

HB

163

Alaska State Legislature

Session:

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Representative Jay Ramras House District 10

Chair, House Judiciary Committee • Member, House Labor & Commerce Committee • Member, House Oil & Gas Committee • Member, House Military & Veteran Affairs Committee

Sponsor Statement

HB 163 - Property Foreclosures and Executions

Alaska's statutes on non judicial foreclosure of real property are antiquated, ambiguous and unclear, and therefore, prone to unnecessary litigation. House Bill 163 clarifies the present statutory language, by simplifying and modernizing the foreclosure process. The suggested changes benefit lenders, borrowers and title insurance companies by bringing clarity and certainty to the foreclosure process.

HB 163 would improve many aspects of the foreclosure process as they appear in Title 34. Some of these changes are:

- Clarifies how proceeds from a foreclosure auction are to be disbursed
- Assures that foreclosure trustees are fiscally responsible by imposing reasonable bond requirements
- Creates deadlines to deter chilled bidding and unnecessary delays
- Allows trustees to nullify sales when mistakes are made that negatively affect the integrity of the sale
- Sets up procedures to follow involving a deceased borrower
- Creates common-sense rules to govern times and methods for posting foreclosure properties
- Creates internet publication procedures to help ensure that bidders learn of foreclosure auctions
- Defines when one's rights are terminated in the foreclosure process
- Allows acceptance of foreclosure auction bids via email, internet, and telephone for greater accessibility

Passage of HB 163 will streamline and simplify the foreclosure language in Alaska statutes and provide for a more open, accessible and fair auction process, benefiting borrowers, lenders, and title insurers, as well as reducing unnecessary litigation.

Concept. #1 PASSES
AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE LINDSEY HOLMES

TO: CSHB 163 (JUD)

- 1 Page 3, lines 25 ~26: ~~48 hours~~ "
- 2 Delete "up to five days"
2 days "

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 163
 (H) Publish Date: 4/23/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title: An Act relating to property foreclosures and RDU: Civil
executions Component: Commercial & Fair Business
 Sponsor: REPRESENTATIVE(s) RAMRAS
 Requester: House Labor & Commerce Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill is intended to streamline and update various processes associated with non-judicial foreclosures, including mandated internet notice of foreclosure, and acceptance of telephonic and email bids. There is no anticipated financial impact on the Department of Law.

Prepared by: Robert Meiners, Admin. Services Manager
 Division: Administrative Services Division
 Approved by: Robert Meiners for Talis Colberg, Attorney General
 Agency: Department of Law

Phone: 465-5427
 Date/Time: 3/29/07 1:49 PM
 Date: 3/29/2007

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 163
 (H) Publish Date: 4/23/2007

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title Property Foreclosures and Executions RDU Alaska Housing Finance Corp.
 Component Operations
 Sponsor Representative Ramras
 Requester _____ Component No. 110

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

As written, HB 163 is not anticipated to have a fiscal effect on the operations of the Alaska Housing Finance Corporation.

Prepared by: Bryan Butcher, Director, Govt. Relations/Public Affairs
 Division Alaska Housing Finance Corporation
 Approved by: _____
 Agency _____

Phone 907-330-8445
 Date/Time _____
 Date 3/29/2007

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Sectional HB 163 Property Foreclosures and Executions

Section 1. AS 09.35.140. Amends AS 09.35.140 to delete the requirements that a notice of the sale of personal property be posted at a post office.

Section 2. AS 09.35.140 – Adds a new subsection to AS 09.35 (execution on property) to require the notice of the sale of real property on execution also be given to an Internet website. Describes the requirements that the Internet website must meet to qualify. Does not require this notice unless there is a qualifying Internet website.

Section 3. Amends AS 09.35.142 to allow an Internet website owner to bring a court action to establish that the website qualifies under AS 09.35.140(b). Makes a conforming change to cross-reference.

Section 4. Amends AS 34.20.070(b) to adjust to 90 days the minimum length of time that must elapse between recording a notice of default on a deed of trust and holding the foreclosure sale. Sets a limit of five days (before a foreclosure sale) when certain defaults on a deed of trust may be cured by a specific payment.

Section 5. Amends AS 34.20.070(c) to require that possession be actual physical possession where possession is required for certain persons to be entitled to receive a notice of default for foreclosure sale. Changes a term used in this subsection.

Section 6. Adds new subsection to AS 34.20.070 (foreclosure by trustee).

Proposed 34.20.070(e) establishes when a person who holds a lien or nonpossessory property interest that can be inferred from an inspection of the property is entitled to receive a notice of default for a foreclosure sale.

Proposed 34.20.070(f) allows a trustee additional time (after recording) to deliver the notice of default when the trustee delivers the notice personally to the property or to an occupant of the property. Allows the trustee to place the notice on the property or as close as practicable to the property under certain conditions.

