

Chapter 11

MORTGAGE FORECLOSURES

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Reviser's Comment: As required by Art. I, § 3 and Art. 11, § 9 of the American Samoa Constitution, this chapter was passed by two successive legislatures.

37.1101 Foreclosure by action.

The High Court may assess the amount due upon a mortgage whether of real or personal property, and shall render judgment for the amount awarded, and the foreclosure of the mortgage. Execution may be issued on the judgment, as ordered by the court.

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

37.1102 Other mortgages joined.

All prior and subsequent mortgage creditors, whose names are or can be discovered by the party foreclosing a mortgage, shall be made parties to the action.

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

37.1103 Proceeds—How applied.

Mortgage creditors shall be entitled to payment according to the priority of their liens, and not pro rata; and judgments of foreclosure shall operate to extinguish the liens of subsequent mortgages of the same property, without forcing prior mortgagees to their right of recovery. The surplus after payment of the mortgage foreclosed shall be applied pro tanto to the next junior mortgage, and so on to payment, wholly or in part, of mortgages junior to the one assessed.

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. Kullabhbai K. Patel & Co., Ltd., 3 A.S.R.2d 99 (1986).

37.1104 Defenses.

The mortgagor, or any subsequent mortgagee, may defend the action for foreclosure, and may show any matter in legal or equitable avoidance of the mortgage.

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

37.1105 Foreclosure under power of sale— Notice—Affidavit after sale.

(a) When a power of sale is contained in a mortgage, the mortgagee, or his successor in interest, or any person authorized by the power to act in the premises, may, upon a breach of the condition, give notice of his intention to foreclose the mortgage and of the sale of the mortgaged property, by publication of the notice once in each of 3 successive weeks (3 publications), the last publication to be not less than 14 days before the day of sale, in a newspaper having a general circulation in the territory; and also give such notices and do all such acts as are authorized or required by the power contained in the mortgage. A copy of the notice shall be posted on the premises not less than 21 days before the day of sale. Any sale, of which notice has been given as aforesaid, may be postponed from time to time by public announcement made by the mortgagee or by some person acting on his behalf. He shall, within 30 days after selling the property in pursuance of the power, file a copy of the notice of sale and his affidavit setting forth his acts in the premises fully and particularly, with the Territorial Registrar. The affidavit and copy of the notice shall be recorded and indexed by the registrar, in the manner provided under 3.0325, 4.1101 through 4.1106 or 37.0210.

(b) This section is inapplicable if the mortgagee is foreclosing as to personal property only.

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

37.1106 Notice to mortgage creditors.

(a) Whenever a mortgage creditor having a mortgage lien on certain premises desires notice that another mortgage creditor having a mortgage lien on the same premises intends to foreclose the mortgage and sell the mortgaged property under a power of sale under 37.1105, he may submit a written request to the mortgagee foreclosing or who may foreclose the mortgage by power of sale, to receive notice of the mortgagee's intention to foreclose the mortgage under power of sale. This request for notice may be submitted any time after the recordation or filing of the mortgage with the Territorial Registrar, but must be submitted prior to the completion of the publication of the mortgagee's notice of intention to foreclose the mortgage and of the sale of the mortgaged property. This request shall be signed by the mortgage creditor, or its authorized representative, desiring to receive notice, specifying the name and address of the person to whom the notice is to be mailed. The mortgagee receiving the request shall thereafter give notice to all mortgage creditors who have timely submitted their request. The notice shall be sent by mail or otherwise communicated to the mortgage creditors, not less than 7 calendar days prior to the date of sale.

(b) No request for copy of any notice under this section nor any statement or allegation in any request nor any record of it shall affect the title to real property or be considered notice to any person that any party requesting copy of the notice has or claims any right, title, or interest in, or lien or charge upon the property described in the mortgage referred to in it.

37.1107 Affidavit as evidence.

If it appears by the affidavit that the affiant has in all respects complied with the requirements of the power of sale and the statute, in relation to all things to be done by him before selling the property, and has sold the same in the manner required by the power, the affidavit, or a duly certified copy of the record thereof, shall be admitted as evidence that the power of sale was duly executed.

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

37.1108 Dower barred.

If the mortgage was executed by a man having at the time no lawful wife, or if the mortgagor being married, his wife joined in the deed in token of her release of dower, the sale

of the property in this manner shall be effectual to bar all claim and possibility of dower in the property.

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

37.1109 Power unaffected by transfer— Surplus after sale.

No sale or transfer by the mortgagor shall impair or annul any right or power of attorney given in the mortgage to the mortgagee to sell or transfer the mortgaged property, as attorney or agent of the mortgagor. When public sale is made of the mortgaged property under this chapter, the remainder of the proceeds, if any, shall be paid over to the owner of the mortgaged property, after deducting the amount of claim and all attendant expenses.

History: 1978, PL 15-83; 1979, PL 16.48 § 1.

37.1110 Transfer of mortgaged interests--Individually owned land--Marketability.

Any person who is a mortgagee, or a federal mortgage insurer or other person which succeeds to the interest of a mortgage, including persons not qualified to acquire title under section 37.0204, to whom by deed or other instrument title to individually owned land is transferred by means of or after the foreclosure of a mortgage on such land shall have the power to receive and hold title to such land for the unexpired term of such mortgage plus an additional period of up to ten years and to transfer title to the entire interest which was pledged as security for the mortgage to any person qualified to acquire title to such interest. No title received, held, or transferred in accordance with this section shall be deemed unmarketable merely because of the restrictions on alienation in section 37.0204.

History: 1988 PL 20-73; and 1989 PL 21-23.

37.1111 Definitions.

(a) "Federal mortgage insurer" means any agency or instrumentality of the Government of the United States of America which insures or guarantees mortgages or other loans for residential housing.

(b) "Individually owned land" means land registered as individual property of a person or determined to be individual property of a person by a final decision of the court of American Samoa.

History: 1988 PL 20-73; and 1989 PL 21-23.