

## DRAFT CSC, Title 24. Land Management

### CHAPTER 15 Mortgages

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#### **§ 1701. Purpose.**

The purpose of this Aet Chapter is to establish a system of mortgage law in the State of Truk Chuuk which will induce lenders to make secured commercial and residential loans, while at the same time insuring that citizens of the Federated States of Micronesia who are residents of the State of Truk Chuuk and who executed mortgages will have full comprehension of the nature and consequences thereof. All provisions of this Aet Chapter shall be construed in such manner as to best effectuate its purpose as set out herein.

**Source:** TSL 4-91, § 1, modified.

**Editor's note:** TSL 4-91 that created this Chapter was signed into law by the Governor on November 10, 1981.

#### **§ 1702. Effect of enactment of this Aet Chapter.**

In the event of conflict between the provisions of this Aet Chapter and those of any other state law or municipal ordinance, except for the provisions of any deed of trust legislation which is now or may be enacted, the provisions of this Aet Chapter shall control in so far as they concern the rights and obligations arising from, the formalities necessary for, and the procedures connected with, mortgages, foreclosures, foreclosure sales, redemptions, or any aspect thereof, and all actions based thereon.

**Source:** TSL 4-91, § 2, as amended by TSL 6-45, § 1, modified.

### **§ 1703. Definitions.**

As used in this Act Chapter, unless it is otherwise provided or the context requires a different construction, application, or meaning:

- (1) "Default" is a failure of an obligor to perform an act he is bound to perform.
- (2) "Encumbrance" is a non-fee interest in or charge upon real property.
- (3) "Improvement" is any building or structure constructed, or any artificial condition maintained, upon real property.
- (4) "Lien" is a charge imposed on some mode upon specific property by which it is made the security for the performance of an act.
- (5) "Mortgage" is a contract in which real property is made the security for the performance of an act, usually the payment of a debt without the transfer of title.
- (6) "Mortgagee" is one that takes or receives a mortgage. This term shall also, where appropriate refer to the mortgagee's heirs, personal representative, successors, and assigns.
- (7) "Mortgagor" is one who having all or some part of title to property, by written instrument pledges that property as security for a debt. This term shall also where appropriate refer to the mortgagor's heirs, personal representative, successors, and assigns.
- (8) "Property" means any interest in real property which is capable of being transferred.

**Source:** TSL 4-91, § 3.

**Editor's note:** Definitions put into alphabetical order and renumbered where appropriate.

### **§ 1704. Right to possession.**

The mortgagee is not entitled to possession of a mortgaged property unless the mortgage expressly grants a right of possession. However, after the execution of a mortgage, the mortgagor may agree to deliver possession to the mortgagee without additional consideration.

**Source:** TSL 4-91, § 4.

### **§ 1705. Security not to be impaired.**

No mortgagor shall do any act which will impair the mortgagee's security without the express written permission of the mortgagee.

**Source:** TSL 4-91, § 5.

### **§ 1706. Property mortgageable.**

Any property may be mortgaged including homestead property for which a deed of conveyance has been issued pursuant to Title 67 of the Trust Territory Code, and properly recorded. The exemption set forth in 8 TTC 61(3) shall not be applicable to any property which is mortgaged and properly recorded.

**Source:** TSL 4-91, § 6.

### **§ 1707. Heirs and devisees take subject to mortgage.**

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

his estate is to satisfy the mortgage. Unless the mortgage is so satisfied out of the decedent's estate, the heir or devisee takes the property subject to the mortgage.

**Source:** TSL 4-91, § 7.

### **§ 1708. Transfers made as security deemed mortgages.**

Every transfer or an interest in property, made only as a security for the performance of another act, and every transfer or conveyance of any property be it a deed or trust or otherwise, executed and delivered to secure performance of another act, shall be deemed a mortgage.

**Source:** TSL 4-91, § 8.

### **§ 1709. Necessity of writing; acknowledgment.**

A mortgage shall be created, amended, renewed, or extended only by writing in English and in Trukese Chuukese language. All mortgage instruments shall contain a clause conspicuously located, notifying the mortgagor:

(1) That the English document shall be the sole operative version. An error or errors in the translated version shall not affect the legal relationship between the parties unless it is proved that the error was willfully or recklessly caused by the party to be charged; and

(2) That the mortgage is a binding legal instrument and that it is recommended that the mortgagor have the instrument reviewed by an attorney.

