

A BILL FOR AN ACT

To amend Title 11 of the Kosrae State Code to add Chapter 8, Property Mortgage; to create and establish the procedure and criteria for Mortgaging of real property in the State of Kosrae; and for other purposes.

BE IT ENACTED BY THE KOSRAE STATE LEGISLATURE

Section 1. Short Title. This act shall be known and may be cited as the “Kosrae State Mortgage Act of 2005.”

Section. Purpose. The purpose of this act is to establish a system of mortgage in the State of Kosrae which will induce lenders to make secured commercial and residential loans and insuring that borrowers who execute mortgages of real property in the State will have a comprehension of the nature and consequences thereof, and that the parties to the mortgage are protected against unfair practices. All provisions of this act shall be construed in such a manner as to best effectuate its purposes as set out herein.

Section 3. Amendment of Title 11. Title 11 of the Kosrae State Code is amended to add Chapter 8, as follows:

“Chapter 8. Property Mortgage”

Section 11.801. Definitions. As used in this act, unless the context clearly requires otherwise:

“(1) “Court” is a court of competent jurisdiction. In a judicial foreclosure, it is the court in which the action is pending.

(2) “Default” is a failure of an obligor to perform an act which the obligor is bound to perform.

(3) “Encumbrance” is an non-fee interest on or charge upon property.

(4) “FSM” is the Federated States of Micronesia.

(5) “Improvement” is any building or structure constructed, or any artificial condition maintained, upon property.

(6) “Lien” is a charge imposed in some mode upon specific property which is made the security for the performance of an act.

(7) “Mortgage” is a contract in which property is made the security for the payment of a debt, without the necessity of a change in possession and without the transfer of title.

(8) “Mortgagee” is a person who takes or receives a mortgage. This term also, where appropriate, refers to the mortgagee’s heirs, personal representatives, successors, and assigns.

(9) “Mortgagor” is a person who, having some part or all of title to the property, by written instrument pledges that property as security for a debt. This term also, where appropriate, refers to the mortgagor’s heirs, personal representatives, successors, and assigns.

(10) “Person” is an individual, corporation, partnership, government, government instrumentality, or other legal entity.

(11) “Property” is an interest in real property, which is capable of being transferred, including leasehold interests.

(12) “Springing lease” and “Springing lease mortgage” has the meaning given to them in Section 11.821 of this act.

(13) “State” is the State of Kosrae

(14) “State Recording Office” is the office in which original certificates of title to property in the State are to be recorded or registered.

Section 11.802. Right to possession. The mortgagee is not entitled to possession of the mortgaged property unless the mortgage expressly grants a right of possession in the mortgage or thereafter. After execution of the mortgage, the mortgagee may agree to deliver possession to the mortgagor without additional consideration. The mortgagor’s possession may not cumulatively exceed five years or satisfaction of the mortgage, whichever is sooner. The purchase at a foreclosure sale is entitled to immediate possession, notwithstanding the existence of any right of redemption.

Section 11.803. Security not be impaired. No mortgagee shall do any act which will impair the mortgagor’s security without the express written permission of the mortgagee.

Section 11.804. Property mortgagable. Any property not otherwise restricted by law may be mortgaged and shall be subject to foreclosure. No homestead or other exemption from execution shall apply to foreclosure of a mortgage.

Section 11.805. Heirs and devisees take subject to mortgage. Whenever property which is subject to a mortgage passes by succession or device, the successor or devisee is not entitled to have the decedent’s personal representative satisfy the mortgage out of the decedent’s estate to

satisfy the mortgage. Unless the mortgage is so satisfied out of the descendant's estate, the heir, or devisee takes property subject to the mortgage.

Section 11.806. Transfers made as security deemed mortgages. Except as otherwise provided by statute, every transfer of an interest in property made only as security for the performance of another act and every transfer or conveyance of property, by deed of trust or otherwise, executed and delivered to secure the performance of another act, shall be deemed a mortgage.

Section 11.807. Necessity of writing. A mortgage shall be created, amended, renewed, or extended only by a writing in English. All mortgage instruments shall contain a clause, conspicuously located on the first page of the instrument, notifying the mortgage in both English and the principal language of the State of Kosrae that:

(1) prior to signing the mortgage, upon request, and without cost, the mortgage is entitled to a translation of the mortgage instrument in the principal language of the State of Kosrae. The English document shall be the sole operative version. An error or errors in the translated version shall not affect the legal relationship between the parties unless it is proven that the error was willfully or recklessly caused by the party to be charged; and

(2) the mortgage is a binding legal instrument and it is recommended that the mortgagee have the instrument reviewed by an attorney.

