

**TITLE 41**  
**REAL PROPERTY**



## TITLE 41 REAL PROPERTY

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### CHAPTER 1 LAND USE PLANNING AND ZONING

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**§1-101. Short title.** — This chapter is known and may be cited as the “Pohnpei Land Use Planning and Zoning Act of 1993.”

Source: S.L. No. 3L-54-94 §1, 1/7/94

**§1-102. Purpose of chapter.** — The purpose of this chapter is to encourage the most appropriate use of land, both public and private, to provide adequate open spaces about buildings for light and air, to prevent undue concentrations of population, to protect the health and welfare of Pohnpei residents, to promote responsible and balanced development, to preserve and enhance cultural and traditional values, to conserve and protect the natural environment, and to assure adequate provision for community facilities and requirements. To accomplish these goals, the chapter calls upon the

cooperative efforts of all state agencies to develop an overall Pohnpei master land use plan for the state and a comprehensive set of zoning and land use laws.

Source: S.L. No. 3L-54-94 §2, 1/7/94

**§1-103. Application of chapter.** — This chapter shall apply to the use of lands in the state by any person who has use or dispositional rights accorded him by virtue of land ownership, leasehold, homestead, use permit, statutory authority or other instrument of control over the use or possession of land. All use of land must be consistent with this chapter. Uses that are not consistent shall be in violation of this chapter.

Source: S.L. No. 3L-54-94 §3, 1/7/94

**§1-104. Local participation.** – It is the sense of the Pohnpei Legislature that primary responsibility for zoning should rest with the local communities of this state, and that the local governments should play a vital role in the development of standards controlling the use of land within the separate local jurisdictions of this state. To this end, the State Commission established by §1-106 is authorized and directed to conduct its activities under this chapter in a manner which places primary emphasis on local participation. The State Commission shall train and assist local government officials and technicians in land planning and land use controls, and shall initiate a major review of the remaining contents of this chapter and activities of state agencies undertaken pursuant to this chapter to ensure compliance with the mandate of this section. No later than September 30, 2003 and following full consultation with the local governments, the State Commission shall submit a comprehensive proposal to the Legislature for a substantive revision of this chapter to realize fully the sense of this section.

Source: S.L. No. 3L-54-94 §4, 1/7/94; S.L. No. 4L-100-99 §1, 3/16/99; S.L. No. 4L-118-99 §1, 7/23/99; S.L. No. 5L-109-03 §1, 9/19/03

**§1-105. Definitions.** — As used in this chapter, unless the context clearly requires otherwise, the following definitions shall apply:

(1) “Capital improvements” means public improvements that are financed either in whole or in part by public funds, and that require the use of land, either public or private.

(2) “Commission” means the Pohnpei Land Use Planning and Zoning Commission created pursuant to §1-106.

(3) “Land” includes areas above and below the high watermark.

(4) “Land use control law” means zoning, subdivision, building, housing, official map or other laws which control the use of land and improvements on the land.

(5) “Local commission” means a local land use planning and zoning commission that may hereafter be established pursuant to revisions of this chapter.

(6) “Master land use plan” or “master plan” means a general body of texts, maps, and descriptive material, that constitutes an overall plan for the development of land, physical resources, and facilities within the state.

(7) “Nonconforming use” means a structure or use that is not permitted by laws and regulations currently in effect.

(8) “Owner” includes lessees and homesteaders of real property.

(9) “Person” means any individual, estate, firm, corporation, company, joint venture, association, partnership, trust, receiver, club, syndicate, cooperative association or other entity, including offices and agencies of a government.

(10) “Structure” means any construction, or any production or piece of work artificially built up or composed of parts joined together in some definite manner.

(11) “Zoning act, law or ordinance” means a duly enacted land use control statute or ordinance that adopts a zoning plan or any amendments thereto.

(12) “Zoning plan” means the proposal of the appropriate land use planning and zoning commission prepared in accordance with this chapter setting out a system of zoning as prescribed by this chapter for the land covered thereunder.

Source: S.L. No. 3L-54-94 §5, 1/7/94

**§1-106. Land Use Planning and Zoning Commission. —**

(1) There is hereby established in and for the state of Pohnpei, the Pohnpei Land Use Planning and Zoning Commission which shall be composed of seven members appointed by the Governor with the advice and consent of the Legislature. Members shall serve for terms of three years. Initial terms shall be determined by the drawing of lots at the organizational meeting.

(2) Members may be removed for cause by the Governor or upon two-thirds vote of the remaining members of the Commission. Absence without justifiable cause from three or more meetings of the Commission in a one-year period shall be cause for removal. The Commission, in its rules of procedure, may provide for other specific grounds for removal by the Commission.

(3) Vacancies shall be filled in the manner of original appointments for the remainder of the unexpired terms.

(4) The Director of the Department of Land and Natural Resources and the Administrator of the Office of Transportation and Infrastructure shall serve as ex-officio members of the Commission without the right to vote.

(5) Meetings shall be called at least once a month and may be called by the Chairman or the Governor. A quorum of five appointed members shall be required for the Commission to transact business, and unless a greater number is required by this chapter, the assent of at least four members shall be required of all decisions requiring a vote. The Commission shall adopt its own rules of procedure for its organization and operation; PROVIDED that the rules shall provide for the annual election of a Chairman, shall provide for adequate public notice of all meetings, shall provide for public access to all meetings, and shall provide for a written account to be kept of all meetings, substantive acts, and decisions of the Commission.

(6) Members of the Commission shall be compensated at the rates established by the Government Officers’ Salary Act, Title 9 Chapter 4 Subchapter I, as amended or superseded, when actually performing functions of the Commission at the direction of the Chairman, except that those members who are employees of the Pohnpei Government and other cooperating entities shall instead be granted administrative leave from their regular duties while performing services for the Commission. Members shall receive travel expenses and per diem at standard Pohnpei Government rates when those amounts would be payable to Pohnpei Government employees in the same circumstances.

(7) The Governor shall provide administrative assistance to the Commission in the performance of its duties, which assistance shall include, but need not be limited to, office space, legal assistance, technical assistance, and clerical and administrative help. The Governor may attach the Commission to one or more executive agencies to facilitate assistance rendered to the Commission. The Commission may, to the extent its budget permits, hire its own staff and may seek assistance from any other source.

Source: S.L. No. 3L-54-94 §6, 1/7/94; S.L. No. 5L-14-00 §3-47, 10/1/00

**§1-107. Powers and duties of the Commission. —** The Commission established by §1-106 shall have the following powers and duties:

(1) The Commission shall prepare and recommend for enactment by the Legislature a proposed master land use plan, as prescribed in §1-108, and shall prepare and recommend for enactment subsequent amendments thereto;

(2) The Commission shall prepare and recommend for enactment by the Legislature such subsidiary plans and development programs as may be desirable for the implementation of the master plan;

(3) The Commission shall prepare and recommend for enactment by the Legislature any zoning and land use control laws necessary and proper for implementation of the master plan, and shall prepare and recommend for enactment subsequent amendments thereto;

(4) The Commission shall conduct a review of any matter submitted to it by a public officer or entity under §1-116, and give its recommendation thereon within the time prescribed therein. The opinion of the Commission on questions of compliance with the master plan, zoning or land use control laws in force in the master plan area shall be binding, subject to appeal to the Pohnpei Supreme Court as provided in §1-118. Other opinions of the Commission shall be advisory only. If recommendations of the Commission are not received in the time prescribed, its silence may not be interpreted as its objecting to the proposal or request embodied in the submission;

(5) The Commission shall conduct an official review of this chapter, the entire master plan, and the zoning and land use control laws enacted hereunder at least once every two years, to determine whether revisions to any of the above are in order. The Commission shall formally advise the Legislature when reviews are complete and whether or not amendments are being proposed;

(6) The Commission shall ensure compliance by all persons with this chapter and other statutes over which it is given legal, administrative or advisory responsibilities. The Commission shall have the authority with respect to the administration of its duties under this chapter to conduct investigations and hold hearings, and in connection therewith, to subpoena witnesses, records, books, documents, and other evidence;

(7) The Commission shall submit a quarterly report of its activities and expenditures to the Governor and the Legislature within 15 days following the close of each quarter of the fiscal year; and

(8) The Commission shall assume such other powers and duties as may be necessary for the Commission to carry out its responsibilities under this chapter.

Source: S.L. No. 3L-54-94 §7, 1/7/94

**§1-108. Master plan: preparation, enactment, and amendment.** — A proposed master plan shall be prepared by the Commission in consultation with relevant agencies of the Pohnpei Government, with appropriate local governments, with local commissions (where established), and with the general public. The Commission shall conduct public hearings on the master plan prior to its adoption by the Commission. Prominent public notice of such hearings shall be made at least 15 days prior to the date of the hearings. In the event the Commission shall alter the substance of a master plan following public hearing, the Commission shall provide public notice of the alteration and shall provide reasonable time commensurate to the alteration made for the public to comment thereon. After approval by the Commission, the proposed master plan shall be submitted simultaneously to the Legislature and the Governor. The master plan shall be enacted by statute; PROVIDED that prior to enactment, the Legislature shall conduct at least one public hearing thereon, either singularly or in conjunction with other related matters before the Legislature. The Legislature may accept the plan as presented or modify the plan in any respect; PROVIDED that final vote may not be taken on a substantively modified plan until 15 days or more following adoption of a committee report or floor motion which makes the amendment to the legislation that so modifies the plan. The Legislature may, prior to enactment, return the proposed master plan or any portion thereof to the Commission for further revision. The master plan, or any of its components, may be amended in the same manner and pursuant to the same required procedures prescribed for the enactment of the plan.

Source: S.L. No. 3L-54-94 §8, 1/7/94

**§1-109. Scope and nature of the master plan.** — The master plan shall be prepared in such manner that all or individual elements may be enacted. The master plan shall include a statement of goals, standards, principles, and social, economic, and cultural considerations sought to be expressed in the development plan of the state. The master plan shall take into account: topography; climate; soil and subsoil conditions; water courses and bodies of water; trends in the economy and demography of the

master plan area; environmental needs; the customs, traditions, and standards of life of the people of the master plan area; and the relation of land use in the master plan to the overall development of the state.

Source: S.L. No. 3L-54-94 §9, 1/7/94

**§1-110. Contents of the master plan.** — The master plan shall include the following elements:

(1) A land use element showing the distribution, location, and extent of existing and proposed uses of land for housing, business, industry, agriculture, recreation, education, public buildings and grounds, and other categories of public and private land use. The land use element shall include a statement of standards of population density and building intensity recommended for the area covered by the master plan;

(2) A transportation, circulation, and communication element showing the location, character, and extent of existing and proposed roads, terminals, shipping routes, airports, harbors, local transportation facilities, and major communication facilities;

(3) A conservation element providing for the conservation, development, utilization, and protection of natural resources, including forests, soils, rivers, streams, aquatic resources, estuaries, tidal lands, fisheries, marine resources, wildlife, minerals, and other natural resources. The conservation element may also cover: reclamation of land and waters; permissible areas for dredging of sand and coral; flood control; prevention and control of pollution of streams and other waters; prevention, control, and correction of the erosion of soils, beaches, and shores; protection of coral and other marine growth; and protection of watersheds;

(4) A culture and tradition element showing the location of historical and present day areas and sites important to the preservation, reverence, and enhancement of cultural and traditional values of the peoples of this state;

(5) A recreation element showing the location and proposed development of recreation sites such as natural preserves, parks, both artificial and natural beaches, playgrounds, vistas, waterfalls, nature walks, and mangrove channels, and other areas of scenic importance;

(6) A tourist promotion element showing the location and proposed development of sites of particular importance to the development and enhancement of tourism, including hotel sites and areas for the location of secondary businesses such as restaurants, clubs, gift shops, car lease businesses, sporting goods rental establishments, and dive shops, as well as tour companies, museums, botanical gardens, living village demonstration areas, cultural centers, guest information centers, marinas, golf courses, and other sports facilities, limited access roadways, local access to areas developed for tourism, and natural ecological buffer zones;

(7) A public services and utilities element showing general locations for sewage, refuse disposal, drainage, local utilities, water supply sources, electrical power sources, and rights-of-way, easements, and facilities for them;

(8) A community design element consisting of standards and principles governing the subdivision of land, and showing recommended designs for community and neighborhood development, including schools, parks, and playgrounds;

(9) A tourism design element consisting of standards and principles governing the spacing and construction of tourist-related facilities, and showing recommended designs and architectural themes for tourist-related facilities for the purpose of promoting an image of Pohnpei and the particular locality where the facilities are situated that is consistent with the overall tourism objectives of the state and the unique attributes of the locality where the facilities are situated;

(10) A housing element consisting of standards and plans for the improvement of single and multiple unit housing and for the provision of adequate sites for housing that reflect the community standards and cultural patterns of the peoples of this state. The housing element may further provide standards and plans for the lodging of out-of-state persons and families residing in Pohnpei for extended periods of time;

(11) A safety element for the protection of the community from fire, rain, wind, floods, marine disturbances, such as tidal waves and unusual tides, and earthquake damage, including such features as shelter areas, peak-load water supply requirements, minimum road widths, clearances around structures, and optimum dwelling design; and

(12) Any additional elements dealing with other subjects relating to the physical development of the state.

