

**HB**

**108**



## HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120  
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### MEMORANDUM

Date: April 6, 2009

To: Representative John Coghill  
Chairman House Rules Committee

From: Representative Jay Ramras  
Chairman House Judiciary Committee

Re: Request for HB108 to be heard on the floor

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Please accept this memo as both the referral file and a request for HB108 to be heard on the floor. Attached you will find the following documents:

- Sponsor Statement
- CSHB108(JUD) 26-LS0318\C
- Amendment P.2
- Work Draft CSHB108(JUD) 26-LS0318P
- Explanation of changes between version R and proposed version P
- Sectional Summary
- Revenue zero fiscal note
- CSHB108(L&C) 26-LS0318\R
- HB108 26-LS0318\A
- Letters of Support
- HJUD Committee Report

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# Alaska State Legislature House of Representatives



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Representative Jay Ramras  
District 10

## Sponsor Statement HB 108 - Property Foreclosures and Executions (3/27/09)

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 108 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
  - 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
  - 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 108 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.

Representative\_Jay\_Ramras@legis.state.ak.us

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE RAMRAS

TO: CSHB 108(JUD), Draft Version "P"

1 Page 2, lines 27 - 29:

2 Delete "The notice must be published for at least 30 days, including at least 10 of the  
3 last 15 days before the actual date of the sale. Giving notice under this subsection is not  
4 required unless there is an Internet website that qualifies under (c) of this section."

5 Insert "Publication of the notice must begin not later than the first day that the notice is  
6 published under (a)(2) of this section and must continue at least through the day in the fourth  
7 week that the notice is published under (a)(2) of this section."  
8

9 Page 4, line 21, following "AS 34.20.080(e)":

10 Insert "unless the trust deed was entered into before the effective date of this Act  
11 and provides for a different time to cure the default before the sale"  
12

13 Page 5, lines 15 - 21:

14 Delete all material and insert:

15 "(1) payment of the sum then in default, other than the principal that  
16 would not then be due if default had not occurred, and foreclosure fees and costs  
17 actually incurred by the beneficiary and trustee due to the default is made

18 (A) at any time up to two days before the sale date stated in the  
19 notice of default, or two days before a date to which the sale is postponed; or

20 (B) if the trust deed was entered into before the effective date  
21 of this Act and provides for a different time than the time described in (A) of  
22 this paragraph to cure the default before the sale, within the time provided in  
23 the trust deed; and"

26-LS0318/P  
Bannister  
3/26/09

**CS FOR HOUSE BILL NO. 108(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES RAMRAS, Gatto

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to real property foreclosures, to the sale of property on execution, and  
2 to deeds of trust."

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

4 \* Section 1. AS 09.35.140 is amended to read:

5 **Sec. 09.35.140. Notice of sale on execution.** Before the sale of property on  
6 execution, notice of the sale shall be given as follows:

7 (1) notice of the sale of personal property is given by posting a written  
8 or printed notice of the time and place of sale in three public places within five miles  
9 of the place where the sale is to be held, not less than 10 days before the day of sale;  
10 [ONE OF THE NOTICES SHALL BE POSTED AT THE POST OFFICE NEAREST  
11 TO THE PLACE WHERE THE SALE IS TO TAKE PLACE;]

12 (2) notice of the sale of real property is given by posting a similar  
13 notice particularly describing the property, including the property's street address if  
14 there is a street address for the property, not less than 30 days before the day of sale in

1 three public places, as provided in (1) of this section, and publishing a copy of the  
2 notice four times, once a week for four successive weeks in a newspaper of general  
3 circulation published nearest to the place of sale; an inaccuracy in the street address  
4 may not be used to set aside a sale if the legal description is correct [; IN THIS  
5 PARAGRAPH, "NEWSPAPER OF GENERAL CIRCULATION" MEANS A  
6 PUBLICATION THAT

7 (A) IS PUBLISHED IN NEWSPAPER FORMAT;

8 (B) IS DISTRIBUTED AT LEAST ONCE A WEEK FOR AT  
9 LEAST 50 WEEKS EACH YEAR WITHIN THE JUDICIAL DISTRICT,  
10 EXCLUDING A PERIOD WHEN PUBLICATION IS INTERRUPTED BY A  
11 LABOR DISPUTE OR BY A NATURAL DISASTER OR OTHER  
12 CASUALTY THAT THE PUBLISHER CANNOT CONTROL; AND HAS A  
13 TOTAL PAID CIRCULATION OR PAID DISTRIBUTION OF AT LEAST  
14 500 COPIES, OR 10 PERCENT OF THE TOTAL POPULATION OF THE  
15 JUDICIAL DISTRICT, WHICHEVER IS LESS; IN THIS  
16 SUBPARAGRAPH, "JUDICIAL DISTRICT" MEANS THE JUDICIAL  
17 DISTRICT WHERE THE PLACE OF SALE IS LOCATED;

18 (C) HOLDS A SECOND CLASS MAILING PERMIT FROM  
19 THE UNITED STATES POSTAL SERVICE;

20 (D) IS NOT PUBLISHED PRIMARILY TO DISTRIBUTE  
21 ADVERTISING; AND

22 (E) IS NOT INTENDED PRIMARILY FOR A PARTICULAR  
23 PROFESSIONAL OR OCCUPATIONAL GROUP].

