SB

515

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MAY 2 1988

# STATE OF ALASKA
# THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
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## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM May 2, 1988

SUBJECT: Interpretation of CSSB 515 (Judiciary)

TO: Senator Jay Kerttula
Chair, Senate Judiciary Committee

FROM: Theresa L. Bannister TB
Legislative Counsel

I wish to bring to your attention an interpretative question in CSSB 515 (Judiciary) that you may wish to address while the bill is in the House. Until now I have interpreted sec. 1 of the bill to prevent only the use of nonjudicial foreclosure after a judgment has been obtained in certain circumstances. However, after studying the bill further, I have determined that it is very possible that the section would be interpreted to prevent the use of both nonjudicial and judicial foreclosure in those circumstances. This conclusion is based on the use of the words "remedies under this section" on line 23, page 1 of the bill. AS 34.20.-070(a) discusses both the remedy of ordinary "foreclosure and sale" and nonjudicial foreclosure. The use of "remedies" rather than "remedy" in the bill suggests that the judicial foreclosure remedy is prohibited as well as the nonjudicial foreclosure remedy.

To limit the bill's prohibition to nonjudicial foreclosure, the language on page 1, line 23 should read something like "remedy of nonjudicial foreclosure authorized under this section". To prohibit both types of foreclosure, the bill should be amended to read something like "remedy of judicial foreclosure or the remedy of nonjudicial foreclosure". I suggest that one or the other of the two changes be made in order to make the bill's application clear.

Please contact me if you wish to have any amendments drafted to address the issues mentioned in this memo.

If I may be of further assistance, please advise.

TLB:bb
b5/085

5-2103L
Bannister
4/27/88

Original sponsor: Judiciary Committee

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 515 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to foreclosure of a deed of trust or a suit on a deed of trust note; and providing for an effective date."

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

* Section 1. AS 34.20.070(a) is amended to read:

(a) If a deed of trust is executed conveying real property located in the state to a trustee as security for the payment of an indebtedness and the deed provides that in case of default or noncompliance with the terms of the trust, the trustee may sell the property for condition broken, the trustee, in addition to the right of foreclosure and sale, may execute the trust by sale of the property, upon the conditions and in the manner set forth in the deed of trust, without first securing a decree of foreclosure and order of sale from the court, if the trustee has complied with the notice requirements of (b) of this section. If the deed of trust is foreclosed judicially or the note secured by the deed of trust is sued on, the judgment obtained extinguishes the deed of trust and the note, and the remedies under this section may not be exercised. Before executing against other assets, the beneficiary of the deed of trust must first proceed against the real property that is the subject of the deed of trust if the beneficiary executes under a judgment that was obtained in a

(1) judicial foreclosure of the deed of trust; or

(2) suit on the note, if the note secures part or all of the purchase price of the real property, and if the deed of trust is

in the senior position for deeds of trust on the real property.

* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

# STATE OF ALASKA

**DEPARTMENT OF LAW**

*OFFICE OF THE ATTORNEY GENERAL*


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April 26, 1988

The Honorable Jay Kerttula, Chair
Senate Judiciary Committee
P.O. Box V
Juneau, AK 99811

Re: CSSB 515(Jud)

Dear Senator Kerttula:

The Department of Law has serious concerns with the CSSB 515(Jud) work draft dated April 22, 1988. If enacted, the effect of this bill would be to encourage foreclosure by the holder of an inferior deed of trust. Currently, a lender will work with the borrower to see if time will help solve the borrower's problems. With this law, the only way a junior lien holder may recover the debt is to foreclose in order to obtain a money judgment. To avoid being extinguished by foreclosure of a senior lien, juniors are encouraged to rush to foreclosure and declare a default at the slightest infraction.

In this act, foreclosure by the junior is a feasible collection tool because the act does not require the lender to purchase the foreclosed property. Therefore, the lender could hold the sale, not bid, and most likely the borrower would purchase the property for $1. The second could then obtain a money judgment to execute on. This foreclosure does not benefit the borrower. In fact, because most loan documents contain a provision to pass costs on to the borrower, the result is additional costs for the sale (anywhere from $500 to $1000) being owed by the borrower when the money judgment is rendered. Further, foreclosure by the second can be a trigger for foreclosure by the first in most deeds; the end result being the borrower is out of the house earlier than is now occurring, and also has judgments outstanding on both debts.

We also are concerned with the complexity of the work draft. The approach of the bill is confusing. For example, subsection (d) of section 4 concerns a judicial sale and thus would logically belong as an amendment to AS 09.45.180. We note that section 5 repeals the very statutes that could most logically be amended to provide the intended results.

Additionally, as legislative counsel Theresa Bannister has already pointed out, the current work draft raises constitutional questions.

The Department of Law is informed that a committee substitute has been proposed that would require lenders to choose one remedy. We do not oppose that approach. Nor do we oppose the approach in HB 549 that requires notice in a promissory note of the remedies available to a lender. We note that SB 515 meets certain intentions of the committee, and would not oppose that version if "or a suit on the note" was deleted from lines 24-25.

Thank you for this opportunity to be heard on SB 515. If I may be of any further assistance, please advise.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: Joyce James
Joyce James
Assistant Attorney General

JJ:prm

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THE SUPREME COURT OF THE STATE OF ALASKA

| | |
|---|---|
| MARSHALL LEE CONRAD and COLLEEN M. CONRAD,<br><br>Appellants/Respondents,<br><br>v.<br><br>COUNSELLORS INVESTMENT CO., a partnership; BRIAN J. BRUNDIN; BILL LAWRENCE; MARCUS R. CLAPP; JERRY E. MELCHER; and JAMES M. POWELL,<br><br>Appellees/Petitioners. | File No. S-1996/2102<br><br>O P I N I O N<br><br>[No. 3275 - February 26, 1988] |

Appeal in File No. S-1996 from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Gerald J. Van Hoomissen, Judge. Petition for Review in File No. S-2102 from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Jay Hodges, Judge.

Appearances: Barry Donnellan, Fairbanks, for Appellants/Respondents. Timothy R. Byrnes, James M. Gorski, Hughes, Thorsness, Gantz, Powell, and Brundin, Anchorage, for Appellees/Petitioners.

Before: Matthews, Chief Justice, Rabinowitz, Compton, and Moore, Justices. [Burke, Justice, not participating.]

COMPTON, Justice.

This appeal presents two questions. The first question is whether secured creditors agreed to limit their remedy to nonjudicial foreclosure of their security. The second is whether the creditors' subsequent claim for judicial foreclosure of that security is precluded by the judgment in a prior suit on the note.

## I. FACTUAL AND PROCEDURAL BACKGROUND

Counsellors Investment Co. (Counsellors)[1] purchased commercial property in Fairbanks from Marshall Lee Conrad and Colleen M. Conrad. In partial payment for the property, Counsellors gave the Conrads a note secured by a second deed of trust.

Counsellors eventually stopped making payments on the note and offered to reconvey the property to the Conrads in satisfaction of the debt. The Conrads declined the offer and sued Counsellors and its partners for a personal judgment on the note (Conrad I).

