

CHAPTER 2.**REAL PROPERTY TRUST INSTRUMENTS****ARRANGEMENT OF SECTIONS**

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An Act to establish the procedures relating to real property trust instruments in the Republic.

Commencement: March 20, 1987
 Source: P.L. 1987-12
 P.L. 1988-24
 P.L. 1994-94

§201. Short title.

This Chapter may be cited as the Real Property Trust Instruments Act 1987. [P.L.1987-12, §1.]

§202. Creation of trust in real property to secure obligations.

(1) A trust of any interest in real property may be created to secure the performance of an obligation or the payment of any debt. The encumbrance of real property interests to secure obligations may be by deed of trust pursuant to the provisions of this Chapter; provided, however, that such a transfer does not entitle the trustee or beneficiary to the possession of the property, except as hereinafter provided.

(2) Transfer of a trust in leasehold interest in real property for purposes of this Chapter may be made by a citizen of the Republic to a trustee referred to in Section 203 of this Chapter, or by any other individual or entity, irrespective of citizenship; provided, however, that no leasehold interest conveyed to a trustee shall exceed a term of fifty (50) years, inclusive of all renewable rights from the date of conveyance of the deed of trust. [P.L.1987-12, §2.]

§203. Trustee for deed of trust; Escrow account required in certain cases.

(a) The trustee for any deed of trust executed in the Republic shall be the Marshall Islands Development Bank or any other public corporation or authority approved by the Cabinet.

(b) If the beneficiary of a deed of trust executed in the Republic is the United States of

America acting through the Farmers Home Administration, the Department of Housing and Urban Development or the Veterans Administration, the trustee shall establish and maintain a Loan Guarantee Escrow Account ("Escrow Account") in an amount to be agreed to between the trustee and such beneficiary.

Such account is to be deposited in a financial institution which has U.S. Federal Deposit Insurance Corporation ("FDIC") coverage, and any interest earned shall be redeposited into the Escrow Account. The use of funds from the Escrow Account shall be for the sole purpose of servicing loans made by such beneficiary in the event of the settlor'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 Escrow Account through the trustee. The trustee and such beneficiary shall agree in writing as to the procedure for the use of funds from the Escrow Account. The Escrow Account shall not be terminated without the written consent of the trustee and such beneficiary. [P.L.1994-94, §2, repealing and replacing previous section.]

§204. Writing and registration.

A deed of trust shall be created, renewed, modified, or extended only in writing and must be registered with the Clerk of the High Court. [P L. 1987-12, §4.]

§205. Procedure for registration.

(1) Upon the receipt of a deed of trust for registration from a settlor/lessee (applicant), along with a copy of the encumbered lease, the Clerk of the Court shall, within two weeks of the date of receipt, issue public notice of and afford opportunity to object to. the deed of trust and the encumbered lease. Notice shall be issued in such a form and manner as the High Court deems proper; provided, however, the duration of notice shall not exceed sixty (60) days from the date of application.

(2) All expenses required for issuance of notice under Subsection (1) of this Section in addition to fees charged for registration, shall be borne by the applicant.

(3) If no objections are received by the Clerk with respect to the deed of trust and/or encumbered lease, he shall then register the trust deed and all persons, other than the lessor claiming under the lease, shall be estopped from claiming any rights against the interests of the trustee or the lessee under the deed of trust or the lease.

(4) If objections are received by the Clerk with respect to the deed of trust or the encumbered lease, he shall so notify the applicant. If, within 30 days after receiving such notice from the Clerk, the applicant requests the Clerk to register the deed of trust, then the Clerk shall register the deed and all persons, other than the lessor claiming under the lease and the objector claiming with respect to the objection, shall be estopped from claiming any rights against the interests of the trustee or the lessee under the deed of trust or the lease. [P L. 198 7-12, §5 amended by P L. 1988-24, §3, substituting new § 5]

§206. Priority of Trust Interests.

The priority of trust instruments on the same real property shall be determined by the order and date of registration pursuant to Section 205 with the first to register having superior rights over subsequent trusts. [P.L.1988-24, §4.]

