DIVISION OF LANDS AND SURVEYS — OFFICIAL FILE

PART 1

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R011-2167-NO.3 1 of 5

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March 21, 1975
Serial:LS14900
File:178.3.167

Special Assistant for Legislative Affiars

Director, Resources and Development

Senate Bill 6-142, an Act "Declaring certain matters public records, and providing for the right of public access to the same, and for other purposes."

This Department has reviewed the subject legislation; and, we find that although the general intent of the Bill is felt to be desirable that we cannot support its enactment into law due to the generality of the definition of "public record".

While there are definite exceptions which are specifically excluded from the definition, our reading of the Bill would make all documents, working papers, memorandum, etc., contained in the Administration's files, whether in final form or in draft form, available to the public. This is particularly apparent in the catchall phrasing contained in Subsection (3)(o) of Section 3 of the Bill.

We note the phrase "and any other records, ..., or statements affecting the general public...." in Subsection (3) (o) of Section 3. This apparently is an attempt to allow denial of access to records which do not affect the general public. However, we believe that it would be very difficult to determine which records do not affect the general public and the Bill makes no provision for making such a determination nor is there a definition of this phrase. We believe a case could be made that any piece of paper contained in the Administration's files in some indirect way affects the general public. The concept of public access to records which have direct effect and for which the general public has a need to know is basic to a democratic form of Government. However, the general public does not need to know what individuals personally feel on a particular issue or policy as expressed in a departmental memorandum. Only the final departmental position on the issue or policy is relevant to the public.

Therefore, if enacted into law the Bill would provide the basis for harassment of individual programs or personalities that might be in disfavor among a particular segment of the public. It is not felt that the enactment of this type of legislation is in the best interests of the public.

R011-2167
NO. 3
1 of 5

TT 1053 (REV. 3-71) *(Other Forms Obsolete)*

Thus, we recommend that the Bill be vetoed by the High Commissioner with a recommendation to the Congress that the phrase "public records" be approached in the same particularity as the exceptions to the definition. This would then provide the public with access to records which are of direct concern to individuals and for which individuals would have reason to have access, but at the same time would protect programs and individuals from harassment.

Eusebio Rechucher

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Eusebio Rechucher

ORIGINATOR
LANDS & SURVEYS

March 21, 1975
Serial: LS14901
File: 178.3.167

Special Assistant for Legislative Affiars

Director, Resources and Development

Senate Bill 6-143, an Act "To amend Paragraph (a), Subsection (2) of Section 501 of Title 5 of the Trust Territory Code to allow a jury trial in eminent domain proceedings; and to amend Section 513 of Title 5 to allow each district to adopt jury trial proceedings selectively and for other purposes."

This Department has reviewed the subject legislation and we have concluded that while we are sympathetic to the concept of jury trials for all criminal cases and for most civil suits, we cannot endorse the concept with regard to eminent domain proceedings.

As you are aware land in general is a very emotional issue in the Trust Territory and we believe you would agree that the use of eminent domain to obtain land for public purposes has become an extremely volatile issue. We believe this situation to be unjustified; however, the causes of this situation are not relevant to this writing but only that the situation exists.

With this type of emotional feeling being embodied in most people of the Trust Territory, it would be extremely difficult, if not impossible, for the selection of an impartial and unemotional jury before which the Government could obtain a fair hearing.

The basic statutes of the Trust Territory Code provide for the award of just compensation for the taking of lands by the Government. In the United States "just compensation" would and generally does bear some relation to the fair market value of the land taken usually as determined by professional appraisal. Fair market value for land in the United States does not have an emotional component, even though some people in the United States do have emotional feelings toward land. The story of the little old lady sitting on the front porch of the house she has lived in all her life with a shotgun on her lap in the face of approaching bulldozers constructing a highway points out this fact. However, the little old lady's land was taken by the Government by eminent domain and the final award of just compensation for the taking as determined by a jury would not be based on sentimental or emotional value but on what the jury concludes the little old lady would have received if she has tried to sell the land on the open real estate market.

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TT 1053 (REV. 3-71) *(Other Forms Obsolete)*

We realize that it is difficult to transfer this concept to an area where land plays such an important role in the day to day lives of the people and where great emotional attachment is placed on land. However, we know of no realistic way of placing a price tag on emotional and traditional values.

The situation is further complicated in that there is not an open real estate market in the Trust Territory and the few transactions of record can give a very distorted picture of value. The only equitable basis for determining fair value in the Trust Territory that this Department has been able to be guided by is expected monetary return from the most practical use of the land. This value, however, is difficult to determine and only persons with a background in appraisals based on economics and familiar with the Territory would be competent to undertake such a task. Generally, of the appraisals done for the Government under contract there has been heavy emphasis on economic factors.

