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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. 245

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH 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
14 a transaction, regardless of its form, that is intended or that
15 appears under all the circumstances to be intended to create a securi-
16 ty interest in real property in the state.

17 (b) Each provision of this chapter with regard to rights, obli-
18 gations, 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 les-
21 sor's interest is a security interest. If a seller's retention of
22 legal title to real property after the buyer enters into possession is
23 intended 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
28 create 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 other-
3 wise agreed, if a secured party knows that collateral is owned by a
4 person who is not the debtor, the owner of the collateral is entitled
5 to receive from the secured party any surplus under AS 34.21.230(c),
6 is not liable for the debt or for a deficiency after judicial foreclo-
7 sure, and has the same right as the debtor to

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

10 (2) cure a default under AS 34.21.180;

11 (3) obtain injunctive or other relief under AS 34.21.240;

12 (4) recover losses under AS 34.21.240; and

13 (5) receive statements under AS 34.21.040.

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

1 debtor may request it from the secured party. The secured party or
2 the secured party's agent for receiving payments who without reason-
3 able excuse fails to comply with a written request within 15 days
4 after receiving it is liable to the person requesting the statement of
5 account for

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

8 (2) \$250 without proof of actual damages.

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

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

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

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

29 Sec. 34.21.050. ALIENABILITY OF DEBTOR'S RIGHTS. A debtor's

1 rights in collateral may be voluntarily or involuntarily transferred
2 by way of sale, creation of a security interest, attachment, levy or
3 other judicial process, notwithstanding a provision in the security
4 agreement prohibiting a transfer or making a transfer a default.

5 Sec. 34.21.060. NOTIFICATION OF ASSIGNMENT. (a) A debtor is
6 authorized to pay an assignor of the security agreement until the
7 debtor receives notice that the security agreement has been assigned
8 and that payment is to be made to someone other than the assignor. A
9 notice which does not reasonably identify the rights assigned is in-
10 effective.

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

15 Sec. 34.21.070. RELEASE OF SECURITY INTEREST. (a) A document
16 that releases a security interest evidenced by a recorded security
17 agreement must contain the recording information for that security
18 agreement.

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

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

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

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

3 Sec. 34.21.080. REMEDIES OF SECURED PARTY. (a) If a debtor is
4 in default under a security agreement, the secured party has the
5 rights and remedies provided in (b) of this section and in AS 34.21.-
6 090 - 34.21.270.

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
11 secured 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 34.21.090 - 34.21.190 leading
16 to, but not including, summary foreclosure sale.

17 (c) If collateral is sold under AS 34.21.190, 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. 34.21.090. REQUIREMENTS FOR SUMMARY FORECLOSURE. To fore-
22 close under AS 34.21.090 - 34.21.270 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. 34.21.100. 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 34.21.110 - 34.21.150. The content of notices required
5 by those sections is set out in AS 34.21.160 - 34.21.170.

6 Sec. 34.21.110. TRANSMITTING NOTICE OF DEFAULT. Not less than
7 30 days after a default the secured party or other person having a
8 power of sale shall cause a written notice of default which meets the
9 requirements of AS 34.21.160 to be transmitted by first class certi-
10 fied mail, return receipt requested, to the debtor, to the successor
11 in interest of the debtor if known to the secured party, and to all
12 persons actually occupying the collateral whose names are known to the
13 secured party.

14 Sec. 34.21.120. RECORDING NOTICE OF INTENT TO SELL. Not less
15 than 30 days after transmittal of the notice of default the secured
16 party or other person having the power of sale shall record a notice
17 of intent to sell the collateral which meets the requirements of
18 AS 34.21.170. The collateral may not be sold within 60 days following
19 the recording of the notice of intent to sell.

20 Sec. 34.21.130. TRANSMITTING, POSTING, AND PUBLISHING NOTICE OF
21 INTENT TO SELL. After recording the notice of intent to sell, and not
22 less than 45 days before the sale, the secured party or other person
23 having the power of sale shall

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

26 (A) each person who has an interest in or lien or
27 claim of lien against the collateral or a part of it, if the
28 interest, lien or claim is of record at the time the notice of
29 intent to sell is recorded and if the address of the person is in

1 the recorded instrument or is otherwise known to the secured
2 party;

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

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

14 (A) the nature of the lien;

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

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

18 (D) the recording information for the lien;

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

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

29 Sec. 34.21.140. TRANSMITTING FURTHER INFORMATION ABOUT SALE.

1 Unless the information required by this section has been included in
2 the notice of intent to sell, not less than 10 days before the time of
3 public sale or if there is to be a private sale or other disposition
4 of the collateral, not less than 10 days before entering into a con-
5 tract of sale or otherwise disposing of the collateral, the secured
6 party or other person having the power of sale shall transmit by first
7 class certified mail, return receipt requested, a written notice of
8 the time and place of a public sale or of the time after which a
9 private sale or other intended disposition is to be made

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

13 (2) to any person to whom a notice of intent to sell was
14 sent under AS 34.21.130.

