



Ninety-Eighth Legislature - Second Session - 2004
Introducer's Statement of Intent
LB 979

Chairperson: Mark Quandahl
Committee: Banking, Commerce and Insurance
Date of Hearing: January 20, 2004

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 979 would amend a number of statutory provisions relating to financial institutions, including the following:

(1) **TRUST DEEDS AND MORTGAGES** - Sections 1, 5, 6, 7, and 8 amend provisions of state law relating to mortgages and trust deeds in the following respects:

(a) **FINALITY OF TRUSTEE'S AND FORCLOSURE SALES** - Section 1 of the bill would amend Neb.Rev.Stat. § 25-1530 to provide that a debtor's (mortgagors) rights in property sold pursuant to a decree of foreclosure, subject to the right of redemption and confirmation of sale, including all rights of persons claiming by, through, and under the debtor and his or her successors in interest, shall be deemed to be terminated as of the time the sheriff or master commissioners accepts the highest bid at the sale.

Similarly, Section 7 of the bill would provide that a debtor's (trustor's) rights in property sold pursuant to a trustee's sale, including all rights of persons claiming by, through, or under the debtor, shall be deemed to be terminated as of the time the trustee or the attorney for the trustee accepts the highest bid at the time of the sale.

These provisions are designed to address the holding in the case of In Re: Deanna Dieken, Case No. 03-40428 (Bankr. D. Neb. 2003) which determined that a debtor's rights in property sold at a trustee's sale were not terminated until the trustee's deed was executed and delivered to the buyer.

(b) **NOTICE OF DEFAULT/AGRICULTURAL REAL ESTATE** - Section 5 of the bill would amend Neb.Rev.Stat. § 76-1006 to require that a notice of default involving "agricultural real estate" reflect the amount of accrued interest "as of the date the notice of default is signed by the trustee or the trustee's attorney," replacing provisions under current law requiring the notice of default to provide the amount of the interest that is accrued from the date of filing the notice of default.

(c) **POSTPONEMENT OF TRUSTEE'S SALE** - Under current law, a trustee's sale may only be postponed for a period of one day. Section 6 of the bill would allow a trustee's sale to be postponed for a period of up to 45 days. Situations in which a longer time period for postponement of a trustee's sale would be appropriate include: (1) cases where the filing of a bankruptcy causes undue delay; (2) cases involving "bad faith" in which a Chapter 13 filing is followed by a Chapter 7 filing and an evidentiary hearing is required to get relief from the stay in order to proceed with the sale; and (3) cases in which a debtor has the ability to refinance the loan and pay the loan off in full or where the debtor has procured a third-party buyer and needs extra time to finalize a sale.

(d) **RECOVERY OF TRUSTEE'S FEES, COSTS AND EXPENSES** - Current law expressly provides for the recovery by a beneficiary of trustee's fees, costs, and expenses in the event that a trustee's sale is conducted (Neb. Rev. Stat. §76-1011) and when the trustor reinstates the obligation secured by the trust deed prior to the trustee's sale being conducted (Neb.Rev.Stat. § 76-1012). Section 8 of the bill would clarify existing Nebraska law by authorizing a beneficiary to recover trustee's fees, costs, and expenses incurred in enforcing the terms of an obligation secured by a trust deed in cases involving full payment of an obligation by or on behalf of the trustor, subsequent to the time of a breach or default and prior to the time of the trustee's sale.

(2) **UNIFORM TRANSFER ON DEATH/SECURITY ACCOUNTS** - Under current law, investment management and custody accounts which a bank trust department may hold for its customers are not included within the definition of "security account" for purposes of the Uniform Transfer on Death law. As a result, customers of a bank trust department do not have the same capability as customers of brokerage houses to designate these accounts for "transfer on death" treatment.

Section 2 of the bill would expand the definition of "security accounts" under the Uniform Transfer on Death law to include investment management and custody accounts held by a bank trust department.

(3) **BANK DATA MATCH – ORDER TO WITHHOLD AND DELIVER** - Section 3 of the bill would clarify provisions of the bank data match law by amending Neb.Rev.Stat. § 43-3334 to ensure that the issuance of an order to withhold and deliver only requires the recipient of the order to hold property in its possession or under its control at the time the order to withhold and deliver was received.

(4) **PUBLIC FUNDS** - LB 979 would make two changes to the laws relating to public funds, as follows:

(a) **Interstate Branching** – Nebraska law has traditionally recognized that any deposit of public funds by the state or by a political subdivisions that are required to be made in a financial institution must be placed in a bank which is chartered or which has a branch in this state or in a savings and loan which is chartered in this state. Under current federal law, the only manner in which an out-of-state bank may enter Nebraska is through the acquisition of a Nebraska bank which has been in existence for at least five years. Legislation pending before Congress would

allow an out-of-state financial institution to enter Nebraska on a *de novo* basis. Passage of this federal legislation would effectively eliminate the ability of Nebraska to maintain its restrictions on the manner in which out-of-state institutions may enter Nebraska and would result, without the changes proposed under LB 979, in the ability of an out-of-state financial institution with only a “branch” presence in Nebraska to be eligible to hold state and local political subdivision deposits. Sections 4,9,10, and 11 of the bill would clarify that only banks or saving and loans with a charter in Nebraska or branches of a bank or savings and loan which maintained a charter in this state prior to becoming a branch would be eligible to hold public funds.

(b) **CDARS PROGRAM** - Some Nebraska financial institutions participate in a program (CDARS Program) which allows participating financial institutions to “exchange” deposits with other participating institutions in order to provide full FDIC insurance coverage for customers wishing to deposit amounts in excess of the \$100,000 FDIC insurance limits. Under this program, a financial institution with a customer desiring full FDIC insurance coverage for a \$1 million deposit could retain \$100,000 of such deposit which would be fully insured by the FDIC and transfer the remaining \$900,000 of the deposit in \$100,000 increments to nine separate participating financial institutions and under the terms of the program would receive nine separate \$100,000 deposits from other participating financial institutions to replace these funds. All funds “exchanged” under the program remain fully insured by the FDIC.

Under current law, the state and local political subdivisions are authorized to invest public funds in a number of alternative investment vehicles, including certificates of deposit and time deposits in banks chartered in Nebraska or in national banks with a principal office or a branch in Nebraska and in savings and loans organized under Nebraska law or federal savings and loans with their principal office in Nebraska. Due to the requirement for certain deposits of the state and local political subdivisions to be deposited in certificates of deposit or time deposits with Nebraska chartered financial institutions, it is not clear whether deposits exchanged with out-of-state institutions under the CDARS Program would represent a permissible investment for the state and local political subdivisions. Section 12 of the bill would clarify existing law to authorize the investment of funds pursuant to the CDARS program described above.

Principal Introducer:

_____ **Senator Mark Quandahl**