

SENATE BILL NO. 206

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE COUNCIL FOR THE CODE REVISION COMMISSION

Introduced: 3/15/91
Referred: L&C and Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to security interests in real property; and providing for an effective
2 date."

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

4 * Section 1. PURPOSE. The purpose of this Act is to provide fair and uniform treatment of real
5 property security interests, regardless of form.

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

7 **CHAPTER 21. SECURITY INTERESTS IN REAL PROPERTY.**

8 **Sec. 34.21.010. POLICY AND SCOPE.** (a) This chapter applies to a transaction,
9 regardless of form, that is intended or that appears under all the circumstances to be intended to
10 create a security interest in real property in the state.

11 (b) Each provision of this chapter with regard to rights, obligations, and remedies applies
12 whether title to collateral is in the secured party, the debtor, or a third party.

13 (c) If a lease is intended as security to the lessor, the lessor's interest is a security
14 interest. If a seller's retention of legal title to real property after the buyer enters into possession

1 is intended as security, the seller's interest is a security interest. Whether a transaction is
2 intended to create a security interest is to be determined by the facts of each case; however, the
3 inclusion in a lease of an option to purchase at a price reasonable in the circumstances at the time
4 of contracting does not of itself indicate that the lease is intended to create a security interest.

5 Sec. 34.21.020. TRANSACTIONS EXCLUDED. This chapter does not apply to a lien
6 created by statute or rule of law.

7 Sec. 34.21.030. COLLATERAL NOT OWNED BY DEBTOR. Unless otherwise agreed,
8 if a secured party knows that collateral is owned by a person who is not the debtor, the owner
9 of the collateral is entitled to receive from the secured party any surplus under AS 34.21.230(c),
10 is not liable for the debt or for a deficiency after judicial foreclosure, and has the same right as
11 the debtor to

- 12 (1) receive and object to a secured party's notice of intent to sell the collateral;
- 13 (2) cure a default under AS 34.21.180;
- 14 (3) obtain injunctive or other relief under AS 34.21.240;
- 15 (4) recover losses under AS 34.21.240; and
- 16 (5) receive statements under AS 34.21.040.

17 Sec. 34.21.040. REQUEST FOR STATEMENT OF ACCOUNT. (a) A debtor or the
18 holder of a subordinate security interest in the collateral may request a statement of account
19 between the debtor and secured party as of a specified date. If the debtor makes payments to
20 the secured party's agent, the debtor or the holder of the subordinate security interest shall make
21 the request of the agent; if the debtor makes payments directly to the secured party, the debtor
22 or the holder shall make the request of the secured party. A person receiving a written request
23 shall comply with it within 15 days after receipt by sending a written statement of account that
24 includes the principal amount due, accrued interest, other sums due, and the interest rate in effect,
25 including the rate per day for the current interest period, and that indicates the status of an
26 escrow account held by the secured party or the secured party's agent for receiving payments in
27 connection with the loan. If the debtor or holder has requested a statement of account from a
28 secured party's agent and does not receive it within 20 days, the debtor or holder may request
29 it from the secured party. A secured party or a secured party's agent for receiving payments who
30 without reasonable excuse fails to comply with a written request within 15 days after receiving
31 it is liable to the person requesting the statement of account for either \$250 without proof of

1 damages, or the amount of damages the person sustains and can prove by reason of the
2 noncompliance, whichever is greater.

3 (b) If at the time the request for a statement of account is received the person receiving
4 it no longer has an interest in the obligation or collateral either as secured party or as agent for
5 receiving payments, that person shall, within 15 days after receipt of the request, disclose the
6 name and address of a successor in interest known to that person. A person who fails to disclose
7 as required by this subsection is liable to the debtor for a loss caused by the failure to disclose.

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

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

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

18 Sec. 34.21.050. ALIENABILITY OF DEBTOR'S RIGHTS. A debtor's rights in
19 collateral may be voluntarily or involuntarily transferred by way of sale, creation of a security
20 interest, attachment, levy, or other judicial process, notwithstanding a provision in the security
21 agreement prohibiting a transfer or making a transfer a default.