**Source:** TSL 4-91, § 9.

### **§ 1710. Requisites for recording.**

(1) No mortgage shall be received (1) for recordation unless it is executed in accordance with the requirements of Section 1709 and 1710 hereof and contains:

- (a) post office addresses of the mortgagor and mortgagee;
- (b) the legal description of the real property affected;
- (c) principal amount of the secured indebtedness;
- (d) rate of interest thereon;
- (e) the time and place of repayment, and maturity date.

(2) All mortgages, amendments, renewals, and extensions or mortgages shall be acknowledged or proved, as provided in this ~~Act~~ Chapter and recorded with the Clerk of Courts, and/or with the Senior Commissioner or Registrar, as required by Section 201 of Title 57, and Section 119 of Title 67 of the Trust Territory Code. For purposes of this ~~Act~~ Chapter, the proof or acknowledgment of an instrument affecting title to or any interest in real property may be made before a judge of the Federated States of Micronesia, ~~a judge of the high court~~, a judge of the State Court, a judge of a Community Court, a Land Commissioner, the Clerk of Courts of the State or the State Land Title Officer, or any subordinate of the above duly authorized to act in the name of said official. Nothing in this section shall preclude acknowledgment by a notary public duly authorized to acknowledge instruments in any state or territory of the United States or other foreign jurisdiction; provided, however, that said notary public complies with the laws of that jurisdiction.

**Source:** TSL 4-91, § 10, modified.

### **§ 1711. Effect of failure to record.**

In the event of failure to properly record a mortgage the provisions of 57 TTC Section 202 shall apply.

**Source:** TSL 4-91, § 11.

**§ 1712. Instruments made with intent to defraud.**

Any instrument affecting an estate in real property, including every charge upon real property, or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof, or encumbrances thereon is hereby declared to void as against every purchaser or encumbrancer for value, of the same property or the rent or profits thereof.

**Source:** TSL 4-91, § 12.

**§ 1713. Service of notice; designated personal representative.**

(1) All notices required by this ~~Act~~ Chapter must be in writing and notwithstanding any other provision of this Section, shall be sufficient if received by the mortgagor. The mortgagor shall designate in the mortgage instrument, the name and post office address of a personal representative for the service of notice in the event the mortgagor cannot, after diligent search be founds within the State of ~~Truk Chuuk~~ Truk Chuuk.

(2) The name and address of the designated personal representative may be changed from time to time upon the request of the mortgagor, by an amendment to the mortgage.

(3) A United States Postal Service Registry Return Receipt showing that the envelope containing the notice has been received by the mortgagor, or his designated personal representative shall be prima facie evidence that proper notice has been given. A return by a police officer, ~~Officer of the High Court~~, or any other person authorized by the Court to serve such notice, stating by affidavit that notice has been delivered personally to the mortgagor, or if he cannot be located within the ~~District State~~ State of Truk Chuuk, to his personal representative, shall be prima facie evidence that proper notice has been delivered.

(4) When service cannot be made in accordance with the provisions of Subsection (3) of this Section, the notice shall be filed with the Clerk of Courts who shall cause the notice to be announced on radio within the State at least once per week for four ~~(4)~~ weeks and shall further cause said notice to be posted in a prominent public place on the island upon which the land is located for 30 ~~thirty (30)~~ consecutive days, which shall be prima facie evidence that proper notice has been given. The Clerk of Courts may collect a reasonable charge for the cost of such publication. Service shall be considered effected 30 ~~thirty (30)~~ days after the first publication, broadcast, or posting, whichever is last in time.

(5) In the event there is more than one mortgagor, proper notice served upon any one shall constitute service upon all of said mortgagors.

**Source:** TSL 4-91, § 13, modified.

**§ 1714. Assignments, subordinations, and waivers.**

Nothing in this ~~act~~ Chapter shall preclude the assignment, subordination, or waiver of a mortgage. The recordation of any assignment, subordination, or waiver shall operate as constructive notice to all persons from the date and time of its recordation.

**Source:** TSL 4-91, § 14, modified.

**§ 1715. Record of assignment not notice to mortgagor; Form of notice tomortgagor.**

When a mortgage is executed as security for money due or to become due on a promissory note, bond, or other instrument, the recordation of the assignment of the mortgage is not of itself sufficient notice to the mortgagor, so as to invalidate any payment made by the mortgagor, to the person holding

such note, bond, or other instrument. At the time of the assignment, a notice shall be served upon the mortgagor pursuant to the provisions of Section 1713 of this Aet Chapter. The notice shall be in substantially the following form:

"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) \_\_\_\_\_."