Source: S.L. No. 3L-54-94 §10, 1/7/94

**§1-111. Zoning and land use control laws: nature and scope.** — The Legislature shall enact zoning and land use control laws for the implementation of the master plan. Zoning laws shall divide the master plan area, or portions thereof as circumstances dictate, into zones as provided in §1-112. Such laws shall be made to achieve the arrangement of land uses depicted in the master plan; to loosen congestion; to secure safety from fire, panic, and other dangers; to promote health and general welfare; to preserve and enhance cultural and traditional values; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewage, schools, and parks; to provide for adequate parking; to protect real property value; and to safeguard and enhance the appearance of the master plan area. Such laws shall be made with reasonable regard for, among other things, the character of each zone and its particular suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the master plan area. Such laws shall further be made with reasonable regard for the expansion and development of communities within the master plan area, so as to provide for the orderly growth and development of such communities.

Source: S.L. No. 3L-54-94 §11, 1/7/94

**§1-112. Enactment of zoning laws prepared by the Commission.** — The Commission shall prepare and recommend for enactment by the Legislature a comprehensive zoning law or laws for the master plan area or any specific portion thereof, and may from time to time, may prepare and recommend amendments and revisions thereto. The zoning law shall conform to and shall implement the master plan adopted by the Legislature. It shall include maps delineating zone boundaries. The proposed zoning law shall be submitted simultaneously to the Legislature and the Governor. The Legislature shall conduct at least one public hearing within each local jurisdiction of the zone so affected by the legislation. Each hearing shall be preceded by public announcement on the public radio station at least once a day for ten days prior to the date of the hearing. The announcement shall contain information relating to the time and place of the hearing, the purpose thereof, and where copies of the proposed legislation may be obtained within the local jurisdiction or jurisdictions affected by the legislation. The Legislature may thereafter enact the zoning law in the form submitted by the Commission, amend it, reject it or return it to the Commission for further revision. In the event the Legislature substantially amends the legislation following a hearing as required by this section, it shall not take final action thereon for a period of ten days or more following adoption of a committee report or a floor motion which makes the amendment to the legislation that so modifies the plan unless the Legislature by majority vote of two-thirds of its members, without regard to vacancies, determines that sooner action is necessary in the interest of the welfare of the people of the state.

Source: S.L. No. 3L-54-94 §12, 1/7/94

**§1-113. Consideration of zoning legislation not submitted by the Commission.** The Legislature may consider zoning legislation or proposed amendments to zoning laws not submitted by the Commission at any time and enact zoning laws and amendments thereto in the same manner as it considers and acts on other bills generally.

Source: S.L. No. 3L-54-94 §13, 1/7/94; S.L. No. 7L-62-10 §5, 4/8/10



**§1-114. Land use zones.** — No land shall be used contrary to zoning laws enacted pursuant to this section. The following classifications are hereby adopted as use zones and no other classification shall be adopted by the Legislature or by any local government as may be authorized by revision to this chapter. The use zones are defined as follows:

- (1) Residential-1 (R-1): Single family residential – low density;
- (2) Residential-2 (R-2): Single family residential – medium density;
- (3) Residential-3 (R-3): Multi-family residential;
- (4) Residential-commercial (RC): Mixed residential and commercial-office;
- (5) Commercial (C): Commercial-office with restriction on the size of warehouses;
- (6) Resort Center (RC): Visitors' facilities;
- (7) Transportation Zone (T2): Transportation facilities as prescribed by Title 32 Chapter 2, as amended;
- (8) Industrial-1 (I-1): Industrial, including warehousing and limited commercial;
- (9) Industrial-2 (I-2): Intensive industrial uses, e.g. slaughterhouses, fish canneries, sewage treatment plants, and electrical production plants;
- (10) Public (P): Public and general access facilities;
- (11) Village (V): Low-density areas of limited size with multiple land uses;
- (12) Agricultural (A): All types of agricultural uses, except those as may be considered as intensive industry (I-2);
- (13) Conservation (CON): Public open spaces and recreational areas, wilderness and tidal areas, marine and aquatic preserves, land reserved for control of flooding and soil erosion, and other uses not detrimental to a multiple use conservation concept;
- (14) Watershed Forest Reserves (WFS): Areas prescribed by 26 PC 4-105;
- (15) Important Watershed Areas (IWA): Areas prescribed by 26 PC 4-106;
- (16) Mangrove Forests (MF): Areas prescribed by 26 PC 4-107;
- (17) Historic Preservation (HP): Sites of historical, archaeological, and cultural interest;
- (18) Planned Development (PD): Relatively large residential, commercial, and other uses planned as integrated developments;
- (19) Floating Zone (FZ): Future nonconforming uses in the public interest and consistent with the purposes of the overall master plan: e.g. to allow an electrical substation in a residential area; and
- (20) Impact Zone (IZ): Present permissible uses as prescribed in the foregoing subsections of this section, established after consultation with the national government, of such areas of the Palikir Valley Urbanization Impact Zone created pursuant to 42 PC 10-101 not transferred to the national government.

Source: S.L. No. 3L-54-94 §14, 1/7/94

Note: Letters "ON" have been added to "C" in Subsection (13) to distinguish this designation from that used in Subsection (5).

**§1-115. Nonconforming uses.** — Any zoning law or amendment thereto enacted pursuant to this chapter shall not apply to buildings or structures existing on the effective date of such legislation, nor to the existing use of any building, structure or land to the extent to which it is used on the effective date of such legislation; PROVIDED that the zoning law shall apply to any change of use of a structure or land, to any alteration of a building or structure when the same would amount to reconstruction, extension or structural change, to any erection of any building or structure and to any alteration of a building or structure to provide for its use of a different purpose or in a manner

substantially different from the use to which it was put before alteration, or for its use for the same purpose to a substantially greater extent; PROVIDED FURTHER that the Legislature may enact such laws as are necessary and proper to eliminate a nonconforming use more rapidly than normal attrition and compensate the owner of the use.

Source: S.L. No. 3L-54-94 §15, 1/7/94

**§1-116. Matters requiring mandatory review by the Commission. —**

(1) *State capital improvement program-planning and budgeting.* The Governor shall submit the state capital improvement program and the annual budget request for capital improvement projects in the master plan areas to the Commission for its review and recommendation at appropriate times in the budget and planning cycles as to allow for meaningful review and comment by the Commission.

(2) *Other capital improvement projects.* No governmental or quasi-governmental entity may commence a capital improvement project within the state having a value of \$10,000 or more without first submitting its plans therefor to the Commission for its review and comment.

(3) *Matters affecting master plans and zoning and land use control laws.* Any proposed administrative action or administrative submission to the Legislature for enactment into law which would significantly affect the master plans, zoning or land use control laws of the state shall first be submitted to the Commission for its review and comment prior to its promulgation into administrative action or its submission to the Legislature. The Legislature and its appropriate committees shall endeavor to ensure that all such legislation brought before it from any source which would significantly affect the master plans, zoning or land use control laws of the state shall be presented to the Commission for its review and comment prior to taking final action thereon.

(4) *Procedure for review.* In all cases where review by the Commission is mandatory under this section, the appropriate government official shall submit the matter to the Commission, together with a request in writing for a review and recommendation. The Commission shall then consider the matter and shall report its written recommendations to the official, the Governor, and the Legislature within 15 days following the receipt of the request, unless the Commission, for good cause, shall inform the parties so stated, in writing, that a longer time is needed, but not more than 30 additional days; PROVIDED that if the request is submitted by the Legislature or a committee thereof while the Legislature is in session or in anticipation thereof, the Commission shall submit its recommendations in the form and within the time so requested by the Legislature or its committee.

Source: S.L. No. 3L-54-94 §16, 1/7/94

**§1-117. Compliance. —** No land, way, ground, open space, water resource, tidal area, wetland, marine area, air space or any building, structure or contract right shall be acquired, developed, improved, constructed, used, leased or disposed of unless in conformity with the master plan and respective zoning and land use control laws pertaining to the master plan area.

Source: S.L. No. 3L-54-94 §17, 1/7/94

**§1-118. Appeals. —**

(1) The Commission shall hear and decide appeals from any order, requirement, decision or determination made by an administrative official charged with enforcement of any provision of the master plan or the zoning or land use control laws of the state. An appeal must be filed with the Commission in writing within 30 days of the effective date of the decision of the enforcing official. The Commission shall meet upon notice of the Chairman within 15 days of the filing of an appeal or at stated periodic intervals if warranted by the volume of work. All hearings shall be public and the appellant, his representative, the relevant official and any other person whose interest may be affected by the matter on appeal shall be given an opportunity to give oral testimony.

(2) The Commission shall affirm, modify or reverse the decision of the enforcing official by a majority vote of its total membership, without regard to vacancies. Every decision shall be in writing

and a certified copy shall be furnished without charge to the appellant and to the enforcing official. The enforcing official shall take immediate action to conform to the decision of the Commission.

(3) Any person aggrieved by the decision of the Commission on matters relating to an appeal may apply to the Pohnpei Supreme Court for review.

(4) This section shall supersede and control any conflicting provisions of law regarding administrative procedure, insofar as such conflict exists.

Source: S.L. No. 3L-54-94 §18, 1/7/94

**§1-119. Civil and criminal enforcement penalties and remedies. —**

(1) The Commission, the Attorney General or any aggrieved person may bring suit for an injunction or any other appropriate civil remedy against any person or agency that violates this chapter, or any master plan, zoning law, land use control law or zoning or land use regulation enacted or promulgated pursuant to this chapter.

(2) Any person who willfully and knowingly violates a zoning or land use control law or regulation promulgated pursuant thereto enacted pursuant to this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$500, or imprisoned for not more than one month, or both such fine and imprisonment, for each day the violation continues.

Source: S.L. No. 3L-54-94 §19, 1/7/94

**§1-120. Authorization for appropriation; administration. —**

(1) There is hereby authorized for appropriation from the general fund of Pohnpei a sum or sums to be determined annually in the Comprehensive Budget Act for the purpose of financing the activities of the Commission and other purposes consistent with the administration of this chapter.

(2) The sums authorized for appropriation by this section shall be administered and expended by the Chairman of the Commission solely for the purposes specified in Subsection (1) of this section.

(3) Any balance of the sums appropriated under the authorization of this section for a fiscal year remaining unexpended or unobligated for expenditure at the close of that fiscal year shall revert to the general fund of Pohnpei.

(4) The Commission shall be eligible to receive grants and assistance from such other sources as may from time to time become available.

(5) The Chairman of the Commission shall report to the Legislature on or before October 15 each year on all financial activities of the Commission for the previous year.

Source: S.L. No. 3L-54-94 §20, 1/7/94

**§1-121. Administrative authority. —**

(1) The Commission is empowered with the authority to adopt such regulations in accordance with the Administrative Procedures Act, Title 8 Chapter 1, as amended or superseded, as are necessary and proper to carry out the purposes and provisions of this chapter. Such regulations shall have the force and effect of law.

(2) The Commission may, as incidences of its investigatory authority, adopt procedures for the conduct of hearings by the Commission, the summoning of witnesses to testify under oath at the hearings, the taking of depositions, and the compelling of the submission of records and other forms of documentary evidence.

Source: S.L. No. 3L-54-94 §21, 1/7/94

**§1-122. Standards for interpretation; spot zoning impermissible. —** The standards for interpretation to be used by the Commission, local commissions where established pursuant to this chapter, and the courts in the application, administration, and adjudication of this chapter, and any statutes and local ordinances, rules, regulations, and administrative actions adopted or undertaken pursuant to this chapter, shall be consistent with the Pohnpei Constitution, the purpose of this chapter

as prescribed in §1-102 and where appropriate §1-111, having due regard to the customs and traditions of this state. Any attempt at spot zoning or the process of singling out a small parcel of land for a use classification substantially different from that of the surrounding area, for the benefit of the owners of such property and to the detriment of other owners, is hereby declared to be inconsistent with the purpose of this chapter and the constitutional foundation on which it is premised, and is therefore not permissible.

Source: S.L. No. 3L-54-94 §22, 1/7/94

Notes: 1. S.L. No. 3L-54-94 §23 repealed D.L. No. 3L-92-74 as amended. 2. S.L. No. 3L-54-94 §24 severability provision has been omitted.

## CHAPTER 2 SURVEY AND MARKING

### Section

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### **§2-101. 1970 Pohnpei Island Coordinate System. —**

(1) The system of plane coordinates hereinafter established for defining and stating the position or location of points on the surface of the earth within the island of Pohnpei shall be known and designated as the “1970 Pohnpei Island Coordinate System” and any land description in which it is used shall be designated the 1970 Pohnpei Island Coordinate System.

