

HB

549



Alaska State Legislature

House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

TO: MEMBERS OF THE SENATE LABOR AND COMMERCE COMMITTEE

FROM: Representative Steve Rieger, Co-Chair
Subcommittee on Housing and Banking
HOUSE JOINT ECONOMIC RECOVERY COMMITTEE

DATE: MAY 3, 1988

RE: CSHB 549(JUD) - "An Act relating to notice requirements in the use of a mortgage or a deed of trust"

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The purpose of CSHB 549(JUD) is to inform the borrower who has signed a Note secured by a Deed of Trust (or mortgage) that he is in fact personally liable for the total amount of the debt, regardless of the market value of the property. In short, it requires a disclosure statement to the borrower of the lender's available remedies, should foreclosure actions be deemed necessary.

At the time of closing, the borrower signs a Deed of Trust as security for the property and also signs a Note promising to pay the amount of the debt. Yet, because there is so much involved with closing a loan, the simple facts and understandings sometimes get lost in the paper shuffle. The problem lies in the fact that some borrowers were under the assumption that if they were foreclosed upon, they could just turn in the keys and walk away from the property, (thereby extinguishing the debt), and many more borrowers were under the assumption that the lender could not take any personal assets as payment of the debt unless the lender first pursued judicial foreclosure, (i.e. deficiency judgment and right of redemption period). Many borrowers today seem surprised that the lender does indeed have the option to sue on the Note prior to foreclosing on the Deed of Trust.

If foreclosure is warranted, under current law the lender generally has three choices:

- (Judicial) suit on the Note for fulfillment of the debt;
- Nonjudicial foreclosure on the Deed of Trust with no deficiency judgment, no right of redemption and no recourse as to the Note;
- Judicial foreclosure on the Deed of Trust with a possible deficiency judgment awarded by the court, and a one year right of redemption period to the borrower.

In practice, the lender usually forecloses on the Deed of Trust nonjudicially if no workout arrangement can be arranged between the borrower and lender; in very few cases does the lender chose to look towards the Note prior to foreclosing on the Deed of Trust. Further, if private mortgage insurance (PMI) is in place, (required by the lender when the loan-to-value ratio is 80% or above), the PMI pays the lender for the percentage of the loan it originally covered, frequently with no recourse to the borrower. Therefore, in a foreclosure situation where there is negative equity, it is possible that the market value of the property and the private mortgage insurance would cover the entire debt.

Under the current CS, if the lender fails to give sufficient notice to the borrower of the lender's foreclosure remedies, then the lender can only foreclose nonjudicially or judicially on the Deed of Trust -- but cannot sue directly on the Note.

FHLMC (Federal Home Loan Mortgage Corporation), FNMA (Federal National Mortgage Association), the Alaska Association of Realtors and various banking institutions have provided positive endorsement for the concept of this legislation. Due to federal government requirements, they have requested that the "notice" information be contained outside the actual document of the Note, rather than within the body of the Note. FHLMC also recommends that the explanation to the borrower be spelled out in law in order to avoid future "language" problems that would develop if each lender is allowed to write their own language.

State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
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MEMORANDUM

TO: SENATOR TIM KELLY, CHAIR
SENATE LABOR AND COMMERCE COMMITTEE

FROM: MAX F. GRUENBERG, JR., HOUSE CHAIR
JOINT COMMITTEE ON ECONOMIC RECOVERY *MP*

DATE: APRIL 28, 1988

RE: JOINT COMMITTEE LEGISLATION

I would appreciate it if you could calendar the attached bill at your earliest convenience. CSHB 549 (Judiciary), "An Act relating to notice requirements in the use of a mortgage or a deed of trust", was developed by the Housing and Banking subcommittee of the House members of the Joint Committee on Economic Recovery. This bill was heard by the full committee, the House Labor and Commerce and Judiciary Committees and passed the House unanimously today.

CSHB 549 (Judiciary) would require banks to list on notes that are used as evidence of an obligation secured by a mortgage or a deed of trust, the actions and remedies available to the lender in the case of default.

The Senate members of the Joint Committee on Economic Recovery have also endorsed the concept embodied in this legislation.

If you have any questions please give Tom Begich of my staff a call at 465-3718, or contact Representative Steve Rieger, the designated House floor manager for the bill, directly.

Thanks.

attachment