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Referred: Judiciary

BY THE RULES COMMITTEE BY  
REQUEST OF THE LEGISLATIVE  
COUNCIL (for the Code  
Revision Commission)

1 IN THE HOUSE

2 HOUSE BILL NO. 403

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to security interests in real prop-  
7 erty; and providing for an effective date."

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

9 \* Section 1. The purpose of this Act is to provide fair and uniform  
10 treatment of real property security interests, regardless of form.

11 \* Sec. 2. AS 34 is amended by adding a new chapter to read:

12 CHAPTER 21. SECURITY INTERESTS IN REAL PROPERTY.

13 Sec. 34.21.010. POLICY AND SCOPE. (a) This chapter applies to a  
14 transaction, regardless of its form, which is intended or which appears  
15 under all the circumstances to be intended to create a security interest  
16 in real property in the state.

17 (b) Each provision of this chapter with regard to rights, obliga-  
18 tions, and remedies applies whether title to collateral is in the  
19 secured party, the debtor, or a third party.

20 (c) If a lease is intended as security to the lessor, the lessor's  
21 interest is a security interest. If a seller's retention of legal  
22 title to real property after the buyer enters into possession is in-  
23 tended as security, the seller's interest is a security interest.  
24 Whether a transaction is intended as security is to be determined by  
25 the facts of each case; however, the inclusion in a lease of an option  
26 to purchase at a price reasonable in the circumstances at the time of  
27 contracting does not of itself indicate the lease is intended to create  
28 a security interest.

29 Sec. 34.21.020. TRANSACTIONS EXCLUDED. This chapter does not

1 apply to a lien created by statute or rule of law.

2 Sec. 34.21.030. COLLATERAL NOT OWNED BY DEBTOR. Unless otherwise  
3 agreed, if a secured party knows that collateral is owned by a person  
4 who is not the debtor, the owner of the collateral is entitled to  
5 receive from the secured party any surplus under AS 34.21.240(b), is  
6 not liable for the debt or for a deficiency after judicial foreclosure,  
7 and has the same right as the debtor to

8 (1) receive and object to a secured party's notice of intent  
9 to sell the collateral;

10 (2) cure a default under AS 34.21.190;

11 (3) obtain injunctive or other relief under AS 34.21.250 -  
12 34.21.260;

13 (4) recover losses caused to him under AS 34.21.250; and

14 (5) receive statements under AS 34.21.040.

15 Sec. 34.21.040. REQUEST FOR STATEMENT OF ACCOUNT. (a) A debtor  
16 or the holder of a subordinate security interest in the collateral may  
17 request a statement of account between the debtor and secured party as  
18 of a specified date. If the debtor makes his payments to the secured  
19 party's agent, he or the holder of the subordinate security interest  
20 shall make the request of the agent; if he makes his payments directly  
21 to the secured party, he shall make the request of the secured party.  
22 A person receiving a written request must comply with it within 15 days  
23 after receipt by sending a written statement of account that includes  
24 the principal amount due, accrued interest, other sums due, and the  
25 interest rate in effect (including the rate per day for the current  
26 interest period), and that indicates the status of any escrow account  
27 held by the secured party or his agent for receiving payments in connec-  
28 tion with the loan. If the debtor has requested a statement of account  
29 from the secured party's agent and does not receive it within 20 days,

1 he may request it from the secured party. The secured party or his  
2 agent for receiving payments who without reasonable excuse fails to  
3 comply with a written request within 15 days after receiving it is  
4 liable to the person requesting the statement of account for

5 (1) all damage caused to that person because of failure to  
6 comply; and

7 (2) \$250 without proof of actual damages.

8 (b) If at the time the request for a statement of account is  
9 received the person receiving it no longer has an interest in the  
10 obligation or collateral either as secured party or as agent for receiv-  
11 ing payments, he must, within 15 days after receipt of the request,  
12 disclose the name and address of any successor in interest known to  
13 him, and he is liable for a loss caused to the debtor as a result of  
14 failure to disclose.

15 (c) Subject to (d) of this section a debtor is entitled to request  
16 a statement of account once every six months without charge. The  
17 secured party may charge not exceeding \$20 for each additional statement  
18 furnished.

