

CHAPTER 2

NONJUDICIAL FORECLOSURE

Section

2-101 Property in possession of debtor

2-102 Property in possession of creditor

2-103 Procedures

46 PC 2-101. Property in possession of debtor.

If the property is in the possession of the debtor:

(1) If the agreement provides that the creditor may take the property if the debtor is in default for 20 days or more and the debtor is so in default, the creditor may take possession of the property without notice if this can be done without breach of the peace. If the creditor does so, he shall retain the property for 20 days, during which period the debtor may redeem the property as provided in this section; thereafter, if the property has not been so redeemed, the creditor may hold the property as his own subject to 46 PC 2-103.

(2) If the agreement does not contain the provision for taking without notice referred to in the preceding subsection, the creditor shall, not more than 40 nor less than 20 days prior to the taking, cause written notice to be given to the debtor of the property on account of default of the debtor. The notice shall state the default and the period at the end of which the property will be taken. This notice may be given personally to the debtor or by leaving it at his usual place of abode or of business with some person not less than 18 years of age and of sound mind then residing or employed there, and, if the person with whom the notice is left states he is unable to read it, by also orally explaining the substance of it to him, if practical, in a language understood by him, otherwise in a language generally understood in the locality.

(3) If after such notice the debtor does not perform the obligations in which he has made default before the day set in such notice for taking, the creditor may take possession of the property if this can be done without breach of the peace.

(4) Unless the property can be taken without a breach of the peace either under Subsections (1) or (3) of this section, the foreclosure shall proceed thereafter only by a civil action in the court under the judicial foreclosure provisions of this title. Nothing herein shall be construed to authorize a violation of the criminal law.

(5) Nothing in this section shall affect the right of a creditor to proceed under 57 PC 8-105 and 57 PC 8-106, simultaneously with action in accordance with this section nor shall anything herein limit the discretion of the Trial Division of the Pohnpei Supreme Court to order a sale authorized by 57 PC 8-106 on such terms or notice, if any, as it deems best.

Source: TTC §279(h)(1)(A) (1966), 57 TTC §51 (1970); 57 TTC §51 (1980)

46 PC 2-102. Property in possession of creditor.

If the property is in the possession of the creditor:

(1) Not more than 40 nor less than 20 days prior to foreclosing on the property the creditor shall cause written notice to be given to the debtor of the creditor's intention to foreclose. The notice shall state the default and the period at the end of which the property will be foreclosed. This notice may be given in the manner provided in 46 PC 2-101(2).

(2) If after such notice the debtor does not perform the obligations in which he has made default before the day set in such notice for foreclosure, the creditor may hold the property as his own subject to 46 PC 2-103.

Source: TTC §279(h)(1)(B) (1966); 57 TTC §52 (1970); 57 TTC §52 (1980)

46 PC 2-103. Procedures.

(1) If the debtor, at the time of the taking or of the foreclosure under this chapter, has paid at least one half of the principal due under the agreement, the creditor shall sell the property at public auction in the state where it was at the time of the taking or foreclosure, such sale to be held not more than 90 days after the taking or foreclosure. The creditor shall give to the debtor not less than 10 days written notice of the sale in the manner provided in 46 PC 2-101(2), which notice shall not be given until the expiration of the 20 days retention period provided for in 46 PC 2-101(1), if the taking was made under such subsection. The creditor shall also give notice of the sale by posting in at least three conspicuous places within the state where the property is to be sold at least 5 days before the sale and shall make an honest attempt to obtain a fair value at the sale and, provided he does this, may himself bid for the property at the sale.

(2) The proceeds of the sale shall be applied:

- (a) To the payment of the reasonable expenses thereof;
- (b) To the payment of the reasonable expenses of taking, keeping, and storing the property;
- (c) To the satisfaction of the balance due under the agreement.

Any sum remaining after the satisfaction of such claims shall be paid to the debtor. If the proceeds of the sale are not sufficient to defray the reasonable expenses thereof and also the reasonable expenses of taking, keeping, and storing the property and the balance due under the agreement, the creditor may recover the deficiency from the debtor or anyone who has succeeded to the obligations of the debtor.

(3) If the debtor, at the time of the taking or of the foreclosure mentioned above, has not paid at least half of the principal due under the agreement, the creditor shall have the option of:

(a) Notifying the debtor in the manner provided in 46 PC 2-101(2) of his election to retain the property as his own without obligation to account to the debtor and the debtor shall then be discharged of all obligations under the agreement; or

(b) Selling the property in the manner provided in Subsection (1) of this section and applying the proceeds as provided in Subsection (2) of this section, with the same right to recover any deficiency as therein provided.

(4) During the 20 days retention period provided for in 46 PC 2-101(1) and at any other time before the creditor has disposed of the property or before the debtor's obligation has been discharged under Subsection (3) of this section, the debtor may redeem the property by tendering fulfillment of all obligations due under the agreement up to the date of the tender as well as all the expenses reasonably incurred by the creditor in taking, keeping, and storing the property and in arranging for the sale, and upon so doing shall become entitled to take possession of the property and to continue in the performance of the agreement as if no default has occurred. Upon written demand given by the debtor in the manner provided for notice in 46 PC 2-101(2), the creditor shall furnish to the debtor a written statement of the sum due under the agreement and the expenses of taking, keeping, and storing and in arranging for the sale. For failure to furnish such a statement within a reasonable time after demand the creditor shall forfeit to the debtor \$5 and shall also be liable to him for all damages suffered because of such failure.

Source: TTC §279(h)(l)(C) – (F) (1966); 57 TTC §53 (1970); 57 TTC §53 (1980)