

LEGISLATIVE BILL 1275

Approved by the Governor April 19, 1994

Introduced by Withem, 14

AN ACT relating to transactions and records; to amend sections 76-214, 76-215, 76-1018, and 84-712.01, Reissue Revised Statutes of Nebraska, 1943, and sections 45-711, 77-1311, and 77-1327, Revised Statutes Supplement, 1992; to define terms; to provide requirements for real estate closing agents; to provide powers and duties for the Attorney General, the Tax Commissioner, county attorneys, registers of deeds, county assessors, and regulating entities; to provide a penalty; to change duties relating to mortgage bankers; to provide duties and liability for mortgagees, trustees, and beneficiaries; to authorize civil actions and attorney's fees and costs; to provide filing duties for purchasers of real property as prescribed by the Tax Commissioner; to state intent; to authorize alternative means to access public records; to eliminate provisions relating to satisfaction of obligations on real estate; to harmonize provisions; and to repeal the original sections, and also sections 76-255 and 76-1014, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. For purposes of sections 1 to 3 of this act:

(1) Federally insured financial institution shall mean an institution in which the monetary deposits are insured by the Federal Deposit Insurance Corporation or National Credit Union Administration.

(2) Good funds shall mean: (a) Lawful money of the United States; (b) wired funds when unconditionally held by the real estate closing agent or employee; (c) cashier's checks, certified checks, bank money orders, or teller's checks issued by a federally insured financial institution and unconditionally held by the real estate closing agent or employee; or (d) United States treasury checks, federal reserve bank checks, federal home loan bank checks, and State of Nebraska warrants.

(3) Real estate closing agent shall mean a person who collects and disburses funds on behalf of another in closing a real estate transaction but shall not include a seller or buyer closing a real estate transaction on his or her own behalf or a lender closing a real estate loan transaction; and

(4) Regulating entity shall mean the:

(a) Department of Insurance;

(b) Supreme Court;

(c) State Real Estate Commission;

(d) Department of Banking and Finance;

(e) Federal Deposit Insurance Corporation;

(f) Federal Office of Thrift Supervision;

(g) Federal Farm Credit Administration; or

(h) National Credit Union Administration.

Sec. 2. (1) To act as a real estate closing agent, a person shall:

(a)(i) Be licensed or regulated by one or more regulating entities or (ii) be employed by a person or entity regulated by one or more regulating entities, unless employing such person to act as a real estate closing agent is otherwise prohibited by statute, rule, or regulation; and

(b) Have received good funds which are available for disbursement at the time of closing a real estate transaction.

(2) The Attorney General or any county attorney may act to enjoin the performance of real estate closings which violate this section.

(3) A person acting as a real estate closing agent in violation of this section shall be guilty of a Class V misdemeanor.

Sec. 3. Each state regulating entity shall adopt and promulgate rules and regulations and issue such orders as are necessary or desirable to carry out section 2 of this act. Each regulating entity may inspect, examine, and audit the books and records of real estate closing agents under its jurisdiction who conduct real estate closings. The regulating entity may require reimbursement from the real estate closing agent for the expenses of such inspection, examination, or audit.

Sec. 4. That section 45-711, Revised Statutes Supplement, 1992, be amended to read as follows:

45-711. A licensee shall:

(1) Disburse required funds paid by the borrower and held in escrow for the payment of insurance payments no later than the date upon which the

premium is due under the insurance policy;

(2) Disburse funds paid by the borrower and held in escrow for the payment of real estate taxes prior to the time such real estate taxes become delinquent;

(3) Pay any penalty incurred by the borrower because of the failure of the licensee to make the payments required in subdivisions (1) and (2) of this section unless the licensee establishes that the failure to timely make the payments was due solely to the fact that the borrower was sent a written notice of the amount due more than fifteen calendar days before the due date to the borrower's last-known address and failed to timely remit the amount due to the licensee;

(4) At least annually perform a complete escrow analysis. If there is a change in the amount of the periodic payments, the licensee shall mail written notice of such change to the borrower at least twenty calendar days before the effective date of the change in payment. The following information shall be provided to the borrower, in one or more reports, at least annually:

(a) The name and address of the licensee;

(b) The name and address of the borrower;

(c) A summary of the escrow account activity during the year which includes all of the following:

(i) The balance of the escrow account at the beginning of the year;

(ii) The aggregate amount of deposits to the escrow account during the year; and

(iii) The aggregate amount of withdrawals from the escrow account

for each of the following categories:

(A) Payments applied to loan principal;

(B) Payments applied to interest;

(C) Payments applied to real estate taxes;

(D) Payments for real property insurance premiums; and

(E) All other withdrawals; and

(d) A summary of loan principal for the year as follows:

(i) The amount of principal outstanding at the beginning of the year;

(ii) The aggregate amount of payments applied to principal during the year; and

(iii) The amount of principal outstanding at the end of the year;

(5) Answer in writing, within ten business days of receipt, any written request for payoff information received from a borrower or a borrower's designated representative; and

(6) Execute and deliver a release of mortgage in recordable form or, in the case of a trust deed, execute and deliver a reconveyance in recordable form executed by the trustee within sixty days after the satisfaction of the obligations secured by the mortgage or trust deed, or, in the case of a trust deed, execute and deliver to the trustee under a trust deed a request for the reconveyance of the real property after payoff and within twenty business days after the receipt of correct payment in good funds.