19 (d) If a secured party without request provides annually or more  
20 frequently a statement of account containing the information specified  
21 in (a) of this section, he may charge not exceeding \$20 for a statement  
22 requested as of a date within 21 days before or after the date of a  
23 periodic statement of account.

24 (e) If a purchaser or other interested party relies in good faith  
25 on a statement of account provided under this section, the secured  
26 party may not claim a security interest larger than that shown in the  
27 statement of account.

28 Sec. 34.21.050. ALIENABILITY OF DEBTOR'S RIGHTS. A debtor's  
29 rights in collateral may be voluntarily or involuntarily transferred by

1 way of sale, creation of a security interest, attachment, levy or other  
2 judicial process, notwithstanding a provision in the security agreement  
3 prohibiting a transfer or making a transfer a default.

4 Sec. 34.21.060. ACCELERATION OF DEBT. (a) Subject to (c) of  
5 this section, a term in a security agreement may be enforced which  
6 provides that a sale of collateral without consent of the secured party  
7 is ground for acceleration of the debt.

8 (b) A term in a security agreement may not be enforced which  
9 provides that a transfer, alienation, or encumbrance other than a sale  
10 is ground for acceleration of the debt.

11 (c) A provision for acceleration upon sale contained in a security  
12 agreement covering an owner-occupied dwelling for not more than four  
13 families, the principal use of which is for residential purposes may be  
14 enforced only if

- 15 (1) the new owner will not live in the dwelling; or  
16 (2) the sale impairs the security; or  
17 (3) the sale is prohibited by law other than this section;

18 or

19 (4) at the time of the sale the new buyer is not credit-  
20 worthy.

21 (d) In determining whether a person is creditworthy under (c)(4)  
22 of this section, the secured party may consider any factor customarily  
23 considered by financial institutions in the state. However, for pur-  
24 poses of this section a person is presumed to be creditworthy if

25 (1) his total prospective housing expense, excluding payments  
26 on principal but including estimates of interest, ground rent, mainte-  
27 nance costs, taxes, insurance, and utilities, is less than 35 percent  
28 of his expected gross income for the first two years after his purchase,  
29 or for the balance of the term of the security agreement, whichever is

1 the shorter term; and

2 (2) he provides the secured party the information needed to  
3 determine if he is creditworthy.

4 (e) At the time of acceleration the secured party must provide  
5 both the debtor and the purchaser from the debtor a written statement  
6 setting out the precise reasons for acceleration.

7 Sec. 34.21.070. NOTIFICATION OF ASSIGNMENT. (a) A debtor is  
8 authorized to pay an assignor of the security agreement until the  
9 debtor receives notice that the security agreement has been assigned  
10 and that payment is to be made to someone other than the assignor. A  
11 notice which does not reasonably identify the rights assigned is in-  
12 effective.

13 (b) If requested by the debtor, the assignee must, within 30 days  
14 after the request, furnish reasonable proof that the assignment has  
15 been made. Until he does so the debtor may pay the assignor.

16 Sec. 34.21.080. RELEASE OF SECURITY INTEREST. (a) A document  
17 that releases a security interest evidenced by a recorded security  
18 agreement must contain the recording information for that security  
19 agreement.

20 (b) When there is no outstanding secured obligation and no commit-  
21 ment to make advances, incur or fulfill obligations, or otherwise give  
22 value under a security agreement the secured party or his agent must  
23 within 15 days after receiving a written demand by the debtor send the  
24 debtor a document legally sufficient to release the security interest.

25 (c) If the secured party or his agent fails without good cause to  
26 send a document to the debtor as required under (b) of this section,  
27 the secured party is liable to the debtor or his successor in interest  
28 for the greater of

29 (1) \$500 without proof of actual damages; and

1 (2) all damage the debtor or his successor in interest  
2 sustains by reason of the failure.

3 Sec. 34.21.090. REMEDIES OF SECURED PARTY. (a) If a debtor is  
4 in default under a security agreement, the secured party has the rights  
5 and remedies provided in (b) of this section and in AS 34.21.100 -  
6 34.21.290.