**Source:** TSL 4-91, § 15, modified.

#### **§ 1716. 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.

**Source:** TSL 4-91, § 16.

#### **§ 1717. Certificate of discharge required.**

When any mortgage has been satisfied, the mortgagee must execute, acknowledge, and deliver to the mortgagor a certificate of the discharge thereof, so as to entitle such certificate to be recorded. Any mortgagee, who after demand by the mortgagor, for a period of 30 ~~thirty (30)~~ days fails or refuses to deliver a certificate of discharge shall be liable for all damages which such mortgagor may sustain by reason of such refusal and shall also forfeit to the mortgagor the sum of three-hundred dollars (\$300.00). Upon satisfaction of the mortgage, the mortgagee shall also deliver to the mortgagor, the mortgage and the note so paid or satisfied with, if requested, satisfaction of the mortgage and note acknowledged on the margin thereof.

**Source:** TSL 4-91, § 17.

#### **§ 1718. Waiver by borrower of statutory rights; Validity.**

Any express agreement made or entered into by a borrower at the time of or in connection with the making or renewing of any loan secured by a mortgage or other instrument creating a lien on property, whereby the borrower agrees to waive the rights or privileges conferred upon him by this aet Chapter shall be void and of no effect.

**Source:** TSL 4-91, § 18, modified.

#### **§ 1719. No private power of sale conferred by mortgage.**

No mortgage may be foreclosed other than by the judicial remedies provided by this Aet Chapter except for mortgages created pursuant to deed of trust legislation, with which may be foreclosed by private sale as provided in such deed of trust legislation.

**Source:** TSL 4-91, § 19, as amended by TSL 6-45, § 2, modified.

**Cross-reference:** The Deed of Trust Act of 1988 (TSL 6-46) is codified in [Chapter 17](#) of this title.

#### **§ 1720. Acceleration of principal.**

No acceleration of unpaid principal of the underlying obligation shall be effective until 30 ~~thirty (30)~~ days after receipt of the notice of default provided for in Section 1722 of this Chapter.

**Source:** TSL 4-91, § 20, modified.

#### **§ 1721. Mortgagee's remedies in the event of default.**

In the event of default by the mortgagor in the performance of his obligations under the mortgage or note or any 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 a common count or counts for payment of money by the mortgagor, guarantor, or other parties obligated thereunder. In the event that 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 judgement shall act to discharge the mortgage;

(2) The mortgagee may, if so empowered by the terms of the note or mortgage, bring an action to foreclose or satisfy the mortgage in accordance with the provisions of this ~~act~~ Chapter.

**Source:** TSL 4-91, § 21, modified.

### **§ 1722. Notice of default.**

Not less than 30 ~~thirty (30)~~ days prior to the commencement of any action or proceeding seeking foreclosure of a mortgage, written notice of default shall be served as provided in Section 1713 of this ~~Act~~ Chapter. The notice shall be written in both the English and ~~Trukese~~ in the Chuukese languages and shall contain the following:

(1) a description of the real property;

(2) the date and amount of the mortgage;

(3) the amount due for principal and interest, separately stated; and

(4) a statement that if the amount due is not paid within 30 ~~thirty (30)~~ days from the date of service, the mortgagor shall be in default and proceedings shall be commenced to foreclose the mortgage.

**Source:** TSL 4-91, § 22, modified.

### **§ 1723. Request for copies of a notice of default prior to foreclosure.**

(1) ~~Request; Recording; Contents; Form~~. Any person desiring to receive a copy of a notice of default prior to foreclosure may, at any time subsequent to recordation of such mortgage and prior to service of default as provided under Section 1713 ~~of this Chapter~~ hereof, cause to be filed for recording in the Office of the Clerk of Courts of the State a request for a copy of any such notice of default prior to foreclosure. This request shall be signed and acknowledged by the person making the request, specifying the name and address of the person to whom the notice is to be mailed. It shall also identify the mortgage by stating the names of the parties thereto, the date of recordation thereof, and such other identification as may reasonably be required by the Clerk of Courts. The request for notice shall be in substantially the following form:

"In accordance with Section 1723 of the ~~Truk~~ Chuuk State Mortgage Act, request is hereby made that a copy of any notice of default prior to foreclosure of the mortgage recorded \_\_\_\_\_ (date) \_\_\_\_\_, 19 20\_\_\_\_, executed by \_\_\_\_\_ (name) \_\_\_\_\_ as mortgagor in which \_\_\_\_\_ (name) \_\_\_\_\_ is named as mortgagee be mailed to \_\_\_\_\_ (name) \_\_\_\_\_ at \_\_\_\_\_.

