURE

HOUSE

NO. 151

House of Representatives, February 18, 1921.

Referred to Committee on Judiciary and 1000 copies ordered printed. Sent up for concurrence.

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Bartlett of Waterville.

STATE OF MAINE

**IN THE YEAR OF OUR LORD ONE THOUSAND
NINE HUNDRED AND TWENTY-ONE**

AN ACT to Provide for the Foreclosure of Mortgages of Real
Estate by Sale of the Property.

Be it enacted by the People of the State of Maine, as follows:

Section 1. If a conditional judgment has been entered
2 upon a mortgage which contains a power of sale, the court
3 shall, instead of issuing a writ of possession, at the request of
4 the plaintiff make an order that the property be sold pur-
5 suant to such power. The plaintiff shall thereupon execute
6 the power and do all things required by it or by the court.

Sect. 2. The person selling shall, within ten days after
2 the sale, file in the clerk's office a report under oath of the
3 sale and of his doings, and the court may confirm the sale or

4 set it aside and order a re-sale. Any person interested may
5 appear or be summoned, and the order of the court confirm-
6 ing the sale shall be conclusive evidence against all persons
7 that the power of sale was duly executed.

Sect. 3. Unless the defendant is seized in fee simple in
2 possession of the whole equity of redemption of the land
3 demanded, an order for a sale shall not be made until all
4 parties interested in the equity of redemption and whose
5 estate or interest therein would be affected by such sale,
6 including a person having a right or possibility of inherit-
7 ance, have been summoned to appear.

Sect. 4. The mortgagee or a person who has his estate
2 in the land mortgaged or a person authorized by the power
3 of sale, or the attorney duly authorized by writing under
4 seal, or the legal guardian or conservator of such mortgagee
5 or person acting in the name of such mortgagee or person,
6 may, upon a breach of the condition and without action
7 brought, do all the acts authorized or required by the pow-
8 er; but no sale under such power shall be effectual to fore-
9 close a mortgage, unless, previous to such sale, notice there-
10 of has been published once in each of three successive
11 weeks, the first publication to be not less than twenty-one
12 days before the day of sale, in a newspaper, if any, pub-
13 lished in the city or town in which the land lies. If there
14 is no newspaper published in such city or town, notice may
15 be published in a newspaper published in the county where
16 the land lies, and this provision shall be deemed to be im-
17 plied in every power of sale mortgage in which it is not

18 expressly set forth. A newspaper which by its title page
 19 purports to be printed or published in such town, city or
 20 county, and which shall have a circulation therein, shall be
 21 sufficient for the purpose.

The following form of foreclosure notice may be used
 2 and may be altered as circumstances may require; but noth-
 3 ing herein shall be construed to prevent the use of other
 4 forms.

(FORM)

Mortgagee's Sale of Real Estate

By virtue and in execution of the power of sale contained
 in a certain mortgage given by to dated
 and recorded with Deeds, Book,
 page, of which mortgage the undersigned is the present
 holder,
 (If by assignment or in any fiduciary capacity give references)
 for breach of the conditions of said mortgage and for the pur-
 pose of foreclosing the same will be sold at public auction at
 o'clock, M., on the day of
 A. D., 19....., (place)....., all and singular
 the premises described in said mortgage,

(In case of partial releases, state exceptions)

To wit:

“(Description exactly as in the mortgage, including all
 references to title, restrictions, encumbrances, etc., as therein
 set forth).”

Terms of sale: (State here the amount, if any, to be paid
 in cash by the purchaser at the time and place of the sale, and

the time or times for payment of the balance or the whole as the case may be.)

Other terms to be announced at the sale.

(Signed)
.....

Present holder of said mortgage.

....., 19....

A notice of sale in the above form published in accordance with the terms of the power in the mortgage and of this chapter, together with such other or further notice, if any, as is required by the terms of the mortgage, shall be a sufficient notice for the purposes of the sale; and the premises sold shall be deemed to have been sold, and the deed thereunder shall convey the premises, subject to and with the benefit of any and all restrictions, easements, improvements, outstanding tax titles, municipal or other public taxes, assessments, liens or claims in the nature of liens, and existing encumbrances of record created prior to the mortgage, whether or not reference to such restrictions, easements, improvements, liens or encumbrances is made in the deed; but no purchaser at the sale shall be bound to complete the purchase if there are encumbrances, other than those named in the mortgage and included in the notice of sale, which are not stated at the sale and included in the auctioneer's contract with the purchaser.

Sect. 5. The person selling or the attorney duly authorized by writing under seal, or the legal guardian or conservator of such person, shall, within thirty days after the

4 sale, cause a copy of the notice and his affidavit stating his
5 acts, or the acts of his principal or ward, fully and particu-
6 larly to be recorded in the registry of deeds for the county
7 or district in which the land lies, with a note of reference
8 thereto on the margin of the record of the mortgage deed,
9 if the mortgage is recorded in the same registry. If the
10 affidavit shows that the requirements of the power of sale
11 and of the statute have in all respects been complied with,
12 the affidavit, or a certified copy of the record thereof, shall
13 be admitted as evidence that the power of sale was duly exe-
14 cuted.

Sect. 6. If the mortgagor had at the time of the execution
2 of the mortgage no husband or wife or if, being married,
3 the husband or wife joined in the deed in token of his or
4 her release of right of inheritance, the sale in either of the
5 modes aforesaid shall bar all right and possibility of inherit-
6 ance in the land.

Sect. 7. A sale or transfer by the mortgagor shall not
2 impair or annul any right or power of attorney given in
3 the mortgage to the mortgagee to sell or transfer the land
4 as attorney or agent of the mortgagor.