7 (b) If a debtor is in default under a security agreement, the  
8 secured party may do one or more of the following in any order or  
9 simultaneously:

10 (1) bring a civil action to recover judgment for the secured  
11 debt without foreclosing on the collateral;

12 (2) bring a civil action to foreclose on the collateral;

13 (3) file a claim in the debtor's bankruptcy as a secured or  
14 unsecured creditor; and

15 (4) take all steps under AS 34.21.100 - 34.21.200 leading  
16 to, but not including, summary foreclosure sale.

17 (c) If collateral is sold under AS 34.21.200, the secured party  
18 shall withdraw a claim filed under (b)(3) of this section, dismiss the  
19 actions listed in (b)(1) and (b)(2) of this section and, if judgment  
20 has been entered, shall file a satisfaction of judgment.

21 Sec. 34.21.100. REQUIREMENTS FOR SUMMARY FORECLOSURE. To fore-  
22 close under AS 34.21.100 - 34.21.290 it is required that

23 (1) the security agreement confer a power of sale upon the  
24 secured party or another person;

25 (2) a default occur under the security agreement, which by  
26 the terms of the security agreement makes the power of sale operative;  
27 and

28 (3) the security agreement be recorded in the recording  
29 district in which the collateral being foreclosed is located.

1           Sec. 34.21.110. PROCEDURE BEFORE SALE. The procedures that must  
2 be followed before collateral may be sold under a power of sale, and  
3 the minimum time periods before the procedures may be taken are estab-  
4 lished by AS 34.21.120 - 34.21.160. The content of notices required by  
5 those sections is set out in AS 34.21.170 - 34.21.180.

6           Sec. 34.21.120. TRANSMITTING NOTICE OF DEFAULT. Not less than 30  
7 days after a default the secured party or other person having a power  
8 of sale shall cause a written notice of default which meets the require-  
9 ments of AS 34.21.170 to be transmitted by first class certified mail,  
10 return receipt requested, to the debtor, to the successor in interest  
11 of the debtor if known to the secured party, and to all persons actually  
12 occupying the collateral whose names are known to the secured party.

13           Sec. 34.21.130. RECORDING NOTICE OF INTENT TO SELL. Not less  
14 than 30 days after transmittal of the notice of default the secured  
15 party or other person having the power of sale shall record a notice of  
16 intent to sell the collateral which meets the requirements of AS 34.21.-  
17 180. The collateral may not be sold within 60 days following the  
18 recording of the notice of intent to sell.

19           Sec. 34.21.140. TRANSMITTING, POSTING, AND PUBLISHING NOTICE OF  
20 INTENT TO SELL. After recording the notice of intent to sell, and not  
21 less than 45 days before the sale, the secured party or other person  
22 having the power of sale shall

23           (1) transmit a copy of the notice of intent to sell by first  
24 class certified mail, return receipt requested, to

25           (A) each person who has an interest in or lien or claim  
26 of lien against the collateral or a part of it, if the interest,  
27 lien or claim is of record at the time the notice of intent to  
28 sell is recorded and if the address of the person is in the re-  
29 corded instrument or is otherwise known to the secured party;

1 (B) each attorney of record in a pending court action  
2 to foreclose a lien or other encumbrance on all or a part of the  
3 collateral, if a lis pendens showing the existence of the action  
4 is of record on the date the notice of intent to sell is recorded;

5 (2) if the state has a recorded lien on the collateral,  
6 transmit to the attorney general by first class certified mail, return  
7 receipt requested, the notice of intent to sell and so much of the  
8 following information as is shown of record regarding each of the  
9 recorded state liens that is inferior in priority to the interest of  
10 the secured party:

11 (A) the nature of the lien;

12 (B) the amount shown on the lien document;

13 (C) the department of state government that appears to  
14 have caused the lien to be filed; and

15 (D) the recording information for the lien;

16 (3) post in a conspicuous place on the collateral a copy of  
17 the notice of intent to sell; and

18 (4) publish the first of three publications of the notice of  
19 intent to sell, the publications to be made once a week for three suc-  
20 cessive weeks in a newspaper of general circulation published in the  
21 municipality in which the collateral is located, or if none is published  
22 there, in a newspaper of general circulation published in the state  
23 senate election district where the collateral is located, or if none is  
24 published there, in a newspaper of general circulation published in the  
25 judicial district where the collateral is located.

