

YSC, Title 29. Property

Chapter 1: Yap State Mortgage

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§101. Short title.

This chapter shall be known and may be cited as the "Yap State Mortgage Act of 1987".

Source: YSL 2-24 §1, modified.

§102. Purpose.

The purpose of this chapter is to establish a system of mortgage law in Yap State which will induce lenders to make secured commercial and residential loans, while at the same time insuring that borrowers who execute mortgages of property in Yap State will have a full comprehension of the nature and consequences thereof, and that the parties to the mortgage are protected against unfair practices.

All provisions of this chapter shall be construed in such a manner as to best effectuate its purposes as set out herein.

Source: YSL 2-24 §2, modified.

§103. Definitions.

As used in this chapter, unless the context clearly requires otherwise:

- (a) "Clerk" means the State Clerk of Courts.
- (b) "Court" means the Yap State Court.
- (c) "Default" is a failure of an obligor to perform an act he is bound to perform.
- (d) "Encumbrance" is a non-fee interest in or charge upon property.
- (e) "Household estate" means an estate that at one time or another has a house platform.
- (f) "Improvement" is any building or structure constructed, or any artificial condition maintained, upon property.
- (g) "Lien" is a charge imposed in some mode upon specific property by which it is made the security for the performance of an act.
- (h) "Mafen" means a person who is considered a trustee of a clan's estates and takes an active role in the affairs of the clan.
- (i) "Mortgage" is a contract in which property is made the security for the payment of a debt, without the necessity of a change in possession and without the transfer of title.
- (j) "Mortgagee" is a public agency or a financial lending institution duly licensed to do business as such in the State of Yap that takes or receives a mortgage. This term also, where appropriate, refers to the mortgagee's heirs, personal representative, successors and assigns.
- (k) "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.
- (l) "Primary estate" means the main house site of an estate, which is the seat of all authority and political rights that by definition belong to that estate.
- (m) "Property" means any interest in real property which is capable of being transferred. Property includes leasehold interests.

Source: YSL 2-24 §3, terms put into alphabetical order and section modified.

§104. Right to possession.

The mortgagee is not entitled to possession of mortgaged property unless the mortgage expressly grants a right of possession.

Source: YSL 2-24 §4.

§105. 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: YSL 2-24 §5.

§106. Property mortgageable.

Any property not otherwise restricted by law and/or traditions and customs may be mortgaged and

shall be subject to foreclosure; PROVIDED, HOWEVER, that written consents are required from the member of the Council of Pilung or the Council of Tamol in whose municipality, the traditional village or island chief in whose village or island, the property to be mortgaged is situated, and the . mafen. of the estate in question, before the property can be mortgaged; PROVIDED, FURTHER, that the value of the property so mortgaged including any improvements thereon or to be effected thereon by the debt for which such security is demanded, shall not exceed the total value of said debt, including interest and incidental charges, by three hundred percent (300%); PROVIDED, FURTHER, that no primary estates, or what is known in Yap as "Kenggin e def", or household estates shall be mortgaged.

Source: YSL 2-24 §6, modified.

Cross-reference: The statutory provisions on Traditional Leaders and Traditions are found in Title 5 of this Code.

§107. 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 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: YSL 2-24 §7.

§108. Necessity of writing; oral statement.

A mortgage shall be created, amended, renewed, or extended only in writing. All mortgage instruments shall contain a clause, conspicuously located on the first page of the instrument, notifying the mortgagor in both English and the indigenous languages of the State:

(a) That he is entitled without cost to a translation of the mortgage instrument in the indigenous languages of Yap State. 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;

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

Source: YSL 2-24 §8, modified.

Cross-reference : [Article XIV, section 5 of the Constitution](#) of the State of Yap states: "The indigenous languages of the State and English shall be official languages".

§109. Requisites for recording.

(a) No mortgage shall be received for recordation unless it is executed in accordance with the requirements of sections 108 and 109 hereof and contains:

- (1) mailing address of the mortgagor and mortgagee;
- (2) the legal description of the property affected;
- (3) principal amount of the secured indebtedness;
- (4) rate of interest thereon; and
- (5) time, place of repayment and maturity date.

