

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 386

FINAL READING

Introduced by Langemeier, 23.

Read first time January 16, 2007

Committee: Banking, Commerce and Insurance

A BILL

- 1 FOR AN ACT relating to real property; to adopt the Nebraska
- 2 Security Instrument Satisfaction Act.
- 3 Be it enacted by the people of the State of Nebraska,

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

3 Sec. 2. For purposes of the Nebraska Security Instrument
4 Satisfaction Act:

5 (1) Closing agent means a licensed title insurance agent
6 as defined in section 44-19,108 designated by a title insurer
7 to execute and file certificates of satisfaction pursuant to a
8 designation of authority or a member in good standing of the
9 Nebraska State Bar Association;

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

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

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

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

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

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

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

7 (b) Notification given under subdivision (5)(a) of this
8 section is effective:

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

12 (ii) One day following the date the notice is deposited
13 with a commercially reasonable delivery service for overnight
14 delivery;

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

18 (iv) On the date the notice is received, if transmitted
19 by any other method permitted by the Nebraska Security Instrument
20 Satisfaction Act;

21 (6) Payoff amount means the sum necessary to satisfy a
22 secured obligation;

23 (7) Payoff statement means a statement of the amount of
24 unpaid balance of the secured obligation containing (a) the date
25 on which it was prepared and the payoff amount as of that date,

1 including the amount by type of each fee, charge, or other sum
2 included within the payoff amount, (b) the information reasonably
3 necessary to calculate the payoff amount as of the requested payoff
4 date, including the per diem interest, (c) the payment cutoff time,
5 if any, (d) the address or place where payment must be made, and
6 (e) any limitation as to the authorized method of payment;

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

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

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

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

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

23 (13) Secured creditor means a person that holds or is
24 the beneficiary of a security interest or that is authorized
25 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

1 line of credit or containing a statement sufficient to terminate
2 the effectiveness of the provision for future advances as provided
3 under section 76-238.01 or 76-1002.

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

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

19 Sec. 4. A closing agent may, on behalf of a landowner or
20 purchaser, execute a certificate of satisfaction that complies with
21 the requirements of the Nebraska Security Instrument Satisfaction
22 Act and record the certificate of satisfaction in the real property
23 records of each county in which the security instrument is
24 recorded, if a deed of reconveyance or release or satisfaction
25 of the security interest has not been executed and recorded within

1 sixty days after the date (1) the secured creditor has received
 2 full payment or performance of the secured obligation in accordance
 3 with a payoff statement furnished by the secured creditor and, if
 4 applicable, notification pursuant to subsection (1) of section 3 of
 5 this act has been performed and (2) the closing agent has notified
 6 the secured creditor in accordance with section 6 of this act.

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

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

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

19 (c) State that the secured creditor provided a payoff
 20 statement;

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

24 (e) State that there are reasonable grounds to believe
 25 that the real property described in the security instrument is

1 residential real property;

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

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

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

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

17 CERTIFICATE OF SATISFACTION

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

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

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

17 (c) The undersigned has reasonable grounds to believe
 18 that the real property described in the security instrument is
 19 residential real property;

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

22 (e) To the best knowledge of the undersigned, the
 23 secured creditor has not recorded any instrument satisfying or
 24 releasing the security interest within sixty days following (i) the
 25 secured creditor's receipt of full payment or performance and (ii)

1 notification as required by law.

2 Dated:, by,

3 Closing Agent.

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

9 (a) The identity and mailing address of the closing
10 agent;

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

15 (c) A statement that the closing agent has reasonable
16 grounds to believe that:

17 (i) The real property described in the security
18 instrument is residential real property;

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

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

25 (d) A statement that the closing agent has the authority,

1 pursuant to a designation of authority if the closing agent is
2 a title insurance agent, to execute and record a certificate of
3 satisfaction of the security interest unless within sixty days
4 after notification:

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

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

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

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

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

21 LENDER PAYOFF/SATISFACTION NOTIFICATION

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

1 creditor.