24 \* **Sec. 2.** AS 09.35.140 is amended by adding new subsections to read:

25 (b) In addition to the notice required by (a) of this section, notice of the sale of  
26 real property on execution shall be given by publishing a notice of the sale on an  
27 Internet website beginning at least 45 days before the date of the sale. The notice must  
28 be published for at least 30 days, including at least 10 of the last 15 days before the  
29 actual date of the sale. Giving notice under this subsection is not required unless there  
30 is an Internet website that qualifies under (c) of this section.

31 (c) To qualify as an Internet website on which notices of sale may be

1 published under (b) of this section, an Internet website must,

2 (1) if operated by a newspaper of general circulation, be completely  
3 free to the public for viewing and not require a subscription; or

4 (2) if operated by a newspaper that is not covered by (1) of this  
5 subsection, or by another person,

6 (A) be available to any person;

7 (B) be completely free to the public for viewing and not require  
8 a subscription;

9 (C) be used primarily to advertise real property under  
10 foreclosure;

11 (D) have been in continuous operation for more than one year;

12 (E) have a viewership of at least 5,000 different visitors each  
13 month that is verified by an independent audit; and

14 (F) have an office in the state and the office has staff that  
15 includes a senior management person.

16 (d) In this section, "newspaper of general circulation" means a publication that

17 (1) is published in newspaper format;

18 (2) is distributed at least once a week for at least 50 weeks each year  
19 within the judicial district, excluding a period when publication is interrupted by a  
20 labor dispute or by a natural disaster or other casualty that the publisher cannot  
21 control; and has a total paid circulation or paid distribution of at least 500 copies, or 10  
22 percent of the total population of the judicial district, whichever is less; in this  
23 paragraph, "judicial district" means the judicial district where the place of sale is  
24 located;

25 (3) holds a second class mailing permit from the United States Postal  
26 Service;

27 (4) is not published primarily to distribute advertising; and

28 (5) is not intended primarily for a particular professional or  
29 occupational group.

30 \* Sec. 3. AS 09.35.142 is amended to read:

31 **Sec. 09.35.142. Action to establish newspaper or Internet website status. A**

1 person who owns a publication may bring an action under AS 22.10.020(g) to  
2 establish that the publication is a newspaper of general circulation under  
3 AS 09.35.140. A person who owns an Internet website may bring an action under  
4 AS 22.10.020(g) to establish that the Internet website qualifies as an Internet  
5 website on which notices of sale may be published under AS 09.35.140(b)  
6 [AS 09.35.140(2)].

7 \* Sec. 4. AS 34.20.070(b) is amended to read:

8 (b) Not less than 30 days after the default and not less than **90 days** [THREE  
9 MONTHS] before the sale, the trustee shall record in the office of the recorder of the  
10 recording district in which the trust property is located a notice of default setting out  
11 (1) the name of the trustor, (2) the book and page where the trust deed is recorded or  
12 the serial number assigned to the trust deed by the recorder, (3) a description of the  
13 trust property, including the property's street address if there is a street address for the  
14 property, (4) a statement that a breach of the obligation for which the deed of trust is  
15 security has occurred, (5) the nature of the breach, (6) the sum owing on the  
16 obligation, (7) the election by the trustee to sell the property to satisfy the obligation,  
17 [AND] (8) the date, time, and place of the sale, **and (9) the statement described in**  
18 **(e) of this section describing conditions for curing the default.** An inaccuracy in the  
19 street address may not be used to set aside a sale if the legal description is correct. At  
20 any time **up to two days** before the sale **date stated in the notice of default or to**  
21 **which the sale is postponed under AS 34.20.080(e),** if the default has arisen by  
22 failure to make payments required by the trust deed, the default may be cured **and sale**  
23 **under this section terminated** by payment of the sum **then** in default, other than the  
24 principal that would not then be due if no default had occurred, **and foreclosure**  
25 [PLUS ATTORNEY] fees **and** [OR COURT] costs actually incurred by the  
26 **beneficiary and** trustee due to the default. If, under the same trust deed, notice of  
27 default under this subsection has been recorded two or more times previously and the  
28 default has been cured under this subsection, the trustee may elect to refuse payment  
29 and continue the sale.

