

CHAPTER 7

DEEDS OF TRUST

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41 PC 7-101. Short title.

This chapter is known and may be cited as the “Deed of Trust Act of 1987.”

Source: S.L. No. 1L-157-87 §1, 8/5/87

41 PC 7-102. Purpose.

The purpose of this chapter is to provide for a satisfactory method of securing the financing of improvements to real property by the United States of America acting through the Rural Economic and Community Development Services, the Department of Housing and Urban Development or the Veterans Administration.

Source: S.L. No. 1L-157-87 §2, 8/5/87

41 PC 7-103. Applicability.

This chapter shall be applicable only to transactions wherein the debtor (trustor) is required to make payments of the secured financing in accordance with the applicable federal regulations of the Rural Economic and Community Development Services, the Department of Housing and Urban Development or the Veterans Administration of the United States of America Government.

Source: S.L. No. 1L-157-87 §3, 8/5/87; S.L. No. 2L-37-88 §1, 8/15/88

41 PC 7-104. Deed of trust.

A deed of trust is a conveyance of the freehold or leasehold 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. The deed of trust shall be evidenced by an instrument in writing containing the terms thereof in both the English language and the principal language of the trustor, if that be an indigenous language of the state. In the event of conflict between

the two versions of the deed of trust, or any term thereof, the version in the English language shall prevail.

Source: S.L. No. 1L-157-87 §4, 8/5/87

41 PC 7-105. Definitions.

The following words as used herein shall mean:

(1) Beneficiary. The United States of America acting through the Rural Economic and Community Development Services, the Department of Housing and Urban Development or the Veterans Administration, who is the creditor to whom the trustor's obligation is owed.

(2) Recordation. Any references to recordation or the filing of record shall mean the proper filing of such instrument with the Pohnpei Court of Land Tenure and/or the Clerk of the Pohnpei Supreme Court, whichever is applicable pursuant to the laws and statutes governing transfers of interest in land.

(3) Trustee. The Pohnpei Housing Authority or any legal entity of the state government, 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.

(4) Trustor. The debtor under a deed of trust or the owner or owners of the fee simple who conveys the title to real property to the trustee under the terms of the deed of trust instrument.

Source: S.L. No. 1L-157-87 §5, 8/5/87; S.L. No. 2L-37-88 §2, 8/15/88; S.L. No. 2L-143-90 §1, 1/5/90

Note: S.L. No. 2L-37-88 §3 repealing provision has been omitted.

41 PC 7-106. Effect of recordation.

A deed of trust and any instruments concerning the same shall not be valid against subsequent purchasers or persons taking an interest in the real estate in good faith and for valuable consideration without notice of such deed of trust or an interest in the same unless such deed of trust and any instrument relating to the same is first duly recorded.

Source: S.L. No. 1L-157-87 §6, 8/5/87

41 PC 7-107. Not exempt 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 this deed of trust.

Source: S.L. No. 1L-157-87 §7, 8/5/87

41 PC 7-108. Duties of trustee.

The duties of the trustee shall be as set forth in the deed of trust instrument provided such terms and conditions are not in conflict with this chapter.

Source: S.L. No. 1L-157-87 §8, 8/5/87

41 PC 7-109. Loan guarantee escrow account.

The trustee shall establish and maintain a loan guarantee escrow account in an amount to be agreed to between the trustee and the beneficiary. Such account is to be deposited in a state financial institution that has Federal Deposit Insurance Corporation (FDIC) coverage, and any interest earned shall be redeposited into the account. The use of funds from the account shall be for the sole purpose of servicing loans made by the 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 loan guarantee escrow account through the trustee. The trustee and Rural Economic and Community Development Services, as beneficiary, shall be directed by the Memorandum of Understanding as to the procedure for the use of funds from the loan guarantee escrow account. The loan guarantee escrow account shall not be terminated without the written consent of the trustee and the Rural Economic and Community Development Services.