26 Sec. 34.21.150. TRANSMITTING FURTHER INFORMATION ABOUT SALE.

27 Unless the information required by this section has been included in  
28 the notice of intent to sell, not less than 10 days before the time of  
29 public sale or if there is to be a private sale or other disposition of

1 the collateral, not less than 10 days before entering into a contract  
2 of sale or otherwise disposing of the collateral, the secured party or  
3 other person having the power of sale shall transmit by first class  
4 certified mail, return receipt requested, a written notice of the time  
5 and place of a public sale or of the time after which a private sale or  
6 other intended disposition is to be made

7 (1) to any person who has asked the secured party or other  
8 person having the power of sale in writing for the notice and has  
9 provided an address to which the notice is to be mailed; and

10 (2) to any person to whom a notice of intent to sell was  
11 sent under AS 34.21.140.

12 Sec. 34.21.160. MANNER OF TRANSMITTING NOTICE. Wherever in  
13 AS 34.21.120 - 34.21.160 transmittal of a notice by mail is required,  
14 the notice may instead be served in the manner provided for service of  
15 summons and complaint in Alaska civil actions or may be delivered  
16 personally.

17 Sec. 34.21.170. CONTENT OF NOTICE OF DEFAULT. A notice of default  
18 shall include

19 (1) a description of the collateral;  
20 (2) the recording information for the security agreement;  
21 (3) a statement that the secured party declares the debtor  
22 to be in default and the nature of the default;

23 (4) if the default is failure to make payments, a statement  
24 of the amount in arrears on the date of the notice;

25 (5) a statement of the fees and costs (in addition to any  
26 amount in arrears) that the debtor is obliged to pay to reinstate the  
27 security agreement and an estimate of additional fees and costs antici-  
28 pated before a foreclosure sale;

29 (6) a statement that failure to cure the default and failure

1 to pay fees and costs within 30 days after the date of transmittal and  
2 posting of the notice of default may lead to the recording of a notice  
3 of intent to sell, and that the collateral may be sold at a date not  
4 less than 60 days after the recording of the notice of intent to sell;

5 (7) a statement that the effect of the recording of a notice  
6 of intent to sell will be

7 (A) to increase the fees and costs; and

8 (B) to advertise the debtor's property for sale;

9 (8) a statement that the effect of a failure to cure the  
10 default within 60 days after the recording of a notice of intent to  
11 sell will be to deprive the debtor and those who hold by, through or  
12 under him of all their interest in the collateral, except for

13 (A) the right to stop the sale by curing the default  
14 and paying the entire remaining indebtedness under AS 34.21.190(c);

15 (B) the right to enjoin or object to sale under AS 34.-  
16 21.250 - 34.21.260; and

17 (C) the right to surplus proceeds under AS 34.21.240(b);

18 and

19 (9) a statement that the debtor or his successor in interest  
20 has recourse to the courts to contest the default.

21 Sec. 34.21.180. CONTENT OF NOTICE OF INTENT TO SELL. A notice of  
22 intent to sell shall be in substantially the following form:

23 NOTICE OF INTENT TO SELL

24 I

25 Notice is given that the undersigned intends to sell the following  
26 property:

27 (set out legal description of collateral to be sold)

28 II

29 (If the time and place of a public sale are known, set them out here.

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If a private sale or other disposition is intended, set out here the intention and the time after which the private sale or disposition is to be made. If the time and manner of disposition of the property are not fixed at the time of recording of this notice, insert the following.) The date of sale will be not earlier than ....., 19.... The property will be advertised for sale in a way that is commercially reasonable for the specific property, will be sold in one or more parcels by public or private proceedings and may be sold by one or more contracts. At least 10 days written notice of the time and place of a public sale or of the time after which a private sale or other intended disposition of the property is to be made will be provided to any person who asks the undersigned in writing for such a notice and provides a mailing address, and to any person to whom this notice of intent to sell is sent under AS 34.21.140(1).

III

Authority to sell the property in the event of default is contained in a (insert title of security agreement) executed by ....., debtor, to secure an obligation to ....., secured party, dated ....., 19..., and recorded in the records of the ..... Recording District, ..... Judicial District, State of Alaska, in book ..... at page .....

