

LEGISLATIVE BILL 14

Approved by the Governor February 16, 1993

Introduced by Kristensen, 37

AN ACT relating to security interests; to amend section 76-276, Reissue Revised Statutes of Nebraska, 1943; to authorize creation of security interests in rents; to define terms; to provide for recording, priorities, and enforcement of such security interests; to harmonize provisions; to repeal the original section; and to declare an emergency.

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

Section 1. For purposes of sections 1 to 8 of this act:

(1) Assignee shall mean the holder, and his or her successors and assigns, of a security interest in rents which has been created, provided, assigned, or granted by an assignor;

(2) Assignment instrument shall mean any mortgage, trust deed, assignment of leases, assignment of rents, or other instrument or agreement which creates, provides, assigns, or grants a security interest in rents;

(3) Assignor shall mean a person, and his or her successors and assigns, who has created, provided, assigned, or granted a security interest in rents to an assignee;

(4) Lease shall mean any license, lease, contract, or other agreement for the use or possession of real estate;

(5) Rent party shall mean the party that is obligated under a lease to pay rents;

(6) Rents shall mean any right to income, rents, proceeds, issues, profits, royalties, or any other payment or benefit derived under a present or future lease; and

(7) Security interest in rents shall mean any interest in rents or leases which secures payment or performance of an obligation.

Sec. 2. An assignment instrument may provide that any or all obligations covered by, described in, or identified by the assignment instrument are to be secured by present, future, or after-arising rents or leases. The obligations covered by, described in, or identified by an assignment instrument may include future advances or other value whether or not the future advances or value are given pursuant to an existing commitment to loan additional funds.

Sec. 3. A security interest in rents shall be valid and binding between the parties to an assignment instrument upon the execution and delivery of the assignment instrument by the assignor to the assignee.

Sec. 4. A security interest in rents shall be perfected upon the recording of an assignment instrument with the register of deeds in the

county in which the real estate, or any part thereof, described in the assignment instrument is situated. Upon the recording of the assignment instrument, the security interest in rents shall be valid, enforceable, and binding against, unavoidable by, and fully perfected as to all parties, including any subsequent purchaser, mortgagee, trustee in bankruptcy, general creditor, lien creditor, and other lienholder or claimant, from the time of the recording of the assignment instrument. It shall not be necessary for an assignee to take actual or constructive possession or control of the real estate or rents related thereto, to secure the appointment of a receiver, to take any action tantamount to taking of such possession or control, or to take any other action whatsoever to perfect a security interest in rents.

Sec. 5. An assignee may enforce a security interest in rents by (1) the appointment of a receiver under applicable law, (2) the recovery of rents as part of the enforcement of an assignment instrument, or (3) as provided in section 6 of this act or under other applicable law. The collection of rents by an assignee in accordance with section 6 of this act shall not be deemed to impose the obligations of a mortgagee or any other person in possession of the real estate on the assignee.

Sec. 6. If agreed in an assignment instrument or on default by the assignor whether agreed in the assignment instrument or not, the assignee shall be entitled to notify any rent party to make payment of rents due or to become due to the assignee whether or not the assignor was previously receiving or collecting rents. A rent party may pay rents to the assignor until the rent party receives notification that the rents due or to become due have been assigned and that payment is to be made to the assignee. If requested by the rent party, the assignee shall furnish reasonable proof that the assignment has been made, and unless the assignee furnishes the proof, the rent party may pay the assignor. A term in any lease between a rent party and an assignor is ineffective if it prohibits assignment of a lease or rents due or to become due pursuant to the lease, if it prohibits creation of a security interest in rents due or to become due, or if it requires the consent of the rent party to such assignment or a security interest in rents.

Sec. 7. Priority between conflicting security interests in rents shall be ranked according to priority in the time of recording of an assignment instrument.

Sec. 8. Sections 1 to 7 of this act shall be applicable to any assignment instrument properly recorded prior to, on, or after the effective date of this act.

Sec. 9. That section 76-276, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-276. In the absence of stipulations to the contrary, the mortgagor of real estate retains the legal title and right of possession thereof. This section shall not limit or otherwise affect the creation, provision, assignment, granting, or enforcement of a security interest in rents arising from real estate pursuant to sections 1 to 8 of this act.

Sec. 10. That original section 76-276, Reissue Revised

Statutes of Nebraska, 1943, is repealed.

Sec. 11. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.