

CHAPTER 6

MORTGAGES

Section

6-101 Short title

6-102 Purpose

6-103 Definitions

6-104 Right to possession

6-105 Security not to be impaired

6-106 Property mortgagable

6-107 Heirs and devisees take subject to mortgage

6-108 Transfers made as security deemed mortgages

6-109 Necessity of writing; oral explanation

6-110 Requisites for recording

6-111 Effect of failure to record

6-112 Instruments made with intent to defraud

6-113 Service of notice; designated personal representative

6-114 Assignments, subordinations, and waivers

6-115 Record of assignment not notice to mortgagor; form of notice to mortgagor

6-116 Assignment of debt carries security

6-117 Certificate of discharge required

6-118 Waiver by borrower of statutory rights; validity

6-119 No private power of sale conferred by mortgage

6-120 Acceleration of principal

6-121 Mortgagee's remedies in the event of default

6-122 Notice of default

6-123 Request for copies of notices of default prior to foreclosure

6-124 Cure of default; payment of arrearages; costs and fees; effect upon acceleration

6-125 Actions for foreclosure of mortgages

6-126 Redemption

6-127 Redemption amount; time; payment; disagreement as to amount; proceedings for determination; notice and hearing; certificate

6-128 Rents and profits; rights of purchaser and redemptioner; credit upon redemption; money to be paid; accounting

6-129 Injury to property restrained

6-130 Limitation of actions

6-131 Discharge of real property mortgage not renewed or extended of record

6-132 Legal tender

6-133 Improvements by mortgagee prior to sale

6-134 Foreign citizen as mortgagee

6-135 Foreclosure by foreign citizen as mortgagee

6-136 Interpretations

41 PC 6-101. Short title.

This chapter is known and may be cited as the “Pohnpei State Real Property Mortgage Act.”

Source: DL. No. 4L-152-78 §1, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-102. Purpose.

The purpose of this chapter is to establish a system of mortgage law in Pohnpei which will induce lenders to make secured commercial and residential loans, while at the same time ensuring that borrowers who execute mortgages of property in Pohnpei have a full comprehension of the nature and consequences thereof, and that the parties to the mortgage are protected against unfair practices. This chapter shall be construed in such a manner as to best effectuate its purposes as set out herein.

Source: D.L. No. 4L-152-78 §2, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-103. Definitions.

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

- (1) "Clerk" means the Clerk of the Pohnpei Supreme Court.
- (2) "Court" means the Trial Division of the Pohnpei Supreme Court.
- (3) "Default" is a failure of an obligor to perform an act he is bound to perform.
- (4) "Encumbrance" is a non-fee interest in or charge upon property.
- (5) "Improvement" is any building or structure constructed, or any artificial condition maintained, upon property.
- (6) "Lien" is a charge imposed in some mode upon specific property by which it is made the security for the performance of an act.
- (7) "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.
- (8) "Mortgagee" is a public agency or a financial lending institution duly licensed to do business as such in the state of Pohnpei that takes or receives a mortgage. This term also, where appropriate, refers to the mortgagee's heirs, personal representatives, successors, and assigns.
- (9) "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 representatives, successors, and assigns.
- (10) "Property" means any interest in real property that is capable of being transferred. Property includes leasehold interests.

Source: D.L. No. 4L-152-78 §3, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-104. Right to possession.

The mortgagee is not entitled to possession of mortgaged property unless the mortgage expressly grants a right of possession; PROVIDED, HOWEVER, after the execution of the mortgage, the mortgagor may agree to deliver possession to the mortgagee without additional consideration; PROVIDED FURTHER that the right of possession of a mortgagee in the mortgaged property may not cumulatively exceed five years or the remaining term of the mortgage, whichever is less.

Source: D.L. No. 4L-152-78 §4, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-105. 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: D.L. No. 4L-152-78 §5, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-106. Property mortgagable.

Any property not otherwise restricted by law may be mortgaged and shall be subject to foreclosure, including homesteaded property for which a deed of conveyance has been issued pursuant to 67 TTC (1980), and properly recorded or pursuant to any law concerning homesteaded property; PROVIDED, HOWEVER, 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%). The exemption from execution set forth in 8 TTC §61(3) (1980), or under any other law shall not be applicable to any property that is mortgaged and properly recorded.

