

LEGISLATIVE BILL 297

Approved by the Governor March 29, 1995

Introduced by Beutler, 28

AN ACT relating to civil procedure; to amend section 25-202, Reissue Revised Statutes of Nebraska; to exempt natural resources districts from limitations in actions for title or possession of certain real estate; to restate existing law; to eliminate an obsolete provision; and to repeal the original section.

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

Section 1. Section 25-202, Reissue Revised Statutes of Nebraska, is amended to read:

25-202. (1) An action for the recovery of the title or possession of lands, tenements, or hereditaments, or for the foreclosure of mortgages thereon, can only be brought within ten years after the cause of action accrues. No shall have accrued, PROVIDED, no limitation shall apply to the time within which any county, city, town, or village, other municipal corporation, public power and irrigation district, public power district, public irrigation district organized under Chapter 70, article 6, or an irrigation district organized under Chapter 46, article 1, or natural resources district may begin an action for the recovery of the title or possession of any public road, street, or alley, or other public or political subdivision grounds or lands, or city or town lots.

(2) For the purposes of this section so far as relates only to the rights and interests of subsequent purchasers and encumbrancers for value:

(a) The cause of action for foreclosure of the mortgage accrues on the last date of maturity of the debt or other obligation secured by the mortgage as the date is stated in or is ascertainable from the filed record of the mortgage or the filed record of an extension of the mortgage.

(b) If no date of maturity is stated or is ascertainable from the filed mortgage or the filed extension, the cause of action for foreclosure of the mortgage accrues no later than twenty years after the date of the mortgage; or

(c) If the mortgage creditor files an affidavit to the effect that the mortgage is unpaid and is still a valid lien, the affidavit is filed before the cause of action is barred under this section, and the affidavit is filed for record in the office of the register of deeds; the cause of action is not barred until ten years after the date the affidavit is filed. The period of ten years shall not be extended by nonresidence, legal disability, partial payment, acknowledgment of debt, or promise to pay. A cause of action for the foreclosure of a mortgage shall be deemed to have accrued at the last date of the maturity of the debt or other obligation secured thereby, as stated in, or as ascertainable from the record of such mortgage, or in an extension thereof duly executed and recorded; and if no date for any maturity be stated therein or be ascertainable therefrom, then no later than twenty years from the date of said mortgage; PROVIDED, that if the mortgage creditor shall, before the mortgage is barred under the provisions of this section, file for record in the office of the register of deeds an affidavit to the effect that said mortgage is unpaid and is still a valid and subsisting lien, then said cause of action shall not be barred as against subsequent encumbrancers and purchasers for value until the expiration of ten years from the date of the filing for record of such affidavit. At the expiration of ten years from the date the cause of action accrues on any mortgage as is herein provided, such mortgage shall be conclusively presumed to have been paid, and the lien thereof shall cease absolutely as against subsequent purchasers and encumbrancers for value whose deeds, mortgages or other instruments shall be thereafter executed and delivered; and said period of ten years shall not be extended by nonresidence, legal disability, partial payment, acknowledgment of debt, or promise to pay the same. No action for the recovery of the title or possession of lands, tenements or hereditaments, or for the foreclosure of a mortgage thereon shall be begun after one year from April 28, 1941, by any person whose right of action would be otherwise barred hereby, unless within such year, the holder of an existing mortgage which would otherwise be barred hereby filed for record a duly executed extension of such mortgage or filed an affidavit as prescribed herein; PROVIDED, that this section shall not operate against, restrict or impair the rights of any mortgagee who prior to April 28, 1941, refilled his mortgage (or a sworn copy thereof) or recorded an extension agreement thereof as theretofore provided.

Sec. 2. Original section 25-202, Reissue Revised Statutes of Nebraska, is repealed.