Sec. 5. When the obligation secured by any mortgage has been satisfied, the mortgagee shall execute and deliver a release of mortgage in recordable form to the mortgagor or mortgagor's successor in interest or designated representative.

Any mortgagee who, after request, fails to deliver such a release within sixty days after the satisfaction of the obligations secured by the mortgage shall be liable to the mortgagor or the mortgagor's successor in interest, as the case may be, for one thousand dollars and all actual damages resulting from the failure, including attorney's fees and costs of title work. In any action against the mortgagee pursuant to this section, the court shall award, in addition to the foregoing amounts, the cost of suit, including reasonable attorney's fees, and may further order the mortgagee to execute a release. Successor in interest of the mortgagor shall include the current owner of the property.

Sec. 6. That section 76-214, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-214. Every grantee who has a deed to real estate recorded, which deed was executed after July 21, 1965, and every purchaser of real estate who has a memorandum of contract or land contract recorded which was executed after the effective date of this act, shall, at the time such deed, memorandum of contract, or land contract is presented for recording, file with the register of deeds a completed statement as prescribed by the Tax Commissioner. For all deeds executed and recorded after January 1, 1986, and for all memoranda of contract and land contracts executed and recorded after the effective date of this act, the statement shall contain the social security number of the grantee or purchaser, if living, or the federal employer

identification number of the grantee or purchaser. This statement may require the recitation of any information contained in the deed, memorandum of contract, or land contract, the total consideration paid, the amount of the total consideration attributable to factors other than the purchase of the real estate itself, and other factors which may influence the transaction. This statement shall be signed and filed by the grantee, the purchaser, or his or her authorized agent. If the grantee or purchaser fails to furnish such statement, the register of deeds shall not record the deed, memorandum of contract, or land contract. The register of deeds shall indicate on the statement the book and page or computer system reference where the deed, memorandum of contract, or land contract is recorded and shall immediately forward the statement to the county assessor. The county assessor shall process the statement according to the instructions of the Tax Commissioner and shall, when directed, forward the statement to the Tax Commissioner. This statement and the information contained therein shall be confidential and available to tax officials only.

Sec. 7. That section 76-215, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-215. Any grantee of real estate who shall fail person who fails to obey the provisions of section 76-214, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars nor exceeding five hundred dollars.

Sec. 8. That section 76-1018, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-1018. Sections 76-1001 to 76-1018 and section 9 of this act shall be known and may be cited as Nebraska Trust Deeds Act.

Sec. 9. When the obligation secured by any trust deed has been satisfied, the beneficiary shall deliver to the trustor or trustor's successor in interest or designated representative a reconveyance in recordable form duly executed by the trustee. The reconveyance may designate the grantee therein as the person or persons entitled thereto. The beneficiary under such trust deed shall upon request deliver to the trustor or his or her successor in interest the trust deed or note or other evidence of the obligation so satisfied. If a trustee fails or refuses to execute a reconveyance required by the beneficiary, the beneficiary shall appoint a successor trustee that will execute a reconveyance.

Any beneficiary who, after request, fails to deliver such a reconveyance within sixty days after the satisfaction of the obligations secured by the trust deed shall be liable to the trustor or his or her successor in interest, as the case may be, for one thousand dollars and all actual damages resulting from such failure, including attorney's fees and costs of title work. In any action against the beneficiary or trustee pursuant to this section, the court shall award, in addition to the foregoing amounts, the cost of suit, including reasonable attorney's fees, and may further order the trustee to reconvey the property. Successor in interest of the trustor shall include the current owner of the property.

