

AN ACT

To provide for a satisfactory method of securing the financing of real estate projects and transactions by the United States of America acting through the Farmers Home Administration or other federal agencies, including but not limited to the Department of Housing and Urban Development and Veterans Administrations, and for other purposes.

Be it enacted by the Legislature of Truk State.

1 Section 1. Short Title. This Act may be cited as the Deed of
2 Trust Act of 1988.

3 Section 2. Purpose. To provide for a satisfactory method of
4 securing the financing of real estate projects and transactions by the
5 United States of America and other federal agencies, including but not
6 limited to the Department of Housing and Urban Development and Veterans
7 Administration.

8 Section 3. Deed of Trust Defined. A Deed of Trust is a
9 conveyance of the fee simple interest in trust to secure an indebtedness or
10 charge against real property conveyed, with or without a power of sale,
11 vested in the trustee to sell according to the terms as set forth in the
12 instrument. A Deed of Trust complying with the terms and conditions of this
13 Act shall be deemed as a lien or encumbrance upon real property.

14 Section 4. Definitions. In this Act unless the context otherwise
15 requires:

16 (a) "Beneficiary" means the United States of America acting
17 through the Farmers Home Administration or any other federal agency, including
18 but not limited to the Department of Housing and Urban Development, or
19 Veterans Administration, who is the creditor to whom the trustor's
20 obligation is owed.

21 (b) "Recordation" or "Filing of record" means the proper filing
22 of an instrument with the Land Commission Office, pursuant to the laws and
23 statutes governing transfers of interest in land.

1 (c) "Trustee" means the Truk Housing Authority or other
2 legal entity to whom the trustor has conveyed title to property to be held
3 by the trustee according to the terms and conditions of the Deed of Trust
4 instrument.

5 (d) "Trustor" means the debtor under a Deed of Trust or the
6 owner of the fee simple who conveys the title of real property to a trustee
7 under the terms of the Deed of Trust instrument.

8 Section 5. Validity Against Subsequent Purchases; Recording
9 Required. A Deed of Trust and any instruments concerning the same shall
10 not be valid against subsequent purchasers and persons taking an interest
11 in the real estate in good faith and for valuable consideration without
12 notice of the Deed of Trust or an interest in the same unless the Deed of
13 Trust and any instrument relating to it is first duly recorded.

14 Section 6. No Exemption from Execution. Any property conveyed
15 hereunder shall not be exempt from execution as may be provided by any
16 statute concerning any exemptions and homesteads, but such execution shall
17 not affect the priority of the lien evidenced by the Deed of Trust.

18 Section 7. Foreclosure by Judicial or Non-Judicial Process.

19 (a) The Deed of Trust instrument may provide for foreclosure
20 proceedings by judicial or non-judicial process.

21 (b) If foreclosure is by judicial process then the foreclosure
22 proceedings shall be brought in the Trial Division of the Truk State Court.
23 Any judicial action for the foreclosure of a Deed of Trust shall be similar
24 to and based on the same proceedings as the Real Estate Mortgage Law,
25 TSL 4-91, except that no right of redemption shall exist under the Deed of
26 Trust.

27 (c) If foreclosure is by non-judicial process, then such may be by
28 private power of sale as set forth in this Act. The trustee shall not have
29 any right of redemption after such sale.

30 Section 8. Foreclosure by Private Power of Sale. Non-judicial
31 foreclosure of a Deed of Trust by the exercise of private power of sale
32 shall be in accordance with the provisions of this Act.

33 (a) Power of Sale. A power of sale means a private power of sale
34 conferred upon the trustee to sell the property at public auction after the
35 breach of an obligation for which the property is transferred.

1 (b) Reconsideration and Notice. The power of sale may not be
2 exercised until:

3 (1) A notice is sent by the trustee or beneficiary to the
4 trustor setting forth the default, the amounts owed and for what period, the
5 method and amount to cure the default, the time in which to cure the
6 default (which shall not be less than 30 days after the date of the notice
7 sent to the trustor), and the right to sell the property by power of sale and
8 any other remedy which may be taken by the trustee if the default is not
9 cured in the method, manner, date, and time as set forth in the notice.