The superior court entered summary judgment for Counsellors on the ground that the Conrads' "remedy under their note and deed of trust is that provided in Paragraph B6 of the deed of trust and in AS 34.20.070-.135, and that [the Conrads] may not

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1. Counsellors is a general partnership. The partners are Brian Brundin, Bill Lawrence, Marcus Clapp, Jerry Melcher and James Powell.

maintain a suit on the promissory note alone;" in other words, the Conrads' remedy was limited to nonjudicial foreclosure of the security. Since the judgment form submitted by Counsellors was not consistent with some of the court's oral conclusions, the Conrads moved to amend the judgment to clarify whether they had the right to foreclose judicially. The court denied the motion and entered an order prohibiting the Conrads from exercising "any remedy inconsistent with the deed of trust." However, the court struck language in the proposed order which expressly precluded an action for judicial foreclosure.

The Conrads appealed the judgment in Conrad I and filed a complaint for judicial foreclosure and a deficiency judgment (Conrad II). Counsellors moved to dismiss the complaint, arguing that the Conrads' claim for judicial foreclosure was barred by the judgment in Conrad I. The superior court denied the motion to dismiss because "the question of judicial foreclosure was not before the court in the [prior] action" and "the right of the Conrads to maintain this action for judicial foreclosure of a deed of trust is granted by AS 09.45.170." Counsellors petitioned for review. We granted review and consolidated the cases for appeal.

## II. CONRAD I: DID THE CREDITORS AGREE TO LIMIT THEIR REMEDY TO NONJUDICIAL FORECLOSURE OF THE SECURITY?

The Conrads argue that they have the right initially to ignore their security and sue on the note, or to file a complaint

for judicial foreclosure. Counsellors does not dispute that a secured creditor generally has that option; however, it contends that the deed of trust expressly limits the Conrads' remedy to nonjudicial foreclosure.

In Moening v. Alaska Mutual Bank, __ P.2d __, Op. No. 3274 at 6 (Alaska, February 26, 1988), we held that absent an agreement to the contrary, a secured creditor has the option whether to sue on the note or foreclose the security. If the creditor sues on the note and obtains a personal judgment which is returned unsatisfied, the creditor may then foreclose the security. Id.; AS 09.45.200.[2] In determining whether the parties agreed to limit the creditor's remedies, the note and trust deed are construed together and interpreted to carry out the reasonable expectations of the parties. __ P.2d at __, Op. No. 3274 at 7.

The deed of trust note here in issue states that Counsellors "promise(s) to pay" the Conrads the loan amount. In the event of default, the Conrads may at once declare the entire debt due and payable. The note does not indicate that

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2. AS 09.45.200 provides:

> During or after the pendency of an action for the recovery of a debt secured by a lien mentioned in AS 09.45.170, an action cannot be maintained for the foreclosure of the lien unless judgment is given in that action that the plaintiff recover the debt or a part of it, and an execution issued in the action against the property of the defendant is returned unsatisfied in whole or in part.

Counsellors is not liable for payment; therefore, the Conrads are entitled to sue on the note or foreclose judicially unless the deed of trust provides otherwise.

Counsellors argue that Paragraph B6 of the deed of trust limits the Conrads' remedy to nonjudicial foreclosure:

> Upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In the event of default Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of his election to cause to be sold the herein described property to satisfy the obligation hereof, and shall cause such notice to be recorded in the office of the recorder of each recording precinct wherein said real property of [sic] some part thereof is situated.

(Emphasis added). Counsellors reasons that the language "Beneficiary shall execute" must be construed as a limitation on the Conrads' right to do anything else.[3] However, we believe that the only logical interpretation of this language requires the Conrads to execute the notice only after they have "elected" the remedy of nonjudicial foreclosure. The Conrads are entitled to exercise any other remedies permitted by law.

We conclude that the deed of trust does not limit the Conrads to the remedy of nonjudicial foreclosure. The trust deed

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3. See Fowler v. City of Anchorage, 583 P.2d 817, 820 (Alaska 1978) ("Unless the context otherwise indicates, the use of the word 'shall' denotes a mandatory intent.")

does not expressly preclude a suit on the note. The fact that a creditor may foreclose nonjudicially does not imply that it may not foreclose judicially.[4] Because the Conrads' remedies were not expressly waived in the note or deed of trust, they had the right to sue on the note or foreclose the security. Therefore, the superior court erred as a matter of law when it entered summary judgment against the Conrads on their right to sue on the note.[5]

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4. AS 34.20.070(a) provides in part:

> If a deed of trust is executed conveying real property located in the state to a trustee as security for the payment of an indebtedness and the deed provides that in case of default or noncompliance with the terms of the trust, the trustee may sell the property for condition broken, the trustee, in addition to the right of foreclosure and sale, may execute the trust by sale of the property, upon the condition and in the manner set forth in the deed of trust, without first securing a decree of foreclosure and order of sale from the court,
> . . .

(Emphasis added).

5. The superior court appeared concerned that the Conrads filed suit on the note without providing Counsellors any notice of default. Paragraph B6 of the deed of trust requires the Conrads to record a notice of default as one of the steps leading to nonjudicial foreclosure. However, no notice is required if the Conrads pursue one of the other remedies available to them as secured creditors. See Smith v. Certified Realty, 585 P.2d 293, 294 (Colo. App. 1978), aff'd, 575 P.2d 1043 (Colo. 1979) (debtor has no equitable right to cure default in an action brought solely on a promissory note).

III. CONRAD II: IS THE CREDITORS' CLAIM FOR JUDICIAL FORECLOSURE PRECLUDED BY THE PRIOR SUIT ON THE NOTE?

Counsellors argues that the Conrads' claim for judicial foreclosure is precluded by the judgment on the note. The Conrads contend that judicial foreclosure was not addressed in Conrad I.

We described the claim preclusive effect of a prior judgment in State v. Smith, 720 P.2d 40, 41 (Alaska 1986), as follows:

> Under the doctrine of res judicata (claim preclusion), a judgment on the merits of a controversy bars subsequent suits between the same parties asserting the same claim for relief when the matter raised was or could have been decided in the first suit. Pankratz v. State, Department of Highways, 652 P.2d 68, 74 (Alaska 1982); Calhoun v. Greening, 636 P.2d 69, 71-72 (Alaska 1981). The Restatement (Second) of Judgments § 24(a) (1982) states that the claim extinguished by the first judgment:
>
> > includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.
>
> A mere change in the legal theory asserted will not avoid the preclusive effect of the first judgment. Pankratz, 652 P.2d at 74.

Arguably, Conrad II is barred under this reasoning. Conrad I involved the same parties and resulted in a judgment on the merits. The Conrads could have joined a claim for judicial

foreclosure with their claim for judgment on the note. Thus, it is irrelevant whether the Conrad I court ruled on this issue.[6]

On the other hand, the common law permits a creditor to judicially foreclose a security following an action on the note. E.g., Foothills Holding Corp. v. Tulsa Rig, Reel & Mfg., 393 P.2d 749, 751 (Colo. 1964); Berg v. Liberty Fed. Sav. & Loan Ass'n, 428 A.2d 347, 348-49 (Del. 1981); Klondike, Inc. v. Blair, 211 So. 2d 41, 42-43 (Fla. App. 1968). Moreover, AS 09.45.200 permits an action for judicial foreclosure "after the pendency of an action for the recovery of a [secured] debt," provided that the creditor prevails in the prior action and its judgment remains unsatisfied in whole or in part.[7]

We believe that this situation is best viewed as an express statutory exception to general principles of res judicata. A creditor need not join its claim for judicial foreclosure in the suit for recovery on the note at the risk of losing its security. In one sense, the subsequent foreclosure may be considered a special form of execution on the prior

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6. To the extent that Counsellors argues that this issue is precluded by Conrad I, it is relevant whether the first court ruled on the judicial foreclosure question. We agree with the Conrads that the superior court did not rule that the Conrads are limited to nonjudicial foreclosure; despite Counsellors' best efforts to obtain a decision on this question, the court left it unresolved.