§207. Effect of Non-registration.

Failure to register an executed deed of trust in accordance with Section 205 shall not affect the validity of the trust, provided, however, such non registered trust shall be subordinate to any and all deeds of trust which may have been duly registered, irrespective of the date of execution. [P. L. 1988-24, §4.]

§208. Compliance with the Chapter required for foreclosure.

Foreclosure of a deed of trust shall be done only by the exercise of the power of sale made in accordance with the provisions of this Chapter; provided, however, that the preceding provision does not preclude a court from granting equitable relief other than foreclosure. [P.L. 1987-12, §6.]

§209 Power of sale.

(1) Where any trust is created of any interest in real property to secure the performance of an obligation or the payment of any debt, a power of sale is hereby conferred upon the trustee to be exercised upon a breach of the obligation for which such trust is created.

(2) The power of sale conferred under Subsection (1) of this Section shall not be exercised, until:

(a) the trustee or beneficiary shall first file of record with the Clerk of the High Court a notice of default identifying the deed of trust by the name or names of the settlor or seniors and giving the date of registration and the location where the same is registered and containing a statement that a breach of the obligation for which such trust is created has occurred, and setting forth the nature of such breach and of his election to sell or cause to be sold such property to satisfy the obligation;

(b) a copy of the notice of default and election to sell is personally served or, if personal service is not made despite efforts in good faith, is mailed by registered or certified mail with postage prepaid to the settlor or his successor in interest, if his address is known, or otherwise affixed on the trust property if his address is not known;

(c) not less than three (3) months shall have lapsed from the date of notice referred to in Paragraph (b) of this Subsection; and

(d) after the lapse of the three (3) months therefrom and within sixty (60) days thereof the trustees gives notice of sale, stating the time and place thereof, in the manner and within the time specified under the provisions of this Chapter.

(3) Any interest in real property in the Republic sold pursuant to exercise of a power of sale in a deed of trust shall be in accordance with and pursuant to the requirements contained in Section 202 of this Chapter. In no event shall title transferred pursuant to Section 202(1) of this Chapter be reconveyed or re-transferred to a person or entity other than a citizen of the Republic. [P.L. 1987-12, §7.]

§210. Reinstatement.

Whenever all or a portion of the principal sum of any obligation secured by deed of trust on real property interest has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of failure of the settlor to pay in accordance with the terms of such obligation or of such deed of trust, or when the settlor voluntarily conveys the property to the trustee, the settlor or his successor in interest in the trust property or any part thereof, at any time under such deed of trust, may pay to the beneficiary or his successor in interest the entire amount then due under the

terms of such deed of trust and the obligation secured thereby (including costs and expenses actually incurred in enforcing the terms of such obligation and deed of trust, and trustee's and attorney's fees, as may be awarded by the Court) and cure the default thereto existing. Where any default has been cured as aforesaid all proceedings thereto had or instituted shall be dismissed or discontinued and the obligation and deed of trust shall be reinstated and shall be and remain in force and effect as if no such acceleration had occurred. [P.L. 1987-12, §8.]

§211. Sale under power of sale.

(1) All sales of property under power contained in any deed of trust must be held on the island in the Republic where said property is situated, and shall be by public auction, to the highest bidder, between the hours of 8:00 a.m. and 5:00 p.m.

(2) Before the sale of property under the power contained in any deed of trust, notice of sale thereof must be given by:

(a) personal service or, if personal service is not made despite efforts in good faith, by mailing a copy of said notice at least twenty (20) days but not more than sixty (60) days before the date of sale by registered or certified mail with postage prepaid to the settlor or his successor in interest if such address is known, otherwise by posting at a conspicuous place on the trust property;

(b) publishing a copy thereof once a week for two (2) consecutive weeks at least twenty (20) days before the date of sale in some newspaper of general circulation in the Republic on the island in which the property is situated, or, if there be no such newspaper, by posting such notice for the same period in three (3) public places in the community in which the property is to be sold; and

(c) posting a copy of said notice in some conspicuous place on the property to be sold, at least twenty (20) days before the date of sale.