30 \* Sec. 5. AS 34.20.070(c) is amended to read:

31 (c) Within 10 days after recording the notice of default, the trustee shall mail a

1 copy of the notice by certified mail to the last known address of each of the following  
2 persons or their legal representatives: (1) the trustor [GRANTOR] in the trust deed;  
3 (2) the successor in interest to the trustor [GRANTOR] whose interest appears of  
4 record or of whose interest the trustee or the beneficiary has actual notice, or who is in  
5 actual physical possession of the property; (3) any other person actually in physical  
6 possession of [OR OCCUPYING] the property; (4) any person having a lien or  
7 interest subsequent to the interest of the trustee in the trust deed, where the lien or  
8 interest appears of record or where the trustee or the beneficiary has actual notice of  
9 the lien or interest, except as provided in (f) of this section. The notice may be  
10 delivered personally instead of by mail.

11 \* Sec. 6. AS 34.20.070 is amended by adding new subsections to read:

12 (e) The statement required by (b)(9) of this section must state that, if the  
13 default has arisen by failure to make payments required by the trust deed, the default  
14 may be cured and the sale under this section terminated if

15 (1) payment of the following amounts is made at any time up to two  
16 days before the sale date stated in the notice of default, or two days before a date to  
17 which the sale is postponed:

18 (A) the sum then in default, other than the principal that would  
19 not then be due if no default had occurred; and

20 (B) foreclosure fees and costs actually incurred by the  
21 beneficiary and trustee due to the default; and

22 (2) when notice of default under (b) of this section has been recorded  
23 two or more times previously under the same trust deed and the default has been cured  
24 under (b) of this section, the trustee does not elect to refuse payment and continue the  
25 sale.

26 (f) In (c)(4) of this section, if the existence of a lien or nonpossessory interest  
27 can only be inferred from an inspection of the real property, the person holding the  
28 lien or nonpossessory interest is not entitled to notice under (c) of this section unless  
29 the lien or nonpossessory interest appears of record or a written notice of the lien or  
30 nonpossessory interest has been given to the beneficiary or trustee before the  
31 recording of the notice of default.

1 (g) If the trustee delivers notice personally under (c) of this section to the  
2 property or to an occupant of the property, the trustee may, notwithstanding (c) of this  
3 section, deliver the notice up to 20 days after the notice of default is recorded. If there  
4 is not a structure on the property and a person is not present on the property at the time  
5 of delivery, the trustee may place the notice on the property, or as close as practicable  
6 to the property if

7 (1) there is not a practical road access to the property; or

8 (2) access to the property is restricted by gates or other barriers.

9 (h) If the trustee or other person who delivered notice under (g) of this section  
10 signs an affidavit for the delivery, the affidavit is prima facie evidence that the trustee  
11 complied with (g) of this section. After one year from the delivery, as evidenced by  
12 the affidavit, the trustee is conclusively presumed to have complied with (g) of this  
13 section unless, within one year from the delivery, an action has been filed in court to  
14 contest the foreclosure based on failing to comply with (g) of this section.

15 (i) If a person who is entitled to receive notice by mail under (c) of this section  
16 is known by the beneficiary or trustee to be deceased, the trustee may satisfy the  
17 notice requirements of (c) of this section by mailing the notice to the last known  
18 address of the deceased person and to the personal representative of the deceased  
19 person if the beneficiary or trustee knows that a personal representative has been  
20 appointed for the deceased person.

21 (j) If a person who is entitled to receive notice by mail under (c) of this section  
22 is known by the beneficiary or trustee to be deceased but the trustee and the  
23 beneficiary do not know that a personal representative has been appointed for the  
24 deceased person, the trustee may satisfy the notice requirements of (c) of this section  
25 by

26 (1) mailing the notice to the heirs and devisees of the deceased person

27 (A) whose names and addresses are known to the beneficiary or  
28 trustee; or

29 (B) who have recorded a notice of their interest in the property;

30 and

31 (2) publishing and posting the notice of the foreclosure as provided by

1 law for the sale of real property on execution, except that the notice must be titled "To  
2 the Heirs or Devisees of (insert the name of the deceased person)" and include in the  
3 body of the notice a list of the names of the persons who are known by the beneficiary  
4 or trustee to be the heirs and devisees of the deceased person.

5 (k) If notice is given as required by (i) and (j) of this section, an heir or  
6 devisee of the deceased person may not challenge the foreclosure on the ground that  
7 the heir or devisee did not receive notice of the sale, unless the heir or devisee  
8 challenges the foreclosure on this ground within 90 days after the sale.