(b) All mortgages, amendments, renewals, and extensions of mortgages shall be

acknowledged or proven, as provided by this chapter, and recorded with the Clerk of Courts, and/or with the Senior Land Commissioner or Registrar. For purposes of this chapter, the proof or acknowledgment of an instrument affecting title to or any interest in property may be made before a judge of the State Court, a Land Commissioner, the Clerk of Courts of the State of Yap or any subordinate of the above duly authorized to act in the name of said official, or any notary public.

Source: YSL 2-24 §9, modified.

Cross-reference: The statutory provisions on the Judiciary are found in Title 4 of this Code. The statutory provision designating the composition and responsibilities of the Department of Resources and Development is found in section 125 of Title 3 (Executive) of this Code. The statutory provisions on [notaries public are found in Title 22](#) of this Code.

§110. Effect of failure to record.

No transfer of or encumbrance upon title to real estate or any interest therein, other than a lease for a term not exceeding one year, shall be valid against any subsequent purchaser or mortgagee of the same real estate or interest, or any part thereof, in good faith for a valuable consideration without notice of such transfer or encumbrance, or against any person claiming under them, if the transfer to the subsequent purchaser or mortgagee is first duly recorded. Nor shall any transfer of or encumbrance upon title to real estate or any interest therein, other than a lease for a term; not exceeding one year, be valid as against any judgment affecting the title unless such transfer or encumbrance is duly recorded prior to the record of the notice of action in which the judgment is rendered.

Source: YSL 2-24 §10.

§111. Instruments made with the intent to defraud.

Any mortgage instrument affecting an estate 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 encumbrances thereon is hereby declared to be void as against every purchaser or encumbrancer for value, of the same property or the rent or profits thereof.

Source: YSL 2-24 §11.

Cross-reference: The statutory provisions on Public Property, Purchasing and Contracts are found in Title 9 of this Code.

§112. Service of notice; designated personal representative.

(a) All notices required by this chapter must be in writing and, notwithstanding any provision of this section, shall be sufficient if received by the mortgagor and a duplicate copy recorded with the Clerk of Courts within five days after commencement of service upon the party to be served.

The mortgagor shall designate in the mortgage instrument, the name and mailing address of a personal representative for the service of notice in the event the mortgagor cannot, after diligent search, be found within Yap State.

(b) The name and address of the designated 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 notice of the same.

(c) All notices are to be delivered personally, or sent through the postal service by registered mail to the mortgagor or his personal representative.

(d) When service cannot be made in accordance with the provisions of subsection (c) of this section, the notice shall be filed with the Clerk of Courts who shall cause the notice to be posted in a prominent public place in the municipality in which the property is located and in prominent public places in all branches of the State Government for thirty consecutive days, which shall be

prima facie evidence that proper notice has been given. Once said notice has been posted in a prominent public place, the fact that the notice 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. Service shall be considered effected thirty days after the first publication, or posting, whichever is last in time.

(e) In the event there is more than one mortgagor, proper notice must be served upon all of them.

Source: YSL 2-24 §12, modified.

Cross-reference: The statutory provisions on the Judiciary are found in Title 4 of this Code.

§113. Assignments, subordinations and waivers.

Nothing in this 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: YSL 2-24 §13, modified.

§114. Record of assignment not notice to mortgagor; form of notice to mortgagor.

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 mailed to the mortgagor and be sufficient when there is written evidence that the mortgagor has received the same. 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: YSL 2-24 §14, modified.

§115. 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: YSL 2-24 §15.

§116. Certificate of discharge required.

When any mortgage has been satisfied, the mortgagee must execute, acknowledge and deliver to the mortgagor a release of mortgage or a certificate of discharge thereof, so as to entitle such certificate to be recorded. Any mortgagee who, after demand by the mortgagor, for a period of thirty 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 failure or refusal and shall also forfeit to the mortgagor the sum of \$300.00 and \$20.00 for each day after thirty days. 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: YSL 2-24 §16, modified.

