

## LEGISLATIVE BILL 657

Approved by the Governor March 14, 1988

Introduced by Goodrich, 20

AN ACT relating to property; to amend sections 76-107, 76-122, and 76-2,104, Reissue Revised Statutes of Nebraska, 1943; to provide a limitation on the duration of certain future interests and actions as prescribed; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 76-107, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-107. (1) The conveyance of an existing future interest, whether legal or equitable, is not ineffective on the sole ground that the interest so conveyed is future or contingent, except that ~~PROVIDED~~, possibilities of reverter or rights of reentry for breach of condition subsequent shall not be alienable or devisable.

(2) Neither possibilities of reverter nor rights of reentry for breach of condition subsequent relating to any property, whether created on, before, or after the effective date of this act, when the condition has not been broken, shall be valid for a longer period than thirty years from the date of the creation of the condition or possibility of reverter or right of reentry. If such possibility of reverter or right of reentry is created to endure for a longer period than thirty years, it shall be valid for thirty years. This subsection shall not apply to personal property which has been conveyed to a library or museum for the purpose of public display.

(3) Any cause of action arising from any possibility of reverter or right of reentry for breach of condition subsequent which existed prior to the effective date of this act shall be commenced within a period of one year following the effective date of this act.

Sec. 2. That section 76-122, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-122. Sections 76-101 to 76-123 shall not

apply to acts which occurred, or to conveyances which became effective, before August 24, 1941, except as provided in subsections (2) and (3) of section 76-107.

Sec. 3. That section 76-2,104, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-2,104. Subsections (2) and (3) of section 76-107 and sections ~~Sections~~ 76-299 to 76-2,105 shall not invalidate or affect:

(1) A conveyance made for the purpose of releasing or extinguishing a possibility of reverter or right of entry or reentry;

(2) A right of entry or the transfer of a right of entry for default in payment of rent reserved in a lease or for breach of covenant contained in a lease, ~~where~~ when such transfer is in connection with a transfer of a reversion and the rent reserved in the lease;

(3) A right of reentry or the transfer of a right of entry for default in payment of a rent granted or reserved in any deed or grant, or for breach of any covenant in any deed or grant ~~where~~ when a rent is granted or reserved, ~~where~~ if such transfer is in connection with a transfer of a rent so granted or the transfer of a rent so reserved;

(4) Any rights of a mortgagor based upon the terms of the mortgage, ~~or~~ any rights of a trustee or a beneficiary under a trust deed in the nature of a mortgage based upon the terms of the trust deed, or any rights of grantor under a vendor's lien reserved in a deed; or

(5) Any condition, restrictive covenant, limitation, or possibility of reverter or right of entry or reentry for breach of condition subsequent contained in any grant or easement to any railroad or other public utility for the establishment and operation of a transportation system, communication or transmission lines, or public highways.

Sec. 4. That original sections 76-107, 76-122, and 76-2,104, Reissue Revised Statutes of Nebraska, 1943, are repealed.

## LEGISLATIVE BILL 664

Approved by the Governor April 8, 1988

Introduced by Schmit, 23; Rogers, 41

AN ACT relating to agriculture; to adopt the Farm Mediation Act; to provide a termination date; and to provide severability.

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

Section 1. This act shall be known and may be cited as the Farm Mediation Act.

Sec. 2. As used in the Farm Mediation Act, unless the context otherwise requires:

(1) Administrator shall mean the Department of Agriculture or any other appropriate state agency designated by the Governor;

(2) Borrower shall mean an individual, corporation, trust, cooperative, joint venture, or other entity entitled to contract who is engaged in farming or ranching, who derives more than fifty percent of his or her gross income from farming or ranching, and who holds an agricultural loan;

(3) Creditor shall mean any individual, organization, cooperative, partnership, trust, or state or federally chartered corporation to whom an agricultural loan is owed;

(4) Farm mediation service shall mean an entity with which the administrator contracts to conduct mediation and related services pursuant to the act;

(5) Mediation shall mean a process by which creditors and borrowers present, discuss, and explore practical and realistic alternatives to the resolution of a borrower's debts; and

(6) Mediator shall mean anyone responsible for and engaged in the performance of mediation pursuant to the act.

Sec. 3. The administrator shall serve as the farm mediation program coordinator and shall be responsible for placing into effect and implementing the Farm Mediation Act.

Sec. 4. (1) Borrowers involved in mediation under the Farm Mediation Act shall be offered assistance, at no cost to borrowers, in the analysis of their business and personal financial situation. The administrator shall contract with one or more eligible persons to provide such assistance. A person shall be

eligible to contract to provide services pursuant to this subsection if he or she has staff trained and experienced in farm and ranch financial analysis, is familiar with the unique aspects of production agriculture, is able to work effectively with borrowers and creditors, and demonstrates an ability to assist each borrower in developing alternatives and to evaluate such alternatives for potential viability.

(2) The administrator shall provide any available information regarding legal assistance programs for borrowers and may contract with one or more eligible persons to provide such assistance. A person shall be eligible to contract to provide services pursuant to this subsection if such assistance is provided by attorneys who are qualified in agricultural credit problems of borrowers.