Section 11.808. Requisites for recording.

(1) No mortgage shall be received for recording unless it is executed in accordance with the requirements of Sections 11.806 and 11.807 of this act and contains:

- (a) the names and mailing addresses of the mortgagor and mortgagees;
- (b) the legal description of the property affected; and
- (c) the principal amount of the secured indebtedness.

(2) Every mortgage and every amendment, renewal, and extension thereof shall be acknowledged or proven, as provided in the next subsection, and recorded in the State Recording Office.

(3) For purposes of this act, the proof or acknowledgement of an instrument affecting title to or any interest in property may be made before:

- (a) a judge of the Supreme Court of the FSM

- (b) a judge of the Supreme Court of the State of Kosrae;
- (c) a judge of any other court of the State of Kosrae;
- (d) a Clerk of Court of any court referred to above;
- (e) the official in charge of the State Recording to above;
- (f) any subordinate of any of the above officials duly authorized to act in the name of the official; or
- (g) any notary public duly authorized to acknowledged instruments in any state or territory of the FSM or the United States if the notary public complies with the law of that jurisdiction.

Section 11.809. Effect of failure to record. An unrecorded mortgage is not void, but it may lose priority to other transfers of or encumbrances on the mortgage property in accordance with generally applicable laws regarding recordation of land transfers.

Section 11.810. Instruments made with interest of defraud. Any mortgage instrument affecting an estate in property, including every charge upon property or upon its rents or profits, made with the intent to defraud prior or subsequent purchasers thereof or encumbrances thereon, is hereby declared to be void as against every purchaser or encumbrancers for value of the same property or the rents or profits thereof.

Section 11.811. Service of notice on mortgagor.

(1) All notices to the mortgagor required by this act must be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, to be mortgagor or, if applicable, the mortgagor's personal representative.

(2) The mortgagor may designate in the mortgage instrument the name and address of a personal representative within the State of Kosrae for the service of notice if the mortgagor cannot be found in the State of Kosrae after a reasonable search or if one week has elapsed since the proper mailing of the notice of the mortgagor. The name and address of the personal representative may be changed from time to time upon request of the mortgagor by written notice to the mortgagee and with written evidence that the mortgagee has received such notice.

(3) A notice to the mortgagor shall be effective on the earliest of:
a. the date the notice is received or refused by the mortgagor or, if applicable, the mortgagor's personal representative;

- b. one (1) week after the proper mailing of the notice to the mortgagor's personal representative if a personal representative has been designated; or
 - c. one (1) week after the proper mailing of the notice to the mortgagor if no representative has been designated.
- (4) Except as may be otherwise agreed in writing by the mortgagor and the mortgagee, in the event there is more than one mortgagor, proper notice to each mortgagor holding at least a 25% interest in the mortgaged property shall constitute service upon all of the mortgagors.

Section 11.812. Service of other notices; posting.

(1) Any notice required by this act to be given to a person other than the mortgagor may be delivered personally. If not so delivered, it shall be given as provided in this act with respect to such notices or, if there is no such provision, by depositing the notice in the FSM mail addressed to the last known address of the intended recipient. Unless otherwise provided in this act, a mailed notice is effective upon mailing, regardless of when or whether it is received. A notarized certificate of mailing shall be prima facie evidence of mailing.

(2) With respect to a notice which is posted under any section of this act, once the notice is so posted, the fact that it has been destroyed, removed, or damaged by natural causes or by persons not under the direction or control of the mortgagee shall not invalidate, terminate, or void such notice.

Section 11.813. Assignments, subordination and waivers. Nothing in this act shall preclude the assignment, subordination, or waiver of a mortgage. Except as provided in Section 11.813. of this act, the recordation of any assignment, subordination, or waiver shall operate as constructive notice to all persons from the date and time of the recordation.

Section 11.814. Notice to mortgagor of assignment. When a mortgage is executed as security for money due or to become due on a promissory note, bond, or other instrument, recordation of the assignment or the mortgage is not itself sufficient notice to the mortgagor or other person obligated to pay the money, so as to invalidate any payment made by the mortgagor or other person to the holder of such note, bond, or other instrument. At the time of the assignment, a notice in substantially the following form shall be given to the mortgagee or other person pursuant to Section 11.810 of this act:

“Your promissory note and mortgage of (date) to (payee-mortgagee) has been assigned to (assignee). All payments shall hereafter be made to (assignee) at (assignee’s address)”

Section 11.815. Assignment of debt carries security. The assignment of a debt secured by a mortgage carries with it the mortgage unless the assignment provides to the contrary.

