

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 738**

Introduced by McCoy, 39.

Read first time January 06, 2010

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Nebraska Trust Deeds Act; to amend  
2 section 76-1004, Reissue Revised Statutes of Nebraska;  
3 to change provisions relating to the substitution of  
4 trustee; to repeal the original section; and to declare  
5 an emergency.

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

1           Section 1. Section 76-1004, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           76-1004 (1) The beneficiary may appoint a successor  
4 trustee at any time by filing for record in the office of the  
5 register of deeds of each county in which the trust property or  
6 some part thereof is situated a substitution of trustee. From the  
7 time the substitution is filed for record, the new trustee shall  
8 succeed to all the power, duties, authority, and title of the  
9 trustee named in the deed of trust and of any successor trustee.

10           (2) The substitution shall identify the trust deed by  
11 stating the names of the original parties thereto, the date of  
12 recordation, the full legal description of the realty affected, and  
13 the book and page or computer system reference where the trust deed  
14 is recorded, shall state the name of the new trustee, and shall  
15 be executed and acknowledged by all of the beneficiaries under the  
16 trust deed or their successors in interest.

17           (3) The recorded substitution shall also contain or have  
18 attached to it an affidavit that a copy of the substitution has,  
19 by regular United States mail with postage prepaid, been mailed  
20 to the last-known address of the trustee being replaced or an  
21 affidavit of personal service of a copy thereof or of publication  
22 of notice thereof, which notice shall be published one time in a  
23 newspaper having general circulation in any county in which the  
24 trust property or some part thereof is situated.

25           (4) Any affidavit contained in or attached to the

1 substitution shall constitute prima facie evidence of the facts  
2 required to be stated and conclusive evidence of such facts as  
3 to bona fide purchasers and encumbrancers for value of the trust  
4 property or of any beneficial interest in the trust deed.

5 (5) On and after April 3, 1997, no recorded substitution  
6 filed for record shall be required to contain or have attached to  
7 it an affidavit pursuant to subsection (3) of this section, and any  
8 recorded substitution filed for record without containing or having  
9 attached to it an affidavit pursuant to such subsection prior to  
10 April 3, 1997, shall not be deemed incomplete or defective because  
11 such affidavit was not contained therein or attached.

12 (6) On and after the effective date of this act, there  
13 shall be no requirement for a beneficiary, in connection with  
14 the recording of the substitution of trustee, to provide notice  
15 of the substitution by mail, personal service, publication, or in  
16 any other manner to the trustee being replaced, and any recorded  
17 substitution filed for record prior to the effective date of this  
18 act, without having provided such notice, shall not be deemed  
19 incomplete or defective because such notice was not provided.

20 ~~(6)~~ (7) A substitution of trustee shall be sufficient if  
21 made in substantially the following form:

22 Substitution of Trustee

23 (insert name and address of new trustee)

24 is hereby appointed successor trustee under the  
25 trust deed executed by ..... as trustor, in which

1 ..... is named beneficiary and ..... as trustee,  
 2 and filed for record ....., 20..., and recorded in book .....,  
 3 page ..... (or computer system reference .....), Records of  
 4 ..... County, Nebraska. The trust property affected is legally  
 5 described as follows:

6 .....  
 7 .....  
 8 .....  
 9 .....

10 Signature .....

11 Sec. 2. Original section 76-1004, Reissue Revised  
 12 Statutes of Nebraska, is repealed.

13 Sec. 3. Since an emergency exists, this act takes effect  
 14 when passed and approved according to law.