

HB

108

Alaska State Legislature

Session:

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Representative Jay Ramras House District 10

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Sectional HB 108 Property Foreclosures and Executions

3.18.10

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, inclusive of newspaper websites. Also, describes the requirements that Newspaper websites and 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) adjusts 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.

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) explains that a lien or nonpossessory interest must be recorded or notice given to the beneficiary or trustee before the recording of the notice of default.

Proposed 34.20.070(g) 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(h) 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(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 knows a personal representative has been appointed.

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

Proposed sec. 34.20.070(m) 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(n) 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 trust 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 ten days, prohibits the trustee from issuing the deed under certain conditions, and describes what the trustee must do when rescinding the sale.

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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 state agencies from the bonding requirements.

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

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Explanation of Changes Between SCCSHB108(L&C) 26-LS0318\T and Proposed CS version 26-LS0318\M

Sec. 2 AS 09.35.140(d)(2), Page 3. Lines 16-26, Deleted the following language "and has a total paid circulation or paid distribution of at least 500 copies or 10 percent of the total population of the judicial district, whichever is less" The circulation requirements were deleted since these are pervasively covered by the Second Class Mailing Permit. Hopefully, this will allow smaller papers to flourish and compete, and thus driving down the incredibly high price of legal notice publication.

Sec. 7 AS 34.20.080(a), Page 7, line 28. The word "escrow" was changed to "trust account." This is easier for trustees to follow.

Sec. 10. AS 34.20.080(g), Page 9, line 15 changes "five days" to "ten days". This allows more time to find and correct errors. This change is borrower-friendly since a property that goes to sale when it should not directly impact the borrower.

Sec. 13 AS 34.20.125(e), Page 11, lines 24-27, Deleted all language. This deletes the bonding exemption for title providers. Foreclosures involve complex procedures and large dollar amounts. Title agencies have no special expertisc warranting an exemption. Only state agencies are now exempted.

Explanation of Previous Changes to HB108

Sec. 2. AS 09.35.140(b). New language expands the list of qualified Internet sites, to newspapers of general circulation provided they meet the requirements of proposed AS 09.35.140(d) and are free to the public. Thus, if a newspaper qualifies to run legal ads it will be qualified to run the internet publication.

Sec. 4. AS 34.20.070(b). Removed the requirement that the notice of default must include language that the payment to cure the default must be made two days prior to the sale date due to the fact that the default can now be cured up to the date of sale.

AS 34.20.070(e) adds new conforming language to AS 34.20.070(b)(9), and gives an exception for deeds that were entered into before the effective date of the Act and provided for a different time period to cure the default before the sale.

Sec. 6 AS 34.20.070(e) clarified the time to the time of sale for curing the default and sums that need to be paid.

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.

26-LS0318M
Bannister
3/19/10

SENATE CS FOR CS FOR HOUSE BILL NO. 108()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

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. Publication of
 28 the notice must begin not later than the first day that the notice is published under
 29 (a)(2) of this section and must continue at least through the day in the fourth week that
 30 the notice is published under (a)(2) 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 person who is not covered by (1) of this
5 subsection,

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 where the place of sale is located, excluding a period when
20 publication is interrupted by a labor dispute or by a natural disaster or other casualty
21 that the publisher cannot control;

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

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

25 (5) is not intended primarily for a particular professional or
26 occupational group.

27 * **Sec. 3.** AS 09.35.142 is amended to read:

28 **Sec. 09.35.142. Action to establish newspaper or Internet website status.** A
29 person who owns a publication may bring an action under AS 22.10.020(g) to
30 establish that the publication is a newspaper of general circulation under
31 **AS 09.35.140. A person who owns an Internet website may bring an action under**

1 AS 22.10.020(g) to establish that the Internet website qualifies as an Internet
 2 website on which notices of sale may be published under AS 09.35.140(b)
 3 [AS 09.35.140(2)].

