

LEGISLATIVE BILL 999

Approved by the Governor April 19, 1986

Introduced by R. Johnson, 34; Eret, 32; Beutler, 28;
Chambers, 11; Hoagland, 6

AN ACT relating to real estate; to amend sections 40-101, 40-110, and 76-1012, Reissue Revised Statutes of Nebraska, 1943, and section 76-1008, Revised Statutes Supplement, 1984; to provide the right to cure default in certain actions involving agricultural land; to require notice as prescribed; to change provisions relating to the homestead exemption and deeds of trust; to provide for partial redemption as prescribed; to harmonize provisions; and to repeal the original sections.

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

Section 1. (1) If agricultural land as described in sections 77-1359 and 77-1360 is involved, at the commencement of an action to foreclose, repossess, or otherwise execute upon the terms of a loan or state law when such right is based on the borrower's alleged default, the lender or holder of the secured interest shall deliver to the borrower by certified mail written notice of default as described in subsection (2) of this section.

(2) The notice of default required by subsection (1) of this section shall include: (a) A statement that the borrower has a right to remove the default within sixty days of the sending of such notice of default and to reinstate the loan; (b) a listing of the delinquent amounts due for principal and interest prior to acceleration; (c) any amount less than the total of the amounts listed in subdivision (b) of this subsection which the lender or holder of the secured interest would accept to reinstate the loan; and (d) in the case of nonmonetary defaults, actions which the borrower can take to remove those defaults.

(3) If the borrower submits the full amount specified in subdivision (2)(b) or (c) of this section or performs the actions specified in subdivision (2)(d) of this section within sixty days of the sending of the notice required by subsection (1) of this section, the lender's or secured interest holder's debt collection

rights provided by loan or other statutory right of debt collection shall be removed, and the borrower's status under any such agreement or state law shall be reinstated in full with the same effect as though no default had occurred.

Sec. 2. That section 40-101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

40-101. A homestead not exceeding ten thousand dollars in value six thousand five hundred dollars, consisting shall consist of the dwelling house in which the claimant resides, its appurtenances, and the land on which the same is situated, not exceeding one hundred and sixty acres of land, to be selected by the owner thereof, and not in any incorporated city or village, or instead thereof, at the option of the claimant, a quantity of contiguous land not exceeding two lots within any incorporated city or village, and shall be exempt from judgment liens, and from execution or forced sale, except as provided in sections 40-101 to 40-117.

Sec. 3. That section 40-110, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

40-110. If from the evidence it appears that the land upon which the execution has been levied can be divided without material injury, the court shall, by an order, set off to the claimant so much of the land, including the residence, not exceeding the quantity prescribed in section 40-101, as will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land, PROVIDED, except that if the residence and the ground on which it is situated, with five acres surrounding the same, amount in value to more than two thousand dollars the homestead exemption, other lands may be selected on which no building or residence stands as the homestead for the debtor and his or her family.

Sec. 4. (1)(a) In all proceedings to foreclose any mortgage upon agricultural land as described in sections 77-1359 and 77-1360, if the whole or any part of the homestead of the debtor is included in the real estate mortgage or writ of execution the owners of the real estate may, at any time prior to the sale, make partial redemption of the homestead. The homestead shall include the dwelling house, its appurtenances, the land on which the dwelling house is located, and any additional real estate which the debtor wishes to redeem, not exceeding one hundred sixty acres

of land. Except as provided in subdivision (b) of this subsection, partial redemption shall be accomplished by paying into court the current appraised value of the owner's homestead.

(b) When an appraisal shows that the debtor has equity in the entire property that equals or exceeds the appraised value of the proposed partial redemption of the homestead, the payment shall be waived by the court. In the case of such partial redemption based on debtor equity, partial redemption shall be permitted only when the debt remaining equals eighty-five per cent or less of the appraised value of the property remaining after the redemption.

(2) The owner shall provide the court with the legal description of the real estate to be redeemed and current separate appraisals of both the real estate to be redeemed and the remaining real estate, with both appraisals reflecting the redemption. The mortgagee or judgment creditor may challenge the partial redemption at a confirmation hearing based on the legal description, the current appraised value, or that the partial redemption would unreasonably affect the value of the remaining property. The court, after a hearing, shall determine the legal description, the current value, and the reasonableness of redemption if disputed or, if undisputed, shall confirm the redemption.

(3) Upon exercise of a power of sale by a trustee under a deed of trust, the trustors of the real estate may file a petition seeking a redemption of the homestead pursuant to Chapter 25 in the district court of the county where a majority of the land is located and shall pay to the court the current appraised value of the property, except that when an appraisal shows that the trustor has equity in the entire property that equals or exceeds the appraised value of the proposed partial redemption of the homestead, the payment shall be waived by the court. If the sale of the unredeemed property does not satisfy the secured debt, the trustor, in order to retain the redeemed property, shall submit to the court an amount necessary to satisfy the remaining debt, except that such amount shall not exceed the appraised value of the redeemed portion of the property. The petition prescribed in this subsection shall include the information required by subsection (2) of this section in the case of a partial redemption under a mortgage or writ of execution. The trustee or beneficiary of a deed of trust may challenge the partial redemption at a special confirmation hearing based on the considerations listed in this section and section

25-1531.