Proposed sec 34.20.070(g) states that an affidavit signed by a trustee or another person who delivered notice personally under sec. 34.20.070(f) is prima facie evidence that the trustee complied with sec. 34.20.070(f). Establishes a conclusive presumption

(as evidenced by the affidavit) after one year unless a court action is filed within the year to challenge the foreclosure for failure to comply with sec. 34.20.070(f)

Proposed sec. 34.20.070(h) establishes how a trustee may satisfy the notice requirements for a person known by the trustee to be deceased and for whom the trustee or the deed of trust beneficiary knows a personal representative has been appointed.

Proposed sec. 34.20.070(i) establishes how a trustee may satisfy the notice requirements for a person known by the trustee to be deceased and for whom the trustee or the deed of trust beneficiary know that a personal representative has been appointed for the deceased person.

Proposed sec. 34.20.070(j) states that an heir or devisee of a deceased person must challenge a foreclosure sale within three months if alleging non-receipt of notice and if the trustee gave notice as required by (h) – (i).

Proposed sec. 34.20.070(k) describes the persons who may bring a court action to enjoin a foreclosure sale. Includes the attorney general.

Proposed sec. 34.20.070(l) states that when a court injunction action meets certain conditions, a court may impose conditions that it considers appropriate to protect the deed of trust beneficiary.

Proposed sec. 34.20.070(m) defines certain terms for AS 34.20.070

Section 7. Requires that the proceeds from a foreclosure sale be placed in escrow until disbursed. Allows a trustee to accept foreclosure bids by telephone, the Internet, and electronic mail if certain conditions are met.

Section 8. Allows the attorney or another agent of the trustee to conduct the sale. Allows the trustee to set reasonable rules for the conduct of the sale. Adds language that conforms the deed delivery requirements to the new provision in sec. 34.20.070(g) allowing the trustee to rescind the sale under certain circumstances.

Section 9. Limits the postponement of a foreclosure sale to not more than 12 months unless a new notice of sale is given. Establishes that postponement for up to 12 months does not provide a basis for challenging the validity of the foreclosure because of how long the foreclosure has been pending.

Section 10. Adds new subsection to AS 34.20.080(foreclosure sale).

Proposed sec. 34.20.080(f) indicates how any cash proceeds of the sale are to be distributed after delivery of a deed.

Proposed sec. 34.20.080(g) allows a trustee to withhold delivery of the deed for up to five days, prohibits the trustee from issuing the deed under certain conditions, and describes what the trustee must do when rescinding the sale.

Proposed sec. 34.20.080(h) allows the trustee to reschedule a rescinded sale, establishes a minimum time that must elapse after the rescinded sale before the new sale may be held, and establishes the notice procedure that the trustee must follow for the rescheduled sale.

Proposed sec. 34.20.080(i) establishes that if a sale is not rescinded it completely terminates the rights of the trust deed grantor of the property.

Section 11. Allows the attorneys for the beneficiaries or their successors in interest to execute and acknowledge the substitution of a trustee for certain trust needs.

Section 12. Adds a requirement to the contents of a trustee substitution for the situation when the substitution is executed by the attorneys for the beneficiaries or their successors in interest.

Section 13. Adds a new section.

Proposed sec. 34.20.125(a) requires a trustee to provide a surety bond before performing trustee duties under a deed of trust foreclosure.

Proposed sec. 34.20.125(b) requires the bond to be terminable at any time by the surety by complying with certain requirements, indicates when the bond terminates, and indicates that the surety is not liable after termination for more than the face amount of the bond. States that a revision of the amount of the bond is not cumulative.

Proposed sec. 34.20.125(c) prohibits a person whose bond has been terminated under (b) from acting as a trustee until the person obtains another bond.

Proposed sec. 34.20.125(d) requires a trustee to file evidence of a bond each year with the Department of Commerce, Community, and Economic Development. Requires the department to verify that the evidence is satisfactory, keep an updated list of bonded trustees, and make the evidence and the list available to the public. Allows the department to charge the trustee a reasonable fee for the verification and maintenance of records.

Proposed sec. 34.20.125(e) exempts certain persons from the bonding requirements.

Proposed sec. 34.20.125(f) defines "department" for this section.



**First American
Title Insurance Company**

BRYAN S. MERRELL
REGIONAL COUNSEL

March 12, 2007

Re: Senate Bill 18 *"An Act relating to property foreclosures and executions; and amending Rule 65, Alaska Rules of Civil Procedure."*

House Bill 163 *"An Act relating to real property foreclosures, executions, and deeds of trust."*

To Whom It May Concern:

This letter is written in support of Senate Bill 18 and its companion bill, HB 163, relating to Deeds of Trust and Foreclosures.

I am Regional Counsel for First American Title Insurance Company. First American is the leading title insurer in the United States, and here in Alaska. I am an 18-year member of the Alaska Bar, and a former long time resident of Alaska. In my capacity as an in-house attorney for First American, I have had many occasions to be involved in non-judicial foreclosure related issues and controversies, as First American has produced title insurance products related to such foreclosures, and acted as trustee in many cases as well.