The Government would then be offering as just compensation what it believes to be the fair economic value of the taken land, while the jury would be including emotional and traditional values into what it believes to be just compensation. This clearly points out conflict in what different groups consider just compensation.

We, hence, believe that if there are to be jury trials in eminent domain proceedings that the definition of just compensation should be defined to be what the jury believes is the fair economic value of the taken land. Even then it is believed the Government would be at a great disadvantage.

Therefore, we must recommend that the subject Bill be vetoed by the High Commissioner.

Eusebio Rechucher

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Special Assistant for Legislative Affiars March 21, 1975

Director, Resources and Development

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Therefore, we must recommend that the subject Bill be vetoed by the High Commissioner.

Eusebio Rechucher

D/R&D

MAR 12 1975

Attorney General

Special Assistant for Legislative Affairs

Senate Bill 6-143, an Act "To amend Paragraph (a), Subsection (2) of Section 501 of Title 5 of the Trust Territory Code to allow a jury trial in eminent domain proceedings; and to amend Section 513 of Title 5 to allow each district to adopt jury trial proceedings selectively; and for other purposes."

The above legislation was enacted during the First Regular Session, Sixth Congress and was received by our office on Tuesday morning, March 11.

We would appreciate your review of this legislation and receipt of your comments by Friday, March 21.

N. Neiman Craley, Jr.

cc: Director/Public Affairs
Director/Resources and Development
All District Administrators
Director/Territorial Affairs

SIXTH CONGRESS OF MICRONESIA

FIRST REGULAR SESSION, 1975 SENATE BILL NO. 6-143

AN ACT

To amend Paragraph (a), Subsection (2) of Section 501 of Title 5 of the Trust Territory Code to allow a jury trial in eminent domain proceedings; and to amend Section 513 of Title 5 to allow each district to adopt jury trial proceedings selectively; and for other purposes.

BE IT ENACTED BY THE CONGRESS OF MICRONESIA:

Section 1. Paragraph (a), Subsection (2) of Section 501 of Title 5 of the Trust Territory Code is hereby amended to read as follows:

"(a) In civil actions in the Trial Division of the High Court, where the amount claimed or value of the property involved exceeds one thousand dollars exclusive of interest and costs, the parties shall be entitled to a trial by a jury of six persons, of all factual (as distinguished from legal or equitable) issues, to the same extent and under the same circumstances that they would be entitled to a trial by jury if the case were pending in a United States District Court and were within the jurisdiction of that court; and the Federal Rules of Civil Procedure heretofore or hereafter promulgated, which are not inconsistent with this Subsection, shall be applicable so far as all matters affecting trial by jury are concerned; PROVIDED, HOWEVER, that there shall be no right to trial by jury in actions against the Trust Territory specified in Subsection (3), Section 251, Chapter 11, Title 6 of this Code, and for annulment, divorce, and adoption."

Section 2. Section 513 of Title 5 of the Trust Territory Code is hereby amended to read as follows:

"Section 513. Application of Chapter--Adoption by District Legislature. This Chapter shall have no force and effect in any district whose district legislature has not adopted it, but the same may be adopted as to any district of the Trust Territory by an act of the district legislature thereof having the force and effect of law. After the effective date of such an act, all trials in that district subject to the terms hereof shall be governed by this Chapter; PROVIDED, that nothing in this section shall be construed to prohibit any district from adopting a law which shall provide for jury trial in less than all of those types of cases permissible under Section 501 of this Title."

Section 3. This act shall take effect upon approval by the High Commissioner, or upon its becoming law without such approval.

_____, 1975

Edward E. Johnston
High Commissioner
Trust Territory of the Pacific Islands

TRUST TERRITORY OF THE PACIFIC ISLANDS
OFFICE OF THE HIGH COMMISSIONER
SAIPAN, MARIANA ISLANDS 96950

February 3, 1975

The Honorable Amata Kabua
Chairman
Senate Committee on Resources
and Development
Congress of Micronesia
Saipan, Mariana Islands 96950

Dear Mr. Chairman:

This office has been asked to comment on S.B. No. 6-32 entitled: "A bill for an act establishing a mortgage law and providing for the proceeding of foreclosures and for other purposes". We have carefully reviewed this bill and our comments are provided below.

It is difficult to comprehend how this proposed mortgage law would be applied in the various districts as land tenure systems differ significantly from district to district. A mortgage law can only operate effectively when titles to real property are readily and accurately ascertainable. The issue of land ownership is in dispute with respect to a substantial portion of land in the Trust Territory, and it is often extremely complicated to determine all parties who hold interest in a particular parcel of land and who therefore must consent to any encumbrance or transfer of the land. In light of the current status of land ownership in the Trust Territory, it is believed that a uniform set of mortgage laws would be unworkable in the districts.

