

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 926**

Introduced by Mines, 18

Read first time January 5, 2006

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Nebraska Trust Deeds Act; to amend  
2 section 76-1011, Reissue Revised Statutes of Nebraska,  
3 and sections 76-1006, 76-1007, 76-1008, 76-1010, and  
4 76-1012, Revised Statutes Cumulative Supplement, 2004; to  
5 change provisions relating to the sale of trust property;  
6 to repeal the original sections; and to declare an  
7 emergency.

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

1           Section 1. Section 76-1006, Revised Statutes Cumulative  
2 Supplement, 2004, is amended to read:

3           76-1006 The power of sale conferred in the Nebraska Trust  
4 Deeds Act upon the trustee shall not be exercised until:

5           (1) The trustee or the attorney for the trustee shall  
6 first file for record in the office of the register of deeds of  
7 each county wherein the trust property or some part or parcel  
8 thereof is situated a notice of default identifying the trust  
9 deed by stating the name of the trustor named therein and giving  
10 the book and page or computer system reference where the same  
11 is recorded and a description of the trust property, containing  
12 a statement that a breach of an obligation for which the trust  
13 property was conveyed as security has occurred, and setting forth  
14 the nature of such breach and of his or her election to sell or  
15 cause to be sold such property to satisfy the obligation;

16           (2) If the trust property is used in farming operations  
17 carried on by the trustor, not in any incorporated city or village,  
18 the notice of default also sets forth:

19           (a) A statement that the default may be cured within two  
20 months of the filing for record of the notice of default and the  
21 obligation and trust deed may be thereby reinstated as provided in  
22 section 76-1012;

23           (b) A statement of the amount of the entire unpaid  
24 principal sum secured by the trust deed, the amount of interest  
25 accrued thereon to and including the date the notice of default is

1 signed by the trustee or the trustee's attorney, and the dollar  
2 amount of the per diem interest accruing from and after such date;  
3 and

4 (c) A statement of the amount of the unpaid principal  
5 which would not then be due had no default occurred; and

6 (3) After the lapse of not less than one month, or two  
7 months if the notice of default is subject to subdivision (2) of  
8 this section, the trustee or the attorney for the trustee shall  
9 give notice of sale as provided in section 76-1007.

10 Sec. 2. Section 76-1007, Revised Statutes Cumulative  
11 Supplement, 2004, is amended to read:

12 76-1007 (1) The trustee or the attorney for the  
13 trustee shall give written notice of the time and place of sale  
14 particularly describing the property to be sold by publication of  
15 such notice, at least five times, once a week for five consecutive  
16 weeks, the last publication to be at least ten days but not more  
17 than thirty days prior to the sale, in some newspaper having a  
18 general circulation in each county in which the property to be  
19 sold, or some part thereof, is situated.

20 (2) The sale shall be held at the time and place  
21 designated in the notice of sale which shall be between the hours  
22 of nine a.m. and five p.m. and at the premises or at the courthouse  
23 of the county in which the property to be sold, or some part  
24 thereof, is situated.

25 (3) The notice of sale shall be sufficient if made in

1 substantially the following form:

2 Notice of Trustee's Sale

3 The following described property will be sold at public  
4 auction to the highest bidder at the ..... door of the county  
5 courthouse in ....., County of ....., Nebraska, on  
6 ....., 20.... .

7 (Name of Trustee) .....

8 Sec. 3. Section 76-1008, Revised Statutes Cumulative  
9 Supplement, 2004, is amended to read:

10 76-1008 (1) Any person desiring a copy of any notice  
11 of default and of any notice of sale under any trust deed may,  
12 at any time subsequent to the filing for record of the trust  
13 deed and prior to the filing for record of a notice of default  
14 thereunder, file for record in the office of the register of deeds  
15 of any county in which any part or parcel of the trust property  
16 is situated a duly acknowledged request for a copy of any such  
17 notice of default and notice of sale. The request shall set forth  
18 the name and address of the person or persons requesting copies of  
19 such notices and shall identify the trust deed by stating the names  
20 of the original parties thereto, the date of filing for record  
21 thereof, and the book and page or computer system reference where  
22 the same is recorded and shall be in substantially the following  
23 form:

24 Request is hereby made that a copy of any notice of  
25 default and a copy of notice of sale under the trust deed

1 filed for record ....., 20..., and recorded in book  
 2 ....., page ....., (or computer system reference .....)  
 3 Records of ..... County, Nebraska, executed by .....  
 4 as trustor, in which ..... is named as beneficiary and  
 5 ..... as trustee, be mailed to .....(insert name).....  
 6 at .....(insert address)..... .

