

AMENDMENTS TO LB 386

Introduced by Langemeier, 23.

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Sections 1 to 7 of this act shall be known and
4 may be cited as the Nebraska Security Instrument Satisfaction Act.

5 Sec. 2. For purposes of the Nebraska Security Instrument
6 Satisfaction Act:

7 (1) Closing agent means a licensed title insurance agent
8 as defined in section 44-19,108 or a member in good standing of the
9 Nebraska State Bar Association;

10 (2) Good faith means honesty in fact and the observance
11 of reasonable commercial standards of fair dealing;

12 (3) Landowner means a person that owns the real property
13 described in a security instrument;

14 (4) (a) Notification or notice means:

15 (i) Depositing the notice in the mail or any commercially
16 reasonable delivery service, properly addressed with postage or
17 cost of delivery provided for;

18 (ii) Transmitting the notice by facsimile transmission or
19 electronic mail to an address identified by the recipient, but only
20 if the recipient agreed to receive notification in this manner; or

21 (iii) Otherwise causing the notice to be received within
22 the time it would have been received if notification had been given
23 by mail or commercial delivery service.

1 (b) Notification given under subdivision (4) (a) of this
2 section is effective:

3 (i) Three days following the date that the notice is
4 deposited in the mail or with a commercially reasonable delivery
5 service for delivery other than by overnight delivery;

6 (ii) One day following the date the notice is deposited
7 with a commercially reasonable delivery service for overnight
8 delivery;

9 (iii) On the date that the secured creditor or closing
10 agent submits electronic verification of receipt of the notice, if
11 transmitted under subdivision (4) (a) (ii) of this section; or

12 (iv) On the date the notice is received, if transmitted
13 by any other method permitted by the Nebraska Security Instrument
14 Satisfaction Act;

15 (5) Payoff amount means the sum necessary to satisfy a
16 secured obligation;

17 (6) Payoff statement means a statement of the amount of
18 unpaid balance of the secured obligation containing (a) the date
19 on which it was prepared and the payoff amount as of that date,
20 including the amount by type of each fee, charge, or other sum
21 included within the payoff amount, (b) the information reasonably
22 necessary to calculate the payoff amount as of the requested payoff
23 date, including the per diem interest, (c) the payment cutoff time,
24 if any, (d) the address or place where payment must be made, and
25 (e) any limitation as to the authorized method of payment;

26 (7) Person means an individual, corporation, business
27 trust, estate, trust, partnership, limited liability company,

1 association, joint venture, public corporation or government,
2 governmental subdivision, agency, or instrumentality, or any other
3 legal or commercial entity;

4 (8) Purchase means taking by sale, mortgage, lien,
5 security interest, gift, or any other voluntary transaction
6 creating an interest in real property;

7 (9) Purchaser means a person who takes by purchase;

8 (10) Record means to submit a document complying with
9 applicable legal standards with required fees and taxes paid to the
10 appropriate government office pursuant to Nebraska law;

11 (11) Residential real property means real property
12 located in this state which is used primarily for personal, family,
13 or household purposes and is improved by one to four dwelling
14 units;

15 (12) Secured creditor means a person that holds or is
16 the beneficiary of a security interest or that is authorized
17 both to receive payments on behalf of a person that holds a
18 security interest and to record a satisfaction of the security
19 instrument upon receiving full payment or performance of the
20 secured obligation. The term does not include a trustee under a
21 security instrument;

22 (13) Secured obligation means an obligation the payment
23 or performance of which is secured by a security interest;

24 (14) Security instrument means an agreement, whether
25 denominated a mortgage, deed of trust, trust deed, or otherwise
26 that creates or provides for a security interest. Such an agreement
27 is a security instrument even if it also creates or provides for a

1 lien upon personal property; and

2 (15) Security interest means an interest in residential
3 real property created by a security instrument.

4 Sec. 3. (1) A secured creditor shall, after the secured
5 creditor receives full payment or performance of the secured
6 obligation, record a deed of reconveyance or a release or
7 satisfaction of a security interest in the real property records
8 of each county in which the security instrument is recorded.
9 If a security instrument secures a line of credit or future
10 advances, the secured obligation is fully paid or performed if, in
11 addition to full payment or performance, the secured creditor has
12 received a notification requesting the creditor to terminate the
13 line of credit or containing a statement sufficient to terminate
14 the effectiveness of the provision for future advances as provided
15 under section 76-238.01 or 76-1002.

16 (2) In addition to any other remedy provided by law,
17 a secured creditor who fails to record a deed of reconveyance
18 or a release or satisfaction of a security interest within sixty
19 days after receiving full payment or performance of the secured
20 obligation is liable to the landowner or purchaser for actual
21 damages in the amount of any loss caused by the failure, including
22 reasonable attorney's fees and costs. The provisions of this
23 subsection do not apply if the secured creditor received full
24 payment or performance before the effective date of this act.

