

Commencement: March 20, 1987

LAWS OF THE REPUBLIC OF THE MARSHALL ISLANDS

TITLE 24. PROPERTY

CHAPTER 3.

REAL PROPERTY MORTGAGE

ARRANGEMENT OF SECTIONS

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An Act to establish the procedure relating to real property mortgages in the Republic.

Commencement: March 20, 1987

Source: P.L. 1987-13

P.L. 1988-20

§ 1. Short title.

This Act may be cited as the "Real Property Mortgage Act 1987". [*P.L. 1987-13, § 1.*]

§ 2. Establishment of mortgages on leasehold interest.

In order to secure the performance of an obligation or the payment of a debt a person may mortgage any lease or leasehold interest of any real property; provided, however, that such a mortgage does not entitle the mortgagee to possession of the property, except as hereinafter provided:

- (a) a real estate mortgage created under this Act may encumber a lease or leasehold interest only, and any mortgage purporting to encumber the title or any ownership rights in the real property shall be null and void;

(b) the lease or leasehold interest upon which a mortgage is granted shall contain a term which is reasonably equal to the life of the improvements situated on the real property after the consideration for the mortgage has been advanced to the mortgagor, but in no event shall exceed a term of fifty (50) years;

(c) nothing in this Act shall prevent a direct lease from the then existing Iroij Laplap, Iroij Erik, where applicable, and the Alab and Senior Dri Jerbal of the property to be mortgaged in order to secure the performance of an obligation or the payment of a debt. Any such lease may be conditioned on an event which constitutes a default pursuant to the mortgage before such lease becomes effective and entitles the mortgagee to possession of the leasehold premises. Any mortgage executed on a conditional leasehold interest under this Subsection may be foreclosed pursuant to either Section 8, or Sections 9 and 10 of this Act. [*P.L. 1987-13, § 2.*]

§ 3. Requirements for mortgages.

All mortgages made or entered into pursuant to this Act shall contain:

- (a) the name, address, and marital status of the mortgagor and mortgagee;
- (b) the legal status of the mortgagor and mortgagee describing whether they are individuals, a corporation, or a partnership;
- (c) a description of the lease or leasehold interest with the following information:
 - (i) the names of the lessors and lessee;
 - (ii) the date and period of the lease; and
 - (iii) a description of the property with reference to a survey map or in metes and bounds including the name of the veto, island and atoll;
- (d) a statement whether the mortgage encumbers the improvements, appurtenances and fixtures on the property;
- (e) a reference to the promissory note or other instrument of indebtedness being secured by the mortgage indicating the amount of indebtedness, the term, and whether the mortgage will attach to future advances;
- (f) a statement indicating the consideration being given for the mortgage;
- (g) date of execution and effective date;
- (h) the maturity date of the mortgage with any right to extend;
- (i) mortgagor's covenants;
- (j) mortgagee's rights including events which shall constitute a default by mortgagor; and
- (k) notarially executed signature of the mortgagor. [*P.L. 1987-13, § 3.*]

§ 4. Registration of mortgages.

All mortgages executed pursuant to this Act shall be registered with the Clerk of the Court [*P. L. 1987-13, § 4.*]

§ 5. Procedure for registration.

(1) Upon the receipt of a mortgage for registration from a mortgagor lessee (applicant), along with a copy of the encumbered lease, the Clerk of the Court shall, within two weeks of the date of receipt, issue public notice of and afford opportunity to object to, the mortgage and the encumbered lease. Notice shall be issued in such form and manner as the High Court deems proper; provided, however, that the duration of notice shall not exceed sixty (60) days from the date of application.

(2) All expenses required for issuance of notice Subsection (1) of this Section, in addition to fees charged for registration, shall be borne by the applicant.

(3) If no objections are received by the Clerk with respect to the mortgage and/or the encumbered lease, he shall then register the mortgage; and all persons, other than the lessor claiming under the lease, shall be estopped from claiming any rights against the interests of the mortgagee or the lessee under the mortgage or the lease.

(4) If objections are received by the Clerk with respect to the mortgage or the encumbered lease, he shall so notify the applicant. If within thirty (30) days after receiving such From the Clerk, the applicant requests the Clerk to register the mortgage, then the Clerk shall register the mortgage; and all persons, other than the lessor claiming under the lease and the objector with respect to his objection, shall be estopped from claiming any rights against the interests of the mortgagee of the lessee under the mortgage or lease. [*P.L. 1987-13, § 5; completely amended by P.L. 1988-20, § 2.*]

§ 6. Priority of mortgage interests.

The priority of mortgage interests on the same real property shall be determined by the order and date of registration pursuant to Section 4 of this Act with the first to register having superior rights over subsequent mortgages. [*P.L. 1987-13, § 6.*]

§ 7. Effect of non-registration.

Failure to register an executed mortgage in accordance with Section 4 of this Act shall not affect the validity of the mortgage; provided, however, that such non-registered mortgage shall be subordinate to any and all mortgages which may have been duly registered, irrespective of the date of execution or any actual or constructive notice. [*P.L. 1987-13, § 7.*]

§ 8. Foreclosure of mortgages.

