

## YSC, Title 29. Property

### Chapter 2: Deed of Trust Act

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#### **§201. Short title.**

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

**Source:** YSL 3-64 §1, modified.

#### **§202. Purpose.**

The purpose of this chapter is to provide for the use of deed of trust instruments as a method of securing the financing of real property transactions in the State of Yap by financing institutions.

**Source:** YSL 3-64 §2, modified.

**Cross-reference:** The Yap Investment Trust established in [chapter 20 of Title 20 of this Code](#) shall act as trustee for Deed of Trust guarantees as provided for under this chapter.

#### **§203. Deed of Trust defined.**

A Deed of Trust is a conveyance of the fee simple interest in trust to secure an indebtedness or charge against real property conveyed, with or without a 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 chapter shall be deemed as a lien or encumbrance upon real property, and shall be evidenced by an instrument in writing containing the terms thereof in English and, if requested by the trustor, in the principal language of the trustor. In the event of conflict between the two versions of the Deed of Trust, or any term thereof, the English version shall prevail. The transfer does not entitle the trustee or beneficiary to the possession of the property except as herein provided.

**Source:** YSL 3-64 §3, as amended by YSL 4-76 §1, modified.

#### **§204. Requirements; consents, writing and recordation.**

(a) Any real property not otherwise restricted by law and/or traditions and customs may be transferred in trust to secure the financing of real property transactions by a Deed of Trust instrument pursuant to the provisions of this chapter; 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 transferred in trust is situated, and the "mafen" of the estate in question, before the transfer in trust of real property may be made.

(b) A Deed of Trust shall only be created, renewed, modified or extended by an instrument in writing and must be properly recorded with the Clerk of Courts of the Yap State Court and the subdivision of Land Registration of the Department of Resources and Development.

(c) No Deed of Trust shall be received for recordation pursuant to subsection (b) of this section unless it contains the name and mailing address of the beneficiary, the principal amount of secured indebtedness and the interest rate.

**Source:** YSL 3-64 §4, modified.

#### **§205. Definitions.**

In this chapter, unless the context otherwise requires:

(a) "Beneficiary" means any financing institution who is the creditor to whom the trustor's obligation is owed.

(b) "Recordation" or "filing of record" means the proper filing of an instrument with the Clerk of Courts of the Yap State Court and the Subdivision of Land Registration of the Department of Resources and Development.

(c) "Trustee" means the Yap Economic Development Authority, Yap Investment Trust, 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) "Trustor" means the debtor under a Deed of Trust or the owner of the fee simple who conveys the title to real property to a trustee under the terms of the Deed of Trust instrument.

(e) "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.

**Source:** YSL 3-64 §5, subsection (c) amended by YSL 4-76 §2, modified.

#### **§206. Validity against subsequent purchasers; 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 interest in the same unless the Deed of Trust and any instrument relating to it is first duly recorded.

**Source:** YSL 3-64 §6, modified.

#### **§207. 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:** YSL 3-64 §7, modified.

### **§208. Foreclosure by judicial or non-judicial process.**

(a) The Deed of Trust instrument may provide for foreclosure proceedings by judicial or non-judicial process.

(b) If foreclosure is by judicial process then the foreclosure proceedings shall be brought in the Trial Division of the State Court of Yap. Any judicial action for the foreclosure of a Deed of Trust shall be similar to and based on the same proceedings as the [Yap State Mortgage Act of 1987](#).

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

**Source:** YSL 3-64 §8, modified.

**Cross-reference:** The Yap State Mortgage Act of 1987 is codified at [Chapter 1 of this title](#).

### **§209. Foreclosure by private power of sale.**

(a) 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) Recordation and notice. The power of sale shall not be exercised until:

(1) 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.

(2) After the lapse of 30 days as set forth in subdivision (1), 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.

(3) Within 10 days after notice has been sent to the trustor as set forth in subdivision (2), the trustee or beneficiary shall file of record a notice of default, identifying the Deed of Trust by stating the names of the trustor, trustees 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.

(c) All notices referred to in subsection (b) of this section to be served on the trustor shall be in English and the principal language of the trustor.

**Source:** YSL 3-64 §9, modified.

### **§210. Power of sale; reinstatement.**

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

(b) 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.

(c) 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 effect as though no default had occurred; provided, however, that the 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:** YSL 3-64 §10, modified.

### **§211. 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:** YSL 3-64 §11, modified.

### **§212. Power of sale: publication.**

Prior to the date of sale, the trustee shall:

(a) Publish in English and the trustor's principal language 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 and on the radio;

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

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

**Source:** YSL 3-64 §12, modified.

### **§213. Postponement of public sale.**

Whenever a request in writing signed by both the trustor and beneficiary for a postponement of the sale to an agreed date and hour is given to the trustee, the trustee shall thereupon postpone the public sale to the day and hour so fixed in such request, by making a public declaration at the time and place of the sale. The sale shall be held at the place originally fixed by the trustee for 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) Publish a notice of the postponement, with a new date of sale at least once in some newspaper of general circulation and on the radio;

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

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

(d) File a notice of postponement with the Yap State Clerk of Courts and with the Subdivision of Land Registration in the Department of Resources and Development.