Name

Address

Signature: \_\_\_\_\_ ."

(2) Clerk of court's duties. Upon filing for recording such request, the Clerk of Courts shall index with the mortgage, the names of persons requesting copies.

(3) Mailing notice. The mortgagee shall within ten (20 10) days following service of the notice of default, deposit or cause to be deposited in the mail in an envelope, registered, and with air mail postage prepaid if the addressee lives outside the State, otherwise first class postage prepaid, containing a copy of such notice with the date of service on the mortgagor shown thereon, addressed to each person whose name and address is set forth in a duly recorded request therefor.

**Source:** TSL 4-91, § 23, modified.

**§ 1724. Cure of default; Payment of arrearages; Cost and fees; Effect upon acceleration.**

Whenever there has been a failure by the mortgagor to pay obligations in accordance with the terms of a mortgage, including circumstances when all or a portion of the principal sum secured by the mortgage has, prior to the fixed maturity date become due or been declared due by reason of his default, the mortgagor or his successor in interest in the mortgaged property or any part thereof, or any other person having a subordinate lien or encumbrance therein may at any time prior to the foreclosure sale, pay to the mortgagee or successor in interest, the entire amount then due under the terms of such mortgage, and reasonable attorney's fees actually incurred, but if the complaint for foreclosure has not yet been filed, then such attorneys fees shall not exceed three hundred dollars (\$300.00), or one-half of one percent of the entire unpaid principal sum secured (whichever is greater), other than such portion of principal as would not then be due had no default occurred. Such payment shall cure the default, and all proceedings therefore instituted shall be dismissed or discontinued. The obligations and mortgage shall then be reinstated and remain in full force and effect as if no default occurred, provided, however, that such payment shall not prevent a valid acceleration of the principal due if a previous valid acceleration of principal caused by a prior default of the mortgagor, which resulted in a filing of complaint in foreclosure, by a mortgagee, had been canceled by virtue of a payment made pursuant to the terms of this Section.

**Source:** TSL 4-91, § 24.

**§ 1725. Actions for the foreclosure of mortgages.**

(1) Actions for the foreclosure of mortgages; where brought. All judicial actions for the foreclosure of a mortgage shall be brought in the Trial Division of the ~~High Court~~ Supreme Court of the Federated States of Micronesia or an appropriate State Court.

(2) Service of summons. Service of summons in an action of foreclosure shall be made in accordance with the applicable provisions of ~~Title VI of the Trust Territory Code,~~ and the ~~Trust Territory~~ rules of civil procedure of the court where the action is brought.

(3) Complaint in an action for foreclosure of a mortgage. The complaint for foreclosure shall set forth the date and the due execution of the mortgage; its assignments, if any; the name and residence of the mortgagor; a description of the mortgaged property; a statement of the date of the note or other obligation secured by the mortgage, and the amount claimed to be unpaid thereon; and the names and residences of all persons having or claiming an interest in the property subordinate in right to that of a holder of the mortgage, all of whom shall be made defendants in the action. No person holding a conveyance from or under the mortgagor of property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record at the time of commencement of the action, need be made a party to such action, and the judgment therein rendered, and the proceedings therein had, shall be conclusive against the party holding such unrecorded conveyance or lien if he had been a part to the action.

(4) Trial and judgment in foreclosure suits. 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 attorney's fees, and shall render judgment for the sum so found due, and order that the same be paid into the court within a period of three (3) months from and after the date on which the order was made.

(5) Sales of the mortgaged property. When the mortgagor, after being directed to do so, as provided in subsection (4) above, fails to pay the principal, interest, costs, and attorney's fees at the time directed in the order, the court shall order the property (or so much thereof as may be necessary) to be sold; but such sale shall not effect the rights of persons holding prior recorded encumbrances upon the same estate or part thereof. Any sale of property under a judgment of foreclosure shall be made by ~~some~~ a person appointed by the court for that purpose and must be made at a public place to be designated by the court, upon the notice and in the manner provided by law governing sales under execution with such additional requirements including, but not limited to the extension of the term of notice, and requirement of announcement in local newspapers, radio or television, as may be prescribed by the court to attempt to assure a reasonable return from the sale. Nothing in this ~~Act~~ Chapter shall deny to the mortgagee the right to purchase property at a foreclosure sale, provided however, that said mortgagee is otherwise eligible to own land within the State.