Even if we were to assume that the problems of multiple land tenure systems could be overcome, we feel that the bill would require considerable revision and changes before it could ever be enacted into law. It is also our impression that the bill as currently drafted provides insufficient protection to the debtor-mortgagor. Our first concern with regard to any mortgage legislation is to insure that the

178. 3.167

legal rights of the citizens of the Trust Territory will be fairly and adequately protected. While we do not intend in this letter to present an exhaustive section by section review of the bill, we are taking this opportunity to voice our most serious reservations on this proposed legislation.

In Sections 15, 16 and 17, there is some confusion as to whether the language, "... action for the foreclosure or satisfaction of a mortgage", refers to an action on the debt or an action on the security, i.e., the mortgaged property. If this language refers only to actions against the real property, then Section 15 implies that the creditor additionally has the option to sue on the debt and after receiving a money judgment, to execute against property other than the mortgaged property. We question whether the creditor-mortgagee should have the opportunity to pursue any and all legal remedies available to him in the event of default by the debtor. In most cases, the creditor-mortgagee will be a financial lending institution which has decided to loan out funds only after a thorough evaluation of the debtor's credit record and after taking a security on the real property to be purchased by the debtor with the funds. If the debtor defaults on his loan payments, it seems inequitable to permit the creditor to simply ignore the security which he took and permit him to pursue everything else owned or possessed by the debtor. Since the creditor is in the business of lending money and assuming the risk of defaults, and since he bargained for the real property as security for the debtor's possible default, he should be limited to one form of action for the recovery of the debt, or the enforcement of any right secured by the mortgage. This limitation on the creditor's remedies in no way precludes the creditor from a later suit for a deficiency judgment. The California Code of Civil Procedure, Section 726, provides for one form of action in mortgage cases and it is recommended that serious consideration be given to possible inclusion of a similar provision in any Trust Territory mortgage law.

The primary benefit received by the debtor under a "one form of action" law is that the creditor would not have the ability to pick and choose which assets of the debtor he wished to execute upon but would be forced to an election of remedies. If the creditor sued on the debt and received a judgment for the money owed him but no judgment of foreclosure, the debtor could decide how he wished to satisfy

the judgment. The debtor himself would be able to decide which assets to use to pay off the debt. If the creditor chose to bring an action for foreclosure of the security, the debtor would again have the choice of letting the property go to the creditor or terminating the foreclosure action by selling off assets to cure the default.

We also note that the bill fails to clearly distinguish between an action on the debt (e.g. promissory note), an action to foreclose on the security (real property), and an action of execution against personal property, and it is unclear whether all these actions are concurrently available to the creditor.

In Section 16, there is a requirement that "...no proceeding shall be had in the foreclosure action, unless an order of execution against the personal property of the defendant has been issued..." and returned unsatisfied. First, what proceedings are referred to by this language? If it refers to the procedure of the foreclosure sale, this should be so stated. Secondly, we raise the objection that a debtor's personal property should not be subject to execution if the debtor took out the loan with the understanding that real property was to serve as security for the loan. This brings in the preceding discussion on the creditor's election of remedies. Thirdly, Title 8, Section 61 of the Trust Territory Code provides a number of personal property exemptions from attachment and execution. Since the personal property which could be executed upon would be minimal, the creditor would undoubtedly end up going after the mortgaged property in the vast majority of cases.

Under the present draft of the bill, the debtor would be personally liable for any amount still due and owing after the proceeds of the foreclosure sale have been distributed to the creditor. In California, the mortgage laws include anti-deficiency provisions which prohibit deficiency judgments against certain classes of debtors and under certain described circumstances. Social policy reasons would appear to dictate strongly in favor of including some anti-deficiency provision in any mortgage law enacted in the Trust Territory. This issue raises important social and economic questions which cannot be answered without considerable discussion as to the purpose and policy of a mortgage law. It is urged that some consideration be given to prohibiting anti-deficiency judgments against small borrowers who have taken

out loans to purchase residential property for their families. It is not believed that this would significantly increase the number of defaults if the protection is limited to single dwelling purchasers and if there is an awareness that future credit would be drastically affected by a default.

We note also that Section 17 states that:

> "The court under no circumstances shall have the power to render a deficiency judgment for any sum whatever against the mortgagor or purchaser, or the successor in interest of either, except as hereinafter provided." (line 13-16, p. 5).