22 Sec. 34.21.060. NOTIFICATION OF ASSIGNMENT. (a) A debtor is authorized to pay
23 an assignor of the security agreement until the debtor receives notice that the security agreement
24 has been assigned and that payment is to be made to someone other than the assignor. A notice
25 that does not reasonably identify the rights assigned is ineffective.

26 (b) If requested by the debtor, the assignee shall, within 30 days after the request, furnish
27 reasonable proof that the assignment has been made. Until the assignee does so the debtor may
28 pay the assignor.

29 Sec. 34.21.070. RELEASE OF SECURITY INTEREST. (a) A document that releases
30 a security interest evidenced by a recorded security agreement must contain the recording
31 information for that security agreement.

1 (b) When there is no outstanding secured obligation and no commitment to make
2 advances, incur or fulfill obligations, or otherwise give value under a security agreement the
3 secured party or the secured party's agent shall within 15 days after receiving a written demand
4 by the debtor send the debtor a document legally sufficient to release the security interest.

5 (c) If the secured party or the secured party's agent fails without good cause to send a
6 document to the debtor as required by (b) of this section, the secured party is liable to the debtor
7 or the debtor's successor in interest for either \$500 without proof of damages, or the amount of
8 damages the debtor or the debtor's successor in interest sustains and can prove by reason of the
9 failure, whichever amount is greater.

10 Sec. 34.21.080. REMEDIES OF SECURED PARTY. (a) If a debtor is in default under
11 a security agreement, the secured party has the rights and remedies provided in (b) of this section
12 and in AS 34.21.090 - 34.21.270.

13 (b) Except as prohibited by federal law or as provided under (c) and (d) of this section,
14 and subject to AS 34.21.085, if a debtor is in default under a security agreement, the secured
15 party may do one or more of the following in any order or simultaneously:

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

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

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

20 (4) take all steps under AS 34.21.090 - 34.21.190 leading to, but not including,
21 summary foreclosure sale.

22 (c) If collateral is sold under AS 34.21.190, the secured party shall withdraw a claim
23 filed under (b)(3) of this section, dismiss the actions listed in (b)(1) and (b)(2) of this section and,
24 if judgment has been entered, file a satisfaction of judgment.

25 (d) If the collateral is foreclosed under (b)(2) of this section or if a judgment is obtained
26 under (b)(1) of this section, the secured party may not proceed under AS 34.21.090 - 34.21.190.

27 Sec. 34.21.085. NOTICE OF OTHER REMEDIES. (a) When a secured party uses a
28 note as evidence of a secured debt, if the secured party wants the option to bring suit directly on
29 the note to collect an amount owing under the note without first foreclosing on the collateral the
30 note must affirmatively advise the debtor that the secured party has this option. This option shall
31 be stated in writing within the note or as a separate document. If a note fails to contain the

1 notice specified in this section, the secured party may not exercise the option, but may foreclose
2 the secured debt under AS 09.45.170 - 09.45.220 or AS 34.21.090 - 34.21.190.

3 (b) If the secured party wishes to collect an amount owing under the note without first
4 foreclosing on the collateral covered by the security agreement, the following language is
5 sufficient in the note:

6 The debtor is personally obligated and fully liable for the amount due
7 under the note. The secured party has the right to sue on the note and
8 obtain a personal judgment against the debtor for satisfaction of the
9 amount due under the note either before or after a judicial foreclosure of
10 the mortgage or deed of trust under AS 09.45.170 - 09.45.220.

11 Sec. 34.21.090. REQUIREMENTS FOR SUMMARY FORECLOSURE. To foreclose
12 under AS 34.21.090 - 34.21.270,

13 (1) the security agreement must confer a power of sale upon the secured party or
14 another person;

15 (2) a default that by the terms of the security agreement makes the power of sale
16 operative must occur under the security agreement; and

17 (3) the security agreement must be recorded in the recording district in which the
18 collateral being foreclosed is located.