7. See AS 09.45.200, supra note 2.

judgment for the creditor. Under AS 09.45.200, the creditor may bring these claims consecutively.[8]

The decision of the superior court in File No. S-1996 is REVERSED; the decision in File No. S-2102 is AFFIRMED. The cases are REMANDED to the superior court for further proceedings. The Conrads may elect whether to proceed with the suit on the note or the foreclosure.

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8. However, when the creditor resorts first to judicial foreclosure, failure to join its claim for a deficiency judgment may result in claim preclusion. See AS 09.45.170; see also Darnell v. Denton, 669 P.2d 981, 983 (Ariz. App. 1983); but see Perpetual Bldg. & Loan Ass'n v. Braun, 242 S.E.2d 407 (S.C. 1978).

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THE SUPREME COURT OF THE STATE OF ALASKA

| | |
|---|---|
| HAROLD J. MOENING and COLLEEN M. MOENING,<br><br>Appellants,<br><br>v.<br><br>ALASKA MUTUAL BANK,<br><br>Appellee. | File No. S-1980<br><br>O P I N I O N<br><br>[No. 3274 - February 26, 1988] |

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Milton M. Souter, Judge.

Appearances: Francis J. Nosek, Jr. and Kelly Fisher, Anchorage, for Appellants. Gordon F. Schadt and Milford H. Knutson, Anchorage, for Appellee.

Before: Matthews, Chief Justice, Rabinowitz, Compton, and Moore, Justices. [Burke, Justice, not participating.]

COMPTON, Justice.

This appeal presents three questions. The first question is whether a secured creditor initially may ignore the security and sue for a personal judgment on the underlying debt, absent an agreement to the contrary. The second is whether the creditor agreed to limit its remedy to foreclosure of the security. The third is whether the suit on the debt extinguishes the security as a matter of law.

## I. FACTUAL AND PROCEDURAL BACKGROUND

Harold Moening and Ronald Rivard became business associates in 1983. Prior to their association, Rivard was the sole shareholder of Quest Enterprises, Inc. (Quest). Moening agreed to guarantee Quest's debts to Alaska Mutual Bank (AMB) in exchange for a 40% interest in the business.[1]

To effectuate the guarantee, Moening executed a $700,000 deed of trust note in favor of AMB.[2] The note was secured by a deed of trust on Moening's home, and on the property which originally secured the Quest obligations extinguished by the consolidation. Moening defaulted. Later Moening executed a secured promissory note for $33,000 to guarantee the debt for

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1. Colleen Moening is a named defendant because she co-signed many of the obligations with her husband Harold Moening.

2. The principal was payable on demand in a single installment. Absent a demand, the note was due on May 7, 1985.

property purchased by Quest in Peters Creek.[3] Moening defaulted on this note as well.

AMB filed a complaint against Moening seeking a personal judgment on the notes. It did not foreclose the deeds of trust nor attempt to exercise the power of sale. The superior court entered summary judgment for AMB, concluding that AMB had the right initially to ignore its security and sue on the note. The court entered a money judgment for $733,000 in principal due on the notes, plus accrued interest, costs, and attorney's fees. In addition, the court ordered that the notes should be filed with the court, marked "Conditionally Cancelled" and, "if subsequent execution on the judgment does not satisfy it, the amount by which it is not satisfied may form the basis of judicial or non-judicial foreclosure of the collateral securing the promissory notes."

Moening appeals on the grounds that (1) as a matter of law, AMB must exhaust the security first; (2) AMB agreed to exhaust the security first; and (3) AMB waived its security by suing on the notes.[4] For the reasons hereinafter set forth, we affirm the judgment of the superior court.

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3. The note was secured by a deed of trust identical to that securing the $700,000 note. The trust deed is not part of the record.

4. Moening also argues that AMB failed to join indispensable parties (Rivard and Quest). Alaska R. Civ. P. 19(b). This is an action to collect a debt. Neither Rivard nor

(Footnote Continued)

II. THE RIGHTS OF A SECURED CREDITOR

Moening argues that a secured creditor may not ignore the security and sue on the underlying obligation; it must first exhaust the security. AMB contends that a secured creditor has the option to foreclose or sue on the note, and that it may pursue these remedies concurrently or consecutively.

Statutes provide a secured creditor with a variety of remedies when the debtor defaults. For example, the creditor may bring an action for judicial foreclosure. AS 09.45.170.[5] The creditor is then entitled to a deficiency judgment against the debtor. Id.; Smith v. Shortall, 732 P.2d 548, 549 (Alaska 1987); Suber v. Alaska State Bond Comm., 414 P.2d 546, 555-56 (Alaska

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(Footnote Continued)

Quest was a party to the note and neither has an interest in this lawsuit. Civil Rule 19(a)(2). Moreover, their absence does not preclude granting complete relief between Moening and AMB. Civil Rule 19(a)(1). The fact that Moening may have claims against Rivard arising from other agreements, or that Rivard and Quest may have interests of record in the security, does not render them indispensable to AMB's suit on the note.

5. AS 09.45.170 provides:

> A person having a lien upon real property, other than that of a judgment, whether created by mortgage or otherwise, to secure a debt or other obligation may bring an action to foreclose the lien. In the action, the court may direct the sale of the encumbered property or a portion of it and the application of the proceeds of the sale to the payment of costs, expenses of sale, and the amount due the plaintiff. The judgment shall also determine the personal liability of a defendant for the payment of the debt secured by the lien and be entered accordingly.

Similar to deficiency

1966). The debtor has a statutory right of redemption for twelve months after the sale is confirmed. AS 09.45.190, 09.35.250.

The creditor may elect to conduct a nonjudicial foreclosure sale if the deed of trust provides for this remedy. Suber, 414 P.2d at 555-56; AS 34.20.070(a).[6] The creditor is not entitled to a deficiency judgment following a nonjudicial foreclosure. Smith, 732 P.2d at 549; AS 34.20.100.[7] The debtor is not entitled to redeem the property, unless the deed of trust provides otherwise. AS 34.20.090(a).

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6. AS 34.20.070(a) provides in part:

> If a deed of trust is executed conveying real property located in the state to a trustee as security for the payment of an indebtedness and the deed provides that in case of default or noncompliance with the terms of the trust, the trustee may sell the property for condition broken, the trustee, in addition to the right of foreclosure and sale, may execute the trust by sale of the property, upon the conditions and in the manner set forth in the deed of trust, without first securing a decree of foreclosure and order of sale from the court . . . .

(Emphasis added).

7. AS 34.20.100 provides:

> When a sale is made by a trustee under a deed of trust, as authorized by AS 34.20.070 -- 34.20.130, no other or further action or proceeding may be taken nor judgment entered against the maker or the surety or guarantor of the maker, on the obligation secured by the deed of trust for a deficiency.

