

LEGISLATIVE BILL 151

Approved by the Governor February 26, 2015

Introduced by Urban Affairs Committee: Crawford, 45, Chairperson; Coash, 27; Ebke, 32; Hansen, 26; Hughes, 44; Krist, 10; McCollister, 20.

A BILL FOR AN ACT relating to real property; to amend sections 25-2142, 76-1006, and 76-1012, Reissue Revised Statutes of Nebraska; to provide for a person designated to accept city or village notices in cases of mortgaged property or trust deed default; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 25-2142, Reissue Revised Statutes of Nebraska, is amended to read:

25-2142 (1) Upon filing a complaint for the foreclosure or satisfaction of a mortgage, the complainant shall state therein whether any proceedings have been had at law for the recovery of the debt secured thereby, or any part thereof, and whether such debt, or any part thereof, has been collected and paid.

(2) Subsequent to the filing of a complaint for the foreclosure or satisfaction of a mortgage under this section, the complainant, within five business days after receipt of a written request by a designated representative of the incorporated city or village having jurisdiction of the mortgaged property, shall provide the name and address of a person designated by the complainant to accept notices of violations of ordinances by the owner of the mortgaged property on behalf of the complainant. Failure to provide the name and address required under this subsection shall not void, invalidate, or affect in any way a complaint for the foreclosure or satisfaction of a mortgage filed under this section. This subsection does not impose upon the complainant a duty to maintain the mortgaged property. The designation of a representative to receive notices shall terminate upon transfer of fee title ownership to the mortgaged property.

Sec. 2. Section 76-1006, Reissue Revised Statutes of Nebraska, is amended to read:

76-1006 (1) The power of sale conferred in the Nebraska Trust Deeds Act upon the trustee shall not be exercised until:

(a 1) The trustee or the attorney for the trustee shall first file for record in the office of the register of deeds of each county wherein the trust property or some part or parcel thereof is situated a notice of default identifying the trust deed by stating the name of the trustor named therein and giving the book and page or computer system reference where the same is recorded and a description of the trust property, containing a statement that a breach of an obligation for which the trust property was conveyed as security has occurred, and setting forth the nature of such breach and of his or her election to sell or cause to be sold such property to satisfy the obligation;

(b 2) If the trust property is used in farming operations carried on by the trustor, not in any incorporated city or village, the notice of default also sets forth:

(i a) A statement that the default may be cured within two months of the filing for record of the notice of default and the obligation and trust deed may be thereby reinstated as provided in section 76-1012;

(ii b) A statement of the amount of the entire unpaid principal sum secured by the trust deed, the amount of interest accrued thereon to and including the date the notice of default is signed by the trustee or the trustee's attorney, and the dollar amount of the per diem interest accruing from and after such date; and

(iii c) A statement of the amount of the unpaid principal which would not then be due had no default occurred; and

(c 3) After the lapse of not less than one month, or two months if the notice of default is subject to subdivision (1 2)(b)(i) of this section, the trustee or the attorney for the trustee shall give notice of sale as provided in section 76-1007.

(2) Subsequent to the filing of a notice of default pursuant to this section, the trustee or the attorney for the trustee, within five business days after receipt of a written request by a designated representative of the incorporated city or village having jurisdiction of the trust property, shall provide the name and address of a person designated by the beneficiary of the trust deed to accept notices of violations of ordinances by the owner of the trust property on behalf of the beneficiary. Failure to provide the name and address required under this subsection shall not void, invalidate, or affect in any way a notice of default filed under this section. This subsection does not impose upon the beneficiary, trustee, or the attorney for the trustee a duty to maintain the trust property. The designation of a representative to receive notices shall terminate upon transfer of fee title ownership to the trust property.

Sec. 3. Section 76-1012, Reissue Revised Statutes of Nebraska, is amended to read:

76-1012 (1) Whenever all or a portion of the principal sum of any obligation secured by a trust deed has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust deed, including a default in the payment of interest or of any installment of principal, or by reason of failure of the trustor to pay, in accordance with the terms of such trust deed, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with terms of such obligation or of such trust deed, the trustor or his or her successor in interest in the trust property or any part thereof or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust deed, at any time within one month, or within two months if the notice of default is subject to subdivision (1 2)(b)(i) of section 76-1006, of the filing for record of notice of default under such trust deed, if the power of sale is to be exercised, may pay to the beneficiary or his or her successor in interest the entire amount then due under the terms of such trust deed and the obligation secured thereby, including costs and expenses actually incurred in enforcing the terms of such obligation, or trust deed, and the trustee's fees actually incurred not exceeding in the aggregate fifty dollars or one-half of one percent of the entire unpaid principal sum secured, whichever is greater, other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing and thereupon all proceedings theretofore had or instituted shall be dismissed or discontinued, and the obligation and trust deed shall be reinstated and shall be and remain in force and effect the same as if no acceleration had occurred. If the default is cured and the trust deed reinstated in the manner provided in this section, the beneficiary, or his or her assignee, shall, on demand of any person having an interest in the trust property, execute and deliver to him or her a request to the trustee that the trustee execute, acknowledge, and deliver a cancellation of the recorded notice of default under such trust deed, and any beneficiary under a trust deed, or his or her assignee, who, for a period of thirty days after such demand, refuses to request the trustee to execute and deliver such cancellation shall be liable to the person entitled to such request for all damages resulting from such refusal. A cancellation of recorded notice of default under a trust deed shall, when acknowledged, be entitled to be recorded and shall be sufficient if made and executed by the trustee in substantially the following form:

Cancellation of Notice of Default

The undersigned hereby cancels the notice of default filed for record, 20...., and recorded in book, page, (or computer system reference) Records of County, Nebraska, which notice of default refers to the trust deed executed by as trustor, in which is named as beneficiary and as trustee, and filed for record, 20...., and recorded in book, page, (or computer system reference) Records of County, Nebraska.

Signature of trustee or attorney for trustee

(2) Whenever all or a portion of the principal sum of any obligation secured by a trust deed has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust deed, including a default in the payment of interest or of any installment of principal, or by reason of failure of the trustor to pay, in accordance with the terms of such trust deed, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with terms of such obligation or of such trust deed, in the event the trustor or his or her successor in interest or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust deed makes payment of the entire amount then due under the terms of such trust deed and the obligation secured thereby at any time subsequent to the breach or default and prior to the sale of the trust property under section 76-1010, the beneficiary shall be allowed to collect the costs and expenses actually incurred in enforcing the terms of such obligation, or trust deed, including the trustee's fees, costs, and expenses actually incurred, not to exceed the amount provided in the trust deed or the obligation secured thereby.

Sec. 4. Original sections 25-2142, 76-1006, and 76-1012, Reissue Revised Statutes of Nebraska, are repealed.