19 Sec. 34.21.100. PROCEDURE BEFORE SALE. The procedures that must be followed
20 before collateral may be sold under a power of sale, and the minimum time periods before the
21 procedures may be taken are established by AS 34.21.110 - 34.21.150. The content of notices
22 required by those sections is set out in AS 34.21.160 - 34.21.170.

23 Sec. 34.21.110. TRANSMITTING NOTICE OF DEFAULT. Not less than 30 days after
24 a default the secured party or other person having a power of sale shall cause a written notice
25 of default that meets the requirements of AS 34.21.160 to be transmitted by first class certified
26 mail, return receipt requested, to the debtor, to the successor in interest of the debtor if known
27 to the secured party, and to all persons actually occupying the collateral whose names are known
28 to the secured party. The secured party or other person having a power of sale shall exercise due
29 diligence to determine the address of each person entitled to notice under this section.

30 Sec. 34.21.120. RECORDING NOTICE OF INTENT TO SELL AND EFFECT ON
31 TIME OF SALE. Not less than 30 days after transmittal of the notice of default the secured

1 party or other person having the power of sale shall record a notice of intent to sell the collateral
2 that meets the requirements of AS 34.21.170. The collateral may not be sold within 60 days
3 following the recording of the notice of intent to sell.

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

7 (1) after exercising due diligence to determine the address of the person, transmit
8 a copy of the notice of intent to sell by first class certified mail, return receipt requested, to

9 (A) each person who has an interest in or lien or claim of lien against the
10 collateral or a part of it, if the interest, lien or claim is of record at the time the notice
11 of intent to sell is recorded;

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

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

19 (A) the nature of the lien;

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

21 (C) the state agency that appears to have caused the lien to be filed; and

22 (D) the recording information for the lien;

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

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

31 Sec. 34.21.140. TRANSMITTING FURTHER INFORMATION ABOUT SALE. Unless

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

8 (1) person who has made a written request of the secured party or other person
9 having the power of sale for the notice and has provided an address to which the notice is to be
10 mailed; and

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

12 Sec. 34.21.150. MANNER OF TRANSMITTING NOTICE. Wherever in AS 34.21.110 -
13 34.21.150 transmittal of a notice by mail is required, the notice may instead be served in the
14 manner provided for service of summons and complaint in a civil action or may be delivered
15 personally.

16 Sec. 34.21.160. CONTENT OF NOTICE OF DEFAULT. A notice of default must
17 include

18 (1) a description of the collateral;

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

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

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

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

27 (6) a statement that failure to cure the default and failure to pay accrued fees and
28 costs within 30 days after the date of transmittal and posting of the notice of default may lead
29 to the recording of a notice of intent to sell, and that the collateral may be sold at a date not less
30 than 60 days after the recording of the notice of intent to sell;

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

1 to

2 (A) increase the fees and costs; and

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

4 (8) a statement that the effect of a failure to cure the default within 60 days after
5 the recording of a notice of intent to sell will be to deprive the debtor and those who hold by,
6 through, or under the debtor, except persons holding interests senior to those of the secured party
7 giving the notice, of all their interest in the collateral, except for the right to

8 (A) stop the sale by curing the default and paying the entire remaining
9 indebtedness under AS 34.21.180(d);

10 (B) enjoin or object to sale under AS 34.21.240; and

11 (C) receive surplus proceeds under AS 34.21.230(c); and

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

14 Sec. 34.21.170. CONTENT OF NOTICE OF INTENT TO SELL. A notice of intent to
15 sell must be in substantially the following form:

16 NOTICE OF INTENT TO SELL

17 I

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

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

20 II

21 (If the time and place of a public sale are known, set them out here. If a private sale or
22 other disposition is intended, set out here the intention and the time after which the
23 private sale or disposition is to be made. If the time and manner of disposition of the
24 property are not fixed at the time of recording of this notice, insert the following.) The
25 date of sale will be not earlier than, 19.... The property will be advertised for sale
26 in a way that is commercially reasonable for the specific property, will be sold in one or
27 more parcels by public or private proceedings and may be sold by one or more contracts.
28 At least 10 days' written notice of the time and place of a public sale or of the time after
29 which a private sale or other intended disposition of the property is to be made will be
30 provided to any person who asks the undersigned in writing for such a notice and pro-
31 vides a mailing address, and to any person to whom this notice of intent to sell is sent

1 under AS 34.21.130(1) or (2).

