

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 designated by a title insurer
9 to execute and file certificates of satisfaction pursuant to a
10 designation of authority or a member in good standing of the
11 Nebraska State Bar Association;

12 (2) Designation of authority means the designation of a
13 title insurance agent by a title insurer, executed and acknowledged
14 as required by law stating (a) the name of the title insurer,
15 (b) the name of the title insurance agent, (c) that the title
16 insurance agent has authority to execute and record certificates
17 of satisfaction on behalf of the title insurer, and (d) that the
18 title insurance agent has consented to and accepts the terms of the
19 designation;

20 (3) Good faith means honesty in fact and the observance
21 of reasonable commercial standards of fair dealing;

22 (4) Landowner means a person that owns the real property
23 described in a security instrument;

1 (5) (a) Notification or notice means:

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

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

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

11 (b) Notification given under subdivision (5) (a) of this
12 section is effective:

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

16 (ii) One day following the date the notice is deposited
17 with a commercially reasonable delivery service for overnight
18 delivery;

19 (iii) On the date that the secured creditor or closing
20 agent submits electronic verification of receipt of the notice, if
21 transmitted under subdivision (5) (a) (ii) of this section; or

22 (iv) On the date the notice is received, if transmitted
23 by any other method permitted by the Nebraska Security Instrument
24 Satisfaction Act;

25 (6) Payoff amount means the sum necessary to satisfy a
26 secured obligation;

27 (7) Payoff statement means a statement of the amount of

1 unpaid balance of the secured obligation containing (a) the date
2 on which it was prepared and the payoff amount as of that date,
3 including the amount by type of each fee, charge, or other sum
4 included within the payoff amount, (b) the information reasonably
5 necessary to calculate the payoff amount as of the requested payoff
6 date, including the per diem interest, (c) the payment cutoff time,
7 if any, (d) the address or place where payment must be made, and
8 (e) any limitation as to the authorized method of payment;

9 (8) Person means an individual, corporation, business
10 trust, estate, trust, partnership, limited liability company,
11 association, joint venture, public corporation or government,
12 governmental subdivision, agency, or instrumentality, or any other
13 legal or commercial entity;

14 (9) Purchase means taking by sale, mortgage, lien,
15 security interest, gift, or any other voluntary transaction
16 creating an interest in real property;

17 (10) Purchaser means a person who takes by purchase;

18 (11) Record means to submit a document complying with
19 applicable legal standards with required fees and taxes paid to the
20 appropriate government office pursuant to Nebraska law;

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

25 (13) Secured creditor means a person that holds or is
26 the beneficiary of a security interest or that is authorized
27 both to receive payments on behalf of a person that holds a

1 security interest and to record a satisfaction of the security
2 instrument upon receiving full payment or performance of the
3 secured obligation. The term does not include a trustee under a
4 security instrument;

5 (14) Secured obligation means an obligation the payment
6 or performance of which is secured by a security interest;

7 (15) Security instrument means an agreement, whether
8 denominated a mortgage, deed of trust, trust deed, or otherwise
9 that creates or provides for a security interest. Such an agreement
10 is a security instrument even if it also creates or provides for a
11 lien upon personal property;

12 (16) Security interest means an interest in residential
13 real property created by a security instrument; and

14 (17) Title insurer means a person authorized and licensed
15 to transact the business of insuring titles to interests in real
16 property in this state.

17 Sec. 3. (1) A secured creditor shall, after the secured
18 creditor receives full payment or performance of the secured
19 obligation, record a deed of reconveyance or a release or
20 satisfaction of a security interest in the real property records
21 of each county in which the security instrument is recorded.
22 If a security instrument secures a line of credit or future
23 advances, the secured obligation is fully paid or performed if, in
24 addition to full payment or performance, the secured creditor has
25 received a notification requesting the creditor to terminate the
26 line of credit or containing a statement sufficient to terminate
27 the effectiveness of the provision for future advances as provided

1 under section 76-238.01 or 76-1002.