Source: S.L. No. 1L-157-87 §9, 8/5/87

Note: §9 was repealed by S.L. No. 2L-37-88 §3, 8/15/88 and S.L. No. 2L-143-90 §2, 1/5/90 inserted a new §9.

41 PC 7-110. Foreclosure by judicial or non-judicial process.

The deed of trust instrument may provide for foreclosure proceedings by judicial or non-judicial process. If foreclosure is by judicial process, then the foreclosure proceedings shall be brought in a court of competent jurisdiction. Any judicial action for the foreclosure of a deed of trust shall be similar to and based on the same proceedings as the statute governing actions for foreclosure of mortgages (the Real Property Mortgage Act, Chapter 6, as amended, or its successor in Pohnpei law), (41 PC 6-*), including the notice, requirements, and reinstatement rights; PROVIDED, HOWEVER, that the trustor shall not have any right of redemption under a deed of trust executed hereunder. If foreclosure is by non-judicial process then such may be by private power of sale as set forth herein and the trustor shall not have any right of redemption after such sale.

Source: S.L. No. 1L-157-87 §10, 8/5/87

41 PC 7-111. Foreclosure by private power of sale.

Non-judicial foreclosure of a deed of trust by the exercise of private power of sale shall be in accordance with this chapter.

(1) Power of sale. A power of sale shall mean 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.

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

(a) A written notice is sent by the trustee or beneficiary to the trustor setting forth in English and in the principal language of the trustor if that be an indigenous language of the state, his default, the amounts owed and for what periods, the method and amount to cure such default, the time in which to cure such 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 shall be taken by the trustee if such default is not cured in the method, manner, date, and time as set forth in the notice.

(b) After the lapse of days as set forth in the written notice specified in Paragraph (a) of this subsection, 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 in writing the date, time, and place thereof in English and the principal language of the trustor if that be an indigenous language of the state.

(c) Within ten days after such notice has been sent to the trustor as set forth in Paragraph (b) of this subsection, the trustee or beneficiary shall file a record of default, identifying the deed of trust by stating the names of the trustor, trustee, 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.

Source: S.L. No. 1L-157-87 §11, 8/5/87

41 PC 7-112. Power of sale: reinstatement.

The trustor shall have one right of reinstatement. 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. Such payment shall then cure the default and the sale or proceedings shall then 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 such 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: S.L. No. 1L-157-87 §12, 8/5/87

41 PC 7-113. Notice.

Any notice as required hereunder shall be deemed delivered if sent by registered or certified mail with proper postage thereon, to the trustor or his successor in interest, at the address as set forth in the deed of trust instrument, or personally delivered to the trustor or his successor in interest, or to his agent as may be designated in the deed of trust instrument.

Source: S.L. No. 1L-157-87 §13, 8/5/87

41 PC 7-114. Power of sale: publication.

Prior to the date of sale, the trustee shall:

- (1) Publish a notice of sale by power of sale at least once a week for three weeks prior to the date of sale, in some newspaper of general circulation in the state center and in the local jurisdiction where the property is located or situated;
- (2) Broadcast the same notice in both English and the principal language of the trustor if that be an indigenous language of the state at least once a week for three weeks prior to the date of sale, by some radio broadcast station of general AM broadcast capabilities in the state center and in the local jurisdiction where the property is located or situated;
- (3) Post such notice for three weeks prior to the date of the sale in three public places in the local jurisdiction where the property is to be sold; and
- (4) Post a copy of said notice in some conspicuous place on the property to be sold, at least 20 days prior to the date of said sale.

Source: S.L. No. 1L-157-87 §14, 8/5/87

41 PC 7-115. Postponement of public sale.

The trustee, at his discretion, may postpone the public sale by making a public declaration at the time and place of such sale. If the postponement is for more than ten days from the date of sale, then the trustee shall, within ten days after the date of sale as postponed:

- (1) Publish a notice of such postponement, with a new date of sale at least once in some newspaper of general circulation in the state center and in the local jurisdiction where the property is located or situated;
- (2) Broadcast the same notice in English and the principal language of the trustor if that be an indigenous language of the state, with a new date of sale, at least once by a radio broadcast station of general AM broadcast capabilities in the state center and in the local jurisdiction where the property is located or situated;
- (3) Post such notice in three public places in the local jurisdiction where the property is to be sold;
- (4) Post a copy of such notice in some conspicuous place on the property to be sold; and
- (5) File a notice of postponement with the proper place of record.

