

TITLE 6
ACTIONS IN PARTICULAR CASES

CHAPTER 1
FORECLOSURE OF MORTGAGES AND OTHER LIENS

6-101. PROCEEDINGS IN FORECLOSURE -- CONSTRUCTION OF SECTION -- MEANING OF "ACTION" -- EFFECT OF FORECLOSURE ON HOLDER OF UNRECORDED LIEN. (1) There can be but one action for the recovery of any debt, or the enforcement of any right secured by mortgage upon real estate which action must be in accordance with the provisions of this chapter. In such action the court may, by its judgment, direct a sale of the incumbered property (or so much thereof as may be necessary) and the application of the proceeds of the sale to the payment of the costs of the court and the expenses of the sale, and the amount due to the plaintiff; and sales of real estate under judgments of foreclosure of mortgages and liens are subject to redemption as in the case of sales under execution; (and if it appear from the sheriff's return that the proceeds are insufficient, and a balance still remains due, judgment can then be docketed for such balance against the defendant or defendants personally liable for the debt), and it becomes a lien on the real estate of such judgment debtor, as in other cases on which execution may be issued.

(2) The provisions of this section must be construed in order to permit a secured creditor to realize upon collateral for a debt or other obligation agreed upon by the debtor and creditor.

(3) As used in this section, an "action" does not include any of the following acts or proceedings:

- (a) To appoint a receiver for, or obtain possession of, any real or personal property collateral for the debt or other obligation;
- (b) To enforce a security interest in, or the assignment of, any rents, issues, profits or other income of any real or personal property;
- (c) To enforce a mortgage or other lien upon any real or personal property collateral located outside of the state which is security for the same debt or other obligation;
- (d) To secure a judgment outside of this state on a debt or other obligation secured by real property in this state and by real or personal property collateral located outside this state;
- (e) For the exercise, pursuant to section 45-1505, Idaho Code, of a power of sale conferred pursuant to section 45-1503, Idaho Code;
- (f) For the exercise of any right or remedy authorized by:
 - (i) The Idaho uniform commercial code, title 28, Idaho Code, except the securing of a judgment on the secured debt, including a deficiency judgment, in a court in Idaho; or
 - (ii) The uniform commercial code as enacted in any other state;
- (g) For claim and delivery of personal property pursuant to chapter 3, title 8, Idaho Code;
- (h) For the exercise of any right to set off a deposit account, or to enforce a pledge in a deposit account pursuant to a written agreement or pledge or to enforce a banker's lien;
- (i) To draw under a letter of credit;
- (j) To collect any debt, or enforce any obligation or right, secured by a mortgage or other lien on real property if the property has been sold to a person other than the creditor to satisfy, in whole or in part, a

debt or other obligation or right secured by a senior mortgage or other senior lien on the property;

(k) Relating to any proceeding in bankruptcy, including the filing of a proof of claim, seeking relief from an automatic stay and any other action to determine the amount or validity of a debt or other obligation;

(l) For filing a claim pursuant to the Idaho uniform probate code, title 15, Idaho Code, or to enforce such a claim which has been disallowed;

(m) Which does not include the collection of the debt or enforcement of the obligation or realization of the collateral securing the debt or other obligation;

(n) Which is exempted from the provisions of this section by specific statute;

(o) To recover costs of suit, costs and expenses of sale, attorney fees and other incidental relief in connection with any action authorized in this subsection.

(4) No person holding a conveyance from or under the mortgagor of the property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the proper office at the commencement of the action, need be made a party to such action; and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action.

[(6-101) C.C.P. 1881, sec. 468; R.S., R.C., & C.L., sec. 4520; C.S., sec. 6949; I.C.A., sec. 9-101; am. 1967, ch. 272, sec. 1, p. 745; am. 1993, ch. 281, sec. 1, p. 949.]

6-102. DISPOSITION OF SURPLUS MONEY. If there be surplus money remaining after payment of the amount due on the mortgage, lien or encumbrance, with costs, the court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in court.

[(6-102) C.C.P. 1881, sec. 469; R.S., R.C., & C.L., sec. 4521; C.S., sec. 6950; I.C.A., sec. 9-102.]

