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Sectional HB 108 Property Foreclosures and Executions

Section 1. AS 09.35.140 is amended –Removes the U.S. Post Office as a posting requirement.

Section 2. Amends AS 09.35.140 to add a new subsection. Adds a new section to AS 09.35 (execution on property) to require the notice of the execution sale of real property also be noticed on an Internet website, including newspaper websites. Also, Describes the requirements that the Internet websites must meet to qualify, and the Internet notice requirement for a non judicial foreclosure.

Section 3. Amends AS 09.35.142 to allow an Internet website owner to bring a court action to establish that the website qualifies under AS 09.35.140(b)

Section 4. Amends AS 34.20.070(b) to adjust to 90 days the minimum length of time that must elapse between recording a notice of default on a deed of trust and holding the foreclosure sale. Sets a limit of two days (before a foreclosure sale) when certain defaults on a deed of trust may be cured by a specific payment.

Section 5. Amends AS 34.20.070(c) requires that possession be actual physical possession where possession is required for certain persons to be entitled to receive a notice of default for foreclosure sale.

Section 6. Adds new subsection to AS 34.20.070 (foreclosure by trustee).

Proposed 34.20.070(e) establishes when a person who holds a lien or non-possessory property interest that can be inferred from an inspection of the property is entitled to receive a notice of default for a foreclosure sale.

Proposed 34.20.070(f) allows a trustee additional time (after recording) to deliver the notice of default when the trustee delivers the notice personally to the property or to an occupant of the property. Allows the trustee to place the notice on the property or as close as practicable to the property under certain conditions.

Proposed sec 34.20.070(g) states that an affidavit signed by a trustee or another person who delivered notice personally under sec. 34.20.070(f) is prima facie evidence that the trustee complied with sec. 34.20.070(f). Establishes a conclusive presumption

(as evidenced by the affidavit) after one year unless a court action is filed within the year to challenge the foreclosure for failure to comply with sec. 34.20.070(f)

Proposed sec. 34.20.070(h) establishes how a trustee may satisfy the notice requirements for a person known by the trustee to be deceased and for whom the trustee or the deed of trust beneficiary knows a personal representative has been appointed.

Proposed sec. 34.20.070(i) establishes how a trustee may satisfy the notice requirements for a person known by the trustee to be deceased and for whom the trustee or the deed of trust beneficiary know that a personal representative has been appointed for the deceased person.

Proposed sec. 34.20.070(j) states that an heir or devisee of a deceased person must challenge a foreclosure sale within 90 days if alleging non-receipt of notice and if the trustee gave notice as required by (h) – (i).

Proposed sec. 34.20.070(k) describes the persons who may bring a court action to enjoin a foreclosure sale.

Proposed sec. 34.20.070(l) states that when a court injunction action meets certain conditions, a court may impose conditions that it considers appropriate to protect the deed of trust beneficiary.

Proposed sec. 34.20.070(m) defines certain terms for AS 34.20.070

Section 7. AS 34.20.080(a) is amended to require that the proceeds from a foreclosure sale are placed in escrow until disbursed. This section allows a trustee to accept foreclosure bids by telephone, the Internet, and electronic mail if certain conditions are met.

Section 8. Amends AS 34.20.080(b) Allowing the attorney or other agent of the trustee to conduct the sale. Additionally, allows the trustee to set reasonable rules for the conduct of the sale. Adds language that conforms the deed delivery requirements to the new provision in sec. 34.20.070(g) allowing the trustee to rescind the sale under certain circumstances.

Section 9. Amends AS 34.20.080(e) Limiting the postponement of a foreclosure sale to not more than 12 months unless a new notice of sale is given. Establishes that postponement for up to 12 months does not provide a basis for challenging the validity of the foreclosure because of how long the foreclosure has been pending.

Section 10. Adds a new subsections to AS 34.20.080(foreclosure sale).

Proposed sec. 34.20.080(f) indicates how any cash proceeds of the sale are to be distributed after delivery of a deed.

Proposed sec. 34.20.080(g) allows a trustee to withhold delivery of the deed for up to five days, prohibits the trustee from issuing the deed under certain conditions, and describes what the trustee must do when rescinding the sale.

Proposed sec. 34.20.080(h) allows the trustee to reschedule a rescinded sale, establishes a minimum time that must elapse after the rescinded sale before the new sale may be held, and establishes the notice procedure that the trustee must follow for the rescheduled sale.

Proposed sec. 34.20.080(i) establishes that if a sale is not rescinded it completely terminates the rights of the trustor of the deed in the property.

Section 11. AS 34.20.120(a) is amended. Allowing the attorneys for the beneficiaries or their successors in interest to execute and acknowledge the substitution of a trustee for certain trust needs.

Section 12. AS 34.20.120(b) is amended. Adds a requirement to the contents of a trustee substitution for a situation when the substitution is executed by the attorneys for the beneficiaries or their successors in interest.

Section 13. Adds a new section AS 34.20.125(a) requiring a trustee to provide a surety bond before performing trustee duties under a deed of trust foreclosure.

AS 34.20.125(b) requires the bond to be terminable at any time by the surety by complying with certain requirements, indicates when the bond terminates, and indicates that the surety is not liable after termination for more than the face amount of the bond. States that a revision of the amount of the bond is not cumulative.

AS 34.20.125(c) gives notice requirements for a termination of the bond.

AS 34.20.125(d) requires a trustee to file evidence of a bond each year with the Department of Commerce, Community, and Economic Development. Requires the department to verify that the evidence is satisfactory, keep an updated list of bonded trustees, and make the evidence and the list available to the public. Allows the department to charge the trustee a reasonable fee for the verification and maintenance of records.

AS 34.20.125(e) exempts certain persons from the bonding requirements.

AS 34.20.125(f) defines "department" in this section to mean the Department of Commerce, Community, and Economic Development