Mortgages created pursuant to this Act may be foreclosed in the following manner:

(a) by filing an action in the High Court seeking judicial foreclosure and sale of the mortgaged premises with a right to deficiency judgment as provided in Section 9 this Act; or

(b) by power of sale as provided in Sections 10 and 11 of this Act. [*P.L. 1987-13, § 8.*]

§ 9. Judicial foreclosure of mortgages.

(1) Any action to foreclose a mortgage filed in the High Court shall name as defendants all other mortgage lien holders on the property shown in the register with the Clerk of Courts.

(2) No foreclosure sale shall take place under this Section unless:

- (a) thirty (30) days have lapsed from the date the judgment is entered; and
- (b) a notice of sale for the mortgaged premises is given:
 - (i) by publication in a newspaper of general circulation in the Republic on the island where the property is located at least once a week for two consecutive weeks immediately prior to the sale; and
 - (ii) by radio announcement transmitted by a radio station with regular programming, serving the atoll or island within which the property is located, once each day for seven (7) days within the twenty (20) days immediately prior to the date of sale;
- (c) any notice of sale given pursuant to Subsection (2)(b) of this Section shall be published, announced, and posted in both the Marshallese and English languages; and
- (d) it is stated that every sale made under this Section vests in the purchaser free from encumbrance of the leasehold interest of the mortgagor without equity or right of redemption.

(3) Any action to foreclose a mortgage filed in the High Court shall contain the following averments:

- (a) the date of the mortgage;
- (b) the name of the mortgagor;
- (c) the name of the mortgagee;
- (d) the date the mortgage was registered with the Clerk of Court;
- (e) the names of all mortgage or lien holders in the register with the Clerk of Court who shall also be named as defendants;
- (f) a description of the lease giving the date of the lease along with the names of the lessors and lessee, and a description of the property with reference to a survey map or in metes and bounds including the names of the weto, island, and atoll;
- (g) the amount of the original indebtedness as indicated in the mortgage or promissory note;
- (h) statements as to defaults and the amount now due;
- (i) a prayer including the following:
 - (i) for a judgment of foreclosure and sale of the mortgage;
 - (ii) if necessary, for the appointment of a receiver pursuant to Section 15 of this Act;
 - (iii) for the appointment of a commissioner to conduct the foreclosure sale in accordance with the Court's instructions; and
 - (iv) for a personal deficiency judgment if the indebtedness is not satisfied by the foreclosure sale pursuant to Section 12 of this Act. [*P.L. 1987-13, § 9.*]

§ 10. Power of sale foreclosure.

Any mortgage containing a provision for power of sale shall be foreclosed in the following manner:

(a) the mortgagee shall first file for registration with the Clerk of Court a notice of default, identifying the mortgage by the name or names of the mortgagor and giving the date of registration and the location where the same is registered, a description of the leasehold property encumbered by the mortgage, a statement that a breach of the obligation for which such mortgage was given as security has occurred and setting forth the nature of such breach, and of mortgagee's election to sell or cause to be sold such leasehold interest in the property to satisfy the obligation;

(b) a registered copy of the notice of default and election to sell shall be personally served on the mortgagor, or if personal service is not made despite efforts in good faith, mailed by registered or certified mail with postage prepaid to the mortgagor or his successor in interest if such address is known, otherwise by posting on the mortgaged property;

(c) not less than ninety (90) days shall elapse after such notice during which time the mortgagor shall have the right to reinstate the mortgage by paying the mortgagee or his successor in interest, the entire amount then due including principal and interest (including cost and expenses actually incurred in enforcing the terms of such obligation in the mortgage) and thereby cure the default thereto existing, whereupon all proceedings thereto had or instituted shall be dismissed or discontinued and the obligation and mortgage shall remain in force and effect as if no such acceleration had occurred; and

(d) after the lapse of ninety (90) days, and if no reinstatement has been made pursuant to Paragraph (c) of this Section, the mortgagee shall within sixty (60) days thereof, give notice of sale, stating the time and place thereof, in the manner, and within the time, specified in Section 11 of this Act for the exercise of a power of sale in the mortgage. [*P.L. 1987-13, § 10.*]

§ 11. Sale under power of sale.

(1) All sales of a leasehold interest in real property under a power of sale contained in any mortgage must be held on the island in the Republic where the real property is situated, and shall be by public auction to the highest bidder, between the hours of 8:00 a.m. and 5:00 p.m.