(2) The plane coordinates of a point of the surface of the earth used in expressing the position or location of such point in this system shall consist of two distances expressed in meters and decimals of meter. One of these distances, to be known as the “X-coordinate,” shall give the position in an east-and-west direction; the other, to be known as the “Y-coordinate,” shall give the position in a north-and-south direction. These coordinates shall be made to depend upon and conform to the coordinates on the 1970 Pohnpei Island Coordinate System of the triangulation and traverse stations as hereinafter established, as those coordinates have been determined by the United States of America Geological Survey Department in cooperation with the government of the Trust Territory of the Pacific Islands.

(3) All positions in the 1970 Pohnpei Island Coordinate System were computed on the Guam Datum of 1963, Clarks Spheroid of 1866 holding fixed the position of station “POHNPEI RM 1” as determined by a direct tie from station “POHNPEI HIRAN 1962” was observed by the U.S. Air Force in 1962 and computed by the U.S. Army. The astronomic position at station “POHNPEI HIRAN 1962” and the astronomic azimuth from “POHNPEI RM 1” to station “DISTAD ARMY MAP SERVICE 1962” were observed by the U.S. Navy Oceanographic Office in 1962. A laplace correction was applied to the astronomic azimuth by the U.S. Geological Survey. The corrected azimuth was used as the orienting direction for the computations. The horizontal control is a combination of electronic traverse and triangulation using second-order methods. All geodetic coordinates have been converted to plane rectangular coordinates using station “DISTAD” as the point of origin. The coordinates assigned to this station are: X=80,122.82 meters, Y=80,747.24 meters. The origin of the coordinates being on the meridian 158° 12’ 33.4772” east from Greenwich (Longitude) at the intersection of the parallel 6° 57’ 54.2725” north (Latitude). The plane coordinate system is a modified azimuth equal-distance projection in which the geodetic azimuth and grid distance are the same between the point of origin and any other in the projection. The position of said 1970 Pohnpei Island Coordinate System using station “DISTAD” as the origin is located in Kolonia across the street from the District Administrator’s Office marked with Standard Corp of Engineers-U.S. Army tablet stamped “DISTAD 1962” and set in the top of the east side of a large concrete slab.

(4) Any triangulation and/or traverse station established as described in Subsection (3) of this section may be used in establishing connection between a property survey and the rectangular coordinates as defined in this section.

(5) No survey or lands or maps or other documents hereinafter made shall have endorsed therein any legend or other statement indicating that it is based upon the Pohnpei Island Coordinate System unless the coordinates have been established on that system as defined in this section.

(6) Nothing contained in this section shall be interpreted as requiring any purchaser or mortgagee to rely on a description based wholly upon the aforesaid system.

(7) Any person who willfully alters, defaces or removes any marker erected for the purpose of designating any triangulation or traverse station of the Pohnpei Island Coordinate System shall be guilty of a misdemeanor and upon conviction thereof shall be imprisoned for a period of not more than one year or fined not more than \$100, or both such fine and imprisonment.

Source: PDC §12-1, 3/71; D.L. No. 4L-115-77 §2, 11/8/77

**§2-102. Boundary markers.** — Boundary markers, unless otherwise allowed by the Governor, shall take one of the following forms:

- (1) A pile of rocks or stones having a base four feet square and a height of three feet;
- (2) A four-faced concrete marker with a size of 4” x 4” x 24”;
- (3) A single rock of sufficient size that when firmly planted it shall have a vertical protrusion above the ground of at least two feet;
- (4) Any larger rock outcropping into which the mark “X” is carved; or
- (5) Any natural landmark or physical feature of the land, such as a river or stream.

Source: PDC §12-3(a), 3/71

**§2-103. Plantings near boundary markers.** — Except for natural landmarks or physical features used as boundary markers, it shall be unlawful for any person to plant any coconut, breadfruit, orange, cacao, mango or other tree of large size within ten feet of a boundary marker, or any banana, sugar cane or taro plants within six feet of a boundary marker, or any other plants of small size within three feet of a boundary marker.

Source: PDC §12-3(b), 3/71

**§2-104. Boundary lines.** — Except for boundary lines following natural landmarks or physical features, it shall be unlawful for any person to plant any coconut, breadfruit, orange, cacao, kapok, mango or other tree of large size within ten feet, or any other smaller tree or any plants within three feet, of any boundary line which has been surveyed by the Office of Land Management or its successor in law since January 1, 1966. For purposes of this section, the term “boundary line” shall be defined to be an imaginary straight line drawn between two parcels of land; PROVIDED, that in the case of boundary lines between natural landmarks or physical feature boundary markers, such boundary lines shall follow the course of such natural landmark or physical features.

Source: PDC §12-3(c), 3/71

**§2-105. Exceptions to §§2-103 and 2-104.** — §§2-103 and 2-104 shall not apply to the atolls of Mwoakilloa, Pingelap, Sapwuahfik, Nukuoro, and Kapingamarangi.

Source: PDC §12-3(d), 3/71

**§2-106. Penalties.** — Any person found in violation of §§2-103 and 2-104 shall, upon conviction thereof, be imprisoned for a period not to exceed 30 days, or fined not more than \$50, or both such fine and imprisonment.

Source: PDC §12-3(e), 3/71

**§2-107. Establishment of surveying program.** — There is hereby authorized for appropriation from the general fund of Pohnpei a sum to train employees and accelerate the surveying and mapping of lands in Pohnpei State; PROVIDED, HOWEVER, that nothing herein shall prohibit the use of such employees in any manner deemed appropriate by the Governor, or his designated representative, to accelerate the homestead program in Pohnpei State.

Source: PDC §12-4(a), 3/71; D.L. No. 3L-49-73 §1, 5/25/73; D.L. No. 3L-58-73 §33, 5/29/73

**§2-108. Compensation of surveyors.** — Compensation, per diem, annual and sick leave shall be as that established for the employees of the state government and shall be administered in accordance with the Public Service System Act, Title 9 Chapter 2.

Source: PDC §12-4(b), 3/71; D.L. No. 3L-58-73 §33, 5/29/73

**§2-109. Administration of surveying program.** — All sums authorized by this section shall be expended by the Governor solely for the purposes specified in §2-107. This program shall be administered by the Governor or his representative who shall make a progress report at each session of the Pohnpei Legislature.

Source: PDC §12-4(c), 3/71; D.L. No. 3L-58-73 §33, 5/29/73

REAL PROPERTY



### CHAPTER 3 LAND MEASUREMENT SYSTEM

Section

3-101 Metric system authorized; conversion tables

3-103 Markers; removal

3-102 Markers; payment

**§3-101. Metric system authorized; conversion tables.** — It shall be lawful throughout the state of Pohnpei to employ the metric system of measurement of lengths and areas, and no contract or dealing or pleading in any court shall be deemed invalid or liable to objection because the measures expressed or referred to therein are measures of the metric system. The tables in the following schedule shall be recognized in the construction of contracts and in all legal proceedings, and may lawfully be used for expressing measurements of length and area in the metric system:

#### Measures of Length

<u>Metric denominations and values</u>	<u>Equivalent in English System</u>
Kilometer .....1,000 meters	0.62137 mile, or 3,280 feet and 10 inches
Hectometer .....100 meters	328 feet and 1 inch
Dekameter .....10 meters	393.7 inches
Meter .....1 meter	39.37 inches
Decimeter .....1/10 of a meter	3.937 inches
Centimeter .....1/100 of a meter	0.3937 inch
Millimeter .....1/1000 of a meter	0.0394 inch

#### Measures of Area

<u>Metric denominations and values</u>	<u>Equivalent in English System</u>
Hectare ...10,000 square meters	2.471 acres
Are .....100 square meters	119.6 square yards
Centare .....1 square meter	1.19 square yards or 1,550 square inches

Source: TTC §1020 (1966); 57 TTC §11151 (1970); 57 TTC §251 (1980)

**§3-102. Markers; removal.** — The Chief of the Division of Surveying and Mapping shall collect and deposit with the Director of the Department of Treasury and Administration the reasonable cost of land markers furnished by the Division of Surveying and Mapping.

Source: TTC §1021 (1966); 57 TTC §11152 (1970); 57 TTC §252 (1980); S.L. No. 5L-14-00 §3-56, 10/1/00

**§3-103. Markers; removal.** —

(1) Any person who willfully and maliciously defaces, alters or removes any marker, monument or reference point which marks or determines the configuration or contour of any lot or tract of land, if erected by:

- (a) A licensed surveyor;
- (b) A private individual pursuant to 67 TTC §207 (1980);

- (c) Agreement between adjacent landowners; PROVIDED, HOWEVER, that this subsection shall apply only to persons who own no interest in any land to which such marker, monument, or reference point pertains; or
  - (d) Any agency of the government;
- (2) Shall upon conviction be imprisoned for a period of not more than one year, or fined not more than \$100, or both such fine and imprisonment.

Source: TTC §1022 (1966); 57 TTC §11153 (1970); P.L. No. 5-29 §1; 57 TTC §253 (1980)

Note: 67 TTC §207 (1980) relates to homesteading under the Trust Territory Administration.

## CHAPTER 4 OWNERSHIP, REGISTRATION, AND CONVEYANCE

### Section

4-101 Restrictions upon ownership

4-103 Effect of failure to record

4-102 Copies; indexes

4-104 Effect of German land title documents

**§4-101. Restrictions upon ownership.** — Only citizens of the state of Pohnpei or corporations wholly owned by citizens of the state of Pohnpei may hold title to land in the state of Pohnpei; PROVIDED, that nothing herein shall be construed to divest or impair the right, title or interest of noncitizens or their heirs or devisees, in lands in the state of Pohnpei held by such persons prior to December 8, 1941, and which have not been vested in the alien property custodian by vesting order dated September 27, 1951, or, if vested, are released from the terms of said order by direction of the High Commissioner; PROVIDED FURTHER, that nothing herein shall be construed to prevent the Government of Pohnpei from holding title to lands in Pohnpei State; and PROVIDED FURTHER, that this section shall not apply to cooperative associations and credit unions duly organized and incorporated pursuant to the laws of the state of Pohnpei.

Source: TTC §900 (1966); 57 TTC §11101 (1970); 57 TTC §201 (1980)

Cross-reference: See Article 12, §2 of the Pohnpei Constitution relative to acquisition of permanent interest in real property.

**§4-102. Copies; indexes.** — The Clerk of Pohnpei Supreme Court, upon payment of such fees, if any, as the Governor may fix, shall make and keep in a permanent record a copy of all documents submitted to him for recording which relate to title to real estate and shall comply with regulations issued by the Supreme Court, and any law applicable thereto. He shall also keep an index or indexes of such records in such manner as the Supreme Court may direct.

Source: TTC §1023(a) (1966); 57 TTC §11201 (1970); 57 TTC §301 (1980)

**§4-103. Effect of failure to record.** — No transfer of or encumbrance upon title to real estate or any interest therein, other than a lease for a term not exceeding one year, shall be valid against any subsequent purchaser or mortgagee of the same real estate or interest, or any part thereof, in good faith for a valuable consideration without notice of such transfer or encumbrance, or against any person claiming under them, if the transfer to the subsequent purchaser or mortgagee is first duly recorded. Nor shall any transfer of or encumbrance upon title to real estate or any interest therein, other than a lease for a term not exceeding one year, be valid as against any judgment affecting the title unless such transfer or encumbrance is duly recorded prior to the record of the notice of action in which the judgment is rendered.

Source: TTC §1023(b) (1966); 57 TTC §11202 (1970); 57 TTC §302 (1980)

**§4-104. Effect of German land title documents.** — German land title documents shall be recognized only as evidence of ownership of lands within Pohnpei State. All other provisions of said documents, including references to use, inheritance, and transfer of land shall be void and of no further force and effect.

Source: PDC §12-200, 3/71

REAL PROPERTY

## CHAPTER 5 DEVELOPMENT LEASEHOLD

### SUBCHAPTER I GENERAL PROVISIONS

#### Section

5-101 Short title	5-104 – 5-109 [Reserved]
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### SUBCHAPTER II DEVELOPMENT LEASEHOLDS

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5-111 Statutory contents of a development lease agreement	5-113 – 5-119 [Reserved]

### SUBCHAPTER III DUE DILIGENCE PROTECTIONS

5-120 Application of this subchapter is optional	5-128 Posting of announcement
5-121 Protections	5-129 Filing of notice of objection
5-122 Notice of intent to enter into or substantially modify a development lease	5-130 Time limits of validity of the notice of intent
5-123 Signatures and endorsements	5-131 Certification of compliance
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### SUBCHAPTER IV DUE PROCESS

5-140 Filings and recordings of development lease agreement	5-144 Agreements not to enforce declared null and void
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### SUBCHAPTER I GENERAL PROVISIONS

**§5-101. Short title.** — This chapter shall be known and may be cited as the “Development Leasehold Act of 2006.”

Source: S.L. No. 6L-72-06 §1-1, 6/5/06

**§5-102. Definitions.** — As used in this chapter, unless the context clearly requires otherwise, the following words shall have the following meanings:

(1) “Development lease” means a lease or combination of interconnected leases of real property that may contain an expanded term not to exceed 55 years when executed pursuant to this chapter.