9 (l) A person may bring an action in court to enjoin a foreclosure on real  
10 property only if the person is

11 (1) the trustor of the deed of trust under which the real property was  
12 foreclosed;

13 (2) a guarantor of the obligation that the real property is securing;

14 (3) a person who has an interest in the real property that has been  
15 recorded;

16 (4) a person who has a recorded lien against the real property;

17 (5) an heir to the real property;

18 (6) a devisee of the real property; or

19 (7) the attorney general acting under other legal authority.

20 (m) If a person brings an action under (l) of this section to stop a sale of real  
21 property, and if the sale is being brought because of a default in the performance of a  
22 nonmonetary obligation required by the deed of trust that the real property is securing,  
23 the court may impose on the person the conditions that the court determines are  
24 appropriate to protect the beneficiary.

25 (n) In this section, "devisee," "heir," and "personal representative" have the  
26 meanings given in AS 13.06.050.

27 \* Sec. 7. AS 34.20.080(a) is amended to read:

28 (a) The sale authorized in AS 34.20.070 shall be made under the terms and  
29 conditions and in the manner set out in the deed of trust. **The proceeds from a sale**  
30 **shall be placed in escrow until they are disbursed.** However, the sale shall be made

31 (1) at public auction held at the front door of a courthouse of the

1 superior court in the judicial district where the property is located, unless the deed of  
2 trust specifically provides that the sale shall be held in a different place, **except that a**  
3 **trustee may also accept bids by telephone, the Internet, and electronic mail if the**  
4 **trustee has taken reasonable steps to ensure that the bidding methods using the**  
5 **telephone, the Internet, or electronic mail are fair, accessible, and designed to**  
6 **result in money that is immediately available for disbursement**; and

7 (2) after public notice of the time and place of the sale has been given  
8 in the manner provided by law for the sale of real property on execution.

9 \* Sec. 8. AS 34.20.080(b) is amended to read:

10 (b) The attorney for the trustee **or another agent of the trustee** may conduct  
11 the sale and act in the sale as the auctioneer for the trustee. **The trustee may set**  
12 **reasonable rules and conditions for the conduct of the sale.** Sale shall be made to  
13 the highest and best bidder. The beneficiary under the trust deed may bid at the  
14 trustee's sale. **Except as provided by (g) of this section, the** [THE] trustee shall  
15 execute and deliver to the purchaser a deed to the property sold.

16 \* Sec. 9. AS 34.20.080(e) is amended to read:

17 (e) The trustee may postpone sale of all or any portion of the property by  
18 delivering to the person conducting the sale a written and signed request for the  
19 postponement to a stated date and hour. The person conducting the sale shall publicly  
20 announce the postponement to the stated date and hour at the time and place originally  
21 fixed for the sale. This procedure shall be followed in any succeeding postponement,  
22 **but the foreclosure may not be postponed for more than 12 months unless a new**  
23 **notice of the sale is given under (a)(2) of this section. A sale may be postponed for**  
24 **up to 12 months from the sale date stated in the notice of default under**  
25 **AS 34.20.070(b) without providing a basis for challenging the validity of the**  
26 **foreclosure process because of the length of time the foreclosure has been**  
27 **pending.**

28 \* Sec. 10. AS 34.20.080 is amended by adding new subsections to read:

29 (f) After delivery of a deed under (b) of this section, the trustee shall distribute  
30 any cash proceeds of the sale in the following order to

31 (1) the beneficiary of the deed of trust being foreclosed until the

1 beneficiary is paid the full amount that is owed under the deed of trust to the  
2 beneficiary;

3 (2) the persons who held, at the time of the sale, recorded interests,  
4 except easements, in the property, that were subordinate to the foreclosed deed of  
5 trust; the distribution under this paragraph shall be made according to the priority of  
6 the recorded interest, and a recorded interest with a higher priority shall be satisfied  
7 before distribution is made to the recorded interest that is next lower in priority;  
8 however, if a person holds a recorded interest that is an assessment, the person is  
9 entitled only to the amount of the assessment that was due at the time of the sale; in  
10 this paragraph, "recorded interest" means an interest, including a lease, recorded under  
11 AS 40.17;

12 (3) the trustor in the trust deed if the trustor is still the owner of the  
13 property at the time of the foreclosure sale, but, if the trustor is not still the owner of  
14 the property at the time of the foreclosure sale, then to the trustor's successor in  
15 interest whose interest appears of record at the time of the foreclosure sale.

