

DRAFT CSC, Title 24. Land Management

CHAPTER 17 Deeds of Trust

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§ 1801. Short title.

This Act Chapter may be cited as the Deed of Trust Act of 1988.

Source: TSL 6-46, § 1, modified.

Editor's note: TSL 6-46 that created this Chapter was signed into law by the Governor on August 12, 1988.

§ 1802. Purpose.

To provide for a satisfactory method of securing the financing of real estate projects and transactions by the United States of America acting through the Farmers Home Administration or other federal agencies, including but not limited to the Department of Housing and Urban Development and Veterans Administration.

Source: TSL 6-46, § 2, as amended by TSL 6-59, § 1.

Editor's note: TSL 6-59 that amended Sections 1802, 1803, 1804, and 1809 of this Chapter was signed into law by the Governor on March 9, 1989.

§ 1803. Deed of trust defined.

A deed of trust is a conveyance of the fee simple, a freehold, a leasehold interest in trust to secure an indebtedness or charge against real property conveyed, with or without power of sale, vested in the trustee to sell according to the terms as set forth in the instrument. A deed of trust complying with the terms and conditions of this Act Chapter shall be deemed as a lien or encumbrance upon real property.

Source: TSL 6-46, § 3, as amended by TSL 6-59, § 2, modified.

§ 1804. Definitions.

In this Aet Chapter, unless the context otherwise requires:

(a) (1) "Beneficiary" means the United States of America acting through the Farmers Home Administration or any other federal agency, including but not limited to the Department of Housing and Urban Development, or Veterans Administration, who is the creditor to whom the trustor's obligation is owed.

(b) (2) "Recordation" or "filing of record" means the proper filing of an instrument with the Land Commission Office, pursuant to the laws and statutes governing transfers of interest in land.

(c) (3) "Trustee" means the ~~Trust~~ Chuuk Housing Authority or other legal entity to whom the trustor has conveyed title to property to be held by the trustee according to the terms and conditions of the deed of trust instrument.

(d) (4) "Trustor" means the debtor under the deed of trust or owner of the fee simple, freehold, or leasehold interest, who conveys the title of real property to a trustee under the terms of the deed of trust instrument.

Source: TSL 6-46, § 4, as amended by TSL 6-59, § 3, modified.

§ 1805. Validity against subsequent purchases; Recording required.

A deed of trust and any instruments concerning the same shall not be valid against subsequent purchasers and persons taking an interest in the real estate in good faith and for valuable consideration without notice of the deed of trust or an instrument in the same, unless the deed of trust and any instrument relating to it is first duly recorded.

Source: TSL 6-46, § 5.

§ 1806. No exemption from execution.

Any property conveyed hereunder shall not be exempt from execution as may be provided by any statute concerning any exemptions and homesteads, but such execution shall not affect the priority of the lien evidenced by the deed of trust.

Source: TSL 6-46, § 6.

§ 1807. Foreclosure by judicial or non-judicial process.

(a) (1) The deed of trust instrument may provide for foreclosure proceedings by judicial and non-judicial process.

(b) (2) If foreclosure is by judicial process then the foreclosure proceedings shall be brought in the Trial Division of the ~~Trust~~ Chuuk State Supreme Court. Any judicial action for the foreclosure of a deed of trust shall be similar to and based on the same proceedings as the Real Estate Mortgage Law, TSL 4-91, except that no right of redemption shall exist under the deed of trust.

(c) (3) If foreclosure is by non-judicial process, then such may be by private power of sale as set forth in this Aet Chapter. The trustee shall not have any right of redemption after such sale.

Source: TSL 6-46, § 7, modified.

§ 1808. Foreclosure by private power of sale.

Non-judicial foreclosure of a deed of trust by the exercise of private power of sale shall be in accordance with the provisions of this Aet Chapter.

(a) (1) Power of sale. A power of sale means a private power of sale conferred upon the trustee to sell the property at public auction after the breach of an obligation for which the property is transferred.

~~(b)~~ (2) Reconsideration and notice. The power of sale may not be exercised until:

(i) ~~(a)~~ A notice is sent by the trustee or beneficiary to the trustor setting forth the default, the amounts owed and for what period, the method and amount to cure the default, the time in which to cure the default (which shall not be less than 30 days after the date of the notice sent to the trustor), and the right to sell the property by power of sale and any other remedy which may be taken by the trustee if the default is not cured in the method, manner, date, and time as set forth in the notice.