(2) “Development lease agreement” means a contract or agreement evidencing the existence of a development lease that has been executed in compliance with this chapter.

(3) “Director” means the Director of the Department of Land and Natural Resources or the executive head of its successor in state law.

(4) “Improvements to real property” means permanent additions to or betterments of real property, which improvements are more extensive than ordinary repairs and substantially enhance the value of the property.

(5) “Lease” means a leasehold estate in real property within Pohnpei State, and all subleases and assignments of all or any portion thereof.

(6) “Lessee” means the person, or group of persons acting in concert, who is the recipient of a leasehold estate, and his successors in interest.

(7) “Leasehold estate” means the total, cumulative, and collective interests in real property that the lessor has transferred, inclusive of any rights, privileges or options to extend or renew the lease or any portion thereof, or to enter into a subsequent lease or series of leases with respect to the real property, or any interest therein that is the subject of the leasehold estate. Leasehold estate also includes concurrent leases, reversionary leases, cascading leases, and subsequent leases or series of leases issued to a singular lessee, or group of lessees acting in concert, or for a singular purpose or related group of purposes.

(8) “Leasehold option” or “option” means the legal right of one or more parties to a leasehold agreement to extend or renew the lease for a specific number of years.

(9) “Lessor” means the person, or group of persons acting in concert, who is the grantor of a leasehold estate, and his successors in interest.

(10) “Person” means and includes individuals, corporations, partnerships, trusts, governmental entities, diplomatic missions, international entities created by one or more governments, religious institutions, charitable organizations, non-profit associations, and all other forms of legal association.

(11) “Pohnpeian language” means the mother language of Pohnpei Island, the mother language of Kapingamarangi, the mother language of Mwoakilloa, the mother language of Nukuoro, the mother language of Pingelap, or the mother language of Sapwuahfik.

(12) “Term of the lease” or “lease term” means the maximum number of years under which any rights or privileges with respect to a leasehold estate may be exercised and enforced by the lessee under a leasehold agreement, inclusive of any rights, privileges or options to extend or renew the lease or any portion thereof, or to enter into a subsequent lease or series of leases with respect to the real property, or any interest therein that is the subject of the leasehold estate, irrespective of whether or not there are provisions for mandatory negotiations, arbitrations or other decision making apparatus for the re-valuation thereof or for any other condition subsequent; PROVIDED that the parties to a development lease may at any time voluntarily enter into a new lease agreement in the manner prescribed by law, the term of which does not include previous agreements.

Source: S.L. No. 6L-72-06 §1-2, 6/5/06

**§5-103. Disclaimer.** — This chapter applies only to leases where the parties thereto intend to exercise the privilege provided by this chapter to create a leasehold estate, as defined by §5-102(7), for greater than the 25 year limitation prescribed by Section 1 of Article 12 of the Pohnpei Constitution. Nothing in this chapter shall affect the validity of a leasehold estate of 25 years or less, irrespective of whether the parties thereto shall label or refer to such lease as a development lease; PROVIDED that the parties may voluntarily contract to be obligated to one or more of the covenants prescribed in Subchapter II of this chapter for a lease of 25 years or less, but shall not be entitled to the due diligence protections of Subchapter III of this chapter.

Source: S.L. No. 6L-72-06 §1-3, 6/5/06

**§§5-104 – 5-109. [RESERVED]**

## SUBCHAPTER II DEVELOPMENT LEASEHOLDS

**§5-110. Lease period.** — Notwithstanding the provisions of Section 1 of Article 12 of the Pohnpei Constitution, lands in the state of Pohnpei may be leased for developmental purposes for a lease term of more than 25 years, but not more than 55 years, otherwise known as a “development lease”; PROVIDED that such leases shall contain the statutory provisions set forth in §5-111; PROVIDED FURTHER that, notwithstanding any other provision of this chapter, a lease to a foreign government pursuant to this chapter for the purpose of establishing a diplomatic mission in Pohnpei may contain a right of renewal for one additional term, for a total lease term not to exceed 110 years.

Source: S.L. No. 6L-72-06 §2-1, 6/5/06

**§5-111. Statutory contents of a development lease agreement.** — In addition to such provisions as the parties to the lease shall agree upon, each development lease agreement executed under this chapter shall contain:

(1) The names of the lessee and lessor who are the parties to the development lease and the purpose or purposes for which the development lease is to be let or substantially modified;

(2) A description of the property for which the award is granted, and a covenant restricting the size of the property subject to the lease to an area that is substantially related to the land requirements for the purpose for which the development lease is sought;

(3) A covenant stating the total number of years for which any possession, use, privilege, option or any other right or interest in the leasehold estate may be exercised, which shall not exceed a maximum lease term of 55 years from the commencement of the term of the development lease; and

(4) A covenant stating the minimum value of improvements to the real property that is the subject of the lease that must be emplaced upon the property by the fifth anniversary of the execution of the development lease, the value of which shall not be less than the sum of \$100,000 plus \$4,000 for each year in excess of the first twenty-five years that the land is or may be subject to the leasehold estate as calculated pursuant to Subsection (3) of this section.

Source: S.L. No. 6L-72-06 §2-2, 6/5/06

**§5-112. Conditions made part of the agreement.** — The statutory conditions prescribed by §5-111 are hereby made a part by reference and operation of law of every development lease executed in Pohnpei State for the benefit of the lessor, notwithstanding their incorporation or non-incorporation in the written leasehold agreement. Any provision in a lease contract, agreement or subsequent agreement or contract that seeks to effectuate a waiver of the statutory provisions of §5-111 to the detriment of the rights and privileges of the lessor contained therein is null and void as against public policy. Violation of any condition or covenant prescribed by said sections of this chapter to the detriment of the rights and privileges of the lessor shall be deemed a material breach of the lease agreement, that may be redressed by resort to judicial action.

Source: S.L. No. 6L-72-06 §2-3, 6/5/06

**§§5-113 – 5-119. [RESERVED]**

## SUBCHAPTER III DUE DILIGENCE PROTECTIONS

**§5-120. Application of this subchapter is optional.** — Compliance with the statutory procedures of due diligence under this subchapter by the parties to a development lease entered into under the provisions of this chapter is optional. Parties who do not exercise the option to obtain the due diligence

protections which are accorded to them through application of this subchapter may exercise such other due diligence procedures as are recognized by law and attain such legal remedies as may be otherwise accorded by the courts, but shall not be accorded the statutory protections of this subchapter unless the parties be found to be in compliance with the statutory procedures required by this subchapter.

Source: S.L. No. 6L-72-06 §3-1, 6/5/06

**§5-121. Protections.** — Leases complying with the provisions of this subchapter shall be secure from collateral attack from persons not a party to the lease agreement and for which an objection has not been properly filed within the time prescribed by §5-129 or having been properly filed has not been withdrawn or administratively or judicially resolved; PROVIDED that nothing in this section shall prevent a party in interest from seeking legal remedies in the form of monetary damages from a party to a lease which has been made in compliance with the provisions of this subchapter; PROVIDED FURTHER that the protections of this subchapter shall not apply to a lease wherein the lessors whose names appear on the lease agreement shall thereafter be shown to collectively possess less than a sixty percent common ownership right in the real property subject to the leasehold estate at the time of the execution of the lease; PROVIDED FURTHER that the protections of this subchapter shall not apply to a lease obtained through fraud or material misrepresentation if the lessee participated in or had knowledge of such fraud or material misrepresentation.

Source: S.L. No. 6L-72-06 §3-2, 6/5/06

**§5-122. Notice of intent to enter into or substantially modify a development lease.** — Any person desiring to obtain the due diligence protections of this subchapter when acquiring or substantially modifying the terms or purpose of a development lease in excess of the term limits established in Section 1 of Article 12 of the Pohnpei Constitution shall file notice of his intent to acquire or substantially modify such interest in the manner prescribed by §5-125; PROVIDED that a person may also file notice of a development lease or modification that has already been executed. The notice so filed shall contain the following information:

(1) Name, address, and description of the prospective lessor and lessee who intend to be the parties to the development lease agreement, including evidence of personal, corporate or other legally recognized forms of organization capable of leasing land and entering into valid and enforceable agreements;

(2) A copy of the proposed development lease agreement and all proposed related agreements pertaining to options to extend, modify or renew the lease agreement, and any other matter related to the terms or duration of the leasehold agreement;

(3) A copy, where available, of the most recent land title determination of rights and privileges of persons having an ownership interest in the property to be subject to the development lease issued by a qualified court of the Pohnpei Judiciary, or predecessor thereto;

(4) A description of the activities that the lessee intends to conduct upon the premises;

(5) The levels of capitalization that the applicant intends to invest in improvements to the real property to be subject to the lease and the applicant's financial abilities to carry out the responsibilities of replacing the improvement upon the property;

(6) A summary description of the proposed improvements on the property and standards for the construction and maintenance of the improvements to the real property; and  
Such other information that the Director, in his discretion, deems necessary.

Source: S.L. No. 6L-72-06 §3-3, 6/5/06

**§5-123. Signatures and endorsements.** — Each notice submitted pursuant to §5-122 for filing shall contain the signature of each person who will be lessee to the development lease for which the notice is made. The application shall also contain the signed endorsement of each person who will be a lessor to the lease. In the case such person is a trust, corporation or other form of legal personality, the



application shall contain the signatures of each officer of that entity whose signature is required to authenticate a legally binding agreement of that entity of the type and nature of the proposed development lease. The signatures and endorsements required by this section shall be affixed to the notice solely for the purposes of this chapter, and shall not be construed as a binding obligation of the parties to enter into a lease agreement.

Source: S.L. No. 6L-72-06 §3-4, 6/5/06

**§5-124. Filing fees and bonds.** — Each notice submitted for filing pursuant to §5-122 shall be accompanied by a non-refundable filing fee of \$100 and a refundable bond equal to \$100 for each year of the term of the proposed lease in excess of the first twenty-five years thereof.

Source: S.L. No. 6L-72-06 §3-5, 6/5/06

**§5-125. Submission of notice of intent.** — The notice of intent to enter or to substantially modify a development lease required by §5-122, along with such filing fees and bonds as are prescribed by §5-124, shall be submitted by the prospective lessee to the Director of the Department of Land and Natural Resources.

Source: S.L. No. 6L-72-06 §3-6, 6/5/06

**§5-126. Deposit of fees and bonds.** — The filing fee so paid upon submission of a notice of intent shall be deposited in the general fund of the Pohnpei Treasury as the realization of general revenues. The refundable bond shall be deposited in a special holding fund of the Treasury, and shall be returned to the payer or his designee if the prospective development lease agreement is not executed within the time limits prescribed by §5-130, or, if so executed, on the fifth anniversary of the execution of the development lease upon a finding by the Director that the requisite capital improvements have been emplaced on the real property as prescribed by §5-111(4); PROVIDED, HOWEVER, that such bonds shall be forfeited to the state if required by §5-141(2).

Source: S.L. No. 6L-72-06 §3-7, 6/5/06

**§5-127. Certification and distribution of notice of intent.** — Within five working days following his receipt of a notice of intent to enter or to substantially modify a development lease, the Director of the Department of Land and Natural Resources shall certify whether the submission meets the procedural requirements of §5-122, §5-123, and §5-124 and so notify the prospective lessee. If the submission is incomplete, the Director shall return the submission to the prospective lessee stating his reasons why. Thereafter, the prospective lessee may resubmit a completed notice; PROVIDED that no additional filing fee shall be required for a subsequent submission of said notice of intent. Upon the submission of a completed notice, the Director shall certify the submission and so notify the prospective lessee thereof and, within five working days thereafter, shall cause copies of the notice and his certification thereof to be distributed to the following entities:

- (1) The Pohnpei Land Use Planning and Zoning Commission;
- (2) The Office of the Attorney General; and
- (3) The office of the chief executive of the local government of each locality wherein the lease lands are located.

Source: S.L. No. 6L-72-06 §3-8, 6/5/06

**§5-128. Posting of announcement.** — In addition to the filing of the notice of intent to enter into or substantially modify a development lease with the Director of the Department of Land and Natural Resources, the prospective lessee, within five working days following his receipt of the notification of affirmative certification by the Director, shall cause an announcement of the filing of a notice of intent to enter or substantially modify the development lease to be posted at the Office of the Director, the

Pohnpei Supreme Court, the offices of the local government of each locality wherein the land is situated and at least two prominent places on the land that is to be subject to the lease. Said posting:

- (1) Shall be on a form prescribed by Director of the Department of Land and Natural Resources;
- (2) Shall briefly identify the land which is to be subject of the proposed lease;
- (3) Shall specify the date of initial posting;
- (4) Shall contain information on where to locate the full, filed notice of intent; and
- (5) Shall explain when, where and how to file an objection with respect thereto.

The announcement so posted shall be both in English and the Pohnpeian language of the locality wherein the land is situated.

