

**CHAPTER 3.****REAL PROPERTY MORTGAGE****ARRANGEMENT OF SECTIONS**

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AN ACT to provide for the mortgaging of freehold and leasehold interests in land and to provide for the registration of mortgages with the Land Registration Authority. This Act repealed and replaces the Real Property Mortgage Act, 1987 [Section numbering modified to conform to new Code format Rev2003].

Commencement: December 3, 2003  
Source P.L. 2003-97

**§301. Short title.**  
This Act may be cited as the “Real Property Mortgage Act 2003”. [P.L 2003-97, §1.]

**§302. Interpretation.**  
In this Act, unless the context otherwise requires:  
(1) “Court” means the High Court.  
(2) “Default” means failure of an obligor to perform an act which the obligor is bound to perform or to refrain from performing or permitting an act which the obligor is bound to refrain from performing or permitting.

(3) “Encumbrance” means any interest in property except ownership of the property.

(4) “Improvement” means any building or structure constructed, or any artificial condition maintained, upon land.

(5) “Land Registration Authority” means the place established under the Land Recording and Registration Act 2003 in which documents affecting title to land in the Republic are to be recorded or registered.

(6) “Lien” means a charge imposed in some mode upon specific property which is made the security for the performance of an act.

(7) “Mortgage” means a contract in which property is made the security for the payment of a debt or performance of other obligation, without the necessity of a change in possession and without the transfer of title.

(8) “Mortgagee” means a person who takes or receives a mortgage. This term also, where appropriate, refers to the mortgagee’s heirs, personal representatives, successors, and assigns.

(9) “Mortgagor” means a person who owns an interest in property and by written instrument pledges that interest in property as security for a debt. This term also, where appropriate, refers to the mortgagor’s heirs, personal representatives, successors, and assigns.

(10) “Ownership” of property means outright ownership of specific property, also known as title to the property.

(11) “Person” means any individual, corporation, partnership, government, government instrumentality, or other legal entity.

(12) “Property” means any interest in real property which is capable of being transferred, including a leasehold interest.

(13) “Real Property” means any interest in land or the improvements thereupon.

(14) “Springing lease” and “springing lease mortgage” have the meanings given to them in Section 322 of this Act. [P.L. 2003-97, §2.]

**§303. Right to possession.**

The mortgagee is not entitled to possession of the mortgaged property unless the mortgagor expressly grants a right of possession in the mortgage or thereafter. After execution of the mortgage, the mortgagor may agree to deliver possession to the mortgagee without additional consideration. The mortgagee’s possession may not cumulatively exceed five years or satisfaction of the mortgage, whichever is sooner. The purchaser at a foreclosure sale is entitled to immediate possession. [P.L. 2003-97, §3.]

**§304. Security not to be impaired.**

No mortgagor shall do or permit any act which will impair the mortgagee’s security without the express written permission of the mortgagee. [P.L. 2003-97, §4.]

**§305. Property mortgagable.**

Any property not otherwise restricted by law may be mortgaged and shall be subject to foreclosure. No homestead or other exemption from execution shall apply to foreclosure of a mortgage. [P.L. 2003-97, §5.]

**§306. Heirs and devisees take subject to mortgage.**

Whenever property which is subject to a mortgage passes by succession or devise, the successor or devisee is not entitled to have the decedent’s personal representative satisfy the mortgage out of the decedent’s interest unless there is an express provision in the decedent’s will

that the descendant's interest is to satisfy the mortgage. Unless the mortgage is so satisfied out of the descendant's interest, the heir or devisee takes the property subject to the mortgage. [P.L. 2003-97, §6.]

**§307. Transfers made as security deemed mortgages.**

Except as otherwise provided by statute, every transfer of an interest in property made only as security for the performance of another act and every transfer or conveyance of property, by deed of trust or otherwise, executed and delivered to secure the performance of another act, shall be deemed a mortgage. [P.L. 2003-97, §7.]