15 Sec. 34.21.150. MANNER OF TRANSMITTING NOTICE. Wherever in
16 AS 34.21.110 - 34.21.150 transmittal of a notice by mail is required,
17 the notice may instead be served in the manner provided for service of
18 summons and complaint in Alaska civil actions or may be delivered
19 personally.

20 Sec. 34.21.160. CONTENT OF NOTICE OF DEFAULT. A notice of
21 default shall include

22 (1) a description of the collateral;

23 (2) the recording information for the security agreement;

24 (3) a statement that the secured party declares the debtor
25 to be in default and the nature of the default;

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

28 (5) a statement of the fees and costs (in addition to any
29 amount in arrears) that the debtor is obliged to pay to reinstate the

1 security agreement and an estimate of additional fees and costs antic-
2 ipated before a foreclosure sale;

3 (6) a statement that failure to cure the default and fail-
4 ure to pay fees and costs within 30 days after the date of transmittal
5 and posting of the notice of default may lead to the recording of a
6 notice of intent to sell, and that the collateral may be sold at a
7 date not less than 60 days after the recording of the notice of intent
8 to sell;

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

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

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

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

17 (A) the right to stop the sale by curing the default
18 and paying the entire remaining indebtedness under AS 34.21.180-
19 (c);

20 (B) the right to enjoin or object to sale under AS 34.
21 21.240; and

22 (C) the right to surplus proceeds under AS 34.21.230-
23 (c); and

24 (9) a statement that the debtor or the debtor's successor
25 in interest has recourse to the courts to contest the default.

26 Sec. 34.21.170. CONTENT OF NOTICE OF INTENT TO SELL. A notice
27 of intent to sell shall be in substantially the following form:

28 NOTICE OF INTENT TO SELL

29 I

1 Notice is given that the undersigned intends to sell the following
2 property:

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

4 II

5 (If the time and place of a public sale are known, set them out here.
6 If a private sale or other disposition is intended, set out here the
7 intention and the time after which the private sale or disposition is
8 to be made. If the time and manner of disposition of the property are
9 not fixed at the time of recording of this notice, insert the follow-
10 ing.) The date of sale will be not earlier than, 19....
11 The property will be advertised for sale in a way that is commercially
12 reasonable for the specific property, will be sold in one or more
13 parcels by public or private proceedings and may be sold by one or
14 more contracts. At least 10 days written notice of the time and place
15 of a public sale or of the time after which a private sale or other
16 intended disposition of the property is to be made will be provided to
17 any person who asks the undersigned in writing for such a notice and
18 provides a mailing address, and to any person to whom this notice of
19 intent to sell is sent under AS 34.21.130(1).

20 III

21 Authority to sell the property in the event of default is contained in
22 a (insert title of security agreement) executed by, debtor,
23 to secure an obligation to, secured party, dated,
24 19.., and recorded in the records of the Recording District,
25 Judicial District, State of Alaska, in book at page
26

27 IV

28 (ALTERNATIVE A: If the default is failure to pay money, set out that
29 the default is failure to pay when due the following amounts:

1 (listing the amounts in arrears)).

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

4 A written notice of default was transmitted to the debtor or the
5 debtor's successor in interest at the following address:

6
7
8

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

11 V

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

18 VI

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

24 (set out fees and costs)

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

29 VII

1 Failure to cure the default alleged in this notice before,
2 19.. (insert the date 61 days after the date of recording of the
3 notice of intent to sell) will deprive the debtor and those who hold
4 by, through or under the debtor of all their interest in the collater-
5 al, except the right to stop the sale by curing any default and paying
6 the entire indebtedness under AS 34.21.180(c), the right to enjoin or
7 object to sale under AS 34.21.240, and the right to surplus proceeds
8 under AS 34.21.230(c).