IV

(ALTERNATIVE A: If the default is failure to pay money, set out that the default is failure to pay when due the following amounts: (listing the amounts in arrears)).

(ALTERNATIVE B: If default is for other than failure to pay money, set out the particulars).

A written notice of default was transmitted to the debtor or his successor in interest at the following address:

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on the ..... day of ....., 19.., proof of which is in the possession of the undersigned.

V

The sale will be terminated if at any time before the ..... day of ....., 19.., (insert the date 61 days after the date of recording of the notice of intent to sell) the default as set out above is cured and all fees and costs are paid. The sale will be terminated if at any later time before the sale the entire principal and interest plus all fees and costs are paid.

VI

As of the date of recording of this notice there is owing on the obligation secured by the security agreement \$....., together with interest on \$..... from the ..... day of ....., 19.., at the rate of ..... percent per ....., and the following accrued fees and costs that the debtor is obliged to pay to cure the default:

(set out fees and costs)

It is estimated that additional fees and costs totaling \$..... will accrue before a foreclosure sale. The property described in paragraph I of this notice will be sold to satisfy the above amounts owing plus the expenses of sale and other accrued fees and costs.

VII

Failure to cure the default alleged in this notice before ....., 19.. (insert the date 61 days after the date of recording of the notice of intent to sell) will deprive the debtor and those who hold by, through or under him of all their interest in the collateral, except the right to stop the sale by curing any default and paying the entire indebtedness under AS 34.21.190(c), the right to enjoin or object to

1 sale under AS 34.21.250 - 34.21.260, and the right to surplus proceeds  
2 under AS 34.21.240(b).

3 VIII

4 A person having an objection to the sale on any ground will be afforded  
5 an opportunity to be heard as to the objection if he brings a lawsuit  
6 to restrain the sale under AS 34.21.250 - 34.21.260. Failure to bring  
7 a lawsuit may result in a waiver of any ground for invalidating the  
8 sale.

9 IX

10 The person whose name and address is set out below will provide in  
11 writing to anyone requesting it a statement of all fees and costs due  
12 at any time before the sale.

13 X

14 The effect of the sale will be to deprive the grantor and all those who  
15 hold by, through or under him of all their interest in the above-  
16 described property.

17 (signed).....

18 .....

19 Address.....

20 .....

21 Phone.....

22 STATE OF ALASKA )

23 : ss.

24 \_\_\_\_\_ JUDICIAL DISTRICT )

25 On this day personally appeared before me ....., to me known to  
26 be the individual described in and who executed the within and foregoing  
27 instrument, and acknowledged that he signed the same as his free and  
28 voluntary act and deed, for the uses and purposes therein mentioned.  
29 GIVEN under my hand and official seal this ..... day of .....,

1 19....

2 .....  
3 NOTARY PUBLIC in and for the State  
4 of Alaska. My commission expires .....

5 (SEAL)

6 Sec. 34.21.190. CURING DEFAULT BEFORE SALE; EXTINCTION OF DEB-  
7 TOR'S RIGHT TO CURE. (a) Subject to (b) of this section, the debtor,  
8 his successor in interest, or a holder of an interest inferior in  
9 priority to that being foreclosed may cause a discontinuance of sale  
10 proceedings by curing the default, which, if the default is failure to  
11 pay, shall be by paying to the secured party or other person having the  
12 power of sale

13 (1) all amounts then due under the terms of the security  
14 agreement and the obligation secured by it, other than amounts which  
15 would not be due if default had not occurred; and

16 (2) the expenses actually incurred by the secured party or  
17 other person having the power of sale in enforcing the provisions of  
18 the security agreement and the obligation secured by it, including  
19 attorney fees and court costs incurred because of the default.

20 (b) The cure described in (a) of this section must be made within  
21 60 days following the recording of the notice of intent to sell, or  
22 within 45 days following the first publication and completion of posting  
23 and transmittal of the notice of intent to sell, whichever is the later  
24 time.

25 (c) Notwithstanding (a) and (b) of this section, if under the  
26 same security agreement notice of intent to sell has been recorded two  
27 or more times previously because of default by the debtor, the secured  
28 party or other person having the power of sale may refuse the cure of  
29 the default under (a) of this section and continue with the sale.