Generally speaking, only the mortgagor, his guarantor or surety can be held liable for any deficiency judgment. It is unclear whether the language is intended to create liability on the part of the purchaser for any deficiency or for the difference between the price the purchaser paid for the mortgaged property and its actual fair market value. We do not believe that the purchaser can be bound to pay either amount.

Since the creditor is permitted a deficiency judgment only for the amount by which the sum adjudged to be due and the costs of the action exceed the fair market value of the mortgaged premises, the creditor would lose the amount of any difference by which the purchase price at a foreclosure sale was less than the assessed fair market value of the property.

If there is to be no anti-deficiency legislation, then the single most important protection for the debtor-mortgagor is to have a procedure whereby the highest and best price can be obtained on the mortgaged property. Prices in excess of the fair market value of the property would decrease the amount of any deficiency or discharge the debt completely. Section 18 of the bill provides that the foreclosure is to be conducted in the manner prescribed by Section 54 of Title 8 of the Trust Territory Code. Since this Section focuses on the sale of personal property, it is wholly inadequate for the public sale of real property. The procedure of sale for real property should include such safeguards as publication of sale by newspapers, notices posted on the property and in public places, a longer period for notice of sale, terms of the public auction, restrictions on the

auctioneer, the selling of land in parcels if likely to bring higher prices, and the method of accepting bids. Without a complete and thorough procedure of foreclosure sale of real property, this bill cannot be found sufficient to adequately protect mortgagors.

Section 23 of the bill provides for a one year period of redemption but does not proceed to elaborate the procedure whereby the mortgagor can exercise the right of redemption. There is no explanation of who can redeem and how. There is also unclarity in the bill as to the procedures of reinstatement and redemption. Section 28 provides that default can be cured by reinstatement within 30 days from the service of notice before foreclosure. It fails to specify whether the debtor is liable only for those payments which resulted in default, or all payments currently in default, or the entire accelerated remainder of the mortgage obligation since most mortgages customarily include acceleration clauses to take effect upon default. How does the Section 28 procedure of reinstatement fit in with the Section 21 provision permitting the debtor, any time before the sale of the property, to have the complaint dismissed by paying the principal and interest due, with costs and disbursements. Is this also to be a form of reinstatement?

The amount to be paid to redeem or reinstate must be made explicit. It is impossible to know whether the amounts to be paid as provided in Sections 17, 21, 22, 26 and 28 refer to all payments in default up to the time of payment, only those payments which resulted in default, or the entire accelerated amount.

Section 4 provides for a power of sale which is to be "executed only in the manner prescribed by the provisions of this act". No provisions are then set forth in the act.

Section 19 provides that a certificate of sale is to be given to the purchaser at a foreclosure sale and that the purchaser shall be given a deed to the purchased property after the period of redemption has passed and no party has exercised the right of redemption. Although it is evident that the deed is to vest the grantee with all the rights, title and interest of the mortgagor in and to the property sold, what rights and interests does the certificate of sale transfer to the purchaser?

The short form of mortgage set out in Section 30 does not require sufficient detail or description and therefore appears to be legally inadequate in form.

The bill also fails to provide in any way for multiple mortgages on the same property. Since it is anticipated that even single dwelling residences will be encumbered by second mortgages, the bill must be redrafted to include provisions concerning junior lienors. Sections 14, 15, 20, 25 and 27 must be reworked to require proper notification to all parties holding junior liens on the mortgaged premises and the distribution of proceeds to junior lienors in order of priority in the event of surplus. It must also be decided whether the rights of reinstatement and redemption will be applicable to junior lienors. California law extends such rights to junior lien holders.

Section 12 provides that in the event a mortgagor dies with the mortgage still outstanding, the successor or devisee is not entitled to have the decedent's personal representative satisfy the mortgage out of the decedent's estate. This can be done only if the testator expressly provided that the mortgage be paid in his will. We should consider whether this policy will place undue hardship on families in which income was solely dependent on the mortgagor.

We must also point out the possiblity that a mortgage law creates the potential for significant changes in land ownership patterns. Since foreclosure sales are to be conducted by open, competitive bidding at public auctions, one must also consider whether the majority of Trust Territory citizens are presently in a financial position to be able to participate in public auctions of real property.

In conclusion, we believe that a uniform set of mortgage laws is not feasible at this time because of the individual nature of land ownership systems in each of the districts. While we cannot support the passage of this bill into law, we realize the necessity for a mortgage law in the Trust Territory. We therefore recommend that the Congress of Micronesia pass enabling legislation authorizing the district legislatures to enact their own mortgage laws which would be tailored to meet their own district's particular land tenure systems. We also suggest that

such enabling legislation include a uniform set of safe-guards for both the debtor-mortgagor and creditor-mortgagee which is to be applicable to all the districts.

