

KSC, TITLE 11. LAND & ENVIRONMENT

Chapter 4. The Deed of Trust

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Section 11.401. Deed of trust; Recordation; Definitions.

(a) A transfer in trust of an estate in real property may occur to secure the performance of an obligation or the payment of a debt. A transfer in trust of a freehold or leasehold interest in real property to secure an obligation is by deed of trust pursuant to this chapter. A transfer does not entitle the trustee or beneficiary to the possession of the property, except as provided in this chapter. A deed of trust complying with the terms and conditions of this chapter shall be deemed to be an encumbrance upon real property and subject to the recordation provision of Section 11.619.

(b) The following definitions are applicable to this chapter:

(1) "beneficiary": a person to whom is owed an obligation that is secured by the deed of trust; in the case of a secured debt or other obligation owed to the United States of America, the Farmers Home Administration, the Department of Housing and Urban Development or the Veterans Administration, the beneficiary may be any one of these entities;

(2) "trustee": a person, including Department of Administration and Finance or other legal entity of the State Government designated by the Governor, to whom a freehold or leasehold interest in property is conveyed by the trustor to secure payment of a debt or performance of an obligation owed to the beneficiary and who holds title pursuant to the terms and conditions of the deed of trust instrument; the trustee is 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;

(3) "trustor": the debtor under a deed of trust or the owner or owners of the freehold and leasehold interest who convey that interest in real property to the trustee under the terms of the deed of trust instrument.

Background

Amended by State Law 5-53. Subsection (2) was amended by State Law 7-1.

Section 11.402. Writing.

The creation, renewal, modification, or extension of a deed of trust is in writing containing the terms

thereof in both the English language and the principal language of the trustor, if that be an indigenous language of the State. In the event of conflict between the two versions of the Deed of Trust, or any terms thereof, the version in the English language shall prevail.

Background

Amended by State Laws 5-53 and 5-76.

Section 11.403. Foreclosure.

Foreclosure of a deed of trust is only by the exercise of a private power of sale or by judicial sale pursuant to this chapter. This section does not preclude a court from granting equitable relief.

Background

Amended by State Law 5-76.

Section 11.404. Power of Sale.

(1) When a transfer in trust of any freehold or leasehold interest in real property secures the performance of an obligation or the payment of a debt, the trustee has a power of sale for exercise after a breach of the obligation for which the transfer is security. If at the time of the exercise of the power of sale, the trustee determines that there exists a separable portion of the encumbered property that is of sufficient value to pay all expenses, costs and obligations to the trustee and the beneficiary, the trustee, in the absence of prejudice to other persons holding an interest in or encumbrance on the property and by agreement with the beneficiary and the trustor, may place for sale that portion alone. The beneficiary and the trustee do not unreasonably withhold their agreement.

(2) The trustee may not exercise the power of sale until three months following:

(a) the trustee's or beneficiary's filing with the Land Commission (*Court*) (*changes effective October 1, 2001 by State Law 7-126*) a notice of default, identifying the deed of trust and including such other information as follows: (1) the name of the trustor; (2) the date of recordation of the deed of trust; (3) a statement of the occurrence of a breach of the obligation for which the transfer in trust in security was made; (4) the nature of the breach; (5) his election to sell or cause to be sold the property to satisfy the obligation; and (6) the amounts owed and for what periods and the method and amount to cure such default if cure is made within thirty days of the notice; and

(b) the electing party's: (1) service of a copy of the notice of default on the trustor or his successor in interest or, if he cannot make personal service despite efforts in good faith; (2) mailing the copy by registered or certified mail with postage pre-paid to the address of the trustor, or if the address is not known, to the address of the trust property.

Background

Amended by State Law 5-53.

Section 11.405. Reinstatement.