Source: D.L. No. 4L-152-78 §6, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-107. 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: D.L. No. 4L-152-78 §7, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-108. Transfers made as security deemed mortgages.

Except as provided in the Deed of Trust Act, Chapter 7, (41 PC 7-*), every transfer of an interest in property, made only as a security for the payment of a debt, and every transfer or conveyance of any property by deed of trust or otherwise, executed and delivered to secure the payment of such a debt, shall be deemed a mortgage. No other transaction, unless excepted by this section, for which property is purportedly made the security therefor, whether in whole or in part, shall affect the property or interests therein by reason of the purported security agreement.

Source: D.L. No. 4L-152-78 §8, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80; S.L. No. 1L-157-87 §30, 8/5/87

41 PC 6-109. Necessity of writing; oral explanation.

(1) A mortgage shall be created, amended, renewed or extended only by writing in English. All mortgage instruments shall contain a clause, conspicuously located on the first page of the instrument, notifying the mortgagor in both English and the principal language of the state:

(a) That he is entitled without cost to a translation of the mortgage instrument in the principal language of Pohnpei; PROVIDED, HOWEVER, that the English document shall be the sole operative version. 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; and

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

(2) The mortgagee shall orally, in the predominant language being used in the transaction, inform the mortgagor prior to the execution of the mortgage agreement that a copy of the mortgage instrument may be obtained without cost in the principal language of the state and that the mortgage is a binding legal instrument and that it is recommended that the mortgagor have the instrument reviewed by an attorney, and that the mortgagee shall further orally explain to the mortgagor prior to execution of the agreement the total estimated costs of the debt secured by the mortgage including repayment of the principal, interest, and all incidental charges, such total to be a reasonable estimate of the costs computed as of the time for execution of the mortgage instrument and a statement verifying compliance with this subsection shall be signed by the mortgagor and mortgagee and appended to the mortgage instrument.

Source: D.L. No. 4L-152-78 §9, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-110. Requisites for recording.

(1) No mortgage shall be received for recordation unless it is executed in accordance with the requirements of this section and 41 PC 6-109 and contains:

(a) The mailing addresses of the mortgagor and mortgagee;

(b) The description of the property affected;

(c) The principal amount of the secured indebtedness;

(d) The rate of interest thereon; and

(e) The time, place of repayment, and maturity date.

(2) All mortgages, amendments, renewals, and extensions of mortgages shall be acknowledged or proven, as provided by this chapter, and recorded with the Clerk of the Pohnpei Supreme Court and/or with the Principal Judge of the Court of Land Tenure or Registrar, as required by 41 PC 4-102 and 67 TTC §119 (1980) or with the proper governmental agency pursuant to any applicable law concerning the recordation of real estate instruments within the state of Pohnpei. 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 justice of the Supreme Court, a judge of the Court of Land Tenure, the Clerk of the Pohnpei Supreme Court, the Clerk of the Court of Land Tenure, or any subordinate of the above duly authorized to act in the name of said official. Nothing in this section shall preclude acknowledgment by a notary public duly authorized to acknowledge instruments in any state or territory of the United States of America or other foreign jurisdiction; PROVIDED, HOWEVER, that said notary public complies with the laws of that jurisdiction.

Source: D.L. No. 4L-152-78 §10, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-111. Effect of failure to record.

In the event of failure to properly record a mortgage, such mortgage shall not be void but 57 TTC §302 (1980) shall apply, or any other applicable law or equity that would allow the mortgagee to recover debt owed by the mortgagor.

Source: D.L. No. 4L-152-78 §11, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-112. Instruments made with 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: D.L. No. 4L-152-78 §12, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-113. Service of notice; designated personal representative.

(1) 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 the Pohnpei Supreme Court 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 Pohnpei State.

(2) 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.

(3) A Federated States of Micronesia Postal Service Registry Return Receipt showing that the envelope containing the notice has been received by the mortgagor or his designated personal representative shall be prima facie evidence that proper notice has been given. A return by a police officer, officer of the Supreme Court or any other person authorized by the Supreme Court to serve such notice, stating by affidavit that notice has been delivered personally to the mortgagor, or, if he cannot be located within the state of Pohnpei, to his designated personal representative, shall be prima facie evidence that notice has been delivered.