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

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

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

28 (c) Within 10 days after recording the notice of default, the trustee shall mail a
 29 copy of the notice by certified mail to the last known address of each of the following
 30 persons or their legal representatives: (1) the trustor [GRANTOR] in the trust deed;
 31 (2) the successor in interest to the trustor [GRANTOR] whose interest appears of

1 record or of whose interest the trustee or the beneficiary has actual notice, or who is in
2 actual physical possession of the property; (3) any other person actually in physical
3 possession of [OR OCCUPYING] the property; (4) any person having a lien or
4 interest subsequent to the interest of the trustee in the trust deed, where the lien or
5 interest appears of record or where the trustee or the beneficiary has actual notice of
6 the lien or interest, except as provided in (f) of this section. The notice may be
7 delivered personally instead of by mail.

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

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

12 (1) payment of the sum then in default, other than the principal that
13 would not then be due if default had not occurred, and foreclosure fees and costs
14 actually incurred by the beneficiary and trustee due to the default is made at any time
15 before the sale date stated in the notice of default or to which the sale is postponed;
16 and

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

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

27 (g) If the trustee delivers notice personally under (c) of this section to the
28 property or to an occupant of the property, the trustee may, notwithstanding (c) of this
29 section, deliver the notice up to 20 days after the notice of default is recorded. If there
30 is not a structure on the property and a person is not present on the property at the time
31 of delivery, the trustee may place the notice on the property, or as close as practicable

1 to the property if

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

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

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

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

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

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

22 (A) whose names and addresses are known to the beneficiary or
23 trustee; or

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

25 and

26 (2) publishing and posting the notice of the foreclosure as provided by
27 law for the sale of real property on execution, except that the notice must be titled "To
28 the Heirs or Devisees of (insert the name of the deceased person)" and include in the
29 body of the notice a list of the names of the persons who are known by the beneficiary
30 or trustee to be the heirs and devisees of the deceased person.

31 (k) If notice is given as required by (i) and (j) of this section, an heir or

1 devisee of the deceased person may not challenge the foreclosure on the ground that
2 the heir or devisee did not receive notice of the sale, unless the heir or devisee
3 challenges the foreclosure on this ground within 90 days after the sale.

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

6 (1) the trustor of the deed of trust under which the real property was
7 foreclosed;

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

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

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

12 (5) an heir to the real property;

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

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

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

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

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

23 (a) The sale authorized in AS 34.20.070 shall be made under the terms and
24 conditions and in the manner set out in the deed of trust. **The proceeds from a sale**
25 **shall be placed in a trust account until they are disbursed.** However, the sale shall
26 be made

27 (1) at public auction held at the front door of a courthouse of the
28 superior court in the judicial district where the property is located, unless the deed of
29 trust specifically provides that the sale shall be held in a different place, **except that a**
30 **trustee may also accept bids by telephone, the Internet, and electronic mail if the**
31 **trustee has taken reasonable steps to ensure that the bidding methods using the**

1 telephone, the Internet, or electronic mail are fair, accessible, and designed to
2 result in money that is immediately available for disbursement; and

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

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

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

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

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

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

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

27 (1) the beneficiary of the deed of trust being foreclosed until the
28 beneficiary is paid the full amount that is owed under the deed of trust to the
29 beneficiary;

30 (2) the persons who held, at the time of the sale, recorded interests,
31 except easements, in the property, that were subordinate to the foreclosed deed of

1 trust; the distribution under this paragraph shall be made according to the priority of
2 the recorded interest, and a recorded interest with a higher priority shall be satisfied
3 before distribution is made to the recorded interest that is next lower in priority;
4 however, if a person holds a recorded interest that is an assessment, the person is
5 entitled only to the amount of the assessment that was due at the time of the sale; in
6 this paragraph, "recorded interest" means an interest, including a lease, recorded under
7 AS 40.17;

8 (3) the trustor in the trust deed if the trustor is still the owner of the
9 property at the time of the foreclosure sale, but, if the trustor is not still the owner of
10 the property at the time of the foreclosure sale, then to the trustor's successor in
11 interest whose interest appears of record at the time of the foreclosure sale.

