

STANDARD NO. 609

PROBLEM:

If record title is claimed by virtue of the foreclosure of a mortgage, what method of foreclosure is acceptable to a title examiner?

RECOMMENDATION:

Foreclosure under any statutory method authorized by Title 14 M.R.S. §6051(1) or Title 14 M.R.S., Chapter 713, is acceptable, with the following limitations:

- A. 14 M.R.S. §6321, et seq, (civil action) is acceptable for any mortgage deed executed on or after October 1, 1975. For mortgage deeds executed prior to October 1, 1975, civil action is only acceptable if the foreclosure proceedings were commenced on or after July 6, 1978, and provide for a one-year redemption period from the date of the Judgment. See Standard No. 202, Recommendation D, and 14 M.R.S. §6323(1) for recorded documents on which the examiner may rely.
- B. Power of Sale Foreclosures (14 M.R.S. §6203-A et seq) are acceptable for mortgage deeds containing a power of sale clause executed during the following time periods:
 - 1. October 1, 1967 – October 8, 1991: mortgages on real estate of a corporation.
 - 2. October 9, 1991 – June 29, 1992: mortgages that secure loans primarily for business, commercial or agricultural purposes extended to a corporation, partnership or trust.
 - 3. June 30, 1992 – September 30, 1993: mortgages granted by a corporation, partnership or trustee of a trust.
 - 4. October 1, 1993 – date: mortgages granted by a corporation, partnership or trustee of a trust, if the mortgage deed states that it is given primarily for a business, commercial or agricultural purpose. See also limits on foreclosure against trusts with resident beneficiaries.

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- C. Foreclosure of any mortgage whenever given by any method other than civil action commenced after October 1, 1975, shall be acceptable provided that all "parties in interest" (as defined by 14 M.R.S. §6321) as of the recording of the Notice of Foreclosure shall be given written notice of the foreclosure. The Strict Foreclosure provisions formerly codified as 14 M.R.S. §§ 6201, 6202, 6203, 6204 and 6204-B were repealed by chapter 391 of the public laws of 2007 effective September 20, 2007.
- D. Foreclosure of any mortgage whenever given commenced by a federal agency after June 8, 1976 by publication (14 M.R.S. §6203(1)) is not acceptable.
- E. When the record reveals that a lien of the United States Government against real estate has been extinguished by virtue of the foreclosure of a prior mortgage, the examiner should be sure that the required procedure was followed and the applicable federal redemption period has expired.

DISCUSSION:

- A. Portland Savings Bank vs. Landry, 372 A.2d 573 (Me. 1977) held the civil action method to be unconstitutional for mortgages executed prior to October 1, 1975, because of the reduced redemption period. In response to this decision, the Maine legislature amended the third paragraph of 14 M.R.S. §6322 by Chapter 618 of the public laws of 1978, effective July 6, 1978.
- B. 14 M.R.S. §6203-A et seq. was enacted by PL 1967, Chapter 424. Statute was amended on October 9, 1991 by PL 1991, Chapter 134; on June 30, 1992 by PL 1991, Chapter 768; and again on October 1, 1993 by PL 1993, Chapters 277 and 481.
- C. Accepted practice suggests that parties with recorded claims to real estate be given notice of any foreclosure affecting their claims, despite lack of statutory obligation to do so in some methods. 14 M.R.S. §6204-A was enacted on October 1, 1975, requiring mortgagees to account for any surplus after any sale after the expiration of the redemption period in a strict foreclosure. On July 14, 1990, §6204-A was repealed and replaced by §6204-B, with new accounting and surplus requirements.
- D. Ricker vs. United States, 417 F.Supp. 133 (D.Me. 1976) held that mortgages given to the Farmers Home Administration are subject to the Fifth Amendment of the United States Constitution, and specifically, that §6203(1) (Foreclosure by Publication) is unconstitutional for failure to give adequate notice to the defaulting mortgagor.

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- E. Internal Revenue Code (26 U.S.C.) §7425 describes the procedure necessary to extinguish federal liens by civil action (28 U.S.C. §2410(a)) and by other methods (§7425(b)). Note special rules required by §7425(c) and CFR §301.7425. For IRS liens, §7425(d) and 28 U.S.C. §2410(c) allows United States to redeem from mortgagee for 120 days from date of “sale”. For federal tax liens other than by IRS, 28 U.S.C. §2410(c) establishes extra redemption period of one year only in civil action foreclosures.
- F. There are several areas with potential problems that should be avoided in conducting new foreclosures or reviewing existing foreclosures, and examiners should be aware of the recent decisions in these areas:
1. Fitzgerald vs. Cleland, 650 F.2d 360 (1st Cir. 1981) affirming 498 F.Supp. 341 (D.Me. 1980) held that foreclosure by §6203(2) is constitutional because the one-year redemption period provides the necessary “due process”. The Circuit Court did not address the District Court rulings that (a) §6203(2) does not implicate the Fourteenth Amendment right to due process, because the procedure does not involve state action and (b) the V.A. guarantee of a state bank loan does not provide a sufficiently close nexus to implicate the Fifth Amendment.
 2. Note that the power of sale method (§6203-A et seq) has no redemption period.
 3. Note that unopposed entry (§6201(3)) may not provide any actual notice to mortgagors.
 4. Note that there are no final decisions of any constitutional questions that may arise under the State of Maine Constitution.
- G. IN ALL CASES, STRICT ADHERENCE TO THE PRECISE PROCEDURES OF EACH METHOD MUST BE FOLLOWED.