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MEMORANDUM

Date: April 13, 2009

To: Senator Joe Paskvan
Chairman Senate Labor & Commerce

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Request for HB108 to be Heard in Senate Labor &
Commerce

-
- Sponsor Statement
 - CSHB108(JUD)am 26-LS0318\C.A
 - Sectional
 - House Floor Amendment
 - CSHB108(JUD) 26-LS0318\C
 - Amendment P.2
 - CSHB108(JUD) Work Draft version P
 - Explanation of Changes version R to version P
 - REV Zero Fiscal Note
 - CSHB108 version R
 - HB108 version A
 - Bill History

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Alaska State Legislature House of Representatives



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Representative Jay Ramras
District 10

Sponsor Statement HB 108 - Property Foreclosures and Executions (3/27/09)

Alaska's statutes on non judicial foreclosure of real property are antiquated, ambiguous and unclear, and therefore, prone to unnecessary litigation. House Bill 163 clarifies the present statutory language, by simplifying and modernizing the foreclosure process. The suggested changes benefit lenders, borrowers and title insurance companies by bringing clarity and certainty to the foreclosure process.

HB 108 would improve many aspects of the foreclosure process as they appear in Title 34. Some of these changes are:

- Clarifies how proceeds from a foreclosure auction are to be disbursed
- Assures that foreclosure trustees are fiscally responsible by imposing reasonable bond requirements
- Allows trustees to nullify sales when mistakes are made that negatively affect the integrity of the sale
- Sets up procedures to follow involving a deceased borrower
- Creates common-sense rules to govern times and methods for posting foreclosure properties
- Defines when one's rights are terminated in the foreclosure process
- Allows acceptance of foreclosure auction bids via email, internet, and telephone for greater accessibility

Passage of HB 108 will streamline and simplify the foreclosure language in Alaska statutes and provide for a more open, accessible and fair auction process, benefiting borrowers, lenders, and title insurers, as well as reducing unnecessary litigation.

CS FOR HOUSE BILL NO. 108(JUD) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 4/11/09

Offered: 4/7/09

Sponsor(s): REPRESENTATIVES RAMRAS, Gatto

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to real property foreclosures, to the sale of property on execution, and
2 to deeds of trust."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 09.35.140 is amended to read:

5 **Sec. 09.35.140. Notice of sale on execution.** Before the sale of property on
6 execution, notice of the sale shall be given as follows:

7 (1) notice of the sale of personal property is given by posting a written
8 or printed notice of the time and place of sale in three public places within five miles
9 of the place where the sale is to be held, not less than 10 days before the day of sale;
10 [ONE OF THE NOTICES SHALL BE POSTED AT THE POST OFFICE NEAREST
11 TO THE PLACE WHERE THE SALE IS TO TAKE PLACE;]

12 (2) notice of the sale of real property is given by posting a similar
13 notice particularly describing the property, including the property's street address if
14 there is a street address for the property, not less than 30 days before the day of sale in

1 three public places, as provided in (1) of this section, and publishing a copy of the
 2 notice four times, once a week for four successive weeks in a newspaper of general
 3 circulation published nearest to the place of sale; an inaccuracy in the street address
 4 may not be used to set aside a sale if the legal description is correct [; IN THIS
 5 PARAGRAPH, "NEWSPAPER OF GENERAL CIRCULATION" MEANS A
 6 PUBLICATION THAT

7 (A) IS PUBLISHED IN NEWSPAPER FORMAT;

8 (B) IS DISTRIBUTED AT LEAST ONCE A WEEK FOR AT
 9 LEAST 50 WEEKS EACH YEAR WITHIN THE JUDICIAL DISTRICT,
 10 EXCLUDING A PERIOD WHEN PUBLICATION IS INTERRUPTED BY A
 11 LABOR DISPUTE OR BY A NATURAL DISASTER OR OTHER
 12 CASUALTY THAT THE PUBLISHER CANNOT CONTROL; AND HAS A
 13 TOTAL PAID CIRCULATION OR PAID DISTRIBUTION OF AT LEAST
 14 500 COPIES, OR 10 PERCENT OF THE TOTAL POPULATION OF THE
 15 JUDICIAL DISTRICT, WHICHEVER IS LESS; IN THIS
 16 SUBPARAGRAPH, "JUDICIAL DISTRICT" MEANS THE JUDICIAL
 17 DISTRICT WHERE THE PLACE OF SALE IS LOCATED;

18 (C) HOLDS A SECOND CLASS MAILING PERMIT FROM
 19 THE UNITED STATES POSTAL SERVICE;

20 (D) IS NOT PUBLISHED PRIMARILY TO DISTRIBUTE
 21 ADVERTISING; AND

22 (E) IS NOT INTENDED PRIMARILY FOR A PARTICULAR
 23 PROFESSIONAL OR OCCUPATIONAL GROUP].

24 * **Sec. 2.** AS 09.35.140 is amended by adding new subsections to read:

25 (b) In addition to the notice required by (a) of this section, notice of the sale of
 26 real property on execution shall be given by publishing a notice of the sale on an
 27 Internet website beginning at least 45 days before the date of the sale. Publication of
 28 the notice must begin not later than the first day that the notice is published under
 29 (a)(2) of this section and must continue at least through the day in the fourth week that
 30 the notice is published under (a)(2) of this section.

31 (c) To qualify as an Internet website on which notices of sale may be

published under (b) of this section, an Internet website must,

(1) if operated by a newspaper of general circulation, be completely free to the public for viewing and not require a subscription; or

(2) if operated by a newspaper that is not covered by (1) of this subsection, or by another person,

(A) be available to any person;

(B) be completely free to the public for viewing and not require a subscription;

(C) be used primarily to advertise real property under foreclosure;

(D) have been in continuous operation for more than one year;

(E) have a viewership of at least 5,000 different visitors each month that is verified by an independent audit; and

(F) have an office in the state and the office has staff that includes a senior management person.

(d) In this section, "newspaper of general circulation" means a publication that

(1) is published in newspaper format;

(2) is distributed at least once a week for at least 50 weeks each year within the judicial district, excluding a period when publication is interrupted by a labor dispute or by a natural disaster or other casualty that the publisher cannot control; and has a total paid circulation or paid distribution of at least 500 copies, or 10 percent of the total population of the judicial district, whichever is less; in this paragraph, "judicial district" means the judicial district where the place of sale is located;

(3) holds a second class mailing permit from the United States Postal Service;

(4) is not published primarily to distribute advertising; and

(5) is not intended primarily for a particular professional or occupational group.

* Sec. 3. AS 09.35.142 is amended to read:

Sec. 09.35.142. Action to establish newspaper or Internet website status. A

1 person who owns a publication may bring an action under AS 22.10.020(g) to
 2 establish that the publication is a newspaper of general circulation under
 3 AS 09.35.140. A person who owns an Internet website may bring an action under
 4 AS 22.10.020(g) to establish that the Internet website qualifies as an Internet
 5 website on which notices of sale may be published under AS 09.35.140(b)
 6 [AS 09.35.140(2)].

7 * **Sec. 4.** AS 34.20.070(b) is amended to read:

8 (b) Not less than 30 days after the default and not less than **90 days** [THREE
 9 MONTHS] before the sale, the trustee shall record in the office of the recorder of the
 10 recording district in which the trust property is located a notice of default setting out
 11 (1) the name of the trustor, (2) the book and page where the trust deed is recorded or
 12 the serial number assigned to the trust deed by the recorder, (3) a description of the
 13 trust property, including the property's street address if there is a street address for the
 14 property, (4) a statement that a breach of the obligation for which the deed of trust is
 15 security has occurred, (5) the nature of the breach, (6) the sum owing on the
 16 obligation, (7) the election by the trustee to sell the property to satisfy the obligation,
 17 [AND] (8) the date, time, and place of the sale, and (9) the statement described in
 18 (e) of this section describing conditions for curing the default. An inaccuracy in the
 19 street address may not be used to set aside a sale if the legal description is correct. At
 20 any time before the sale date stated in the notice of default or to which the sale is
 21 postponed under AS 34.20.080(e), if the default has arisen by failure to make
 22 payments required by the trust deed, the default may be cured and sale under this
 23 section terminated by payment of the sum then in default, other than the principal
 24 that would not then be due if no default had occurred, and foreclosure [PLUS
 25 ATTORNEY] fees and [OR COURT] costs actually incurred by the beneficiary and
 26 trustee due to the default. If, under the same trust deed, notice of default under this
 27 subsection has been recorded two or more times previously and the default has been
 28 cured under this subsection, the trustee may elect to refuse payment and continue the
 29 sale.

30 * **Sec. 5.** AS 34.20.070(c) is amended to read:

31 (c) Within 10 days after recording the notice of default, the trustee shall mail a

copy of the notice by certified mail to the last known address of each of the following persons or their legal representatives: (1) the **trustor** [GRANTOR] in the trust deed; (2) the successor in interest to the **trustor** [GRANTOR] whose interest appears of record or of whose interest the trustee or the beneficiary has actual notice, or who is in **actual physical** possession of the property; (3) any other person **actually** in **physical** possession of [OR OCCUPYING] the property; (4) any person having a lien or interest subsequent to the interest of the trustee in the trust deed, where the lien or interest appears of record or where the trustee or the beneficiary has actual notice of the lien or interest, **except as provided in (f) of this section**. The notice may be delivered personally instead of by mail.

* **Sec. 6.** AS 34.20.070 is amended by adding new subsections to read:

(e) The statement required by (b)(9) of this section must state that, if the default has arisen by failure to make payments required by the trust deed, the default may be cured and the sale under this section terminated if

(1) payment of the sum then in default, other than the principal that would not then be due if default had not occurred, and foreclosure fees and costs actually incurred by the beneficiary and trustee due to the default is made

(A) at any time before the sale date stated in the notice of default or to which the sale is postponed; or

(B) if the trust deed was entered into before the effective date of this Act and provides for a different time than the time described in (A) of this paragraph to cure the default before the sale, within the time provided in the trust deed; and

(2) when notice of default under (b) of this section has been recorded two or more times previously under the same trust deed and the default has been cured under (b) of this section, the trustee does not elect to refuse payment and continue the sale.

(f) In (c)(4) of this section, if the existence of a lien or nonpossessory interest can only be inferred from an inspection of the real property, the person holding the lien or nonpossessory interest is not entitled to notice under (c) of this section unless the lien or nonpossessory interest appears of record or a written notice of the lien or

1 nonpossessory interest has been given to the beneficiary or trustee before the
2 recording of the notice of default.

3 (g) If the trustee delivers notice personally under (c) of this section to the
4 property or to an occupant of the property, the trustee may, notwithstanding (c) of this
5 section, deliver the notice up to 20 days after the notice of default is recorded. If there
6 is not a structure on the property and a person is not present on the property at the time
7 of delivery, the trustee may place the notice on the property, or as close as practicable
8 to the property if

9 (1) there is not a practical road access to the property; or

10 (2) access to the property is restricted by gates or other barriers.

11 (h) If the trustee or other person who delivered notice under (g) of this section
12 signs an affidavit for the delivery, the affidavit is prima facie evidence that the trustee
13 complied with (g) of this section. After one year from the delivery, as evidenced by
14 the affidavit, the trustee is conclusively presumed to have complied with (g) of this
15 section unless, within one year from the delivery, an action has been filed in court to
16 contest the foreclosure based on failing to comply with (g) of this section.

17 (i) If a person who is entitled to receive notice by mail under (c) of this section
18 is known by the beneficiary or trustee to be deceased, the trustee may satisfy the
19 notice requirements of (c) of this section by mailing the notice to the last known
20 address of the deceased person and to the personal representative of the deceased
21 person if the beneficiary or trustee knows that a personal representative has been
22 appointed for the deceased person.

23 (j) If a person who is entitled to receive notice by mail under (c) of this section
24 is known by the beneficiary or trustee to be deceased but the trustee and the
25 beneficiary do not know that a personal representative has been appointed for the
26 deceased person, the trustee may satisfy the notice requirements of (c) of this section
27 by

28 (1) mailing the notice to the heirs and devisees of the deceased person

29 (A) whose names and addresses are known to the beneficiary or
30 trustee; or

31 (B) who have recorded a notice of their interest in the property;

1 and

2 (2) publishing and posting the notice of the foreclosure as provided by
3 law for the sale of real property on execution, except that the notice must be titled "To
4 the Heirs or Devisees of (insert the name of the deceased person)" and include in the
5 body of the notice a list of the names of the persons who are known by the beneficiary
6 or trustee to be the heirs and devisees of the deceased person.

7 (k) If notice is given as required by (i) and (j) of this section, an heir or
8 devisee of the deceased person may not challenge the foreclosure on the ground that
9 the heir or devisee did not receive notice of the sale, unless the heir or devisee
10 challenges the foreclosure on this ground within 90 days after the sale.

11 (l) A person may bring an action in court to enjoin a foreclosure on real
12 property only if the person is

13 (1) the trustor of the deed of trust under which the real property was
14 foreclosed;

15 (2) a guarantor of the obligation that the real property is securing;

16 (3) a person who has an interest in the real property that has been
17 recorded;

18 (4) a person who has a recorded lien against the real property;

19 (5) an heir to the real property;

20 (6) a devisee of the real property; or

21 (7) the attorney general acting under other legal authority.

22 (m) If a person brings an action under (l) of this section to stop a sale of real
23 property, and if the sale is being brought because of a default in the performance of a
24 nonmonetary obligation required by the deed of trust that the real property is securing,
25 the court may impose on the person the conditions that the court determines are
26 appropriate to protect the beneficiary.

27 (n) In this section, "devisee," "heir," and "personal representative" have the
28 meanings given in AS 13.06.050.

29 * Sec. 7. AS 34.20.080(a) is amended to read:

30 (a) The sale authorized in AS 34.20.070 shall be made under the terms and
31 conditions and in the manner set out in the deed of trust. The proceeds from a sale

1 shall be placed in escrow until they are disbursed. However, the sale shall be made

2 (1) at public auction held at the front door of a courthouse of the
3 superior court in the judicial district where the property is located, unless the deed of
4 trust specifically provides that the sale shall be held in a different place, except that a
5 trustee may also accept bids by telephone, the Internet, and electronic mail if the
6 trustee has taken reasonable steps to ensure that the bidding methods using the
7 telephone, the Internet, or electronic mail are fair, accessible, and designed to
8 result in money that is immediately available for disbursement; and

9 (2) after public notice of the time and place of the sale has been given
10 in the manner provided by law for the sale of real property on execution.