We thank you for the opportunity to review and comment on the bill and submit the above for consideration.

Sincerely yours,

Richard T. Miyamoto
Attorney General

cc: Chief Clerk, Senate
Legislative Counsel, Congress of Micronesia
Special Assistant for Legislative Affairs
Director, Public Affairs
Director, Resources and Development
Chief, Lands and Surveys
Chairman, Bank of Micronesia

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File:178.3.167

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January 31, 1975

The Honorable Amata Kabua
Chairman
Committee on Resources and Development
Senate
Congress of Micronesia
Saipan, Mariana Islands 96950

Dear Mr. Chairman:

In reference to Senate Bill No. 6-32 on the proposed mortgage law for Trust Territory of the Pacific Islands, we submit the following comment:

1. In view of the difference in land tenure patterns between districts, it would be practical for the Congress of Micronesia to pass "enabling" mortgage legislation, thus allowing each district to decide as to the type of mortgage system it wishes to enact and which would suit not only the economic needs of that district, but also the unique land tenure system in that district. Possible concepts to be considered by District Legislatures are reducing to writing the signatory authorities necessary to alienate clan or lineage land (i.e., a conveyancing statute) and possibly even precluding from alienation clan or lineage land and lands held in undivided estates.

2. Any action for foreclosure by the Court should attempt to allow the lender (in this case a commercial bank) to recover the principal and interest due, but return the land to original owner of the land once the bank has recovered the outstanding due amount through the administration of the security.

3. Shouldn't there be "truth in lending" legislation in the Trust Territory of the Pacific Islands so that borrowers will know exactly what they are going into before signing a mortgage?

2.

We do not see how it will benefit the buyer of foreclosed property if he has to wait for one year before taking possession of the property. There is no provision as to how the buyer (investor) will get a reasonable return on his investment for the initial 12 months following the purchase of the property.

4. Alienation of land should be the last alternative. Some kind of a mortgage device should be explored which would be not only an inducement for private lenders to make funds available to Micronesians for construction of private dwellings, but also inhibit the alienation of land from land owners, especially Micronesians who own only one parcel of land.

5. All references in the Bill to filing and recording documents should take into account 67 TTC 119, which provides for filing of documents pertaining to interests in land with the District Registrar of the District Land Commission where the land is located, if there is a Land Commission in existence. (The Marshalls do not have a Land Commission at this time.) This requirement, according to the Trust Territory Code does not apply unless land has been included in a designated registration area.

Sincerely yours,

Eusebio Rechucher
Director, Resources and Development

cc: Special Assistant for Legislative Affairs
Director of Public Affairs
Chief Clerk of the Senate
Director, Resources and Development
Chief, Economic Development

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OFFICE OF THE HIGH COMMISSIONER
SAIPAN, MARIANA ISLANDS 96950

CABLE ADDRESS
HICOTT SAIPAN

Date: 1/23/75

TO: Primary Witness: Attorney General

Secondary Witnesses: Director/ Resources & Development

Chief, Land & Survey

Micronesian Legal Services

Chairman, Saipan Chamber of Commerce

Representatives from Bank of America, Bank of Hawaii, and Citicorp

FROM: Deputy Director, Public Affairs

SUBJECT: Notice of Public Hearing

COMMITTEE: Resources and Development

MEASURES: S.B. 6-32 - Establishing a mortgage law and providing for the proceeding of foreclosure

DATE: 1/27/75 TIME: 1:00 p.m.

PLACE: Senate Chamber

Carl Heine

cc: Deputy High Commissioner
Special Assistant/Legislative Affairs
Director, Public Affairs
Attorney General

SIXTH CONGRESS OF MICRONESIA

FIRST REGULAR SESSION, 1975

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S B. NO. 6-32

A BILL FOR AN ACT

Establishing a mortgage law and providing for the proceeding of foreclosure and for other purposes.

BE IT ENACTED BY THE CONGRESS OF MICRONESIA:

Section 1. Definition. A mortgage is a contract in which real property is used as security for the performance of an act, usually the payment of a debt, without the necessity of a change of possession or the transfer of title.

Section 2. Right to possession. The mortgagee is not entitled to possession of the property unless the mortgage specifically gives the mortgagee the right to possession. After the execution of a mortgage, the mortgagor may agree to deliver possession of the property which is subject to the mortgage of the mortgagee. Such subsequent agreement does not require a new consideration.

Section 3. Security not to be impaired. No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the mortgagee's security.

Section 4. Power of sale conferred by mortgage. A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security. A power of sale under a mortgage is a trust, and as to real property can be executed only in the manner prescribed by the provisions of this act.

