

1 IN THE SENATE

BY SENATOR COOPER

2

SENATE BILL NO. 99

3

IN THE LEGISLATURE OF THE TERRITORY OF ALASKA

4

TWENTY-THIRD SESSION

5

A BILL

6

For an Act entitled: "An Act relating to trust deeds; amending

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Sections 22-5-1, 22-5-2, and 22-5-3 ACLA

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1949, and amending Chapter 5 of Title 22

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ACLA 1949 by adding new sections designated

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as Sections 22-5-6 and 22-5-7."

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BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF ALASKA:

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Section 1. That Section 22-5-1, ACLA 1949 be and the same

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is hereby amended to read as follows:

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Sec. 22-5-1. Trustee's authority to execute trust and

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sell property; Where a deed of trust has been executed con-

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veying real property situate in the Territory of Alaska to

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a trustee to be held as security for the payment of any

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bond, note or other indebtedness, and providing that in case

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of default or non-compliance with the terms of the trust,

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the trustee may sell said property for condition broken.

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The said trustee, in addition to the right of foreclosure

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and sale now vested in him or in the beneficiary, may, and

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he is hereby authorized and empowered to execute his trust

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by sale of the said property, upon the conditions and in

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the manner prescribed and set forth in such deed of trust,

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without first securing from the court a decree of fore-

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closure and order of sale; provided, however, that not

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less than three months prior to the date of sale the trustee

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shall record in the office of the commissioner of the

1 recording precinct wherein the trust property is situated
2 a notice of default which shall set forth the name or names
3 of the trustor or trustors, the book and page where the
4 trust deed is recorded, a description of the trust property,
5 a statement that a breach of the obligation for which such
6 deed of trust is security has occurred, the nature of the
7 breach, the sum or sums owing on such obligation, the
8 election by the trustee to sell such property to satisfy the
9 obligation, and the date, time and place of the sale. With-
10 in ten days after the recording of the notice of default, the
11 trustee shall mail a copy of such notice by registered or
12 certified mail to the last known address of each of the fol-
13 lowing persons or their legal representatives, if any: the
14 grantor in the trust deed; any successor in interest to the
15 grantor whose interest appears of record or of whose interest
16 the trustee or the beneficiary has actual notice, or who is
17 in possession of the property; any other person in possession
18 of or occupying the property; any person having a lien or
19 interest subsequent to the interest of the trustee in the
20 trust deed, where such lien or interest appears of record
21 or where the trustee or the beneficiary has actual notice
22 of such lien or interest. Such notice may be delivered
23 personally in lieu of mailing.

24 Section 2. That Section 22-5-2, ACLA 1949 be and the same
25 is hereby amended to read as follows:

26 Sec. 22-5-2. Sale at public auction: Notice: Bidding:
27 Deed. The sale authorized in Section 22-5-1 herein 1, OF
28 THIS ACT, 7 shall be made under the terms and conditions and
29 in the manner set forth in said deed of trust; provided,

1 however, that such sale shall in all cases be made at public
2 auction held at the front door of the court house of the
3 District Court for the Territory of Alaska in the division
4 where the property is situated (unless the deed of trust
5 specifically provide that the sale be held in a different
6 place) and after at least thirty days public notice of the
7 time and place of such sale shall have been given in the
8 manner provided by law for the sale of real property on
9 execution. The attorney for the trustee may conduct the
10 sale and act in such sale as the auctioneer for the trustee.
11 Sale shall be made to the highest bidder. The beneficiary
12 under the trust deed may bid at the trustee's sale. /AND/
13 The trustee shall execute and deliver to the purchaser a
14 deed to the property sold; which deed shall recite the date
15 and the book and page of the recording of the notice of
16 default, and the mailing or delivery of the copies thereof,
17 the true consideration for the conveyance, /THE TERMS AND
18 CONDITIONS OF THE TRUST, THE CONDITION BROKEN, / the time
19 and place of the publication of notice of sale, and the time,
20 place and manner of sale, and refer to the deed of trust by
21 reference to the page, volume and place of record. Follow-
22 ing the sale there shall be recorded in the mortgage records
23 of the recording precinct where the property is situated an
24 affidavit of mailing the notices of default and an affidavit
25 of publishing notice of sale.