11 * Sec. 8. AS 34.20.080(b) is amended to read:

12 (b) The attorney for the trustee or another agent of the trustee may conduct
13 the sale and act in the sale as the auctioneer for the trustee. The trustee may set
14 reasonable rules and conditions for the conduct of the sale. Sale shall be made to
15 the highest and best bidder. The beneficiary under the trust deed may bid at the
16 trustee's sale. Except as provided by (g) of this section, the [THE] trustee shall
17 execute and deliver to the purchaser a deed to the property sold.

18 * Sec. 9. AS 34.20.080(e) is amended to read:

19 (e) The trustee may postpone sale of all or any portion of the property by
20 delivering to the person conducting the sale a written and signed request for the
21 postponement to a stated date and hour. The person conducting the sale shall publicly
22 announce the postponement to the stated date and hour at the time and place originally
23 fixed for the sale. This procedure shall be followed in any succeeding postponement,
24 but the foreclosure may not be postponed for more than 12 months unless a new
25 notice of the sale is given under (a)(2) of this section. A sale may be postponed for
26 up to 12 months from the sale date stated in the notice of default under
27 AS 34.20.070(b) without providing a basis for challenging the validity of the
28 foreclosure process because of the length of time the foreclosure has been
29 pending.

30 * Sec. 10. AS 34.20.080 is amended by adding new subsections to read:

31 (f) After delivery of a deed under (b) of this section, the trustee shall distribute

1 any cash proceeds of the sale in the following order to

2 (1) the beneficiary of the deed of trust being foreclosed until the
3 beneficiary is paid the full amount that is owed under the deed of trust to the
4 beneficiary;

5 (2) the persons who held, at the time of the sale, recorded interests,
6 except easements, in the property, that were subordinate to the foreclosed deed of
7 trust; the distribution under this paragraph shall be made according to the priority of
8 the recorded interest, and a recorded interest with a higher priority shall be satisfied
9 before distribution is made to the recorded interest that is next lower in priority;
10 however, if a person holds a recorded interest that is an assessment, the person is
11 entitled only to the amount of the assessment that was due at the time of the sale; in
12 this paragraph, "recorded interest" means an interest, including a lease, recorded under
13 AS 40.17;

14 (3) the trustor in the trust deed if the trustor is still the owner of the
15 property at the time of the foreclosure sale, but, if the trustor is not still the owner of
16 the property at the time of the foreclosure sale, then to the trustor's successor in
17 interest whose interest appears of record at the time of the foreclosure sale.

18 (g) The trustee may withhold delivery of the deed under (b) of this section for
19 up to five days after the sale. If, during the five days, the trustee determines that the
20 sale should not have proceeded, the trustee may not issue the deed but shall

21 (1) inform the beneficiary, the otherwise successful bidder, and the
22 trustor of the trust deed or the trustor's successor in interest that the sale is rescinded;
23 and

24 (2) return to the otherwise successful bidder money received from the
25 otherwise successful bidder as a bid on the property; return of this money is the
26 otherwise successful bidder's only remedy if the trustee withholds delivery of the deed
27 under (b) of this section.

28 (h) If a trustee rescinds a sale under (g) of this section and the obligation
29 secured by the deed of trust remains in default, the trustee may, at the request of the
30 beneficiary, reschedule the sale for a date that is not less than 45 days after the date of
31 the rescinded sale. Not less than 30 days before the rescheduled sale date, the trustee

1 shall

2 (1) mail notice of the rescheduled sale date by certified mail to the last
3 known address of each of the persons identified by AS 34.20.070(c); and

4 (2) publish and post the notice of the rescheduled sale date as provided
5 by law for the sale of real property on execution.

6 (i) Unless a sale is rescinded under (g) of this section, the sale completely
7 terminates the rights of the trustor of the trust deed in the property.

8 (j) If a sale is rescinded under (g) of this section, the deed of trust foreclosed
9 in the rescinded sale is restored to the validity and priority it would have had as though
10 the sale had not occurred.

11 * **Sec. 11.** AS 34.20.120(a) is amended to read:

12 (a) The trustee under a trust deed upon real property given to secure an
13 obligation to pay money and conferring no duties upon the trustee other than the duties
14 that are incidental to the exercise of the power of sale conferred in the deed may be
15 substituted by recording in the mortgage records of the recording district in which the
16 property is located a substitution executed and acknowledged by

17 (1) all the beneficiaries under the trust deed, or their successors in
18 interest; or

19 (2) the attorneys for all of the beneficiaries or the attorneys for all
20 of the beneficiaries' successors in interest.

21 * **Sec. 12.** AS 34.20.120(b) is amended to read:

22 (b) The substitution must contain

23 (1) the date of execution of the trust deed;

24 (2) the names of the trustee, trustor, and beneficiary, and, if the
25 substitution is executed by the attorney for the beneficiary or successor in
26 interest to the beneficiary, the name, address, and Alaska Bar Association
27 identification number of the attorney;

28 (3) the book and page where the trust deed is recorded or the serial
29 number assigned to the trust deed by the recorder;

30 (4) the name of the new trustee; and

31 (5) an acknowledgment signed and acknowledged by the trustee

1 named in the trust deed of a receipt of a copy of the substitution, or an affidavit of
 2 service of a copy of it.

3 * **Sec. 13.** AS 34.20 is amended by adding a new section to read:

4 **Sec. 34.20.125. Trustee bond required.** (a) Before performing the duties of a
 5 trustee under AS 34.20.070 and 34.20.080, a person shall obtain a surety bond in the
 6 amount of \$250,000 to protect the trustors and beneficiaries of trust deeds against
 7 fraud or defalcation by the trustee in the performance of the duties.

8 (b) The bond required by (a) of this section must be a bond that is terminable
 9 at any time by the surety by sending written notice by first class United States mail to
 10 the obligee and the principal at the address for each that is last known by the surety,
 11 and to the department. The bond terminates when 45 days have expired after the date
 12 the notice is mailed. The surety is not liable for an act or omission of the principal that
 13 occurs after the termination. The surety is not liable after the termination for more than
 14 the face amount of the bond, regardless of the number of claims made against the bond
 15 or the number of years the bond remains in force. A revision of the amount of the
 16 bond is not cumulative.

17 (c) If a bond terminates under (b) of this section, the person who obtained the
 18 bond under (a) of this section shall give notice of the bond's termination to the
 19 department and may not act as a trustee until the person obtains another bond under (a)
 20 of this section.

21 (d) Each year, a trustee shall file evidence of the bond with the department.
 22 The department shall verify that the evidence is satisfactory to indicate the existence
 23 of the bond, keep an updated list of trustees who are bonded, and make the evidence
 24 and the list available to the public for inspection. The department may charge the
 25 trustee a reasonable fee for verifying the existence of the bond and maintaining the
 26 records required by this subsection.

27 (e) The bonding requirements of this section do not apply to

28 (1) a title insurance company authorized under AS 21.66 to transact a
 29 title insurance business in this state;

30 (2) a title insurance limited producer who is licensed as required by
 31 AS 21.66.270; or

1 (3) a state agency, including the Alaska Housing Finance Corporation
2 and the Alaska Industrial Development and Export Authority.

3 (f) In this section, "department" means the Department of Commerce,
4 Community, and Economic Development.

Alaska State Legislature



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Representative Jay Ramras House District 10

Chair, House Judiciary • Chair, House Economic Development, Trade & Tourism • Member, Energy • Member, House Military & Veteran Affairs, Member, Joint Armed Services

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

Journal Text for HB108 in the 26th Legislature

Full Journal

04-11-2009

House Journal

0904

HB 108

The following, which was advanced to third reading from the April 10, 2009, calendar (page 854), was read the third time:

CS FOR HOUSE BILL NO. 108(JUD)

"An Act relating to real property foreclosures, to the sale of property on execution, and to deeds of trust."

Representative Holmes moved and asked unanimous consent that CSHB 108(JUD) be returned to second reading for the specific purpose of considering Amendment No. 1. There being no objection, it was so ordered.

Amendment No. 1 was offered by Representative Holmes:

Page 4, line 20:

Delete "up to two days"

Page 4, lines 21 - 23:

Delete ", unless the trust deed was entered into before the effective date of this Act and provides for a different time to cure the default before the sale"

Page 5, line 20:

Delete "up to two days"

Page 5, line 21:

Delete ", or two days before a date"

Insert "or"

Representative Holmes moved and asked unanimous consent that Amendment No. 1 be adopted. There being no objection, it was so ordered.

CSHB 108(JUD) am was automatically in third reading.

04-11-2009

House Journal

0905

The question being: "Shall CSHB 108(JUD) am pass the House?"

The roll was taken with the following result:

CSHB 108(JUD) am

Third Reading

Final Passage

YEAS: 34 NAYS: 0 EXCUSED: 2 ABSENT: 4

Yeas: Austerman, Buch, Chenault, Cissna, Coghill, Crawford, Dahlstrom, Doogan, Fairclough, Gara, Gardner, Gatto, Gruenberg, Guttenberg, Hawker, Holmes, Johansen, Johnson, Joule, Kawasaki, Keller, Kerttula, Lynn, Munoz, Neuman, Olson, Petersen, Ramras, Salmon, Seaton, Stoltze, Thomas, Tuck, Wilson

Excused: Foster, Harris

Absent: Edgmon, Herron, Kelly, Millett

And so, CSHB 108(JUD) am passed the House and was referred to the
Chief Clerk for engrossment.

CS FOR HOUSE BILL NO. 108(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES RAMRAS, Gatto

A BILL**FOR AN ACT ENTITLED**

1 **"An Act relating to real property foreclosures, to the sale of property on execution, and**
2 **to deeds of trust."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 09.35.140 is amended to read:

5 **Sec. 09.35.140. Notice of sale on execution.** Before the sale of property on
6 execution, notice of the sale shall be given as follows:

7 (1) notice of the sale of personal property is given by posting a written
8 or printed notice of the time and place of sale in three public places within five miles
9 of the place where the sale is to be held, not less than 10 days before the day of sale;
10 [ONE OF THE NOTICES SHALL BE POSTED AT THE POST OFFICE NEAREST
11 TO THE PLACE WHERE THE SALE IS TO TAKE PLACE;]

12 (2) notice of the sale of real property is given by posting a similar
13 notice particularly describing the property, including the property's street address if
14 there is a street address for the property, not less than 30 days before the day of sale in

1 three public places, as provided in (1) of this section, and publishing a copy of the
 2 notice four times, once a week for four successive weeks in a newspaper of general
 3 circulation published nearest to the place of sale; an inaccuracy in the street address
 4 may not be used to set aside a sale if the legal description is correct [; IN THIS
 5 PARAGRAPH, "NEWSPAPER OF GENERAL CIRCULATION" MEANS A
 6 PUBLICATION THAT

7 (A) IS PUBLISHED IN NEWSPAPER FORMAT;

8 (B) IS DISTRIBUTED AT LEAST ONCE A WEEK FOR AT
 9 LEAST 50 WEEKS EACH YEAR WITHIN THE JUDICIAL DISTRICT,
 10 EXCLUDING A PERIOD WHEN PUBLICATION IS INTERRUPTED BY A
 11 LABOR DISPUTE OR BY A NATURAL DISASTER OR OTHER
 12 CASUALTY THAT THE PUBLISHER CANNOT CONTROL; AND HAS A
 13 TOTAL PAID CIRCULATION OR PAID DISTRIBUTION OF AT LEAST
 14 500 COPIES, OR 10 PERCENT OF THE TOTAL POPULATION OF THE
 15 JUDICIAL DISTRICT, WHICHEVER IS LESS; IN THIS
 16 SUBPARAGRAPH, "JUDICIAL DISTRICT" MEANS THE JUDICIAL
 17 DISTRICT WHERE THE PLACE OF SALE IS LOCATED;

18 (C) HOLDS A SECOND CLASS MAILING PERMIT FROM
 19 THE UNITED STATES POSTAL SERVICE;

20 (D) IS NOT PUBLISHED PRIMARILY TO DISTRIBUTE
 21 ADVERTISING; AND

22 (E) IS NOT INTENDED PRIMARILY FOR A PARTICULAR
 23 PROFESSIONAL OR OCCUPATIONAL GROUP].

24 * **Sec. 2.** AS 09.35.140 is amended by adding new subsections to read:

25 (b) In addition to the notice required by (a) of this section, notice of the sale of
 26 real property on execution shall be given by publishing a notice of the sale on an
 27 Internet website beginning at least 45 days before the date of the sale. Publication of
 28 the notice must begin not later than the first day that the notice is published under
 29 (a)(2) of this section and must continue at least through the day in the fourth week that
 30 the notice is published under (a)(2) of this section.

31 (c) To qualify as an Internet website on which notices of sale may be

published under (b) of this section, an Internet website must,

(1) if operated by a newspaper of general circulation, be completely free to the public for viewing and not require a subscription; or

(2) if operated by a newspaper that is not covered by (1) of this subsection, or by another person,

(A) be available to any person;

(B) be completely free to the public for viewing and not require a subscription;

(C) be used primarily to advertise real property under foreclosure;

(D) have been in continuous operation for more than one year;

(E) have a viewership of at least 5,000 different visitors each month that is verified by an independent audit; and

(F) have an office in the state and the office has staff that includes a senior management person.

(d) In this section, "newspaper of general circulation" means a publication that

(1) is published in newspaper format;

(2) is distributed at least once a week for at least 50 weeks each year within the judicial district, excluding a period when publication is interrupted by a labor dispute or by a natural disaster or other casualty that the publisher cannot control; and has a total paid circulation or paid distribution of at least 500 copies, or 10 percent of the total population of the judicial district, whichever is less; in this paragraph, "judicial district" means the judicial district where the place of sale is located;

(3) holds a second class mailing permit from the United States Postal Service;

(4) is not published primarily to distribute advertising; and

(5) is not intended primarily for a particular professional or occupational group.

* Sec. 3. AS 09.35.142 is amended to read:

Sec. 09.35.142. Action to establish newspaper or Internet website status. A

1 person who owns a publication may bring an action under AS 22.10.020(g) to
 2 establish that the publication is a newspaper of general circulation under
 3 AS 09.35.140. A person who owns an Internet website may bring an action under
 4 AS 22.10.020(g) to establish that the Internet website qualifies as an Internet
 5 website on which notices of sale may be published under AS 09.35.140(b)
 6 [AS 09.35.140(2)].