**§ 308. Need for written documents.**

A mortgage shall be created, amended, renewed, extended, or terminated only by a writing in English. If a mortgage document has also been translated into Marshallese, the English version shall prevail. Errors in the translated version shall not affect the legal relationship between the parties unless it is proven that the error was willfully or recklessly caused by the party to be charged. [P.L. 2003-97, §8.]

**§309. Requirements for mortgages.**

A mortgage shall contain:

- (1) names and mailing addresses of the mortgagor and mortgagee;
- (2) the legal description of the property affected; and
- (3) the principal amount of the secured indebtedness together with a reference to the promissory note or other instrument of indebtedness being secured by the mortgage;
- (4) statement whether the mortgage encumbers the improvements;
- (5) the maturity date of the mortgage and any right to extend;
- (6) the mortgagee's right including events which shall constitute a default by the mortgagor.

[P.L. 2003-97, §9.]

**§310. Recording and Registration of Mortgages.**

All mortgages of any interest in land pursuant to this Act must be either recorded or registered with the Land Registration Authority under the Land Recording and Registration Act, 2003. [P.L. 2003-97, §10.]

**§311. Instruments made with intent to defraud.**

Any mortgage instrument affecting an interest in property, including every charge upon property or upon its rents or profits, made with the intent to defraud prior or subsequent purchasers thereof or holders of any encumbrances thereon, is hereby declared to be void as against every purchaser or holder of any encumbrance for value of the same property or the rents or profits thereof. [P.L. 2003-97, §11.]

**§312. Service of notice on mortgagor.**

(1) All notices to the mortgagor required by this Act must be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, to the mortgagor or, if applicable, the mortgagor's personal representative.

(2) The mortgagor may designate in the mortgage instrument the name and address of a personal representative within the Republic for the service of notice if the mortgagor cannot be found in the Republic after a reasonable search or if seven (7) days have elapsed since the proper mailing of the notice to the mortgagor. The name and address of the personal representative may

be changed from time to time upon request of the mortgagor by written notice to the mortgagee and with written evidence that the mortgagee has received such notice.

(3) A notice to the mortgagor shall be effective on the earliest of:

(a) the date the notice is received or refused by the mortgagor or, if applicable, the mortgagor's personal representative;

(b) seven (7) days after the proper mailing of the notice to the mortgagor's personal representative if a personal representative has been designated; or

(c) seven (7) days after the proper mailing of the notice to the mortgagor if no personal representative has been designated. [P.L 2003-97, §12.]

**§313. Service of other notices; posting.**

(1) Any notice required by this Act to be given to a person other than the mortgagor may be delivered personally. If not so delivered, it shall be given as provided in this Act with respect to such notices or, if there is no such provision, by depositing the notice in the Marshall Islands mail addressed to the last known address of the intended recipient. Unless otherwise provided in this Act, a mailed notice is effective upon mailing, regardless of when or whether it is received. A notarised certificate of mailing shall be prima facie evidence of mailing.

(2) With respect to a notice which is posted under any Section of this Act, once the notice is so posted, the fact that it has been destroyed, removed, or damaged by natural causes or by persons not under the direction or control of the mortgagee shall not invalidate, terminate, or void such notice. [P.L 2003-97, §13.]

**§314. Assignments, subordinations, and waivers.**

Nothing in this Act shall preclude the assignment, subordination, or waiver of a mortgage. Except as provided in Section 315 of this Act, the recording of any assignment, subordination, or waiver shall operate as constructive notice to all persons from the date and time of its recording. [P.L 2003-97, §14.]

**§315. Notice to mortgagor of assignment.**

Recording an assignment of a mortgage is not of itself sufficient notice to the mortgagor or other person obligated under the mortgage so as to invalidate any payment or performance made by the mortgagor or other person to the holder of the note, bond, or other instrument secured by the mortgage. At the time of the assignment, a notice in substantially the following form shall be given to the mortgagee or other person:

"Your promissory note and mortgage of (date) to (payee-mortgagee) has been assigned to (assignee). All payments shall hereafter be made to (assignee) at (assignee's address). [P.L 2003-97, §15.]