Section 11.816. Certificate of discharge required. When any mortgage has been satisfied, the mortgagee must execute, acknowledge, and deliver to the mortgagor a release of mortgage or a certificate of discharge thereof, so as to entitle such certificate to be recorded. Any mortgage who, after demand from the mortgageor, for a period of one (1) month fails or refuses to deliver a release or certificate of discharge shall be liable for all damages which such mortgagor may sustain by reason of such failure or refusal and shall also forfeit to the mortgagor the sum of \$300.00. Upon satisfaction of the mortgage, the mortgagee shall also deliver to the mortgagor the mortgage and the note so paid or satisfied with, if requested, satisfaction of the mortgage and note acknowledged on the margin thereof.

Section 11.817. Waiver by mortgagor of statutory rights. Any agreement entered into by a mortgagor at the time of or in connection with the making or renewing of any loan secured by a mortgage or other instrument creating a lien on property, whereby the mortgagor agrees to waive any right or privilege conferred upon the mortgagor by this act, shall be void and of no effect.

Section 11.818. Acceleration of principal. Acceleration of the principal and obligations under the note or mortgage as a result of default shall be valid. No acceleration of unpaid principal of the underlying obligation shall be effective until 1 month after the notice of default provided for in Section 11.822 has been sufficiently given sufficiently given as provided for in Section 11.811.

Section 11.819. Mortgagee’s remedies in the event of default. In the event of default by the mortgagor in the performance of the mortgagor’s obligations under the mortgage or note or other instrument secured by the mortgage, the mortgagee may elect to do any or all of the following:

- (1) commence an action for specific performance or injunctive relief or a common count or counts for payment of money by the mortgagor, guarantor, or other person obligated thereunder. If the judgment rendered in such action orders full performance of the mortgagor’s entire obligation, or payment of the entire sum of which the mortgagor is indebted, satisfaction by the mortgagor of the judgment shall act to discharge the mortgage;

(2) foreclose upon the property judicially or, if the conditions therefore are met, non-judicially; and

(3) exercise any other right or remedy permitted by law or in the mortgage instrument which is consistent with the rights and privileges of the mortgagor as set forth in this act.

Section 11.820. Conditions for non-judicial foreclosure. The mortgage property may be foreclosed upon without resort to judicial action if and only if:

(1) the mortgagor has granted the mortgagee a power of sale in the mortgage instrument;

(2) the mortgagee is:

a. the State Government or an instrumentality thereof;

b. the FSM National Government or an instrumentality thereof;

c. a bank licensed to do business under Title 29 of the Code of the FSM; and

d. any other bank, development bank, credit union, or other organization engaged primarily in the business of making or guarantying loans and properly authorized to do business in the FSM or the State; and

(3) the interest in property being foreclosed upon is:

a. the leasehold interest under a leasehold mortgage;

b. only the leasehold interests under a springing lease mortgage; or

c. both the leasehold and freehold interests under a springing lease mortgage.

Section 11.821. Springing lease mortgages.

(1) For purposes of this act, a “springing lease mortgage” is a mortgage granted by the owner of fee simple title to property in which the interest mortgaged is or includes the interest of leasee under a lease of property from the mortgagor to the mortgagee which does not take effect unless and until that leasehold interest has been sold in a foreclosure sale or conveyed in lieu thereof. Such lease is called a “springing lease”.

(2) A springing lease mortgage may permit foreclosure upon just the leasehold interest or upon both the leasehold and the freehold interests. If it permits foreclosure upon both, the foreclosure may be upon either interest alone or upon both, in which case each interest shall be offered the leasehold interest alone, the freehold interest alone, or both, but the freehold interest may not be offered alone

without the prior written consent of the mortgagor, given after any of the defaults upon which the foreclosure is based.