(2) Before the sale of property under a power of sale in a mortgage is carried out, notice thereof must be given by:

(a) personal service or, if personal service cannot be made despite efforts in good faith, by mailing a copy of said notice of sale at least twenty (20) days and not more than sixty (60) days before the date of sale, by registered or certified mail with postage prepaid to the mortgagor or his successor in interest if such address is known, or otherwise by posting at a conspicuous place on the mortgaged property;

(b) publishing a copy thereof once a week for two (2) consecutive weeks at least twenty (20) days prior to the date of sale in a newspaper of general circulation in the Republic on the island in which the property is situated, or, if there be no such newspaper, by posting such notice at least twenty (20) days prior to the date of sale in three (3) public places in the community in which the property is to be sold;

(c) posting a copy of said notice of sale in some conspicuous place on the property to be sold, at least twenty (20) days before the date of sale; and (d) announcement transmitted by a radio station with regular programming, serving the atoll or island on which the property is located once each day for seven (7) days within the twenty (20) days immediately prior to the date of sale.

(3) Whenever the mortgagee elects to postpone or cancel the sale under a power of sale, the mortgagee shall thereupon, by public declaration, postpone the sale to another date and hour so fixed, or in the case of cancellation, terminate all notices required pursuant to this Section.

(4) The mortgagee, upon such sale, shall make without warranty, execute, and after due payment made, deliver to the purchaser, his heirs or assigns, a conveyance of the leasehold interest of the premises so sold which shall convey to the purchaser all of the mortgagor's interest in and to the lease on the premises, and shall apply the proceeds of the sale thereof in payment: firstly, to the expenses of such sale including reasonable attorney's fees; and secondly, to the obligation or debt secured and interest thereon then remaining unpaid, and the amount of monies with interest thereon agreed to be paid by mortgagor. Any balance or surplus of such proceeds of sale shall be paid to the mortgagor, his heirs, executors, administrators or assigns.

(5) There shall be a recital in the conveyance executed pursuant to the power of sale, of the compliance with all requirements of law regarding filing of notice of default, election to sell and notice of sale to the mortgagor or his successor in interest, publishing, posting, and radio announcement, notice of sale, and personal service of notices which shall constitute *prima facie* evidence of compliance with such requirements and conclusive evidence thereof in favor of *bona fide* purchasers.

(6) Every sale made under this Section vests in the purchaser, free from encumbrance, of the leasehold interest of the mortgagor without equity or right of redemption.

(7) If, at the time and place specified for sale, no buyer appears, or no acceptable bid is made, the mortgagee may bid in his own name and purchase the leasehold interest in his own name and for his own use. [*P.L. 1987-13, § 11.*]

§ 12. Right to deficiency subsequent to foreclosure sale.

The mortgagee shall have a right to a deficiency judgment against the mortgagor for satisfied balance on the debt being secured by the mortgage subsequent to judgment and foreclosure sale for any mortgage foreclosed pursuant to Sections 8(a) and 9 of this Act. There shall be no right to a deficiency judgment for any mortgage foreclosed pursuant to Sections 8(b), 10, and 11 of this Act, and the foreclosure sale under said Sections shall be a final discharge and release of the mortgage and the obligation secured thereby. [*P.L. 1987-13, § 12.*]

§ 13. Discharge, re-conveyance and satisfaction.

(1) A mortgage must be discharged and released by a certificate of acknowledgement signed by the mortgagee, his personal representative or assign, stating that the debt secured by mortgage has been paid, satisfied or discharged. Reference shall be made in such certificate to the name of the mortgagor, the date of registration and the location where the mortgage is registered.

(2) When any debt secured by a mortgage has been duly satisfied, the mortgagee, or his assignee, shall execute, acknowledge, and deliver to the mortgagor a certificate of discharge of the debt and mortgage. The mortgagee, his personal representative or assign shall deliver to mortgagor, the mortgage and the note so paid marked "satisfied". [*P.L. 1987-13, § 13.*]

§ 14. Impairment of security.

No person who has executed and delivered a mortgage on a leasehold interest in real property as security for the performance of an obligation or the payment of any debt shall do any act which will substantially impair the mortgagee's security. [*P.L. 1987-13, § 14.*]

§ 15. Appointment of receiver.

(1) At any time after an action to foreclose a mortgage is filed in the High Court pursuant to Section 9 of this Act, or after the filing of a notice of default and election to sell a leasehold interest in real property under a power of sale in a mortgage, pursuant to Section 11 of this Act, the mortgagee may apply to the High Court for the appointment of a receiver of such property.

(2) A receiver shall be appointed where it appears that the real property subject to mortgage is in danger of substantial waste, or that the income therefrom is in danger of being lost, or that any personal property subject to the mortgage is in danger of being lost, removed, materially injured or destroyed, or that the property is or may become insufficient to discharge the debt which it secures. [*P.L. 1987-13, § 15.*]

§ 16. Registration of assignments.

Any assignment of mortgagee's interests under a mortgage shall be registered with the Clerk of the High Court, and from the time the same is filed for registration, all persons are deemed to have notice of the contents thereof. [*P. L. 1987-13, § 16.*]

§ 17. This Act to prevail over any other law.

Notwithstanding anything contrary in any other law, the provisions of this Act shall prevail, and in the event there is any inconsistency in this Act with the provisions of any other law, the provisions of this Act shall prevail. [*P.L. 1987-13, § 17.*]