Source: S.L. No. 6L-72-06 §3-9, 6/5/06

**§5-129. Filing of notice of objection.** — Any person, having an interest in the real property to be leased, and not listed in the notice of intent as being a party to the lease, may, within 60 days following the posting of the announcement of the notice of intent as prescribed by §5-128, file a notice of objection to the execution of the development lease with the Director of the Department of Land and Natural Resources on a form prescribed by the Director. The filing of the notice of objection shall clearly indicate the persons and their legal interests in the real property adversely affected by the proposed development lease and the legal grounds for objecting to the development lease of said property. Thereafter, the protections of this subchapter shall not apply to any attempted lease of the subject real property until such time as the objection is withdrawn or is administratively or judicially resolved.

Source: S.L. No. 6L-72-06 §3-10, 6/5/06

**§5-130. Time limits of validity of the notice of intent.** — A notice of intent shall be valid for 180 days following the expiration of the time limits for filing a notice of objection as prescribed by §5-129 or 180 days following the date that such objection is withdrawn or is administratively or judicially resolved, whichever shall last occur. Only parties who have complied with the provisions of this subchapter and have entered into the development lease agreement pursuant thereto after the expiration of the time limits for filing a notice of objection as prescribed by §5-129 or the date that such objection is withdrawn or is administratively or judicially resolved, whichever shall last occur, and prior to the expiration of the notice of intent as prescribed by this section may be accorded the due diligence protections of this subchapter; PROVIDED that if the notice of intent has expired, a new or revised notice of intent may be filed in the same manner and subject to the same procedures and time prescription as an initial notice of intent.

Source: S.L. No. 6L-72-06 §3-11, 6/5/06

**§5-131. Certification of compliance.** — A lessee who has complied with all procedural requirements of this subchapter may, upon such evidentiary proof as the Director of the Department of Land and Natural Resources shall require, obtain from the Director a written certification of compliance with respect thereto. Said certification of the Director shall carry the presumption of proof of compliance with the procedural requirements of this subchapter in any filings thereof or adjudication of claims with respect to the lease for which it has been issued. A certification of compliance shall be issued or denied within 30 days of the request therefor, unless the Director shall, for good cause, notify the lessee in writing that more time is needed, which time extension and the reasons therefor shall be set forth in the notice.

Source: S.L. No. 6L-72-06 §3-12, 6/5/06

**§5-132. Publication of information.** — The Director of the Department of Land and Natural Resources shall publish and make available for distribution to prospective parties and to the general public information in appropriate written format that explains the requirements for a development

lease and the procedures parties must follow in order to enter into a development lease under the provisions of this chapter. The publication shall clearly identify which procedures are optional, and which procedures are mandatory. The publication shall be in English and in all Pohnpeian languages, and shall be made available to any person upon request, and no fee may be charged greater than necessary to compensate for the costs of publication.

Source: S.L. No. 6L-72-06 §3-13, 6/5/06

**§5-133. Request for an expedited land title determination.** — Any lessor who wishes to make his land available for development leaseholds under the terms of this chapter and under the protections of this subchapter and for whom a notice of intent to enter into or substantially modify a development lease has been filed in accordance with this chapter and for which the requisite fees and bonds have been paid may request the court of appropriate jurisdiction within the Pohnpei Judiciary for a determination of title and interest in the land that is to be the subject of the proposed lease transaction. Such request shall include a copy of the notice of intent as prescribed by §5-122 and certified as having been filed with the Department of Land and Natural Resources by the Director thereof. Upon the finding of an appropriate filing of the request herein specified, the court shall recognize that prompt rulings on the determination of title and interest to the real property that may be the subject of proposed development lease transactions under this chapter are in the interest of the economic development of this state and, therefore, shall expedite the consideration and disposition of the matter.

Source: S.L. No. 6L-72-06 §3-14, 6/5/06

**§§5-134 – 5-139. [RESERVED]**

## SUBCHAPTER IV DUE PROCESS

**§5-140. Filings and recordings of development lease agreement.** — Lease agreements executed under the authority of this chapter, and every amendment, modification or extension thereof, shall be filed and recorded with the Pohnpei Government in the same manner as the transfer of title to land in this state; PROVIDED that with respect to leases executed under Subchapter III of this chapter, such filing shall include a copy of the written certification by the Director of the Department of Land and Natural Resources that the lease has been executed in compliance with the procedural requirements of Subchapter III of this chapter.

Source: S.L. No. 6L-72-06 §4-1, 6/5/06

**§5-141. Failure to make improvements.** —

(1) In addition to all other liabilities as may be imposed under this chapter or other law, any lessee who, within five years of the execution of the leasehold agreement, fails to improve the leasehold estate at a value equal to or in excess of the valuation prescribed in §5-111(4) shall have the term of the lease reduced to the number of years for which minimum improvements have been made at the value prescribed by §5-111(4), but not less than 25 years unless the parties shall have agreed to a reduction to a lesser term.

(2) In addition to the reduction in the term of the lease imposed by Subsection (1) of this section, the bond paid for the filing of a notice of intent to enter or substantially modify a development lease as prescribed by §5-124 shall, to the extent of the reduction in the number of years of the leasehold estate, be forfeited to the state.

(3) In addition to the liabilities imposed by Subsection (1) of this section and the forfeiture of the applicable portion of the bond as prescribed by Subsection (2) of this section, the court may order the defendants to the action to pay to the plaintiff parties who have brought or joined the action, the costs

of bringing the legal action, inclusive of court charges and attorney's fees, in accordance with the instructions of the court.

Source: S.L. No. 6L-72-06 §4-2, 6/5/06

**§5-142. Covenants and judgments to run with the land.** — Except as provided in §5-143, all covenants required by §5-111 and any judgment that shall be entered against a lessee of a development lease pursuant to §5-141 shall be deemed to run with the lease, and all subsequent holders of the leasehold estate shall be liable for the performance of such covenants and the satisfaction of such judgments and all interest that shall have accrued with respect to said judgments; PROVIDED that subsequent holders of the leasehold estate shall not be liable for judgments running with the land unless such judgments were duly recorded or unless the subsequent holders had actual notice of the judgments.

Source: S.L. No. 6L-72-06 §4-3, 6/5/06

**§5-143. Extinguishment of responsibility and liability.** — The responsibility to comply with the statutory covenants as prescribed by §5-111 and the liability for the civil sanctions prescribed under Subsection (1) and Subsection (3) of §5-141 shall be extinguished upon cancellation of the leasehold estate and the return of all leasehold interest thereunder to the lessor or upon a voluntary or statutory reduction of the lease to a term of 25 years or less from the date of its execution; PROVIDED, HOWEVER, that the lessee shall remain liable for all costs incurred by the lessor to enforce such covenants or to assess and collect such penalties; PROVIDED FURTHER that the lessee shall be liable for payments already adjudicated as due and payable to the lessor and shall not be entitled to any reimbursement of penalties already paid.

Source: S.L. No. 6L-72-06 §4-4, 6/5/06

**§5-144. Agreements not to enforce declared null and void.** — Any agreement, whether direct or implied, between the parties to a lease agreement not to enforce a covenant specified in §5-111 or not to seek the imposition of any civil remedy pursuant to §5-141 is hereby declared to be null and void as against public policy.

Source: S.L. No. 6L-72-06 §4-5, 6/5/06

**§5-145. Regulations.** — The Governor is empowered to issue rules and regulations for the proper administration of this chapter, which rules and regulations shall carry the force and effect of law.

Source: S.L. No. 6L-72-06 §4-6, 6/5/06

Note: S.L. No. 6L-72-06 §5-1 repealed S.L. No. 4L-21-96, the Development Leasehold Act of 1996, as amended by S.L. No. 5L-14-00, in its entirety.

**§§5-146 – 5-149. [RESERVED]**

## CHAPTER 6 MORTGAGES

### Section

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**§6-101. Short title.** — This chapter is known and may be cited as the “Pohnpei State Real Property Mortgage Act.”

Source: D.L. No. 4L-152-78 §1, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-102. Purpose.** — The purpose of this chapter is to establish a system of mortgage law in Pohnpei which will induce lenders to make secured commercial and residential loans, while at the same time ensuring that borrowers who execute mortgages of property in Pohnpei have a full comprehension of the nature and consequences thereof, and that the parties to the mortgage are protected against unfair practices. This chapter shall be construed in such a manner as to best effectuate its purposes as set out herein.

Source: D.L. No. 4L-152-78 §2, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-103. Definitions.** — As used in this chapter, unless the context clearly requires otherwise:

- (1) “Clerk” means the Clerk of the Pohnpei Supreme Court.
- (2) “Court” means the Trial Division of the Pohnpei Supreme Court.
- (3) “Default” is a failure of an obligor to perform an act he is bound to perform.
- (4) “Encumbrance” is a non-fee interest in or charge upon property.
- (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 by which it 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 public agency or a financial lending institution duly licensed to do business as such in the state of Pohnpei that takes or receives a mortgage. This term also, where appropriate, refers to the mortgagee’s heirs, personal representatives, successors, and assigns.

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

(10) “Property” means any interest in real property that is capable of being transferred. Property includes leasehold interests.

Source: D.L. No. 4L-152-78 §3, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-104. Right to possession.** — The mortgagee is not entitled to possession of mortgaged property unless the mortgage expressly grants a right of possession; PROVIDED, HOWEVER, after the execution of the mortgage, the mortgagor may agree to deliver possession to the mortgagee without additional consideration; PROVIDED FURTHER that the right of possession of a mortgagee in the mortgaged property may not cumulatively exceed five years or the remaining term of the mortgage, whichever is less.

Source: D.L. No. 4L-152-78 §4, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-105. Security not to be impaired.** — No mortgagor shall do any act which will impair the mortgagee’s security without the express written permission of the mortgagee.

Source: D.L. No. 4L-152-78 §5, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-106. Property mortgagable.** — Any property not otherwise restricted by law may be mortgaged and shall be subject to foreclosure, including homesteaded property for which a deed of conveyance has been issued pursuant to 67 TTC (1980), and properly recorded or pursuant to any law concerning homesteaded property; PROVIDED, HOWEVER, that the value of the property so mortgaged including any improvements thereon or to be effected thereon by the debt for which such security is demanded, shall not exceed the total value of said debt, including interest and incidental charges, by three hundred percent (300%). The exemption from execution set forth in 8 TTC §61(3) (1980), or under any other law shall not be applicable to any property that is mortgaged and properly recorded.

Source: D.L. No. 4L-152-78 §6, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-107. Heirs and devisees take subject to mortgage.** — Whenever property which is subject to a mortgage passes by succession or devise, the successor or devisee is not entitled to have the decedent’s personal representative satisfy the mortgage out of the decedent’s estate unless there is an express provision in the decedent’s will that his estate is to satisfy the mortgage. Unless the mortgage is so satisfied out of the decedent’s estate the heir or devisee takes the property subject to the mortgage.

Source: D.L. No. 4L-152-78 §7, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-108. Transfers made as security deemed mortgages.** — Except as provided in the Deed of Trust Act, Chapter 7, every transfer of an interest in property, made only as a security for the payment of a debt, and every transfer or conveyance of any property by deed of trust or otherwise, executed and delivered to secure the payment of such a debt, shall be deemed a mortgage. No other transaction, unless excepted by this section, for which property is purportedly made the security therefor, whether in whole or in part, shall affect the property or interests therein by reason of the purported security agreement.

Source: D.L. No. 4L-152-78 §8, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80; S.L. No. 1L-157-87 §30, 8/5/87

**§6-109. Necessity of writing; oral explanation. —**

(1) A mortgage shall be created, amended, renewed or extended only by writing in English. All mortgage instruments shall contain a clause, conspicuously located on the first page of the instrument, notifying the mortgagor in both English and the principal language of the state:

(a) That he is entitled without cost to a translation of the mortgage instrument in the principal language of Pohnpei; PROVIDED, HOWEVER, that 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 proved that the error was willfully or recklessly caused by the party to be charged; and

(b) That the mortgage is a binding legal instrument and that it is recommended that the mortgagor have the instrument reviewed by an attorney.

(2) The mortgagee shall orally, in the predominant language being used in the transaction, inform the mortgagor prior to the execution of the mortgage agreement that a copy of the mortgage instrument may be obtained without cost in the principal language of the state and that the mortgage is a binding legal instrument and that it is recommended that the mortgagor have the instrument reviewed by an attorney, and that the mortgagee shall further orally explain to the mortgagor prior to execution of the agreement the total estimated costs of the debt secured by the mortgage including repayment of the principal, interest, and all incidental charges, such total to be a reasonable estimate of the costs computed as of the time for execution of the mortgage instrument and a statement verifying compliance with this subsection shall be signed by the mortgagor and mortgagee and appended to the mortgage instrument.

Source: D.L. No. 4L-152-78 §9, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-110. Requisites for recording. —**

(1) No mortgage shall be received for recordation unless it is executed in accordance with the requirements of this section and §6-109 and contains:

- (a) The mailing addresses of the mortgagor and mortgagee;
- (b) The description of the property affected;
- (c) The principal amount of the secured indebtedness;
- (d) The rate of interest thereon; and
- (e) The time, place of repayment, and maturity date.