1 (d) At any time before the secured party or other person having  
2 the power of sale has sold or entered into a contract to sell the  
3 collateral, the debtor, his successor in interest or a holder of an  
4 interest inferior in priority to that being foreclosed may cause a  
5 discontinuance of the sale proceedings by curing the default and paying  
6 the entire principal debt and accrued interest, and all other expenses  
7 as defined in (a)(2) of this section incurred to the date of payment.

8 (e) If the default is cured, the sale proceedings shall be dis-  
9 continued. If the default is cured under (a) of this section, the  
10 security agreement is reinstated and the obligation remains as though  
11 acceleration had not taken place. If the default is cured by the  
12 holder of an interest inferior in priority to that being foreclosed,  
13 the security interest of that holder includes all payments made to  
14 cure, including reasonable costs and attorney fees. If his interest in  
15 the collateral is security for an interest-bearing obligation, his cost  
16 to cure default bears interest at the rate of that obligation; otherwise  
17 his cost to cure default bears interest at the same rate as an unpaid  
18 judgment of a state court.

19 (f) If the default is cured and the obligation and security  
20 agreement reinstated under this section, the secured party or other  
21 person having the power of sale shall promptly cause to be recorded a  
22 notice of discontinuance of the sale. The notice must contain the  
23 recording information of the security agreement and the notice of  
24 intent to sell, and a statement that the sale has been discontinued.

25 (g) The passage of time within which a default may be cured under  
26 (a) of this section extinguishes all rights held in the collateral by  
27 the debtor, his successor in interest, all persons who were sent a  
28 notice of intent to sell under AS 34.21.140, and all holders of un-  
29 recorded junior encumbrances, except

- 1 (1) the right to cure the default under (c) of this section;  
2 (2) the right to seek an injunction under AS 34.21.250 -  
3 34.21.260; and  
4 (3) the right to surplus proceeds under AS 34.21.240(b).

5 (h) To the extent cure of a default requires payment of money,  
6 the secured party may require payment in cash, by cashier's check on a  
7 bank in the judicial district where the sale is held, or by postal  
8 money order.

9 Sec. 34.21.200. MANNER OF SALE. (a) If a default has not been  
10 cured under AS 34.21.190, the secured party or other person having the  
11 power of sale may sell the collateral in its then condition or following  
12 a commercially reasonable preparation.

13 (b) After the time for cure under AS 34.21.190(a) has run and  
14 until the default is cured under AS 34.21.190(c) or the collateral is  
15 sold, the secured party or other person having the power of sale may  
16 take possession of the collateral in order to protect it or to prepare  
17 it for sale.

18 (c) More than 30 days after the recording of a notice of intent  
19 to sell the collateral, the secured party has a right of access to the  
20 collateral to show it to prospective purchasers.

21 (d) The sale of the collateral may be by public or private pro-  
22 ceedings and may be made by way of one or more private contracts. Sale  
23 may be as a whole or in parcels and at any time and place and on any  
24 terms, but every aspect of the sale, including the method, manner,  
25 time, place and terms, must be commercially reasonable.

26 (e) The fact that a better price could have been obtained by a  
27 sale of the collateral at different times or in a different method from  
28 that selected by the secured party or other person having the power of  
29 sale is not of itself sufficient to establish that sale was not made in

1 a commercially reasonable manner. If the collateral is sold in the  
2 usual manner in a recognized market for it, is sold at the price current  
3 in that market at the time of the sale, or is otherwise sold in conform-  
4 ity with reasonable commercial practices among dealers in the type of  
5 property sold, sale is in a commercially reasonable manner.

6 (f) A sale of the collateral which has been approved in a judicial  
7 proceeding or by a creditor's committee convened under section 705 or  
8 1102 of the Bankruptcy Code is conclusively considered commercially  
9 reasonable, but this subsection does not imply that judicial approval  
10 must be obtained nor does it imply that a sale not approved by a credi-  
11 tor's committee is not commercially reasonable.

12 Sec. 34.21.210. PURCHASE OF COLLATERAL BY LIENHOLDER. (a) If  
13 the sale of collateral is at public auction, the secured party who is  
14 foreclosing under this chapter may bid at the sale and set off the  
15 amount of his security interest, including his fees and costs, against  
16 his bid. The secured party may not be a purchaser at a negotiated  
17 sale.