10 (2) After the lapse of 30 days as set forth in subdivision (1), if
11 the default has not been cured, then the trustee shall give to the trustor
12 at least 30 days notice of public sale of the property, stating the date,
13 time and place of the sale.

14 (3) Within 10 days after notice has been sent to the trustor as
15 set forth in subdivision (2), the trustee or beneficiary shall file of record
16 a notice of default, identifying the Deed of Trust by stating the names of
17 the trustor, trustee and beneficiaries, and the description of property being
18 affected, and setting forth the nature of the breach and the right to sell
19 the property by power of sale and any other remedies as set forth in the
20 notice to the trustor, and the date, time and place of sale.

21 Section 9. Power of Sale; Reinstatement.

22 (a) The trustor shall have one right of reinstatement.

23 (b) At any time prior to the date of sale, the trustor or any
24 other person having a subordinate lien or encumbrance on the property may pay
25 to the trustee the entire installment amounts then due under the terms of the
26 note and Deed of Trust up to the date of sale and other costs, such amount
27 being due and payable as though no acceleration, if any, of the principal due
28 had accrued.

29 (c) This payment shall cure the default, the sale of proceedings
30 shall be discontinued and the obligations of the trustor under the Deed of
31 Trust shall then be reinstated and remain full force and effect on the rights
32 of the trustee or beneficiary in the future to accelerate the debt due to
33 the trustor's further or future default.

34 Section 10. Copy of Deed; Notice. Any required notice is deemed
35 delivered if sent by registered or certified mail with proper return receipt.

1 to the trustor or the trustor's successor in interest, at the address set
2 forth in the Deed of Trust instrument, or if personally delivered to the
3 trustor or his or her successor in interest, or to the trustor's agent as may
4 be designated in the Deed of Trust instrument.

5 Section 11. Power of Sale; Publication. Prior to the date of sale, the
6 trustee shall:

7 (a) Publish a notice of sale by power of sale at least once a week
8 for three weeks prior to the date of sale, in a newspaper of general
9 circulation in the FSM;

10 (b) Post such notice for three weeks prior to the date of the sale
11 in three public places in the community or district where the property is to
12 be sold; and

13 (c) Post a copy of the notice in a conspicuous place on the
14 property to be sold, at least 20 days prior to the date of the sale.

15 (d) Or, put out a public radio announcement concerning the sale at
16 least once a day everyday for three weeks before the date of sale.

17 Section 12. Postponement of Public Sale. The trustee, at his
18 direction, may postpone the public sale by making a public declaration at the
19 time and place of the sale. If the postponement is for more than 10 days
20 from the date of sale, then the trustee shall, within 10 days after the date
21 of sale as postponed:

22 (a) Publish a notice of the postponement, with a new date of sale
23 at least once in some newspaper of general circulation in the FSM;

24 (b) Post the notice in three public places in the community where
25 the property is to be sold;

26 (c) Post a copy of the notice in a conspicuous place on the
27 property to be sold; and

28 (d) File a notice of postponement with the Recorder's Office.

29 Section 13. Power of Sale; Conveyance by Trustee; Proceeds;
30 Deficiency.

31 (a) The trustee upon such public sale shall make, without
32 warranty, and execute after due payment is made, a deed to the purchaser or
33 purchasers of the property conveying all the title and interest of the
34 trustee and trustor in the property.

35 (b) The proceeds of sale shall first be applied to the expenses

1 of sale, together with the reasonable expenses of the trust, including
2 reasonable attorney's fees; then to the interest owed on the debt secured
3 by the Deed of Trust; then to the unpaid principal balance owed on that
4 debt, including any advances made by the beneficiary; and then to any other
5 lienholders of record in accordance with their lien priority. Any balance
6 or surplus of such proceeds of sale then be applied to any other interest
7 and principal indebtedness owed to the beneficiary by the trustor. Any
8 remaining balance of the proceeds of sale shall be paid to the trustor, his
9 heirs, executors, administrators or assigns.