9 VIII

10 A person having an objection to the sale on any ground will be afford-
11 ed an opportunity to be heard as to the objection if the person brings
12 a lawsuit to restrain the sale under AS 34.21.240. Failure to bring a
13 lawsuit may result in a waiver of any ground for invalidating the
14 sale.

15 IX

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

19 X

20 The effect of the sale will be to deprive the debtor and all those who
21 hold by, through or under the debtor of all their interest in the
22 above-described property.

23 (signed).....
24
25 Address.....
26
27 Phone.....

28 STATE OF ALASKA)
29 : ss.

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_____ JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this (DATE) by
(NAME OF PERSON WHO ACKNOWLEDGED).

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

(SEAL)

Sec. 34.21.180. CURING DEFAULT BEFORE SALE; EXTINCTION OF DEB-
TOR'S RIGHT TO CURE. (a) Subject to (b) of this section, the debtor,
the debtor's successor in interest, or a holder of an interest inferi-
or in priority to that being foreclosed may cause a discontinuance of
sale proceedings by curing the default, which, if the default is
failure to pay, shall be by paying to the secured party or other
person having the power of sale

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

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

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

(c) Notwithstanding (a) and (b) of this section, if under the
same security agreement notice of intent to sell has been recorded two
or more times previously because of default by the debtor, the secured

1 party or other person having the power of sale may refuse the cure of
2 the default under (a) of this section and continue with the sale.

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

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

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

29 (g) The passage of time within which a default may be cured

1 under (a) of this section extinguishes all rights held in the collat-
2 eral by the debtor, the debtor's successor in interest, all persons
3 who were sent a notice of intent to sell under AS 34.21.130, and all
4 holders of unrecorded junior encumbrances, except

5 (1) the right to cure the default under (c) of this sec-
6 tion;

7 (2) the right to seek an injunction under AS 34.21.240; and

8 (3) the right to surplus proceeds under AS 34.21.230(c).

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

13 Sec. 34.21.190. MANNER OF SALE. (a) If a default has not been
14 cured under AS 34.21.180, the secured party or other person having the
15 power of sale may sell the collateral in its then condition or follow-
16 ing a commercially reasonable preparation.

17 (b) After the time for cure under AS 34.21.180(a) has run and
18 until the default is cured under AS 34.21.180(c) or the collateral is
19 sold, the secured party or other person having the power of sale may
20 take possession of the collateral in order to protect it or to prepare
21 it for sale.

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

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

1 (e) The fact that a better price could have been obtained by a
2 sale of the collateral at different times or in a different method
3 from that selected by the secured party or other person having the
4 power of sale is not of itself sufficient to establish that sale was
5 not made in a commercially reasonable manner. If the collateral is
6 sold in the usual manner in a recognized market for it, is sold at the
7 price current in that market at the time of the sale, or is otherwise
8 sold in conformity with reasonable commercial practices among dealers
9 in the type of property sold, the sale is in a commercially reasonable
10 manner.

11 (f) A sale of the collateral which has been approved in a judi-
12 cial proceeding or by a creditor's committee convened under section
13 705 or 1102 of the Bankruptcy Code is conclusively considered commer-
14 cially reasonable, but this subsection does not imply that judicial
15 approval must be obtained nor does it imply that a sale not approved
16 by a creditor's committee is not commercially reasonable.

17 Sec. 34.21.200. PURCHASE OF COLLATERAL BY LIENHOLDER. (a) If
18 the sale of collateral is at public auction, the secured party who is
19 foreclosing under this chapter may bid at the sale and set off the
20 amount of that secured party's interest, including fees and costs,
21 against the bid. The secured party may not be a purchaser at a nego-
22 tiated sale.

23 (b) At a sale under AS 34.21.190 the holder of a perfected lien
24 against the collateral who is not foreclosing under this chapter may
25 purchase the collateral and set off against the purchase price the
26 amount of the lien. At the time of purchasing under this subsection
27 or before, the lien holder must pay off or otherwise secure the re-
28 lease of superior liens against the collateral.

29 Sec. 34.21.210. PROCEDURE AFTER SALE. After a sale of the

1 collateral under this chapter and receipt of the purchase price, the
2 secured party or other person having the power of sale shall deed the
3 collateral to the purchaser. The deed shall include or have attached
4 to it a sworn statement reciting

5 (1) the recording information of the security agreement
6 which was foreclosed;

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

9 (3) the actual consideration for the conveyance;

10 (4) the manner in which the notices required under AS 34.-
11 21.110 - 34.21.140 were given;

12 (5) the time and place of publication of the notice of
13 intent to sell; and

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

15 Sec. 34.21.220. EFFECT OF SALE. (a) A sale of collateral under
16 this chapter transfers all title and interest the debtor had in the
17 collateral at the time the security agreement was executed, together
18 with all title or interest the debtor may have acquired before the
19 sale. The debtor and successor to the debtor's interest have no right
20 to redeem the collateral after sale, unless the security agreement so
21 declares.