25 (3) A secured creditor is not liable under this section
26 if the secured creditor (a) established a reasonable procedure to
27 achieve compliance with its obligations under this section, (b)

1 complied with that procedure in good faith, and (c) was unable
2 to comply with its obligations due to circumstances beyond its
3 control.

4 Sec. 4. A closing agent may, on behalf of a landowner or
5 purchaser, execute a certificate of satisfaction that complies with
6 the requirements of the Nebraska Security Instrument Satisfaction
7 Act and record the certificate of satisfaction in the real
8 property records of each county in which the security instrument is
9 recorded, if (1) a deed of reconveyance or release or satisfaction
10 of the security interest has not been executed and recorded within
11 sixty days after the date (a) the secured creditor has received
12 full payment or performance of the secured obligation in accordance
13 with a payoff statement furnished by the secured creditor and, if
14 applicable, notification pursuant to subsection (1) of section 3 of
15 this act has been performed and (b) the closing agent has notified
16 the secured creditor in accordance with section 6 of this act or
17 (2) the secured creditor authorizes the closing agent in writing to
18 do so.

19 Sec. 5. (1) A certificate of satisfaction shall:

20 (a) Identify the original parties to the security
21 instrument, the landowner, the secured creditor, the record
22 holder of the security instrument, if different from the secured
23 creditor, the recording data for the security instrument, and a
24 legal description of the real property identified in the security
25 instrument;

26 (b) State that the person executing the certificate of
27 satisfaction is the closing agent and, if the closing agent is

1 a title agent, designate the title insurer for which the closing
2 agent is a duly authorized title agent;

3 (c) State that the secured creditor provided a payoff
4 statement;

5 (d) State that there is satisfactory evidence that the
6 secured creditor has received full payment or performance of the
7 sums identified in the payoff statement;

8 (e) State that there are reasonable grounds to believe
9 that the real property described in the security instrument is
10 residential real property;

11 (f) State that the secured creditor has failed to execute
12 and record a deed of reconveyance or release or satisfaction of the
13 security interest and that the closing agent has not received a
14 notification that the secured obligation remains unsatisfied;

15 (g) State that sixty days have elapsed since the
16 secured creditor received full payment or performance of the sums
17 identified in the payoff statement and notification in accordance
18 with section 6 of this act has been given to the secured creditor;
19 and

20 (h) Be executed and acknowledged as required for a
21 conveyance of an interest in real property.

22 (2) The following statutory certificate of satisfaction,
23 when reproduced and used in the identical words or in substantially
24 the same or a more similar than dissimilar form, shall satisfy the
25 requirements of subsection (1) of this section:

26 CERTIFICATE OF SATISFACTION

27 The undersigned closing agent, as an officer or a duly

1 authorized title insurance agent of _____, a title
2 insurer authorized to transact the business of insuring titles to
3 interests in real property in the State of Nebraska, or a member
4 in good standing of the Nebraska State Bar Association, hereby
5 represents:

6 (a) The indebtedness secured by that certain security
7 instrument, identified as a mortgage, trust deed, or deed of trust,
8 executed by _____, as mortgagor/trustor, to _____,
9 as trustee, and _____, as beneficiary or _____, as
10 mortgagee, recorded on _____ in book _____, page(s) _____, or
11 as Inst. No. _____ of the mortgage records of _____
12 County, Nebraska, and creating a security interest in the following
13 described real estate: _____ has
14 received full payment or performance pursuant to a payoff
15 statement provided to the undersigned on _____ by
16 _____, the holder of the underlying indebtedness,
17 and being the secured creditor;

18 (b) The undersigned has satisfactory evidence that the
19 secured creditor has received full payment or performance of the
20 sums identified in such payoff statement;

21 (c) The undersigned has reasonable grounds to believe
22 that the real property described in the security instrument is
23 residential real property;

24 (d) The undersigned has not received notification that
25 the secured obligation remains unsatisfied; and

26 (e) To the best knowledge of the undersigned, the
27 secured creditor has not recorded any instrument satisfying or

1 releasing the security interest within sixty days following (a) the
2 secured creditor's receipt of full payment or performance and (b)
3 notification as required by law.

4 Dated: _____, by _____,
5 Closing Agent.

6 Sec. 6. (1) At least sixty days in advance of recording
7 a certificate of satisfaction, a closing agent shall notify the
8 secured creditor that the closing agent has the authority to
9 execute and record a certificate of satisfaction of the security
10 interest. The notification shall include:

11 (a) The identity and mailing address of the closing
12 agent;

13 (b) Identification of the security instrument for
14 which the recording of a deed of reconveyance or a release or
15 satisfaction is sought, including the names of the original parties
16 to, and the recording data for, the security instrument;

17 (c) A statement that the closing agent has reasonable
18 grounds to believe that:

19 (i) The real property described in the security
20 instrument is residential real property;

21 (ii) The person to which the notification is being given
22 is the secured creditor; and

23 (iii) The closing agent has made full payment or
24 performance of the secured obligation in accordance with a payoff
25 statement furnished by the secured creditor either prior to or
26 contemporaneous with the giving of the notification;

27 (d) A statement that the closing agent has the authority

1 to execute and record a certificate of satisfaction of the security
2 interest unless within sixty days after notification:

3 (i) The secured creditor records a deed of reconveyance
4 or a release or satisfaction of a security interest;

5 (ii) The closing agent receives from the secured
6 creditor a notification stating that the secured obligation remains
7 unsatisfied; or

8 (iii) The closing agent receives from the secured
9 creditor a notification stating that the secured creditor has
10 assigned the security instrument and identifying the name and
11 address of the assignee; and

12 (e) A statement that the secured creditor will be subject
13 to liability under section 76-252, 76-1014.01, or the Nebraska
14 Security Instrument Satisfaction Act.