7 Signature .....

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

23 (3) Each trust deed shall contain a request that a  
 24 copy of any notice of default and a copy of any notice of sale  
 25 thereunder shall be mailed to each person who is a party thereto

1 at the address of such person set forth therein, and a copy of any  
2 notice of default and of any notice of sale shall be mailed to each  
3 such person at the same time and in the same manner required as  
4 though a separate request therefor had been filed by each of such  
5 persons as provided in this section.

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

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

21 Sec. 4. Section 76-1010, Revised Statutes Cumulative  
22 Supplement, 2004, is amended to read:

23 76-1010 (1) The purchaser at the sale shall forthwith  
24 pay the price bid, and upon receipt of payment, the trustee or  
25 the attorney for the trustee shall execute and deliver his or her

1 deed to such purchaser. The trustee's deed may contain recitals  
2 of compliance with the requirements of the Nebraska Trust Deeds  
3 Act relating to the exercise of the power of sale and sale  
4 of the property described therein, including recitals concerning  
5 any mailing, personal delivery, and publication of the notice of  
6 default, any mailing and the publication and posting of notice of  
7 sale, and the conduct of sale. Such recitals shall constitute prima  
8 facie evidence of such compliance and conclusive evidence thereof  
9 in favor of bona fide purchasers and encumbrancers for value and  
10 without notice.

11 (2) The trustee's deed shall operate to convey to the  
12 purchaser, without right of redemption, the trustee's title and all  
13 right, title, interest, and claim of the trustor and his or her  
14 successors in interest and of all persons claiming by, through, or  
15 under them, in and to the property sold, including all such right,  
16 title, interest, and claim in and to such property acquired by  
17 the trustor or his or her successors in interest subsequent to the  
18 execution of the trust deed. All right, title, interest, and claim  
19 of the trustor and his or her successors in interest, and of all  
20 persons claiming by, through, or under them, in and to the property  
21 sold, including all such right, title, interest, and claim in and  
22 to such property acquired by the trustor or his or her successors  
23 in interest subsequent to the execution of the trust deed, shall be  
24 deemed to be terminated as of the time the trustee or the attorney  
25 for the trustee accepts the highest bid at the time of the sale.

1           Sec. 5. Section 76-1011, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           76-1011 The trustee or the attorney for the trustee shall  
4 apply the proceeds of the trustee's sale, first, to the costs and  
5 expenses of exercising the power of sale and of the sale, including  
6 the payment of the trustee's fees actually incurred not to exceed  
7 the amount which may be provided for in the trust deed, second,  
8 to payment of the obligation secured by the trust deed, third, to  
9 the payment of junior trust deeds, mortgages, or other lienholders,  
10 and the balance, if any, to the person or persons legally entitled  
11 thereto.

12           Sec. 6. Section 76-1012, Revised Statutes Cumulative  
13 Supplement, 2004, is amended to read:

14           76-1012 (1) Whenever all or a portion of the principal  
15 sum of any obligation secured by a trust deed has, prior to  
16 the maturity date fixed in such obligation, become due or been  
17 declared due by reason of a breach or default in the performance  
18 of any obligation secured by the trust deed, including a default  
19 in the payment of interest or of any installment of principal,  
20 or by reason of failure of the trustor to pay, in accordance  
21 with the terms of such trust deed, taxes, assessments, premiums  
22 for insurance, or advances made by the beneficiary in accordance  
23 with terms of such obligation or of such trust deed, the trustor  
24 or his or her successor in interest in the trust property or  
25 any part thereof or any other person having a subordinate lien

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

18 Signature of trustee .....

19 Signature of trustee or attorney for trustee

20 .....

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

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

17           Sec. 7. Original section 76-1011, Reissue Revised  
18 Statutes of Nebraska, and sections 76-1006, 76-1007, 76-1008,  
19 76-1010, and 76-1012, Revised Statutes Cumulative Supplement, 2004,  
20 are repealed.

21           Sec. 8. Since an emergency exists, this act takes effect  
22 when passed and approved according to law.