

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 915

Introduced by Crawford, 45.

Read first time January 15, 2014

Committee: Urban Affairs

A BILL

1 FOR AN ACT relating to real property; to amend sections 25-2142,
2 76-1006, and 76-1012, Reissue Revised Statutes of
3 Nebraska; to provide for a person designated to accept
4 city or village notices in cases of mortgaged property or
5 trust deed default; to harmonize provisions; and to
6 repeal the original sections.

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

1 Section 1. Section 25-2142, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 25-2142 (1) Upon filing a complaint for the foreclosure
4 or satisfaction of a mortgage, the complainant shall state therein
5 whether any proceedings have been had at law for the recovery of the
6 debt secured thereby, or any part thereof, and whether such debt, or
7 any part thereof, has been collected and paid.

8 (2) Subsequent to the filing of a complaint for the
9 foreclosure or satisfaction of a mortgage under this section, the
10 complainant, within five days after receipt of a written request by a
11 designated representative of the incorporated city or village in
12 which the mortgaged property is located, shall provide the name and
13 address of a person designated by the complainant to accept notices
14 of violations by the owner of the mortgaged property on behalf of the
15 complainant. Failure to provide the name and address required under
16 this subsection shall not void, invalidate, or affect in any way a
17 complaint for the foreclosure or satisfaction of a mortgage filed
18 under this section.

19 Sec. 2. Section 76-1006, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 76-1006 (1) The power of sale conferred in the Nebraska
22 Trust Deeds Act upon the trustee shall not be exercised until:

23 ~~(1)~~ (a) The trustee or the attorney for the trustee shall
24 first file for record in the office of the register of deeds of each
25 county wherein the trust property or some part or parcel thereof is

1 situated a notice of default identifying the trust deed by stating
2 the name of the trustor named therein and giving the book and page or
3 computer system reference where the same is recorded and a
4 description of the trust property, containing a statement that a
5 breach of an obligation for which the trust property was conveyed as
6 security has occurred, and setting forth the nature of such breach
7 and of his or her election to sell or cause to be sold such property
8 to satisfy the obligation;

9 ~~(2)~~ (b) If the trust property is used in farming
10 operations carried on by the trustor, not in any incorporated city or
11 village, the notice of default also sets forth:

12 ~~(a)~~ (i) A statement that the default may be cured within
13 two months of the filing for record of the notice of default and the
14 obligation and trust deed may be thereby reinstated as provided in
15 section 76-1012;

16 ~~(b)~~ (ii) A statement of the amount of the entire unpaid
17 principal sum secured by the trust deed, the amount of interest
18 accrued thereon to and including the date the notice of default is
19 signed by the trustee or the trustee's attorney, and the dollar
20 amount of the per diem interest accruing from and after such date;
21 and

22 ~~(c)~~ (iii) A statement of the amount of the unpaid
23 principal which would not then be due had no default occurred; and

24 ~~(3)~~ (c) After the lapse of not less than one month, or
25 two months if the notice of default is subject to subdivision (2) of

1 this section, the trustee or the attorney for the trustee shall give
2 notice of sale as provided in section 76-1007.

3 (2) Subsequent to the filing of a notice of default
4 pursuant to this section, the trustee or the attorney for the
5 trustee, within five business days after receipt of a written request
6 by a designated representative of the incorporated city or village in
7 which the trust property is located, shall provide the name and
8 address of a person designated by the beneficiary of the trust deed
9 to accept notices of violation of ordinances by the owner on behalf
10 of the beneficiary. Failure to provide the name and address required
11 under this subsection shall not void, invalidate, or affect in any
12 way a notice of default filed under this section.