Sec. 5. That section 76-1008, Revised Statutes Supplement, 1984, be amended to read as follows:

76-1008. (1) Any person desiring a copy of any notice of default and of any notice of sale under any trust deed may, at any time subsequent to the filing for record of the trust deed and prior to the filing for record of a notice of default thereunder, file for record in the office of the register of deeds of any county in which any part or parcel of the trust property is situated a duly acknowledged request for a copy of any such notice of default and notice of sale. The request shall set forth the name and address of the person or persons requesting copies of such notices and shall identify the trust deed by stating the names of the original parties thereto, the date of filing for record thereof, and the book and page or computer system reference where the same is recorded and shall be in substantially the following form:

Request is hereby made that a copy of any notice of default and a copy of notice of sale under the trust deed filed for record, 19....., and recorded in book, page (or computer system reference); Records of County, Nebraska, executed by as trustor, in which is named as beneficiary and as trustee, be mailed to (insert name) at (insert address)

Signature

(2) Not later than ten days after recordation of such notice of default, the trustee or beneficiary shall mail, by registered or certified mail with postage prepaid, a copy of such notice with the recording date shown thereon, addressed to each person whose name and address is set forth in a request therefor which has been recorded prior to the filing for record of the notice of default, directed to the address designated in such request. At least twenty days before the date of sale, the trustee shall mail, by registered or certified mail with postage prepaid, a copy of the notice of the time and place of sale, addressed to each person whose name and address is set forth in a request therefor which has been recorded prior to the filing for record of the notice of default, directed to the address designated in such request.

(3) Each trust deed shall contain a request that a copy of any notice of default and a copy of any notice of sale thereunder shall be mailed to each person

who is a party thereto at the address of such person set forth therein, and a copy of any notice of default and of any notice of sale shall be mailed to each such person at the same time and in the same manner required as though a separate request therefor had been filed by each of such persons as provided in this section. If the trust property is agricultural land as described in sections 77-1359 and 77-1360, the notice of default shall also include: (a) A statement that the borrower has a right under section 76-1012 to remove the default within seventy days of the filing of record of the notice of default and reinstate the trust deed; (b) a listing of the delinquent amounts due for principal and interest; (c) any amount less than the total of the amounts listed in subdivision (b) of this subsection which the lender or holder of the secured interest would accept to reinstate the trust deed; and (d) a statement that the borrower has a right under section 4 of this act to partially redeem the homestead.

(4) If no address of the trustor is set forth in the trust deed and if no request for notice by such trustor has been recorded as provided in this section, a copy of the notice of default shall be published at least three times, once a week for three consecutive weeks, in a newspaper of general circulation in each county in which the trust property or some part thereof is situated, such publication to commence not later than ten days after the filing for record of the notice of default.

(5) No request for a copy of any notice filed for record pursuant to this section nor any statement or allegation in any such request nor any record thereof shall affect the title to trust property or be deemed notice to any person that any person requesting copies of notice of default or of notice of sale has or claims any right, title, or interest in or lien or claim upon the trust property.

Sec. 6. That section 76-1012, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-1012. Whenever all or a portion of the principal sum of any obligation secured by a trust deed has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust deed, including a default in the payment of interest or of any installment of principal, or by reason of failure of the trustor to pay, in accordance with the terms of such trust deed, taxes,

assessments, premiums for insurance, or advances made by the beneficiary in accordance with terms of such obligation or of such trust deed, the trustor or his or her successor in interest in the trust property or any part thereof or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust deed, at any time within one month, or within seventy days if the trust property is agricultural land as described in sections 77-1359 and 77-1360, of the filing for record of notice of default under such trust deed, if the power of sale is to be exercised, may pay to the beneficiary or his or her successor in interest the entire amount then due under the terms of such trust deed and the obligation secured thereby, including costs and expenses actually incurred in enforcing the terms of such obligation, or trust deed, and the trustee's fees actually incurred not exceeding in the aggregate fifty dollars or one half of one per cent of the entire unpaid principal sum secured, whichever is greater, other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing and thereupon all proceedings theretofore had or instituted shall be dismissed or discontinued, and the obligation and trust deed shall be reinstated and shall be and remain in force and effect the same as if no acceleration had occurred. If the default is cured and the trust deed reinstated in the manner hereinabove provided, the beneficiary, or his or her assignee, shall, on demand of any person having an interest in the trust property, execute and deliver to him or her a request to the trustee that the trustee execute, acknowledge, and deliver a cancellation of the recorded notice of default under such trust deed, and any beneficiary under a trust deed, or his or her assignee, who, for a period of thirty days after such demand, refuses to request the trustee to execute and deliver such cancellation shall be liable to the person entitled to such request for all damages resulting from such refusal. A cancellation of recorded notice of default under a trust deed shall, when acknowledged, be entitled to be recorded and shall be sufficient if made and executed by the trustee in substantially the following form:

Cancellation of Notice of Default

The undersigned hereby cancels the notice of default filed for record, 19....., and recorded in book, page, (or computer system reference) Records of County,

Nebraska, which notice of default refers to the trust deed executed by as trustor, in which is named as beneficiary and as trustee, and filed for record, 19....., and recorded in book, page, (or computer system reference) Records of County, Nebraska.

Signature of trustee

Sec. 7. That original sections 40-101, 40-110, and 76-1012, Reissue Revised Statutes of Nebraska, 1943, and section 76-1008, Revised Statutes Supplement, 1984, are repealed.