(6) Certificate of sale; deed effect. Whenever any real property shall be sold under judgment of foreclosure pursuant to the provisions of this ~~Act~~ Chapter, the person making the sale must give the purchaser a certificate of sale and properly record a duplicate thereof. The certificate shall state the date of judgment under which the sale was made, the names of the parties, a particular description of the real property sold, the price bid for each ~~District State~~ lot or parcel. Such deed shall vest in the grantee all of the rights, title, and interest of the mortgagor in and to the property sold, at the same time the mortgage was executed, or subsequently acquired by him.

(7) Application of proceeds. The proceeds of every foreclosure sale must be applied first to the costs of sale, to the costs including attorney's fees adjudged by the court to be due in the judgment of foreclosure, and then to the debt. If there is any surplus, it must be brought to court for the use of the defendant or of the person entitled thereto, subject to the order of the court.

(8) Judgment for balance after sale of property. Upon the sale of any real property, under a decree for a sale to satisfy a mortgage or other encumbrance thereon, if there be a balance due to the plaintiff after applying the proceeds of the sale, the court, upon motion, shall give a decree against the defendant for any such balance for which, by the record of the case, he may be personally liable to the plaintiff, upon which execution may issue immediately if the balance is all due at the time of the rendition of the decree; otherwise the plaintiff shall be entitled to execution at such time as the balance remaining would have become due by the terms of the original contract, which time shall be stated in the decree.

(9) Disposition of proceeds in case the debt is not all due. If the debt which the mortgage secured is not all due, as soon as sufficient property has been sold to pay the amount due, with costs, the sale shall cease; and afterwards, as often as more becomes due for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions without injury to the parties, the whole shall be ordered to be sold the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

(10) Vacating sale. Upon motion by an aggrieved party filed within one year of the date of sale, the court may vacate a foreclosure sale and order a new sale upon a finding that there has been fraud in the procurement of the foreclosure decree, where the sale has been improperly, unfairly, or unlawfully conducted, or when the sale is so tainted by fraud that to allow it to stand would be inequitable.

**Source:** TSL 6-45, § 25, modified.

### **§ 1726. Discharge of real estate mortgage not renewed or extended or recorded.**

Every mortgage which has not been renewed or extended or recorded within 15 fifteen ~~(15)~~ years after its due date, or when due date is shown in the mortgage then within 20 twenty ~~20~~ years after the

recording of such mortgage, shall be discharged of record by order of a judge of the Trial Division of the ~~High Court~~ Supreme Court of the Federated States of Micronesia or an appropriate state court upon application of any interested person and with notice to the proper interested parties. Such application and order shall be filed in the office of the Clerk of Courts. The fee for such application and order shall be the same as that charged for filing civil actions.

**Source:** TSL 6-45, § 26, modified.

#### **§ 1727. Legal tender.**

Section 1201 of Title 77 of the Trust Territory Code to the contrary notwithstanding, a mortgagee may require all mortgage payments to be made in the coins and currencies of the United States, and all purchases of land at foreclosure sales and all redemption as provided in this ~~Aet~~ Chapter shall be made in the coin and currency of the United States.

**Source:** TSL 6-45, § 27, modified.

#### **§ 1728. Foreign citizens as mortgagees.**

A non-citizen of the Federated States of Micronesia ~~trust territory~~ may be a mortgagee under the provisions of this ~~Aet~~ Chapter. However, no section of this ~~aet~~ Chapter shall be construed to mean that a non-citizen mortgagee is entitled at any time to hold title to real property in the State. Under the provisions of this ~~Aet~~ Chapter, mortgage creates a lien on the land, but does not pass title to the mortgagee.

**Source:** TSL 6-45, § 28, modified.

#### **§ 1729. Improvements by mortgagee prior to sale.**

After the commencement of a suit ~~for~~ to foreclosure, the mortgagee may make a motion to the court to be allowed to make repairs or to maintain the property. If such motion is granted for good cause shown, the mortgagee shall be allowed to make such repairs or to maintain the property as allowed by the court up to the time of such sale. All expenditures shall be part of the cost of the sale which are recoverable by the mortgagee.

**Source:** TSL 6-45, § 29, modified.