SB 18/HB 163 would clarify a large number of issues relative to non-judicial foreclosure actions. It would fill in gaps in the current statutes relative to procedure. It would clarify issues which Alaska Supreme Court opinions over the years have made unclear. The result of passage of the bill would be a clearer pattern of conduct for the parties to the foreclosure, which should result in less litigation and higher bidding for the properties involved in the process. I urge your yes vote for the bill, and would be happy to answer any questions you may have regarding it.

Very truly yours,

FIRST AMERICAN TITLE INSURANCE CO.

Bryan S. Merrell
Regional Counsel

2101 Fourth Avenue, Suite 800, Seattle, WA 98121

TEL 206.728.0400 • TOLL FREE 800.526.7544 • DIRECT 206.448.6281

bmerrell@firstam.com • www.firstam.com

AlaskaUSA

Federal Credit Union®

March 12, 2007

Mr. Stephen Routh
Routh & Crabtree, APC
3000 A Street, Suite 200
Anchorage, AK 99503

Re: Senate Bill 18 – “An Act relating to property foreclosures and executions; and amending Rule 65, Alaska Rules of Civil Procedure.”
House Bill 163 – “An Act related to real property foreclosures, executions, and deeds of trust.”

Dear Mr. Routh:

Thank you for alerting us to this legislation. We think the changes proposed in the above-referenced bills are well thought out, necessary, and will benefit borrowers, financial institutions, and title agents.

We are pleased to support this legislation.

Sincerely,



William B. Eckhardt
President

WELLS
FARGO

March 12, 2007

Stephen Routh
Routh Crabtree, apc
3000 A Street Suite 200
Anchorage, AK 99503

Re: Senate Bill 18 "An Act relating to property foreclosures and executions;
and amending Rule 65, Alaska Rules of Civil Procedure."

House Bill 163 "An Act relating to real property foreclosures, executions,
and deeds of trust."

Dear Stephen:

Wells Fargo is pleased to support this bill. It will benefit all parties to the foreclosure process including borrowers, lenders, trustees, and title agents. We believe that the changes are timely, necessary, and well-conceived.

Thanks again for bringing this bill to our attention. We are pleased to support it.

Sincerely,



Richard Strutz
Regional President

**Alaska Mortgage Bankers Association
P.O. Box 9-2691
Anchorage, Alaska 99503**

March 9, 2007

Re: Senate Bill 18 *"An Act relating to property foreclosures and executions; and amending Rule 65, Alaska Rules of Civil Procedure."*

House Bill 163 *"An Act relating to real property foreclosures, executions, and deeds of trust."*

Stephen Routh
Routh Crabtree, apc
3000 A Street Suite 200
Anchorage, AK 99503

Dear Stephen;

The Alaska Mortgage Bankers Association is pleased to support this bill. We believe it will benefit borrowers, lenders, title agents, and trustees alike. The changes proposed are well-thought out, timely, and necessary. They also enjoy wide support among the real estate community.

Thanks as well for explaining the bill at our meeting on February 15, 2007. We appreciated your presentation, as well as answering questions directly from our members.

Thanks again for bringing this bill to our attention. We are pleased to support it.

Sincerely,

Kevin M. Breeland

Kevin M. Breeland
President
Alaska Mortgage Bankers Association
P.O. Box 9-2691
Anchorage, Alaska 99509-2691
907-222-8823 direct
907-743-9623 fax
breelandk@residentialmtg.com
www.akmba.org

Kirk Wickersham
280 W. 34th Ave.
Anchorage, Alaska 99503

561-3726

February 10, 2007

Re: SB 18

Dear Members of the Legislature,

I am a real estate lawyer, real estate broker and title insurance licensee.

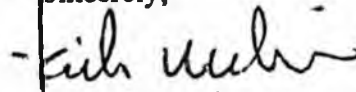
I have had the opportunity to review SB 18, which updates the provisions of Alaska's foreclosure law.

The most outstanding provision is the requirement for publication on the Internet. This will improve dissemination of the sale information to the general public, and thus it should increase the number of bids above the offset bid.

Bids above the offset bid are in everyone's interest. The debtor receives the net proceeds of the sale. The lender does not have to take title, renovate and market the property. And the successful bidder is obviously happy.

I encourage you to adopt this bill. It is my understanding that, if adopted, this bill will become a model for legislation in other states. Please contact me if you have any questions.

Sincerely,


Kirk Wickersham



ALASKA CREDIT UNION LEAGUE

March 21, 2007

Stephen Routh
Routh Crabtree, apc
3000 A Street Suite 200
Anchorage, AK 99503

Re: Senate Bill 18 -An Act relating to property foreclosures and executions; and amending Rule 65, Alaska Rules of Civil Procedure.

House Bill 163 -An Act relating to real property foreclosures, executions, and deeds of trust.

Dear Mr. Routh:

Thank you for alerting us to this legislation. We think the changes proposed in the bill are well thought-out, necessary, and will benefit borrowers, financial institutions, and title agents.

We are pleased to support this legislation.

Sincerely,

Robert M. Teachworth
President