13 Sec. 3. Section 76-1012, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 76-1012 (1) Whenever all or a portion of the principal
16 sum of any obligation secured by a trust deed has, prior to the
17 maturity date fixed in such obligation, become due or been declared
18 due by reason of a breach or default in the performance of any
19 obligation secured by the trust deed, including a default in the
20 payment of interest or of any installment of principal, or by reason
21 of failure of the trustor to pay, in accordance with the terms of
22 such trust deed, taxes, assessments, premiums for insurance, or
23 advances made by the beneficiary in accordance with terms of such
24 obligation or of such trust deed, the trustor or his or her successor
25 in interest in the trust property or any part thereof or any other

1 person having a subordinate lien or encumbrance of record thereon or
2 any beneficiary under a subordinate trust deed, at any time within
3 one month, or within two months if the notice of default is subject
4 to subdivision ~~(2)~~(1)(b)(ii) of section 76-1006, of the filing for
5 record of notice of default under such trust deed, if the power of
6 sale is to be exercised, may pay to the beneficiary or his or her
7 successor in interest the entire amount then due under the terms of
8 such trust deed and the obligation secured thereby, including costs
9 and expenses actually incurred in enforcing the terms of such
10 obligation, or trust deed, and the trustee's fees actually incurred
11 not exceeding in the aggregate fifty dollars or one-half of one
12 percent of the entire unpaid principal sum secured, whichever is
13 greater, other than such portion of the principal as would not then
14 be due had no default occurred, and thereby cure the default
15 theretofore existing and thereupon all proceedings theretofore had or
16 instituted shall be dismissed or discontinued, and the obligation and
17 trust deed shall be reinstated and shall be and remain in force and
18 effect the same as if no acceleration had occurred. If the default is
19 cured and the trust deed reinstated in the manner provided in this
20 section, the beneficiary, or his or her assignee, shall, on demand of
21 any person having an interest in the trust property, execute and
22 deliver to him or her a request to the trustee that the trustee
23 execute, acknowledge, and deliver a cancellation of the recorded
24 notice of default under such trust deed, and any beneficiary under a
25 trust deed, or his or her assignee, who, for a period of thirty days

1 after such demand, refuses to request the trustee to execute and
 2 deliver such cancellation shall be liable to the person entitled to
 3 such request for all damages resulting from such refusal. A
 4 cancellation of recorded notice of default under a trust deed shall,
 5 when acknowledged, be entitled to be recorded and shall be sufficient
 6 if made and executed by the trustee in substantially the following
 7 form:

8 Cancellation of Notice of Default

9 The undersigned hereby cancels the notice of default
 10 filed for record, 20..., and recorded in book,
 11 page, (or computer system reference) Records
 12 of County, Nebraska, which notice of default refers to
 13 the trust deed executed by as trustor, in
 14 which is named as beneficiary and as
 15 trustee, and filed for record, 20..., and recorded in
 16 book, page, (or computer system
 17 reference) Records of County, Nebraska.

18 Signature of trustee or attorney for
 19 trustee

20 (2) Whenever all or a portion of the principal sum of any
 21 obligation secured by a trust deed has, prior to the maturity date
 22 fixed in such obligation, become due or been declared due by reason
 23 of a breach or default in the performance of any obligation secured
 24 by the trust deed, including a default in the payment of interest or
 25 of any installment of principal, or by reason of failure of the

1 trustor to pay, in accordance with the terms of such trust deed,
2 taxes, assessments, premiums for insurance, or advances made by the
3 beneficiary in accordance with terms of such obligation or of such
4 trust deed, in the event the trustor or his or her successor in
5 interest or any other person having a subordinate lien or encumbrance
6 of record thereon or any beneficiary under a subordinate trust deed
7 makes payment of the entire amount then due under the terms of such
8 trust deed and the obligation secured thereby at any time subsequent
9 to the breach or default and prior to the sale of the trust property
10 under section 76-1010, the beneficiary shall be allowed to collect
11 the costs and expenses actually incurred in enforcing the terms of
12 such obligation, or trust deed, including the trustee's fees, costs,
13 and expenses actually incurred, not to exceed the amount provided in
14 the trust deed or the obligation secured thereby.

15 Sec. 4. Original sections 25-2142, 76-1006, and 76-1012,
16 Reissue Revised Statutes of Nebraska, are repealed.