

LEGISLATIVE BILL 547

Approved by the Governor May 4, 1993

Introduced by Wehrbein, 2

AN ACT relating to trust deeds; to amend sections 76-1004 and 76-1005, Reissue Revised Statutes of Nebraska, 1943; to provide for general substitutions of trustees as provided; to eliminate a requirement for a written acknowledgement; and to repeal the original sections.

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

Section 1. That section 76-1004, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

(2) The substitution shall identify the trust deed by stating the names of the original parties thereto, the date of recordation, and the book and page or computer system reference where the trust deed is recorded, shall state the name of the new trustee, and shall be executed and acknowledged by all of the beneficiaries under the trust deed or their successors in interest.

~~(3) Prior to recording the substitution, a copy thereof shall be sent in the manner provided in section 76-1008 to all persons to whom a copy of the notice of default would be required to be mailed by section 76-1008; and the recorded substitution shall contain or have attached to it an affidavit that copies have been sent to such persons.~~

~~(3) (4) The recorded substitution shall also contain or have attached to it an affidavit that a copy of the substitution has, by certified or registered regular United States mail with postage prepaid and return receipt requested, been mailed to and received at the last-known address of the trustee being replaced, an acknowledgment signed and acknowledged by the trustee being replaced of receipt of a copy of the substitution, or an affidavit of personal service of a copy thereof or of publication of notice thereof, which notice shall be published one time in a newspaper having general circulation in any county in which the trust property or some part thereof is situated. When notice is published the affidavit shall also show that a copy of the substitution has been mailed to the trustee being replaced at his or her last-known address.~~

~~(5) (4) Any affidavit contained in or attached to the substitution shall constitute prima facie evidence of the facts required to be~~

stated and conclusive evidence of such facts as to bona fide purchasers and encumbrancers for value of the trust property or of any beneficial interest in the trust deed.

(6) (5) A substitution of trustee shall be sufficient if made in substantially the following form:

Substitution of Trustee

(insert name and address of new trustee)

is hereby appointed successor trustee under the trust deed executed by as trustor, in which is named beneficiary and as trustee, and filed for record, 19....., and recorded in book, page (or computer system reference,) records of County, Nebraska.

Signature

Sec. 2. That section 76-1005, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-1005. (4) A power of sale may be conferred upon the trustee which the trustee may exercise and under which the trust property may be sold in the manner provided in ~~sections 76-1001 to 76-1018~~ the Nebraska Trust Deeds Act after a breach of an obligation for which the trust property is conveyed as security, ; or at the option of the beneficiary a trust deed may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property. The power of sale ~~must~~ shall be expressly provided for in the trust deed.

~~(2) Prior to the execution of any trust deed which confers a power of sale to the trustee, the beneficiary shall obtain a written acknowledgment from the trustor stating that the trustor understands that (a) the document to be executed is a trust deed and not a mortgage and (b) the power of sale provided for in the trust deed provides substantially different rights and obligations to the trustor than a mortgage in the event of a default or breach of obligation. Failure to obtain such written acknowledgment shall nullify the conferring of or exercising of such power of sale.~~

Sec. 3. That original sections 76-1004 and 76-1005, Reissue Revised Statutes of Nebraska, 1943, are repealed.