Statutes also refer to an action on the underlying obligation. Alaska Statute 09.45.200 provides:

> During or after the pendency of an action for the recovery of a debt secured by a lien mentioned in AS 09.45.170, an action cannot be maintained for the foreclosure of the lien unless judgment is given in that action that the plaintiff recover the debt or a part of it, and an execution issued in the action against the property of the defendant is returned unsatisfied in whole or in part.

The clear implication of this section is that the creditor may sue directly on the note without first foreclosing the property. Moreover, if the creditor prevails in the legal action and cannot satisfy the judgment against the debtor's personal property, it may then maintain an action for judicial foreclosure of the security.

The superior court order also permits AMB to foreclose nonjudicially if the judgment on the note is returned unsatisfied. Moening argues that, even if AMB initially may ignore the security, it may not foreclose nonjudicially after obtaining a judgment on the note.

The anti-deficiency statute prohibits a deficiency judgment following exercise of a power of sale; however, it does not preclude the exercise of a power of sale following a judgment on the note. AS 34.20.100, supra note 7. Under the common law, a prior suit on the note does not preclude subsequent judicial or nonjudicial foreclosure of the security. Foothills Holding Corp. v. Tulsa Rig, Reel & Mfg., 393 P.2d 749, 751 (Colo. 1964); Berg

Common law.

v. Liberty Fed. Savings & Loan, 428 A.2d 347, 348-49 (Del. 1981); Klondike, Inc. v. Blair, 211 So. 2d 41, 42-43 (Fla. App. 1968). The doctrine of election of remedies does not apply, because foreclosure and a suit on the note are not inconsistent remedies. Klondike, 211 So. 2d at 42; Norwood Realty v. First Fed. Savings & Loan, 109 S.E. 2d 844 (Ga. App. 1954); Skach v. Lydon, 306 N.E. 2d 482, 485 (Ill. App. 1973). See also 55 Am. Jur. 2d Mortgages § 543, at 523 (1971).

We conclude that the statutes permit a secured creditor initially to ignore the security and sue on the note. Once the creditor obtains a personal judgment which is returned unsatisfied in whole or in part, the creditor may judicially or nonjudicially foreclose the security.[8]

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8. In Smith v. Shortall, 732 P.2d at 549, we held that a spouse who nonjudicially foreclosed a deed of trust securing her former husband's property division obligation was not entitled to a deficiency judgment under AS 34.20.100. In dicta we stated:

> The obligation was evidenced by a promissory note and secured by a deed of trust. When [Debtor] defaulted on the obligation, [Creditor] had several options. She could have waived the security of the deed of trust and sued on the note. Or, she could have brought an action to judicially foreclose the deed of trust, retaining the right to recover a deficiency judgment. AS 09.45.170; Suber v. Alaska State Bond Committee, 414 P.2d 546, 555 (Alaska 1966). Instead, [Creditor] elected the remedy of non-judicial foreclosure. By electing this remedy, [Creditor] lost her right to recover a deficiency judgment against [Debtor].

(Footnote Continued)

III. THE PARTIES' AGREEMENT

When a note is executed and secured by a deed of trust, the documents are read and construed together as one contract to ascertain the parties' intent. In re Sutton Inv., 266 S.E.2d 686, 689 (N.C. App. 1980), rev. denied, 301 N.C. 90 (1980); Herrington v. Murphy, 446 P.2d 595, 597 (Okla. 1968). The contract is interpreted to give effect to the reasonable expectations of the parties, looking to the language of the contract, the circumstances surrounding its adoption, and case law interpreting similar agreements. Craig Taylor Equip. v. Pettibone Corp., 659 P.2d 594, 597 (Alaska 1983). Ambiguities are construed in favor of the debtor. Patton v. First Fed. Sav. & Loan Ass'n, 578 P.2d 152, 156 (Ariz. 1978).

Any agreement between the parties that the creditor will not seek a deficiency judgment and will look only to the security is enforceable. Stern v. Itkin Bros., 385 N.Y.S.2d 753, 754 (N.Y. Sup. 1975).[9] Such an agreement is enforced even when the security is destroyed by foreclosure of a superior lien. The

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(Footnote Continued)

Id. We disapprove of this dicta insofar as it suggests that a suit on the note constitutes a legal waiver of the security.

9. A rider to the Stern mortgage provided in part:

> On default hereunder, no deficiency judgment shall be sought, rendered or entered against the mortgagor and mortgagees will look only to the mortgaged premises.

385 N.Y.S.2d at 754.

formerly secured inferior creditor is not entitled to sue on the note. Laclede Inv. Corp. v. Kaiser, 596 S.W.2d 36, 39 (Mo. App. 1980).[10]

The $700,000 obligation was evidenced by a "deed of trust note." By its terms, Moening expressly promised to pay principal and interest. The note also stated:

> [E]very party signing . . . this note hereby . . . binds himself thereon as a principal, . . . and promises, if this note is not timely paid and is placed in the hands of an attorney for collection, or suit is brought hereon, to pay all costs of collection, including reasonable attorney's fees.

(Emphasis added). The note constitutes a personal obligation of Moening. It does not preclude AMB from suing directly on the note.

The $33,000 debt is evidenced by a "single payment promissory note" in which Moening expressly promised to pay principal and interest. In case of default, Moening agreed to pay AMB's collection costs and attorney's fees. It does not limit AMB's ability to sue Moening.

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10. The Kaiser note contained the following provision:

> No personal liability shall be asserted or be enforceable against the maker, it being intended that the sole remedy of the holder hereof be by the foreclosure of the Deed of Trust and Security Agreement . . . .

596 S.W.2d at 39 n.1.

The deeds of trust securing the loans contain a power of sale provision permitting nonjudicial foreclosure. The trust deeds also expressly allow judicial foreclosure.[11] They do not limit the creditor's right to ignore the security and sue on the note.

## IV. CANCELLING THE NOTES AND TRUST DEEDS

When AMB submitted a proposed judgment on the notes, Moening objected because the judgment did not include an order cancelling the notes and deeds of trust under Civil Rule 78(d).[12] AMB submitted the original notes to the court, but did not submit the trust deeds. AMB requested that the notes not be cancelled in case the personal judgment was returned unsatisfied. The superior court ordered that the notes be marked "Conditionally

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11. The trust deed states in part:

> In the event that this Deed of Trust is foreclosed as a mortgage and said property sold as a foreclosure sale [the purchasers may make necessary repairs or alterations] . . . .

12. Alaska R. Civ. P. 78(d) provides:

> In all cases in which a judgment upon a written instrument is entered, such instrument shall be filed with the court, and unless the court otherwise orders, it shall be cancelled by marks and writing upon its face. The clerk shall retain the same in the files unless otherwise directed by the court.

Cancelled." Moening argues that the superior court erred by failing to unconditionally cancel the notes and trust deeds, entering the order without adequate briefing, and entering the order after the notice of appeal was filed.

When judgment is entered on a written instrument, the instrument shall be filed with the court and cancelled on its face, unless the court orders otherwise. Civil Rule 78(d). We perceive no reason why a secured note should not be subject to this general rule. The note merges with the judgment, and any further proceedings will be to enforce the judgment rather than the note.