16 (g) The trustee may withhold delivery of the deed under (b) of this section for  
17 up to five days after the sale. If, during the five days, the trustee determines that the  
18 sale should not have proceeded, the trustee may not issue the deed but shall

19 (1) inform the beneficiary, the otherwise successful bidder, and the  
20 trustor of the trust deed or the trustor's successor in interest that the sale is rescinded;  
21 and

22 (2) return to the otherwise successful bidder money received from the  
23 otherwise successful bidder as a bid on the property; return of this money is the  
24 otherwise successful bidder's only remedy if the trustee withholds delivery of the deed  
25 under (b) of this section.

26 (h) If a trustee rescinds a sale under (g) of this section and the obligation  
27 secured by the deed of trust remains in default, the trustee may, at the request of the  
28 beneficiary, reschedule the sale for a date that is not less than 45 days after the date of  
29 the rescinded sale. Not less than 30 days before the rescheduled sale date, the trustee  
30 shall

31 (1) mail notice of the rescheduled sale date by certified mail to the last

1 known address of each of the persons identified by AS 34.20.070(c); and

2 (2) publish and post the notice of the rescheduled sale date as provided  
3 by law for the sale of real property on execution.

4 (i) Unless a sale is rescinded under (g) of this section, the sale completely  
5 terminates the rights of the trustor of the trust deed in the property.

6 (j) If a sale is rescinded under (g) of this section, the deed of trust foreclosed  
7 in the rescinded sale is restored to the validity and priority it would have had as though  
8 the sale had not occurred.

9 \* **Sec. 11.** AS 34.20.120(a) is amended to read:

10 (a) The trustee under a trust deed upon real property given to secure an  
11 obligation to pay money and conferring no duties upon the trustee other than the duties  
12 that are incidental to the exercise of the power of sale conferred in the deed may be  
13 substituted by recording in the mortgage records of the recording district in which the  
14 property is located a substitution executed and acknowledged by

15 (1) all the beneficiaries under the trust deed, or their successors in  
16 interest; or

17 (2) the attorneys for all of the beneficiaries or the attorneys for all  
18 of the beneficiaries' successors in interest.

19 \* **Sec. 12.** AS 34.20.120(b) is amended to read:

20 (b) The substitution must contain

21 (1) the date of execution of the trust deed;

22 (2) the names of the trustee, trustor, and beneficiary, and, if the  
23 substitution is executed by the attorney for the beneficiary or successor in  
24 interest to the beneficiary, the name, address, and Alaska Bar Association  
25 identification number of the attorney;

26 (3) the book and page where the trust deed is recorded or the serial  
27 number assigned to the trust deed by the recorder;

28 (4) the name of the new trustee; and

29 (5) an acknowledgment signed and acknowledged by the trustee  
30 named in the trust deed of a receipt of a copy of the substitution, or an affidavit of  
31 service of a copy of it.

1 \* **Sec. 13.** AS 34.20 is amended by adding a new section to read:

2 **Sec. 34.20.125. Trustee bond required.** (a) Before performing the duties of a  
3 trustee under AS 34.20.070 and 34.20.080, a person shall obtain a surety bond in the  
4 amount of \$250,000 to protect the trustors and beneficiaries of trust deeds against  
5 fraud or defalcation by the trustee in the performance of the duties.

6 (b) The bond required by (a) of this section must be a bond that is terminable  
7 at any time by the surety by sending written notice by first class United States mail to  
8 the obligee and the principal at the address for each that is last known by the surety,  
9 and to the department. The bond terminates when 45 days have expired after the date  
10 the notice is mailed. The surety is not liable for an act or omission of the principal that  
11 occurs after the termination. The surety is not liable after the termination for more than  
12 the face amount of the bond, regardless of the number of claims made against the bond  
13 or the number of years the bond remains in force. A revision of the amount of the  
14 bond is not cumulative.

15 (c) If a bond terminates under (b) of this section, the person who obtained the  
16 bond under (a) of this section shall give notice of the bond's termination to the  
17 department and may not act as a trustee until the person obtains another bond under (a)  
18 of this section.

19 (d) Each year, a trustee shall file evidence of the bond with the department.  
20 The department shall verify that the evidence is satisfactory to indicate the existence  
21 of the bond, keep an updated list of trustees who are bonded, and make the evidence  
22 and the list available to the public for inspection. The department may charge the  
23 trustee a reasonable fee for verifying the existence of the bond and maintaining the  
24 records required by this subsection.

25 (e) The bonding requirements of this section do not apply to

26 (1) a title insurance company authorized under AS 21.66 to transact a  
27 title insurance business in this state;

28 (2) a title insurance limited producer who is licensed as required by  
29 AS 21.66.270; or

30 (3) a state agency, including the Alaska Housing Finance Corporation  
31 and the Alaska Industrial Development and Export Authority.

1

(f) In this section, "department" means the Department of Commerce,  
2 Community, and Economic Development.