Source: S.L. No. 1L-157-87 §15, 8/5/87

41 PC 7-116. Power of sale: conveyance by trustee.

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

Source: S.L. No. 1L-157-87 §16, 8/5/87

41 PC 7-117. Power of sale: proceeds.

The proceeds of sale shall then be first applied to the expenses of sale, together with the reasonable expenses of the trust, including reasonable attorneys' 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, 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 such proceeds of sale shall be paid to the trustor, his heirs, executors, administrators or assigns.

Source: S.L. No. 1L-157-87 §17, 8/5/87

41 PC 7-118. Power of sale: deficiency.

If there are insufficient proceeds from the sale to satisfy all amounts due to the beneficiary under the deed of trust instruments, then the trustee shall make up such deficiency of insufficient amounts to the beneficiary from such fund as shall be established by the trustee for said purpose, and in such 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 shall include the expenses of sale, the expenses of the trust, reasonable attorneys' fees, and the interest and principal due, and the trustee may bring an action against the trustor for the recovery of such deficient amounts. Nothing herein shall prevent the trustee from purchasing the property at such foreclosure sale as provided in this chapter.

Source: S.L. No. 1L-157-87 §18, 8/5/87

41 PC 7-119. Vacating of premises.

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

Source: S.L. No. 1L-157-87 §19, 8/5/87

41 PC 7-120. Effect of certain recitals in deed.

A recital in a deed, executed pursuant to the power of sale regarding the filing of notice, personal advice, and mailing of copies of the notice of default shall constitute 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: S.L. No. 1L-157-87 §20, 8/5/87

41 PC 7-121. Power of sale-redemption rights.

A sale made hereunder by the exercise of the private power of sale shall divest the trustor of any equity or right of redemption in the property.

Source: S.L. No. 1L-157-87 §21, 8/5/87

41 PC 7-122. Purchase of property by trustee.

The trustee may be the purchaser at any public sale provided that there are no other purchasers at such public sale, or that the trustee shall be the highest bidding purchaser at such sale.

Source: S.L. No. 1L-157-87 §22, 8/5/87

41 PC 7-123. Duties of trustee.

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.

Source: S.L. No. 1L-157-87 §23, 8/5/87

41 PC 7-124. Discharge or release of deed of trust.

A deed of trust shall be discharged or released by recording an instrument signed by the trustee, and properly acknowledged, stating that the debt secured by the deed of trust has been fully paid and satisfied. Upon such discharge, the trustee shall execute a deed conveying full title to the trustor.

Source: S.L. No. 1L-157-87 §24, 8/5/87

41 PC 7-125. 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: S.L. No. 1L-157-87 §25, 8/5/87

41 PC 7-126. Appointment of receiver.

At any time after the recordation of a notice of default, the trustee or beneficiary may apply to a court of competent jurisdiction 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 therefrom is in danger of being lost.

Source: S.L. No. 1L-157-87 §26, 8/5/87

41 PC 7-127. Assignment of beneficial interest.

The beneficiary may assign his benefits under the deed of trust without the consent or knowledge of the trustor unless the deed of trust instrument provides to the contrary. The

recording of such assignment shall be deemed notice to all persons as of the date of such recording.

Source: S.L. No. 1L-157-87 §27, 8/5/87

41 PC 7-128. Purchaser condition precedent.

The purchaser at any foreclosure or public sale shall be only those entitled to own property in the state of Pohnpei.

Source: S.L. No. 1L-157-87 §28, 8/5/87

41 PC 7-129. Conflict with other laws.

If this chapter is in conflict or inconsistent with any other law, then this chapter shall control.

Source: S.L. No. 1L-157-87 §29, 8/5/87