

LEGISLATIVE BILL 396

Approved by the Governor May 3, 1995

Introduced by Beutler, 28

AN ACT relating to real property; to amend sections 45-711, 76-252, and 76-1014.01, Revised Statutes Supplement, 1994; to change provisions relating to releases and reconveyances; and to repeal the original sections.

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

Section 1. Section 45-711, Revised Statutes Supplement, 1994, is amended to read:

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 pursuant to the provisions of section 76-252 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 pursuant to the provisions of section 76-1014.01.

Sec. 2. Section 76-252, Revised Statutes Supplement, 1994, is amended to read:

76-252. When the obligation secured by any mortgage has been satisfied, the mortgagee shall, upon receipt of a written request by the mortgagor or the mortgagor's successor in interest or designated representative or by holder of a junior trust deed or junior mortgage, 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 receipt of such written request, 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 or ~~and all~~ actual damages resulting from the failure, including ~~attorney's fees and costs of title work whichever is greater~~. 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. 3. Section 76-1014.01, Revised Statutes Supplement, 1994, is amended to read:

76-1014.01. When the obligation secured by any trust deed has been satisfied, the beneficiary shall, upon receipt of a written request by the trustor or the trustor's successor in interest or designated representative or by the holder of a junior trust deed or junior mortgage, 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 receipt of a written request deliver to the trustor or his or her successor in interest the trust deed or and the 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 receipt of such written request~~ shall be liable to the trustor or his or her successor in interest, as the case may be, for one thousand dollars or ~~and all~~ actual damages resulting from such failure, including ~~attorney's fees and costs of title work whichever is greater~~. 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. 4. Original sections 45-711, 76-252, and 76-1014.01, Revised Statutes Supplement, 1994, are repealed.