2

# ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras

Chairman

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Vice-Chairman

Representative John Coghill

Representative Bob Lynn

Representative Carl Gatto

Representative Max Gruenberg

Representative Lindsey Holmes

State Capitol, Room 120

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## Explanation of Changes Between CSHB108(L&C) version 26-LS0318\R and Proposed CSHB108(JUD) 26-LS0318P

**Sec. 2** AS 09.35.140. Adds back into HB108 the requirement that the notice of execution of the sale of real property also be noticed on an Internet website. This new language expands the list of qualified sites, to newspapers of general circulation provided they meet the requirements of proposed AS 09.35.140(c). Thus if a newspaper qualifies to run legal ads, it will be qualified to run the internet publication. A new qualifier is that the site be free to the viewing public.

**Sec. 4** AS 34.20.070(b). Adds a requirement under AS 34.20.070(e) that the notice of default served on the trustor include language stating that payment to cure the default must be made two days prior to the sale dated stated in the notice of default, or two days prior to the date to which the sale date is postponed. This will give the trustor full disclosure in the original notice of the two day cure period.

AS 34.20.070(e) new conforming language to AS 34.20.070(b)

**Sec. 10.** AS 34.20.080(j) adds new language that states that, if a sale is rescinded under (g) of this section, the deed of trust foreclosed in the rescinded sale is restored to the validity and priority it would have had as though the sale did not occur.

# Alaska State Legislature



## Session:

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## Representative Jay Ramras House District 10

*Chair, House Judiciary • Chair, House Economic Development, Trade & Tourism • Member, Energy • Member, House Military & Veteran Affairs, Member, Joint Armed Services*

### Sectional HB 108 Property Foreclosures and Executions

**Section 1. AS 09.35.140 is amended** –Removes the U.S. Post Office as a posting requirement.

**Section 2. Amends AS 09.35.140 to add a new subsection.** Adds a new section to AS 09.35 (execution on property) to require the notice of the execution sale of real property also be noticed on an Internet website, including newspaper websites. Also, Describes the requirements that the Internet websites must meet to qualify, and the Internet notice requirement for a non judicial foreclosure.

**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)

**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 two 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)** requires 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.

**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 non-possessory 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 90 days 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.

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. AS 34.20.080(a) is amended** to require that the proceeds from a foreclosure sale are placed in escrow until disbursed. This section allows a trustee to accept foreclosure bids by telephone, the Internet, and electronic mail if certain conditions are met.

**Section 8. Amends AS 34.20.080(b)** Allowing the attorney or other agent of the trustee to conduct the sale. Additionally, 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. Amends AS 34.20.080(e)** Limiting 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 a new subsections 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 trustor of the deed in the property.

**Section 11. AS 34.20.120(a) is amended.** Allowing 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. AS 34.20.120(b) is amended.** Adds a requirement to the contents of a trustee substitution for a situation when the substitution is executed by the attorneys for the beneficiaries or their successors in interest.

**Section 13. Adds a new section AS 34.20.125(a)** requiring a trustee to provide a surety bond before performing trustee duties under a deed of trust foreclosure.

**AS 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.

**AS 34.20.125(c)** gives notice requirements for a termination of the bond.

**AS 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.

**AS 34.20.125(e)** exempts certain persons from the bonding requirements.

**AS 34.20.125(f)** defines "department" in this section to mean the Department of Commerce, Community, and Economic Development

# FISCAL NOTE

**STATE OF ALASKA**  
**2009 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSHB108(L&C)  
 () Publish Date: \_\_\_\_\_

Identifier (file name): CSSB108(L&C)-DOR-AHFC-3-16-09  
 Title: Property Foreclosures and Executions  
 Sponsor: Representative Ramras  
 Requester: \_\_\_\_\_  
 Dept. Affected: Revenue  
 RDU: Alaska Housing Finance Corp.  
 Component: Operations  
 Component Number: 110

**Expenditures/Revenues** (Thousands of Dollars)

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

| OPERATING EXPENDITURES | Appropriation Required | Information |            |            |            |            |            |
|------------------------|------------------------|-------------|------------|------------|------------|------------|------------|
|                        | FY 2010                | FY 2010     | FY 2011    | FY 2012    | FY 2013    | FY 2014    | FY 2015    |
| Personal Services      |                        |             |            |            |            |            |            |
| Travel                 |                        |             |            |            |            |            |            |
| Contractual            |                        |             |            |            |            |            |            |
| Supplies               |                        |             |            |            |            |            |            |
| Equipment              |                        |             |            |            |            |            |            |
| Land & Structures      |                        |             |            |            |            |            |            |
| Grants & Claims        |                        |             |            |            |            |            |            |
| Miscellaneous          |                        |             |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b>             | <b>0.0</b>  | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                             |  |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|--|
| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|--|

|                               |  |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|--|
| <b>CHANGE IN REVENUES ( )</b> |  |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|--|