(4) When service cannot be made in accordance with Subsection (3) of this section, the notice shall be filed with the Clerk of the Supreme Court who shall cause the notice to be announced on the radio within the state of Pohnpei at least once per week for four weeks and published once a week in a newspaper of general circulation within the state of Pohnpei for at least four consecutive weeks and shall further cause said notice to be posted in a prominent public place in the local jurisdiction in which the property is located for 30 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. The Clerk may collect a reasonable charge for the

cost of such publication. Service shall be considered effected 30 days after the first publication, broadcast or posting, whichever is last in time.

(5) In the event there is more than one mortgagor, proper notice served separately upon each mortgagor holding more than twenty-four percent (24%) of the mortgaged interest in property shall constitute service upon all of the mortgagors thereto.

Source: D.L. No. 4L-152-78 §13, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-114. 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: D.L. No. 4L-152-78 §14, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-115. 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 shall 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: D.L. No. 4L-152-78 §15, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-116. 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: D.L. No. 4L-152-78 §16, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-117. 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 30 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 refusal and shall also forfeit to the mortgagor the sum of \$300. 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: D.L. No. 4L-152-78 §17, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-118. Waiver by borrower of statutory rights; validity.

Any express 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: D.L. No. 4L-152-78 §18, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-119. No private power of sale conferred by mortgage.

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

Source: D.L. No. 4L-152-78 §19, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-120. Acceleration of principal.

Acceleration of the principal and obligations under the note or mortgage as a result of default shall be valid. No acceleration of unpaid principal of the underlying obligation shall be effective until 30 days after receipt of the notice of default provided for in 41 PC 6-122.

Source: D.L. No. 4L-152-78 §20, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-121. 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:

(1) 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.

(2) 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 this chapter.

Source: D.L. No. 4L-152-78 §21, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-122. Notice of default.

Not less than 30 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 41 PC 6-113. The notice shall be written in the English language and in the principal language of Pohnpei 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 30 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: D.L. No. 4L-152-78 §22, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-123. Request for copies of notices of default prior to foreclosure.

(1) Any person desiring to receive a recorded copy of a notice of default prior to foreclosure may, at any time subsequent to recordation of such mortgage and prior to service of default as provided in 41 PC 6-113, cause to be filed for record with the Clerk of the Pohnpei Supreme Court a request for a copy of any such notice of default prior to foreclosure. This request shall be signed and acknowledged by the person making the request, specifying the name and address of the person to whom the notice is to be mailed. It shall also identify the mortgage by stating the names of the parties thereto, the date of recordation thereof, and such other identification as may reasonably be required by the Clerk of the Supreme Court. The request for notice shall be in substantially the following form:

“Request is hereby made that a copy of any notice of default prior to foreclosure of the mortgage recorded [Date], executed by _____ as mortgagor in which _____ is named mortgagee be mailed to [name] at [address]

Signature: _____.”

The Clerk shall collect a fee of \$3 from the requesting party which shall be placed in a special account for the processing of requests and mailing of copies of notices under this chapter.

(2) Upon the filing for record of such request, the Clerk of the Supreme Court shall index with the mortgage, the names of persons requesting copies and shall send a copy of any recorded defaults to such persons.

Source: D.L. No. 4L-152-78 §23, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-124. 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 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 attorneys' fees actually incurred plus any costs or expenses of collection incurred to the extent that such attorneys' fees and collection costs and expenses exclusive of court charges do not cumulatively exceed \$2,000 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: D.L. No. 4L-152-78 §24, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-125. Actions for foreclosure of mortgages.

(1) 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 Pohnpei Supreme Court or its successor in state law.

(2) Service of summons. Service of summons in an action of foreclosure shall be made in accordance with the applicable provisions of Division VIII of this Code, the Rules of Civil Procedure adopted by the Supreme Court or pursuant to any applicable law or rule of procedure in the state of Pohnpei.

(3) 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 thereon; 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.

(4) 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 attorneys' fees, and shall render judgment for the sum so found due, and order that the same be paid into the court within a period of three months from and after the date on which the order was made.