**§316. Assignment of debt carries security.**

The assignment of a debt secured by a mortgage carries with it the mortgage unless the assignment provides to the contrary. [P.L 2003-97, §16.]

**§317. Certificate of discharge required.**

When any mortgage has been satisfied, the mortgagee shall execute, acknowledge, and deliver to the mortgagor a certificate of discharge of the mortgage. If the mortgagee fails or refuses to do so for a period of one (1) month after demand from the mortgagor, the mortgagee shall be liable for all damages which the mortgagor may sustain by reason of such failure or refusal and shall

also forfeit to the mortgagor the sum of \$300. Upon satisfaction of the mortgage, the mortgagee shall also deliver to the mortgagor the mortgage and the note or other instrument secured by the mortgage with, if requested, satisfaction of the mortgage and note or other instrument acknowledged on the margin thereof. [P.L. 2003-97, §17.]

**§318. Waiver by mortgagor of statutory rights.**

An agreement entered into by a mortgagor at the time of or in connection with the making or renewing of any loan secured by a mortgage, whereby the mortgagor agrees to waive any right or privilege conferred upon the mortgagor by this Act, shall be void and of no effect. [P.L. 2003-97, §18.]

**§319. Acceleration of principal.**

Subject to the provisions of this Act, an agreement that the principal and obligations under the note or mortgage may be accelerated as a result of default shall be valid. No acceleration of unpaid principal of the underlying obligation shall be effective until thirty (30) days after the notice of default provided for in Section 323 has been sufficiently given as provided for in Section 312. [P.L. 2003-97, §19.]

**§320 Mortgagee's remedies in the event of default.**

In the event of default by the mortgagor in the performance of the mortgagor's obligations under the mortgage or note or other instrument secured by the mortgage, the mortgagee may elect to do any or all of the following:

(1) commence an action for specific performance or injunctive relief or for payment of money by the mortgagor, guarantor, or other person obligated thereunder. If the judgment rendered in such action orders full performance of the mortgagor's entire obligation, or payment of the entire sum for which the mortgagor is indebted, satisfaction by the mortgagor of the judgment shall function to discharge the mortgage;

(2) foreclose upon the property judicially or, if the conditions therefor are met, non-judicially; and

(3) exercise any other right or remedy permitted by law or in the mortgage instrument which is consistent with the rights and privileges of the mortgagor as set forth in this Act. [P.L. 2003-97, §20.]

**§321. Conditions for non-judicial foreclosure.**

The mortgaged property may be foreclosed upon default without resort to judicial action if:

(1) the mortgagor has granted the mortgagee a power of sale in the mortgage instrument;

(2) the mortgagee is:

(a) the national or any local government of the Republic or an instrumentality thereof;

(b) a bank licensed to do business under Title 17 of the Marshall Islands Revised

Code; or

(c) any other bank, development bank, credit union, or other organization engaged primarily in the business of making or guarantying loans and properly authorized to do business in the Republic; and

(3) the interest in property being foreclosed upon is:

(a) the leasehold interest under a leasehold mortgage;

(b) only the leasehold interest under a springing lease mortgage; or

(c) both the leasehold and freehold interests under a springing lease mortgage. [P.L.

2003-97, §21.]

**§322 Springing lease mortgages.**

(1) For purposes of this Act, a “springing lease mortgage” is a mortgage granted by the holder of the ownership interest in property in which the interest mortgaged is or includes the interest of the lessee under a lease of the property from the mortgagor to the mortgagee which does not take effect unless and until that leasehold interest has been sold in a foreclosure sale or voluntarily conveyed in lieu of foreclosure. Such a lease is called a “springing lease”.

(2) A springing lease mortgage may permit foreclosure upon just the leasehold interest or upon both the leasehold and the ownership interests. If it permits foreclosure upon both, the foreclosure may be upon either interest alone or upon both, in which case each interest shall be offered for sale separately but simultaneously. The mortgagee may choose whether to offer the leasehold interest alone, the ownership interest alone, or both, but the ownership interest may not be offered alone without the prior written consent of the mortgagor, given after any of the defaults upon which the foreclosure is based.