2 III

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

7 IV

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

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

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

14
15
16

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

18 V

19 The sale will be terminated if at any time before the day of, 19., (insert
20 either the date 61 days after the date of recording of the notice of intent to sell, or the
21 date 46 days after the first publication and completion of posting and transmittal of the
22 notice of intent to sell, whichever is the later date) the default as set out above is cured
23 and all fees and costs are paid. The sale will be terminated if at any later time before the
24 sale the entire principal and interest plus all fees and costs are paid.

25 VI

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

30 (set out fees and costs)

31 It is estimated that additional fees and costs totaling \$..... will accrue before a

1 foreclosure sale. The property described in paragraph I of this notice will be sold to
2 satisfy the above amounts owing plus the expenses of sale and other accrued fees and
3 costs.

4 VII

5 Failure to cure the default alleged in this notice before, 19.. (insert the date inserted
6 in V of this notice) will deprive the debtor and those who hold by, through, or under the
7 debtor, except persons holding interests senior to those of the undersigned, of all their
8 interest in the collateral, except the right to stop the sale by curing any default and paying
9 the entire indebtedness under AS 34.21.180(d), the right to enjoin or object to sale under
10 AS 34.21.240, and the right to surplus proceeds under AS 34.21.230(c).

11 VIII

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

16 IX

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

19 X

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

23 (signed).....

24

25 Address.....

26

27 Phone.....

28 STATE OF ALASKA)

29 : ss.

30 _____ JUDICIAL DISTRICT)

31 The foregoing instrument was acknowledged before me this (DATE) by (NAME OF

1 PERSON WHO ACKNOWLEDGED).

2

.....

3

NOTARY PUBLIC in and for the State

4

of Alaska. My commission expires

5

(SEAL)

6

Sec. 34.21.180. CURING DEFAULT BEFORE SALE; EXTINCTION OF DEBTOR'S

7

RIGHT TO CURE. (a) Subject to (b) of this section, the debtor, the debtor's successor in

8

interest, or a holder of an interest inferior in priority to that being foreclosed may cause a

9

discontinuance of sale proceedings by curing the default, which, if the default is failure to pay,

10

shall be by paying to the secured party or other person having the power of sale

11

(1) all amounts then due under the terms of the security agreement and the

12

obligation secured by it, other than amounts which would not be due if default had not occurred;

13

and

14

(2) the expenses actually incurred by the secured party or other person having the

15

power of sale in enforcing the provisions of the security agreement and the obligation secured

16

by it, including attorney fees and court costs incurred because of the default.

17

(b) The cure described in (a) of this section must be made within 60 days following the

18

recording of the notice of intent to sell, or within 45 days following the first publication and

19

completion of posting and transmittal of the notice of intent to sell, whichever is the later time.

20

(c) Notwithstanding (a) and (b) of this section, if under the same security agreement

21

notice of intent to sell has been recorded two or more times previously because of default by the

22

debtor, the secured party or other person having the power of sale may refuse the cure of the

23

default under (a) of this section and continue with the sale.

24

(d) At any time before the secured party or other person having the power of sale has

25

sold or entered into a contract to sell the collateral, the debtor, the debtor's successor in interest,

26

or a holder of an interest inferior in priority to that being foreclosed may cause a discontinuance

27

of the sale proceedings by curing the default and paying the entire principal debt and accrued

28

interest, and all other expenses as defined in (a)(2) of this section incurred to the date of

29

payment.