12 (g) The trustee may withhold delivery of the deed under (b) of this section for
13 up to 10 days after the sale. If, during the 10 days, the trustee determines that the sale
14 should not have proceeded, the trustee may not issue the deed but shall

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

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

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

27 (1) mail notice of the rescheduled sale date by certified mail to the last
28 known address of each of the persons identified by AS 34.20.070(c); and

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

31 (i) Unless a sale is rescinded under (g) of this section, the sale completely

1 terminates the rights of the trustor of the trust deed in the property.

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

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

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

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

13 (2) the attorneys for all of the beneficiaries or the attorneys for all
14 of the beneficiaries' successors in interest.

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

16 (b) The substitution must contain

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

18 (2) the names of the trustee, trustor, and beneficiary, and, if the
19 substitution is executed by the attorney for the beneficiary or successor in
20 interest to the beneficiary, the name, address, and Alaska Bar Association
21 identification number of the attorney;

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

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

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

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

29 **Sec. 34.20.125. Trustee bond required.** (a) Before performing the duties of a
30 trustee under AS 34.20.070 and 34.20.080, a person shall obtain a surety bond in the
31 amount of \$250,000 to protect the trustors and beneficiaries of trust deeds against

1 fraud or defalcation by the trustee in the performance of the duties.

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

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

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

21 (e) The bonding requirements of this section do not apply to a state agency,
22 including the Alaska Housing Finance Corporation and the Alaska Industrial
23 Development and Export Authority.

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

Chair, Judiciary
Chair, Economic Development,
Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Services
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 452-1146

Alaska State Legislature House of Representatives



While in Session
State Capitol, Room 118
Juneau, Alaska 99801-1182
(907) 465- 3004
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Representative Jay Ramras
District 10

Sponsor Statement HB 108 - Property Foreclosures and Executions (3/18/10)

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
- Creates an Internet publishing requirement for non-judicial foreclosures
- 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

ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras

Chairman

(907) 465-3004

Fax: (907) 465-2070

Representative_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324

Fairbanks, AK 99701



Committee Members:

Representative Nancy Dahlstrom,

Vice-Chairman

Representative John Coghill

Representative Bob Lynn

Representative Carl Gatto

Representative Max Gruenberg

Representative Lindsey Holmes

State Capitol, Room 120

Juneau, Alaska 99801

Explanation of Changes Between SCCSHB108(L&C) 26-LS0318\T and Proposed CS version 26-LS0318\M

Sec. 2 AS 09.35.140(d)(2), Page 3. Lines 16-26, Deleted the following language “and has a total paid circulation or paid distribution of at least 500 copies or 10 percent of the total population of the judicial district, whichever is less” The circulation requirements were deleted since these are pervasively covered by the Second Class Mailing Permit. Hopefully, this will allow smaller papers to flourish and compete, and thus drive down the incredibly high price of legal notice publication.

Sec. 7 AS 34.20.080(a), Page 7, line 28. The word “escrow” was changed to “trust account.” This is easier for trustees to follow.

Sec. 10. AS 34.20.080(g), Page 9, line 15 changes “five days” to “ten days”. This allows more time to find and correct errors. This change is borrower-friendly since a property that goes to sale when it should not directly impacts the borrower.

Sec. 13 AS 34.20.125(e), Page 11, lines 24-27, Deleted all language. This deletes the bonding exemption for title providers. Foreclosures involve complex procedures and large dollar amounts. Title agencies have no special expertise warranting an exemption. Only state agencies are now exempted.

Explanation of Previous Changes to HB108

Sec. 2 AS 09.35.140(b). New language expands the list of qualified Internet sites, to newspapers of general circulation provided they meet the requirements of proposed AS 09.35.140(d) and are free to the public. Thus, if a newspaper qualifies to run legal ads it will be qualified to run the internet publication.

Sec. 4. AS 34.20.070(b). Removed the requirement that the notice of default must include language that the payment to cure the default must be made two days prior to the sale date due to the fact that the default can now be cured up to the date of sale.