7 * Sec. 4. AS 34.20.070(b) is amended to read:

8 (b) Not less than 30 days after the default and not less than **90 days** [THREE
 9 MONTHS] before the sale, the trustee shall record in the office of the recorder of the
 10 recording district in which the trust property is located a notice of default setting out
 11 (1) the name of the trustor, (2) the book and page where the trust deed is recorded or
 12 the serial number assigned to the trust deed by the recorder, (3) a description of the
 13 trust property, including the property's street address if there is a street address for the
 14 property, (4) a statement that a breach of the obligation for which the deed of trust is
 15 security has occurred, (5) the nature of the breach, (6) the sum owing on the
 16 obligation, (7) the election by the trustee to sell the property to satisfy the obligation,
 17 [AND] (8) the date, time, and place of the sale, **and (9) the statement described in**
 18 **(e) of this section describing conditions for curing the default.** An inaccuracy in the
 19 street address may not be used to set aside a sale if the legal description is correct. At
 20 any time **up to two days** before the sale **date stated in the notice of default or to**
 21 **which the sale is postponed under AS 34.20.080(e), unless the trust deed was**
 22 **entered into before the effective date of this Act and provides for a different time**
 23 **to cure the default before the sale,** if the default has arisen by failure to make
 24 payments required by the trust deed, the default may be cured **and sale under this**
 25 **section terminated** by payment of the sum **then** in default, other than the principal
 26 that would not then be due if no default had occurred, **and foreclosure** [PLUS
 27 ATTORNEY] fees **and** [OR COURT] costs actually incurred by the **beneficiary and**
 28 trustee due to the default. If, under the same trust deed, notice of default under this
 29 subsection has been recorded two or more times previously and the default has been
 30 cured under this subsection, the trustee may elect to refuse payment and continue the
 31 sale.

1 * **Sec. 5.** AS 34.20.070(c) is amended to read:

2 (c) Within 10 days after recording the notice of default, the trustee shall mail a
3 copy of the notice by certified mail to the last known address of each of the following
4 persons or their legal representatives: (1) the **trustor** [GRANTOR] in the trust deed;
5 (2) the successor in interest to the **trustor** [GRANTOR] whose interest appears of
6 record or of whose interest the trustee or the beneficiary has actual notice, or who is in
7 **actual physical** possession of the property; (3) any other person **actually** in **physical**
8 possession of [OR OCCUPYING] the property; (4) any person having a lien or
9 interest subsequent to the interest of the trustee in the trust deed, where the lien or
10 interest appears of record or where the trustee or the beneficiary has actual notice of
11 the lien or interest, **except as provided in (f) of this section.** The notice may be
12 delivered personally instead of by mail.

13 * **Sec. 6.** AS 34.20.070 is amended by adding new subsections to read:

14 (e) The statement required by (b)(9) of this section must state that, if the
15 default has arisen by failure to make payments required by the trust deed, the default
16 may be cured and the sale under this section terminated if

17 (1) payment of the sum then in default, other than the principal that
18 would not then be due if default had not occurred, and foreclosure fees and costs
19 actually incurred by the beneficiary and trustee due to the default is made

20 (A) at any time up to two days before the sale date stated in the
21 notice of default, or two days before a date to which the sale is postponed; or

22 (B) if the trust deed was entered into before the effective date
23 of this Act and provides for a different time than the time described in (A) of
24 this paragraph to cure the default before the sale, within the time provided in
25 the trust deed; and

26 (2) when notice of default under (b) of this section has been recorded
27 two or more times previously under the same trust deed and the default has been cured
28 under (b) of this section, the trustee does not elect to refuse payment and continue the
29 sale.

30 (f) In (c)(4) of this section, if the existence of a lien or nonpossessory interest
31 can only be inferred from an inspection of the real property, the person holding the

1 lien or nonpossessory interest is not entitled to notice under (c) of this section unless
 2 the lien or nonpossessory interest appears of record or a written notice of the lien or
 3 nonpossessory interest has been given to the beneficiary or trustee before the
 4 recording of the notice of default.

5 (g) If the trustee delivers notice personally under (c) of this section to the
 6 property or to an occupant of the property, the trustee may, notwithstanding (c) of this
 7 section, deliver the notice up to 20 days after the notice of default is recorded. If there
 8 is not a structure on the property and a person is not present on the property at the time
 9 of delivery, the trustee may place the notice on the property, or as close as practicable
 10 to the property if

11 (1) there is not a practical road access to the property; or

12 (2) access to the property is restricted by gates or other barriers.

13 (h) If the trustee or other person who delivered notice under (g) of this section
 14 signs an affidavit for the delivery, the affidavit is prima facie evidence that the trustee
 15 complied with (g) of this section. After one year from the delivery, as evidenced by
 16 the affidavit, the trustee is conclusively presumed to have complied with (g) of this
 17 section unless, within one year from the delivery, an action has been filed in court to
 18 contest the foreclosure based on failing to comply with (g) of this section.

19 (i) If a person who is entitled to receive notice by mail under (c) of this section
 20 is known by the beneficiary or trustee to be deceased, the trustee may satisfy the
 21 notice requirements of (c) of this section by mailing the notice to the last known
 22 address of the deceased person and to the personal representative of the deceased
 23 person if the beneficiary or trustee knows that a personal representative has been
 24 appointed for the deceased person.

25 (j) If a person who is entitled to receive notice by mail under (c) of this section
 26 is known by the beneficiary or trustee to be deceased but the trustee and the
 27 beneficiary do not know that a personal representative has been appointed for the
 28 deceased person, the trustee may satisfy the notice requirements of (c) of this section
 29 by

30 (1) mailing the notice to the heirs and devisees of the deceased person

31 (A) whose names and addresses are known to the beneficiary or

1 trustee; or

2 (B) who have recorded a notice of their interest in the property;

3 and

4 (2) publishing and posting the notice of the foreclosure as provided by
5 law for the sale of real property on execution, except that the notice must be titled "To
6 the Heirs or Devisees of (insert the name of the deceased person)" and include in the
7 body of the notice a list of the names of the persons who are known by the beneficiary
8 or trustee to be the heirs and devisees of the deceased person.

9 (k) If notice is given as required by (i) and (j) of this section, an heir or
10 devisee of the deceased person may not challenge the foreclosure on the ground that
11 the heir or devisee did not receive notice of the sale, unless the heir or devisee
12 challenges the foreclosure on this ground within 90 days after the sale.

13 (l) A person may bring an action in court to enjoin a foreclosure on real
14 property only if the person is

15 (1) the trustor of the deed of trust under which the real property was
16 foreclosed;

17 (2) a guarantor of the obligation that the real property is securing;

18 (3) a person who has an interest in the real property that has been
19 recorded;

20 (4) a person who has a recorded lien against the real property;

21 (5) an heir to the real property;

22 (6) a devisee of the real property; or

23 (7) the attorney general acting under other legal authority.

24 (m) If a person brings an action under (l) of this section to stop a sale of real
25 property, and if the sale is being brought because of a default in the performance of a
26 nonmonetary obligation required by the deed of trust that the real property is securing,
27 the court may impose on the person the conditions that the court determines are
28 appropriate to protect the beneficiary.

29 (n) In this section, "devisee," "heir," and "personal representative" have the
30 meanings given in AS 13.06.050.

31 * Sec. 7. AS 34.20.080(a) is amended to read:

(a) The sale authorized in AS 34.20.070 shall be made under the terms and conditions and in the manner set out in the deed of trust. The proceeds from a sale shall be placed in escrow until they are disbursed. However, the sale shall be made

(1) at public auction held at the front door of a courthouse of the superior court in the judicial district where the property is located, unless the deed of trust specifically provides that the sale shall be held in a different place, except that a trustee may also accept bids by telephone, the Internet, and electronic mail if the trustee has taken reasonable steps to ensure that the bidding methods using the telephone, the Internet, or electronic mail are fair, accessible, and designed to result in money that is immediately available for disbursement; and

(2) after public notice of the time and place of the sale has been given in the manner provided by law for the sale of real property on execution.

* Sec. 8. AS 34.20.080(b) is amended to read:

(b) The attorney for the trustee or another agent of the trustee may conduct the sale and act in the sale as the auctioneer for the trustee. The trustee may set reasonable rules and conditions for the conduct of the sale. Sale shall be made to the highest and best bidder. The beneficiary under the trust deed may bid at the trustee's sale. Except as provided by (g) of this section, the [THE] trustee shall execute and deliver to the purchaser a deed to the property sold.

* Sec. 9. AS 34.20.080(e) is amended to read:

(e) The trustee may postpone sale of all or any portion of the property by delivering to the person conducting the sale a written and signed request for the postponement to a stated date and hour. The person conducting the sale shall publicly announce the postponement to the stated date and hour at the time and place originally fixed for the sale. This procedure shall be followed in any succeeding postponement, but the foreclosure may not be postponed for more than 12 months unless a new notice of the sale is given under (a)(2) of this section. A sale may be postponed for up to 12 months from the sale date stated in the notice of default under AS 34.20.070(b) without providing a basis for challenging the validity of the foreclosure process because of the length of time the foreclosure has been pending.

1 * **Sec. 10.** AS 34.20.080 is amended by adding new subsections to read:

2 (f) After delivery of a deed under (b) of this section, the trustee shall distribute
3 any cash proceeds of the sale in the following order to

4 (1) the beneficiary of the deed of trust being foreclosed until the
5 beneficiary is paid the full amount that is owed under the deed of trust to the
6 beneficiary;

7 (2) the persons who held, at the time of the sale, recorded interests,
8 except easements, in the property, that were subordinate to the foreclosed deed of
9 trust; the distribution under this paragraph shall be made according to the priority of
10 the recorded interest, and a recorded interest with a higher priority shall be satisfied
11 before distribution is made to the recorded interest that is next lower in priority;
12 however, if a person holds a recorded interest that is an assessment, the person is
13 entitled only to the amount of the assessment that was due at the time of the sale; in
14 this paragraph, "recorded interest" means an interest, including a lease, recorded under
15 AS 40.17;

16 (3) the trustor in the trust deed if the trustor is still the owner of the
17 property at the time of the foreclosure sale, but, if the trustor is not still the owner of
18 the property at the time of the foreclosure sale, then to the trustor's successor in
19 interest whose interest appears of record at the time of the foreclosure sale.

20 (g) The trustee may withhold delivery of the deed under (b) of this section for
21 up to five days after the sale. If, during the five days, the trustee determines that the
22 sale should not have proceeded, the trustee may not issue the deed but shall

23 (1) inform the beneficiary, the otherwise successful bidder, and the
24 trustor of the trust deed or the trustor's successor in interest that the sale is rescinded;
25 and

26 (2) return to the otherwise successful bidder money received from the
27 otherwise successful bidder as a bid on the property; return of this money is the
28 otherwise successful bidder's only remedy if the trustee withholds delivery of the deed
29 under (b) of this section.

30 (h) If a trustee rescinds a sale under (g) of this section and the obligation
31 secured by the deed of trust remains in default, the trustee may, at the request of the

beneficiary, reschedule the sale for a date that is not less than 45 days after the date of the rescinded sale. Not less than 30 days before the rescheduled sale date, the trustee shall

(1) mail notice of the rescheduled sale date by certified mail to the last known address of each of the persons identified by AS 34.20.070(c); and

(2) publish and post the notice of the rescheduled sale date as provided by law for the sale of real property on execution.

(i) Unless a sale is rescinded under (g) of this section, the sale completely terminates the rights of the trustor of the trust deed in the property.

(j) If a sale is rescinded under (g) of this section, the deed of trust foreclosed in the rescinded sale is restored to the validity and priority it would have had as though the sale had not occurred.

* Sec. 11. AS 34.20.120(a) is amended to read:

(a) The trustee under a trust deed upon real property given to secure an obligation to pay money and conferring no duties upon the trustee other than the duties that are incidental to the exercise of the power of sale conferred in the deed may be substituted by recording in the mortgage records of the recording district in which the property is located a substitution executed and acknowledged by

(1) all the beneficiaries under the trust deed, or their successors in interest; or

(2) the attorneys for all of the beneficiaries or the attorneys for all of the beneficiaries' successors in interest.

* Sec. 12. AS 34.20.120(b) is amended to read:

(b) The substitution must contain

(1) the date of execution of the trust deed;

(2) the names of the trustee, trustor, and beneficiary, and, if the substitution is executed by the attorney for the beneficiary or successor in interest to the beneficiary, the name, address, and Alaska Bar Association identification number of the attorney;

(3) the book and page where the trust deed is recorded or the serial number assigned to the trust deed by the recorder;

1 (4) the name of the new trustee; and

2 (5) an acknowledgment signed and acknowledged by the trustee
3 named in the trust deed of a receipt of a copy of the substitution, or an affidavit of
4 service of a copy of it.

5 * **Sec. 13.** AS 34.20 is amended by adding a new section to read:

6 **Sec. 34.20.125. Trustee bond required.** (a) Before performing the duties of a
7 trustee under AS 34.20.070 and 34.20.080, a person shall obtain a surety bond in the
8 amount of \$250,000 to protect the trustors and beneficiaries of trust deeds against
9 fraud or defalcation by the trustee in the performance of the duties.

10 (b) The bond required by (a) of this section must be a bond that is terminable
11 at any time by the surety by sending written notice by first class United States mail to
12 the obligee and the principal at the address for each that is last known by the surety,
13 and to the department. The bond terminates when 45 days have expired after the date
14 the notice is mailed. The surety is not liable for an act or omission of the principal that
15 occurs after the termination. The surety is not liable after the termination for more than
16 the face amount of the bond, regardless of the number of claims made against the bond
17 or the number of years the bond remains in force. A revision of the amount of the
18 bond is not cumulative.

19 (c) If a bond terminates under (b) of this section, the person who obtained the
20 bond under (a) of this section shall give notice of the bond's termination to the
21 department and may not act as a trustee until the person obtains another bond under (a)
22 of this section.

23 (d) Each year, a trustee shall file evidence of the bond with the department.
24 The department shall verify that the evidence is satisfactory to indicate the existence
25 of the bond, keep an updated list of trustees who are bonded, and make the evidence
26 and the list available to the public for inspection. The department may charge the
27 trustee a reasonable fee for verifying the existence of the bond and maintaining the
28 records required by this subsection.