(3) If both the leasehold and the ownership interests are offered for sale at foreclosure, only one of the interests may be sold. Based upon whether the highest bids received for each of the interests are sufficient to satisfy the outstanding indebtedness and any other sums payable out of the foreclosure proceeds, the interest to be sold shall be determined as follows:

(a) If each of the highest bids is sufficient, the mortgagor may, by written notice to the person conducting the sale, elect whether the leasehold interest or the ownership interest shall be sold. Such election shall be in writing and must be received by the mortgagee and (if different) the person conducting the sale within seven (7) days after the sale to be effective.

(b) If only the bid for the leasehold interest is sufficient, the leasehold interest shall be sold.

(c) In any other case, the mortgagee shall elect whether to sell the leasehold interest or the ownership interest.

(4) If the leasehold interest is sold alone in a foreclosure sale or by conveyance in lieu thereof, the springing lease shall become effective as of the date of the sale or conveyance, and the transferee of the leasehold interest shall become the lessee under the lease.

(5) A springing lease used in connection with a springing lease mortgage shall be enforceable notwithstanding the common law rules against perpetuities and unreasonable restraints on alienation or any other rule based on the uncertainty or remoteness of vesting of the leasehold interest. [P.L. 2003-97, §22.]

**§323. Notice of default prior to foreclosure.**

Not less than thirty (30) days prior to the filing of the pleading requesting foreclosure in the case of a judicial foreclosure or the giving of the notice of commencement of foreclosure in the case of a non-judicial foreclosure, written notice of default shall be served as provided in Section 311 of this Act. The notice shall be written in English and shall contain:

(1) the legal description of the property;

(2) the date and amount of the mortgage;

(3) a statement of the default, including the amount due on principal, interest, and other sums, stated separately, to the extent the default is monetary;

(4) a statement that if the amount due is not paid or the other defaults are not cured within thirty (30) days from the date of service, the mortgagor shall be in default and the mortgage may be foreclosed; and

(5) provided the note or mortgage so permit and the mortgagee so elects, a statement that the obligations shall be accelerated if the amount due is not paid or the other defaults are not cured within thirty (30) days from the date of service. If that period elapses without a full cure being effected, and unless otherwise expressly provided in the mortgage or agreed by the mortgagee, the indebtedness shall be automatically accelerated. [P.L. 2003-97, §23.]

**§324. Commencement and conduct of non-judicial foreclosure.**

(1) A non-judicial foreclosure shall be commenced by giving a notice of commencement of foreclosure.

(2) A notice of commencement shall be in English and shall contain:

(a) the legal description of the property;

(b) the date and amount of the mortgage;

(c) the recording data of the mortgage, if recorded;

(d) a statement of the continuing and any new default, including the amount due on principal, interest, and other sums, stated separately, to the extent the default is monetary. If the maturity of the principal has been accelerated, the statement shall include the amounts due both with and without such acceleration;

(e) the date on which and the method by which the notice of default prior to foreclosure was given to the mortgagor;

(f) a statement that the default identified in that notice of default has not all been cured; and

(g) a statement that non-judicial foreclosure is being commenced and that the mortgaged property may be sold if all defaults are not cured as provided in this Act.

(3) The notice shall be effective when it has been:

(a) served upon the mortgagor as provided in Section 312 of this Act;

(b) recorded with the Land Registration Authority; and

(c) mailed to the holder of any encumbrance on the property which is junior in priority to the mortgage and which the mortgagee intends to affect by the foreclosure. No such mailing shall be required with respect to any junior encumbrance holder for whom a mailing address is not provided of record or whose encumbrance was not recorded with the Land Registration Authority before the date on which the notice itself is recorded.

(4) A non-judicial foreclosure may be conducted by the mortgagee or any authorized agent of or attorney for the mortgagee.

(5) The mortgagor may commence an action seeking protection from the court if the mortgagor in good faith disputes the existence of the default or defaults upon which a non-judicial foreclosure is based or alleges any material failure to comply with the procedures applicable to a non-judicial foreclosure. For good cause shown, the court may partially or completely convert a non-judicial foreclosure into a judicial foreclosure. [P.L. 2003-97, §24.]

