

HOUSE BILL NO. 163

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE RAMRAS

Introduced: 2/28/07

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to real property foreclosures, executions, and deeds of trust."**

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

3 *** Section 1.** AS 09.35.140 is amended by adding a new subsection to read:

4 (b) In addition to the notice required by (a) of this section, notice of the sale of
5 real property shall be given by publishing a notice of the sale on an Internet website
6 that

7 (1) is available to any person;

8 (2) is completely free and does not require a subscription;

9 (3) is not used primarily to distribute advertising for goods, services,
10 real property other than real property under foreclosure, or other websites;

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

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

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

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

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

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

21 (c) Within 10 days after recording the notice of default, the trustee shall mail a
22 copy of the notice by certified mail to the last known address of each of the following
23 persons or their legal representatives: (1) the grantor in the trust deed; (2) the
24 successor in interest to the grantor whose interest appears of record or of whose
25 interest the trustee or the beneficiary has actual notice, or who is in **actual** possession
26 of the property; (3) any other person **actually** in possession of or occupying the
27 property; (4) any person having a lien or interest subsequent to the interest of the
28 trustee in the trust deed, where the lien or interest appears of record or where the
29 trustee or the beneficiary has actual notice of the lien or interest. The notice may be
30 delivered personally instead of by mail.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (k) A person may bring an action in court to enjoin a foreclosure on real
16 property only if the person is the trustor of the deed of trust under which the real
17 property was foreclosed, a guarantor of the obligation that the real property is
18 securing, a person who has an interest in the real property that has been recorded, or a
19 person who has a recorded lien against the real property.

20 (l) If a person brings an action under (k) 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 (m) In this section, "devisee," "heir," and "personal representative" have the
26 meanings given in AS 13.06.050.

27 * **Sec. 5.** 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. 6.** 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. 7.** 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. 8.** 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

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

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

12 (3) the person who held record title to the property at the time of the
13 foreclosure sale.

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

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

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

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

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

31 (2) publish and post the notice of the rescheduled sale date as provided

1 by law for the sale of real property on execution.

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

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

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

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

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

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

15 (b) The substitution must contain

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

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

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

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

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

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

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

1 (b) The bond required by (a) of this section must be a bond that is terminable
2 at any time by the surety by sending written notice by first class United States mail to
3 the obligee and the principal at the address for each that is last known by the surety.
4 The bond terminates when 30 days have expired after the date the notice is mailed.
5 The surety is not liable for an act or omission of the principal that occurs after the
6 termination. The surety is not liable after the termination for more than the face
7 amount of the bond, regardless of the number of claims made against the bond or the
8 number of years the bond remains in force. A revision of the amount of the bond is not
9 cumulative.

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

18 (d) The bonding requirements of this section do not apply to

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

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