



United Trustees Association

February 25, 2010

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

**Re: HB 108**

Dear Chairman French:

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

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

**Period for Issuance of the Trustee's Deed Upon Sale**

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

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

#### **Deposit of Sale Proceeds**

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

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

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

Respectfully submitted for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rande Johnsen", is written over the typed name.

Rande Johnsen  
President