(ii) ~~(b)~~ After the lapse of 30 days as set forth in subsection ~~division~~ (a i) of this Section, if the default has not been cured, then the trustee shall give to the trustor at least 30 days notice of public sale of the property, stating the date, time, and place of the sale.

(iii) ~~(c)~~ Within 10 days after notice has been sent to the trustor as set forth in subdivision ~~(b ii)~~ of this Section, the trustee or beneficiary shall file of record a notice of default, identifying the deed of trust by stating the names of the trustor, trustee, and beneficiaries, and the description of property being affected, and setting forth the nature of the breach and the right to sell the property by power of sale and any other remedies, as set forth in the notice to the trustor, and the date, time, and place of sale.

Source: TSL 6-46, § 8, modified.

§ 1809. Power of sale; Reinstatement.

~~(a)~~ (1) The trustor shall have one right of reinstatement.

~~(b)~~ (2) At any time prior to the date of sale, the trustor or any other person having a subordinate lien or encumbrance on the property may pay to the trustee the entire installment amounts then due under the terms of the note and deed of trust up to the date of sale and other costs, such amount being due and payable as though no acceleration, if any, of the principal due had accrued.

~~(c)~~ (3) This payment shall cure the default, the sale of proceedings shall be discontinued, and the obligations of the trustor under the deed of trust shall then be reinstated and remain in full force, and such right of reinstatement shall have no effect on the right of the trustee or beneficiary in the future to accelerate the debt due to the trustor's further or future default.

Source: TSL 6-46, § 9, as amended by TSL 6-59, § 4, modified.

§ 1810. Power of sale; Notice.

Any required notice is deemed delivered if sent by registered or certified mail with proper postage thereon, to the trustor or the trustor's successor in interest, at the address set forth in the deed of trust instrument, or if personally delivered to the trustor or his or her successor in interest, or to the trustor's agent as may be designated in the deed of trust instrument.

Source: TSL 6-46, § 10.

§ 1811. Power of sale; Publication.

Prior to the date of sale, the trustee shall:

~~(a)~~ (1) Publish a notice of sale by power of sale at least once a week for three weeks prior to the date of sale, in a newspaper of general circulation in the FSM;

~~(b)~~ (2) Post such notice for three ~~weeks~~ (2) prior to the date of the sale in three public places in the community or ~~district~~ municipality where the property is to be sold; and

(e) (3) Post a copy of the notice in a conspicuous place on the property to be sold, at least 20 days prior to the date of the sale; or

(d) (4) Put out a public radio announcement concerning the sale at least once a day everyday for three weeks before the date of sale.

Source: TSL 6-46, § 11, modified.

§ 1812. Postponement of public sale.

The trustee, at his discretion, may postpone the public sale by making a public declaration at the time and place of the sale. If the postponement is for more than 10 days from the date of sale, then the trustee shall, within 10 days after the date of sale as postponed:

(a) (1) Publish a notice of the postponement, with a new date of sale at least once in some newspaper of general circulation in the FSM;

(b) (2) Post the notice in three public places in the community where the property is to be sold;

(c) (3) Post a copy of the notice in a conspicuous place on the property to be sold; and

(d) (4) File a notice of postponement with the Recorder's Office.

Source: TSL 6-46, § 12, modified.

§ 1813. Power of sale; Conveyance by trustee; Proceeds; Deficiency.

(a) (1) The trustee upon such public sale pursuant to this ~~Aet~~ Chapter shall make, without warranty, and execute after due payment is made, a deed to the purchaser or purchasers of the property conveying all title and interest of the trustee and trustor in the property.

(b) (2) The proceeds of sale shall first be applied to the expenses of sale, together with the reasonable expenses of the trust, including attorney's fees; then to interest owed on the debt secured by the deed of trust; then to the unpaid principal balance owed on that debt, including any advances made by the beneficiary; and then to any other lienholders of record, in accordance with their lien priority. Any balance or surplus of such proceeds of sale shall then be applied to any other interest or principal indebtedness owed to the beneficiary by the trustor. Any remaining balance of the proceeds of sale shall be paid to the trustor, his heirs, executors, administrators or assigns.