In contrast, the deeds of trust should neither be filed with the court nor cancelled:

> [A] judgment recovered upon a debt secured by a mortgage does not merge the mortgage nor operate as a discharge, abandonment, or release of the mortgage security.
>
> . . . The mortgage continues to secure such debt and is not released, discharged, or satisfied by a judgment on the debt, note, or bond. Such judgment stands subordinate to the mortgage lien.

Silver v. Williams, 175 A.2d 673, 676 (N.J. Super. Ct. Ch. Div. 1961) (emphasis in original), rev'd on other grounds, 178 A.2d 649 (N.J. Super. Ct. App. Div. 1962). In essence, the creditor ends up with a secured judgment.

Although the superior court could have simply cancelled the notes, it had discretion under the rule to order otherwise.

The conditional cancellation order does not constitute an abuse of that discretion.[13]

AFFIRMED.

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13. The record does not support Moening's assertion that the conditional cancellation order was entered after Moening filed a notice of appeal. The order was entered on January 7. The notice of appeal contains an initial filing stamp of December 19; however, that stamp was cancelled and the notice shows a second stamped filing date of January 7.

# Alaska State Legislature

Official Business

P.O. BOX V
State Capitol
Juneau, Alaska 99811

SB-515

MAR 3 0 1988

MEMORANDUM

Senate Joint Committee on Economic Recovery

TO: Members
Alaska State Senate

FROM: Senator Arliss Sturgulewski, Co-Chair
Senator Lloyd Jones, Co-Chair
Senate Joint Committee on Economic Recovery

RE: Legislation Endorsement Statement

DATE: March 29, 1988

The Senate Joint Committee on Economic Recovery has endorsed the following legislation and recommends that it proceed through the normal standing committee hearing process.

SCR32 - Senator Fischer - "Urging the state's financial institutions to adopt more flexible lending and collection policies."

Status: House Labor & Commerce Committee

SB333 - Senator Halford - "An Act relating to wage, salary and benefit claims having priority in certain bank liquidations and to certain bank reports required by the Department of Commerce and Economic Development; and providing for an effective date."

Status: House Labor & Commerce Committee

SB392 - Senator Halford - "An Act relating to delinquent loans of the Alaska Industrial development Authority; and providing for an effective date."

Status: House Labor & Commerce Committee

CSSB408 - Senators Kelly and Sturgulewski - "An Act relating to the Alaska Stabilization Assistance Program; and providing for an effective date."

Status: Senate Finance

Endorsement qualifications:
The concept of a "Bridge Bank" is contained in CSSB408. This legislation offers a potential for relieving the pressure of property management for private financial institutions and some state agencies. However it should be structured to encourage private sector management, limited state contributions and provisions for eventual repayment of these contributions back to the state. This conceptual document should be referred to standing committees for further study and processing.

SSSB471 - Senator Halford - "An Act establishing a program in the Alaska Industrial Development and Export Authority to guarantee business loans and to refinance debt; and providing for an effective date."

Status: Senate Finance

Endorsement qualifications:
The committee endorsed this legislation at the March 16, 1988 and adopted the following intent at its meeting on March 22, 1988. "The bill needs further refinement in the Senate Finance Committee and the SJCER recommends that the Finance Committee review setting a cap or maximum limit on the total amount of loan funds that can be guaranteed by AIDEA. This will prevent uncontrollable liability at some future date. The committee also recommends that AIDEA develope guidelines for allowing private financial institutions to offer refinanced debt packages as well as guidelines for new business loans that will stimulate economic growth. Finally, in order to evaluate its progress, the committee suggests a sunset date on the AIDEA loan guarantee program."

SSSB474 - Senator Halford - "An Act increasing property exemptions; and providing for an effective date."

Status: Senate Finance

SB476(CRA)-Senator Halford - "An Act creating the Supplemental Municipal Assistance Fund for Railbelt communities; and providing for an effective date."

Status: Senate Finance

SB477 - CRA Committee - "An Act making a special appropriation to the Department of Community and Regional Affairs for supplemental municipal assistance to Railbelt communities; and providing for an effective date."

Status: Senate Finance

Endorsement qualifications:
The committee adopted an amendment that reduces the appropriation amount to $25,000,000.

Proposed - Senator Josephson - "An Act relating to judicial and nonjudicial foreclosures."

Status: draft

Endorsement qualifications:
The committee adopted the concepts contained in the 5-2103A/Bradley/3-28-88 draft of the subject legislation and forwarded it to the Senate Rules Committee for introduction. The committee additionally recommended that the bill be referred to the Senate Judiciary Committee and that the committee incorporate the concept contained in HB549 "An Act relating to notice requirements on the use of a deed of trust."

The committee also endorsed the following House bills and recommends that they proceed through the normal Senate standing committee process when they are transmitted to the Senate.

HJR 72 - Rules Committee at the request of the HJCER - "Relating to the residential real estate market."

Status: House Labor & Commerce

HB 550 - Rules Committee at the request of the HJCER - "An Act authorizing the Department of Community and Regional Affairs to modify the terms of its mortgage loans; and providing for an effective date."

Status: House Community & Regional Affairs

Offered: 4/15/88
Referred: Judiciary

5-2066X

Original sponsor: Rules by Request/House Members of the Joint Committee on Economic Recovery

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 549 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to notice requirements in the use of a deed of trust; and providing for an effective date."

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

* Section 1. AS 34.20 is amended by adding a new section to read:

Sec. 34.20.132. NOTICE OF OTHER REMEDIES. (a) When a lender uses a note as evidence of an obligation secured by a deed of trust, the note must affirmatively advise the trustor or borrower and any other party bound by the note if the beneficiary or lender wants the option to bring suit directly on the note to collect an amount owing under the note without first foreclosing the deed of trust. This option must be stated in writing within the note or as a separate document. If a note executed after the effective date of this Act fails to contain the notice specified in this section, the debt secured by the deed of trust may be foreclosed under AS 09.45.170 - 09.45.220 or AS 34.20.070 - 34.20.135.

(b) If the beneficiary or lender wishes to collect an amount owing under the note without first foreclosing the deed of trust, the following language is sufficient in the note:

The trustor or borrower is personally obligated and fully liable for the amount due under the note. The security available to the beneficiary or lender is not limited to the property identified in the deed of trust and the beneficiary or lender has the right to sue on the note and

345

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 549 (L&C)
PUBLISH DATE: HOUSE 4/15/88

# FISCAL NOTE

REQUEST:

Revision Date: _____
Agency Affected: Commerce & Econ. Dev.
Title: An Act relating to notice requirements on use of a deed of trust
BRU: _____
Sponsor: Rules Committee
Components: Banking
Requester: _____

**EXPENDITURES / REVENUES:** (Thousands of Dollars)

| OPERATING | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
| REVENUE | -0- | -0- | -0- | -0- | -0- | -0- |

**FUNDING:** (Thousands of dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | -0- | -0- | -0- | -0- | -0- | -0- |

**POSITIONS:**

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | -0- | -0- | -0- | -0- | -0- | -0- |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

**ANALYSIS:** (Attach a separate page if necessary.)

Prepared by: Lawrence P. Carroll, Acting Director — Phone: 465-2521
Division: Banking, Securities & Corporations — Date: 4/11/88
Approved by Commissioner: J. Anthony Smith — Date: 4/12/88
Agency: Department of Commerce & Economic Development

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)



13860-1/041188a

Introduced: 3/28/88
Referred: Labor & Commerce
and Judiciary

5-2066A

BY THE RULES COMMITTEE BY REQUEST OF THE HOUSE MEMBERS OF THE JOINT COMMITTEE ON ECONOMIC RECOVERY

IN THE HOUSE

HOUSE BILL NO. 549

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to notice requirements on the use of a deed of trust; and providing for an effective date."