- (3) If both the leasehold and the freehold estates are offered for sale at foreclosure, only one of the estates may be sold. Based upon whether the highest bids received for each of the estates are sufficient to satisfy the outstanding indebtedness and any other sums payable out of the foreclosure proceeds, the estate to be sold shall be determined as follows:
 - a. If each of the highest bids is sufficient, the mortgagor may, by written notice to the person conducting the sale, elect whether the leasehold estate or the freehold estate shall be sold. Such election shall be in writing and must be received by the mortgagee and (if different) the person conducting the sale within one (1) week after the sale to be effective.
 - b. If only the bid for the leasehold estate is sufficient, the leasehold estate shall be sold.
 - c. If any other case, the mortgagee shall elect whether to sell the leasehold estate or the freehold estate.

(4). If the leasehold estate is sold alone in a foreclosure sale or by conveyance in lieu thereof, the springing lease shall become effective as of the date of the sale or conveyance, and the transferee of the leasehold estate shall become the lease under the lease.

(5) A springing lease used in connection with a springing lease mortgage shall be enforceable notwithstanding the common law rules against perpetuities and unreasonable restraints on alienation or any other rule based on the uncertainty or remoteness of vesting of the leasehold estate.

Section 11.822. Notice of default prior to foreclosure. Not less than one (1) month prior to the filing of the pleading requesting foreclosure in the case of a judicial foreclosure or the giving of the notice of commencement of foreclosure in the case of a non-judicial foreclosure, written notice of default shall be served as provided in Section 11.811 of this act. The notice shall be written in English and in the principal language of Kosrae State and shall contain:

- (1) the legal description of the mortgage;
- (2) the date and amount of the mortgage;

- (3) a statement of the default, including the amount due to on principal, interest, and other sums, stated separately, to the extent the default is monetary;
- (4) a statement that if the amount due is not paid or the other defaults are not cured within one (1) month from the date of service, the mortgagor shall be in default and the mortgage may be foreclosed; and
- (5) provided the note or mortgage so permit and the mortgagee so elects, a statement that the obligations shall be accelerated if the amount due is not paid or the other defaults are not cured within one (1) month from the date service. If that period elapses without a full cure being affected, and unless otherwise expressly provided in the mortgage or agreed by the mortgage, the indebtedness shall be automatically accelerated.

Section 11.823. Commencement and conduct of non-judicial foreclosure.

- (1) A non-judicial foreclosure is commenced by giving a notice of commencement of foreclosure;
- (2) A notice of commencement shall be in English and the principal language of Kosrae State and shall contain:
 - a. a legal description of the property;
 - b. the date and amount of the mortgage;
 - c. the recording date and document number of the mortgage, if recorded;
 - d. the date on which and the method by which the notice of default prior to foreclosure was given to the mortgagor;
 - e. a statement of the continuing and an new default, including the amount due on principal, interest, and other sums, stated separately, to the extent the default is monetary. If the maturity of the principal has been accelerated, the statement shall include the amounts due both with and without such acceleration;
 - f. a statement that the default identified in that notice of default has not all been cured;

- e. a statement of the note or other obligation secured by the mortgage and the amount claimed to be unpaid thereon; and
- f. the name and addresses of all persons having or claiming an interest in the property which is junior to the mortgage, all whom shall be made defendants in the action.

(3) No person holding a conveyance from or under the mortgagor or having a lien on the mortgaged property, which conveyance or lien does not appear of record one (1) week before the filing of the complaint for foreclosure, need be made a party to such action, and the judgment therein rendered, and the proceedings therein had, shall be conclusive against the person holding such unrecorded conveyance or lien as if that person had been a party to the action.

(4) If, upon trial in such action, the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest, costs, and attorney's fees and expenses, and shall render judgment for the sum so found due and order that the same be paid into the court and that any non-monetary default be cured within 3 months after the date of the order.

(5) If the order referred to in subsection (4) is not complied with, the court shall order that the mortgaged property, or so much of it as may be necessary, be sold at a public place and by a person designated by the court.

Section 11.825. Cure rights during foreclosure.

- (1) A default may be cured at any time prior to the foreclosure sale. Payment shall be made to the mortgagee in the case of a non-judicial foreclosure or to the court in the case of a judicial foreclosure. To be effective, the cure must include payment of reasonable costs, including attorney's fees and expenses, incurred by the mortgagee. The cure must also include the entire amount of principal, if any, due by reason of acceleration of the debt unless:
- a. the cure is made within 3 months after the effective date of the notice of commencement in the case of a non-judicial foreclosure or after the court order referred to in Section 11.824(4) of this act in the case of a judicial foreclosure; and
 - b. no prior acceleration of the debt has been avoided and reinstatement of the debt permitted under this section.