29 (e) The bonding requirements of this section do not apply to

30 (1) a title insurance company authorized under AS 21.66 to transact a
31 title insurance business in this state;

1 (2) a title insurance limited producer who is licensed as required by
2 AS 21.66.270; or

3 (3) a state agency, including the Alaska Housing Finance Corporation
4 and the Alaska Industrial Development and Export Authority.

5 (f) In this section, "department" means the Department of Commerce,
6 Community, and Economic Development.

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE RAMRAS

TO: CSHB 108(JUD), Draft Version "P"

1 Page 2, lines 27 - 29:

2 Delete "The notice must be published for at least 30 days, including at least 10 of the
3 last 15 days before the actual date of the sale. Giving notice under this subsection is not
4 required unless there is an Internet website that qualifies under (c) of this section."

5 Insert "Publication of the notice must begin not later than the first day that the notice is
6 published under (a)(2) of this section and must continue at least through the day in the fourth
7 week that the notice is published under (a)(2) of this section."
8

9 Page 4, line 21, following "**AS 34.20.080(e)**":

10 Insert "**, unless the trust deed was entered into before the effective date of this Act**
11 **and provides for a different time to cure the default before the sale**"
12

13 Page 5, lines 15 - 21:

14 Delete all material and insert:

15 "(1) payment of the sum then in default, other than the principal that
16 would not then be due if default had not occurred, and foreclosure fees and costs
17 actually incurred by the beneficiary and trustee due to the default is made

18 (A) at any time up to two days before the sale date stated in the
19 notice of default, or two days before a date to which the sale is postponed; or

20 (B) if the trust deed was entered into before the effective date
21 of this Act and provides for a different time than the time described in (A) of
22 this paragraph to cure the default before the sale, within the time provided in
23 the trust deed; and"

26-LS0318\P

Bannister

3/26/09

CS FOR HOUSE BILL NO. 108(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES RAMRAS, Gatto

A BILL**FOR AN ACT ENTITLED**

1 "An Act relating to real property foreclosures, to the sale of property on execution, and
2 to deeds of trust."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 09.35.140 is amended to read:

5 Sec. 09.35.140. Notice of sale on execution. Before the sale of property on
6 execution, notice of the sale shall be given as follows:

7 (1) notice of the sale of personal property is given by posting a written
8 or printed notice of the time and place of sale in three public places within five miles
9 of the place where the sale is to be held, not less than 10 days before the day of sale;
10 [ONE OF THE NOTICES SHALL BE POSTED AT THE POST OFFICE NEAREST
11 TO THE PLACE WHERE THE SALE IS TO TAKE PLACE;]

12 (2) notice of the sale of real property is given by posting a similar
13 notice particularly describing the property, including the property's street address if
14 there is a street address for the property, not less than 30 days before the day of sale in

1 three public places, as provided in (1) of this section, and publishing a copy of the
2 notice four times, once a week for four successive weeks in a newspaper of general
3 circulation published nearest to the place of sale; an inaccuracy in the street address
4 may not be used to set aside a sale if the legal description is correct [; IN THIS
5 PARAGRAPH, "NEWSPAPER OF GENERAL CIRCULATION" MEANS A
6 PUBLICATION THAT

7 (A) IS PUBLISHED IN NEWSPAPER FORMAT;

8 (B) IS DISTRIBUTED AT LEAST ONCE A WEEK FOR AT
9 LEAST 50 WEEKS EACH YEAR WITHIN THE JUDICIAL DISTRICT,
10 EXCLUDING A PERIOD WHEN PUBLICATION IS INTERRUPTED BY A
11 LABOR DISPUTE OR BY A NATURAL DISASTER OR OTHER
12 CASUALTY THAT THE PUBLISHER CANNOT CONTROL; AND HAS A
13 TOTAL PAID CIRCULATION OR PAID DISTRIBUTION OF AT LEAST
14 500 COPIES, OR 10 PERCENT OF THE TOTAL POPULATION OF THE
15 JUDICIAL DISTRICT, WHICHEVER IS LESS; IN THIS
16 SUBPARAGRAPH, "JUDICIAL DISTRICT" MEANS THE JUDICIAL
17 DISTRICT WHERE THE PLACE OF SALE IS LOCATED;

18 (C) HOLDS A SECOND CLASS MAILING PERMIT FROM
19 THE UNITED STATES POSTAL SERVICE;

20 (D) IS NOT PUBLISHED PRIMARILY TO DISTRIBUTE
21 ADVERTISING; AND

22 (E) IS NOT INTENDED PRIMARILY FOR A PARTICULAR
23 PROFESSIONAL OR OCCUPATIONAL GROUP].

24 * **Sec. 2.** AS 09.35.140 is amended by adding new subsections to read:

25 (b) In addition to the notice required by (a) of this section, notice of the sale of
26 real property on execution shall be given by publishing a notice of the sale on an
27 Internet website beginning at least 45 days before the date of the sale. The notice must
28 be published for at least 30 days, including at least 10 of the last 15 days before the
29 actual date of the sale. Giving notice under this subsection is not required unless there
30 is an Internet website that qualifies under (c) of this section.

31 (c) To qualify as an Internet website on which notices of sale may be

published under (b) of this section, an Internet website must,

(1) if operated by a newspaper of general circulation, be completely free to the public for viewing and not require a subscription; or

(2) if operated by a newspaper that is not covered by (1) of this subsection, or by another person,

(A) be available to any person;

(B) be completely free to the public for viewing and not require a subscription;

(C) be used primarily to advertise real property under foreclosure;

(D) have been in continuous operation for more than one year;

(E) have a viewership of at least 5,000 different visitors each month that is verified by an independent audit; and

(F) have an office in the state and the office has staff that includes a senior management person.

(d) In this section, "newspaper of general circulation" means a publication that

(1) is published in newspaper format;

(2) is distributed at least once a week for at least 50 weeks each year within the judicial district, excluding a period when publication is interrupted by a labor dispute or by a natural disaster or other casualty that the publisher cannot control; and has a total paid circulation or paid distribution of at least 500 copies, or 10 percent of the total population of the judicial district, whichever is less; in this paragraph, "judicial district" means the judicial district where the place of sale is located;

(3) holds a second class mailing permit from the United States Postal Service;

(4) is not published primarily to distribute advertising; and

(5) is not intended primarily for a particular professional or occupational group.

* Sec. 3. AS 09.35.142 is amended to read:

Sec. 09.35.142. Action to establish newspaper or Internet website status. A

1 person who owns a publication may bring an action under AS 22.10.020(g) to
2 establish that the publication is a newspaper of general circulation under
3 AS 09.35.140. A person who owns an Internet website may bring an action under
4 AS 22.10.020(g) to establish that the Internet website qualifies as an Internet
5 website on which notices of sale may be published under AS 09.35.140(b)
6 [AS 09.35.140(2)].

7 * Sec. 4. AS 34.20.070(b) is amended to read:

8 (b) Not less than 30 days after the default and not less than 90 days [THREE
9 MONTHS] before the sale, the trustee shall record in the office of the recorder of the
10 recording district in which the trust property is located a notice of default setting out
11 (1) the name of the trustor, (2) the book and page where the trust deed is recorded or
12 the serial number assigned to the trust deed by the recorder, (3) a description of the
13 trust property, including the property's street address if there is a street address for the
14 property, (4) a statement that a breach of the obligation for which the deed of trust is
15 security has occurred, (5) the nature of the breach, (6) the sum owing on the
16 obligation, (7) the election by the trustee to sell the property to satisfy the obligation,
17 [AND] (8) the date, time, and place of the sale, and (9) the statement described in
18 (e) of this section describing conditions for curing the default. An inaccuracy in the
19 street address may not be used to set aside a sale if the legal description is correct. At
20 any time up to two days before the sale date stated in the notice of default or to
21 which the sale is postponed under AS 34.20.080(e), if the default has arisen by
22 failure to make payments required by the trust deed, the default may be cured and sale
23 under this section terminated by payment of the sum then in default, other than the
24 principal that would not then be due if no default had occurred, and foreclosure
25 [PLUS ATTORNEY] fees and [OR COURT] costs actually incurred by the
26 beneficiary and trustee due to the default. If, under the same trust deed, notice of
27 default under this subsection has been recorded two or more times previously and the
28 default has been cured under this subsection, the trustee may elect to refuse payment
29 and continue the sale.

30 * Sec. 5. AS 34.20.070(c) is amended to read:

31 (c) Within 10 days after recording the notice of default, the trustee shall mail a

1 copy of the notice by certified mail to the last known address of each of the following
2 persons or their legal representatives: (1) the **trustor** [GRANTOR] in the trust deed;
3 (2) the successor in interest to the **trustor** [GRANTOR] whose interest appears of
4 record or of whose interest the trustee or the beneficiary has actual notice, or who is in
5 **actual physical** possession of the property; (3) any other person **actually** in **physical**
6 possession of [OR OCCUPYING] the property; (4) any person having a lien or
7 interest subsequent to the interest of the trustee in the trust deed, where the lien or
8 interest appears of record or where the trustee or the beneficiary has actual notice of
9 the lien or interest, **except as provided in (f) of this section**. The notice may be
10 delivered personally instead of by mail.

11 * **Sec. 6.** AS 34.20.070 is amended by adding new subsections to read:

12 (e) The statement required by (b)(9) of this section must state that, if the
13 default has arisen by failure to make payments required by the trust deed, the default
14 may be cured and the sale under this section terminated if

15 (1) payment of the following amounts is made at any time up to two
16 days before the sale date stated in the notice of default, or two days before a date to
17 which the sale is postponed:

18 (A) the sum then in default, other than the principal that would
19 not then be due if no default had occurred; and

20 (B) foreclosure fees and costs actually incurred by the
21 beneficiary and trustee due to the default; and

22 (2) when notice of default under (b) of this section has been recorded
23 two or more times previously under the same trust deed and the default has been cured
24 under (b) of this section, the trustee does not elect to refuse payment and continue the
25 sale.

26 (f) In (c)(4) of this section, if the existence of a lien or nonpossessory interest
27 can only be inferred from an inspection of the real property, the person holding the
28 lien or nonpossessory interest is not entitled to notice under (c) of this section unless
29 the lien or nonpossessory interest appears of record or a written notice of the lien or
30 nonpossessory interest has been given to the beneficiary or trustee before the
31 recording of the notice of default.

(g) If the trustee delivers notice personally under (c) of this section to the property or to an occupant of the property, the trustee may, notwithstanding (c) of this section, deliver the notice up to 20 days after the notice of default is recorded. If there is not a structure on the property and a person is not present on the property at the time of delivery, the trustee may place the notice on the property, or as close as practicable to the property if

(1) there is not a practical road access to the property; or

(2) access to the property is restricted by gates or other barriers.

(h) If the trustee or other person who delivered notice under (g) of this section signs an affidavit for the delivery, the affidavit is prima facie evidence that the trustee complied with (g) of this section. After one year from the delivery, as evidenced by the affidavit, the trustee is conclusively presumed to have complied with (g) of this section unless, within one year from the delivery, an action has been filed in court to contest the foreclosure based on failing to comply with (g) of this section.

(i) If a person who is entitled to receive notice by mail under (c) of this section is known by the beneficiary or trustee to be deceased, the trustee may satisfy the notice requirements of (c) of this section by mailing the notice to the last known address of the deceased person and to the personal representative of the deceased person if the beneficiary or trustee knows that a personal representative has been appointed for the deceased person.

(j) If a person who is entitled to receive notice by mail under (c) of this section is known by the beneficiary or trustee to be deceased but the trustee and the beneficiary do not know that a personal representative has been appointed for the deceased person, the trustee may satisfy the notice requirements of (c) of this section by

(1) mailing the notice to the heirs and devisees of the deceased person

(A) whose names and addresses are known to the beneficiary or trustee; or

(B) who have recorded a notice of their interest in the property;

and

(2) publishing and posting the notice of the foreclosure as provided by

1 law for the sale of real property on execution, except that the notice must be titled "To
2 the Heirs or Devisees of (insert the name of the deceased person)" and include in the
3 body of the notice a list of the names of the persons who are known by the beneficiary
4 or trustee to be the heirs and devisees of the deceased person.

5 (k) If notice is given as required by (i) and (j) of this section, an heir or
6 devisee of the deceased person may not challenge the foreclosure on the ground that
7 the heir or devisee did not receive notice of the sale, unless the heir or devisee
8 challenges the foreclosure on this ground within 90 days after the sale.

9 (l) A person may bring an action in court to enjoin a foreclosure on real
10 property only if the person is

11 (1) the trustor of the deed of trust under which the real property was
12 foreclosed;

13 (2) a guarantor of the obligation that the real property is securing;

14 (3) a person who has an interest in the real property that has been
15 recorded;

16 (4) a person who has a recorded lien against the real property;

17 (5) an heir to the real property;

18 (6) a devisee of the real property; or

19 (7) the attorney general acting under other legal authority.

20 (m) If a person brings an action under (l) of this section to stop a sale of real
21 property, and if the sale is being brought because of a default in the performance of a
22 nonmonetary obligation required by the deed of trust that the real property is securing,
23 the court may impose on the person the conditions that the court determines are
24 appropriate to protect the beneficiary.

25 (n) In this section, "devisee," "heir," and "personal representative" have the
26 meanings given in AS 13.06.050.

27 * Sec. 7. AS 34.20.080(a) is amended to read:

28 (a) The sale authorized in AS 34.20.070 shall be made under the terms and
29 conditions and in the manner set out in the deed of trust. The proceeds from a sale
30 shall be placed in escrow until they are disbursed. However, the sale shall be made

31 (1) at public auction held at the front door of a courthouse of the

1 superior court in the judicial district where the property is located, unless the deed of
2 trust specifically provides that the sale shall be held in a different place, except that a
3 trustee may also accept bids by telephone, the Internet, and electronic mail if the
4 trustee has taken reasonable steps to ensure that the bidding methods using the
5 telephone, the Internet, or electronic mail are fair, accessible, and designed to
6 result in money that is immediately available for disbursement; and

7 (2) after public notice of the time and place of the sale has been given
8 in the manner provided by law for the sale of real property on execution.

9 * Sec. 8. AS 34.20.080(b) is amended to read:

10 (b) The attorney for the trustee or another agent of the trustee may conduct
11 the sale and act in the sale as the auctioneer for the trustee. The trustee may set
12 reasonable rules and conditions for the conduct of the sale. Sale shall be made to
13 the highest and best bidder. The beneficiary under the trust deed may bid at the
14 trustee's sale. Except as provided by (g) of this section, the [THE] trustee shall
15 execute and deliver to the purchaser a deed to the property sold.