§117. Waiver by borrower of statutory rights; validity.

Any expressed 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 chapter shall be void and of no effect.

Source: YSL 2-24 §17, modified.

§118. No private power of sale conferred by mortgage.

No mortgage may be foreclosed other than by the judicial remedies provided by this chapter.

Source: YSL 2-24 §18, modified.

§119. Acceleration of principal.

Acceleration of the principal and obligations under the note or mortgage as a result of a default shall be valid. No acceleration of unpaid principal of the underlying obligation shall be effective until sixty days after receipt of the notice of default provided for in section 121.

Source: YSL 2-24 §19, modified.

§120. 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:

- (a) 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 judgment shall act to discharge the mortgage.
- (b) The mortgagee may also, 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 chapter.

Source: YSL 2-24 §20, modified.

Cross-reference: The statutory provisions on the Judiciary are found in Title 4 of this Code.

§121. Notice of default.

(a) Not less than thirty 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 112 of this chapter. The notice shall be written in the English language and in the principal language of Yap State and shall contain the following:

- (1) A description of the property;
- (2) The date and amount of the mortgage;
- (3) The amount due for principal and interest stated separately;
- (4) A statement that if the amount due is not paid within sixty days from the date of service, the mortgagor shall be in default and proceedings shall be commenced to foreclose the mortgage; and
- (5) If the mortgagee elects to accelerate the payment of obligations, a statement that if the amount due is not paid, then the obligations shall be accelerated, provided such is allowed under the note and/or mortgage.

Source: YSL 2-24 §21, modified.

Cross-reference: Section 112 of this chapter is on service of notice; designated personal representative.

§122. Cure of default; payment of arrearages; costs 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 where all or a portion of the principal sum secured by the mortgage has, prior to the fixed maturity date become due or has 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 the mortgage, and reasonable attorney's fees actually incurred plus any costs or expenses of collection incurred to the extent that such attorney's fees and collection costs and expenses exclusive of court charges do not cumulatively exceed \$2,000.00 or one-third of the principal and interest remaining due on the debt, whichever is less. Such payment shall cure the default, and all proceedings theretofore instituted shall be dismissed or discontinued. Once the mortgagee has been paid in full, then the mortgaged property shall be released by the mortgagee from the encumbrance of such mortgage.

Source: YSL 2-24 §22, modified.

§123. Actions for foreclosure of mortgages.

(a) Action for foreclosure of mortgage where brought. All judicial actions for the foreclosure of a mortgage shall be brought in the Trial Division of the State Court.

(b) Service of summons. Service of summons in an action of foreclosure shall be made in accordance with the applicable provisions of the [State Court Rules of Civil Procedure](#).

(c) Complaint in an action for foreclosure of a mortgage. The complaint for foreclosure shall set forth the date of 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 thereof; and the names and residences of all persons having or claiming an interest in the property subordinate in right to that of the 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 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.

(d) 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 reasonable period not to exceed one year.

(e) Sale of the mortgaged property. When the mortgagor after being directed to do so, as provided in subsection (d) of this section, fails to pay the principal and interest, costs, and attorney's fees incident thereto to the extent permitted under this chapter 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 bona fide 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 television, as may be prescribed by the court to

attempt to assure a reasonable return from the sale. Nothing in this 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 Yap State; PROVIDED, FURTHER, that residents of the village in which the mortgaged property is located shall be given the first preference to purchase the property.

(f) Certificate of sale; deed effect. Whenever any real property shall be sold under judgment of foreclosure pursuant to the provisions of this 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 distinct lot or parcel. Such deed shall vest in the grantee all the rights, title and interest of the mortgagor in and to the property sold, at the time the mortgage was executed, or subsequently acquired by him.

(g) Application of proceeds . 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 \$2,000.00 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 the person entitled thereto, subject to order of the court.

