

HB 1682-FN - AS INTRODUCED

2018 SESSION

18-2296
03/04

HOUSE BILL ***1682-FN***

AN ACT relative to procedures for foreclosure.

SPONSORS: Rep. Williams, Hills. 4; Rep. Fraser, Belk. 1; Rep. Murray, Rock. 24; Rep. Abel, Graf. 13;
Rep. Luneau, Merr. 10

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill requires that mortgage foreclosures be commenced by civil actions brought in superior court. This bill also modifies the period of redemption for a mortgage.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT relative to procedures for foreclosure.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Redemption. Amend RSA 479:18 to read as follows:

479:18 Redemption After Condition Broken. All lands conveyed in mortgage may be redeemed by the mortgagor, after the condition thereof is broken, by the payment of all demands and the performance of all things secured by the mortgage and the payment of all damages and costs sustained and incurred by reason of the nonperformance of its condition, or by a legal tender thereof, ~~before~~ ***within 90 days after the court's order of*** foreclosure.

2 Subdivision Heading Deleted. Amend RSA 479 by deleting the subdivision heading preceeding RSA 479:22.

3 Commencement of Foreclosure by Civil Action. RSA 479:25 is repealed and reenacted to read as follows:

479:25 Commencement of Foreclosure by Civil Action.

I.(a) After breach of condition in a mortgage of first priority, the mortgagee or any person claiming under the mortgagee may proceed for the purpose of foreclosure by a civil action against all parties in interest in

the superior court in the county in which the mortgaged premises or any part of the mortgaged premises is located, regardless of the amount of the mortgage claim.

(b) After breach of condition of any mortgage other than one of the first priority, the mortgagee or any person claiming under the mortgage may proceed for the purpose of foreclosure by a civil action against all parties in interest, except for parties in interest having a superior priority to the foreclosing mortgagee, in the superior court in the county in which the mortgaged premises or any part of the mortgaged premises is located. Parties in interest having a superior priority shall not be joined nor will their interests be affected by the proceedings, but the resulting sale is of the defendant or mortgagor's equity of redemption only. The plaintiff shall notify the priority parties in interest of the action by sending a copy of the complaint to the parties in interest by certified mail.

II. The foreclosure shall be commenced in accordance with the superior court rules, and the mortgagee shall within 60 days of commencing the foreclosure also record a copy of the complaint or a clerk's certificate of the filing of the complaint in each registry of deeds in which the mortgage deed is or by law ought to be recorded and such a recording thereafter constitutes record notice of commencement of foreclosure. The mortgagee shall further certify and provide evidence that all steps mandated by law to provide notice to the mortgagor were strictly performed. In order to state a claim for foreclosure upon which relief can be granted, the complaint shall contain a certification of proof of ownership of the mortgage note. The mortgagee shall certify proof of ownership of the mortgage note and produce evidence of the mortgage note, mortgage, and all assignments and endorsements of the mortgage note and mortgage. The complaint shall allege with specificity the plaintiff's claim by mortgage on such real estate, describe the mortgaged premises intelligibly, including the street address of the mortgaged premises, if any, which shall be prominently stated on the first page of the complaint, state the book and page number of the mortgage, if any, state the existence of public utility easements, if any, that were recorded subsequent to the mortgage and prior to the commencement of the foreclosure proceeding and without mortgagee consent, state the amount due on the mortgage, state the condition broken, and by reason of such breach demand a foreclosure and sale. If a clerk's certificate of the filing of the complaint is presented for recording pursuant to this section, the clerk's certificate shall bear the title "Clerk's Certificate of Foreclosure" and prominently state, immediately after the title, the street address of the mortgaged premises, if any, and the book and page number of the mortgage, if any. Service of process on all parties in interest and all proceedings shall be in accordance with the superior court rules. "Parties in interest" includes mortgagors, holders of fee interest, mortgagees, lessees pursuant to recorded leases or memoranda thereof, lienors, and attaching creditors all as reflected by the indices in the registry of deeds and the documents referred to therein affecting the mortgaged premises, through the time of the recording of the complaint or the clerk's certificate. Failure to join any party in interest does not invalidate the action nor any subsequent proceedings as to those joined. Failure of the mortgagee to join, as a party in interest, the holder of any public utility easement recorded subsequent to the mortgage and prior to commencement of foreclosure proceedings is deemed consent by the mortgagee to that easement.

Any other party having a claim to the real estate whose claim is not recorded in the registry of deeds as of the time of recording of the copy of the complaint or the clerk's certificate need not be joined in the foreclosure action, and any such party has no claim against the real estate after completion of the foreclosure sale, except that any such party may move to intervene in the action for the purpose of being added as a party in interest at any time prior to the entry of judgment. Within 10 days of submitting the complaint for filing with the court, the mortgagee shall provide a copy of the complaint or of the clerk's certificate as submitted to the court that prominently states, immediately after the title, the street address of the mortgaged premises, if any, and the book and page number of the mortgage, if any, to the

municipal tax assessor of the municipality in which the property is located and, if the mortgaged premises is manufactured housing as defined in RSA 674:31, to the owner of any land leased by the mortgagor. The failure to provide the notice required by this section does not affect the validity of the foreclosure sale.

III. For purposes of this section, "public utility easements" means any easements held by public utilities, as defined in RSA 362:2.

IV. The acceptance, before the expiration of the right of redemption and after the commencement of foreclosure proceedings of any mortgage of real property, of anything of value to be applied on or to the mortgage indebtedness by the mortgagee or any person holding under the mortgagee constitutes a waiver of the foreclosure unless an agreement to the contrary in writing is signed by the person from whom the payment is accepted or unless the bank returns the payment to the mortgagor within 10 days of receipt. The receipt of income from the mortgaged premises by the mortgagee or the mortgagee's assigns while in possession of the premises does not constitute a waiver of the foreclosure proceedings of the mortgage on the premises.

V. The mortgagee and the mortgagor may enter into an agreement to allow the mortgagor to bring the mortgage payments up to date with the foreclosure process being stayed as long as the mortgagor makes payments according to the agreement. If the mortgagor does not make payments according to the agreement, the mortgagee may, after notice to the mortgagor, resume the foreclosure process at the point at which it was stayed.

4 Repeal. The following are repealed:

I. RSA 477:32, relative to affidavit of sale under power of sale in mortgage.

II. RSA 479:19, relative to modes of redeeming mortgaged premises.

III. RSA 479:20 and RSA 479:21, relative to foreclosure notice expenses and evidence.

IV. RSA 479:26 and RSA 479:27, relative to power of sale mortgages.

5 Effective Date. This act shall take effect January 1, 2019.

LBAO
18-2296
11/9/17

**HB 1682-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to procedures for foreclosure.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2019	FY 2020	FY 2021	FY 2022
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This bill provides that foreclosure of a mortgage would be by a civil action in the superior court in the county in which the mortgaged premises or any part of it is located. The bill would also repeal the provisions for power of sale mortgages. As such, all mortgage foreclosures would take place following a civil action in superior court. The Branch has no information on how many actions to foreclose a mortgage will be brought in superior court but is able to provide the cost of processing mortgage foreclosure cases, based on the NH Judicial Needs Assessment done by the National Center for State Courts in 2005. A mortgage foreclosure would be treated as a routine equity case in the superior court, estimated to be \$250.21 in FY 2019 and \$254.07 in FY 2020. Any appeals taken following a trial would also increase costs.

The Banking Department states this bill will not impact its expenditures or revenue.

AGENCIES CONTACTED:

Judicial Branch and Banking Department