6-103. PARTIAL SALES. If the debt for which the mortgage, lien or encumbrance is held is not all due, but is payable in instalments, whether such debt be evidenced by one (1) or more principal notes or otherwise, such mortgage, lien or encumbrance may be foreclosed, at the election of the holder thereof, for the instalment or instalments due, or for taxes or other charges or obligations which the mortgage provides shall be paid by the mortgagor, and the court may by its judgment direct a sale of the encumbered property or of the equity of defendants therein, or so much thereof as may be necessary, to satisfy the amount due for such instalment, charge or obligation, which sale shall be subject to the unpaid balance of said mortgage, lien or encumbrance not reduced to judgment, and such mortgage, lien or encumbrance shall otherwise remain in full force and effect, and the holder thereof shall have the right to foreclose for the balance of the same or any part thereof, notwithstanding the provisions of section 6-101. The remedy herein provided shall be cumulative and not exclusive. Provided, that no deficiency judgment shall be taken under the second or any subsequent foreclosure under any such mortgage, lien or encumbrance.

[(6-103) C.C.P. 1881, sec. 470; R.S., R.C., & C.L., sec. 4522; C.S., sec. 6951; am. 1927, ch. 155, sec. 1, p. 209; I.C.A., sec. 9-103.]

6-104. MORTGAGE NOT A CONVEYANCE. A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure sale.

[(6-104) R.S. 1887, R.C., & C.L., sec. 4523; C.S., sec. 6952; I.C.A., sec. 9-104.]

6-105. EXECUTION UNDER FORECLOSURE ON PROPERTY IN MORE THAN ONE COUNTY. In all actions to foreclose a mortgage or other lien upon real property, where such real property is situated partly in one county and partly in another county, within the state of Idaho, the sheriff of the county in which such action is commenced and where the decree therein is rendered and entered, shall have the power and it is hereby made his duty to enforce execution issued upon such decree in the same manner as if the whole of such real property was situated in the county in which such action was commenced and where the decree therein was rendered and entered.

[(6-105) 1909, p. 171, sec. 1; reen. C.L., sec. 4524; C.S., sec. 6953; I.C.A., sec. 9-105.]

6-106. DUTY OF CLERK ON RETURN OF EXECUTION. Upon the return of such execution by the sheriff, the clerk of the district court issuing the same shall file such execution as in other cases, and as county recorder shall record said execution and return as in other cases of sales of real property. Immediately after such execution and return has been so recorded, as such county recorder he shall prepare a copy of such execution and return and certify the same, which shall be sent by United States mail, postage prepaid, to the county recorder of the other county or counties in which a portion of such real property is situated, and the county recorder of such county or counties shall record such execution and return with the certificate thereto, as in other cases upon the return of executions where real property has been sold.

[(6-106) 1909, p. 171, sec. 2; reen. C.L., sec. 4525; C.S., sec. 6954; I.C.A., sec. 9-106.]

6-107. CERTIFICATES OF SALE. The said sheriff making such sale shall make as many certificates of such sale as there are counties in which such real property is situated, adding a sufficient number to deliver one to each purchaser of such real property. The sheriff shall deliver one of such certificates to each purchaser of such real property, and shall file one with the county recorder of the county where such sale was made; and he shall also send one to each of the county recorders of the several counties in which any portion of said real estate is situated, by United States mail, prepaying the postage thereon. Such certificates of sale shall be filed and recorded by the several county recorders as is now provided by law in sales of real property under execution.

[(6-107) 1909, p. 171, sec. 3; reen. C.L., sec. 4526; C.S., sec. 6955; I.C.A., sec. 9-107.]

6-108. DEFICIENCY JUDGMENTS -- AMOUNT RESTRICTED. No court in the state of Idaho shall have jurisdiction to enter a deficiency judgment in any case involving a foreclosure of a mortgage on real property in any amount greater than the difference between the mortgage indebtedness, as determined by the decree, plus costs of foreclosure and sale, and the reasonable value of the

mortgaged property, to be determined by the court in the decree upon the taking of evidence of such value.

[6-108, added 1933, ch. 150, sec. 1, p. 229.]