

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 750**

Introduced by Williams, 36.

Read first time January 03, 2018

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to real property; to amend sections 76-252,  
2 76-1014.01, and 76-2803, Reissue Revised Statutes of Nebraska, and  
3 section 76-238, Revised Statutes Cumulative Supplement, 2016; to  
4 change provisions relating to the recording of instruments and the  
5 rights and duties of secured creditors; and to repeal the original  
6 sections.

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

1 Section 1. Section 76-238, Revised Statutes Cumulative Supplement,  
2 2016, is amended to read:

3 76-238 (1) Except as otherwise provided in sections 76-3413 to  
4 76-3415, all deeds, mortgages, and other instruments of writing which are  
5 required to be or which under the laws of this state may be recorded,  
6 shall take effect and be in force from and after the time of delivering  
7 such instruments to the register of deeds for recording, and not before,  
8 as to all creditors and subsequent purchasers in good faith without  
9 notice. All such instruments are void as to all creditors and subsequent  
10 purchasers without notice whose deeds, mortgages, or other instruments  
11 are recorded prior to such instruments. However, such instruments are  
12 valid between the parties to the instrument. The transfer of any debt  
13 secured by a mortgage shall also operate as a transfer of the security of  
14 such debt.

15 (2) For purposes of this section, possession of agricultural real  
16 estate or residential real estate by a party related to the owner of  
17 record of the real estate within the third degree of consanguinity or  
18 affinity shall not serve as notice to a creditor or subsequent purchaser  
19 in any case in which such party is claiming rights in such real estate  
20 pursuant to a lease (a) entered into on or after July 16, 2004; (b)  
21 purporting to extend beyond a term of one year; and (c) which has not  
22 satisfied the requirements of section 76-211, unless the creditor or  
23 subsequent purchaser, in advance of recording a deed, mortgage, or other  
24 instrument, has received a written copy of such lease.

25 (3) For purposes of this section:

26 (a) Agricultural products includes grain and feed crops; forages and  
27 sod crops; and animal production, including breeding, feeding, or grazing  
28 of cattle, horses, swine, sheep, goats, bees, or poultry;

29 (b) Agricultural real estate means land which is primarily used for  
30 the production of agricultural products, including waste land lying in or  
31 adjacent to and in common ownership with land used for the production of

1 agricultural products;

2 (c) Related within the third degree of consanguinity or affinity  
3 includes parents, grandparents, great-grandparents, children,  
4 grandchildren, great-grandchildren, brothers, sisters, uncles, aunts,  
5 nephews, nieces, and spouses of the same and any partnership, limited  
6 liability company, or corporation in which all of the partners, members,  
7 or shareholders are related within the third degree of consanguinity or  
8 affinity; and

9 (d) Residential real estate means real estate containing not more  
10 than four units designed for use for residential purposes. A condominium  
11 unit that is otherwise residential real estate remains so even though the  
12 condominium development contains more than four dwelling units or units  
13 for nonresidential purposes.

14 Sec. 2. Section 76-252, Reissue Revised Statutes of Nebraska, is  
15 amended to read:

16 76-252 Section 76-2803 shall govern the mortgagee's obligation to  
17 record or cause to be recorded a release of mortgage and the liability of  
18 the mortgagee for failure to timely record or cause to be recorded a  
19 release of mortgage ~~When the obligation secured by any mortgage has been~~  
20 ~~satisfied, the mortgagee shall, upon receipt of a written request by the~~  
21 ~~mortgagor or the mortgagor's successor in interest or designated~~  
22 ~~representative or by a holder of a junior trust deed or junior mortgage,~~  
23 ~~execute and deliver a release of mortgage in recordable form to the~~  
24 ~~mortgagor or mortgagor's successor in interest or designated~~  
25 ~~representative, as directed in the written request.~~

26 ~~Any mortgagee who fails to deliver such a release within sixty days~~  
27 ~~after receipt of such written request shall be liable to the mortgagor or~~  
28 ~~the mortgagor's successor in interest, as the case may be, for five~~  
29 ~~thousand dollars or actual damages resulting from the failure, whichever~~  
30 ~~is greater. In any action against the mortgagee pursuant to this section,~~  
31 ~~the court shall award, in addition to the foregoing amounts, court costs,~~

1 ~~including reasonable attorney's fees, and may further order the mortgagee~~  
2 ~~to execute a release. Successor in interest of the mortgagor shall~~  
3 ~~include the current owner of the property and shall also include the~~  
4 ~~person issuing a payoff check in accordance with the terms of a payoff~~  
5 ~~letter from a mortgagee.~~

6 Sec. 3. Section 76-1014.01, Reissue Revised Statutes of Nebraska, is  
7 amended to read:

8 76-1014.01 Section 76-2803 shall govern the beneficiary's  
9 obligation to record or cause to be recorded a deed of reconveyance and  
10 the liability of the beneficiary for failure to timely record or cause to  
11 be recorded a deed of reconveyance ~~When the obligation secured by any~~  
12 ~~trust deed has been satisfied, the beneficiary shall, upon receipt of a~~  
13 ~~written request by the trustor or the trustor's successor in interest or~~  
14 ~~designated representative or by the holder of a junior trust deed or~~  
15 ~~junior mortgage, deliver to the trustor or trustor's successor in~~  
16 ~~interest or designated representative a reconveyance in recordable form~~  
17 ~~duly executed by the trustee. The reconveyance may designate the grantee~~  
18 ~~therein as the person or persons entitled thereto. The beneficiary under~~  
19 ~~such trust deed shall, upon receipt of a written request, deliver to the~~  
20 ~~trustor or his or her successor in interest, as directed in the written~~  
21 ~~request, the trust deed and the note or other evidence of the obligation~~  
22 ~~so satisfied. If a trustee fails or refuses to execute a reconveyance~~  
23 ~~required by the beneficiary, the beneficiary shall appoint a successor~~  
24 ~~trustee that will execute a reconveyance.~~