(2) All mortgages, amendments, renewals, and extensions of mortgages shall be acknowledged or proven, as provided by this chapter, and recorded with the Clerk of the Pohnpei Supreme Court and/or with the Principal Judge of the Court of Land Tenure or Registrar, as required by 41 PC 4-102 and 67 TTC §119 (1980) or with the proper governmental agency pursuant to any applicable law concerning the recordation of real estate instruments within the state of Pohnpei. For purposes of this chapter, the proof or acknowledgment of an instrument affecting title to or any interest in property may be made before a justice of the Supreme Court, a judge of the Court of Land Tenure, the Clerk of the Pohnpei Supreme Court, the Clerk of the Court of Land Tenure, or any subordinate of the above duly authorized to act in the name of said official. Nothing in this section shall preclude acknowledgment by a notary public duly authorized to acknowledge instruments in any state or territory of the United States of America or other foreign jurisdiction; PROVIDED, HOWEVER, that said notary public complies with the laws of that jurisdiction.

Source: D.L. No. 4L-152-78 §10, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-111. Effect of failure to record. —** In the event of failure to properly record a mortgage, such mortgage shall not be void but 57 TTC §302 (1980) shall apply, or any other applicable law or equity that would allow the mortgagee to recover debt owed by the mortgagor.

Source: D.L. No. 4L-152-78 §11, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-112. Instruments made with intent to 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 encumbrancer for value, of the same property or the rent or profits thereof.

Source: D.L. No. 4L-152-78 §12, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-113. Service of notice; designated personal representative.** —

(1) All notices required by this chapter must be in writing and notwithstanding any provision of this section shall be sufficient if received by the mortgagor and a duplicate copy recorded with the Clerk of the Pohnpei Supreme Court within five days after commencement of service upon the party to be served. The mortgagor shall designate in the mortgage instrument, the name and mailing address of a personal representative for the service of notice in the event the mortgagor cannot, after diligent search, be found within Pohnpei State.

(2) The name and address of the designated 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 notice of the same.

(3) A Federated States of Micronesia Postal Service Registry Return Receipt showing that the envelope containing the notice has been received by the mortgagor or his designated personal representative shall be prima facie evidence that proper notice has been given. A return by a police officer, officer of the Supreme Court or any other person authorized by the Supreme Court to serve such notice, stating by affidavit that notice has been delivered personally to the mortgagor, or, if he cannot be located within the state of Pohnpei, to his designated personal representative, shall be prima facie evidence that notice has been delivered.

(4) When service cannot be made in accordance with Subsection (3) of this section, the notice shall be filed with the Clerk of the Supreme Court who shall cause the notice to be announced on the radio within the state of Pohnpei at least once per week for four weeks and published once a week in a newspaper of general circulation within the state of Pohnpei for at least four consecutive weeks and shall further cause said notice to be posted in a prominent public place in the local jurisdiction in which the property is located for 30 consecutive days, which shall be prima facie evidence that proper notice has been given. Once said notice has been posted in a prominent public place, the fact that the notice 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. The Clerk may collect a reasonable charge for the cost of such publication. Service shall be considered effected 30 days after the first publication, broadcast or posting, whichever is last in time.

(5) In the event there is more than one mortgagor, proper notice served separately upon each mortgagor holding more than twenty four percent (24%) of the mortgaged interest in property shall constitute service upon all of the mortgagors thereto.

Source: D.L. No. 4L-152-78 §13, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-114. Assignments, subordinations, and waivers.** — Nothing in this chapter shall preclude the assignment, subordination or waiver of a mortgage. The recordation of any assignment, subordination or waiver shall operate as constructive notice to all persons from the date and time of its recordation.

Source: D.L. No. 4L-152-78 §14, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-115. Record of assignment not notice to mortgagor; form of notice to mortgagor.** — When a mortgage is executed as security for money due or to become due on a promissory note, bond or other instrument, the recordation of the assignment of the mortgage is not of itself sufficient notice to the mortgagor, so as to invalidate any payment made by the mortgagor, to the person holding such note, bond or other instrument. At the time of the assignment, a notice shall be mailed to the mortgagor and



shall be sufficient when there is written evidence that the mortgagor has received the same. The notice shall be in substantially the following form:

“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).”

Source: D.L. No. 4L-152-78 §15, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-116. 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.

Source: D.L. No. 4L-152-78 §16, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-117. 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 mortgagee who, after demand by the mortgagor, for a period of 30 days fails or refuses to deliver a certificate of discharge shall be liable for all damages which such mortgagor may sustain by reason of such refusal and shall also forfeit to the mortgagor the sum of \$300. 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.

Source: D.L. No. 4L-152-78 §17, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-118. Waiver by borrower of statutory rights; validity.** — Any express agreement made or entered into by a borrower 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 borrower agrees to waive the rights or privileges conferred upon him by this chapter shall be void and of no effect.

Source: D.L. No. 4L-152-78 §18, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-119. No private power of sale conferred by mortgage.** — No mortgage may be foreclosed other than by the judicial remedies provided by this chapter.

Source: D.L. No. 4L-152-78 §19, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-120. 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 30 days after receipt of the notice of default provided for in §6-122.

Source: D.L. No. 4L-152-78 §20, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-121. Mortgagee’s remedies in the event of default.** — In the event of default by the mortgagor in the performance of his obligations under the mortgage or note or any 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 parties obligated thereunder. In the event that the judgment rendered in such action orders full performance of the mortgagor’s entire obligation, or payment of the entire sum for which the mortgagor is indebted, satisfaction by the mortgagor of the judgment shall act to discharge the mortgage.

(2) The mortgagee may also, if so empowered by the terms of the note or mortgage, bring an action to foreclose or satisfy the mortgage in accordance with this chapter.

Source: D.L. No. 4L-152-78 §21, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-122. Notice of default.** — Not less than 30 days prior to the commencement of any action or proceeding seeking foreclosure of a mortgage, written notice of default shall be served as provided in

§6-113. The notice shall be written in the English language and in the principal language of Pohnpei and shall contain the following:

- (1) A description of the property;
- (2) The date and amount of the mortgage;
- (3) The amount due for principal and interest stated separately;
- (4) A statement that if the amount due is not paid within 30 days from the date of service, the mortgagor shall be in default and proceedings shall be commenced to foreclose the mortgage; and
- (5) If the mortgagee elects to accelerate the payment of obligations, a statement that if the amount due is not paid, then the obligations shall be accelerated, provided such is allowed under the note and/or mortgage.

Source: D.L. No. 4L-152-78 §22, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-123. Request for copies of notices of default prior to foreclosure. —**

(1) Any person desiring to receive a recorded copy of a notice of default prior to foreclosure may, at any time subsequent to recordation of such mortgage and prior to service of default as provided in §6-113, cause to be filed for record with the Clerk of the Pohnpei Supreme Court a request for a copy of any such notice of default prior to foreclosure. This request shall be signed and acknowledged by the person making the request, specifying the name and address of the person to whom the notice is to be mailed. It shall also identify the mortgage by stating the names of the parties thereto, the date of recordation thereof, and such other identification as may reasonably be required by the Clerk of the Supreme Court. The request for notice shall be in substantially the following form:

“Request is hereby made that a copy of any notice of default prior to foreclosure of the mortgage recorded [Date], executed by \_\_\_\_\_ as mortgagor in which \_\_\_\_\_ is named mortgagee be mailed to [name] at [address]

Signature: \_\_\_\_\_.”

The Clerk shall collect a fee of \$3 from the requesting party which shall be placed in a special account for the processing of requests and mailing of copies of notices under this chapter.

(2) Upon the filing for record of such request, the Clerk of the Supreme Court shall index with the mortgage, the names of persons requesting copies and shall send a copy of any recorded defaults to such persons.

Source: D.L. No. 4L-152-78 §23, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-124. Cure of default; payment of arrearages; costs and fees; effect upon acceleration. —**

Whenever there has been a failure by the mortgagor to pay obligations in accordance with the terms of a mortgage, including circumstances where all or a portion of the principal sum secured by the mortgage has, prior to the fixed maturity date become due or been declared due by reason of his default, the mortgagor or his successor in interest in the mortgaged property or any part thereof, or any other person having a subordinate lien or encumbrance therein may at any time prior to the foreclosure sale, pay to the mortgagee or successor in interest, the entire amount then due under the terms of the mortgage, and reasonable attorneys’ fees actually incurred plus any costs or expenses of collection incurred to the extent that such attorneys’ fees and collection costs and expenses exclusive of court charges do not cumulatively exceed \$2,000 or one-third of the principal and interest remaining due on the debt, whichever is less. Such payment shall cure the default, and all proceedings theretofore instituted shall be dismissed or discontinued. Once the mortgagee has been paid in full, then the mortgaged property shall be released by the mortgagee from the encumbrance of such mortgage.

Source: D.L. No. 4L-152-78 §24, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-125. Actions for foreclosure of mortgages. —**

(1) *Action for foreclosure of mortgage: where brought.* All judicial actions for the foreclosure of a mortgage shall be brought in the Trial Division of the Pohnpei Supreme Court or its successor in state law.

(2) *Service of summons.* Service of summons in an action of foreclosure shall be made in accordance with the applicable provisions of Division VIII of this Code, the Rules of Civil Procedure adopted by the Supreme Court or pursuant to any applicable law or rule of procedure in the state of Pohnpei.

(3) *Complaint in an action for foreclosure of a mortgage.* The complaint for foreclosure shall set forth the date of execution of the mortgage; its assignments, if any; the name and residence of the mortgagor; a description of the mortgaged property; a statement of the date of the note or other obligation secured by the mortgage, and the amount claimed to be unpaid thereon; and the names and residences of all persons having or claiming an interest in the property subordinate in right to that of the holder of the mortgage, all of whom shall be made defendants in the action. No person holding a conveyance from or under the mortgagor of property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record at the time of the commencement of the action, need be made a party to such action, and the judgment therein rendered, and the proceedings therein had, shall be conclusive against the party holding such unrecorded conveyance or lien as if he had been a party to the action.

(4) *Trial and judgment in foreclosure suits.* 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 attorneys' fees, and shall render judgment for the sum so found due, and order that the same be paid into the court within a period of three months from and after the date on which the order was made.

(5) *Sale of the mortgaged property.* When the mortgagor after being directed to do so, as provided in Subsection (4) of this section, fails to pay the principal and interest, and costs, and attorneys' fees incident thereto to the extent permitted under this chapter at the time directed in the order, the court shall order the property (or so much thereof as may be necessary) to be sold; but such sale shall not affect the rights of persons holding prior recorded encumbrances upon the same estate or part thereof. Any sale of property under a judgment of foreclosure shall be made by some person appointed by the court for that purpose and must be made at a public place to be designated by the court, upon the notice and in the manner provided by law governing sales under execution with such additional requirements including, but not limited to, the extension of the term of notice, and requirement of publication or announcement in local newspaper, radio or television, as may be prescribed by the court to attempt to assure a reasonable return from the sale. Nothing in this chapter shall deny to the mortgagee the right to purchase property at a foreclosure sale; PROVIDED, HOWEVER, that said mortgagee is otherwise eligible to own land within Pohnpei.

(6) *Certificate of sale; deed effect.* Whenever any property shall be sold under judgment of foreclosure pursuant to this chapter, the person making the sale must give to the purchaser a certificate of sale and properly record a duplicate thereof, and file a duplicate with the court. The certificate shall state the date of judgment under which the sale was made, the names of the parties, a particular description of the property sold, the price bid for each distinct 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 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 to 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 claims, rights 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.

(7) *Application of proceeds.* The proceeds of every foreclosure sale must be applied to the costs of sale; then to the costs of collection and foreclosure proceedings, including attorneys' fees to the extent that such costs and fees, exclusive of court charges, do not cumulatively exceed \$2,000 or one-third of the principal and interest remaining due on the debt, whichever is less; then to the interest due; and then to the principal debt. If there is any surplus, it must be brought to court for the use of the defendant or the person entitled thereto, subject to order of the court.

(8) *Judgment for balance after the sale of property.* Upon the sale of any property, under a decree for a sale to satisfy a mortgage or other encumbrance thereon, if there shall be a balance due to the plaintiff after applying the proceeds of the sale, the court, upon motion, shall give a decree against the defendant for any such balance for which, by the record of the case, he may be personally liable to the plaintiff, upon which execution upon the assets of the defendant shall be issued immediately if the balance is all due at the time of the rendition of the decree.

(9) *Disposition of proceeds in case the debt is not all due.* If the debt which the mortgage secured is not all due, as soon as sufficient property has been sold to pay the amount due, with costs, the sale shall cease; and afterwards, as often as more becomes due for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions without injury to the parties, the whole shall be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

(10) *Vacating the sale.* Upon motion by an aggrieved party filed within one year of the date of sale, the court may vacate a foreclosure sale and order a new sale upon a finding that there has been fraud in the procurement of the foreclosure decree, where the sale has been improperly, unfairly or unlawfully conducted, or when the sale is so tainted by fraud that to allow it to stand would be inequitable.