**FUND SOURCE** (Thousands of Dollars)

|                            |            |            |            |            |            |            |            |
|----------------------------|------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts      |            |            |            |            |            |            |            |
| 1003 GF Match              |            |            |            |            |            |            |            |
| 1004 GF                    |            |            |            |            |            |            |            |
| 1005 GF/Program Receipts   |            |            |            |            |            |            |            |
| 1037 GF/Mental Health      |            |            |            |            |            |            |            |
| Other Interagency Receipts |            |            |            |            |            |            |            |
| <b>TOTAL</b>               | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2009) cost: \_\_\_\_\_

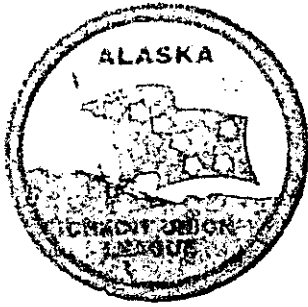
**POSITIONS**

|           |  |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |  |

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

Under the House Labor and Commerce Committee version of House Bill 108, there would be no expected fiscal impact on the Alaska Housing Finance Corporation.

Prepared by: Bryan Butcher Phone 330-8445  
 Division: Alaska Housing Finance Corporation Date/Time: 3/16/09 12:00 AM  
 Approved by: \_\_\_\_\_ Date: \_\_\_\_\_



# ALASKA CREDIT UNION LEAGUE

March 8, 2009

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

Re: HB 108-An Act relating to real property foreclosures, to the sale of property on execution, and to deed of trust.

Dear Mr. Routh;

We are an association representing all thirteen credit unions doing business in Alaska, with a combined membership base of over 500,000.

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. Much of the bill is housekeeping, which will reduce future litigation. Other parts are forward-thinking, like developing methods for internet advertising and bidding, that will tend to increase bidding at foreclosure auctions.

We are pleased to support this legislation.

Sincerely,

  
James M Wileman  
Chair

**Kirk Wickersham**  
**280 W. 34<sup>th</sup> Ave.**  
**Anchorage, Alaska 99503**

907-561-3726

March 18, 2009

Re: House Bill 108 "*An Act relating to real property foreclosures, to the sale of property on execution, and to deeds of trust.*"

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 HB 108, which updates the provisions of Alaska's foreclosure law. It contains many housekeeping items that clarify existing law, as well as some sections that will take Alaska solidly into the 21<sup>st</sup> century.

An outstanding provision is the requirement for publication on the Internet. Most folks look to the internet today for foreclosure information. Having this information on the web 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 Mortgage Bankers Association**  
P.O. Box 9-2691  
Anchorage, Alaska 99509-2691

April 2, 2009

Re: House Bill 108

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

Dear Stephen;

The Alaska Mortgage Bankers Association is a trade organization composed of loan origination companies, servicing companies, and affiliated industry service providers. We have been serving Alaska's mortgage and housing industry since 1980. Our members adhere to a canon of ethics that calls for the use of sound and ethical business practices.

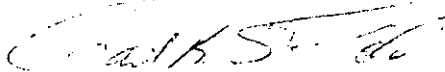
The Alaska Mortgage Bankers Association is dedicated to the preservation and improvement of the Mortgage Banking Industry through a proactive relationship with Federal and State legislators, industry agencies, and other housing trade organizations. Our members are kept informed about changes in mortgage laws and pending legislation.

Our standing committees provide seminars, meetings, and general information for the purpose of education for our members and the public.

The Association promotes public education, high ethical standards, sound business practices, and cooperation among legislators, regulators and other members of the industry.

Consistent with our mission, we are pleased to offer our support for HB 108. It will modernize Alaska Statutes, and make the foreclosure process more fair, transparent, and efficient. It will tend to reduce litigation, and encourage bidders to attend foreclosure auctions to the benefit of borrowers, lenders, and neighborhoods alike.

Sincerely,



Gail K. Stafford  
President

KENNETH P. EGGERS, P.C.  
SALLY J. KUCKO  
DENNIS G. FENERTY  
DAVID A. DEVINE, P.C.  
ROBERT H. SCHMIDT  
SARAH A. BADTEN

CLIFFORD J. GROH, SR.  
1926-1998

LAW OFFICES OF  
GROH EGGERS, LLC  
2600 CORDOVA STREET, SUITE 110  
ANCHORAGE, ALASKA 99503

RECEIVED  
MAR 10 2009

Telephone  
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Facsimile  
(907) 562-6044

www.groheggers.com

March 11, 2009

The Honorable Kurt Olson  
House of Representatives  
Alaska State Capitol  
Juneau, Alaska 99801-1182

Via E-mail: Representative\_Kurt\_Olson@legis.state.ak.gov

re: HB 108 – “A Bill Relating to Foreclosures, etc.”  
Our File No. 85-19-15

Dear Representative Olson:

I am writing on my own behalf, and on behalf of my law firm, to voice my opposition to the as-written version of HB 108 changing Alaska’s laws relating to deed of trust foreclosures. While the majority of the bill contains beneficial changes, HB 108, as written, will create a requirement for Internet publication that will result in giving monopoly power to the law firm that wrote HB 108.