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

* Section 1. AS 34.20 is amended by adding a new section to read:

Sec. 34.20.132. NOTICE OF OTHER REMEDIES. When a lender uses a note as evidence of an obligation secured by a deed of trust, the note must affirmatively advise the trustor and any other party bound by the note, in writing within the note, of the security, recourse, and other remedies, if any, available to the beneficiary. If it is intended to permit the beneficiary to bring suit to collect an amount owing on the obligation without foreclosing the deed of trust, this intent must be stated in writing in the note. A beneficiary may not use a remedy not specifically and clearly stated on a note executed after the effective date of this Act. If a note executed after the effective date of this Act fails to contain the notice required by this section, the debt secured by the deed of trust may be foreclosed only under AS 34.20.-070 - 34.20.135, a deficiency judgment may not be entered, and no other action may be taken nor judgment entered against the trustor, surety, or guarantor on the obligation secured by the note.

* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

SB 515

APR 16 1988

# STATE OF ALASKA
# THE LEGISLATURE
## LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM April 16, 1988

SUBJECT: Changes in current CSSB 305(Judiciary)

TO: Senator Jay Kerttula
Chair, Senate Judiciary Committee

FROM: Theresa L. Bannister TB
Legislative Counsel

This memo accompanies a new version of CSSB 305(Judiciary) containing two changes requested by John Abbott. The first change rewrites AS 34.21.080(d) to clarify that the secured creditor must exhaust the collateral by judicial foreclosure before obtaining a money judgment for the debt against the debtor. The second change repeals AS 09.45.200; the section was repealed in SB 30[illegible], but the repeal was incorrectly deleted from the 4-9-83 committee substitute.

If I may be of further assistance, please advise.

Enclosure

TLB:bb
b5/007

5-1200E
Bannister
4/15/88

Original sponsor: Rules/Legislative Council

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 305 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to security interests in real property; and providing for an effective date."

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

* Section 1. PURPOSES AND INTENT. (a) A purpose of this Act is to provide relief to ~~home~~ loan debtors from the effects of the state's severe economic depression.

(b) The legislature declares its intention to

(1) retroactively apply AS 34.21.080 relating to the remedies of a secured party, AS 34.21.330 relating to attorney fees, and AS 34.21.210 - 34.21.290 relating to the right of redemption, added by sec. 2 of this Act, to foreclosure proceedings that are in progress when this Act takes effect, unless the collateral has been sold under AS 34.20.070 before the effective date of this Act, or unless a judgment has been entered in a judicial foreclosure action or breach of contract action before the effective date of this Act;

(2) modify the common law relating to real property security interests that was established in Moening v. Alaska Mutual Bank, Op. No. 3274 (Alaska, February 26, 1988), and in Conrad v. Counsellors Investment Co., Op. No. 3275 (Alaska, February 26, 1988).

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

CHAPTER 21. SECURITY INTERESTS IN REAL PROPERTY.

Sec. 34.21.010. POLICY AND SCOPE. (a) This chapter applies to a transaction, regardless of its form, that is intended or that appears under all the circumstances to be intended to create a security

interest in real property in the state.

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

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

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

Sec. 34.21.030. COLLATERAL NOT OWNED BY DEBTOR. Unless otherwise agreed, if a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under AS 34.21.320(c), is not liable for the debt or for a deficiency after judicial foreclosure, and has the same right as the debtor to

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

(2) cure a default under AS 34.21.180;

(3) obtain injunctive or other relief under AS 34.21.340;

(4) recover losses under AS 34.21.340;

(5) receive statements under AS 34.21.040; and

(6) redeem the property under AS 34.21.210 - 34.21.290.

Sec. 34.21.040. REQUEST FOR STATEMENT OF ACCOUNT. (a) A debtor

or the holder of a subordinate security interest in the collateral may request a statement of account between the debtor and secured party as of a specified date. If the debtor makes payments to the secured party's agent, the debtor or the holder of the subordinate security interest shall make the request of the agent; if the debtor makes payments directly to the secured party, the debtor shall make the request of the secured party. A person receiving a written request shall comply with it within 15 days after receipt by sending a written statement of account that includes the principal amount due, accrued interest, other sums due, and the interest rate in effect, including the rate per day for the current interest period, and that indicates the status of an escrow account held by the secured party or the secured party's agent for receiving payments in connection with the loan. If the debtor has requested a statement of account from the secured party's agent and does not receive it within 20 days, the debtor may request it from the secured party. The secured party or the secured party's agent for receiving payments who without reasonable excuse fails to comply with a written request within 15 days after receiving it is liable to the person requesting the statement of account for

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

(2) $250 without proof of actual damages.

(b) If at the time the request for a statement of account is received the person receiving it no longer has an interest in the obligation or collateral either as secured party or as agent for receiving payments, that person shall, within 15 days after receipt of the request, disclose the name and address of a successor in interest known to that person, and that person is liable for a loss caused to

the debtor as a result of failure to disclose.

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

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

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

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

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

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

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

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

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

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

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

Sec. 34.21.080. REMEDIES OF SECURED PARTY. (a) If a debtor is in default under a security agreement, the secured party may

(1) bring a civil action that seeks to recover judgment on the secured debt and to foreclose on the collateral;

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

(3) foreclose on the collateral under AS 34.21.090 - 34.21.190.

(b) If the debtor has filed for bankruptcy, the secured party may, in addition to the remedies listed in (a) of this section, file a claim in the debtor's bankruptcy as a secured or unsecured creditor.

(c) If collateral is sold under AS 34.21.190, the secured party shall withdraw a claim filed under (b) of this section, the court

shall dismiss an action filed under (a)(1) or (2) of this section in accordance with the rules of court, and, if judgment has been entered in an action filed under (a)(1) or (2) of this section, the secured party shall file a satisfaction of judgment.

(d) A secured party may not recover a money judgment against the debtor until the secured party has foreclosed judicially on the collateral and the proceeds of the sale have been applied to reduction of the debt.

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

Sec. 34.21.090. REQUIREMENTS FOR SUMMARY FORECLOSURE. Before the foreclosure procedures under AS 34.21.090 - 34.21.500 may be used,

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

(2) a default must occur under the security agreement, if under the terms of the security agreement the default makes the power of sale operative; and

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

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

Sec. 34.21.110. TRANSMITTING NOTICE OF DEFAULT. Not less than 30 days after a default the secured party or other person having a power of sale shall cause a written notice of default that meets the

requirements of AS 34.21.160 to be transmitted by first class certified mail, return receipt requested, to the debtor, to the successor in interest of the debtor if known to the secured party, and to all persons actually occupying the collateral whose names are known to the secured party. Due diligence shall be exercised to determine the address of the debtor, or of the debtor's successor in interest, that is most likely to give the debtor notice.