Section 5. Mortgage is lien against claimants under mortgagor. A mortgage is a lien upon the property mortgaged in the hands of everyone claiming under the mortgagor subsequent to its execution, except purchasers and encumbrancers in good faith without notice and for value.

Section 6. Satisfaction of mortgages, discharge. A recorded

mortgage must be discharged upon the record by the Clerk of Courts District Registrar of the District Land Commission having custody thereof on the presentation of a certificate of discharge signed by the mortgagee, or his authorized representative, properly acknowledged or ~~approved~~ proved and certified. The certificate of discharge shall contain a brief description of the mortgage and shall state that the mortgage has been paid in full or otherwise satisfied and discharged and that the officer is authorized to discharge the same of record.

Section 7. Mortgages of real property, in writing. A mortgage of real property can be created, renewed, or extended only by writing, executed with the formalities required in the case of a grant of real property.

Section 8. Acknowledgment, certification, recording. Mortgages of real property may be acknowledged or proved, certified, and recorded in like manner and with like effect as grants of real property.

Section 9. Prerequisites for recording. No mortgage of real property shall be received for record by the Clerk of Courts unless it contains the post office address of the mortgagee and a complete description of the indebtedness secured as to the amount, rate of interest, and when and where due.

Section 10. Record--Notice to whom. The record of a mortgage duly made operates as notice to all subsequent purchasers and encumbrancers.

Section 11. Certificate of discharge--How recorded. A

certificate for discharge of a mortgage and proof or acknowledgment thereof must be recorded at length and a reference made in the record to the book and page where the mortgage is recorded and of the date of the discharge, made upon the record of the mortgage, to the book and page where the discharge is recorded.

Section 12. Successor or devisee must satisfy mortgage out of his property. Whenever real property which is subject to a mortgage passes by succession or by devise, the successor or devisee is not entitled to have the decedant's personal representative satisfy the mortgage out of the decedant's estate unless there is an express provision in the decedant's will that his estate is to satisfy the mortgage either in ~~while~~ wholl or in part.

Section 13. Discharge of real estate mortgage not renewed or extended of record. Every mortgage of real estate which has not been renewed or extended of record within 15 years after its due date or when no due date is shown in the mortgage, then within 20 years after the recording of such mortgage, shall be discharged of record by order of a judge of the Trial Division of the High Court within the district in which the mortgaged real estate is situated upon application of any party interested and without notice. Such application and order shall be filed in the office of the Clerk of Courts. The fee for such application and order shall be the same as that charged for filing a civil action.

Section 14. Action to foreclose mortgage on real estate authorized. An action may be brought in the Trial Division

of the High Court for the foreclosure or satisfaction or a mortgage on real property in accordance with the provisions of this act.

Section 15. Complaint. In an action for the foreclosure or satisfaction of a mortgage, the complaint shall state whether any proceedings have been had at law or otherwise for the recovery of the debt secured by the mortgage, or any part thereof, and if there have been, whether any and what part thereof has been collected. The plaintiff shall also state in his complaint whether he will in a later and separate action demand judgment for any deficiency which may remain due to him after sale of the mortgaged premises against every party who is personally liable for the debt secured by the mortgage.

Section 16. When judgment obtained. Whenever a judgment in an action for the foreclosure or satisfaction of a mortgage has been entered no proceedings shall be had in the foreclosure action, unless an order of execution against the personal property of the defendant has been issued and the police shall have made certain that the order of execution is unsatisfied, either in whole or in part, and that the defendant has no personal property out of which the order of execution can be satisfied.

Section 17. What judgment shall contain-Deficiency judgment and other suits prohibited in excess of amount by which debt exceeds fair market value of mortgaged real property. In any action for the foreclosure of a real estate mortgage or the cancellation or the foreclosure of a land contract, the court shall have the power

to render judgment for the amount found to be due at the time of the rendition of said judgment and the costs of the action, and to order and decree a sale of the premises in such mortgage or contract described, or such part thereof as may be sufficient to pay the amount adjudged to be due and the costs of the action. The court shall have the power to order and compel delivery of the possession of the premises to the purchaser at such sale, but in no case shall the possession of the premises so sold be delivered until after the expiration of one year from such sale, and the court shall direct, and the judgment shall provide, that during such one year period the debtor or owner of the premises shall be entitled to the possession, rents, use and benefit of the real property sold. The court under no circumstances shall have power to render a deficiency judgment for any sum whatever against the mortgagor or purchaser, or the successor in interest of either, except as hereinafter provided. Where a note or other obligation and a mortgage upon real property have been given to secure a debt contracted subsequent to July 1, 1975, and the sale of the mortgaged premises has failed to satisfy in full the sum adjudged to be due and the costs of the action, the plaintiff may, in a separate action, ask for a deficiency judgment, if he has so indicated in his complaint against the party or parties personally liable for that part of the debt and costs of the action remaining unsatisfied after the sale of the mortgaged premises. Such separate action for a deficiency judgment