16 * Sec. 9. AS 34.20.080(e) is amended to read:

17 (e) The trustee may postpone sale of all or any portion of the property by
18 delivering to the person conducting the sale a written and signed request for the
19 postponement to a stated date and hour. The person conducting the sale shall publicly
20 announce the postponement to the stated date and hour at the time and place originally
21 fixed for the sale. This procedure shall be followed in any succeeding postponement,
22 but the foreclosure may not be postponed for more than 12 months unless a new
23 notice of the sale is given under (a)(2) of this section. A sale may be postponed for
24 up to 12 months from the sale date stated in the notice of default under
25 AS 34.20.070(b) without providing a basis for challenging the validity of the
26 foreclosure process because of the length of time the foreclosure has been
27 pending.

28 * Sec. 10. AS 34.20.080 is amended by adding new subsections to read:

29 (f) After delivery of a deed under (b) of this section, the trustee shall distribute
30 any cash proceeds of the sale in the following order to

31 (1) the beneficiary of the deed of trust being foreclosed until the

beneficiary is paid the full amount that is owed under the deed of trust to the beneficiary;

(2) the persons who held, at the time of the sale, recorded interests, except easements, in the property, that were subordinate to the foreclosed deed of trust; the distribution under this paragraph shall be made according to the priority of the recorded interest, and a recorded interest with a higher priority shall be satisfied before distribution is made to the recorded interest that is next lower in priority; however, if a person holds a recorded interest that is an assessment, the person is entitled only to the amount of the assessment that was due at the time of the sale; in this paragraph, "recorded interest" means an interest, including a lease, recorded under AS 40.17;

(3) the trustor in the trust deed if the trustor is still the owner of the property at the time of the foreclosure sale, but, if the trustor is not still the owner of the property at the time of the foreclosure sale, then to the trustor's successor in interest whose interest appears of record at the time of the foreclosure sale.

(g) The trustee may withhold delivery of the deed under (b) of this section for up to five days after the sale. If, during the five days, the trustee determines that the sale should not have proceeded, the trustee may not issue the deed but shall

(1) inform the beneficiary, the otherwise successful bidder, and the trustor of the trust deed or the trustor's successor in interest that the sale is rescinded; and

(2) return to the otherwise successful bidder money received from the otherwise successful bidder as a bid on the property; return of this money is the otherwise successful bidder's only remedy if the trustee withholds delivery of the deed under (b) of this section.

(h) If a trustee rescinds a sale under (g) of this section and the obligation secured by the deed of trust remains in default, the trustee may, at the request of the beneficiary, reschedule the sale for a date that is not less than 45 days after the date of the rescinded sale. Not less than 30 days before the rescheduled sale date, the trustee shall

(1) mail notice of the rescheduled sale date by certified mail to the last

known address of each of the persons identified by AS 34.20.070(c); and

(2) publish and post the notice of the rescheduled sale date as provided by law for the sale of real property on execution.

(i) Unless a sale is rescinded under (g) of this section, the sale completely terminates the rights of the trustor of the trust deed in the property.

(j) If a sale is rescinded under (g) of this section, the deed of trust foreclosed in the rescinded sale is restored to the validity and priority it would have had as though the sale had not occurred.

* Sec. 11. AS 34.20.120(a) is amended to read:

(a) The trustee under a trust deed upon real property given to secure an obligation to pay money and conferring no duties upon the trustee other than the duties that are incidental to the exercise of the power of sale conferred in the deed may be substituted by recording in the mortgage records of the recording district in which the property is located a substitution executed and acknowledged by

(1) all the beneficiaries under the trust deed, or their successors in interest; or

(2) the attorneys for all of the beneficiaries or the attorneys for all of the beneficiaries' successors in interest.

* Sec. 12. AS 34.20.120(b) is amended to read:

(b) The substitution must contain

(1) the date of execution of the trust deed;

(2) the names of the trustee, trustor, and beneficiary, and, if the substitution is executed by the attorney for the beneficiary or successor in interest to the beneficiary, the name, address, and Alaska Bar Association identification number of the attorney;

(3) the book and page where the trust deed is recorded or the serial number assigned to the trust deed by the recorder;

(4) the name of the new trustee; and

(5) an acknowledgment signed and acknowledged by the trustee named in the trust deed of a receipt of a copy of the substitution, or an affidavit of service of a copy of it.

1 * **Sec. 13.** AS 34.20 is amended by adding a new section to read:

2 **Sec. 34.20.125. Trustee bond required.** (a) Before performing the duties of a
3 trustee under AS 34.20.070 and 34.20.080, a person shall obtain a surety bond in the
4 amount of \$250,000 to protect the trustors and beneficiaries of trust deeds against
5 fraud or defalcation by the trustee in the performance of the duties.

6 (b) The bond required by (a) of this section must be a bond that is terminable
7 at any time by the surety by sending written notice by first class United States mail to
8 the obligee and the principal at the address for each that is last known by the surety,
9 and to the department. The bond terminates when 45 days have expired after the date
10 the notice is mailed. The surety is not liable for an act or omission of the principal that
11 occurs after the termination. The surety is not liable after the termination for more than
12 the face amount of the bond, regardless of the number of claims made against the bond
13 or the number of years the bond remains in force. A revision of the amount of the
14 bond is not cumulative.

15 (c) If a bond terminates under (b) of this section, the person who obtained the
16 bond under (a) of this section shall give notice of the bond's termination to the
17 department and may not act as a trustee until the person obtains another bond under (a)
18 of this section.

19 (d) Each year, a trustee shall file evidence of the bond with the department.
20 The department shall verify that the evidence is satisfactory to indicate the existence
21 of the bond, keep an updated list of trustees who are bonded, and make the evidence
22 and the list available to the public for inspection. The department may charge the
23 trustee a reasonable fee for verifying the existence of the bond and maintaining the
24 records required by this subsection.

25 (e) The bonding requirements of this section do not apply to

26 (1) a title insurance company authorized under AS 21.66 to transact a
27 title insurance business in this state;

28 (2) a title insurance limited producer who is licensed as required by
29 AS 21.66.270; or

30 (3) a state agency, including the Alaska Housing Finance Corporation
31 and the Alaska Industrial Development and Export Authority.

- 1 (f) In this section, "department" means the Department of Commerce,
2 Community, and Economic Development.

ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras

Chairman

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Vice-Chairman

Representative John Coghill

Representative Bob Lynn

Representative Carl Gatto

Representative Max Gruenberg

Representative Lindsey Holmes

State Capitol, Room 120

Juneau, Alaska 99801

Explanation of Changes Between CSHB108(L&C) version 26-LS0318\R and Proposed CSHB108(JUD) 26-LS0318\P

Sec. 2 AS 09.35.140. Adds back into HB108 the requirement that the notice of execution of the sale of real property also be noticed on an Internet website. This new language expands the list of qualified sites, to newspapers of general circulation provided they meet the requirements of proposed AS 09.35.140(c). Thus if a newspaper qualifies to run legal ads, it will be qualified to run the internet publication. A new qualifier is that the site be free to the viewing public.

Sec. 4 AS 34.20.070(b). Adds a requirement under AS 34.20.070(e) that the notice of default served on the trustor include language stating that payment to cure the default must be made two days prior to the sale dated stated in the notice of default, or two days prior to the date to which the sale date is postponed. This will give the trustor full disclosure in the original notice of the two day cure period.

AS 34.20.070(e) new conforming language to AS 34.20.070(b)

Sec. 10. AS 34.20.080(j) adds new language that states that, if a sale is rescinded under (g) of this section, the deed of trust foreclosed in the rescinded sale is restored to the validity and priority it would have had as though the sale did not occur.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB108(L&C)
 () Publish Date: _____

Identifier (file name): CSSB108(L&C)-DOR-AHFC-3-16-09
 Title Property Foreclosures and Executions

Dept. Affected: Revenue
 RDU Alaska Housing Finance Corp.
 Component Operations

Sponsor _____
 Requester Representative Ramras

Component Number 110

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES							
-----------------------------	--	--	--	--	--	--	--

CHANGE IN REVENUES ()							
-------------------------------	--	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2009) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

Under the House Labor and Commerce Committee version of House Bill 108, there would be no expected fiscal impact on the Alaska Housing Finance Corporation.

Prepared by: Bryan Butcher
 Division: Alaska Housing Finance Corporation
 Approved by: _____

Phone: 330-8445
 Date/Time: 3/16/09 12:00 AM
 Date: _____

CS FOR HOUSE BILL NO. 108(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 3/18/09

Referred: Judiciary

Sponsor(s): REPRESENTATIVES RAMRAS, Gatto

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to real property foreclosures, to the sale of property on execution, and**
2 **to deeds of trust."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 09.35.140 is amended to read:

5 **Sec. 09.35.140. Notice of sale on execution.** Before the sale of property on
6 execution, notice of the sale shall be given as follows:

7 (1) notice of the sale of personal property is given by posting a written
8 or printed notice of the time and place of sale in three public places within five miles
9 of the place where the sale is to be held, not less than 10 days before the day of sale;
10 [ONE OF THE NOTICES SHALL BE POSTED AT THE POST OFFICE NEAREST
11 TO THE PLACE WHERE THE SALE IS TO TAKE PLACE;]

12 (2) notice of the sale of real property is given by posting a similar
13 notice particularly describing the property, including the property's street address if
14 there is a street address for the property, not less than 30 days before the day of sale in

three public places, as provided in (1) of this section, and publishing a copy of the notice four times, once a week for four successive weeks in a newspaper of general circulation published nearest to the place of sale; an inaccuracy in the street address may not be used to set aside a sale if the legal description is correct; in this paragraph, "newspaper of general circulation" means a publication that

(A) is published in newspaper format;

(B) is distributed at least once a week for at least 50 weeks each year within the judicial district, excluding a period when publication is interrupted by a labor dispute or by a natural disaster or other casualty that the publisher cannot control; and has a total paid circulation or paid distribution of at least 500 copies, or 10 percent of the total population of the judicial district, whichever is less; in this subparagraph, "judicial district" means the judicial district where the place of sale is located;

(C) holds a second class mailing permit from the United States Postal Service;

(D) is not published primarily to distribute advertising; and

(E) is not intended primarily for a particular professional or occupational group.

* **Sec. 2.** AS 34.20.070(b) is amended to read:

(b) Not less than 30 days after the default and not less than 90 days [THREE MONTHS] before the sale, the trustee shall record in the office of the recorder of the recording district in which the trust property is located a notice of default setting out (1) the name of the trustor, (2) the book and page where the trust deed is recorded or the serial number assigned to the trust deed by the recorder, (3) a description of the trust property, including the property's street address if there is a street address for the property, (4) a statement that a breach of the obligation for which the deed of trust is security has occurred, (5) the nature of the breach, (6) the sum owing on the obligation, (7) the election by the trustee to sell the property to satisfy the obligation, and (8) the date, time, and place of the sale. An inaccuracy in the street address may not be used to set aside a sale if the legal description is correct. At any time up to two days before the sale, if the default has arisen by failure to make payments required by

1 the trust deed, the default may be cured by payment of the sum in default other than
 2 the principal that would not then be due if no default had occurred, plus attorney fees
 3 or court costs actually incurred by the trustee due to the default. If, under the same
 4 trust deed, notice of default under this subsection has been recorded two or more times
 5 previously and the default has been cured under this subsection, the trustee may elect
 6 to refuse payment and continue the sale.

7 * **Sec. 3.** AS 34.20.070(c) is amended to read:

8 (c) Within 10 days after recording the notice of default, the trustee shall mail a
 9 copy of the notice by certified mail to the last known address of each of the following
 10 persons or their legal representatives: (1) the **trustor** [GRANTOR] in the trust deed;
 11 (2) the successor in interest to the **trustor** [GRANTOR] whose interest appears of
 12 record or of whose interest the trustee or the beneficiary has actual notice, or who is in
 13 **actual physical** possession of the property; (3) any other person **actually** in **physical**
 14 possession of [OR OCCUPYING] the property; (4) any person having a lien or
 15 interest subsequent to the interest of the trustee in the trust deed, where the lien or
 16 interest appears of record or where the trustee or the beneficiary has actual notice of
 17 the lien or interest, **except as provided in (e) of this section**. The notice may be
 18 delivered personally instead of by mail.

19 * **Sec. 4.** AS 34.20.070 is amended by adding new subsections to read:

20 (e) In (c)(4) of this section, if the existence of a lien or nonpossessory interest
 21 can only be inferred from an inspection of the real property, the person holding the
 22 lien or nonpossessory interest is not entitled to notice under (c) of this section unless
 23 the lien or nonpossessory interest appears of record or a written notice of the lien or
 24 nonpossessory interest has been given to the beneficiary or trustee before the
 25 recording of the notice of default.

26 (f) If the trustee delivers notice personally under (c) of this section to the
 27 property or to an occupant of the property, the trustee may, notwithstanding (c) of this
 28 section, deliver the notice up to 20 days after the notice of default is recorded. If there
 29 is not a structure on the property and a person is not present on the property at the time
 30 of delivery, the trustee may place the notice on the property, or as close as practicable
 31 to the property if

1 (1) there is not a practical road access to the property; or

2 (2) access to the property is restricted by gates or other barriers.

3 (g) If the trustee or other person who delivered notice under (f) of this section
4 signs an affidavit for the delivery, the affidavit is prima facie evidence that the trustee
5 complied with (f) of this section. After one year from the delivery, as evidenced by the
6 affidavit, the trustee is conclusively presumed to have complied with (f) of this section
7 unless, within one year from the delivery, an action has been filed in court to contest
8 the foreclosure based on failing to comply with (f) of this section.

9 (h) If a person who is entitled to receive notice by mail under (c) of this
10 section is known by the beneficiary or trustee to be deceased, the trustee may satisfy
11 the notice requirements of (c) of this section by mailing the notice to the last known
12 address of the deceased person and to the personal representative of the deceased
13 person if the beneficiary or trustee knows that a personal representative has been
14 appointed for the deceased person.