30

(e) If the default is cured, the sale proceedings shall be discontinued. If the default is

31

cured under (a) of this section, the security agreement is reinstated and the obligation remains

1 as though acceleration had not taken place. ~~If the~~ default is cured by the holder of an interest
2 inferior in priority to that being foreclosed, ~~the~~ security interest of that holder includes all
3 payments made to cure, including reasonable costs and attorney fees. If the interest held in the
4 collateral by the person who cured the default is security for an interest-bearing obligation, the
5 cost to cure default bears interest at the rate of that obligation; otherwise the cost to cure default
6 bears interest at the rate under AS 09.30.070.

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

12 (g) The passage of time within which a default may be cured under (a) of this section
13 extinguishes all rights held in the collateral by the debtor, the debtor's successor in interest, and
14 all persons holding interests junior to the security interest of the secured party who were sent a
15 notice of intent to sell under AS 34.21.130, ~~and~~ all persons holding unrecorded interests junior
16 to the security interest of the secured party, ~~except~~ the right to

- 17 (1) cure the default under (d) of this section;
- 18 (2) seek an injunction under AS 34.21.240; and
- 19 (3) receive surplus proceeds under AS 34.21.230(c).

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

23 Sec. 34.21.190. MANNER OF SALE. (a) If a default has not been cured under
24 AS 34.21.180, the secured party or other person having the power of sale may sell the collateral
25 in its then condition or following a commercially reasonable preparation.

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

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

31 (d) The sale of the collateral may be by public or private proceedings and may be made

1 by way of one or more private contracts. Sale may be as a whole or in parcels and at any time
2 and place and on any terms, but every aspect of the sale, including the method, manner, time,
3 place and terms, must be commercially reasonable.

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

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

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

20 (b) At a sale under AS 34.21.190 the holder of a perfected lien against the collateral who
21 is not foreclosing under this chapter may purchase the collateral and set off against the purchase
22 price the amount of the lien. At the time of purchasing under this subsection or before, the lien
23 holder shall pay off or otherwise secure the release of superior liens against the collateral.

24 Sec. 34.21.210. PROCEDURE AFTER SALE. After a sale of the collateral by summary
25 foreclosure under this chapter and receipt of the purchase price, the secured party or other person
26 having the power of sale shall deed the collateral to the purchaser. The deed must include or
27 have attached to it a sworn statement reciting the

- 28 (1) recording information of the security agreement that was foreclosed;
29 (2) date and recording information of the recorded notice of intent to sell;
30 (3) actual consideration for the conveyance;
31 (4) facts indicating the manner in which the notices required under AS 34.21.110 -

1 34.21.140 were given;

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

3 (6) time, place, and manner of sale.

4 Sec. 34.21.220. EFFECT OF SALE. (a) A sale of collateral under this chapter transfers
5 all title and interest the debtor had in the collateral at the time the security agreement was
6 executed, together with all title or interest the debtor may have acquired before the sale. The
7 debtor and successor to the debtor's interest do not have a right to redeem the collateral after
8 sale, unless the security agreement so declares.

9 (b) The purchaser of the collateral and successor to the purchaser's interest are, after the
10 execution of a deed by the secured party or other person having the power of sale, entitled to the
11 possession of the premises described in the deed as against the debtor or any other person
12 claiming by, through, or under the debtor, except persons holding interests senior to the security
13 interest that was foreclosed.

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

16 (d) After a sale of collateral under AS 34.21.190, another action or proceeding may not
17 be taken or judgment entered against the former debtor, or against the former debtor's surety or
18 guarantor on the obligation secured by the security agreement for a deficiency.

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

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

25 (2) satisfaction of the indebtedness secured;

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

28 (b) If requested by the secured party or other person having the power of sale, the holder
29 of a recorded subordinate security interest or recorded lien shall furnish to the secured party or
30 other person having the power of sale reasonable proof of interest in the collateral.

31 (c) The secured party or other person having the power of sale shall account to the debtor

1 who owns or has rights in the collateral for the proceeds of sale and pay the debtor any surplus
2 after applying the proceeds under (a) of this section.