2 (a) The closing agent is The
3 mailing address of the closing agent is

4 (b) The security instrument that is the subject
5 of this notification was entered into on
6 by, as mortgagor/trustor(s); to
7, as trustee, and,
8 as beneficiary or, as mortgagee,
9 recorded on in book, page(s)
10 or as Inst. No. of the mortgage records of
11 County, Nebraska, against the following
12 described real estate:

13 (c) The closing agent has reasonable grounds to believe
14 that:

15 (i) The real property described in the security
16 instrument is residential real property;

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

19 (iii) Full payment or performance of the secured
20 obligation has been made in accordance with a payoff statement
21 furnished by the secured creditor prior to or contemporaneous with
22 the giving of this notification.

23 (d) The closing agent has authority, pursuant to a
24 designation of authority if the closing agent is a title insurance
25 agent, to execute and record a certificate of satisfaction of the

1 security interest unless within sixty days after notification:

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

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

6 (iii) The closing agent receives from the secured
7 creditor a notification stating that the secured creditor has
8 assigned the security interest and identifying the name and address
9 of the assignee.

10 (e) This notification shall constitute a written request
11 for a deed of reconveyance of a trust deed or release or
12 satisfaction of a mortgage pursuant to sections 76-252 and
13 76-1014.01. These statutes provide for liability on the part
14 of a mortgagee or beneficiary who fails to deliver such deed
15 of reconveyance of a trust deed or release or satisfaction of
16 a mortgage within sixty days following such written request.
17 Liability shall be five thousand dollars or actual damages
18 resulting from such failure, whichever is greater, together with
19 court costs to include reasonable attorney's fees.

20 Dated:, by, Closing
21 Agent.

22 Sec. 7. (1) A certificate of satisfaction complying with
23 the Nebraska Security Instrument Satisfaction Act is evidence of
24 the facts contained in it, shall be accepted for recording in the
25 county in which the security instrument is recorded, and, upon

1 recording, operates as a satisfaction of the security interest
2 described in the certificate of satisfaction. If a security
3 instrument is recorded in more than one county and a certificate of
4 satisfaction is recorded in one of them, a certified copy of the
5 certificate of satisfaction may be recorded in another county with
6 the same effect as the original.

7 (2) (a) Except as otherwise provided in subdivision (b)
8 of this subsection, in addition to any other remedy provided
9 by law, a closing agent wrongfully or erroneously recording a
10 certificate of satisfaction under this section shall be liable to
11 the secured creditor for actual damages caused by the recording of
12 the certificate of satisfaction and reasonable attorney's fees and
13 costs.

14 (b) A closing agent that records a certificate of
15 satisfaction of a security instrument wrongfully or erroneously
16 is not liable if the closing agent complied in good faith with the
17 act.

18 (c) If a certificate of satisfaction is executed and
19 recorded by a title insurance agent pursuant to a designation
20 of authority, the title insurer making such designation shall
21 be liable to a secured creditor for the wrongful or erroneous
22 recording of the certificate of satisfaction by such designee, to
23 the same extent as provided under subdivisions (a) and (b) of this
24 subsection.

25 (d) A single designation of authority may be recorded

1 in the office of the register of deeds in any county in which a
2 certificate of satisfaction may be recorded. The register of deeds
3 shall record such designation of authority upon payment of the
4 required fees. When the designation of authority is recorded, the
5 register of deeds shall index such instrument under the name of the
6 title insurance agent designated in the instrument in the manner
7 provided for miscellaneous instruments relating to real estate. A
8 separate designation of authority shall not be necessary for each
9 certificate of satisfaction. Such authority shall continue until
10 a revocation of the designation of authority is recorded in the
11 county where the designation of authority was recorded.

12 (3) The recording of a certificate of satisfaction does
13 not itself extinguish the liability of any person liable for
14 payment of the underlying obligation.