25 ~~Any beneficiary who fails to deliver such a reconveyance within~~  
26 ~~sixty days after receipt of such written request shall be liable to the~~  
27 ~~trustor or his or her successor in interest, as the case may be, for five~~  
28 ~~thousand dollars or actual damages resulting from such failure, whichever~~  
29 ~~is greater. In any action against the beneficiary or trustee pursuant to~~  
30 ~~this section, the court shall award, in addition to the foregoing~~  
31 ~~amounts, court costs, including reasonable attorney's fees, and may~~

1 ~~further order the trustee to reconvey the property. Successor in interest~~  
2 ~~of the trustor shall include the current owner of the property and shall~~  
3 ~~also include the person issuing a payoff check in accordance with the~~  
4 ~~terms of a payoff letter from a beneficiary.~~

5       Sec. 4. Section 76-2803, Reissue Revised Statutes of Nebraska, is  
6 amended to read:

7       76-2803 (1) A secured creditor shall, after the secured creditor  
8 receives full payment or performance of the secured obligation and  
9 receives a written request by the trustor, mortgagor, or grantor, as  
10 applicable, or the trustor's, mortgagor's, or grantor's successor in  
11 interest or designated representative or by the holder of a junior trust  
12 deed, junior mortgage, or other junior security interest, record, or  
13 cause to be recorded, a deed of reconveyance or a release or satisfaction  
14 of a mortgage or other security instrument, as applicable, interest in  
15 the real property records of each county in which the trust deed,  
16 mortgage, or other security instrument, as applicable, is recorded. If a  
17 trust deed, mortgage, or other security instrument, as applicable,  
18 secures a line of credit or future advances, the secured obligation is  
19 fully paid or performed if, in addition to full payment or performance,  
20 the secured creditor has received a notification requesting the secured  
21 creditor to terminate the line of credit or containing a statement  
22 sufficient to terminate the effectiveness of the provision for future  
23 advances as provided under section 76-238.01 or 76-1002.

24       (2) A secured creditor who fails to record or cause to be recorded a  
25 deed of reconveyance or a release or satisfaction of mortgage or other  
26 security instrument within sixty days after receiving full payment or  
27 performance of the secured obligation and receiving a written request as  
28 required under subsection (1) of this section is liable to (a) the  
29 trustor, mortgagor, or grantor, or the successor in interest of such  
30 trustor, mortgagor, or grantor, as applicable, if such written request  
31 was made by such trustor, mortgagor, or grantor, or a designated

1 representative of a trustor, mortgagor, or grantor, for the greater of  
2 five thousand dollars or actual damages caused by such failure, plus  
3 reasonable attorney's fees and costs or (b) a successor in interest of a  
4 trustor, mortgagor, or grantor or of a landowner, purchaser, or holder of  
5 a junior trust deed, junior mortgage, or other junior security interest,  
6 as applicable, if such written request was made by such successor in  
7 interest of a trustor, mortgagor, or grantor, or by such landowner,  
8 purchaser, or holder of a junior trust deed, junior mortgage, or other  
9 junior security interest, for actual damages caused by such failure plus  
10 reasonable attorney's fees and costs. The court may further order the  
11 trustee to reconvey the property or the mortgagee or grantee to record a  
12 release or satisfaction of the mortgage or other security instrument.  
13 This subsection does not apply if the secured creditor received full  
14 payment or performance before the effective date of this act ~~In addition~~  
15 ~~to any other remedy provided by law, a secured creditor who fails to~~  
16 ~~record a deed of reconveyance or a release or satisfaction of a security~~  
17 ~~interest within sixty days after receiving full payment or performance of~~  
18 ~~the secured obligation is liable to the landowner or purchaser for actual~~  
19 ~~damages in the amount of any loss caused by the failure, including~~  
20 ~~reasonable attorney's fees and costs. The provisions of this subsection~~  
21 ~~do not apply if the secured creditor received full payment or performance~~  
22 ~~before July 18, 2008.~~

23 (3) A secured creditor is not liable under this section if the  
24 secured creditor (a) established a reasonable procedure to achieve  
25 compliance with its obligations under this section, (b) complied with  
26 that procedure in good faith, and (c) was unable to comply with its  
27 obligations due to circumstances beyond its control.

28 (4) A beneficiary under a deed of trust shall not be liable under  
29 this section if the beneficiary (a) satisfies the conditions set forth  
30 under subsection (3) of this section and (b) delivered to the trustee  
31 under such deed of trust a request to execute a reconveyance required by

1 the beneficiary and the trustee failed to do so, provided that the  
2 beneficiary delivered such request within the time provided herein for  
3 recording of a deed of reconveyance and the beneficiary appoints a  
4 successor trustee who executes and records or causes to be recorded a  
5 deed of reconveyance within a reasonable time thereafter.

6 (5) Successor in interest of a trustor, mortgagor, or grantor shall  
7 include the current owner of the real property and the person issuing a  
8 payoff check in accordance with the terms of a payoff letter from a  
9 beneficiary or mortgagee.

10 Sec. 5. Original sections 76-252, 76-1014.01, and 76-2803, Reissue  
11 Revised Statutes of Nebraska, and section 76-238, Revised Statutes  
12 Cumulative Supplement, 2016, are repealed.