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

11 (3) A secured creditor is not liable under this section
12 if the secured creditor (a) established a reasonable procedure to
13 achieve compliance with its obligations under this section, (b)
14 complied with that procedure in good faith, and (c) was unable
15 to comply with its obligations due to circumstances beyond its
16 control.

17 Sec. 4. A closing agent may, on behalf of a landowner or
18 purchaser, execute a certificate of satisfaction that complies with
19 the requirements of the Nebraska Security Instrument Satisfaction
20 Act and record the certificate of satisfaction in the real property
21 records of each county in which the security instrument is
22 recorded, if a deed of reconveyance or release or satisfaction
23 of the security interest has not been executed and recorded within
24 sixty days after the date (1) the secured creditor has received
25 full payment or performance of the secured obligation in accordance
26 with a payoff statement furnished by the secured creditor and, if
27 applicable, notification pursuant to subsection (1) of section 3 of

1 this act has been performed and (2) the closing agent has notified
2 the secured creditor in accordance with section 6 of this act.

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

4 (a) Identify the original parties to the security
5 instrument, the landowner, the secured creditor, the record
6 holder of the security instrument, if different from the secured
7 creditor, the recording data for the security instrument, and a
8 legal description of the real property identified in the security
9 instrument;

10 (b) State that the person executing the certificate of
11 satisfaction is the closing agent and, if the closing agent is a
12 title insurance agent, state the book and page or instrument number
13 of the designation of authority by which the title insurance agent
14 is authorized to file the certificate of satisfaction;

15 (c) State that the secured creditor provided a payoff
16 statement;

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

20 (e) State that there are reasonable grounds to believe
21 that the real property described in the security instrument is
22 residential real property;

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

27 (g) State that sixty days have elapsed since the

1 secured creditor received full payment or performance of the sums
2 identified in the payoff statement and notification in accordance
3 with section 6 of this act has been given to the secured creditor;
4 and

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

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

11 CERTIFICATE OF SATISFACTION

12 The undersigned closing agent with a designation of
13 authority recorded in book, page(s), or
14 as instrument of the miscellaneous records
15 relating to real estate of County, Nebraska,
16 from a title insurer authorized to transact the business of
17 insuring titles to interests in real property in the State of
18 Nebraska, or a member in good standing of the Nebraska State Bar
19 Association, hereby represents:

20 (a) The indebtedness secured by that certain security
21 instrument, identified as a mortgage, trust deed, or deed of
22 trust, executed by, as mortgagor/trustor, to
23, as trustee, and, as beneficiary
24 or, as mortgagee, recorded on in book
25, page(s), or as Inst. No. of the
26 mortgage records of County, Nebraska, and creating
27 a security interest in the following described real estate:

1 has received full payment or
2 performance pursuant to a payoff statement provided to the
3 undersigned on by, the
4 holder of the underlying indebtedness, and being the secured
5 creditor;

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

9 (c) The undersigned has reasonable grounds to believe
10 that the real property described in the security instrument is
11 residential real property;

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

14 (e) To the best knowledge of the undersigned, the
15 secured creditor has not recorded any instrument satisfying or
16 releasing the security interest within sixty days following (a) the
17 secured creditor's receipt of full payment or performance and (b)
18 notification as required by law.

19 Dated:, by,
20 Closing Agent.

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

26 (a) The identity and mailing address of the closing
27 agent;

1 (b) Identification of the security instrument for
2 which the recording of a deed of reconveyance or a release or
3 satisfaction is sought, including the names of the original parties
4 to, and the recording data for, the security instrument;

5 (c) A statement that the closing agent has reasonable
6 grounds to believe that:

7 (i) The real property described in the security
8 instrument is residential real property;

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

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

15 (d) A statement that the closing agent has the authority,
16 pursuant to a designation of authority if the closing agent is
17 a title insurance agent, to execute and record a certificate of
18 satisfaction of the security interest unless within sixty days
19 after notification:

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

22 (ii) The closing agent receives from the secured
23 creditor a notification stating that the secured obligation remains
24 unsatisfied; or

25 (iii) The closing agent receives from the secured
26 creditor a notification stating that the secured creditor has
27 assigned the security instrument and identifying the name and

1 address of the assignee; and

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

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

9 LENDER PAYOFF/SATISFACTION NOTIFICATION

10 This notification is given pursuant to the Nebraska
11 Security Instrument Satisfaction Act by the below-named closing
12 agent with regard to the payoff and release or satisfaction of the
13 lien of a security instrument in which you are named the secured
14 creditor.