must be brought within 90 days after the sale of the mortgaged premises. The court, in such separate action, may render a deficiency judgment against the party or parties personally liable, but such deficiency judgment shall not be in excess of the amount by which the sum adjudged to be due and the costs of the action exceed the fair market value of the mortgaged premises. In case the mortgaged premises sell for less than the amount due and to become due on the mortgaged debt and costs of sale, there shall be no presumption that such premises sold for their fair market value. In all actions brought for a deficiency judgment and before any judgment can be rendered therein, the court shall first determine the fair market value of the mortgaged premises. No deficiency judgment can be rendered against the party or parties personally liable unless the fair market value of the mortgaged premises is determined by the judge to be less than the sum to be due and the costs of the action. Any deficiency judgment obtained shall be enforced by execution as provided by law, except that no execution shall be enforced after three years from the date of the rendition of such deficiency judgment.

Section 13. Sales made by whom and where. All sales of mortgaged premises under a judgment of foreclosure must be made by the District Administrator of the district in which the judgment is rendered, or his representative, or by some person appointed by the court for that purpose and must be made in the municipality where the premises, or some part of them,

are situated, upon the notice and in the manner prescribed by Section 54 of Title 8 of the Trust Territory Code.

Section 19. Certificate of sale--Deed and effect. Whenever any real property shall be sold under judgment of foreclosure pursuant to the provisions of this act, the District Administrator or other person making the sale must give to the purchaser a certificate of sale, and at the expiration of the time for the redemption of such property, if the same is not redeemed, the person making the sale, or his successor in office, or other officer appointed by the court, must make to the purchaser, his heirs, or assignees, or to any person who has acquired the title of such purchaser by redemption or otherwise, a deed or deeds of such property. Such deed shall vest in the grantee all the rights, title and interest of the mortgagor in and to the property sold, at the time the mortgage was executed, or subsequently acquired by him, and shall be a bar to all claim, right, or equity of redemption in or to the property by the parties to such action, their heirs and personal representatives, and also against all persons claiming under them, or any of them, subsequent to the commencement of the action in which such judgment was rendered.

Section 20. Complaint of proceeds. The proceeds of every foreclosure sale must be applied to the discharge of the debt and to the costs adjudged by the court to be due, and if there is any surplus, it must be brought to court for the use of the defendant or of the person entitled thereto, subject to the order of the court.

Section 21. Complaint dismissed on payment of installments due. Whenever an action shall be commenced for the foreclosure of a mortgage upon which there shall be due any interest, or any portion or installment of the principal, and there shall be other portions or installments to become due subsequently, the complaint shall be dismissed upon the defendants bringing to court at any time before sale of the property, the principal and interest due, with costs and disbursements.

Section 22. Referee to view premises. If the defendant shall not bring into court the amount due with costs, or if for any other cause a judgment or decree shall be entered for the plaintiff, the court may appoint a referee to ascertain and report the situation of the mortgaged premises, or may determine the same on trial or other testimony, and if it shall appear that the same can be sold in parcels without inquiry to the interests of the parties, the decree must direct so much of the mortgaged premises to be sold as will be sufficient to pay the amount then due on such mortgage with costs.

Section 23. Redemption. All real property sold upon foreclosure of a mortgage by order, judgment, or decree of court may be redeemed at any time within one year after such sale.

Section 24. Injury to property restrained. The court, by injunction, on good cause shown, may restrain the party in possession from doing any act to the injury of real property during the existence of the lien or foreclosure of a mortgage thereon and

until the expiration of the time allowed for redemption.

Section 25. Notice before foreclosure. At least 30 days and not more than 90 days before the commencement of any action or proceeding for the foreclosure of a mortgage on real estate, a written notice shall be served on the title owner of record of the real estate described in the mortgage as shown by the records in the office of the Clerk of Courts of the district in which such real estate is situated.

Section 26. Contents of notice. The notice before foreclosure shall contain:

(1) a description of the real estate;

(2) the date and amount of the mortgage,

(3) the amount due for principal and interest, stated separately, and

(4) a statement that if the amount due is not paid within 30 days from the date of the registered mailing or service of the notice, proceedings will be commenced to foreclosure the mortgage.

Section 27. (1) Receipt of notice, proof of notice. Service of notice before foreclosure shall be sufficient if it was actually received by the title owner of record or by the personal representative of his estate. A United States Post Office registry return receipt showing that the envelope containing the notice has been delivered to the title owner of record shall be prima facie evidence that proper notice has been given. A return by a policeman or other officer or by a person making personal service stating that notice

has been given to the title owner of record or his personal representative shall be prima facie evidence that proper notice has been given.