(h) Judgment for balance after the sale of property. Upon the sale of any property, under a decree for a sale to satisfy a mortgage 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.

(i) 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 in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

(j) Vacating the 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: YSL 2-24 §23, modified.

Cross-reference: The statutory provisions on the Judiciary are found in Title 4 of this Code.

§124. Injury to property restrained.

(a) The court by injunction, for good cause shown, may restrain the party in possession from doing any injurious act to the property during the existence of the mortgage or pendency of the foreclosure action thereon.

(b) A receiver may be appointed where it appears that mortgaged property is in danger of substantial waste or that the income therefrom is in danger of being lost, or that the property is or may become insufficient to discharge the debt which it secures, and that affirmative action is

needed to prevent such occurrences.

Source: YSL 2-24 §24.

Cross-reference: The statutory provisions on the Judiciary are found in Title 4 of this Code.

§125. Discharge of real property mortgage not renewed or extended of record.

Every mortgage which has not been renewed or extended of record within fifteen years after its due date, or when no due date is shown in the mortgage then within twenty years after the recording of such mortgage, shall be discharged of record by an order of a judge of the Trial Division of the State Court upon application of any interested person with notice to the proper interested parties. Such application and order shall be filed in the Office of the Clerk of Courts.

Source: YSL 2-24 §25, modified.

Cross-reference: The statutory provisions on the Judiciary are found in Title 4 of this Code.

§126. Improvements by mortgagee prior to sale.

After the commencement of a suit to foreclose, 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 costs of the sale which are recoverable by the mortgagee.

Source: YSL 2-24 §26.

Cross-reference: The statutory provisions on the Judiciary are found in Title 4 of this Code.

§127. Foreign citizens as mortgagees.

A noncitizen of the Federated States of Micronesia may be a mortgagee under the provisions of this chapter; PROVIDED, HOWEVER, that no section of this chapter shall be construed to mean that a noncitizen mortgagee is entitled at any time to hold fee simple title to property in Yap State. Under the provisions of this chapter, a mortgage creates a lien on the land, but does not pass title to the mortgagee.

Source: YSL 2-24 §27, modified.

§128. Foreclosure by foreign citizens as mortgagees.

When foreclosure is instituted, the foreign citizen mortgagee may upon a showing of good cause propose to the court that the fee simple title be held by a trustee or by the court as trustee for the disposition of the fee simple title at the sale. The trustee may be the court, or any citizen of the Federated States of Micronesia or any other person or corporation which is authorized to hold the fee simple title to the property, subject to the transfer thereof to the purchaser at the foreclosure sale. Nothing herein shall prevent a mortgage to contain a clause providing for a leasehold mortgage or a leasehold interest to be transferred at the foreclosure sale as may be set forth in the mortgage instruments or documents. A mortgagee may be the purchaser at the foreclosure sale, subject to the law governing the ownership of land in Yap State. If the foreclosure concerns the sale of a leasehold interest, then the length of the term of the lease shall be according to the laws of the State inclusive of laws concerning leases to foreign citizens.

Source: YSL 2-24 §28.

Cross-reference: The statutory provisions on the Judiciary are found in Title 4 of this Code.

§129. Interpretations.

(a) In the event any portion of the mortgage documents including but not limited to the

promissory note, notices and other instruments affecting the same are translated from English to an indigenous language of the State, and thereafter a conflict results as a result of such interpretation, then the English version shall prevail.

(b) Whenever possible, this mortgage law shall be interpreted in such a manner to give it full force and effect and to make it a binding obligation upon the mortgagor to the mortgagee.

Source: YSL 2-24 §29.

Cross-reference: [Article XIV, Section 5 of the Constitution](#) of the State of Yap states: "The indigenous languages of the State and English shall be official languages".

§130. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Source: YSL 2-24 §30, modified.

§131. Prospective effect.

The provisions of this chapter shall have prospective effect only and shall not apply to mortgages, deeds of trust or other control or conveyances entered into prior to the effective date of this chapter.

Source: YSL 2-24 §31, modified.