**§325. Commencement and conduct of judicial foreclosure.**

(1) A judicial action for the foreclosure of a mortgage shall be brought in the High Court. Service of summons shall be by the applicable statute and court rules.

(2) The complaint for foreclosure shall set forth:

(a) the date of execution of the mortgage;

(b) its assignments, if any;

(c) the name and address of the mortgagor;

(d) a description of the mortgaged property;

(e) a statement of the note or other obligation secured by the mortgage and the amount claimed to be unpaid thereon; and

(f) the names and addresses of all persons having or claiming a recorded interest in the property which is junior to the mortgage, all of whom shall be made defendants in the action.

(3) No person holding a conveyance from or under the mortgagor or having a lien on the mortgaged property, which conveyance or lien does not appear of record seven (7) days before the filing of the complaint for foreclosure, need be made a party to such action, and the judgment therein rendered, and the proceedings therein had, shall be conclusive against the person holding such unrecorded conveyance or lien as if that person had been a party to the action.

(4) If, upon trial in such action, the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest, costs, and attorneys' fees and expenses, and shall render judgment for the sum so found due and order that the same be paid into the court and that any non-monetary default be cured within ninety (90) days after the date of the order.

(5) If the order referred to in Subsection (4) of the Section is not complied with, the court shall order that the mortgaged property, or so much of it as may be necessary, be sold at a public place and by a person designated by the court. [P.L. 2003-97, §25.]

### **§326. Cure rights during foreclosure process.**

(1) A default may be cured at any time prior to the foreclosure sale. Payment shall be made to the mortgagee in the case of a non-judicial foreclosure or to the court in the case of a judicial foreclosure. To be effective, the cure must include payment of reasonable costs, including attorney's fees and expenses, incurred by the mortgagee. The cure must also include the entire amount of principal, if any, due by reason of acceleration of the debt unless:

(a) the cure is made within ninety (90) days after the effective date of the notice of commencement in the case of a non-judicial foreclosure or after the court order referred to in Section 325 (4) of this Act in the case of a judicial foreclosure; and

(b) no prior acceleration of the debt has been avoided and reinstatement of the debt permitted under this Section.

(2) In the event of a timely cure, the foreclosure shall be discontinued. If the debt was accelerated and the cure was timely and complete but for the portion of the principal due by reason of acceleration, as permitted under Subsection (1) of this Section, the obligations and mortgage shall be reinstated and remain in full force and effect as if no default had occurred.

(3) A cure may be effected by the mortgagor, any other person obligated on the debt, or the holder of any interest in the mortgaged property which is junior in priority to the mortgage. If the cure is effected by the holder of a junior interest, the holder shall have a lien on the mortgaged property for the cost of the cure, equal in priority to that of the junior interest. [P.L. 2003-97, §26.]

### **§327. Notice of foreclosure sale.**

(1) Before holding a foreclosure sale, a notice of sale shall be given as provided in this Section except as may otherwise be provided by the court in the case of a judicial foreclosure.

(2) A foreclosure sale may not be held until:

(a) the reinstatement period provided for in Section 326 (1) (a) of this Act has elapsed without a cure being effected;

(b) in the case of a judicial foreclosure, the court has ordered a sale; and

(c) twenty (20) days have elapsed after the notice of sale was properly given.