HB 108 requires publication on the Internet prior to a foreclosure. I have no objection to Internet publication as a general matter. In fact, current law requires that all default notices must be published in a newspaper, and most newspapers that publish default notices simultaneously publish the default notice on the newspaper’s accompanying website. Every judicial district already has a newspaper of general circulation that publishes legal notices online. **Therefore, almost all default notices in Alaska are already published on the Internet.**

However, HB 108 goes further to provide that, to qualify as a website for publishing default notices, the website must have 5,000 unique visitors a month, be used primarily for advertising foreclosure properties, and have senior management within the state. Under this definition, almost no websites will qualify. **The websites operated by the Anchorage Daily News, Alaska Journal of Commerce, Juneau Empire, and Fairbanks Daily News-Miner, among others, will not qualify because they are not “used primarily to advertise real property under foreclosure[.]”** Websites such as Craigslist, which was mentioned favorably in the February 23, 2009 committee hearing, would not qualify because it is not used primarily for foreclosures, and because it does not have senior management in Alaska. Websites operated by banks will not qualify because they are not used primarily for foreclosures. Websites operated by local law firms will not qualify because they do not get 5,000 unique visitors a month. Finally, the State of Alaska’s own website will not qualify because it is not used primarily to advertise foreclosures.

Hon. Kurt Olson  
March 11, 2009  
Page 2 of 2

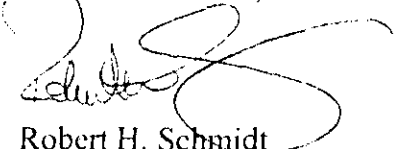
It is my belief that the only website that will qualify under the current HB 108 is USA-Foreclosure.com, which is half owned by Mr. Stephen Routh, whose law firm wrote HB108. Mr. Routh's law firm, with over 400 employees and offices in seven states, should not be granted monopoly power to conduct all foreclosures in Alaska.

I recommend the committee do one of two things with HB 108. I would recommend that all provisions relating to Internet advertising be eliminated. This is what happened last year with HB 163 and I recommend the same change be made now. Alternately, I recommend that proposed subsections AS 09.35.140(c)(3), (5) and (6) be eliminated. This would take away the requirement that a website "be used primarily to advertise real property under foreclosure", that the website have 5,000 unique visitors a month, and the website have senior management in Alaska. This would allow newspaper websites, bank websites, law firm websites, and Craigslist to qualify.

Thank you for the opportunity to provide information to the Committee on HB 108. If I can be of any further assistance, please don't hesitate to contact me.

Very truly yours,

GROH EGGERS, LLC



Robert H. Schmidt

cc: House Labor & Commerce Committee Members (via E-mail)



**AlaskaUSA**  
Federal Credit Union®

---

February 6, 2009

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

Re: HB 108-An Act relating to property foreclosures and executions

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,



William B. Eckhardt  
President



**First American  
Title Insurance Company**

**BRYAN S. MERRELL**  
REGIONAL COUNSEL  
February 5, 2009

RE: House Bill 108 *"An Act relating to real property foreclosures, to the sale of property on execution, and to deeds of trust."*

To Whom It May Concern:

This letter is written in support of House Bill 108, 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 in Alaska. I am a 20 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 produces related to such foreclosures, and acted as trustee in many cases as well.

HB 108 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

818 Stewart Street, Suite 800, Seattle, WA 98101

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bmerrell@firstam.com ▼ firstam.com



**Representative Jay Ramras**  
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Chair, Economic  
Development, Trade &  
Tourism  
Energy  
Military & Veteran Affairs  
Joint Armed Service  
State Capitol, Room 118  
Juneau, Alaska 99801-1182  
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# Alaska State Legislature



## House of Representatives

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Toll Free: (877) 465-3004

**House District 10**

### Fax

To: Terry Bannister  
Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover: 1

From: Jane W. Pierson

Date: April 3, 2009

Re: Final on HB108

---

Today the House Judiciary Committee heard HB108 (26-LS0318\A) please go final on the bill with the following amendment:

1. P.2 (as drafted)

Thank you, if you have any questions call.

Representative\_Jay\_Ramras@legis.state.ak.us