(2) When title owner of record is not within the the jurisdiction of the court. Whenever the record owner of title cannot be located within the Trust Territory, by means provided in Subsection (1) above, then the clerk of the court in which the complaint has been filed shall cause the notice to be posted in a prominent public place. The notice shall remain posted for 30 consecutive days and shall constitute proper notice to the title owner of record.

Section 28. Default may be cured. If the title owner of record or the administrator or executor of his estate, within 30 days from the service of notice before foreclosure, shall perform the conditions or comply with the provisions upon which default in the mortgage shall have occurred, such mortgage shall be reinstated and shall remain in full force and effect the same as though no default had occurred therein.

Section 29. Service of summons. Service of summons in an action of foreclosure shall be made in accordance with Sections 1 through 54 of Title 6 of the Trust Territory Code.

Section 30. Short form of mortgage. Any mortgage of lands, worded in substance as follows: "(Mortgagor) mortgages and warrants to (Mortgagee) the (here describe the premises), to secure the payment or other evidences of debt and also states the due date of

1. Should there be restrictions on the percentage of a person's means or his basic livelihood can be mortgaged?

2. Who is going to insure a family which is insured?

3. Should there be a governmental ~~agency which~~ can veto a loan or restrict loans before they are made?

4. What means exists for the borrower to get accurate info?

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the payment(s)", the said mortgage being dated, and duly signed and acknowledged by the mortgagor, shall be deemed and held to be a good and sufficient mortgage, enforceable against the mortgagor, his heirs, assigns, executors, and administrators.

Section 31. Foreign Citizens as Mortgagees. Any noncitizen of the Trust Territory or any noncitizen of the Trust Territory who is authorized to do business in the Trust Territory may be a mortgagee under the provisions of this Act. However, no section of this Act shall be construed to mean that a noncitizen mortgagee is entitled at any time to hold title to real property in the Trust Territory. Under the provisions of this Act, a mortgage creates a lien on the land but does not pass title to the mortgagee nor give him any right of possession.

How is the lien to be liquidated. At what?

Section 32. Effective date. This act shall take effect six months after the approval of the High Commissioner, or six months after its becoming law without such approval.

Date: 1/17/75 Introduced by: Olympio Borja

January 31, 1975

The Honorable Amata Kabua
Chairman
Committee on Resources and Development
Senate
Congress of Micronesia
Saipan, Mariana Islands 96950

Dear Mr. Chairman:

In reference to Senate Bill No. 6-32 on the proposed mortgage law for Trust Territory of the Pacific Islands, we submit the following comment:

1. In view of the difference in land tenure patterns between districts, it would be practical for the Congress of Micronesia to pass "enabling" mortgage legislation, thus allowing each district to decide as to the type of mortgage system it wishes to enact and which would suit not only the economic needs of that district, but also the unique land tenure system in that district. Possible concepts to be considered by District Legislatures are reducing to writing the signatory authorities necessary to alienate clan or lineage land (i.e., a conveyancing statute) and possibly even precluding from alienation clan or lineage land and lands held in undivided estates.

2. Any action for foreclosure by the Court should attempt to allow the lender (in this case a commercial bank) to recover the principal and interest due, but return the land to original owner of the land once the bank has recovered the outstanding due amount through the administration of the security.

3. Shouldn't there be "truth in lending" legislation in the Trust Territory of the Pacific Islands so that borrowers will know exactly what they are going into before signing a mortgage?

We do not see how it will benefit the buyer of foreclosed property if he has to wait for one year before taking possession of the property. There is no provision as to how the buyer (investor) will get a reasonable return on his investment for the initial 12 months following the purchase of the property.

4. Alienation of land should be the last alternative. Some kind of a mortgage device should be explored which would be not only an inducement for private lenders to make funds available to Micronesians for construction of private dwellings, but also inhibit the alienation of land from land owners, especially Micronesians who own only one parcel of land.

5. All references in the Bill to filing and recording documents should take into account 67 TTC 119, which provides for filing of documents pertaining to interests in land with the District Registrar of the District Land Commission where the land is located, if there is a Land Commission in existence. (The Marshalls do not have a Land Commission at this time.) This requirement, according to the Trust Territory Code does not apply unless land has been included in a designated registration area.

Sincerely yours,

Eusebio Rechucher
Director, Resources and Development

cc: Special Assistant for Legislative Affairs
Director of Public Affairs
Chief Clerk of the Senate
Director, Resources and Development
Chief, Economic Development