15 (i) If a person who is entitled to receive notice by mail under (c) of this section
16 is known by the beneficiary or trustee to be deceased but the trustee and the
17 beneficiary do not know that a personal representative has been appointed for the
18 deceased person, the trustee may satisfy the notice requirements of (c) of this section
19 by

20 (1) mailing the notice to the heirs and devisees of the deceased person

21 (A) whose names and addresses are known to the beneficiary or
22 trustee; or

23 (B) who have recorded a notice of their interest in the property;

24 and

25 (2) publishing and posting the notice of the foreclosure as provided by
26 law for the sale of real property on execution, except that the notice must be titled "To
27 the Heirs or Devisees of (insert the name of the deceased person)" and include in the
28 body of the notice a list of the names of the persons who are known by the beneficiary
29 or trustee to be the heirs and devisees of the deceased person.

30 (j) If notice is given as required by (h) and (i) of this section, an heir or
31 devisee of the deceased person may not challenge the foreclosure on the ground that

1 the heir or devisee did not receive notice of the sale, unless the heir or devisee
2 challenges the foreclosure on this ground within 90 days after the sale.

3 (k) A person may bring an action in court to enjoin a foreclosure on real
4 property only if the person is

5 (1) the trustor of the deed of trust under which the real property was
6 foreclosed;

7 (2) a guarantor of the obligation that the real property is securing;

8 (3) a person who has an interest in the real property that has been
9 recorded;

10 (4) a person who has a recorded lien against the real property;

11 (5) an heir to the real property;

12 (6) a devisee of the real property; or

13 (7) the attorney general acting under other legal authority.

14 (l) If a person brings an action under (k) of this section to stop a sale of real
15 property, and if the sale is being brought because of a default in the performance of a
16 nonmonetary obligation required by the deed of trust that the real property is securing,
17 the court may impose on the person the conditions that the court determines are
18 appropriate to protect the beneficiary.

19 (m) In this section, "devisee," "heir," and "personal representative" have the
20 meanings given in AS 13.06.050.

21 * **Sec. 5.** AS 34.20.080(a) is amended to read:

22 (a) The sale authorized in AS 34.20.070 shall be made under the terms and
23 conditions and in the manner set out in the deed of trust. **The proceeds from a sale**
24 **shall be placed in escrow until they are disbursed.** However, the sale shall be made

25 (1) at public auction held at the front door of a courthouse of the
26 superior court in the judicial district where the property is located, unless the deed of
27 trust specifically provides that the sale shall be held in a different place, **except that a**
28 **trustee may also accept bids by telephone, the Internet, and electronic mail if the**
29 **trustee has taken reasonable steps to ensure that the bidding methods using the**
30 **telephone, the Internet, or electronic mail are fair, accessible, and designed to**
31 **result in money that is immediately available for disbursement:** and

(2) after public notice of the time and place of the sale has been given in the manner provided by law for the sale of real property on execution.

* **Sec. 6.** AS 34.20.080(b) is amended to read:

(b) The attorney for the trustee or another agent of the trustee may conduct the sale and act in the sale as the auctioneer for the trustee. The trustee may set reasonable rules and conditions for the conduct of the sale. Sale shall be made to the highest and best bidder. The beneficiary under the trust deed may bid at the trustee's sale. Except as provided by (g) of this section, the [THE] trustee shall execute and deliver to the purchaser a deed to the property sold.

* **Sec. 7.** AS 34.20.080(e) is amended to read:

(e) The trustee may postpone sale of all or any portion of the property by delivering to the person conducting the sale a written and signed request for the postponement to a stated date and hour. The person conducting the sale shall publicly announce the postponement to the stated date and hour at the time and place originally fixed for the sale. This procedure shall be followed in any succeeding postponement, but the foreclosure may not be postponed for more than 12 months unless a new notice of the sale is given under (a)(2) of this section. A sale may be postponed for up to 12 months from the sale date stated in the notice of default under AS 34.20.070(b) without providing a basis for challenging the validity of the foreclosure process because of the length of time the foreclosure has been pending.

* **Sec. 8.** AS 34.20.080 is amended by adding new subsections to read:

(f) After delivery of a deed under (b) of this section, the trustee shall distribute any cash proceeds of the sale in the following order to

(1) the beneficiary of the deed of trust being foreclosed until the beneficiary is paid the full amount that is owed under the deed of trust to the beneficiary;

(2) the persons who held, at the time of the sale, recorded interests, except easements, in the property, that were subordinate to the foreclosed deed of trust; the distribution under this paragraph shall be made according to the priority of the recorded interest, and a recorded interest with a higher priority shall be satisfied

1 before distribution is made to the recorded interest that is next lower in priority;
 2 however, if a person holds a recorded interest that is an assessment, the person is
 3 entitled only to the amount of the assessment that was due at the time of the sale; in
 4 this paragraph, "recorded interest" means an interest, including a lease, recorded under
 5 AS 40.17;

6 (3) the trustor in the trust deed if the trustor is still the owner of the
 7 property at the time of the foreclosure sale, but, if the trustor is not still the owner of
 8 the property at the time of the foreclosure sale, then to the trustor's successor in
 9 interest whose interest appears of record at the time of the foreclosure sale.

10 (g) The trustee may withhold delivery of the deed under (b) of this section for
 11 up to five days after the sale. If, during the five days, the trustee determines that the
 12 sale should not have proceeded, the trustee may not issue the deed but shall

13 (1) inform the beneficiary, the otherwise successful bidder, and the
 14 trustor of the trust deed or the trustor's successor in interest that the sale is rescinded;
 15 and

16 (2) return to the otherwise successful bidder money received from the
 17 otherwise successful bidder as a bid on the property; return of this money is the
 18 otherwise successful bidder's only remedy if the trustee withholds delivery of the deed
 19 under (b) of this section.

20 (h) If a trustee rescinds a sale under (g) of this section and the obligation
 21 secured by the deed of trust remains in default, the trustee may, at the request of the
 22 beneficiary, reschedule the sale for a date that is not less than 45 days after the date of
 23 the rescinded sale. Not less than 30 days before the rescheduled sale date, the trustee
 24 shall

25 (1) mail notice of the rescheduled sale date by certified mail to the last
 26 known address of each of the persons identified by AS 34.20.070(c); and

27 (2) publish and post the notice of the rescheduled sale date as provided
 28 by law for the sale of real property on execution.

29 (i) Unless a sale is rescinded under (g) of this section, the sale completely
 30 terminates the rights of the trustor of the trust deed in the property.

31 * Sec. 9. AS 34.20.120(a) is amended to read:

(a) The trustee under a trust deed upon real property given to secure an obligation to pay money and conferring no duties upon the trustee other than the duties that are incidental to the exercise of the power of sale conferred in the deed may be substituted by recording in the mortgage records of the recording district in which the property is located a substitution executed and acknowledged by

(1) all the beneficiaries under the trust deed, or their successors in interest; or

(2) the attorneys for all of the beneficiaries or the attorneys for all of the beneficiaries' successors in interest.

* **Sec. 10.** AS 34.20.120(b) is amended to read:

(b) The substitution must contain

(1) the date of execution of the trust deed;

(2) the names of the trustee, trustor, and beneficiary, and, if the substitution is executed by the attorney for the beneficiary or successor in interest to the beneficiary, the name, address, and Alaska Bar Association identification number of the attorney;

(3) the book and page where the trust deed is recorded or the serial number assigned to the trust deed by the recorder;

(4) the name of the new trustee; and

(5) an acknowledgment signed and acknowledged by the trustee named in the trust deed of a receipt of a copy of the substitution, or an affidavit of service of a copy of it.

* **Sec. 11.** AS 34.20 is amended by adding a new section to read:

Sec. 34.20.125. Trustee bond required. (a) Before performing the duties of a trustee under AS 34.20.070 and 34.20.080, a person shall obtain a surety bond in the amount of \$250,000 to protect the trustors and beneficiaries of trust deeds against fraud or defalcation by the trustee in the performance of the duties.

(b) The bond required by (a) of this section must be a bond that is terminable at any time by the surety by sending written notice by first class United States mail to the obligee and the principal at the address for each that is last known by the surety, and to the department. The bond terminates when 45 days have expired after the date

1 the notice is mailed. The surety is not liable for an act or omission of the principal that
2 occurs after the termination. The surety is not liable after the termination for more than
3 the face amount of the bond, regardless of the number of claims made against the bond
4 or the number of years the bond remains in force. A revision of the amount of the
5 bond is not cumulative.

6 (c) If a bond terminates under (b) of this section, the person who obtained the
7 bond under (a) of this section shall give notice of the bond's termination to the
8 department and may not act as a trustee until the person obtains another bond under (a)
9 of this section.

10 (d) Each year, a trustee shall file evidence of the bond with the department.
11 The department shall verify that the evidence is satisfactory to indicate the existence
12 of the bond, keep an updated list of trustees who are bonded, and make the evidence
13 and the list available to the public for inspection. The department may charge the
14 trustee a reasonable fee for verifying the existence of the bond and maintaining the
15 records required by this subsection.

16 (e) The bonding requirements of this section do not apply to

17 (1) a title insurance company authorized under AS 21.66 to transact a
18 title insurance business in this state;

19 (2) a title insurance limited producer who is licensed as required by
20 AS 21.66.270; or

21 (3) a state agency, including the Alaska Housing Finance Corporation
22 and the Alaska Industrial Development and Export Authority.

23 (f) In this section, "department" means the Department of Commerce,
24 Community, and Economic Development.

HOUSE BILL NO. 108

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES RAMRAS, Gatto

Introduced: 2/2/09

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to real property foreclosures, to the sale of property on execution, and**
2 **to deeds of trust."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 09.35.140 is amended to read:

5 **Sec. 09.35.140. Notice of sale on execution.** Before the sale of property on
6 execution, notice of the sale shall be given as follows:

7 (1) notice of the sale of personal property is given by posting a written
8 or printed notice of the time and place of sale in three public places within five miles
9 of the place where the sale is to be held, not less than 10 days before the day of sale;
10 [ONE OF THE NOTICES SHALL BE POSTED AT THE POST OFFICE NEAREST
11 TO THE PLACE WHERE THE SALE IS TO TAKE PLACE;]

12 (2) notice of the sale of real property is given by posting a similar
13 notice particularly describing the property, including the property's street address if
14 there is a street address for the property, not less than 30 days before the day of sale in

1 three public places, as provided in (1) of this section, and publishing a copy of the
 2 notice four times, once a week for four successive weeks in a newspaper of general
 3 circulation published nearest to the place of sale; an inaccuracy in the street address
 4 may not be used to set aside a sale if the legal description is correct; in this paragraph,
 5 "newspaper of general circulation" means a publication that

6 (A) is published in newspaper format;

7 (B) is distributed at least once a week for at least 50 weeks
 8 each year within the judicial district, excluding a period when publication is
 9 interrupted by a labor dispute or by a natural disaster or other casualty that the
 10 publisher cannot control; and has a total paid circulation or paid distribution of
 11 at least 500 copies, or 10 percent of the total population of the judicial district,
 12 whichever is less; in this subparagraph, "judicial district" means the judicial
 13 district where the place of sale is located;

14 (C) holds a second class mailing permit from the United States
 15 Postal Service;

16 (D) is not published primarily to distribute advertising; and

17 (E) is not intended primarily for a particular professional or
 18 occupational group.

19 * **Sec. 2.** AS 09.35.140 is amended by adding new subsections to read:

20 (b) In addition to the notice required by (a) of this section, notice of the sale of
 21 real property on execution shall be given by publishing a notice of the sale on an
 22 Internet website beginning at least 45 days before the date of the sale. The notice must
 23 be published for at least 30 days, including at least 10 of the last 15 days before the
 24 actual date of the sale. Giving notice under this subsection is not required unless there
 25 is an Internet website that qualifies under (c) of this section.

26 (c) To qualify as an Internet website on which notices of sale may be
 27 published under (b) of this section, an Internet website must

28 (1) be available to any person;

29 (2) be completely free to the public for viewing and not require a
 30 subscription;

31 (3) be used primarily to advertise real property under foreclosure;

(4) have been in continuous operation for more than one year;

(5) have a viewership of at least 5,000 different visitors each month that is verified by an independent audit; and

(6) have an office in the state and the office has staff that includes a senior management person.

* **Sec. 3.** AS 09.35.142 is amended to read:

Sec. 09.35.142. Action to establish newspaper or Internet website status. A person who owns a publication may bring an action under AS 22.10.020(g) to establish that the publication is a newspaper of general circulation under **AS 09.35.140(a)(2). A person who owns an Internet website may bring an action under AS 22.10.020(g) to establish that the Internet website qualifies as an Internet website on which notices of sale may be published under AS 09.35.140(b)** [AS 09.35.140(2)].

* **Sec. 4.** AS 34.20.070(b) is amended to read:

(b) Not less than 30 days after the default and not less than **90 days** [THREE MONTHS] before the sale, the trustee shall record in the office of the recorder of the recording district in which the trust property is located a notice of default setting out (1) the name of the trustor, (2) the book and page where the trust deed is recorded or the serial number assigned to the trust deed by the recorder, (3) a description of the trust property, including the property's street address if there is a street address for the property, (4) a statement that a breach of the obligation for which the deed of trust is security has occurred, (5) the nature of the breach, (6) the sum owing on the obligation, (7) the election by the trustee to sell the property to satisfy the obligation, and (8) the date, time, and place of the sale. An inaccuracy in the street address may not be used to set aside a sale if the legal description is correct. At any time **up to two days** before the sale, if the default has arisen by failure to make payments required by the trust deed, the default may be cured by payment of the sum in default other than the principal that would not then be due if no default had occurred, plus attorney fees or court costs actually incurred by the trustee due to the default. If, under the same trust deed, notice of default under this subsection has been recorded two or more times previously and the default has been cured under this subsection, the trustee may elect

1 to refuse payment and continue the sale.

2 * **Sec. 5.** AS 34.20.070(c) is amended to read:

3 (c) Within 10 days after recording the notice of default, the trustee shall mail a
4 copy of the notice by certified mail to the last known address of each of the following
5 persons or their legal representatives: (1) the **trustor** [GRANTOR] in the trust deed;
6 (2) the successor in interest to the **trustor** [GRANTOR] whose interest appears of
7 record or of whose interest the trustee or the beneficiary has actual notice, or who is in
8 **actual physical** possession of the property; (3) any other person **actually** in **physical**
9 possession of [OR OCCUPYING] the property; (4) any person having a lien or
10 interest subsequent to the interest of the trustee in the trust deed, where the lien or
11 interest appears of record or where the trustee or the beneficiary has actual notice of
12 the lien or interest, **except as provided in (e) of this section.** The notice may be
13 delivered personally instead of by mail.