The trustor shall have one right of reinstatement. 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 amounts being due and payable as though no acceleration, if any, of the principal due had occurred. Such payment shall then cure the default and the sale or proceedings shall then be discontinued and the obligations of the trustor under the Deed of Trust shall then be reinstated and remain in full force and effect as though no default had occurred; PROVIDED, HOWEVER, that 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.

Background

Amended by State Laws 5-53 and 5-76.

Section 11.406. Sale.

(1) A sale of real property under a power in deed of trust occurs by auction to the highest bidder, between the hours of 7:30 a.m. and 4:30 p.m. in the municipality where the real property lies.

(2) Before the sale of property under power contained in a deed of trust, there is notice of sale by:

(a) personal service or, if personal service does not occur despite a good faith effort, by mailing a copy of the notice at least twenty days and not more than sixty days before the date of sale by registered or certified mail with postage prepaid to the address of the trustor or his successor in interest, or, if such address is not known, to the address of the trust property;

(b) publishing a copy of the notice once a week for at least twenty days before the date of sale in a newspaper of general circulation in the State, or, if there is no newspaper, by posting the notice for the same period in three public places in the municipality in which the property lies;

(c) posting a copy of the notice in a conspicuous place on the property at least twenty days before the date of sale; and

(d) broadcasting the same notice in both English and Kosraean at least once a week for three weeks prior to the date of sale, by some radio broadcast station of general AM broadcast capabilities in Tofol;

(e) the trustee, at his discretion, may postpone the public sale by making a public declaration at the time and place of such sale. If the postponement is for more than ten days from the date of sale, he publishes notice of postponement and the new date and time of sale as follows:

(i) publishing a copy of the notice in a newspaper of general circulation in the State, or, if there is no newspaper, by posting the notice in three public places in the municipality in which the property lies;

(ii) posting a copy of the notice in a conspicuous place on the property at least twenty days before the date of sale; and

(iii) broadcasting the same notice in both English and Kosraean, by some radio broadcast station of general AM broadcast capabilities in Tofol.

(3) When the trustee receives a written request signed by the trustor and beneficiary for a postponement of the sale to an agreed date and hour the trustee by public declaration postpones the sale to the requested day and hour at the place originally fixed by the trustee for the sale. The trustee gives public notice of postponement at the time and place originally appointed for the sale. There is no other required notice of the postponed sale.

(4) Following sale the trustee (1) makes without warranty, executes and, upon payment, delivers to the purchaser, a deed of the premises which conveys to the purchaser the full title of the trustor in the premises, subject to any interest or other lien having priority over the deed of trust, and (2) applies the proceeds of sale in payment of (a) first, the expenses of sale, together with the reasonable expenses of trust, including reasonable attorney's fees, and (b) second, to the unpaid interest owed on the debt secured by the Deed of Trust, then to the unpaid principal balance on that

debt, including any advances made by the beneficiary and, (c) third, to any subordinate lien holders of record as of the date of sale in accordance with their lien priority, (d) fourth, any balance or surplus of such proceeds of sale shall then be applied to any other interest and principal indebtedness owed to the beneficiary by the trustor. Any remaining balance of such proceeds of sale shall be paid to the trustor, his heirs, executors, administrators or assigns.

(5) A recital in a deed executed pursuant to power of sale stating compliance with all requirements of law regarding filing of notice of default, personal service or mailing copies of the notice of default, election to sell and notice of sale to the trustor or his successor in interest, publishing or posting, or both, notice of sale, and personal service or mailing copies of notices constitutes prima facie evidence of compliance with the requirements and conclusive evidence in favor of bona fide purchasers and encumbrancers for value and without notice.

(6) A sale made pursuant to this chapter vests in the purchaser the title of the trustor without equity or right of redemption.