(5) Sale of the mortgaged property. When the mortgagor after being directed to do so, as provided in Subsection (4) of this section, fails to pay the principal and interest, and costs, and attorneys' 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 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 Pohnpei.

(6) Certificate of sale; deed effect. Whenever any property shall be sold under judgment of foreclosure pursuant to this chapter, the person making the sale must give to the purchaser a certificate of sale and properly record a duplicate thereof, and file a duplicate with the court. The certificate shall state the date of judgment under which the sale was made, the names of the parties, a particular description of the property sold, the price bid for each distinct lot or parcel, and the period during which the property is subject to redemption. At the expiration of the time for the redemption of such property, if the same is not redeemed, the person making the sale, or his successor in office, or other officer appointed by the court, must make to the purchaser, his heirs or assignees, or to any person who has acquired the title of such purchaser by redemption or otherwise, a deed or deeds to such property. 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 and shall be a bar to all claims, rights or equity of redemption in or to the property by the parties to such action, their heirs and personal representatives, and also against all persons claiming under them, or any of them, subsequent to the commencement of the action in which such judgment was rendered.

(7) 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 attorneys' fees to the extent that such costs and fees, exclusive of court charges, do not cumulatively exceed \$2,000 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.

(8) 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.

(9) 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.

(10) 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: D.L. No. 4L-152-78 §25, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-126. Redemption.

All property sold upon foreclosure of a mortgage by order, judgment or decree of court may be redeemed, in the manner hereinafter provided, at any time within 12 months after the date of such sale by the judgment debtor or his successor in interest; PROVIDED, HOWEVER, that the judgment debtor or his successor in interest redeem all of the property as sold.

Source: D.L. No. 4L-152-78 §26, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-127. Redemption amount; time; payment; disagreement as to amount; proceedings for determination; notice and hearing; certificate.

The judgment debtor may redeem the property from the purchaser within 12 months of the date of the sale, upon paying the purchaser the amount of his purchase, with one percent (1%) per month thereon, up to the time of redemption. In addition, the judgment debtor shall pay the following: (1) the amount of any assessment or taxes; (2) any costs or sums paid for fire insurance, management, maintenance upkeep or repair of improvements located upon the property; and (3) any sum paid on a prior obligation secured by the property to the extent such payment was necessary for the protection of the purchaser's interest, which the purchaser may have paid thereon after purchase, and interest on such amounts in the amount computed above. Upon receipt of such payment the purchaser shall execute to the judgment debtor a proper certificate of redemption in the form prescribed below. In the event of a disagreement between the purchaser and the judgment debtor as to whether any such sum demanded by the purchaser is a proper charge to be added to the amount required for redemption, the judgment debtor shall thereupon pay to the Clerk of the Pohnpei Supreme Court out of which execution or order authorizing the sale was issued, the amount demanded by the purchaser for redemption which the purchaser believes, in good faith, are the amounts allowed by this chapter, less the amount in dispute, and shall at the same time file with the court a petition in writing setting forth specifically the item or items demanded to which he objects, together with his reasons for such objections, and asking that such amount be determined by the court. In no event shall the amount deposited with the Clerk of the Supreme Court be less than the purchase price as paid by the purchaser at the foreclosure sale, plus interest from the date of purchase to the date of deposit with the Clerk of the Supreme Court at twelve percent (12%) per annum, plus an amount equal to ten percent (10%) of the said purchase price. The court shall thereupon fix a day, not less than 20 nor more than 60 days from the date of such filing, or if the court be not in session, not less than five nor more than ten days from the day it again sits, whichever is the greater, for the hearing of said objection. A copy of said petition, together with a notice of hearing, giving the time and place thereof, shall be served by the judgment debtor, or his attorney, seeking redemption, upon the purchaser not less than 20 days before the day of the hearing. Upon the day fixed, the court in which the order of sale or execution was originally issued shall determine, by order duly entered in the minutes of said court, the amount required for redemption, either upon affidavit or evidence which is satisfactory to the court. When the amount has been so determined and in the event the amount thereto deposited with the court is sufficient, the same shall forthwith be paid to the purchaser upon his execution of a proper certificate of redemption, said certificate stating the

name of the purchaser and of the redemptioner, and further stating the claim, instrument or judgment under which the redemptioner derives the right to redeem, and further stating the date of the redemption and amount for which it was made, and particularly describing the redeemed property. In the event an additional amount to that theretofore paid to the court is required, the redemptioner shall pay such additional amount to the Clerk within ten days. He shall then pay the whole amount necessary to the purchaser upon his execution of a proper certificate of redemption. The certificate of redemption so issued may be deposited with the Clerk for delivery to the redemptioner, or given to the redemptioner at the time of payment.

