

LEGISLATIVE BILL 738

Approved by the Governor March 3, 2010

Introduced by McCoy, 39.

FOR AN ACT relating to the Nebraska Trust Deeds Act; to amend section 76-1004, Reissue Revised Statutes of Nebraska; to change provisions relating to the substitution of trustee; to repeal the original section; 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 April 3, 1997, 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 April 3, 1997, shall not be deemed incomplete or defective because such affidavit was not contained therein or attached.

(6) On and after the effective date of this act, there shall be no requirement for a beneficiary, in connection with the recording of the substitution of trustee, to provide notice of the substitution by mail, personal service, publication, or in any other manner to the trustee being replaced, and any recorded substitution filed for record prior to the effective date of this act, without having provided such notice, shall not be deemed incomplete or defective because such notice was not provided.

~~(6)~~ (7) 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, 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. Original section 76-1004, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 3. Since an emergency exists, this act takes effect when passed and approved according to law.