15 (a) The closing agent is The
16 mailing address of the closing agent is

17 (b) The security instrument that is the subject
18 of this notification was entered into on
19 by, as mortgagor/trustor(s); to
20, as trustee, and,
21 as beneficiary or, as mortgagee,
22 recorded on in book, page(s)
23 or as Inst. No. of the mortgage records of
24 County, Nebraska, against the following
25 described real estate:

26 (c) The closing agent has reasonable grounds to believe
27 that:

1 (i) The real property described in the security
2 instrument is residential real property;

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

5 (iii) Full payment or performance of the secured
6 obligation has been made in accordance with a payoff statement
7 furnished by the secured creditor prior to or contemporaneous with
8 the giving of this notification.

9 (d) The closing agent has authority, pursuant to a
10 designation of authority if the closing agent is a title insurance
11 agent, to execute and record a certificate of satisfaction of the
12 security interest unless within sixty days after notification:

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

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

17 (iii) The closing agent receives from the secured
18 creditor a notification stating that the secured creditor has
19 assigned the security interest and identifying the name and address
20 of the assignee.

21 (e) This notification shall constitute a written request
22 for a deed of reconveyance of a trust deed or release or
23 satisfaction of a mortgage, pursuant to sections 76-252 and
24 76-1014.01. These statutes provide for liability on the part
25 of a mortgagee or beneficiary who fails to deliver such deed
26 of reconveyance of a trust deed or release or satisfaction of
27 a mortgage within sixty days following such written request.

1 Liability shall be five thousand dollars or actual damages
2 resulting from such failure, whichever is greater, together with
3 court costs to include reasonable attorney's fees.

4 Dated:, by, Closing
5 Agent.

6 Sec. 7. (1) A certificate of satisfaction complying with
7 the Nebraska Security Instrument Satisfaction Act is evidence of
8 the facts contained in it, shall be accepted for recording in the
9 county in which the security instrument is recorded, and, upon
10 recording, operates as a satisfaction of the security interest
11 described in the certificate of satisfaction. If a security
12 instrument is recorded in more than one county and a certificate of
13 satisfaction is recorded in one of them, a certified copy of the
14 certificate of satisfaction may be recorded in another county with
15 the same effect as the original.

16 (2)(a) Except as otherwise provided in subdivision (b)
17 of this subsection, in addition to any other remedy provided
18 by law, a closing agent wrongfully or erroneously recording a
19 certificate of satisfaction under this section shall be liable to
20 the secured creditor for actual damages caused by the recording of
21 the certificate of satisfaction and reasonable attorney's fees and
22 costs.

23 (b) A closing agent that records a certificate of
24 satisfaction of a security instrument wrongfully or erroneously
25 is not liable if the closing agent complied in good faith with the
26 act.

27 (c) If a certificate of satisfaction is executed and

1 recorded by a title insurance agent pursuant to a designation
2 of authority, the title insurer making such designation shall
3 be liable to a secured creditor for the wrongful or erroneous
4 recording of the certificate of satisfaction by such designee, to
5 the same extent as provided under subdivisions (a) and (b) of this
6 subsection.

7 (d) A single designation of authority may be recorded
8 in the office of the register of deeds in any county in which a
9 certificate of satisfaction may be recorded. The register of deeds
10 shall record such designation of authority upon payment of the
11 required fees. When the designation of authority is recorded, the
12 register of deeds shall index such instrument under the name of the
13 title insurance agent designated in the instrument in the manner
14 provided for miscellaneous instruments relating to real estate. A
15 separate designation of authority shall not be necessary for each
16 certificate of satisfaction. Such authority shall continue until
17 a revocation of the designation of authority is recorded in the
18 county where the designation of authority was recorded.

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.