Sec. 10. That section 77-1311, Revised Statutes Supplement, 1992, be amended to read as follows:

77-1311. The county assessor shall have general supervision over and direction of the assessment of all property in his or her county. In addition to the other duties provided by law, the county assessor shall:

(1) Annually revise the real property assessment for the correction of errors and, when properties have been assessed as entities and afterward part or parts transferred to other parties, set off and apportion to each its just and equitable portion of the valuation;

(2) Obey all rules and regulations made under Chapter 77 and the instructions sent out by the State Board of Equalization and Assessment or the Tax Commissioner;

(3) Examine the records in the office of the register of deeds and county clerk for the purpose of ascertaining whether mortgages on real property and security interests on personal property, producing mineral leases, title notes, contracts, and bills of sale, intended to operate as a lien in the county, have been fully and correctly listed and add to the assessment roll any which have been omitted, belonging to residents of his or her county, and not otherwise assessed, upon notice to the owner thereof or his or her agents;

(4) Examine the records in the office of the county judge and ascertain whether the property belonging to minors, persons with mental retardation or a mental disorder, and estates of deceased persons has been fully and correctly listed and add to or change any such assessments so that the same shall be fully assessed;

(5) Examine the records in the office of the clerk of the district

court to ascertain whether any judgments or liens thereon filed, belonging to residents of his or her county and not otherwise assessed, have been omitted from the assessment rolls and, in case of any such omission, add the same to the assessment roll after notice to the owner; and

(6) Make up the assessment books as provided in section 77-1303; and

(7) Provide access to the public to property record cards and allow facsimiles to be reproduced at cost to the requesting individual.

Sec. 11. That section 77-1327, Revised Statutes Supplement, 1992, be amended to read as follows:

77-1327. (1) It is the intent of the Legislature that accurate and comprehensive information be made accessible to the taxpayer in order to ensure the quality and uniformity of assessment practices on both intercounty and intracounty valuations.

(2) The Tax Commissioner annually shall make and issue comprehensive assessment ratio studies of the average level of assessment, the degree of assessment uniformity, and overall compliance with assessment requirements for each major class of real property and for mobile homes and cabin trailers subject to the property tax in each county in the state. In order to determine the degree of assessment uniformity and compliance in the assessment of major classes of property within each county, the Tax Commissioner shall compute measures of central tendency and dispersion and shall employ such standard statistical analysis as deemed appropriate by him or her.

(2) (3) The Tax Commissioner may require assessors and other local officers to report to him or her data on taxable valuations and other features of the property tax for such periods and in such form and content as the Tax Commissioner shall require. The Tax Commissioner shall so construct and maintain his or her system for the collection and analysis of property tax facts as to enable him or her to make intracounty comparisons, including school districts, as well as intercounty comparisons, including school districts, based on property tax and assessment ratio data. The Tax Commissioner shall include analysis of real estate sales pursuant to land contracts and similar transfers at the time of execution of the contract or similar transfer. The Department of Revenue shall assist those county officials who require supplemental information to perform the duties necessary to carry out this section. The information requested may include, but shall not be limited to, sample appraisals, statistical analyses, arm's-length sales transactions, or any other information necessary to complete such analysis.

(4) The Tax Commissioner shall verify the accuracy of information, including the selection of form 521 comparable sales, if any, that are not arm's-length transactions.

(3) (5) The Tax Commissioner shall annually publish annually a summary of the findings of the assessment ratio studies together with digests of property tax data.

(4) (6) The county assessor shall annually, within fifteen days after certifying the assessment rolls pursuant to section 77-1315, post annually in his or her office and, as designated by the county board, mail to a newspaper of general circulation and to licensed broadcast media in the county the assessment ratio ratios as found in his or her county as determined by the Tax Commissioner and any other statistical measures, including, but not limited to, the assessment-to-sales ratio, the coefficient of dispersion, and the price-related differential.

Sec. 12. That section 84-712.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-712.01. (1) Except where when any other statute expressly provides that particular information or records shall not be made public, public records shall include all records and documents, regardless of physical form, or of belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form shall remain a public record when maintained in computer files.

(2) When a custodian of a public record of a county which has a population of one hundred thousand inhabitants or more as determined by the most recent federal decennial census provides to a member of the public, upon request, a copy of the public record by transmitting it from a modem to an outside modem, a reasonable fee may be charged for such specialized service. Such fee may include a reasonable amount representing a portion of the amortization of the cost of computer equipment, including software, necessarily added in order to provide such specialized service. This subsection shall not be construed to require a governmental entity to acquire computer capability to generate public records in a new or different form when that new form would require additional computer equipment or software not

already possessed by the governmental entity.

(3) (2) Sections 84-712 to 84-712.03 shall be liberally construed whenever any state, county, or political subdivision fiscal records, audit, warrant, voucher, invoice, purchase order, requisition, payroll, check, receipt, or other record of receipt, cash, or expenditure involving public funds is involved in order that the citizens of this state shall have the full ~~rights~~ right to know of, and have full access to information on the public finances of the government and the public bodies and entities created to serve them.

Sec. 13. That original sections 76-214, 76-215, 76-1018, and 84-712.01, Reissue Revised Statutes of Nebraska, 1943, and sections 45-711, 77-1311, and 77-1327, Revised Statutes Supplement, 1992, and also sections 76-255 and 76-1014, Reissue Revised Statutes of Nebraska, 1943, are repealed.