(3) The administrator shall contract with one or more eligible persons to provide farm mediation services pursuant to the Farm Mediation Act. A person shall be eligible to contract to provide farm mediation services if he or she is qualified or provides agricultural credit mediation training of mediators to a level of expertise specified by the administrator and ensures that all mediation sessions are confidential.

(4) Any person contracting with the administrator to provide services pursuant to this section shall demonstrate an ability to perform high quality service for the least cost within the time limits established by the administrator.

(5) The contract or contracts entered into pursuant to this section may be terminated by either party upon written notice. Any person awarded a contract shall be designated as the contractor for the service area of the state set forth in such contract for the duration of the contract.

Sec. 5. After receiving a mediation request, the farm mediation service shall advise the borrower that financial and legal preparation assistance may be available. The farm mediation service shall provide any other available information regarding assistance programs to farmers.

Sec. 6. The administrator shall adopt and promulgate rules and regulations setting appropriate fee guidelines for the services provided under the Farm Mediation Act, which fees shall not exceed actual costs and shall be borne equally by all parties, and setting forth any procedures or requirements necessary to implement the act. The rules and regulations shall provide that the fees shall be collected by the farm

mediation service and retained by the farm mediation service to offset its costs and that the farm mediation service may require payment of the fees or a portion thereof prior to a mediation meeting.

Sec. 7. (1) At least thirty days prior to the initiation of a proceeding on an agricultural debt in excess of forty thousand dollars, a creditor, except as provided in subsection (2) or (3) of this section, shall provide written notice directly to the borrower of the availability of mediation and the address and telephone number of the farm mediation service in the service area of the borrower.

(2) Subsection (1) of this section shall not apply to creditors subject to the federal Agricultural Credit Act of 1987 if such act and the rules and regulations adopted and promulgated thereunder require otherwise.

(3) Subsection (1) of this section shall not apply if a court of competent jurisdiction determines that the time delay required would cause the creditor to suffer irreparable harm because there are reasonable grounds to believe the borrower may dissipate or divert collateral.

Sec. 8. Any borrower or creditor may request mediation of any indebtedness incurred in relation to an agricultural loan by applying to the farm mediation service. The farm mediation service shall notify all the parties and, upon their consent, schedule a meeting with a mediator. The borrower and any creditor shall not be required to attend any mediation meetings under this section, and failure to attend any mediation meetings or to participate in mediation under this section shall not affect the rights of a borrower or creditor in any manner. Participation in mediation under this section shall not be a prerequisite or a bar to the institution of or prosecution of legal proceedings by the borrower or the creditor.

Sec. 9. Within twenty days after receiving a mediation request under section 8 of this act, the farm mediation service shall send a mediation meeting notice to all the consenting parties setting a time and place for an initial mediation meeting between the borrower, the creditor or creditors, and a mediator associated with the farm mediation service. Adequate preparation by all parties shall be advised by the farm mediation service prior to the mediation meeting. An initial mediation meeting shall be held within twenty days of the issuance of the notice.

Sec. 10. The farm mediation service shall

conduct and conclude a mediation meeting during the mediation period which extends for sixty days after the farm mediation service receives the mediation request. If all parties consent, mediation may continue after the end of the mediation period. If any party elects not to participate in mediation, the farm mediation service shall so notify all parties.

Sec. 11. If an agreement is reached between the borrower and the creditor or creditors, the mediator may (1) draft a written mediation agreement encompassing the agreement, (2) have it signed by the borrower and the creditor or creditors, and (3) file the agreement with the farm mediation service. The borrower and any creditor who is a party to the mediation agreement may enforce the agreement as a legal contract.

Sec. 12. (1) At the initial mediation meeting and any subsequent meetings, the mediator associated with the farm mediation service shall:

(a) Listen to the borrower and any creditor desiring to be heard;

(b) Attempt to mediate between the borrower and creditor or creditors;

(c) Allow for exploration of legitimate and fair interests of the borrower and creditor or creditors; and

(d) Advise the borrower and the creditor or creditors as to the existence of any available assistance programs including financial preparation and legal assistance.

(2) All data regarding the finances of borrowers and creditors which is created, collected, and maintained by the farm mediation service shall not be public records and shall be held in strict confidence by the farm mediation service and all parties to the mediation. If all parties consent to disclosure, such information may be disclosed pursuant to the terms of the consent.

(3) No mediation shall commence until the mediator makes a statement to the effect of language contained in subsection (2) of this section. At the end of a mediation session, the mediator shall obtain a signed statement by all parties to the mediation agreeing to abide by the requirements of this section.

Sec. 13. The farm mediation service shall make an extensive effort to educate borrowers and creditors on the mediation process and availability of farm mediation services.

Sec. 14. Except as otherwise provided in the Farm Mediation Act, nothing in the act shall be

applicable to or shall affect any legal proceedings filed by a borrower or creditor.

Sec. 15. The farm mediation service shall maintain complete statistical records of program participation and costs and make them available upon request.

Sec. 16. The Farm Mediation Act shall terminate on March 1, 1992, unless extended by action of the Legislature.

Sec. 17. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.