- (2) In the event of a timely cure, the foreclosure shall be discontinued. If the debt was accelerated and the cure was timely and complete but for the portion of the principal due by reason of acceleration, as permitted under subsection 91), the obligations and mortgage shall be reinstated and remain in full force and effect as if no default had occurred.
- (3) A cure may be effected by the mortgagor, any other person obligated on the debt, or the holder of any interest in the mortgaged property which is junior interest, the holder shall have a lien on the mortgaged property for the cost of the cure, equal in priority to that of the junior interest.

Section 11.826. Notice of foreclosure sale.

- (1) A foreclosure sale may not be held until:
 - a. the cure period provided for in Section 11.825 this act elapsed without a cure being effected.
 - b. In the case of a judicial foreclosure, the court has ordered a sale; and
 - c. 3 weeks have elapsed after a notice of sale was property given.
- (2) The notice of sale shall be in both English and the principal language of the State of Kosrae and shall contain:
 - a. the legal description of the property;
 - b. the names and addresses of the mortgagor and mortgagee;
 - c. the recording date and document number of the mortgage, if recorded;
 - d. the date, time, and place of sale;
 - e. the name and address of the person conducting the sale; and
 - f. a statement of total amount of money due under the mortgage as of the date of notice and expected to be due as of the date of sale.
- (3) The notice of sale shall be effective when it has been:
 - a. served upon the mortgagor as provided in Section 11.811nof this act;
 - b. recorded in the State Recording Office;
 - c. mailed to the holder of any encumbrance on the property which is junior in priority to the mortgagee and which the mortgage intends

to affect by the foreclosure. No such mailing shall be required with respect to any junior encumbrance holder for whom a mailing address is not provided of record or whose encumbrance was not recorded in the State Recording Office at least one week before the date on which the notice itself is recorded.

- d. Posted in a prominent place within the municipality or village in which the property is located;
- e. Posted on the property; and
- f. Announced on the public radio station on three separate days.

(4) If it is impossible to hold the sale at the noticed time and place or if the mortgagee so requests in writing, the person conducting the sale may postpone the sale by making a public announcement at the time and place previously noticed for the sale. If the postponement is for more than 2 weeks, notice of the postponement shall also be given in the same manner as provided in subsection (3) at least 1 week prior to the new sale date.

Section 11.827. Conduct of foreclosure sale.

(1) A foreclosure sale may be conducted by sealed bids or open auction as determined by the person conducting the sale or, in the case of a judicial foreclosure, by the court. The sale shall be for cash, tendered promptly by the winning bidder upon announcement or the winner, except that the mortgagee may credit bid all or part of the amounts secured by the mortgage.

(2) If the debt secured by the mortgage is not all due, the sale shall cease as soon as sufficient property has been sold to pay the amount due, with costs. As more money becomes due thereafter, more of the property may be sold as directed by the court, upon motion, in the case of a judicial foreclosure or by the mortgagee in the case of a non-judicial foreclosure. But if the property cannot be sold in portions without injury to the persons interested in the property, the whole shall be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is appropriate.

(3) After the sale and upon payment of the sale amount in a foreclosure without right of redemption, the person conducting the sale shall execute, acknowledge, and deliver a good and sufficient deed, without warranty of title, to the purchaser.

(4) After the sale and upon payment of the sale amount in a foreclosure without right of redemption, the person conducting the sale shall execute, acknowledge, and deliver to the purchaser a certificate of sale and record a duplicate thereof in the State Recording Office. The certificate shall state the date of judgment (if any) under which the sale was made, the names of the parties, the legal description of the property sold, the price bid for each district lot or parcel, and the period during which the property is subject to redemption. At the expiration of the time for the redemption of such property, if the same is not redeemed, the person conducting the sale or his successor shall execute, acknowledge, and deliver a good and sufficient deed, without warranty of title, to the purchaser.

(5) The deed referred to in subsection (3) or (4) shall vest in the grantee all the right, title, and interest of the mortgagor in and the property sold, at the time the mortgage was executed or subsequently acquired, and shall be a bar to all claim, right, or equity of redemption in or to the property by:

- a. in the case of a judicial foreclosure, the parties to the action;
- b. in the case of non-judicial foreclosure, any person who received a mailed notice under subsection 11.826(3) © if this act to whom no mailed notice was required under the express terms of that subsection.
- c. Any person whose interest or claim thereof was not recorded in the State Recording Office at least 1 week before commencement of the foreclosure; and
- d. The heirs, personal representatives, successors, and assigns of any of the foregoing.

