

Chapter 10

MORTGAGES

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Reviser’s Comment: As required by Art. I, § 3 and Art. II § 9 of the American Samoa Constitution, this chapter was passed by two successive legislatures.

37.1001 Lien of mortgages of real property or fixtures—Debts secured—Priority.

(a) Every transfer of an interest in real property or fixtures made as security for the performance of another act or subject to defeasance upon the payment of an obligation, whether the transfer is made in trust or otherwise, is to be considered a mortgage and shall create a lien only as security for the obligation and shall not be deemed to pass title.

(b) A mortgage may secure the repayment of past debt, a debt incurred at the time the mortgage is executed, or a debt incurred for advances which may be made by the mortgagee subsequent to the execution of the mortgage even though the mortgagee is under no contractual duty to make such advances. In any case where the mortgagee is under no such contractual duty, the mortgage lien, to the extent that it secures future advances, shall be superior to any mortgage or any other lien, other than liens for taxes and for public improvements, duly recorded subsequent to the time at which the advance has been made, but in the event the mortgagee is under a contractual duty to make future advances and the maximum amount of the future advances is stated in the mortgage, the lien therefor shall be superior to that of any subsequently recorded mortgage or other lien, except liens for taxes and for public improvements, even though the subsequently recorded mortgage or other lien, except liens for taxes and for public improvements, is recorded prior to the date upon which any advance or advances have been made.

History: 1978, PL 15-83; 1979, PL 16-48 § 1.

37.1002 On what property—Enforceability.

(a) If the mortgage so provides, the lien of the mortgage may attach to additions, improvements, and purchases or substitutions made to supply the place of any real property or fixtures referred to in the mortgage when the mortgagor acquires an interest therein to the extent of the interest, but subject to existing liens and the lien of a purchase money mortgage given by the mortgagor of the after-acquired real property or fixtures.

(b) Any mortgage, except to the extent provided in this chapter, shall be enforceable against the mortgagor, creditors of the mortgagor, and against subsequent purchasers, mortgagees, assignees, and transferees, who take without valuable consideration or with notice, actual or constructive, even though the mortgaged real property or fixtures may have been detached or moved to a location different from that occupied by it at the time of the execution of the mortgage.

History: 1978, PL 15-83; 1979, PL 16-48 § 1.

Case Notes:

Territorial statute providing that court should set payments on a judgment in accordance with debtor's ability to pay did not defeat creditor's right to foreclose a chattel mortgage. A.S.C.A. §§ 37.1002, 37.1103, 43.1501. R.S.T.T.A.N. Hisatake, Inc., v. Dullabhbai K. Patel & Co., Ltd., 3 A.S.R.2d 99 (1986).

37.1003 After-acquired real property and fixtures.

The mortgage shall operate only as a contract between the parties with respect to and shall not create a lien upon real property or fixtures acquired in any manner by the mortgagor subsequent to the execution of the mortgage, if there are not described therein the real property, the fixtures and the real property to which the fixtures are or will be affixed, unless and until the mortgagor or the mortgagee, at the time of or subsequent to the acquisition, executes and duly records with the Territorial Registrar an instrument or affidavit containing a reference to the book and page number where the mortgage is recorded and also a description of the real property, the fixtures and the real property to which the fixtures are or will be affixed sufficient to identify and locate them, the description of real property may be made by describing the deed or other instrument of conveyance by which the real property was acquired or by describing the land by metes and bounds.

History: 1978, PL 15-43; 1979, PL 16-48 § 1.

Case Notes:

Statute which states that no instrument shall be effective to create a security interest unless it contains a description of items to be mortgaged prevents the creation of a "general mortgage" and reinforces the statutory prohibition against mortgages on after-acquired real property and fixtures, as well as security interests in personal property. A.S.C.A. §§ 27.1510©, 37.1003. Shantilal Brothers, Ltd. V. KMKST Wholesale, 15 A.S.R.2d 115 (1990).

The general rule against mortgages of after-acquired real property contains an important exception for cases in which the property to be acquired is described in the mortgage document. A.S.C.A. § 37.1003. Shantilal Brothers, Ltd. V. KMST Wholesale, Inc., 16 A.S.R.2d 103 (1990).

37.1004 Interests in recorded mortgages and leases.

The mortgage shall operate only as a contract between the parties with respect to, and shall not create a lien upon, any recorded mortgage or lease, unless, and until, a specific reference to the mortgage or lease is contained in an instrument or affidavit executed by the mortgagor or mortgagee and duly recorded in the office of the Territorial Registrar.

History: 1978, PL 15-83, 1979, PL 16-48 § 1.

37.1005 Use and possession of mortgaged property.

In the absence of an agreement to the contrary, the mortgagor of real property or fixtures under a duly recorded mortgage is entitled to the use or possession of it until default.

History: 1978, PL 15-83; 1979, PL 16-48 § 1.

Case Notes:

Where owner of mortgaged property retained the right to use and possession of the property until default, and where there was no evidence of default on the debt secured by the mortgage, garnishment by unsecured judgment creditor of rents derived from the property did not interfere with the rights of the mortgagee. A.S.C.A. § 37.1005. Landrigan v. Opelle, 5 A.S.R.2d 155 (1987).

37.1006 Interpretation of chapter provisions.

Nothing in this chapter is considered to modify or amend 4.0325, 4.1101 through 4.1106 or

37.0210.

History: 1978, PL 15-83; 1979, PL 16-48 § 1.