

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 151

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

Read first time January 09, 2015

Committee: Urban Affairs

- 1 A BILL FOR AN ACT relating to real property; to amend sections 25-2142,
- 2 76-1006, and 76-1012, Reissue Revised Statutes of Nebraska; to
- 3 provide for a person designated to accept city or village notices in
- 4 cases of mortgaged property or trust deed default; to harmonize
- 5 provisions; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

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

3 25-2142 (1) Upon filing a complaint for the foreclosure or
4 satisfaction of a mortgage, the complainant shall state therein whether
5 any proceedings have been had at law for the recovery of the debt secured
6 thereby, or any part thereof, and whether such debt, or any part thereof,
7 has been collected and paid.

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

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

23 76-1006 (1) The power of sale conferred in the Nebraska Trust Deeds
24 Act upon the trustee shall not be exercised until:

25 (a) The trustee or the attorney for the trustee shall first file
26 for record in the office of the register of deeds of each county wherein
27 the trust property or some part or parcel thereof is situated a notice of
28 default identifying the trust deed by stating the name of the trustor
29 named therein and giving the book and page or computer system reference
30 where the same is recorded and a description of the trust property,
31 containing a statement that a breach of an obligation for which the trust

1 property was conveyed as security has occurred, and setting forth the
2 nature of such breach and of his or her election to sell or cause to be
3 sold such property to satisfy the obligation;

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

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

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

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

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

21 (2) Subsequent to the filing of a notice of default pursuant to this
22 section, the trustee or the attorney for the trustee, within five
23 business days after receipt of a written request by a designated
24 representative of the incorporated city or village having jurisdiction of
25 the trust property, shall provide the name and address of a person
26 designated by the beneficiary of the trust deed to accept notices of
27 violation of ordinances by the owner on behalf of the beneficiary.
28 Failure to provide the name and address required under this subsection
29 shall not void, invalidate, or affect in any way a notice of default
30 filed under this section. This subsection does not impose upon the
31 beneficiary, trustee, or the attorney for the trustee a duty to maintain

1 the trust property. The designation of a representative to receive
2 notices shall terminate upon transfer of fee title ownership to the trust
3 property.

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

6 76-1012 (1) Whenever all or a portion of the principal sum of any
7 obligation secured by a trust deed has, prior to the maturity date fixed
8 in such obligation, become due or been declared due by reason of a breach
9 or default in the performance of any obligation secured by the trust
10 deed, including a default in the payment of interest or of any
11 installment of principal, or by reason of failure of the trustor to pay,
12 in accordance with the terms of such trust deed, taxes, assessments,
13 premiums for insurance, or advances made by the beneficiary in accordance
14 with terms of such obligation or of such trust deed, the trustor or his
15 or her successor in interest in the trust property or any part thereof or
16 any other person having a subordinate lien or encumbrance of record
17 thereon or any beneficiary under a subordinate trust deed, at any time
18 within one month, or within two months if the notice of default is
19 subject to subdivision (1)(b)(i) of section 76-1006, of the filing for
20 record of notice of default under such trust deed, if the power of sale
21 is to be exercised, may pay to the beneficiary or his or her successor in
22 interest the entire amount then due under the terms of such trust deed
23 and the obligation secured thereby, including costs and expenses actually
24 incurred in enforcing the terms of such obligation, or trust deed, and
25 the trustee's fees actually incurred not exceeding in the aggregate fifty
26 dollars or one-half of one percent of the entire unpaid principal sum
27 secured, whichever is greater, other than such portion of the principal
28 as would not then be due had no default occurred, and thereby cure the
29 default theretofore existing and thereupon all proceedings theretofore
30 had or instituted shall be dismissed or discontinued, and the obligation
31 and trust deed shall be reinstated and shall be and remain in force and

1 effect the same as if no acceleration had occurred. If the default is
 2 cured and the trust deed reinstated in the manner provided in this
 3 section, the beneficiary, or his or her assignee, shall, on demand of any
 4 person having an interest in the trust property, execute and deliver to
 5 him or her a request to the trustee that the trustee execute,
 6 acknowledge, and deliver a cancellation of the recorded notice of default
 7 under such trust deed, and any beneficiary under a trust deed, or his or
 8 her assignee, who, for a period of thirty days after such demand, refuses
 9 to request the trustee to execute and deliver such cancellation shall be
 10 liable to the person entitled to such request for all damages resulting
 11 from such refusal. A cancellation of recorded notice of default under a
 12 trust deed shall, when acknowledged, be entitled to be recorded and shall
 13 be sufficient if made and executed by the trustee in substantially the
 14 following form:

15 Cancellation of Notice of Default

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

24 Signature of trustee or attorney for
 25 trustee

26 (2) Whenever all or a portion of the principal sum of any obligation
 27 secured by a trust deed has, prior to the maturity date fixed in such
 28 obligation, become due or been declared due by reason of a breach or
 29 default in the performance of any obligation secured by the trust deed,
 30 including a default in the payment of interest or of any installment of
 31 principal, or by reason of failure of the trustor to pay, in accordance

1 with the terms of such trust deed, taxes, assessments, premiums for
2 insurance, or advances made by the beneficiary in accordance with terms
3 of such obligation or of such trust deed, in the event the trustor or his
4 or her successor in interest or any other person having a subordinate
5 lien or encumbrance of record thereon or any beneficiary under a
6 subordinate trust deed makes payment of the entire amount then due under
7 the terms of such trust deed and the obligation secured thereby at any
8 time subsequent to the breach or default and prior to the sale of the
9 trust property under section 76-1010, the beneficiary shall be allowed to
10 collect the costs and expenses actually incurred in enforcing the terms
11 of such obligation, or trust deed, including the trustee's fees, costs,
12 and expenses actually incurred, not to exceed the amount provided in the
13 trust deed or the obligation secured thereby.

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