(7) No one who is not a citizen of the Federated States of Micronesia and Kosraen by descent is an eligible buyer of a freehold interest at any foreclosure or public sale. If at the time and place specified for sale no eligible buyer appears, unless the trust instrument directs otherwise, and except in cases where subsection (8) of this section is applicable, the trustee purchases the property in his own name in trust for and on behalf of the beneficiary, for the remaining unpaid balance of the debt secured by the deed of trust, and may thereupon enter into possession of the property, recording the purchase and other evidence of title with the Land Commission. The trustee then is in all respects a fiduciary of the property for the benefit of the beneficiary, and may lease, operate, manage, and sell, or otherwise dispose of the property under terms, covenants and conditions specified by the beneficiary. The trustee and beneficiary of a deed of trust may at any time agree or enter into a trust or holding agreement formalizing the rights, duties and obligations concerning the property secured by a deed of trust.

(8) In a case where the beneficiary is the Farmers Home Administration and the proceeds from the sale are insufficient to satisfy all amounts due to the beneficiary under the deed of trust instrument, then the trustee shall notify the beneficiary and make up the deficiency to the beneficiary from such Fund as shall be established by the trustee for said purpose, and in such event the beneficiary shall assign all of its rights and interests in the deed of trust 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.

Background

Amended by State Laws 5-53, 5-76 and 6-61.

Section 11.407. Discharge; reconveyance; satisfaction.

(1) A beneficiary discharges a deed of trust by his acknowledged certificate, stating that there has been payment of satisfaction or discharge of the debt secured by the deed of trust, referring to the name of the trustor and the date of recordation with the Land Commission (*Court*). (*changes effective October 1, 2001 by State Law 7-126*)

(2) Upon satisfaction of a debt secured by a deed of trust, the beneficiary of the deed of trust executes, acknowledges and delivers to the trustor or the owner of the land a certificate of discharge of the debt. Upon receipt of notice, the trustee executes a full reconveyance of title to the trustor or owner. The beneficiary delivers to the trustor, the deed of trust and the paid or satisfied note.

Section 11.408. Waste.

A person who has transferred in trust an estate in real property as security for the performance of an obligation or the payment of a debt does not act in a manner to impair substantially the beneficiary's security.

Section 11.409. Receiver.

(1) At any time after the filing of a notice of breach and election to sell real property under a power of sale in a deed of trust the trustee or beneficiary of the deed of trust may apply to the Court for the appointment of a receiver of the property.

(2) The Court appoints a receiver when it appears that (1) real property subject to the deed of trust is in danger of substantial waste; (2) the property's income is in danger of being lost; (3) personal property subject to the deed of trust is in danger of being lost, removed, materially injured or destroyed, or (4) the property is or may become insufficient to discharge the debt which it secures.

Section 11.410. Recording; assignment.

Recording of the beneficial interest in a deed of trust in the Land Commission (*Court*) (*changes effective October 1, 2001 by State Law 7-126*) results in constructive notice to the public of the interest. The beneficiary may assign his benefits under the deed of trust without the consent or knowledge of the trustor unless the deed of trust instrument provides to the contrary. The recordation of such assignment shall be deemed notice to all persons as of the date of such recordation.

Background

Amended by State Law 5-53.

Section 11.411. Loan Guarantee Escrow Account.

In a case where the beneficiary is the Farmers Home Administration, the trustee, who shall be the State Office of Budget and Planning or other legal entity of the State Government designated by the Governor, establishes and maintains a Loan Guarantee Escrow Account in an amount to be agreed upon by the trustee and the beneficiary. Such account is to be maintained in a State financial institution which has Federal Deposit Insurance Corporation (FDIC) coverage, and any interest earned is redeposited into the account. The use of funds from the account is for the sole purpose of servicing loans made by the beneficiary in the event of the trustor's default on the obligations under the terms of the promissory note and the deed of trust security instrument securing such note and for which such note is guaranteed by the Loan Guarantee Escrow Account through the trustee. The trustee and Farmers Home Administration, as beneficiary, are directed by a Memorandum of Understanding as to the procedure for the use of funds from the Loan Guarantee Escrow Account. The Loan Guarantee Escrow Account is not terminated without the written consent of the trustee and the Administrator of Farmer's Home Administration.

