

LEGISLATIVE BILL 284

Approved by the Governor April 2, 1997

Introduced by Beutler, 28

AN ACT relating to trust deeds; to amend sections 76-1004 and 76-1015, Reissue Revised Statutes of Nebraska; to change provisions relating to record filings; to specify the statutes of limitations applicable to sales of property; to repeal the original sections; and to declare an emergency.

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

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

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, the full legal description of the realty affected, 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) The recorded substitution shall also contain or have attached to it an affidavit that a copy of the substitution has, by regular United States mail with postage prepaid, been mailed to the last-known address of the trustee being replaced 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.

(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.

~~(5) On and after the effective date of this act, no recorded substitution filed for record shall be required to contain or have attached to it an affidavit pursuant to subsection (3) of this section, and any recorded substitution filed for record without containing or having attached to it an affidavit pursuant to such subsection prior to the effective date of this act shall not be deemed incomplete or defective because such affidavit was not contained therein or attached.~~

~~(5)~~ (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..... or 20....., and recorded in book ....., page ..... (or computer system reference .....), Records of ..... County, Nebraska. The trust property affected is legally described as follows:

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Signature .....

Sec. 2. Section 76-1015, Reissue Revised Statutes of Nebraska, is amended to read:

76-1015. The trustee's sale of property under a trust deed shall be made within the period prescribed by law in section 25-205 for the commencement of an action on the obligation secured by the trust deed unless the beneficiary elects to foreclose a trust deed in the manner provided for by law for the foreclosure of mortgages on real estate as provided in section 76-1005, in which case the statute of limitations for the commencement of such action shall be the same as the statute of limitations for mortgages pursuant to section 25-202.

Sec. 3. Original sections 76-1004 and 76-1015, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 4. Since an emergency exists, this act takes effect when passed and approved according to law.