AS 34.20.070(e) adds new conforming language to AS 34.20.070(b)(9), and gives an exception for deeds that were entered into before the effective date of the Act and provided for a different time period to cure the default before the sale.

Sec. 6 AS 34.20.070(e) clarified the time to the time of sale for curing the default and sums that need to be paid.

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

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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

(3:23:10)

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. 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 a newspaper and 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) adjusts 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.

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 trust 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 ten 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 state agencies from the bonding requirements.

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



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Palmer, Alaska 99645
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www.mvfcu.coop

February 24, 2009

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

Re: HB 108 – Property Foreclosures and Executions

Dear Mr. Routh,

This letter is being written in support of House Bill 108 “An Act relating to real property foreclosures, to the sale of property on execution, and to deeds of trust.”

The proposed changes to the above referenced bill will clarify and update the current foreclosure process and language.

If there are any questions please don't hesitate to contact me at 745-9140.

Sincerely,

Al Strawn
CEO

/geg



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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



United Trustees Association

February 25, 2010

Honorable Hollis French
Chair, Senate Judiciary Committee
State Capitol, Room 417
Juneau, AK 99801

Re: HB 108

Dear Chairman French:

I write to you on behalf of the United Trustees Association and its members in regard to HB 108. The United Trustees Association ("UTA") is a nonprofit association whose membership consists of trustees, substitute trustees, foreclosure agents, posting and publishing companies and others in the deed of trust default services industry.

The latest version of HB 108 provides much-needed clarity and additional structure to the existing statutory scheme governing Alaska's nonjudicial foreclosures, and UTA generally supports the Bill. However, the UTA would like to bring the following concerns to your attention, *as important matters that should be considered for revision in the final version of the Bill.*

Period for Issuance of the Trustee's Deed Upon Sale

As specified in Section 10 of the Bill, the proposed new subsection of AS 34.20.080(g), provides that the time period within which a foreclosure trustee must issue a Trustee's Deed Upon Sale to a third party purchaser is five days. Presently, there is no maximum time period for issuance of the Trustee's Deed in Alaska. UTA believes that a five-day period is too short to allow bid funds to be remitted and/or cleared for deposit, for a final quality control review to be conducted, and for the Trustee's Deed Upon Sale to be generated and delivered to a third party purchaser. This is especially true when a foreclosure sale is cried in a remote borough and the auctioneer cannot make the afternoon overnight express mail cutoff so that the funds are not remitted to the trustee for processing until the second business day after the sale. In the case of any sale conducted after Wednesday, the intervening weekend would leave only three business days for the necessary action and delivery of the deed by the foreclosure trustee.

Other Western states have much more lenient statutory periods within which a Trustee's Deed Upon Sale can be issued. California Civil Code section 2924h provides that the foreclosure sale is deemed perfected as of 8:00 a.m. on the day of the sale if the Trustee's Deed is recorded within 15 days of the sale. While this is not an absolute statutory deadline, it is a reasonable and desirable standard to enjoy the benefit of the sale date perfection. Nevada Revised Statutes provide that the Trustee's Deed Upon Sale must be recorded within 20 days of the sale. Arizona Revised Statutes section 33-811 requires that the trustee deliver or record the Trustee's Deed Upon Sale within seven days. Oregon Revised Statutes require that the Trustee's Deed be issued within ten days of the sale. Thus, the UTA would recommend that the time period in AS 34.20.080(g) as presently proposed be increased to ten days. It would not appear that there would be any substantial detriment to interested parties to increase the period to ten days, especially when there is presently no deadline. If the legislature is not inclined to amend the Bill to provide ten days, at a minimum, UTA would recommend that the five day period be defined in terms of business days, not calendar days.

Deposit of Sale Proceeds

The proposed language in Section 7 of the Bill regarding the process of conducting a sale, found in the second sentence of AS 34.20.080(a) provides: "The proceeds from a sale shall be placed in escrow until they are disbursed." This provision seems misplaced. UTA recommends that this provision be placed in AS 34.20.080(b), in Section 8 of the Bill, just before the sentence that reads, "trustee shall execute and deliver to the purchaser a deed to the property sold." The basis for this recommendation is that a trustee would not want to deposit the third party purchaser's funds into an escrow until it is determined that a Trustee's Deed Upon Sale will be issued, after quality control review and verification of the availability of the bid funds by the issuing bank.