Section 11.828. Application of proceeds. The proceeds of a foreclosure sale shall be applied in the following order to the:

- (1) costs of sale;
- (2) costs of collection and foreclosure, including reasonable attorney's fees and expenses;
- (3) other amounts due under the mortgage (excluding principal and interest);
- (4) interest due under the mortgage; and
- (5) principal due under the mortgage.

If there is any surplus, it shall be deposited with the court for distribution to the mortgagor or other person or persons entitled thereto, as ordered by the court.

Section 11.829. Deficiency Judgment. If the proceeds of a foreclosure sale are insufficient to pay the entire debt, including costs, the court, upon motion (or upon commencement and hearing of a new action if none is then pending), shall give a judgment against the mortgagor or other person personally liable for the debt for the balance remaining due to the mortgage, upon which execution upon the assets of the judgment debtor shall be issued immediately if the balance is all due at the time of the rendition of the judgment.

Section 11.830. Vacation of sale. Upon motion by an aggrieved person filed within 1 year after the date of sale, the court may vacate a foreclosure sale and order a new sale upon a finding that there was fraud in the procurement of the foreclosure decree, the sale was improperly, unfairly, or unlawfully conducted, or the sale was otherwise so tainted by fraud that to allow it to stand be inequitable.

Section 11.831. Redemption.

(1) This section shall apply only to a foreclosure sale at which freehold interest in property was sold.

(2) The mortgagor may redeem from the purchaser all the property sold at such a foreclosure sale within 6 months from the date of the sale upon paying to the purchaser the purchase price, with interest thereon at 12% per annum up to the time of redemption. In addition, the mortgagor shall pay:

- a. The amount of any taxes or assessments;
- b. Any costs or sums paid for fire insurance, management, maintenance, upkeep, or repair of improvements located on the property; and
- c. Any sums paid on a prior obligation secured by the property to the extent such payment was necessary for the protection of the purchaser's interest which the purchaser paid after purchase, together with interest thereon at the rate stated above.

(3) In the event of a disagreement between the purchaser and the mortgagor as to whether any sum demanded by the purchaser is a proper charge to be added to the amount required for redemption, the following procedures shall apply:

a. The mortgagor shall deposit with the court the amount demanded by the purchaser, less the amount in dispute, and shall at the same time file with the court a written petition setting forth specifically the item or items demanded to which the mortgagor objects, stating the reasons for such objections, and asking that such amount be determined by the court. In no event shall the amount deposited with the court be less than the purchase price paid by the purchaser at the foreclosure sale, plus interest thereon from the date of purchase to the date of deposit with the court at 12% per annum, plus an amount equal to 10% of the purchase price.

b. Upon receipt of the deposit and petition described in subsection (a), the court shall fix a day, not less than 2 weeks nor more than 1 month from the date of such filing, or if the court is not in session, not less than 1 week nor more than 2 weeks from the day it again sits, whichever is greater, for hearing the mortgagor's objections.

c. The mortgagor shall cause a copy of the petition and a notice of hearing, giving the time and place thereof, to be served upon the purchaser not less than 2 weeks before the day of the hearing.

d. On the day fixed for the hearing, the court in which the order or sale or execution was originally issued shall determine, by order duly entered in the minutes of said court, the amount required for redemption, either upon affidavit or upon evidence which is satisfactory to the court. If the redemption amount so determined is greater than the amount deposited with the court, the redemptioner shall pay the difference to the court within 1 week. When the amount deposited with the court is sufficient to pay the redemption amount, it shall forthwith be paid to the purchaser.

(4) Upon receipt of the redemption amount, the purchaser shall execute, acknowledge, and deliver to the redemptioner a certificate of redemption containing:

- a. the names of the purchaser and redemptioner;
- b. the claim, instrument, or judgment under which the redemptioner derives the right to redeem;
- c. the date of the redemption and the amount for which it was made; and
- d. the legal description of the redeemed property.

(5) From the time of sale until a redemption, the purchaser is entitled to receive, from the tenant(s) in possession, the rents of the property sold or the value of the use

and occupation thereof, but any rents or profits from the property received by the purchaser or the purchaser's assigns before the redemption, less reasonable expenses incurred in the production of such rents and profit and a reasonable management fee, shall be credited against the redemption amount to be paid. If the redemptioner, before the expiration of the time allowed for redemption, demands in writing of the purchaser a written and verified statement of the amounts of rents and profits received and related expenses incurred, the period for redemption shall be extended for a period of 3 weeks after the normal expiration of the redemption period.