- (3) The notice of sale shall be in both English and Marshallese and shall contain:
- (a) the legal description of the property;
  - (b) the names and addresses of the mortgagor and mortgagee;
  - (c) the recording data of the mortgage, if recorded;
  - (d) the date, time, and place of sale;
  - (e) the name and address of the person conducting the sale; and
  - (f) a statement of the total amount of money due under the mortgage as of the date of notice and expected to be due as of the date of sale.
- (4) The notice of sale shall be effective when it has been:
- (a) served upon the mortgagor as provided in Section 312 of this Act;
  - (b) recorded in the Land Registration Authority Office;
  - (c) mailed to the holder of any encumbrance on the property which is junior in priority to the mortgage and which the mortgagee intends to affect by the foreclosure. No such mailing shall be required with respect to any junior encumbrance holder for whom a mailing address is not provided of record or whose encumbrance was not recorded with the Land Registration Authority at least seven (7) days before the date on which the notice itself is recorded;
  - (d) posted in the office of the local government where the property is located;
  - (e) posted on the property;
  - (f) published in a newspaper (if any) of general circulation on the island where the property is located at least once a week for two consecutive weeks; and
  - (g) announced on a radio station (if any) serving the atoll or island where the property is located on three separate days.
- (5) If it is impossible to hold the sale at the noticed time and place or if the mortgagee so requests in writing, the person conducting the sale may postpone the sale by making a public announcement at the time and place previously noticed for the sale. If the postponement is for more than fifteen (15) days, notice of the postponement shall also be given in the same manner as provided in Subsection (3) of this Section at least seven (7) days prior to the new sale date. [P.L. 2003-97, §27.]

**§328. Conduct of foreclosure sale.**

- (1) A foreclosure sale may be conducted by sealed bids or open auction as determined by the person conducting the sale or, in the case of a judicial foreclosure, by the court. The sale shall be for all cash, tendered promptly by the winning bidder upon announcement of the winner, except that the mortgagee may credit bid all or part of the amounts secured by the mortgage.
- (2) If the debt secured by the mortgage is not all due, the sale shall cease as soon as sufficient property has been sold to pay the amount due, with costs. As more money becomes due thereafter, more of the property may be sold as directed by the court, upon motion, in the case of a judicial foreclosure or by the mortgagee in the case of a non-judicial foreclosure. But if the property cannot be sold in portions without injury to the persons interested in the property, the whole shall be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is appropriate. [P.L. 2003-97, §27.]
- (3) After the sale and upon payment of the sale amount, the person conducting the sale shall execute, acknowledge, and deliver a good and sufficient deed, without warranty of title, to the purchaser.
- (4) The deed referred to in subsection (3) shall vest in the grantee all the right, title, and interest of the mortgagor in and to the property sold, at the time the mortgage was executed or

subsequently acquired, and shall be a bar to all claim, right, or equity of redemption in or to the property by:

- (a) in the case of a judicial foreclosure, the parties to the action;
  - (b) in the case of a non-judicial foreclosure, any person who received a mailed notice under Subsection 327 (4) (c) of this Act or to whom no mailed notice was required under the express terms of that Subsection;
  - (c) any person whose interest or claim thereof was not recorded with the Land Registration Authority at least seven (7) days before commencement of the foreclosure; and
  - (d) the heirs, personal representatives, successors, and assigns of any of the foregoing.
- [P.L. 2003-97, §28.]

**§329. Application of proceeds.**

The proceeds of a foreclosure sale shall be applied to the following items in the following order:

- (1) costs of sale;
- (2) costs of collection and foreclosure, including reasonable attorneys' fees and expenses;
- (3) other amounts due under the mortgage (excluding principal and interest);
- (4) interest due under the mortgage; and
- (5) principal due under the mortgage.

If there is any surplus, it shall be deposited with the court for distribution to the mortgagor or other person or persons entitled thereto, as ordered by the court. [P.L. 2003-97, §29.]

**§330. Deficiency judgment.**

If the proceeds of a foreclosure sale are insufficient to pay the entire debt, including costs, the court, upon motion (or upon commencement and hearing of a new action if none is then pending), shall enter a judgment against the mortgagor or other person personally liable for the debt for the balance remaining due to the mortgagee, upon which execution upon the assets of the judgment debtor shall be issued immediately if the balance is all due at the time of the rendition of the judgment. [P.L. 2003-97, §30.]

**§331. Vacation of sale.**

(1) Upon motion by an aggrieved person filed within sixty (60) days after the date of sale, the court may vacate a sale conducted pursuant to a non-judicial foreclosure and order a new sale upon a finding that there was fraud in the procurement of the foreclosure decree, the sale was improperly, unfairly, or unlawfully conducted, or the sale was otherwise so tainted by fraud that to allow it to stand would be inequitable.