3 Sec. 34.21.240. SECURED PARTY'S LIABILITY FOR FAILURE TO COMPLY;
4 ENJOINING SALE. If it is established that the secured party or other person having the power
5 of sale is not complying with AS 34.21.090 - 34.21.230, a sale of collateral may be ordered or
6 restrained on appropriate terms and conditions. If the sale has occurred, the debtor or a person
7 entitled to a copy of notice of intent to sell under AS 34.21.130 or a person whose subordinate
8 security interest or lien has been recorded before the distribution of proceeds of sale may recover
9 from the secured party or other person having the power of sale a loss caused by the failure to
10 comply with AS 34.21.090 - 34.21.230.

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

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

20 Sec. 34.21.370. DEFINITIONS. In this chapter, unless the context requires otherwise,

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

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

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

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

31 (5) "secured party" means a lender, seller, beneficiary, or other person or

1 governmental agency for whose benefit there is a security interest, including a receiver, trustee
2 in bankruptcy, or person to whom a security agreement is transferred;

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

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

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

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

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

12 Sec. 09.45.170. JUDGMENT ON FORECLOSURE OF LIEN. A person having a lien
13 upon real property, other than that of a judgment, whether created by security agreement
14 [MORTGAGE] or otherwise, to secure a debt or other obligation may bring an action to foreclose
15 the lien. In the action, the court may direct the sale of the encumbered property or a portion of
16 it and the application of the proceeds of the sale to the payment of costs, expenses of sale, and
17 the amount due the plaintiff. The court [JUDGMENT] shall also determine the personal liability
18 of a defendant for the payment of the debt secured by the lien and enter the determination in
19 the judgment [BE ENTERED ACCORDINGLY].

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

21 (b) In this section, "security agreement" means an agreement that creates or provides for
22 a security interest in real property, and includes a lease if the lease was intended to create a
23 security interest; in this subsection, "security interest" has the meaning given in AS 34.21.370.

24 * Sec. 6. AS 09.45.200 is amended to read:

25 Sec. 09.45.200. EFFECT OF ACTION TO RECOVER DEBT. Except for a lien
26 governed by AS 34.21. during [DURING] or after the pendency of an action for the recovery
27 of a debt secured by a lien mentioned in AS 09.45.170, an action may not [CANNOT] be
28 maintained for the foreclosure of the lien unless judgment is given in that action that the plaintiff
29 recover the debt or a part of it, and an execution issued in the action against the property of the
30 defendant is returned unsatisfied in whole or in part.

31 * Sec. 7. AS 34.20.010, 34.20.030, 34.20.040, 34.20.050, 34.20.060, 34.20.070, 34.20.080, 34.20.090,

1 34.20.100, 34.20.110, 34.20.120, 34.20.130, 34.20.135, and 34.20.160 are repealed.

2 * **Sec. 8. TRANSITIONAL PROVISIONS.** (a) A security agreement as defined in AS 34.21.370,
3 as enacted in sec. 2 of this Act, that is entered into before January 1, 1992, including rights, duties, and
4 interests under it, continues in effect and may be terminated or enforced under a law amended or
5 repealed by this Act as though the law had not been amended or repealed.

6 (b) Notwithstanding (a) of this section, a person foreclosing a security agreement other than a
7 deed of trust shall foreclose under the law in effect when the security agreement was entered into.

8 * **Sec. 9.** Notwithstanding other provisions of this Act, AS 34.21.080(d), enacted by sec. 2 of this Act,
9 applies to deed of trust foreclosure proceedings and suits on a deed of trust note that are in progress
10 during, or that begin after, May 24, 1988, unless the real property has been sold before January 1, 1992,
11 under AS 34.20.080, or unless a judgment has been entered before January 1, 1992, in a judicial
12 foreclosure action or judicial action for breach of contract arising out of the deed of trust.

13 * **Sec. 10.** AS 34.21.085, enacted by sec. 2 of this Act, applies to promissory notes executed after
14 January 1, 1992. Promissory notes executed before January 1, 1992, are governed by the law in effect
15 when they were executed.

16 * **Sec. 11.** This Act takes effect January 1, 1992.