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

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

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

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

(B) each person who is the attorney of record in a pending court action to foreclose a lien or other encumbrance on all or a part of the collateral, if a lis pendens showing the existence of the action is of record on the date the notice of

intent to sell is recorded;

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

(A) the nature of the lien;

(B) the amount shown on the lien document;

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

(D) the recording information for the lien;

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

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

Sec. 34.21.140. TRANSMITTING FURTHER INFORMATION ABOUT SALE. Unless the information required by this section has been included in the notice of intent to sell, not less than 10 days before the time of public sale or if there is to be a private sale or other disposition of the collateral, not less than 10 days before entering into a contract of sale or otherwise disposing of the collateral, the secured party or other person having the power of sale shall transmit by first

class certified mail, return receipt requested, a written notice of the time and place of a public sale or of the time after which a private sale or other intended disposition is to be made to a

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

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

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

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

(1) a description of the collateral;

(2) the recording information for the security agreement;

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

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

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

(6) a statement that failure to cure the default and failure to pay fees and costs within 30 days after the date of transmittal and posting of the notice of default may lead to the recording of a notice of intent to sell, and that the collateral may be sold at a

date not less than 60 days after the recording of the notice of intent to sell;

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

(A) to increase the fees and costs; and

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

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

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

(B) enjoin or object to sale under AS 34.21.340;

(C) receive surplus proceeds under AS 34.21.320(c); and

(D) redeem the collateral under AS 34.21.210 - 34.21.290 after the sale; and

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

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

NOTICE OF INTENT TO SELL

I

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

(set out legal description of collateral to be sold)

II

(If the time and place of a public sale are known, set them out here. 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 34.21.130(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 the

debtor's successor in interest at the following address:

.....

.....

.....

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 cerminated 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 the debtor of all their interest in the

collateral, except the right to stop the sale by curing any default under AS 34.21.180(d) and paying the entire indebtedness and certain expenses, the right to enjoin or object to sale under AS 34.21.340, the right to receive surplus proceeds under AS 34.21.320(c), and the right to redeem the collateral under AS 34.21.210 - 34.21.290 after the sale.

VIII

A person having an objection to the sale on any ground will be afforded an opportunity to be heard as to the objection if the person brings a lawsuit to restrain the sale under AS 34.21.340. Failure to bring a lawsuit may result in a waiver of any ground for invalidating the sale.

IX

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

X

The effect of the sale will be to deprive the debtor and all those who hold by, through or under the debtor of all their interest in the above-described property, unless the debtor redeems the collateral under AS 34.21.210 - 34.21.290 after the sale.

(signed).....

.....

Address.....

.....

Phone.....

STATE OF ALASKA )

: ss.

_____ 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 DEBTOR'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 inferior 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 the attorney fees allowed under AS 34.21.330 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

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

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

(e) If the default is cured, the sale proceedings shall be discontinued. If the default is cured under (a) of this section, the security agreement is reinstated and the obligation remains as though acceleration had not taken place. If the default is cured by the holder of an interest inferior in priority to that being foreclosed, the security interest of that holder includes all payments made to cure, including attorney fees allowed under AS 34.21.330 and reasonable costs. If the interest held in the collateral by the person who cured the default is security for an interest-bearing obligation, the cost to cure default bears interest at the rate of that obligation; otherwise the cost to cure default bears interest at the same rate as an unpaid judgment of a state court.

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

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

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

(1) to cure the default under (d) of this section;

(2) to seek an injunction under AS 34.21.340;

(3) to receive surplus proceeds under AS 34.21.320(c); and

(4) to redeem the collateral under AS 34.21.210 - 34.21.290

after the sale.

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

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

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

(c) After the notice of intent to sell the collateral has been recorded for 30 days, the secured party has a right of access to the collateral to show it to prospective purchasers.

(d) The sale of the collateral may be by public or private proceedings and may be made by way of one or more private contracts. Sale may be as a whole or in parcels and at any time and place and on any terms, but every aspect of the sale, including the method, manner,

time, place and terms, must be commercially reasonable.

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

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

Sec. 34.21.200. PURCHASE OF COLLATERAL BY LIENHOLDER. (a) If the sale of collateral is at public auction, the secured party who is foreclosing under this chapter may bid at the sale and set off the amount of that secured party's interest, including attorney fees allowed under AS 34.21.330 and costs, against the bid. The secured party may not be a purchaser at a negotiated sale.

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

Sec. 34.21.210. RIGHT OF REDEMPTION. A sale of collateral by summary procedure under this chapter is subject to redemption. The person conducting the sale shall give to the purchaser a certificate of the sale that contains

(1) a particular description of the collateral sold;

(2) the price bid for each distinct lot or parcel;

(3) the entire price paid; and

(4) a statement that the property is subject to redemption.

Sec. 34.21.220. REDEMPTION. Collateral subject to redemption under AS 34.21.210 may be redeemed by the following persons or their successors in interest:

(1) the debtor; and

(2) a creditor having a lien by judgment or security interest on all or part of the collateral if the lien is subsequent in time to the security interest for which the collateral was sold.

Sec. 34.21.230. REDEMPTION BY LIEN CREDITOR FROM PURCHASER. A lien creditor may redeem the collateral under AS 34.21.210 within 60 days after the sale by paying the amount of the purchase money, interest on the purchase money at the rate of 10.5 percent a year from the date of the sale, and the amount of taxes that the purchaser has paid for the collateral since the sale. If the purchaser is also a creditor having a lien prior to that of the redemptioner, the redemptioner shall also pay the amount of the purchaser's lien with the interest allowed under AS 45.45.010(a).

Sec. 34.21.240. SUBSEQUENT REDEMPTIONS. The collateral may be redeemed from the previous redemptioner within 60 days after the last redemption by paying the sum paid on the last redemption, interest at eight percent a year from the date of the last redemption, the taxes on the collateral that the last redemptioner has paid as part of or

after redeeming, and the amount of the liens held by the last redemptioner that are prior in time to the lien of the last redemptioner. A lien creditor may not redeem the property from the debtor who has redeemed under AS 34.21.250.

Sec. 34.21.250. REDEMPTION BY DEBTOR. The debtor or the debtor's successor in interest may redeem the collateral by paying within 12 months of the sale the amount of the purchase money, interest at the rate of 10.5 percent, and the taxes that the purchaser or last redemptioner paid for the collateral under AS 09.35.230 or 09.35.240.

Sec. 34.21.260. PROCEDURE FOR REDEMPTION. (a) Redemption is made by paying the required sum to the seller. Upon a redemption, the seller shall give the person redeeming a certificate of redemption containing the sum paid on redemption, the name of the person from whom the collateral was redeemed, and the date of the redemption. The seller shall immediately give notice of the redemption to the party from whom the collateral was redeemed.

(b) To redeem collateral, a debtor or redemptioner shall submit to the seller

(1) a copy of the recorded security agreement or judgment lien on which the debtor or redemptioner bases the right to redeem;

(2) a copy of an assignment that is necessary to establish that the person is the successor in interest to the holder of the security agreement or judgment lien provided under (1) of this subsection, verified by the affidavit of the holder or the agent of the holder; and

(3) an affidavit by the holder of the security interest or judgment or by the agent of the holder showing the amount then actually due under the security agreement or the judgment lien.