18 (b) At a sale under AS 34.21.200 the holder of a perfected lien  
19 against the collateral who is not foreclosing under this chapter may  
20 purchase the collateral and set off the amount of his lien against the  
21 purchase price he pays for the collateral if he first pays off or  
22 otherwise secures the release of liens against the collateral which are  
23 superior in priority to his lien.

24 Sec. 34.21.220. PROCEDURE AFTER SALE. After a sale of the colla-  
25 teral under this chapter and receipt of the purchase price, the secured  
26 party or other person having the power of sale shall deed the collateral  
27 to the purchaser. The deed shall include or have attached to it a  
28 sworn statement reciting

29 (1) the recording information of the security agreement

1 which was foreclosed;

2 (2) the date and recording information of the recorded  
3 notice of intent to sell;

4 (3) the actual consideration for the conveyance;

5 (4) the manner in which the notices required under AS 34.21.-  
6 120 - 34.21.150 were given;

7 (5) the time and place of publication of the notice of  
8 intent to sell; and

9 (6) the time, place and manner of sale.

10 Sec. 34.21.230. EFFECT OF SALE. (a) A sale of collateral under  
11 this chapter transfers all title and interest the debtor had in the  
12 collateral at the time the security agreement was executed, together  
13 with all title or interest he may have acquired before the sale. The  
14 debtor and his successors in interest have no right to redeem the  
15 collateral after sale, unless the security agreement so declares.

16 (b) The purchaser of the collateral and his successors in interest  
17 are, after the execution of a deed by the secured party or other person  
18 having the power of sale, entitled to the possession of the premises  
19 described in the deed as against the debtor or any other person claiming  
20 by, through or under him.

21 (c) A sworn statement complying with AS 34.21.220 and asserting  
22 that all requirements of law have been complied with is prima facie  
23 evidence of compliance with those requirements.

24 (d) After a sale of collateral under this chapter, no other  
25 action or proceeding may be taken or judgment entered against the  
26 maker, his surety or guarantor on the obligation secured by the security  
27 agreement for a deficiency.

28 Sec. 34.21.240. DISPOSITION OF PROCEEDS OF SALE. (a) The secured  
29 party or other person with power of sale shall apply the proceeds of

1 the sale of the collateral in the following order to

2 (1) the reasonable expenses of retaking, holding, preparing  
3 for sale and selling the collateral, and the reasonable attorney fees  
4 and legal expenses incurred by the secured party or other person with  
5 power of sale;

6 (2) the satisfaction of the indebtedness secured;

7 (3) the satisfaction of indebtedness secured by a recorded  
8 subordinate security interest or recorded lien on the collateral.

9 (b) If requested by the secured party or other person having the  
10 power of sale, the holder of a recorded subordinate security interest or  
11 recorded lien must furnish to the secured party or other person having  
12 the power of sale reasonable proof of his interest in the collateral.

13 (c) The secured party or other person having the power of sale  
14 must account to the debtor who owns or has rights in the collateral for  
15 the proceeds of sale and pay him any surplus after applying the proceeds  
16 under (a) of this section.

17 Sec. 34.21.250. SECURED PARTY'S LIABILITY FOR FAILURE TO COMPLY,  
18 ENJOINING SALE. (a) If it is established that the secured party or  
19 other person having the power of sale is not proceeding in accordance  
20 with AS 34.21.100 - 34.21.270, a sale of collateral may be ordered or  
21 restrained on appropriate terms and conditions. If the sale has  
22 occurred, the debtor or a person entitled to a copy of notice of intent  
23 to sell under AS 34.21.140 or a person whose subordinate security  
24 interest or lien has been recorded before the distribution of proceeds  
25 of sale may recover from the secured party or other person having the  
26 power of sale a loss caused by a failure to comply with AS 34.21.100 -  
27 34.21.270.

