

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 386

Introduced by Langemeier, 23

Read first time January 16, 2007

Committee: Banking, Commerce and Insurance

A BILL

- 1 FOR AN ACT relating to real property; and to adopt the Nebraska
- 2 Security Instrument Satisfaction Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 7 of this act shall be known and
2 may be cited as the Nebraska Security Instrument Satisfaction Act.

3 Sec. 2. For purposes of the Nebraska Security Instrument
4 Satisfaction Act:

5 (1) Closing agent means a person authorized and licensed
6 to transact the business of insuring titles to interests in real
7 property in this state or an attorney licensed to practice in
8 Nebraska in good standing;

9 (2) Good faith means honesty in fact and the observance
10 of reasonable commercial standards of fair dealing;

11 (3) Landowner means a person that owns the real property
12 described in a security instrument;

13 (4) Payoff amount means the sum necessary to satisfy a
14 secured obligation;

15 (5) Payoff statement means a statement of the amount of
16 unpaid balance of the secured obligations containing (a) the date
17 on which it was prepared and the payoff amount as of that date,
18 including the amount by type of each fee, charge, or other sum
19 included within the payoff amount, (b) the information reasonably
20 necessary to calculate the payoff amount as of the requested payoff
21 date, including the per diem interest, and (c) the payment cutoff
22 time, if any, the address or place where payment must be made, and
23 any limitation as to the authorized method of payment;

24 (6) Person means an individual, corporation, business
25 trust, estate, trust, partnership, limited liability company,

1 association, joint venture, public corporation or government,
2 governmental subdivision, agency, or instrumentality or any other
3 legal or commercial entity;

4 (7) Purchase means taking by sale, mortgage, lien,
5 security interest, gift, or any other voluntary transaction
6 creating an interest in real property;

7 (8) Purchaser means a person who takes by purchase;

8 (9) Record means to submit a document complying with
9 applicable legal standards with required fees and taxes paid to the
10 appropriate government office pursuant to Nebraska law;

11 (10) Residential real property means real property
12 located in this state which is used primarily for personal, family,
13 or household purposes and is improved by one to four dwelling
14 units;

15 (11) Secured creditor means a person that holds or is
16 the beneficiary of a security interest or that is authorized both
17 to receive payments on behalf of a person that holds a security
18 interest and to record a satisfaction of the security instrument
19 upon receiving full performance of the secured obligations. The
20 term does not include a trustee under a security instrument;

21 (12) Secured obligation means an obligation the payment
22 or performance of which is secured by a security interest;

23 (13) Security instrument means an agreement, whether
24 denominated a mortgage, deed of trust, trust deed, or otherwise
25 that creates or provides for a security interest. Such an agreement

1 is a security instrument even if it also creates or provides for a
2 lien upon personal property; and

3 (14) Security interest means an interest in residential
4 real property created by a security instrument.

5 Sec. 3. (1) A secured creditor shall, after the secured
6 creditor receives full payment or performance of the secured
7 obligation, record a certificate of satisfaction of a security
8 interest in the real property records of each county in which the
9 security instrument is recorded. If a security instrument secures
10 a line of credit or future advances, the secured obligation is
11 fully performed if, in addition to full payment or performance,
12 the secured creditor has received a notification requesting the
13 creditor to terminate the line of credit or containing a statement
14 sufficient to terminate the effectiveness of the provision for
15 future advances as provided under section 76-238.01 or 76-1002.

16 (2) In addition to any other remedy provided by law, a
17 secured creditor who fails to record a satisfaction of a security
18 interest within sixty days after receiving full performance of the
19 secured obligation is liable to the landowner or purchaser for
20 actual damages in the amount of any loss caused by the failure,
21 including reasonable attorney fees and costs.

22 Sec. 4. A closing agent may, on behalf of a landowner or
23 purchaser, execute a certificate of satisfaction that complies with
24 the requirements of the Nebraska Security Instrument Satisfaction
25 Act and record the certificate of satisfaction in the real property

1 records of each county in which the security instrument is recorded
2 if a satisfaction of the security interest has not been executed
3 and recorded within sixty days after the date payment in full
4 of the secured obligation was made in accordance with a payoff
5 statement furnished by the secured creditor.

6 Sec. 5. A certificate of satisfaction shall:

7 (1) Identify the original parties to the security
8 instrument, the landowner, the secured creditor, the record holder
9 of the security instrument, if different from the secured creditor,
10 and the recording data for the security instrument and, if
11 necessary for proper indexing of the certificate of satisfaction, a
12 legal description of the real property identified in the security
13 interest;

14 (2) State that the person executing the certificate of
15 satisfaction is either an officer or a duly appointed agent of
16 a title insurance company authorized and licensed to transact the
17 business of insuring titles to interests in real property in this
18 state or an attorney in good standing and licensed to practice law
19 in this state;

20 (3) State that the secured creditor provided a payoff
21 statement;

22 (4) State that the person executing the certificate of
23 satisfaction has satisfactory evidence that the secured creditor
24 has received payment in full of the sums identified in the payoff
25 statement;

1 (5) State that the person executing the certificate
2 of satisfaction has reasonable grounds to believe that the real
3 property described in the security instrument is residential real
4 property; and

5 (6) Be executed and acknowledged as required for a
6 conveyance of an interest in real property.

7 Sec. 6. A closing agent on behalf of the landowner
8 or purchaser may sign and submit for recording a certificate of
9 satisfaction if (1) the secured creditor has not, to the knowledge
10 of the closing agent, recorded a satisfaction of a security
11 interest within sixty days after receiving full performance or (2)
12 the secured creditor authorizes the closing agent to do so.

13 Sec. 7. (1) A certificate of satisfaction complying with
14 the Nebraska Security Instrument Satisfaction Act is evidence of
15 the facts contained in it, shall be accepted for recording in the
16 county in which the security instrument is recorded, and, upon
17 recording, operates as a satisfaction of the security interest
18 described in the certificate of satisfaction. If a security
19 instrument is recorded in more than one county and a certificate of
20 satisfaction is recorded in one of them, a certified copy of the
21 certificate of satisfaction may be recorded in another county with
22 the same effect as the original.

23 (2)(a) Except as other provided in subdivision (b) of
24 this subsection, in addition to any other remedy provided by law, a
25 closing agent wrongfully or erroneously recording a certificate of

1 satisfaction under this section shall be liable to the secured
2 creditor for actual damages caused by the recording of the
3 certificate of satisfaction and reasonable attorney fees and costs.

4 (b) A closing agent that records a certificate of
5 satisfaction of a security instrument erroneously is not liable
6 if the closing agent complied in good faith with the act.

7 (3) The recording of a certificate of satisfaction does
8 not itself extinguish the liability of any person liable for
9 payment of the underlying secured obligation.