15 (2) The following statutory notification, when reproduced
16 and used in the identical words or in substantially the same or a
17 more similar than dissimilar form, shall satisfy the requirements
18 of subsection (1) of this section:

19 LENDER PAYOFF/SATISFACTION NOTIFICATION

20 This notification is given pursuant to the Nebraska
21 Security Instrument Satisfaction Act by the below-named closing
22 agent with regard to the payoff and release or satisfaction of the
23 lien of a security instrument in which you are named the secured
24 creditor.

25 (a) The closing agent is _____ . The
26 mailing address of the closing agent is _____ .

27 (b) The security instrument that is the subject

1 of this notification was entered into on _____
2 by _____, as mortgagor/trustor(s); to
3 _____, as trustee, and _____,
4 as beneficiary or _____, as mortgagee,
5 recorded on _____ in book _____, page(s) _____
6 or as Inst. No. _____ of the mortgage records of
7 _____ County, Nebraska, against the following
8 described real estate: _____

9 (c) The closing agent has reasonable grounds to believe
10 that:

11 (i) The real property described in the security
12 instrument is residential real property;

13 (ii) The person to whom this notification is being given
14 is the secured creditor; and

15 (iii) Full payment or performance of the secured
16 obligation has been made in accordance with a payoff statement
17 furnished by the secured creditor prior to or contemporaneous with
18 the giving of this notification.

19 (d) The closing agent has authority to execute and record
20 a certificate of satisfaction of the security interest unless
21 within sixty days after notification:

22 (i) The secured creditor records a deed of reconveyance
23 or a release or satisfaction of the security interest;

24 (ii) The closing agent is notified by the secured
25 creditor that the secured obligation remains unsatisfied; or

26 (iii) The closing agent receives from the secured
27 creditor a notification stating that the secured creditor has

1 assigned the security interest and identifying the name and address
2 of the assignee.

3 (e) This notification shall constitute a written request
4 for a deed of reconveyance of a trust deed or release or
5 satisfaction of a mortgage, pursuant to sections 76-252 and
6 76-1014.01. These statutes provide for liability on the part
7 of a mortgagee or beneficiary who fails to deliver such deed
8 of reconveyance of a trust deed or release or satisfaction of
9 a mortgage within sixty days following such written request.
10 Liability shall be five thousand dollars or actual damages
11 resulting from such failure, whichever is greater, together with
12 court costs to include reasonable attorney's fees.

13 Dated: _____, by _____,
14 Closing Agent.

15 Sec. 7. (1) A certificate of satisfaction complying with
16 the Nebraska Security Instrument Satisfaction Act is evidence of
17 the facts contained in it, shall be accepted for recording in the
18 county in which the security instrument is recorded, and, upon
19 recording, operates as a satisfaction of the security interest
20 described in the certificate of satisfaction. If a security
21 instrument is recorded in more than one county and a certificate of
22 satisfaction is recorded in one of them, a certified copy of the
23 certificate of satisfaction may be recorded in another county with
24 the same effect as the original.

25 (2) (a) Except as otherwise provided in subdivision (b)
26 of this subsection, in addition to any other remedy provided
27 by law, a closing agent wrongfully or erroneously recording a

1 certificate of satisfaction under this section shall be liable to
2 the secured creditor for actual damages caused by the recording of
3 the certificate of satisfaction and reasonable attorney's fees and
4 costs.

5 (b) A closing agent that records a certificate of
6 satisfaction of a security instrument wrongfully or erroneously
7 is not liable if the closing agent complied in good faith with the
8 act.

9 (c) A title insurer designated in a certificate
10 of satisfaction executed and recorded in compliance with the
11 requirements of the Nebraska Security Instrument Satisfaction
12 Act may be liable to a secured creditor for actual damages and
13 reasonable attorney's fees and costs caused by the wrongful or
14 erroneous recording of such certificate of satisfaction by its
15 policy issuing agent. Nothing in this subdivision shall prohibit a
16 title insurer from recovering any amounts for which it is liable
17 under this subdivision from the closing agent who has wrongfully or
18 erroneously recorded a certificate of satisfaction.

19 (3) The recording of a certificate of satisfaction does
20 not itself extinguish the liability of any person liable for
21 payment of the underlying obligation.