Source: D.L. No. 4L-152-78 §25, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-126. Redemption.** — All property sold upon foreclosure of a mortgage by order, judgment or decree of court may be redeemed, in the manner hereinafter provided, at any time within 12 months after the date of such sale by the judgment debtor or his successor in interest; PROVIDED, HOWEVER, that the judgment debtor or his successor in interest redeem all of the property as sold.

Source: D.L. No. 4L-152-78 §26, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-127. Redemption amount; time; payment; disagreement as to amount; proceedings for determination; notice and hearing; certificate.** — The judgment debtor may redeem the property from the purchaser within 12 months of the date of the sale, upon paying the purchaser the amount of his purchase, with one percent (1%) per month thereon, up to the time of redemption. In addition, the judgment debtor shall pay the following: (1) the amount of any assessment or taxes; (2) any costs or sums paid for fire insurance, management, maintenance upkeep or repair of improvements located upon the property; and (3) any sum 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 may have paid thereon after purchase, and interest on such amounts in the amount computed above. Upon receipt of such payment the purchaser shall execute to the judgment debtor a proper certificate of redemption in the form prescribed below. In the event of a disagreement between the purchaser and the judgment debtor as to whether any such sum demanded by the purchaser is a proper charge to be added to the amount required for redemption, the judgment debtor shall thereupon pay to the Clerk of the Pohnpei Supreme Court out of which execution or order authorizing the sale was issued, the amount demanded by the purchaser for redemption which the purchaser believes, in good faith, are the amounts allowed by this chapter, less the amount in dispute, and shall at the same time file with the court a petition in writing setting forth specifically the item or items demanded to which he objects,

together with his reasons for such objections, and asking that such amount be determined by the court. In no event shall the amount deposited with the Clerk of the Supreme Court be less than the purchase price as paid by the purchaser at the foreclosure sale, plus interest from the date of purchase to the date of deposit with the Clerk of the Supreme Court at twelve percent (12%) per annum, plus an amount equal to ten percent (10%) of the said purchase price. The court shall thereupon fix a day, not less than 20 nor more than 60 days from the date of such filing, or if the court be not in session, not less than five nor more than ten days from the day it again sits, whichever is the greater, for the hearing of said objection. A copy of said petition, together with a notice of hearing, giving the time and place thereof, shall be served by the judgment debtor, or his attorney, seeking redemption, upon the purchaser not less than 20 days before the day of the hearing. Upon the day fixed, the court in which the order of 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 evidence which is satisfactory to the court. When the amount has been so determined and in the event the amount thereto deposited with the court is sufficient, the same shall forthwith be paid to the purchaser upon his execution of a proper certificate of redemption, said certificate stating the name of the purchaser and of the redemptioner, and further stating the claim, instrument or judgment under which the redemptioner derives the right to redeem, and further stating the date of the redemption and amount for which it was made, and particularly describing the redeemed property. In the event an additional amount to that theretofore paid to the court is required, the redemptioner shall pay such additional amount to the Clerk within ten days. He shall then pay the whole amount necessary to the purchaser upon his execution of a proper certificate of redemption. The certificate of redemption so issued may be deposited with the Clerk for delivery to the redemptioner, or given to the redemptioner at the time of payment.

Source: D.L. No. 4L-152-78 §27, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-128. Rents and profits; rights of purchaser and redemptioner; credit upon redemption; money to be paid; accounting.** — The purchaser, from the time of sale until a redemption, is entitled to receive, from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof. But when any rents or profits have been received by the purchaser, or his assigns, from the property thus sold preceding such redemption, the amounts of such rents and profits, less reasonable expenses incurred in the production of such rents and profits and a management fee, shall be a credit upon the redemption money to be paid, and if the redemptioner, before the expiration of the time allowed for such redemption, demands in writing of such purchaser a written and verified statement of the amounts of such expenses, rents, and profits thus received, the period for redemption is extended for a period of 20 days after the normal expiration of the redemption period.

Source: D.L. No. 4L-152-78 §28, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-129. Injury to property restrained.** —

(1) The court by injunction, for good cause shown, may restrain the party in possession from doing any injurious act to the property during the existence of the mortgage or pendency of the foreclosure action thereon and until the expiration of the time allowed for redemption.

(2) A receiver may be appointed where it appears that mortgaged property is in danger of substantial waste or that the income therefrom is in danger of being lost, or that the property is or may become insufficient to discharge the debt which it secures, and that affirmative action is needed to prevent such occurrences.

Source: D.L. No. 4L-152-78 §29, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-130. Limitation of actions.** — 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 as provided in this chapter.

Source: D.L. No. 4L-152-78 §30, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-131. Discharge of real property mortgage not renewed or extended of record.** — Every mortgage 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 an order of a judge of the Trial Division of the Pohnpei Supreme Court upon application of any interested person with notice to the proper interested parties. Such application and order shall be filed in the office of the Clerk of the Supreme Court. The fee for such application and order shall be the same as that charged for filing a civil action.

Source: D.L. No. 4L-152-78 §31, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-132. Legal tender.** — Unless otherwise provided by law, a mortgage may require all mortgage payments to be made in the coins and currencies of the United States of America, and all purchases of land at foreclosure sales and all redemptions as provided in this chapter shall be made in the coins and currencies of the United States.

Source: D.L. No. 4L-152-78 §32, 9/14/78

Note: §32 was inserted by S.L. No. 2L-44-80 §1, 11/13/80.

**§6-133. Improvements by mortgagee prior to sale.** — After the commencement of a suit to foreclose, the mortgagee may make a motion to the court to be allowed to make repairs or to maintain the property. If such motion is granted for good cause shown, the mortgagee shall be allowed to make such repairs or to maintain the property as allowed by the court up to the time of such sale. All expenditures shall be a part of the costs of the sale which are recoverable by the mortgagee.

Source: D.L. No. 4L-152-78 §33, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

**§6-134. Foreign citizen as mortgagee.** — A noncitizen of Pohnpei may be a mortgagee under this chapter; PROVIDED, HOWEVER, that no section of this chapter shall be construed to mean that a noncitizen mortgagee is entitled at any time to hold fee simple title to property in Pohnpei State. Under this chapter, a mortgage creates a lien on the land but does not pass title to the mortgagee.

Source: D.L. No. 4L-152-78 §32, 9/14/78; S.L. No. 2L-44-80 §1, 11/13/80

Note: S.L. No. 2L-44-80 §1, 11/13/80 renumbered §32 as §34.

**§6-135. Foreclosure by foreign citizen as mortgagee.** — When foreclosure is instituted, the foreign citizen mortgagee may, upon a showing of good cause, propose to the court that the fee simple title be held by a trustee or by the court as trustee for the disposition of the fee simple title at the sale or at any postponed sale. The trustee may be the court, or any citizen of Pohnpei or any other person or corporation that is authorized to hold the fee simple title to the property, subject to the transfer thereof to the purchaser at the foreclosure sale. Nothing herein shall prevent a mortgage to contain a clause providing for a leasehold mortgage or a leasehold interest to be transferred at the foreclosure sale as may be set forth in the mortgage instruments or documents. A mortgagee may be the purchaser at the foreclosure sale, subject to the law governing the ownership of land in Pohnpei State. If the foreclosure concerns the sale of a leasehold interest, then the length of the term of the lease shall be according to the laws of the state inclusive of laws concerning leases to foreign citizens; PROVIDED, HOWEVER, that in the absence of any such law enacted by the government of this state, to hold such a leasehold interest of less than ten years; PROVIDED FURTHER that this provision shall not exempt

any such purchaser from compliance with applicable business and foreign investment laws in the use of such leasehold interests.

Source: D.L. No. 4L-152-78 §35, 9/14/78

Notes: 1. §35 was inserted by S.L. No. 2L-44-80 §1, 11/13/80. 2 References to Trust Territory Code, TTPI Manual of Administration, TTPI regulatory provisions and the High Commissioner have been omitted.

**§6-136. Interpretations. —**

(1) In the event any portion of the mortgage documents including but not limited to the promissory note, notices and other instruments affecting the same are translated from English to Pohnpeian, and thereafter a conflict results as a result of such interpretation, then the English version shall prevail.

(2) Whenever possible, this mortgage law shall be interpreted in such a manner to give it full force and effect and to make it a binding obligation upon the mortgagor to the mortgagee.

Source: D.L. No. 4L-152-78 §36, 9/14/78

Note: §36 was inserted by S.L. No. 2L-44-80 §1, 11/13/80.

REAL PROPERTY



## CHAPTER 7 DEEDS OF TRUST

### Section

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**§7-101. Short title.** — This chapter is known and may be cited as the “Deed of Trust Act of 1987.”

Source: S.L. No. 1L-157-87 §1, 8/5/87

**§7-102. Purpose.** — The purpose of this chapter is to provide for a satisfactory method of securing the financing of improvements to real property by the United States of America acting through the Rural Economic and Community Development Services, the Department of Housing and Urban Development or the Veterans Administration.

Source: S.L. No. 1L-157-87 §2, 8/5/87

**§7-103. Applicability.** — This chapter shall be applicable only to transactions wherein the debtor (trustor) is required to make payments of the secured financing in accordance with the applicable federal regulations of the Rural Economic and Community Development Services, the Department of Housing and Urban Development or the Veterans Administration of the United States of America Government.

Source: S.L. No. 1L-157-87 §3, 8/5/87; S.L. No. 2L-37-88 §1, 8/15/88

**§7-104. Deed of trust.** — A deed of trust is a conveyance of the freehold or leasehold interest in trust to secure an indebtedness or charge against real property conveyed, with or without a power of sale, vested in the trustee to sell according to the terms as set forth in the instrument. A deed of trust complying with the terms and conditions of this chapter shall be deemed as a lien or encumbrance upon real property. The deed of trust shall be evidenced by an instrument in writing containing the terms thereof in both the English language and the principal language of the trustor, if that be an indigenous language of the state. In the event of conflict between the two versions of the deed of trust, or any term thereof, the version in the English language shall prevail.

Source: S.L. No. 1L-157-87 §4, 8/5/87

**§7-105. Definitions.** — The following words as used herein shall mean:

(1) *Beneficiary.* The United States of America acting through the Rural Economic and Community Development Services, the Department of Housing and Urban Development or the Veterans Administration, who is the creditor to whom the trustor's obligation is owed.

(2) *Recordation.* Any references to recordation or the filing of record shall mean the proper filing of such instrument with the Pohnpei Court of Land Tenure and/or the Clerk of the Pohnpei Supreme Court, whichever is applicable pursuant to the laws and statutes governing transfers of interest in land.

(3) *Trustee.* The Pohnpei Housing Authority or any legal entity of the state government, to whom the trustor has conveyed title to property to be held by the trustee according to the terms and conditions of the deed of trust instrument.

(4) *Trustor.* The debtor under a deed of trust or the owner or owners of the fee simple who conveys the title to real property to the trustee under the terms of the deed of trust instrument.

Source: S.L. No. 1L-157-87 §5, 8/5/87; S.L. No. 2L-37-88 §2, 8/15/88; S.L. No. 2L-143-90 §1, 1/5/90

Note: S.L. No. 2L-37-88 §3 repealing provision has been omitted.

**§7-106. Effect of recordation.** — A deed of trust and any instruments concerning the same shall not be valid against subsequent purchasers or persons taking an interest in the real estate in good faith and for valuable consideration without notice of such deed of trust or an interest in the same unless such deed of trust and any instrument relating to the same is first duly recorded.

Source: S.L. No. 1L-157-87 §6, 8/5/87

**§7-107. Not exempt from execution.** — Any property conveyed hereunder shall not be exempt from execution as may be provided by any statute concerning any exemptions and homesteads, but such execution shall not affect the priority of the lien evidenced by this deed of trust.

Source: S.L. No. 1L-157-87 §7, 8/5/87

**§7-108. Duties of trustee.** — The duties of the trustee shall be as set forth in the deed of trust instrument provided such terms and conditions are not in conflict with this chapter.

Source: S.L. No. 1L-157-87 §8, 8/5/87

**§7-109. Loan Guarantee Escrow Account.** —

(1) The Pohnpei Housing Authority, as trustee, shall establish and maintain a Loan Guarantee Escrow Account in an amount to be agreed to between the trustee and the USDA Rural Economic and Community Development Services, as beneficiary. Such account is to be deposited in a state financial institution that has Federal Deposit Insurance Corporation (FDIC) coverage, and any interest earned shall be redeposited into the account. The principal balance of the Loan Guarantee Escrow Account shall be paid from and maintained through loan guarantee fees assessed against borrowers under the low-income housing loan program sponsored by the beneficiary. Pohnpei Housing Authority shall adopt regulations setting a minimum required escrow amount based on the factors identified in this Chapter.