10 (c) If there are insufficient proceeds from the sale to satisfy
11 all amounts due to the beneficiary under the Deed of Trust instruments, then
12 the trustee shall make up such deficiency of insufficient amounts to the
13 beneficiary. In that event, the beneficiary shall assign all of its rights
14 and interest in the Deed of Trust to the trustee. The trustor be liable for
15 all such deficient amounts, which includes the expenses of sale, the expenses
16 of the trust, reasonable attorney's fees, and the interest and principal due.
17 The trustee may bring an action against the trustor for the recovery of such
18 deficient amounts. Nothing herein shall prevent the trustee from purchasing
19 the property at the foreclosure sale as provided in this Act.

20 Section 14. Recitals. A recital in a deed, executed pursuant to the
21 power of sale regarding the filing of notice, personal advice and mailing of
22 copies of the notice of default, is prima facie evidence of compliance with
23 the requirements of this Act and shall be conclusive evidence thereof in favor
24 of bonafide purchasers for value and without notice.

25 Section 15. Power of Sale; Redemption Rights by Trustor;
26 Purchase by Trustee.

27 (a) A sale made pursuant to this Act by the exercise of the
28 private power of sale shall divest the trustor of any equity or right of
29 redemption in the property.

30 (b) The trustee may be the purchaser at any public sale provided
31 that there are no other purchasers at the public sale, or that the trustee
32 is the highest bidder at the sale.

33 Section 16. Duties of Trustee.

34 The trustee shall be in all respects a fiduciary with respect
35 to the property, for the benefit of the beneficiary, and shall be governed

1 by the terms and conditions of the Deed of Trust instrument.

2 (b) The duties of the trustee shall be as set forth in the Deed
3 of Trust instrument provided the terms and conditions are not in conflict
4 with the provisions of this Act.

5 Section 17. Duties of Trustor. The Trustor shall not cause any
6 waste or the diminishing of the value of the property which would substan-
7 tially impair the beneficiary's security.

8 Section 18. Discharge or Release of Deed of Trust. A Deed of
9 Trust shall be discharged or released by recording an instrument signed by
10 the trustee, and properly acknowledged, stating that the debt secured by
11 Deed of Trust has been fully paid and satisfied. Upon such discharge, the
12 trustee shall execute a deed conveying full title to the trustor.

13 Section 19. Appointment of Receiver. Any time after the
14 recordation of a notice of a default, the trustee or beneficiary may apply
15 to the Truk State Trial Court for the appointment of a receiver for the
16 property. A receiver shall be appointed where it appears that the real
17 property subject to the Deed of Trust is in danger of substantial waste, or
18 that the income from it is in danger of being lost.

19 Section 20. Assignment of Beneficial Interest. The beneficiary
20 may assign his or her benefits under the Deed of Trust without the consent
21 or acknowledgement of the trustor unless the Deed of Trust instrument
22 provides to the contrary. The recordation of the assignment shall be deemed
23 notice to all persons as of the date of the recordation.

24 Section 21. Ownership. The purchaser at any foreclosure or
25 public sale shall be only those entitled to own real property in the Federated
26 States of Micronesia.

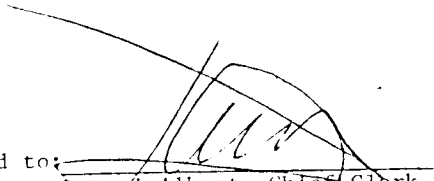
27 Section 22. Conflict with other Laws.

28 (a) If the provisions of this Act are in conflict or
29 inconsistent with the provisions of any other law, then the
30 provisions of this Act shall control.

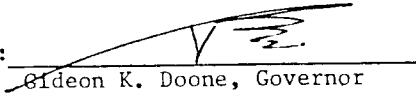
31 Section 23. Effective Date. This Act shall take effect upon
32 approval by the Governor, or upon its becoming law without such approval.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

Signed by: 
Fritz A. Hartmann, Speaker
Third Truk State Legislature

Attested to: 
Datasl Albert, Chief Clerk
Truk State Legislature

Date: 7/25/88

Approved by: 
Gideon K. Doone, Governor
Truk State Government

Date: 8/12/88