Source: D.L. No. 4L-152-78 §27, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-128. Rents and profits; rights of purchaser and redemptioner; credit upon redemption; money to be paid; accounting.

The purchaser, from the time of sale until a redemption, is entitled to receive, from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof. But when any rents or profits have been received by the purchaser, or his assigns, from the property thus sold preceding such redemption, the amounts of such rents and profits, less reasonable expenses incurred in the production of such rents and profits and a management fee, shall be a credit upon the redemption money to be paid, and if the redemptioner, before the expiration of the time allowed for such redemption, demands in writing of such purchaser a written and verified statement of the amounts of such expenses, rents, and profits thus received, the period for redemption is extended for a period of 20 days after the normal expiration of the redemption period.

Source: D.L. No. 4L-152-78 §28, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-129. Injury to property restrained.

(1) 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 and until the expiration of the time allowed for redemption.

(2) 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: D.L. No. 4L-152-78 §29, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-130. Limitation of actions.

No action to recover property or any interest therein based on any claim or color of title originating, accruing or arising under the parties to the mortgage before a foreclosure sale shall be commenced after expiration of the redemption period as provided in this chapter.

Source: D.L. No. 4L-152-78 §30, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-131. Discharge of real property mortgage not renewed or extended of record. Every mortgage which has not been renewed or extended of record within 15 years after its due date, or when no due date is shown in the mortgage then within 20 years after the recording of such mortgage, shall be discharged of record by an order of a judge of the Trial Division of the Pohnpei Supreme 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 the Supreme Court. The fee for such application and order shall be the same as that charged for filing a civil action.

Source: D.L. No. 4L-152-78 §31, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-132. Legal tender.

Unless otherwise provided by law, a mortgage may require all mortgage payments to be made in the coins and currencies of the United States of America, and all purchases of land at foreclosure sales and all redemptions as provided in this chapter shall be made in the coins and currencies of the United States.

Source: D.L. No. 4L-152-78 §32, 9/14/78

Note: §32 was inserted by S.L. No. 2L-44-80 §1, 11/13/80.

41 PC 6-133. 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 a part of the costs of the sale which are recoverable by the mortgagee.

Source: D.L. No. 4L-152-78 §33, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

41 PC 6-134. Foreign citizen as mortgagee.

A noncitizen of Pohnpei may be a mortgagee under 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 Pohnpei State. Under this chapter, a mortgage creates a lien on the land but does not pass title to the mortgagee.

Source: D.L. No. 4L-152-78 §32, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

Note: S.L. No. 2L-44-80 §1, 11/13/80 renumbered §32 as §34.

41 PC 6-135. Foreclosure by foreign citizen as mortgagee.

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 or at any postponed sale. The trustee may be the court, or any citizen of Pohnpei or any other person or corporation that 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 Pohnpei 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; PROVIDED, HOWEVER, that in the absence of any such law enacted by the government of this state, to hold such a leasehold interest of less than ten years; PROVIDED FURTHER that this provision shall not exempt any such purchaser from compliance with applicable business and foreign investment laws in the use of such leasehold interests.

Source: D.L. No. 4L-152-78 §35, 9/14/78

Notes: 1. §35 was inserted by S.L. No. 2L-44-80 §1, 11/13/80. 2. References to Trust Territory Code, TTPI Manual of Administration, TTPI regulatory provisions and the High Commissioner have been omitted.

41 PC 6-136. Interpretations.

(1) 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 Pohnpeian, and thereafter a conflict results as a result of such interpretation, then the English version shall prevail.

(2) 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: D.L. No. 4L-152-78 §36, 9/14/78

Note: §36 was inserted by S.L. No. 2L-44-80 §1, 11/13/80.