

SENATE BILL NO. 18

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY SENATOR BUNDE

Introduced: 1/16/07

Referred: Labor and Commerce, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to property foreclosures and executions; and amending Rule 65,**
2 **Alaska Rules of Civil Procedure."**

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

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

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

8 (1) is available to any person;

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

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

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

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

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

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

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

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

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

1 delivered personally instead of by mail.

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

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

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

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

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

17 (g) If the trustee who delivered notice under (f) of this section signs an
18 affidavit for the delivery, the affidavit is, without being recorded, prima facie evidence
19 that the trustee complied with (f) of this section. After one year from the delivery, the
20 trustee is conclusively presumed to have complied with (f) of this section unless,
21 within one year from the delivery, an action has been filed in court to contest the
22 foreclosure based on failing to comply with (f) of this section.

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

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

1 deceased person, the trustee may satisfy the notice requirements of (c) of this section
2 by

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

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

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

7 and

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

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

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

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

29 * **Sec. 5.** AS 34.20.070 is amended by adding a new subsection to read:

30 (n) To bring an action under (k) of this section, a person must file the action
31 and accomplish service under the rules of court at least five days before the scheduled

1 date of the foreclosure sale.

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

3 (a) The sale authorized in AS 34.20.070 shall be made under the terms and
4 conditions and in the manner set out in the deed of trust. However, the sale shall be
5 made

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

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

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

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

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

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

1 **pending.**

2 * **Sec. 9.** AS 34.20.080 is amended by adding new subsections to read:

3 (f) After delivery of a deed under (b) of this section, if the beneficiary has bid
4 less than the amount that is owed under the deed of trust and the successful bidder bids
5 more than the beneficiary, the trustee shall distribute the sale proceeds, if any, in the
6 following order to

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

9 (2) the persons who hold junior liens on the property in the order of the
10 priority of their liens until the persons who hold junior liens are paid in full or the sale
11 proceeds are exhausted; and

12 (3) the grantor in the trust deed.

13 (g) When distributing sale proceeds under (f) of this section, a person who
14 does not hold a lien or an ownership interest in the real property is not entitled to share
15 in the proceeds of the sale. In this subsection,

16 (1) "lien" includes a lien for an assessment on the real property only to
17 the extent of the amount of the assessment that is due at the time of the sale;

18 (2) "ownership interest" does not include an easement.

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

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

25 (2) return to the otherwise successful bidder money received from the
26 otherwise successful bidder as a bid on the property.

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

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

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

5 (j) Unless a sale is rescinded under (h) of this subsection, the sale completely
6 terminates the rights of the grantor of the trust deed in the property.

7 * **Sec. 10.** AS 34.20 is amended by adding a new section to read:

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

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

20 (c) The bonding requirements of this section do not apply to

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

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

25 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 **INDIRECT COURT RULE AMENDMENT.** The provisions of AS 34.20.070(n),
28 enacted by sec. 5 of this Act have the effect of changing Rule 65, Alaska Rules of Civil
29 Procedure, by changing the procedure for injunctions in certain cases.

30 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 CONDITIONAL EFFECT. AS 34.20.070(n), enacted by sec. 5 of this Act, takes
2 effect only if sec. 5 of this Act receives the two-thirds majority vote of each house required by
3 art. IV, sec. 15, Constitution of the State of Alaska.