Sec. 34.21.270. PRIORITY OF REDEMPTION. If more than one person

applies to the seller at the same time to redeem, the debtor may redeem first, if the debtor is among the applicants, and the person having the earliest recorded lien may redeem first, if the debtor is not among the applicants.

Sec. 34.21.280. REFUSAL TO PERMIT REDEMPTION. A person's right to redeem is not prejudiced by the refusal of the seller to allow the redemption.

Sec. 34.21.290. RIGHTS OF PURCHASER AND REDEMPTIONER. The purchaser, from the time of sale until a resale or a redemption, or a redemptioner, from the time of redemption until another redemption, is entitled to the possession of the collateral purchased or redeemed as against the debtor or other person claiming by, through, or under the debtor. Where the collateral is in the possession of a tenant, the purchaser or redemptioner is entitled to receive the rents of the collateral or the value of the use and occupation of the collateral.

Sec. 34.21.300. PROCEDURE AFTER SALE. After a sale of the collateral by summary procedure under this chapter and receipt of the purchase price, the secured party or other person having the power of sale shall deed the collateral to the purchaser subject to the right of redemption provided under this chapter. The deed shall include or have attached to it a sworn statement reciting

(1) the recording information of the security agreement that was foreclosed;

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

(3) the actual consideration for the conveyance;

(4) the facts indicating the manner in which the notices required under AS 34.21.110 - 34.21.140 were given;

(5) the time and place of publication of the notice of

intent to sell; and

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

Sec. 34.21.310. EFFECT OF SALE. (a) Subject to the right of redemption under AS 34.21.210 - 34.21.290, a sale of collateral under this chapter transfers all title and interest the debtor had in the collateral at the time the security agreement was executed, together with all title or interest the debtor may have acquired before the sale.

(b) A sworn statement complying with AS 34.21.300 and asserting that all requirements of law have been complied with is prima facie evidence of compliance with those requirements.

Sec. 34.21.320. DISPOSITION OF PROCEEDS OF SALE. (a) The secured party or other person with power of sale shall apply the proceeds of the sale of the collateral in the following order to

(1) the reasonable expenses of retaking, holding, preparing for sale and selling the collateral, the attorney fees allowed under AS 34.21.330, and the reasonable legal expenses incurred by the secured party or other person with power of sale;

(2) the satisfaction of the indebtedness secured;

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

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

(c) The secured party or other person having the power of sale shall account to the debtor who owns or has rights in the collateral for the proceeds of sale and pay the debtor any surplus after applying

the proceeds under (a) of this section.

Sec. 34.21.330. ATTORNEY FEES. (a) The attorney fees that must be paid under AS 34.21.180 by the debtor to cure the default before the sale of the collateral may not exceed the sum of

(1) $250 for the first $100,000 of the amount due under the terms of the security agreement at the time of the cure; plus

(2) .15 percent of the amount that exceeds $100,000 and that is due under the terms of the security agreement at the time of the cure.

(b) The attorney fees that are included in the set-off under AS 34.21.200 may not exceed the sum of (a)(1) and (2) of this section.

(c) The attorney fees that are considered a reasonable expense under AS 34.21.320 of retaking, holding, preparing for sale and selling the collateral may not exceed the sum of (a)(1) and (2) of this section.

(d) In this section, "amount due" does not include attorney fees.

Sec. 34.21.340. SECURED PARTY'S LIABILITY FOR FAILURE TO COMPLY, ENJOINING SALE. If it is established that the secured party or other person having the power of sale is not proceeding under AS 34.21.090 - 34.21.360, a sale of collateral may be ordered or restrained on appropriate terms and conditions. If the sale has occurred, the debtor or a person entitled to a copy of notice of intent to sell under AS 34.-21.130 or a person whose subordinate security interest or lien has been recorded before the distribution of proceeds of sale may recover from the secured party or other person having the power of sale a loss caused by a failure to comply with AS 34.21.090 - 34.21.360.

Sec. 34.21.350. GENERAL VALIDITY OF SECURITY AGREEMENT. Unless it conflicts with a provision of law, a security agreement is

effective between the parties according to its terms. Nothing in this chapter validates a charge or practice that is illegal under a statute or regulation for debtor protection including those statutes and regulations governing usury and small loans. Nothing in this chapter extends the application of the statute or regulation for debtor protection to a transaction not otherwise subject to it.

Sec. 34.21.360. WAIVER OF RIGHTS. To the extent that they give rights to the debtor and impose duties on the secured party or other person having the power of sale, the provisions of this chapter may not be waived or varied.

Sec. 34.21.500. DEFINITIONS. In this chapter, unless the context requires otherwise,

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

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

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

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

(5) "redemptioner" means a creditor who is allowed to redeem collateral under AS 34.21.220(2) and who redeems collateral sold by summary procedure under this chapter;

(6) "secured party" means a lender, seller, beneficiary or

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

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

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

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

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

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

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

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

(b) In this section, "security agreement" means an agreement that creates or provides for a security interest in real property; in this subsection, "security interest" has the meaning given in AS 34.-21.500.

* Sec. 6. AS 09.45.200, AS 34.20.010, 34.20.020, 34.20.030, 34.20.040, 34.20,050, 34.20,060, 34.20,070, 34.20,080, 34.20,090, 34.20.100, 34.20.-110, 34.20.120, 34.20.130, and 34.20.135 are repealed.

* Sec. 7. TRANSITIONAL PROVISIONS. (a) A security agreement as defined in AS 34.21.500, as enacted in sec. 2 of this Act, that is entered into before the effective date of this Act, including rights, duties, and interests under it, continues in effect and may be terminated or enforced under a law amended or repealed by this Act as though the law had not been amended or repealed.

(b) A person foreclosing a deed of trust executed before the effective date of this Act, may elect to foreclose under AS 34.21, added by sec. 2 of this Act, or under the law in effect when the deed of trust was entered into.

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

(d) Notwithstanding the other provisions of (a) - (c) of this section to the contrary,

(1) AS 34.21.080, 34.21.210 - 34.21.290, and 34.21.330, added by sec. 2 of this Act, apply to security agreement foreclosure proceedings that are in progress during, or that begin after, the effective date of this Act, unless the collateral has been sold before the effective date of this Act under AS 34.20.070, repealed by sec. 6 of this Act, or unless a judgment has been entered before the effective date of this Act in a judicial foreclosure action or judicial action for breach of contract arising out of the security agreement; and

(2) AS 34.21.080 also applies retroactively to the cases that were the subject of Moening v. Alaska Mutual Bank, Op. No. 3274 (Alaska, February 26, 1988) and Conrad v. Counsellors Investment Co. Op. No. 3275

(Alaska, February 26, 1988) and to the cases subsequently decided in this state under the authority of either of the cases.

* Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

# STATE OF ALASKA 1987 LEGISLATIVE SESSION
# FISCAL NOTE

Bill Version : SB 515
Publish Date : April 21, 1988

REQUEST:

Revision Date:
Title : Foreclosure of deed of trust

Agency Affected :
BRU :

Sponsor : Senate Judiciary
Requestor :

Components :

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary)

Prepared by : Senate Judiciary Committee
Division :
Phone : 465-3717
Date : April 21, 1988

Approved by: Senator Jay Kerttula
Agency : Senate Judiciary Committee
Date : April 21, 1988

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