Background

Added by State Law 4-39 and amended by State Laws 5-53 and 5-76.

Section 11.412. Judicial sale; notice of default.

Not less than thirty (30) days prior to the commencement of any action or proceeding seeking foreclosure of a deed of trust, written notice of default [is given] containing the same information and served and filed in the same manner as provided by [Section 11.404](#), sub-subsections (2)(a) and (b). The notice shall be in both English and Kosraean.

Background

Added by State Law 5-76.

Section 11.413. Judicial Sale; Proceedings.

(1) All actions for foreclosure of deeds of trust shall be brought in the Kosrae State Court.

(2) Service of summons in an action of foreclosure shall be made in accordance with the applicable provisions of State law and such rules of procedure consistent therewith that are adopted by the Kosrae State Court.

(3) The complaint in an action for foreclosure of a deed of trust shall set forth the date of execution of the deed of trust; its assignments, if any; the name and residence of the trustor; a description of the subject property; a statement of the date of the note or other obligation secured by the deed of trust, and the amount claimed to be unpaid thereon; and the names and places of residence of all persons having or claiming interest in the property that are subordinate in right to that of the beneficiary of the deed of trust, all of whom shall be made defendants in the action. No person holding a conveyance from or under the trustor of the subject property, or having a lien thereon, which conveyance or lien does not appear of record at the time of the 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 as if he 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 secured 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) When the trustor after being directed to do so, as provided in Subsection (4) of this Section, fails to pay the principal and interest, and costs, and attorney's fees incident thereto to the extent permitted under this act 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 affect 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 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 publication or announcement in local newspaper, radio, or other reasonable public medium, as may be prescribed by the court to attempt to assure a reasonable return from the sale. Nothing in this act shall deny to the beneficiary the right to purchase property at a foreclosure sale; PROVIDED, HOWEVER, that said beneficiary is otherwise eligible to own land within Kosrae.

(6) Whenever any property shall be sold under judgment of foreclosure pursuant to the provisions of this act, the person making the sale must give to the purchaser a certificate of sale and properly record a duplicate thereof, and file a duplicate with the court. The certificate shall state the date of judgment under which the sale was made, the names of the parties, a particular description of the property sold, the price bid for each distinct lot or parcel, and the period during which the property is subject to redemption. At the expiration of the time for the redemption of such property, if the same is not redeemed, the person making the sale, or his successor in office, or other officer appointed by the court, must make to the purchaser, his heirs, or assignees, or to any person who has acquired the title of such purchaser by redemption or otherwise, a deed or deeds to such property. Such deed shall vest in the grantee all the rights, title and interest of the trustor in and to the property sold, at the time the deed of trust was executed, or subsequently acquired by him and shall be a bar to all claim, right, or equity of redemption in or to the property by the parties to such action, their heirs and personal representatives, and also against all persons claiming under them, or any of them, subsequent to the commencement of the action in which such judgment was rendered.

(7) The proceeds of every foreclosure sale must be applied to the costs of sale; then to the costs of collection and foreclosure proceedings, including attorney's fees to the extent that such costs and fees, exclusive of court charges, do not cumulatively exceed \$2000 or one-third of the principal and

interest remaining due on the debt, whichever is less; then to the interest due; and then to the principal debt. If there is any surplus, it must be brought to court for the use of the defendant or person entitled thereto, subject to order of the court.

(8) Upon sale of any property, under decree for a sale to satisfy a deed of trust or other encumbrance thereon, if there shall 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 upon the assets of the defendant shall be issued immediately if the balance is all due at the time of the rendition of the decree.

(9) If the debt which the deed of trust 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 in the first instance, and the entire debt and costs paid, there being a rebate of interest where such interest is proper.

(10) Upon motion by an aggrieved party filed within one (1) 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.

Background

Added by State Law 5-76.

