

## LEGISLATIVE BILL 386

Approved by the Governor March 10, 2008

Introduced by Langemeier, 23.

FOR AN ACT relating to real property; to adopt the Nebraska Security Instrument Satisfaction Act.

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

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

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

(1) Closing agent means a licensed title insurance agent as defined in section 44-19,108 designated by a title insurer to execute and file certificates of satisfaction pursuant to a designation of authority or a member in good standing of the Nebraska State Bar Association;

(2) Designation of authority means the designation of a title insurance agent by a title insurer, executed and acknowledged as required by law, stating (a) the name of the title insurer, (b) the name of the title insurance agent, (c) that the title insurance agent has authority to execute and record certificates of satisfaction on behalf of the title insurer, and (d) that the title insurance agent has consented to and accepts the terms of the designation;

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

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

(5) (a) Notification or notice means:

(i) Depositing the notice in the mail or any commercially reasonable delivery service, properly addressed with postage or cost of delivery provided for;

(ii) Transmitting the notice by facsimile transmission or electronic mail to an address identified by the recipient, but only if the recipient agreed to receive notification in this manner; or

(iii) Otherwise causing the notice to be received within the time it would have been received if notification had been given by mail or commercial delivery service.

(b) Notification given under subdivision (5) (a) of this section is effective:

(i) Three days following the date that the notice is deposited in the mail or with a commercially reasonable delivery service for delivery other than by overnight delivery;

(ii) One day following the date the notice is deposited with a commercially reasonable delivery service for overnight delivery;

(iii) On the date that the secured creditor or closing agent submits electronic verification of receipt of the notice, if transmitted under subdivision (5) (a) (ii) of this section; or

(iv) On the date the notice is received, if transmitted by any other method permitted by the Nebraska Security Instrument Satisfaction Act;

(6) Payoff amount means the sum necessary to satisfy a secured obligation;

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

(8) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation or government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

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

(10) Purchaser means a person who takes by purchase;

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

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

(13) Secured creditor means a person that holds or is the beneficiary of a security interest or that is authorized both to receive payments on behalf of a person that holds a security interest and to record a satisfaction of the security instrument upon receiving full payment or performance of the secured obligation. The term does not include a trustee under a security instrument;

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

(15) Security instrument means an agreement, whether denominated a mortgage, deed of trust, trust deed, or otherwise, that creates or provides for a security interest. Such an agreement is a security instrument even if it also creates or provides for a lien upon personal property;

(16) Security interest means an interest in residential real property created by a security instrument; and

(17) Title insurer means a person authorized and licensed to transact the business of insuring titles to interests in real property in this state.

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

(2) In addition to any other remedy provided by law, a secured creditor who fails to record a deed of reconveyance or a release or satisfaction of a security interest within sixty days after receiving full payment or performance of the secured obligation is liable to the landowner or purchaser for actual damages in the amount of any loss caused by the failure, including reasonable attorney's fees and costs. The provisions of this subsection do not apply if the secured creditor received full payment or performance before the effective date of this act.

(3) A secured creditor is not liable under this section if the secured creditor (a) established a reasonable procedure to achieve compliance with its obligations under this section, (b) complied with that procedure in good faith, and (c) was unable to comply with its obligations due to circumstances beyond its control.

Sec. 4. A closing agent may, on behalf of a landowner or purchaser, execute a certificate of satisfaction that complies with the requirements of the Nebraska Security Instrument Satisfaction Act and record the certificate of satisfaction in the real property records of each county in which the security instrument is recorded, if a deed of reconveyance or release or satisfaction of the security interest has not been executed and recorded within sixty days after the date (1) the secured creditor has received full payment or performance of the secured obligation in accordance with a payoff statement furnished by the secured creditor and, if applicable, notification pursuant to subsection (1) of section 3 of this act has been performed and (2) the closing agent has notified the secured creditor in accordance with section 6 of this act.

Sec. 5. (1) A certificate of satisfaction shall:

(a) Identify the original parties to the security instrument, the landowner, the secured creditor, the record holder of the security instrument, if different from the secured creditor, the recording data for the security instrument, and a legal description of the real property identified in the security instrument;

(b) State that the person executing the certificate of satisfaction is the closing agent and, if the closing agent is a title insurance agent, state the book and page or instrument number of the designation of authority by which the title insurance agent is authorized to file the certificate of satisfaction;

(c) State that the secured creditor provided a payoff statement;

(d) State that there is satisfactory evidence that the secured creditor has received full payment or performance of the sums identified in the payoff statement;

(e) State that there are reasonable grounds to believe that the real property described in the security instrument is residential real property;

(f) State that the secured creditor has failed to execute and record a deed of reconveyance or release or satisfaction of the security interest and that the closing agent has not received a notification that the secured obligation remains unsatisfied;

(g) State that sixty days have elapsed since the secured creditor received full payment or performance of the sums identified in the payoff statement and notification in accordance with section 6 of this act has been given to the secured creditor; and

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

(2) The following statutory certificate of satisfaction, when reproduced and used in the identical words or in substantially the same or a more similar than dissimilar form, shall satisfy the requirements of subsection (1) of this section:

CERTIFICATE OF SATISFACTION

The undersigned closing agent with a designation of authority recorded in book ....., page(s) ....., or as instrument ..... of the miscellaneous records relating to real estate of ..... County, Nebraska, from a title insurer authorized to transact the business of insuring titles to interests in real property in the State of Nebraska, or a member in good standing of the Nebraska State Bar Association, hereby represents:

(a) The indebtedness secured by that certain security instrument, identified as a mortgage, trust deed, or deed of trust, executed by ....., as mortgagor/trustor, to ....., as trustee, and ....., as beneficiary or ....., as mortgagee, recorded on ..... in book ....., page(s) ....., or as Inst. No. .... of the mortgage records of ..... County, Nebraska, and creating a security interest in the following described real estate: ..... has received full payment or performance pursuant to a payoff statement provided to the undersigned on ..... by ....., the holder of the underlying indebtedness, and being the secured creditor;

(b) The undersigned has satisfactory evidence that the secured creditor has received full payment or performance of the sums identified in such payoff statement;

(c) The undersigned has reasonable grounds to believe that the real property described in the security instrument is residential real property;

(d) The undersigned has not received notification that the secured obligation remains unsatisfied; and

(e) To the best knowledge of the undersigned, the secured creditor has not recorded any instrument satisfying or releasing the security interest within sixty days following (i) the secured creditor's receipt of full payment or performance and (ii) notification as required by law.

Dated: ....., by ....., Closing Agent.

Sec. 6. (1) At least sixty days in advance of recording a certificate of satisfaction, a closing agent shall notify the secured creditor that the closing agent has the authority to execute and record a certificate of satisfaction of the security interest. The notification shall include:

(a) The identity and mailing address of the closing agent;

(b) Identification of the security instrument for which the recording of a deed of reconveyance or a release or satisfaction is sought, including the names of the original parties to, and the recording data for, the security instrument;

(c) A statement that the closing agent has reasonable grounds to believe that:

(i) The real property described in the security instrument is residential real property;

(ii) The person to which the notification is being given is the secured creditor; and

(iii) The closing agent has made full payment or performance of the secured obligation in accordance with a payoff statement furnished by the secured creditor either prior to or contemporaneous with the giving of the notification;

(d) A statement that the closing agent has the authority, pursuant to a designation of authority if the closing agent is a title insurance agent, to execute and record a certificate of satisfaction of the security interest unless within sixty days after notification:

(i) The secured creditor records a deed of reconveyance or a release or satisfaction of a security interest;

(ii) The closing agent receives from the secured creditor a notification stating that the secured obligation remains unsatisfied; or

(iii) The closing agent receives from the secured creditor a notification stating that the secured creditor has assigned the security instrument and identifying the name and address of the assignee; and

(e) A statement that the secured creditor will be subject to liability under section 76-252 or 76-1014.01 or the Nebraska Security Instrument Satisfaction Act.

(2) The following statutory notification, when reproduced and used in the identical words or in substantially the same or a more similar than dissimilar form, shall satisfy the requirements of subsection (1) of this section:

LENDER PAYOFF/SATISFACTION NOTIFICATION

This notification is given pursuant to the Nebraska Security Instrument Satisfaction Act by the below-named closing agent with regard to the payoff and release or satisfaction of the lien of a security instrument in which you are named the secured creditor.

(a) The closing agent is ..... The mailing address of the closing agent is .....

(b) The security instrument that is the subject of this notification was entered into on ..... by ....., as mortgagor/trustor(s); to ....., as trustee, and ....., as beneficiary or ....., as mortgagee, recorded on ..... in book ....., page(s) ..... or as Inst. No. .... of the mortgage records of ..... County, Nebraska, against the following described real estate: .....

(c) The closing agent has reasonable grounds to believe that:

(i) The real property described in the security instrument is residential real property;

(ii) The person to whom this notification is being given is the secured creditor; and

(iii) Full payment or performance of the secured obligation has been made in accordance with a payoff statement furnished by the secured creditor prior to or contemporaneous with the giving of this notification.

(d) The closing agent has authority, pursuant to a designation of authority if the closing agent is a title insurance agent, to execute and record a certificate of satisfaction of the security interest unless within sixty days after notification:

(i) The secured creditor records a deed of reconveyance or a release or satisfaction of the security interest;

(ii) The closing agent is notified by the secured creditor that the secured obligation remains unsatisfied; or

(iii) The closing agent receives from the secured creditor a notification stating that the secured creditor has assigned the security interest and identifying the name and address of the assignee.

(e) This notification shall constitute a written request for a deed of reconveyance of a trust deed or release or satisfaction of a mortgage pursuant to sections 76-252 and 76-1014.01. These statutes provide for liability on the part of a mortgagee or beneficiary who fails to deliver such deed of reconveyance of a trust deed or release or satisfaction of a mortgage within sixty days following such written request. Liability shall be five thousand dollars or actual damages resulting from such failure, whichever is greater, together with court costs to include reasonable attorney's fees.

Dated: ....., by ....., Closing Agent.

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

(2)(a) Except as otherwise provided in subdivision (b) of this subsection, in addition to any other remedy provided by law, a closing agent wrongfully or erroneously recording a certificate of satisfaction under this section shall be liable to the secured creditor for actual damages caused by the recording of the certificate of satisfaction and reasonable attorney's fees and costs.

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

(c) If a certificate of satisfaction is executed and recorded by

a title insurance agent pursuant to a designation of authority, the title insurer making such designation shall be liable to a secured creditor for the wrongful or erroneous recording of the certificate of satisfaction by such designee, to the same extent as provided under subdivisions (a) and (b) of this subsection.

(d) A single designation of authority may be recorded in the office of the register of deeds in any county in which a certificate of satisfaction may be recorded. The register of deeds shall record such designation of authority upon payment of the required fees. When the designation of authority is recorded, the register of deeds shall index such instrument under the name of the title insurance agent designated in the instrument in the manner provided for miscellaneous instruments relating to real estate. A separate designation of authority shall not be necessary for each certificate of satisfaction. Such authority shall continue until a revocation of the designation of authority is recorded in the county where the designation of authority was recorded.

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