(c) (3) If there are insufficient proceeds from the sale to satisfy all amounts due to the beneficiary under the deed of trust instruments, then the trustee shall notify the beneficiary and make up the deficiency to the beneficiary. Upon acknowledgment by the beneficiary that such payment has been made and the deficiencies satisfied, the beneficiary shall assign all of its rights and interest in the deed of trust instrument that is subject to foreclosure to the trustee. Upon payment by the trustee of all deficiencies incurred pursuant to a deed of trust instrument the trustor shall be liable to the trustee for all such deficient amounts, the expenses of sale, the expenses of the trust, reasonable attorney's fees, and the interest and principal due. The trustee may bring an action against the trustor for the recovery of such deficient amounts paid by the trustee to the beneficiary and all other costs incident thereto. Nothing herein shall prevent the trustee from purchasing the property at the foreclosure sale, as provided in this ~~Aet~~ Chapter.

Source: TSL 6-46, § 13, as amended by TSL 6-90, § 1, modified.

Editor's note: TSL 6-90 that amended this Section was signed into law by the Governor on May 4, 1990.

§ 1814. Recitals.

A recital in a deed, executed pursuant to the power of sale regarding the filing of notice , personal

advice and mailing of copies of the notice of default, is prima facie evidence of compliance with the requirements of this Aet Chapter and shall be conclusive evidence thereof in favor of bonafide purchasers for value and without notice.

Source: TSL 6-46, § 14, modified.

§ 1815. Power of sale; Redemption rights by trustor; Purchase by trustee.

(a) (1) A sale made pursuant to this Aet Chapter by the exercise of the private power of sale shall divest the trustor of any equity or right of redemption in the property.

(b) (2) The trustee may be the purchaser at any public sale provided that there are no other purchasers at the public sale, or that the trustee is the highest bidder at the sale.

Source: TSL 6-46, § 15, modified.

§ 1816. Duties of trustee.

(a) (1) The trustee shall be in all respects a fiduciary with respect to the property, for the benefit of the beneficiary, and shall be governed by the terms and conditions of the deed of trust instrument.

(b) (2) The duties of the trustee shall be set forth in the deed of trust instrument, provided the terms and conditions are not in conflict with the provisions of this Aet Chapter. The duties of the trustee shall include, but not be limited to, establishing and maintaining a Loan Guarantee Escrow Account (the "Account") in an initial amount of \$200,000. The Account shall be separate from other State accounts. Interest earned on the Account shall be redeposited into the Account. Funds from the Account are to be used for the sole purpose of servicing loans made by the beneficiary in the event the trustor defaults on the obligations under the terms of the promissory note, and the deed of trust security instrument securing the note and for which note is guaranteed by the Account through the trustee.

(c) (3) The trustee shall promulgate rules and regulations, subject to the approval by the Farmer's Home Administration as beneficiary, and consistent with this Aet Chapter and the Memorandum, governing the use and administration of funds in the Account, and any other matters necessary for the full and proper execution of this Aet Chapter.

Source: TSL 6-46, § 16, as amended by TSL 6-90, § 2, modified.

Editor's note: TSL 6-90 that amended this Section was signed into law by the Governor on May 4, 1990.

§ 1817. Duties of trustor.

The trustor shall not cause any waste or the diminishing of the value of the property which would substantially impair the beneficiary's security.

Source: TSL 6-46, § 17.

§ 1818. Discharge or release of deed of trust.

A deed of trust shall be discharged or released by recording an instrument signed by the trustee, and properly acknowledged, stating that the debt secured by deed of trust has been fully paid and satisfied. Upon such discharge, the trustee shall execute a deed conveying full title to the trustor.

Source: TSL 6-46, § 18.

§ 1819. Appointment of receiver.

Any time after the recordation of a notice of default, the trustee or beneficiary may apply to the ~~Trust~~ Chuk State Supreme Court, Trial Division, for the appointment of a receiver for the property. A receiver shall be appointed where it appears that the real property subject to the deed of trust is in

danger of substantial waste, or that the income from it is in danger of being lost.

Source: TSL 6-46, § 19, modified.

§ 1820. Assignment of beneficial interest.

The beneficiary may assign his or her benefits under the deed of trust without the consent or acknowledgment of the trustor unless the deed of trust instrument provides to the contrary. The recordation of the assignment shall be deemed notice to all persons as of the date of the recordation.

Source: TSL 6-46, § 20.

§ 1821. Ownership.

The purchaser at any foreclosure or public sale shall be only those entitled to own real property in the Federated States of Micronesia.

Source: TSL 6-46, § 21.

§ 1822. Conflict with other laws.

(a) If the provisions of this ~~Act~~ Chapter are in conflict or inconsistent with the provisions of any other law, then the provisions of this ~~Act~~ Chapter shall control.

Source: TSL 6-46, § 22, modified.