22 (b) The purchaser of the collateral and successor to the pur-
23 chaser's interest are, after the execution of a deed by the secured
24 party or other person having the power of sale, entitled to the pos-
25 session of the premises described in the deed as against the debtor or
26 any other person claiming by, through or under the debtor.

27 (c) A sworn statement complying with AS 34.21.210 and asserting
28 that all requirements of law have been complied with is prima facie
29 evidence of compliance with those requirements.

1 (d) After a sale of collateral under this chapter, no other
2 action or proceeding may be taken or judgment entered against the
3 maker, or against the maker's surety or guarantor's on the obligation
4 secured by the security agreement for a deficiency.

5 Sec. 34.21.230. DISPOSITION OF PROCEEDS OF SALE. (a) The
6 secured party or other person with power of sale shall apply the
7 proceeds of the sale of the collateral in the following order to

8 (1) the reasonable expenses of retaking, holding, preparing
9 for sale and selling the collateral, and the reasonable attorney fees
10 and legal expenses incurred by the secured party or other person with
11 power of sale;

12 (2) the satisfaction of the indebtedness secured;

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

15 (b) If requested by the secured party or other person having the
16 power of sale, the holder of a recorded subordinate security interest
17 or recorded lien must furnish to the secured party or other person
18 having the power of sale reasonable proof of interest in the collateral.
19

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

24 Sec. 34.21.240. SECURED PARTY'S LIABILITY FOR FAILURE TO COMPLY,
25 ENJOINING SALE. If it is established that the secured party or other
26 person having the power of sale is not proceeding in accordance with
27 AS 34.21.090 - 34.21.260, a sale of collateral may be ordered or
28 restrained on appropriate terms and conditions. If the sale has
29 occurred, the debtor or a person entitled to a copy of notice of

1 intent to sell under AS 34.21.130 or a person whose subordinate secu-
2 rity interest or lien has been recorded before the distribution of
3 proceeds of sale may recover from the secured party or other person
4 having the power of sale a loss caused by a failure to comply with
5 AS 34.21.090 - 34.21.260.

6 Sec. 34.21.250. GENERAL VALIDITY OF SECURITY AGREEMENT. Unless
7 it conflicts with a provision of law, a security agreement is effec-
8 tive between the parties according to its terms. Nothing in this
9 chapter validates a charge or practice that is illegal under a statute
10 or regulation for debtor protection including those statutes and
11 regulations governing usury and small loans. Nothing in this chapter
12 extends the application of the statute or regulation for debtor pro-
13 tection to a transaction not otherwise subject to it.

14 Sec. 34.21.260. WAIVER OF RIGHTS. To the extent that they give
15 rights to the debtor and impose duties on the secured party or other
16 person having the power of sale, the provisions of this chapter may
17 not be waived or varied.

18 Sec. 34.21.270. DEFINITIONS. In this chapter, unless the con-
19 text requires otherwise,

20 (1) "collateral" means the real property subject to a
21 security interest;

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

29 (3) "real property" includes an interest in real property;

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

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

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

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

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

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

17 * Sec. 4. AS 09.45.170 is amended to read:

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

29 * Sec. 5. AS 09.45.170 is amended by adding a new subsection to read:

1 (b) In this section, "security agreement" means an agreement
2 that creates or provides for a security interest in real property, as
3 "security interest" is defined in AS 34.21.270.

4 * Sec. 6. AS 09.45.200 and AS 34.20.010 - 34.20.135 are repealed.

5 * Sec. 7. TRANSITIONAL PROVISIONS. (a) A security agreement as de-
6 fined in AS 34.21.270 that is entered into before January 1, 1986, and
7 rights, duties, and interests under it, continues in effect and may be
8 terminated or enforced under a law amended or repealed by this Act as
9 though the law had not been amended or repealed.

10 (b) A person foreclosing a deed of trust executed before January 1,
11 1986, may elect to foreclose under AS 34.21 added by this Act or under the
12 law in effect when the deed of trust was entered into.

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

16 * Sec. 8. This Act takes effect January 1, 1986.