14 * **Sec. 6.** AS 34.20.070 is amended by adding new subsections to read:

15 (e) In (c)(4) of this section, if the existence of a lien or nonpossessory interest
16 can only be inferred from an inspection of the real property, the person holding the
17 lien or nonpossessory interest is not entitled to notice under (c) of this section unless
18 the lien or nonpossessory interest appears of record or a written notice of the lien or
19 nonpossessory interest has been given to the beneficiary or trustee before the
20 recording of the notice of default.

21 (f) If the trustee delivers notice personally under (c) of this section to the
22 property or to an occupant of the property, the trustee may, notwithstanding (c) of this
23 section, deliver the notice up to 20 days after the notice of default is recorded. If there
24 is not a structure on the property and a person is not present on the property at the time
25 of delivery, the trustee may place the notice on the property, or as close as practicable
26 to the property if

27 (1) there is not a practical road access to the property; or

28 (2) access to the property is restricted by gates or other barriers.

29 (g) If the trustee or other person who delivered notice under (f) of this section
30 signs an affidavit for the delivery, the affidavit is prima facie evidence that the trustee
31 complied with (f) of this section. After one year from the delivery, as evidenced by the

1 affidavit, the trustee is conclusively presumed to have complied with (f) of this section
2 unless, within one year from the delivery, an action has been filed in court to contest
3 the foreclosure based on failing to comply with (f) of this section.

4 (h) If a person who is entitled to receive notice by mail under (c) of this
5 section is known by the beneficiary or trustee to be deceased, the trustee may satisfy
6 the notice requirements of (c) of this section by mailing the notice to the last known
7 address of the deceased person and to the personal representative of the deceased
8 person if the beneficiary or trustee knows that a personal representative has been
9 appointed for the deceased person.

10 (i) If a person who is entitled to receive notice by mail under (c) of this section
11 is known by the beneficiary or trustee to be deceased but the trustee and the
12 beneficiary do not know that a personal representative has been appointed for the
13 deceased person, the trustee may satisfy the notice requirements of (c) of this section
14 by

15 (1) mailing the notice to the heirs and devisees of the deceased person

16 (A) whose names and addresses are known to the beneficiary or
17 trustee; or

18 (B) who have recorded a notice of their interest in the property;
19 and

20 (2) publishing and posting the notice of the foreclosure as provided by
21 law for the sale of real property on execution, except that the notice must be titled "To
22 the Heirs or Devisees of (insert the name of the deceased person)" and include in the
23 body of the notice a list of the names of the persons who are known by the beneficiary
24 or trustee to be the heirs and devisees of the deceased person.

25 (j) If notice is given as required by (h) and (i) of this section, an heir or
26 devisee of the deceased person may not challenge the foreclosure on the ground that
27 the heir or devisee did not receive notice of the sale, unless the heir or devisee
28 challenges the foreclosure on this ground within 90 days after the sale.

29 (k) A person may bring an action in court to enjoin a foreclosure on real
30 property only if the person is

31 (1) the trustor of the deed of trust under which the real property was

1 foreclosed;

2 (2) a guarantor of the obligation that the real property is securing;

3 (3) a person who has an interest in the real property that has been
4 recorded;

5 (4) a person who has a recorded lien against the real property;

6 (5) an heir to the real property;

7 (6) a devisee of the real property; or

8 (7) the attorney general acting under other legal authority.

9 (l) If a person brings an action under (k) of this section to stop a sale of real
10 property, and if the sale is being brought because of a default in the performance of a
11 nonmonetary obligation required by the deed of trust that the real property is securing,
12 the court may impose on the person the conditions that the court determines are
13 appropriate to protect the beneficiary.

14 (m) In this section, "devisee," "heir," and "personal representative" have the
15 meanings given in AS 13.06.050.

16 * Sec. 7. AS 34.20.080(a) is amended to read:

17 (a) The sale authorized in AS 34.20.070 shall be made under the terms and
18 conditions and in the manner set out in the deed of trust. **The proceeds from a sale**
19 **shall be placed in escrow until they are disbursed.** However, the sale shall be made

20 (1) at public auction held at the front door of a courthouse of the
21 superior court in the judicial district where the property is located, unless the deed of
22 trust specifically provides that the sale shall be held in a different place, **except that a**
23 **trustee may also accept bids by telephone, the Internet, and electronic mail if the**
24 **trustee has taken reasonable steps to ensure that the bidding methods using the**
25 **telephone, the Internet, or electronic mail are fair, accessible, and designed to**
26 **result in money that is immediately available for disbursement;** and

27 (2) after public notice of the time and place of the sale has been given
28 in the manner provided by law for the sale of real property on execution.

29 * Sec. 8. AS 34.20.080(b) is amended to read:

30 (b) The attorney for the trustee **or another agent of the trustee** may conduct
31 the sale and act in the sale as the auctioneer for the trustee. **The trustee may set**

1 reasonable rules and conditions for the conduct of the sale. Sale shall be made to
 2 the highest and best bidder. The beneficiary under the trust deed may bid at the
 3 trustee's sale. Except as provided by (g) of this section, the [THE] trustee shall
 4 execute and deliver to the purchaser a deed to the property sold.

5 * Sec. 9. AS 34.20.080(e) is amended to read:

6 (e) The trustee may postpone sale of all or any portion of the property by
 7 delivering to the person conducting the sale a written and signed request for the
 8 postponement to a stated date and hour. The person conducting the sale shall publicly
 9 announce the postponement to the stated date and hour at the time and place originally
 10 fixed for the sale. This procedure shall be followed in any succeeding postponement,
 11 but the foreclosure may not be postponed for more than 12 months unless a new
 12 notice of the sale is given under (a)(2) of this section. A sale may be postponed for
 13 up to 12 months from the sale date stated in the notice of default under
 14 AS 34.20.070(b) without providing a basis for challenging the validity of the
 15 foreclosure process because of the length of time the foreclosure has been
 16 pending.

17 * Sec. 10. AS 34.20.080 is amended by adding new subsections to read:

18 (f) After delivery of a deed under (b) of this section, the trustee shall distribute
 19 any cash proceeds of the sale in the following order to

20 (1) the beneficiary of the deed of trust being foreclosed until the
 21 beneficiary is paid the full amount that is owed under the deed of trust to the
 22 beneficiary;

23 (2) the persons who held, at the time of the sale, recorded interests,
 24 except easements, in the property, that were subordinate to the foreclosed deed of
 25 trust; the distribution under this paragraph shall be made according to the priority of
 26 the recorded interest, and a recorded interest with a higher priority shall be satisfied
 27 before distribution is made to the recorded interest that is next lower in priority;
 28 however, if a person holds a recorded interest that is an assessment, the person is
 29 entitled only to the amount of the assessment that was due at the time of the sale; in
 30 this paragraph, "recorded interest" means an interest, including a lease, recorded under
 31 AS 40.17;

1 (3) the trustor in the trust deed if the trustor is still the owner of the
 2 property at the time of the foreclosure sale, but, if the trustor is not still the owner of
 3 the property at the time of the foreclosure sale, then to the trustor's successor in
 4 interest whose interest appears of record at the time of the foreclosure sale.

5 (g) The trustee may withhold delivery of the deed under (b) of this section for
 6 up to five days after the sale. If, during the five days, the trustee determines that the
 7 sale should not have proceeded, the trustee may not issue the deed but shall

8 (1) inform the beneficiary, the otherwise successful bidder, and the
 9 trustor of the trust deed or the trustor's successor in interest that the sale is rescinded;
 10 and

11 (2) return to the otherwise successful bidder money received from the
 12 otherwise successful bidder as a bid on the property; return of this money is the
 13 otherwise successful bidder's only remedy if the trustee withholds delivery of the deed
 14 under (b) of this section.

15 (h) If a trustee rescinds a sale under (g) of this section and the obligation
 16 secured by the deed of trust remains in default, the trustee may, at the request of the
 17 beneficiary, reschedule the sale for a date that is not less than 45 days after the date of
 18 the rescinded sale. Not less than 30 days before the rescheduled sale date, the trustee
 19 shall

20 (1) mail notice of the rescheduled sale date by certified mail to the last
 21 known address of each of the persons identified by AS 34.20.070(c); and

22 (2) publish and post the notice of the rescheduled sale date as provided
 23 by law for the sale of real property on execution.

24 (i) Unless a sale is rescinded under (g) of this section, the sale completely
 25 terminates the rights of the trustor of the trust deed in the property.

26 * **Sec. 11.** AS 34.20.120(a) is amended to read:

27 (a) The trustee under a trust deed upon real property given to secure an
 28 obligation to pay money and conferring no duties upon the trustee other than the duties
 29 that are incidental to the exercise of the power of sale conferred in the deed may be
 30 substituted by recording in the mortgage records of the recording district in which the
 31 property is located a substitution executed and acknowledged by

1 (1) all the beneficiaries under the trust deed, or their successors in
2 interest; or

3 (2) the attorneys for all of the beneficiaries or the attorneys for all
4 of the beneficiaries' successors in interest.

5 * Sec. 12. AS 34.20.120(b) is amended to read:

6 (b) The substitution must contain

7 (1) the date of execution of the trust deed;

8 (2) the names of the trustee, trustor, and beneficiary, and, if the
9 substitution is executed by the attorney for the beneficiary or successor in
10 interest to the beneficiary, the name, address, and Alaska Bar Association
11 identification number of the attorney;

12 (3) the book and page where the trust deed is recorded or the serial
13 number assigned to the trust deed by the recorder;

14 (4) the name of the new trustee; and

15 (5) an acknowledgment signed and acknowledged by the trustee
16 named in the trust deed of a receipt of a copy of the substitution, or an affidavit of
17 service of a copy of it.

18 * Sec. 13. AS 34.20 is amended by adding a new section to read:

19 **Sec. 34.20.125. Trustee bond required.** (a) Before performing the duties of a
20 trustee under AS 34.20.070 and 34.20.080, a person shall obtain a surety bond in the
21 amount of \$250,000 to protect the trustors and beneficiaries of trust deeds against
22 fraud or defalcation by the trustee in the performance of the duties.

23 (b) The bond required by (a) of this section must be a bond that is terminable
24 at any time by the surety by sending written notice by first class United States mail to
25 the obligee and the principal at the address for each that is last known by the surety,
26 and to the department. The bond terminates when 45 days have expired after the date
27 the notice is mailed. The surety is not liable for an act or omission of the principal that
28 occurs after the termination. The surety is not liable after the termination for more than
29 the face amount of the bond, regardless of the number of claims made against the bond
30 or the number of years the bond remains in force. A revision of the amount of the
31 bond is not cumulative.

1 (c) If a bond terminates under (b) of this section, the person who obtained the
2 bond under (a) of this section shall give notice of the bond's termination to the
3 department and may not act as a trustee until the person obtains another bond under (a)
4 of this section.

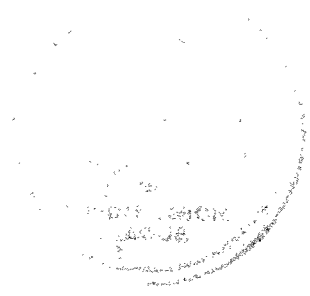
5 (d) Each year, a trustee shall file evidence of the bond with the department.
6 The department shall verify that the evidence is satisfactory to indicate the existence
7 of the bond, keep an updated list of trustees who are bonded, and make the evidence
8 and the list available to the public for inspection. The department may charge the
9 trustee a reasonable fee for verifying the existence of the bond and maintaining the
10 records required by this subsection.

11 (e) The bonding requirements of this section do not apply to

12 (1) a title insurance company authorized under AS 21.66 to transact a
13 title insurance business in this state; or

14 (2) a title insurance limited producer who is licensed as required by
15 AS 21.66.270.

16 (f) In this section, "department" means the Department of Commerce,
17 Community, and Economic Development.



March 8, 2009

Stephen Routh
Routh Crabtree, APC
3000 A Street Suite 200
Anchorage, AK 99503

Re: HB 108-An Act relating to real property foreclosures; to the sale of property on execution; and to deed of trust

Dear Mr. Routh:

We are an association representing all thirteen credit unions doing business in Alaska, with a combined membership base of over 500,000.

Thank you for alerting us to this legislation. We think the changes proposed in the bill are well thought-out, necessary, and will benefit borrowers, financial institutions, and title agents. Much of the bill is housekeeping, which will reduce future litigation. Other parts are forward-thinking, like developing methods for internet advertising and bidding, that will tend to increase bidding at foreclosure auctions.

We are pleased to support this legislation.

Sincerely,

James M. Whelan
Chair

Kirk Wickersham
280 W. 34th Ave.
Anchorage, Alaska 99503

907-561-3726

March 18, 2009

Re: House Bill 108 "*An Act relating to real property foreclosures, to the sale of property on execution, and to deeds of trust.*"

Dear Members of the Legislature,

I am a real estate lawyer, real estate broker and title insurance licensee.

I have had the opportunity to review HB 108, which updates the provisions of Alaska's foreclosure law. It contains many housekeeping items that clarify existing law, as well as some sections that will take Alaska solidly into the 21st century.

An outstanding provision is the requirement for publication on the Internet. Most folks look to the internet today for foreclosure information. Having this information on the web will improve dissemination of the sale information to the general public, and thus it should increase the number of bids above the offset bid.

Bids above the offset bid are in everyone's interest. The debtor receives the net proceeds of the sale. The lender does not have to take title, renovate and market the property. And the successful bidder is obviously happy.

I encourage you to adopt this bill. It is my understanding that, if adopted, this bill will become a model for legislation in other states. Please contact me if you have any questions.

Sincerely,

Kirk Wickersham

Alaska Mortgage Bankers Association
P.O. Box 9-2691
Anchorage, Alaska 99509-2691

April 2, 2009

Re: House Bill 108

Stephen Routh
Routh Crabtree, APC
3000 "A" Street Suite 200
Anchorage, AK 99503

Dear Stephen;

The Alaska Mortgage Bankers Association is a trade organization composed of loan origination companies, servicing companies, and affiliated industry service providers. We have been serving Alaska's mortgage and housing industry since 1980. Our members adhere to a canon of ethics that calls for the use of sound and ethical business practices.

The Alaska Mortgage Bankers Association is dedicated to the preservation and improvement of the Mortgage Banking Industry through a proactive relationship with Federal and State legislators, industry agencies, and other housing trade organizations. Our members are kept informed about changes in mortgage laws and pending legislation.