- (6) Under no circumstances shall the redemption period be extended, by the court or otherwise, or more than 3 months past the normal expiration of the redemption period except with the prior written consent of the purchaser. If a proceeding to determine the redemption amount is pending at the end of said 3 months, the purchaser or the right of redemption shall be lost. If it is later determined that the redemption amount should have been lower, the person redeeming shall be entitled to a judgment against the purchaser for any excess paid.
- (7) No action to recover property or any interest therein based on any claim or color of title originating, accruing, or arising under the parties to the mortgage before a foreclosure sale shall be commenced after expiration of the redemption period.

Section 11.832. Injury to property restrained.

- (1) The court by injunction, for good cause shown, may restrain any person in possession of the property from doing any injurious act to the property during the existence of the mortgage until the completion of foreclosure, including any redemption period.
- (2) A receiver may be appointed where it appears that the mortgaged property is in danger of substantial waste, the income therefrom is in danger of being lost, or the
- (3) Property is or may become insufficient to discharge the debt which it secures, and that affirmative action is needed to prevent such occurrences.

Section 11.833. Discharge of state mortgage. Every mortgage which has not been renewed or extended of record within 15 years after its due date, or within 20 years after

recording of the mortgage if no due date is shown in the mortgage, shall be discharged of record by an order of a judge of the State Supreme Court upon application of any interested person, with notice to the mortgagee then shown of record. The order shall be recorded in the State Recording Office. No such discharge may be ordered while a foreclosure is pending.

Section 11.834. Legal tender. Unless otherwise provided by law, a mortgage may require all mortgage payments to be made in the coin and currency of the United States, and all purchases of property at foreclosure sales and all redemption as provided in this act shall be made in coin and currency of the United States.

Section 11.835. Improvements by mortgagee prior to sale. After commencement of a foreclosure, the mortgagee may apply to the court to be allowed to make repairs or to maintain the property. If such an application is granted for good cause shown, the mortgagee may make such repairs or maintain the property as allowed by the court up to the time of sale. All expenditures shall be a cost of the sale which are recoverable by the mortgagee.

Section 11.836. Foreign citizens as mortgages. A non-citizen of the FSM may be a mortgagee under this act. A non-citizen may also be the purchaser at a foreclosure sale, but only if and to the extent that the interest in property being sold (for example, a leasehold) is one which a non-citizen may legally own under applicable FSM and State Laws. Under the provisions of this act, mortgage creates a lien on the land and does not pass title to the mortgagee.

Section 11.837. Recovery of attorney's fees. Where a mortgage or this act provides for a party to recover that party's attorney's fees and expenses from another party, and except as may be further limited in the circumstances, without reference to any legally imposed maximum stated in absolute or percentage terms.

Section 11.838. Interpretation.

- (1) If any portion of the mortgage documents, including but not limited to the promissory note, notices, and other instruments affecting the same, is translated from English to any other language, and a conflict results from such translation, the English version shall prevail.
- (2) Whenever possible, this mortgage act shall be interpreted in such a manner as to give it full force and effect as a binding obligation upon the mortgagor to the mortgagee. If any provision of this act or its application to any person or circumstance is ever held invalid or unenforceable, the remainder of the act shall

not be affected thereby and there shall be substituted a valid and enforceable provision as similar to the invalid or unenforceable provision as may be possible.

Section 11.839. Prospective effect.

- (1) The provisions of this act shall have prospective effect only and shall not apply to mortgages, deeds of trust, or such instruments entered into before the effective date of this act.
- (2) Any mortgage or deed of trust law superseded by this act shall nevertheless continue in effect with respect to any mortgage, deed of trust, or other such instrument which was governed by that law before the effective date of this act.

Section 4. Effective Date. This act shall take effect upon the approval by the Governor, or upon its becoming law without such approval.

PASSED BY THE EIGHT KOSRAE STATE LEGISLATURE ON THE 02ND DAY OF JUNE, 2005.

/s/ Lyndon H. Jackson
Speaker, 8th Kosrae State Legislature

Attested by: /s/ Tosie K. Elley
Chief Clerk

Rensley A. Sigrah
Governor, State of Kosrae

Date: _____

Become law without signature