(2) Except as provided in Subsection (1) of this Section, all foreclosure sales shall be final and not subject to further challenge. This is without prejudice to any right of an aggrieved person to recover damages on the grounds provided in Subsection (1) of this Section. [P.L. 2003-97, §31.]

**§332. No redemption right.**

There shall be no equity or right of redemption in connection with any foreclosure sale under this Act. [P.L. 2003-97, §32.]

**§333. Injury to property restrained.**

(1) The court by injunction, for good cause shown, may restrain any person in possession of the property from doing anything injurious to the property during the existence of the mortgage until the completion of foreclosure.

(2) A receiver may be appointed where it appears that the mortgaged property is in danger of substantial waste, the income therefrom is in danger of being lost, or the property is or may become insufficient to discharge the debt which it secures, and that affirmative action is needed to prevent such occurrences. [P.L. 2003-97, §33.]

**§334. Discharge of stale mortgage.**

Every mortgage which has not been renewed or extended of record within fifteen (15) years after its due date, or within twenty (20) years after recording of the mortgage if no due date is shown in the mortgage, shall be discharged of record by an order of a the court upon application of any interested person, with notice to the mortgagee then shown of record. The order shall be recorded with the Land Registration Authority. No such discharge may be ordered while a foreclosure is pending. [P.L. 2003-97, §34.]

**§335. Improvements by mortgagee prior to sale.**

After commencement of a foreclosure, the mortgagee may apply to the court to be allowed to make repairs or to maintain the property. If such an application is granted for good cause shown, the mortgagee may make such repairs or maintain the property as allowed by the court up to the time of sale. All expenditures shall be a cost of the sale which are recoverable by the mortgagee. [P.L. 2003-97, §35.]

**§336. Foreign citizens as mortgagees.**

A non-citizen of the Republic may be a mortgagee under this Act. A non-citizen may also be the purchaser at a foreclosure sale, but only if and to the extent that the interest in property being sold (for example, a leasehold) is one which a non-citizen may legally own in the Republic. Under the provisions of this Act, a mortgage creates a lien on the land and does not pass title to the mortgagee. [P.L. 2003-97, §36.]

**§337. Recovery of attorneys' fees.**

Where a mortgage or this Act provides for a party to recover that party's attorneys' fees and expenses from another party, and except as may be further limited in the mortgage, the only limit on the amounts so recoverable shall be their reasonableness in the circumstances, without reference to any legally imposed maximum stated in absolute or percentage terms. [P.L. 2003-97, §37.]

**§338. Severability.**

Whenever possible, this mortgage Act shall be interpreted in such a manner as to give it full force and effect as a binding obligation upon the mortgagor to the mortgagee. If any provision of this Act or its application to any person or circumstance is ever held invalid or unenforceable, the remainder of the Act shall not be affected thereby and there shall be substituted a valid and enforceable provision as similar to the invalid or unenforceable provision as may be possible. [P.L. 2003-97, §38.]

**§339. Prospective effect.**

(1) The provisions of this Act shall have prospective effect only and shall not apply to mortgages or other such instruments entered into before the effective date of this Act.

(2) Any mortgage or deed of trust law superseded by this Act shall nevertheless continue in effect with respect to any mortgage or other such instrument which was governed by that law before the effective date of this Act.

(3) Notwithstanding Subsection (1) of this Section, the provisions of this Act shall apply to any mortgage or other such instrument if the parties thereto so elect in a signed and recorded document. [P.L 2003-97, §39.]

**§340. Repeal.**

The Real Property Mortgage Act 1987 is hereby repealed in its entirety. [P.L 2003-97, §40.]

**§341. Effective Date.**

This Act shall take effect on a date to be decided by the Cabinet and publicly notified by circular, newspaper and radio notices, after certification, in accordance with Article IV Section 21 of the Constitution and the Rules and Procedures of the Nitijela.