**Source:** YSL 3-64 §13, modified.

**Cross-reference:** The statutory provisions on the Yap State Court are found in Title 4 of this Code.

### **§214. Power of sale; conveyance by Trustee; proceeds; deficiency.**

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

(b) The proceeds of sale shall first be applied to the expenses of sale, together with the reasonable expenses of the trust, including reasonable attorney's fees; then to the 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 that are secured by said beneficiary. s deed of trust and including the recapture of any deferred principal and interest or of any interest credit and subsidy granted to the trustor by the United States of America, acting through the Rural Economic and Community Development Services, as 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 and 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) If there are insufficient proceeds from the sale to satisfy all amounts due to the beneficiary under the Deed of Trust instrument, then the trustee shall make up such deficiency of insufficient amounts to the beneficiary. In that event, the beneficiary shall assign all of its rights and interest in the Deed of Trust to the trustee. The trustor shall be liable for all such deficient amounts, which includes 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.

**Source:** YSL 3-64 §14, as amended by YSL 4-2 §1, modified.

### **§215. Vacating of premises prior to sale.**

The trustor, or its agents, or persons holdings possession of the property by and through the trustor, shall vacate the property and give up possession of the property at any time prior to the date of sale, subject to any right of reinstatement as set forth in this article. In the event of any postponement of the date of sale, the trustor is not entitled to repossession of the premises, unless the postponement be over 60 days from the date of sale.

**Source:** YSL 3-64 §15, modified.

### **§216. Recitals.**

A recital in a deed, executed pursuant to the power of sale regarding the filing of notice, personal service or mailing of copies of the notice of default, is prima facie evidence of compliance with the requirements of this chapter, and shall be conclusive evidence thereof in favor of bona fide purchasers for value and without notice.

**Source:** YSL 3-64 §16, modified.

### **§217. Power of sale; redemption rights by trustor; purchase by Trustee.**

(a) A sale made pursuant to this 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) 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:** YSL 3-64 §17, modified.

### **§218. Duties of Trustee.**

(a) 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) The duties of the trustee shall be as set forth in the Deed of Trust instrument provided the terms and conditions are not in conflict with the provisions of this chapter.

**Source:** YSL 3-64 §18, modified.

### **§219. Loan Guarantee Escrow Accounts.**

The Trustee shall establish and maintain a separate Loan Guarantee Escrow Account, herein-after referred to as the Account, for each beneficiary. Each Account shall be in an amount to be agreed to between the trustee and the beneficiary. The Accounts shall be maintained in a state financial institution which has Federal Deposit Insurance Corporation (FDIC) coverage, and any interests earned in each Account shall be deposited into that Account. The use of funds from each Account shall be for the sole purpose of servicing loans made by each respective beneficiary in the event of trustor's defaults 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 Account through the Trustee. The Trustee and each respective beneficiary shall be directed by a Memorandum of Understanding or an agreement as to the procedure for the use of funds from the respective Account. Each Account shall not be terminated without the written consent of the Trustee and the respective beneficiary.

**Source:** YSL 3-64 §19, modified.

### **§220. 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:** YSL 3-64 §20, modified.

### **§221. Discharge, reconveyance and satisfaction.**

(a) A Deed of Trust shall be discharged or released by recording a certificate of acknowledgment signed by the beneficiary, his personal representative or assignee, stating that the debt secured by the Deed of Trust has been fully paid, satisfied or discharged. Reference shall be made in such certificate to the name or names of the trustor, the date of recordation and the location where the Deed of Trust is recorded.

(b) When any debt secured by a Deed of Trust has been justly satisfied, the beneficiary of the Deed of Trust, his personal representative or assignee, must execute, acknowledge, and deliver to the trustor or owner of the real property a certificate of discharge of the debt, and upon notice thereof, the trustee thereupon shall execute a full reconveyance of the encumbered interest to the trustor. The beneficiary, his assignee or personal representative shall deliver to the trustor, or his heirs, successor or assign, the Deed of Trust and the note shall be marked paid and satisfied.

**Source:** YSL 3-64 §21, modified.

### **§222. Appointment of receiver.**

Any time after the recordation of a notice of a default, the trustee or beneficiary may apply to the Trial Division of the State Court of Yap 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:** YSL 3-64 §22, modified.

**Cross-reference:** The statutory provisions on the Yap State Court are found in Title 4 of this Code.

### **§223. Assignment of beneficial interest.**

The beneficiary may assign its Deed of Trust or its benefits under the Deed of Trust and may assign its promissory note or notes without the consent or acknowledgment of the trustor unless the Deed of Trust instrument provides to the contrary. The assignment shall be recorded. The recordation of the assignment shall be deemed notice to all persons as of the date of such recordation.

**Source:** YSL 3-64 §23, as amended by YSL 4-2 §2, modified.

### **§224. Ownership.**

The purchaser at any foreclosure or public sale shall be only those entitled to own property in the State of Yap and provided that such is not inconsistent with traditions and customs.

**Source:** YSL 3-64 §24, modified.

### **§225. 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 this 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 3-64 §25, modified.