26 Section 3. That Section 22-5-3, ACLA 1949 be and the same
27 is hereby amended to read as follows:

28 Sec. 22-5-3. Title, interest and possessory rights
29 under sale and deed: Redemption / ACTION TO CONTEST TRUST

1 DEED AND POSSESSORY RIGHT⁷. Such sale and conveyance shall
2 transfer all title and interest which the party executing
3 the deed of trust had in the property sold at the time of
4 its execution, together with all title and interest he may
5 have thereafter acquired prior to the sale, and the party
6 executing the deed of trust, his heirs and assigns shall
7 have no right or privilege to redeem such property, unless
8 the deed of trust so declare.

9 The purchaser at such sale, his heirs or assigns, shall,
10 after the execution of a deed to him by the said trustee
11 TRUSTEES⁷, be entitled to the possession of the premises
12 described therein as against the party executing the deed of
13 trust or any other person claiming by, through or under him
14 subsequent to the proper filing of said deed of trust for
15 record in the recording district where the property is
16 situate. NOTHING HEREIN CONTAINED SHALL PREVENT THE PERSON
17 EXECUTING SUCH DEED OF TRUST, OR HIS SUCCESSOR IN INTEREST,
18 FROM INSTITUTING A PROPER ACTION, WITHIN THE TIME ALLOWED BY
19 THE STATUTE OF LIMITATION, TO CONTEST THE VALIDITY OF THE
20 DEED OF TRUST OR THE RIGHT TO THE POSSESSION OF THE PROPERTY
21 SOLD THEREUNDER.⁷ A recital in the deed executed pursuant
22 to the power of sale of compliance with all requirements of
23 law regarding the mailing or personal delivery of copies of
24 notices of default shall constitute prima facie evidence of
25 compliance therewith and conclusive evidence thereof in
26 favor of bona fide purchasers and encumbrancers for value
27 and without notice.

28 Section 4. Chapter 5 of Title 22, ACLA 1949, is hereby
29 amended by adding thereto the following new section, designated

1 as Section 5-22-6, to read as follows:

2 Sec. 5-22-6. Substitution of trustee under trust deed:
3 Contents of substitution: Effect. The trustee under a trust
4 deed upon real property given to secure an obligation to pay
5 money and conferring no other duties upon the trustee than
6 those which are incidental to the exercise of the power of
7 sale therein conferred, may be substituted by the recording
8 in the mortgage records of the recording precinct in which
9 the property is situated of a substitution executed and
10 acknowledged by all the beneficiaries under such trust deed,
11 or their successors in interest. The substitution must
12 contain the date of execution of the trust deed, the name of
13 the trustee, trustor and the beneficiary, the book and page
14 where the trust deed is recorded, and the name of the new
15 trustee. The substitution shall also contain an acknowledg-
16 ment signed and acknowledged by the trustee named in the trust
17 deed or a receipt of a copy thereof, or an affidavit of
18 service of a copy thereof. From the time the substitution
19 is filed for record, the new trustee shall succeed to all the
20 powers, duties, authority and title of the trustee named in
21 the deed of trust.

22 Section 5. Chapter 5 of Title 22, ACLA 1949, is hereby
23 amended by adding thereto the following new section, designated as
24 Section 5-22-7, to read as follows:

25 Sec. 22-5-7. Recording of assignment of beneficial
26 interest, or instrument subordinating or waiving priority:
27 Effect of record. Any assignment of the beneficial interest
28 under a deed of trust may be recorded, and from the time the
29 same is filed for record operates as constructive notice

1 thereof to all persons; and any instrument by which any deed
2 of trust of real property is subordinated or waived as to
3 priority may be recorded, and from the time the same is
4 filed for record operates as constructive notice of the
5 contents thereof, to all persons.

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