Section 11.414. Redemption time and payment; disputes as to amount.

The judgment debtor may redeem the property from the purchaser within twelve months of the date of the sale, upon paying the purchaser the amount of his purchase, with one percent per month interest thereon, up to the time of redemption. In addition, the judgment debtor shall pay the following: (1) the amount of any assessment or taxes; (2) any costs or sums paid for fire insurance, management, maintenance, upkeep, or repair of improvements located upon the property; and (3) any sum paid on a prior obligation secured by the property to the extent such payment was necessary for the protection of the purchaser. s interest, which the purchaser may have paid thereon after purchase, and interest on such amounts in the amount computed above. Upon receipt of such payment the purchaser shall execute to the judgment debtor a proper certificate of redemption in the form prescribed below. In the event of a disagreement between the purchaser and the judgment debtor as to whether any such sum demanded by the purchaser is a proper charge to be added to the amount required for redemption, the judgment debtor shall thereupon pay to the clerk of the State Court of which execution, or order authorizing the sale, was issued the amount demanded by the purchaser for redemption which the purchaser believes, in good faith, are the amounts allowed by this act, less the amount in dispute, and shall at the same time file with the court a petition in writing setting forth specifically the item or items demanded to which he objects, together with his reasons for such objections, and asking that such amount be determined by the court.

In no event shall the amount deposited with the clerk of the State Court be less than the purchase price as paid by the purchaser at the foreclosure sale, plus interest from the date of purchase to the date of deposit with the clerk of the State Court at twelve percent (12%) per annum, plus an amount equal to ten percent (10%) of the said purchase price. The court shall thereupon fix a day, not less than twenty (20) nor more than sixty (60) days from the date of such filing, or if the court not be in session not less than five (5) nor more amount equal to ten percent (10%) of the sold purchase price. The court shall thereupon fix a day, not less than twenty (20) nor more than sixty (60) days from the date of such filing, or if the court not be in session, not less than five (5) nor more than ten (10) days from the day it again sits, whichever is later, for the hearing of said objection; a copy of said petition, together with a notice of hearing, giving the time and place thereof, shall be served by the judgment debtor seeking redemption, or his attorney, upon the purchaser not less than twenty (20) days before the day of the hearing; upon the day fixed, the court in which the order of sale or execution was originally issued shall determine by order

duly entered in the minutes of said court, the amount required for redemption, either upon affidavit or evidence which is satisfactory to the court; and when the amount has been so determined and in the event the amount thereto deposited with the court is sufficient, the same shall forthwith be paid to the purchaser upon his execution of a proper certificate of redemption, said certificate stating the name of the purchaser and of the redemptioner, and further stating the claim, instrument or judgment under which the redemptioner derives the right to redeem, and further stating the date of the redemption and amount for which it was made, and particularly describing the redeemed property. In the event an additional amount to that theretofore paid to the court is required, the redemptioner shall pay such additional amount to the clerk within ten (10) days. He shall then pay the whole amount necessary to the purchaser upon his execution of a proper certificate of redemption. The certificate of redemption so issued may be deposited with the clerk for delivery to the redemptioner, or given to the redemptioner at the time of payment.

Background

Added by State Law 5-76.

Section 11.415. Rights of purchaser and redemptioner to rents and profits.

The purchaser is entitled to receive from the tenant in possession the rents of the property sold, or the value of the use and occupation thereof, for the period from the sale until a redemption. However, the amount of any rents or profits that have been received by the purchaser or his assigns from the property sold preceding redemption, less reasonable expenses incurred in the production of such rents and profits and any management fee, shall be a credit upon the redemption money to be paid. If the redemptioner, before the expiration of the time allowed for redemption, demands in writing of such purchaser a written and verified statement of the amounts of such expenses, rents and profits, the period for redemption is extended for a period of twenty (20) days after the normal expiration of the redemption period.

Background

Added by State Law 5-76.