UTA is also concerned with the use of the term, "in escrow." It is unclear whether this terminology would require trustees to open a separate escrow account with a licensed escrow company for each sale for the disbursement of funds, or if it would be sufficient to deposit the funds into the trustee's separate surplus funds or trust account pending disbursement. Requiring a separate escrow to be opened for the deposit of funds from every foreclosure sale would entail additional time, cost and expense in the post-sale processing of the sale proceeds. Presently, the sale proceeds are deposited by the trustee into an operating account so that the checks to the foreclosing lender for the total debt can be processed timely and the refund checks to the third party purchaser can be generated in time to deliver with the Trustee's Deed Upon Sale. UTA believes that requiring an "escrow" to be opened with a separate company would be unnecessary and detrimental to the current efficiencies required in processing the sale proceeds. Thus,

February 25, 2010
Page Three
Chairman French

UTA suggests that the entire sentence "The proceeds from a sale shall be placed in escrow until they are disbursed," should be omitted from the Bill. However, to the extent that the legislature is concerned with the security of the funds in the event of the insolvency of the trustee, perhaps the language of the Bill could require deposit in a "trust account" as opposed to "in escrow." Without any revision to this provision as drafted, UTA feels that the required process is not clearly defined, and if the intent of the current terminology is that a separate escrow is required for each sale, this is unnecessary.

Respectfully submitted for your consideration.

Very truly yours,



Rande Johnsen
President

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.

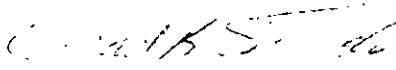
The Alaska Mortgage Bankers Association is dedicated to the preservation and improvement of the Mortgage Banking Industry through a proactive relationship with Federal and State legislators, industry agencies, and other housing trade organizations. Our members are kept informed about changes in mortgage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

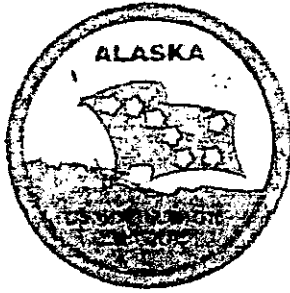
Our standing committees provide seminars, meetings, and general information for the purpose of education for our members and the public.

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



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.

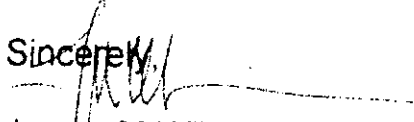
Dear Mr. Routh;

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. 34th 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 21st 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

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.
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(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

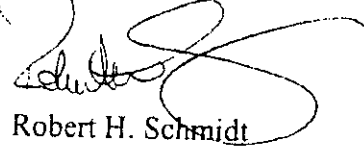
It is my belief that the only website that will qualify under the current HB 108 is USA-Foreclosure.com, which is half owned by Mr. Stephen Routh, whose law firm wrote HB108. Mr. Routh's law firm, with over 400 employees and offices in seven states, should not be granted monopoly power to conduct all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

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development,
Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Services
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Alaska State Legislature



House of Representatives

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House District 10

Memo

To: Senator Hollis French
Chairman Senate Judiciary Committee

From: Representative Jay Ramras

Date: March 23, 2010

Re: Hearing Request for HB108 – “Property Foreclosures and Executions”

Please accept this memo as a request for the Senate Judiciary Committee to have a hearing on HB108 – Property Foreclosures and Executions. Accompanying this memo please find the following documents:

- Sponsor Statement
- Proposed SCS for HB108() 26-LS0318\M
- Explanation of Changes
- Sectional for version \M
- SCSHB108(L&C) 26-LS0318\T
- REV Zero Fiscal Note
- Letters of Support

Representative_Jay_Ramras@legis.state.ak.us