(2) The use of funds from the Loan Guarantee Escrow Account shall be for the sole purpose of servicing loans made by the beneficiary in the event of trustor's defaults on the obligations under the terms of the promissory note and the deed of trust security instrument securing such note and for which such note is guaranteed by the Loan Guarantee Escrow Account through the trustee.

(3) The Pohnpei Housing Authority, as trustee, and Rural Economic and Community Development Services, as beneficiary, shall be directed by this section of the Code and the Memorandum of Understanding as to the procedure for the use of funds from the Loan Guarantee Escrow Account. The Loan Guarantee Escrow Account shall not be terminated without the written consent of the Pohnpei Housing Authority and the Rural Economic and Community Development Services.

(4) The Pohnpei Housing Authority may, pursuant to 31 PC 1-105(25), expend assets of the Pohnpei Housing Loan Fund in the enforcement, collection and, where necessary, foreclosure actions on defaulted loans secured by the deeds of trust covered by the Loan Guarantee Escrow Account; PROVIDED that monies received from such enforcement, collection and foreclosure actions shall first be returned to the Pohnpei Housing Loan

Fund in the amounts so expended therefrom under this subsection, and thereafter any remaining balance shall be deposited in the Loan Guarantee Escrow Account for the purposes specified in this section. To the maximum extent practical, the USDA Rural Economic and Community Development Services and the Office of the Pohnpei Attorney General shall assist the Pohnpei Housing Authority in enforcement, collection and foreclosure actions under this section.

Source: S.L. No. 1L-157-87 §9, 8/5/87; S.L. No. 7L-57-10 §1, 1/12/10

Note: §9 was repealed by S.L. No. 2L-37-88 §3, 8/15/88 and S.L. No. 2L-143-90 §2, 1/5/90 inserted a new §9.

**§7-110. Foreclosure by judicial or non-judicial process.** — The deed of trust instrument may provide for foreclosure proceedings by judicial or non-judicial process. If foreclosure is by judicial process, then the foreclosure proceedings shall be brought in a court of competent jurisdiction. Any judicial action for the foreclosure of a deed of trust shall be similar to and based on the same proceedings as the statute governing actions for foreclosure of mortgages (the Real Property Mortgage Act, Chapter 6 as amended, or its successor in Pohnpei law), including the notice, requirements, and reinstatement rights; PROVIDED, HOWEVER, that the trustor shall not have any right of redemption under a deed of trust executed hereunder. If foreclosure is by non-judicial process then such may be by private power of sale as set forth herein and the trustor shall not have any right of redemption after such sale.

Source: S.L. No. 1L-157-87 §10, 8/5/87

**§7-111. Foreclosure by private power of sale.** — Non-judicial foreclosure of a deed of trust by the exercise of private power of sale shall be in accordance with this chapter.

(1) *Power of sale.* A power of sale shall mean a private power of sale conferred upon the trustee to:

- (a) Sell the property at public auction after the breach of an obligation for which the property is transferred, or,
- (b) Transfer the property by negotiated sale after the breach of an obligation for which the property is transferred.

(2) *Recordation and notice.* The power of sale shall not be exercised until:

- (a) A written notice is sent by the trustee or beneficiary to the trustor setting forth in English and in the principal language of the trustor if that be an indigenous language of the state, his default, the amounts owed and for what periods, the method and amount to cure such default, the time in which to cure such default which shall not be less than 30 days after the date of the notice sent to the trustor, and the right to sell or transfer the property by power of sale, and any other remedy which shall be taken by the trustee if such default is not cured in the method, manner, date, and time as set forth in the notice.
- (b) After the lapse of days as set forth in the written notice specified in Paragraph (a) of this subsection, if the default has not been cured, then the trustee shall give to the trustor at least 60 days notice of public sale of the property, stating in writing the date, time, and place thereof in English and the principal language of the trustor if that be an indigenous language of the state, or in the alternative, that the trustee shall entertain a negotiated sale to qualified relatives.
- (c) Within ten days after such notice has been sent to the trustor as set forth in Paragraph (b) of this subsection, the trustee or beneficiary shall file a record of default, identifying the deed of trust by stating the names of the trustor, trustee, and beneficiaries, and the description of property being affected, and setting forth the nature of the breach and the right to sell or transfer the property by power of sale and any other remedies as set forth in the notice to the trustor, and the date, time, and place of public auction, if such has been set.

Source: S.L. No. 1L-157-87 §11, 8/5/87; S.L. No. 7L-57-10 §2, 1/12/10

**§7-112. Negotiated sale. —**

(1) The trustee is authorized to enter into a negotiated sale with qualified relatives of the trustor as provided in this section. Qualified relatives must also be persons entitled to own real property in the state of Pohnpei.

(2) The following relatives of the trustor are eligible to purchase under this section:

- (i) Spouse;
- (ii) Children;
- (iii) Parents;
- (iv) Widows or widowers of children;
- (v) Grandchildren;
- (vi) Siblings;
- (vii) Widows or widowers of siblings; and
- (viii) Nieces and nephews.

(3) Relatives of the half-blood shall be treated the same as relatives of the whole blood, and adopted relatives shall be treated the same as natural relatives.

(4) The sale price under this section shall be the total indebtedness attributable to the trustor. Total indebtedness shall include:

- (i) Reasonable expenses of the sale and of the trust, including reasonable attorneys' fees;
- (ii) Interest owed on the debt secured by the deed of trust; and
- (iii) The unpaid principal balance owed on the debt, including any advances made by the beneficiary.

(5) The trustee may negotiate the assumption of the existing deed of trust, or the granting of a new deed of trust in payment of the existing deed of trust.

(6) Pohnpei Housing Authority shall adopt regulation to facilitate implementation of this section.

Source: S.L. No. 1L-157-87 §12, 8/5/87; S.L. No. 7L-57-10 §3, 1/12/10

Editors note: S.L. No. 1L-157-87 §12 was repealed by §3 of S.L. No. 7L-57-10

**§7-113. Notice. —** Any notice as required hereunder shall be deemed delivered if sent by registered or certified mail with proper postage thereon, to the trustor or his successor in interest, at the address as set forth in the deed of trust instrument, or personally delivered to the trustor or his successor in interest, or to his agent as may be designated in the deed of trust instrument.

Source: S.L. No. 1L-157-87 §13, 8/5/87

**§7-114. Public auction: publication. —** Prior to the first date of public auction, the trustee shall:

(1) Publish a notice of public auction by power of sale at least once a week for three weeks prior to the date of public auction, in some newspaper of general circulation in the state center and in the local jurisdiction where the property is located or situated;

(2) Broadcast the same notice in both English and the principal language of the trustor if that be an indigenous language of the state at least once a week for three weeks prior to the date of public auction, by some radio broadcast station of general AM broadcast capabilities in the state center and in the local jurisdiction where the property is located or situated;

(3) Post such notice for three weeks prior to the date of the public auction in three public places in the local jurisdiction where the property is to be auctioned; and

(4) Post a copy of said notice in some conspicuous place on the property to be auctioned, at least 20 days prior to the date of said auction.

Source: S.L. No. 1L-157-87 §14, 8/5/87; S.L. No. 7L-57-10 §4, 1/12/10

**§7-115. Postponement of public auction. —** The trustee, at his discretion, may postpone the public auction by making a public declaration at the time and place of such auction. If the postponement is

for more than ten days from the date of auction, then the trustee shall, within ten days after the date of auction as postponed:

(1) Publish a notice of such postponement, with a new date of auction at least once in some newspaper of general circulation in the state center and in the local jurisdiction where the property is located or situated;

(2) Broadcast the same notice in English and the principal language of the trustor if that be an indigenous language of the state, with a new date of auction, at least once by a radio broadcast station of general AM broadcast capabilities in the state center and in the local jurisdiction where the property is located or situated;

(3) Post such notice in three public places in the local jurisdiction where the property is to be auctioned;

(4) Post a copy of such notice in some conspicuous place on the property to be auctioned; and

(5) File a notice of postponement with the proper place of record.

Source: S.L. No. 1L-157-87 §15, 8/5/87; S.L. No. 7L-57-10 §5, 1/12/10

**§7-116. Power of sale: conveyance by trustee.** — The trustee upon such public sale shall make, without warranty, and execute after due payment is made, a deed to such purchaser or purchasers of the property conveying all the title and interest of the trustee and trustor in the property.

Source: S.L. No. 1L-157-87 §16, 8/5/87

**§7-117. Power of sale: proceeds.** — The proceeds of sale shall then be first applied to the expenses of sale, together with the reasonable expenses of the trust, including reasonable attorneys' fees, then to the interest owed on the debt secured by the deed of trust, then to the unpaid principal balance owed on that debt, including any advances made by the beneficiary, and then to any other lienholders of record in accordance with their lien priority. Any balance or surplus of such proceeds of sale shall then be applied to any other interest and principal indebtedness owed to the beneficiary by the trustor. Any remaining balance of such proceeds of sale shall be paid to the trustor, his heirs, executors, administrators or assigns.

Source: S.L. No. 1L-157-87 §17, 8/5/87

**§7-118. Power of sale: deficiency.** — If there are insufficient proceeds from the auction to satisfy all amounts due to the beneficiary under the deed of trust instruments, then the trustee shall make up such deficiency of insufficient amounts to the beneficiary from such fund as shall be established by the trustee for said purpose, and in such event the beneficiary shall assign all of its rights and interest in the deed of trust to the trustee. The trustor shall be liable for all such deficient amounts which shall include the expenses of sale, the expenses of the trust, reasonable attorneys' fees, and the interest and principal due, and the trustee may bring an action against the trustor for the recovery of such deficient amounts. Nothing herein shall prevent the trustee from purchasing the property at such foreclosure sale as provided in this chapter.

Source: S.L. No. 1L-157-87 §18, 8/5/87; S.L. No. 7L-57-10 §6, 1/12/10

**§7-119. Vacating of premises.** — The trustor or its agents or persons holding possession of the property by and through the trustor shall vacate the property and give up possession thereof at any time prior to the date of sale. In the event of any postponement of the date of sale, the trustor shall not be entitled to repossession of the premises, unless any such postponement be over 60 days from the date of sale.

Source: S.L. No. 1L-157-87 §19, 8/5/87; S.L. No. 7L-57-10 §7, 1/12/10

**§7-120. Effect of certain recitals in deed.** — A recital in a deed, executed pursuant to the power of sale regarding the filing of notice, personal advice, and mailing of copies of the notice of default shall constitute prima facie evidence of compliance with the requirements of this chapter, and shall be conclusive evidence thereof in favor of bona fide purchasers for value and without notice.

Source: S.L. No. 1L-157-87 §20, 8/5/87

**§7-121. Power of sale–redemption rights.** — A sale made hereunder by the exercise of the private power of sale shall divest the trustor of any equity or right of redemption in the property.

Source: S.L. No. 1L-157-87 §21, 8/5/87

**§7-122. Purchase of property by trustee.** — The trustee may be the purchaser at any public auction provided that there are no other purchasers at such public auction, or that the trustee shall be the highest bidding purchaser at such auction.

Source: S.L. No. 1L-157-87 §22, 8/5/87; S.L. No. 7L-57-10 §8, 1/12/10

**§7-123. Duties of trustee.** — The trustee shall be in all respects a fiduciary with respect to the property, for the benefit of the beneficiary, and shall be governed by the terms and conditions of the deed of trust instrument.

Source: S.L. No. 1L-157-87 §23, 8/5/87

**§7-124. Discharge or release of deed of trust.** — A deed of trust shall be discharged or released by recording an instrument signed by the trustee, and properly acknowledged, stating that the debt secured by the deed of trust has been fully paid and satisfied. Upon such discharge, the trustee shall execute a deed conveying full title to the trustor.

Source: S.L. No. 1L-157-87 §24, 8/5/87

**§7-125. Duties of trustor.** — The trustor shall not cause any waste or the diminishing of the value of the property which would substantially impair the beneficiary's security.

Source: S.L. No. 1L-157-87 §25, 8/5/87

**§7-126. Appointment of receiver.** — At any time after the recordation of a notice of default, the trustee or beneficiary may apply to a court of competent jurisdiction for the appointment of a receiver for the property. A receiver shall be appointed where it appears that the real property subject to the deed of trust is in danger of substantial waste, or that the income therefrom is in danger of being lost.

Source: S.L. No. 1L-157-87 §26, 8/5/87

**§7-127. Assignment of beneficial interest.** — The beneficiary may assign his benefits under the deed of trust without the consent or knowledge of the trustor unless the deed of trust instrument provides to the contrary. The recordation of such assignment shall be deemed notice to all persons as of the date of such recordation.

Source: S.L. No. 1L-157-87 §27, 8/5/87

**§7-128. Purchaser condition precedent.** — The purchaser at any foreclosure or public sale shall be only those entitled to own property in the state of Pohnpei.

Source: S.L. No. 1L-157-87 §28, 8/5/87

**§7-129. Conflict with other laws.** — If this chapter is in conflict or inconsistent with any other law, then this chapter shall control.

Source: S.L. No. 1L-157-87 §29, 8/5/87

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