28 Sec. 34.21.260. ENJOINING SALE OF HOME. If the collateral is a  
29 dwelling for not more than four families which is occupied by the

1 debtor or his successor in interest, and the court enters an order  
2 restraining sale under this chapter, the court shall require as a  
3 condition of continuing the restraining order that the debtor or his  
4 successor in interest pay to the secured party or clerk of the court  
5 every 30 days the monthly payment of principal and interest that would  
6 be due on the obligation secured by the security interest if the secur-  
7 ity interest were not being foreclosed.

8 Sec. 34.21.270. GENERAL VALIDITY OF SECURITY AGREEMENT. (a)  
9 Unless it conflicts with a provision of law, a security agreement is  
10 effective between the parties according to its terms. Nothing in this  
11 chapter validates a charge or practice that is illegal under a statute  
12 or regulation for debtor protection including those statutes and regula-  
13 tions governing usury and small loans. Nothing in this chapter extends  
14 the application of the statute or regulation for debtor protection to a  
15 transaction not otherwise subject to it.

16 Sec. 34.21.280. WAIVER OF RIGHTS. To the extent that they give  
17 rights to the debtor and impose duties on the secured party or other  
18 person having the power of sale, the provisions of this chapter may not  
19 be waived or varied.

20 Sec. 34.21.290. DEFINITIONS. In this chapter, unless the context  
21 requires otherwise,

22 (1) "collateral" means the real property subject to a secur-  
23 ity interest;

24 (2) "debtor" means the person who owes payment or other  
25 performance of the obligation secured, whether or not he owns or has  
26 rights in the collateral; if the debtor and the owner of the collateral  
27 are not the same person, the term "debtor" means the owner of the  
28 collateral in any provision of this chapter dealing with the collateral,  
29 the obligor in any provision dealing with the obligation, and may

1 include both when the context requires it;

2 (3) "recording information" means the information (book and  
3 page, document number, electronic retrieval code, or other specific  
4 information) needed to find a document in the public records;

5 (4) "security agreement" means an agreement which creates or  
6 provides for a security interest in real property, and includes a lease  
7 if the lease was intended to create a security interest;

8 (5) "security interest" means a consensual interest in real  
9 property which secures payment or performance of an obligation;

10 (6) "secured party" means a lender, seller, beneficiary or  
11 other person or governmental agency for whose benefit there is a secur-  
12 ity interest, including a receiver, trustee in bankruptcy, or person to  
13 whom a security agreement is sold.

14 \* Sec. 3. AS 06.05.175 is amended by adding a new subsection to read:

15 (d) It is not a violation of this section to provide a statement  
16 of account to a debtor or the holder of a subordinate security interest  
17 under AS 34.21.040.

18 \* Sec. 4. AS 09.45.170 is amended to read:

19 Sec. 09.45.170. JUDGMENT ON FORECLOSURE OF LIEN. (a) A person  
20 having a lien upon real property, other than that of a judgment, whether  
21 created by security agreement [MORTGAGE] or otherwise, to secure a debt  
22 or other obligation may bring an action to foreclose the lien. In the  
23 action, the court may direct the sale of the encumbered property or a  
24 portion of it and the application of the proceeds of the sale to the  
25 payment of costs, expenses of sale, and the amount due the plaintiff.  
26 The judgment shall also determine the personal liability of a defendant  
27 for the payment of the debt secured by the lien and be entered accord-  
28 ingly.

29 (b) In this section, "security agreement" means an agreement

1 which creates or provides for a security interest in real property, as  
2 "security interest" is defined in AS 34.21.290.

3 \* Sec. 5. AS 09.45.200 and AS 34.20.010 - 34.20.130 are repealed.

4 \* Sec. 6. TRANSITIONAL PROVISIONS. (a) A security agreement as defined  
5 in AS 34.21.290 which is entered into before January 1, 1982, and rights,  
6 duties, and interests under it, continues in effect and may be terminated or  
7 enforced under a law amended or repealed by this Act as though the law had  
8 not been amended or repealed.

9 (b) A person foreclosing a deed of trust executed before January 1,  
10 1982, may elect to foreclose under AS 34.21 added by this Act or under the  
11 law in effect when the deed of trust was entered into.

12 (c) A person foreclosing a security agreement other than a deed of  
13 trust shall foreclose under the law in effect when the security agreement  
14 was entered into.

15 \* Sec. 7. This Act takes effect January 1, 1982.  
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