Our standing committees provide seminars, meetings, and general information for the purpose of education for our members and the public.

The Association promotes public education, high ethical standards, sound business practices, and cooperation among legislators, regulators and other members of the industry.

Consistent with our mission, we are pleased to offer our support for HB 108. It will modernize Alaska Statutes, and make the foreclosure process more fair, transparent, and efficient. It will tend to reduce litigation, and encourage bidders to attend foreclosure auctions to the benefit of borrowers, lenders, and neighborhoods alike.

Sincerely,


Gail K. Stafford
President

KENNETH F. EGGERS, P.C.
SALLY J. KUCKO
DENNIS G. PENERTY
DAVID A. DEVINE, P.C.
ROBERT H. SCHMIDT
SARAH A. BAYLEN

JOSEPH D. GROH, SR.
1920-1998

LAW OFFICES OF
GROH EGGERS, LLC

2000 CORDOVA STREET, SUITE 110
ANCHORAGE, ALASKA 99503

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MAR 11 2009

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(907) 562-6471
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March 11, 2009

The Honorable Kurt Olson
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

Via E-mail: Representative_Kurt_Olson@legis.state.ak.gov

re: HB 108 - "A Bill Relating to Foreclosures, etc."
Our File No. 85-19-15

Dear Representative Olson:

I am writing on my own behalf, and on behalf of my law firm, to voice my opposition to the as-written version of HB 108 changing Alaska's laws relating to deed of trust foreclosures. While the majority of the bill contains beneficial changes, HB 108, as written, will create a requirement for Internet publication that will result in giving monopoly power to the law firm that wrote HB 108.

HB 108 requires publication on the Internet prior to a foreclosure. I have no objection to Internet publication as a general matter. In fact, current law requires that all default notices must be published in a newspaper, and most newspapers that publish default notices simultaneously publish the default notice on the newspaper's accompanying website. Every judicial district already has a newspaper of general circulation that publishes legal notices online. **Therefore, almost all default notices in Alaska are already published on the Internet.**

However, HB 108 goes further to provide that, to qualify as a website for publishing default notices, the website must have 5,000 unique visitors a month, be used primarily for advertising foreclosure properties, and have senior management within the state. Under this definition, almost no websites will qualify. **The websites operated by the Anchorage Daily News, Alaska Journal of Commerce, Juneau Empire, and Fairbanks Daily News-Miner, among others, will not qualify because they are not "used primarily to advertise real property under foreclosure[.]"** Websites such as Craigslist, which was mentioned favorably in the February 23, 2009 committee hearing, would not qualify because it is not used primarily for foreclosures, and because it does not have senior management in Alaska. Websites operated by banks will not qualify because they are not used primarily for foreclosures. Websites operated by credit unions, title companies, and other entities that do not have senior management in Alaska will not qualify. Websites operated by out-of-state entities will not qualify. Websites operated by out-of-state entities will not qualify.

Hon. Kurt Olson

March 11, 2009

Page 2 of 2

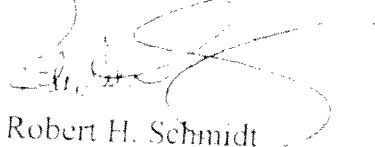
It is my belief that the only website that will qualify under the current HB 108 is USA-Foreclosure.com, which is half owned by Mr. Stephen Routh, whose law firm wrote HB108. Mr. Routh's law firm, with over 400 employees and offices in seven states, should not be granted monopoly power to conduct all foreclosures in Alaska.

I recommend the committee do one of two things with HB 108. I would recommend that all provisions relating to Internet advertising be eliminated. This is what happened last year with HB 163 and I recommend the same change be made now. Alternately, I recommend that proposed subsections AS 09.35.140(c)(3), (5) and (6) be eliminated. This would take away the requirement that a website "be used primarily to advertise real property under foreclosure", that the website have 5,000 unique visitors a month, and the website have senior management in Alaska. This would allow newspaper websites, bank websites, law firm websites, and Craigslist to qualify.

Thank you for the opportunity to provide information to the Committee on HB 108. If I can be of any further assistance, please don't hesitate to contact me.

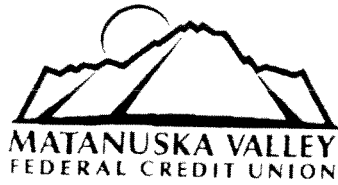
Very truly yours,

GROH EGGERS, LLC



Robert H. Schmidt

cc: House Labor & Commerce Committee Members (via E-mail)



1020 S. Bailey St.
Palmer, Alaska 99645
(907) 745-4891
(907) 694-4891
Fax: (907) 745-9131
www.mvfcu.coop

February 24, 2009

Mr. Stephen Routh
Routh & Crabtree, APC
3000 A Street, Suite 200
Anchorage, AK 99503

Re: HB 108 Property Foreclosures and Executions


Dear Mr. Routh,

This letter is being written in support of House Bill 108 "An Act relating to real property foreclosures, to the sale of property on execution, and to deeds of trust."

The proposed changes to the above referenced bill will clarify and update the current foreclosure process and language.

If there are any questions please don't hesitate to contact me at 745-9140.

Sincerely,


Al Strawn
CEO

geg



Building Better Financial Futures Since 1948!



AlaskaUSA

Federal Credit Union[®]

February 6, 2009

Mr. Stephen Routh
Routh & Crabtree, APC
3000 A Street, Suite 200
Anchorage, AK 99503

Re: HB 108-An Act relating to property foreclosures and executions

Dear Mr. Routh:

Thank you for alerting us to this legislation. We think the changes proposed in the bill are well thought out, necessary, and will benefit borrowers, financial institutions, and title agents.

We are pleased to support this legislation.

Sincerely,



William B. Eckhardt
President



**First American
Title Insurance Company**

BRYAN S. MERRELL

REGIONAL COUNSEL

February 5, 2009

RE: House Bill 108 "*An Act relating to real property foreclosures, to the sale of property on execution, and to deeds of trust.*"

To Whom It May Concern:

This letter is written in support of House Bill 108, relating to Deeds of Trust and Foreclosures.

I am Regional Counsel for First American Title Insurance Company. First American is the leading title insurer in the United States, and in Alaska. I am a 20 year member of the Alaska Bar, and a former long time resident of Alaska. In my capacity as an in-house attorney for First American, I have had many occasions to be involved in non-judicial foreclosure related issues and controversies, as First American has produced title insurance produces related to such foreclosures, and acted as trustee in many cases as well.

HB 108 would clarify a large number of issues relative to non-judicial foreclosure actions. It would fill in gaps in the current statutes relative to procedure. It would clarify issues which Alaska Supreme Court opinions over the years have made unclear. The result of passage of the bill would be a clearer pattern of conduct for the parties to the foreclosure, which should result in less litigation and higher bidding for the properties involved in the process. I urge your yes vote for the bill, and would be happy to answer any questions you may have regarding it.

Very truly yours,

FIRST AMERICAN TITLE INSURANCE CO.

Bryan S. Merrell
Regional Counsel

Bill History/Action for 26th Legislature

BILL: HB 108

BILL VERSION: CSHB 108(JUD) AM

CURRENT STATUS: (S) L&C

THEN JUD

SPONSOR(s): REPRESENTATIVE(s) RAMRAS, Gatto

SHORT TITLE: PROP. FORECLOSURE/EXECUTION/TRUST
DEEDS

STATUS DATE: 04/13/09

TITLE: "An Act relating to real property foreclosures, to the sale of property on execution, and to deeds of trust."

Bill Number:	<input type="text"/>	Search Bills	Next Bill
Full Text	Fiscal Notes	Amendments	Minutes
Documents			
Sponsor Statement			
Display Committee Action with Bill History			

Jrn-Date	Jrn-Page	Action
02/02/09	0136	(H) READ THE FIRST TIME - REFERRALS
02/02/09	0136	(H) L&C, JUD
02/16/09	0264	(H) COSPONSOR(S): GATTO
03/18/09	0497	(H) L&C RPT CS(L&C) IDP 5NR
03/18/09	0497	(H) DP: CHENAULT
03/18/09	0497	(H) NR: BUCH, COGHILL, NEUMAN, HOLMES, OLSON
03/18/09	0498	(H) FN1: ZERO(REV)
04/07/09	0769	(H) JUD RPT CS(JUD) 2DP 4NR 1AM
04/07/09	0769	(H) DP: COGHILL, RAMRAS
04/07/09	0769	(H) NR: LYNN, GRUENBERG, DAHLSTROM, GATTO
04/07/09	0769	(H) AM: HOLMES
04/07/09	0769	(H) FN1: ZERO(REV)
04/10/09	0853	(H) RULES TO CALENDAR 4/10/2009
04/10/09	0853	(H) READ THE SECOND TIME
04/10/09	0853	(H) JUD CS ADOPTED UNAN CONSENT
04/10/09	0854	(H) ADVANCED TO THIRD READING 4/11 CALENDAR
04/11/09	0904	(H) READ THE THIRD TIME CSHB 108(JUD)
04/11/09	0904	(H) RETURN TO SECOND FOR AM 1 UNAN CONSENT
04/11/09	0904	(H) AM NO 1 ADOPTED UNAN CONSENT
04/11/09	0904	(H) AUTOMATICALLY IN THIRD READING
04/11/09	0905	(H) PASSED Y34 E2 A4
04/11/09	0914	(H) TRANSMITTED TO (S)
04/11/09	0914	(H) VERSION: CSHB 108(JUD) AM
04/13/09		(S) READ THE FIRST TIME - REFERRALS
04/13/09		(S) L&C, JUD
04/13/09		(S) REFERRED TO LABOR & COMMERCE

Similar Subject Match or Exact Subject Match

ATTORNEYS

AUCTIONS

BONDS & BONDING

DEBI

DEEDS

ESTATES

FINANCIAL INSTITUTIONS
FORECLOSURE
INTERNET
PROPERTY
SALES

Bill Number:

[Return to Basis Main Menu \(26th Legislature\)](#)

HB 108 Property Foreclosures and Executions

SPONSOR(S): REPRESENTATIVE(s) RAMRAS, Gatto

CURRENT STATUS: (H) RLS

FISCAL NOTE: Revenue-0

BILL HISTORY/ACTION:

(H) L&C 1DP: Chenault; 5NR: Buch, Coghill, Neuman, Olson, Holmes

(H) JUD 2 DP: Ramras, Coghill; NR: Lynn, Gruenberg, Dalstrom, Gatto; AM: Holmes

BILL SUMMARY: Bill amends AS 09.35.140, AS 34.20.142, AS 34.20.070, AS 34.20.080, AS 34.20.120, and AS 34.34.20.125 (see sectional for 108)

ISSUES (pros & cons):

TALKING POINTS (if any):

COMMITTEE/DATE: (H) JUD 3/30/09, 4/3/09

Roll: Ramras, Coghill, Lynn, Gruenberg, Dalstrom, Gatto, and Holmes

Action: CS moved

Next Referral: (H) Rules

Amendments: yes (P.2)

Change in CS: yes, CS created and adopted (version "P")

Amendments/Changes:

Differences in CS between L&C and JUD:

- JUD CS adds back in the requirement that notice of execution of sale be also noticed on an Internet website. The list of qualified sites is also expanded with the qualifier that the site be free to the viewing public.
- 2-day cure deadline must be conveyed in writing in the notice of default.
- Adds language: if a sale is rescinded under section (g), the deed of trust foreclosed in the rescinded sale is restored to the validity and priority it would have had as though the sale did not occur.

Amendment P.2

Page 2, lines 27-29:

Delete "The notice must be published for at least 30 days, including at least 10 of the last 15 days before the actual date of sale. Giving notice under this subsection is not required unless there is an Internet website that qualifies under (c) of this section."

Insert "Publication of the notice must begin not later than the first day that the notice is published under (a)(2) of this section and must continue at least through the day in the fourth week that the notice is published under (a)(2) of this section."

Page 4, line 21, following "AS 34.20.080(e)":

Insert "**unless the trust deed was entered into before the effective date of this Act and provides for a different time to cure the default before that sale**"

Page 5, lines 15-21:

Delete all material and insert:

“(1) payment of the sum then in default, other than the principal that would not then be due if default had not occurred, and foreclosure fees and costs actually incurred by the beneficiary and trustee due to the default is made

(A) at any time up to two days before the sale date stated in the notice of default, or two days before a date to which the sale is postponed; or

(B) if the trust deed was entered into before the effective date of this Act and provides for a different time than the time described in (A) of this paragraph to cure the default before the sale, within the time provided in the trust deed; and”

Committee Discussion/Action: Discussed the 2-day cure issue. Currently a borrower may cure (i.e. make a payment on a home to avoid foreclosure) anytime before the sale. This bill puts a 2-day prior to sale cure deadline on the borrower. However, the committee along with Mr. Routh and Mr. Schmidt discussed high likelihood that banks/lenders would probably continue to take payment up until the last minute to avoid sale. Discussion of the language of the Deed of Trust would also be taken into consideration.

Testimony Summary:

Jane Pierson, staff to Rep Ramras, presented the bill.

Stephen Routh, attorney at Routh Crabtree, testified in favor of the bill.

- Would be 3rd State to enact legislation like this
- 2-day requirement's goal is to move day of cure up a little bit to avoid litigation
- Says most of the deeds of trust do not put in cure language

Robert Schmidt, attorney, testified in favor of most of the bill, but indicated that he was concerned about the 2-day cure issue.

COMMITTEE/DATE: (H) L&C 3/16/09

Roll: Chenault, Buch, Coghill, Neuman, Olson, Holmes

Action: moved

Next Referral: (H) JUD

Amendments: 2

Change in CS:

Amendments/Changes: Amendment 1 removed the bonding requirements for state agencies. Amendment 2 deleted the internet posting requirements.

Committee Discussion/Action: The committee adopted the two amendments. Representative Holmes expressed concern that the bill did not allow an owner to cure a foreclosure up to the day of the sale (the ability for an owner to cure ends 2 days before the sale). The committee moved the bill.

Testimony Summary:

Jane Pierson, staff to Rep Ramras, presented the bill.

Stephen Routh, attorney at Routh Crabtree, testified in favor of the bill, particularly the internet posting requirements

Robert Schmidt, attorney, testified in favor of most of the bill, but indicated that the internet posting requirement would only benefit one group in the state—Routh Crabtree (since they have the only website that would meet the bill's requirements)