(3) Whenever a request in writing signed by both settlor and beneficiary for a postponement of the sale to an agreed date and hour is given to the trustee, the trustee shall thereupon by public declaration postpone the sale to the day and hour so fixed in such request. The sale shall be held at the place originally fixed by the trustee for the sale. In the case of a postponement, notice shall be given by public declaration by the trustee at the time and place last appointed for the sale.

(4) The trustee, upon such sale, shall make without warranty, execute and, after due payment made, deliver to the purchaser, his heirs or assigns, a conveyance of the premises so sold which shall convey to the expenses of trust, including reasonable attorney's fees as may be awarded by the Court, which shall become due upon any default made by the settlor in any of the payments, secondly, to the obligation or debts secured, and interest thereon then remaining unpaid, and the amount of all other monies with interest thereon remaining unpaid, and the amount of monies with interest thereon agreed to be paid by settlor. The balance or surplus of such proceeds of sale shall be paid to the senior, his heirs, executors, administrators, or assigns.

(5) There shall be a recital in the conveyance executed pursuant to the power of sale, of the 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 settlor or his successor in interest, publishing or posting, or both, notice of sale, and personal service of notices which shall constitute prima facie evidence of compliance with such requirements and conclusive evidence thereof in favor of bona fide purchasers.

(6) Every sale made under the provisions of this Chapter vests in the purchaser, free from encumbrance, the interest of the settlor without equity or right of redemption.

(7) If, at the time and place specified for sale, no buyer appears or is eligible to purchase under the provisions of this Chapter, the trustee may purchase the property in its 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; and such purchase and other evidence of title shall be registered with the Clerk of the High Court.

(8) In the event of such a purchase, or acquisition in lieu of foreclosure, the trustee shall in all respects be a fiduciary with respect to such property for the benefit of the beneficiary, and may lease, operate, manage, sell, or otherwise dispose of the property, under such terms, covenants and conditions as may be specified by the beneficiary. The trustee and beneficiary of any 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 deed of trust, in the event the trustee purchases the trust under the provisions of this Chapter. [P.L. 1987-12, §9; amended by P. L. 1988-24, §5.]

§212. Discharge, reconveyance, and satisfaction.

(1) A deed of trust must be discharged by 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 paid, satisfied or discharged. Reference shall be made in such certificate to the name or names of the senior or seniors, the date of registration and the location where the deed of trust is registered.

(2) When any debt secured by a deed of trust has been justly satisfied, the beneficiary of the deed of trust, or his assignee, must execute, acknowledge, and deliver to the settlor and/or the owners of the real property a certificate of discharge of the debt, and, upon notice thereof, the trustee shall execute a full reconveyance of the encumbered interests to the settlor and/or owners. The beneficiary, his assignee or personal representative shall deliver to the settlor, or his heirs, successors or assigns, the deed of trust and the note so paid marked satisfied. [P.L. 1987-12, §10.]

§213. Impairment of security.

No person who has transferred in trust any interest in real property as security for the performance of an obligation or the payment of any debt shall do any act which will substantially impair the beneficiary's security. [P. L. 1987-12, §11.]

§214. Appointment of receiver.

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

(2) 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 therefrom is in danger of being lost, or that personal property subject to the deed of trust is in danger of being lost, removed, materially injured or destroyed, or that the property is or may become insufficient to discharge the debt which it secures. [P.L. 1987-12, §12; amended by P. L. 1988-24, § 6.]

§215. Registration of assignment.

Any assignment of the beneficial interest under a deed of trust shall be registered with the Clerk of the High Court, and from the time the same is filed of record all persons are deemed to have notice of the contents thereof. [P.L. 1987-12, §13.]

§216. This Chapter to prevail over any other law.

Notwithstanding anything contrary in any other law, the provisions of this Chapter shall prevail, and in the event there is any inconsistency in this Chapter with the provisions of any other law, the provisions of this Chapter shall prevail. [P.L. 1987-12, §14.]