

E AND R AMENDMENTS TO LB 750

Introduced by Wishart, 27, Chairman Enrollment and Review

1           1. Strike the original sections and all amendments thereto and  
2 insert the following new sections:

3           Section 1. Section 45-737, Revised Statutes Cumulative Supplement,  
4 2016, is amended to read:

5           45-737 A licensee licensed as a mortgage banker shall:

6           (1) Disburse required funds paid by the borrower and held in escrow  
7 for the payment of insurance payments no later than the date upon which  
8 the premium is due under the insurance policy;

9           (2) Disburse funds paid by the borrower and held in escrow for the  
10 payment of real estate taxes prior to the time such real estate taxes  
11 become delinquent;

12           (3) Pay any penalty incurred by the borrower because of the failure  
13 of the licensee to make the payments required in subdivisions (1) and (2)  
14 of this section unless the licensee establishes that the failure to  
15 timely make the payments was due solely to the fact that the borrower was  
16 sent a written notice of the amount due more than fifteen calendar days  
17 before the due date to the borrower's last-known address and failed to  
18 timely remit the amount due to the licensee;

19           (4) At least annually perform a complete escrow analysis. If there  
20 is a change in the amount of the periodic payments, the licensee shall  
21 mail written notice of such change to the borrower at least twenty  
22 calendar days before the effective date of the change in payment. The  
23 following information shall be provided to the borrower, without charge,  
24 in one or more reports, at least annually:

25           (a) The name and address of the licensee;

26           (b) The name and address of the borrower;

27           (c) A summary of the escrow account activity during the year which

1 includes all of the following:

2 (i) The balance of the escrow account at the beginning of the year;

3 (ii) The aggregate amount of deposits to the escrow account during  
4 the year; and

5 (iii) The aggregate amount of withdrawals from the escrow account  
6 for each of the following categories:

7 (A) Payments applied to loan principal;

8 (B) Payments applied to interest;

9 (C) Payments applied to real estate taxes;

10 (D) Payments for real property insurance premiums; and

11 (E) All other withdrawals; and

12 (d) A summary of loan principal for the year as follows:

13 (i) The amount of principal outstanding at the beginning of the  
14 year;

15 (ii) The aggregate amount of payments applied to principal during  
16 the year; and

17 (iii) The amount of principal outstanding at the end of the year;

18 (5) Establish and maintain a toll-free telephone number or accept  
19 collect telephone calls to respond to inquiries from borrowers, if the  
20 licensee services residential mortgage loans. If a licensee ceases to  
21 service residential mortgage loans, it shall continue to maintain a toll-  
22 free telephone number or accept collect telephone calls to respond to  
23 inquiries from borrowers for a period of twelve months after the date the  
24 licensee ceased to service residential mortgage loans. A telephonic  
25 messaging service which does not permit the borrower an option of  
26 personal contact with an employee, agent, or contractor of the licensee  
27 shall not satisfy the conditions of this section. Each day such licensee  
28 fails to comply with this subdivision shall constitute a separate  
29 violation of the Residential Mortgage Licensing Act;

30 (6) Answer in writing, within seven business days after receipt, any  
31 written request for payoff information received from a borrower or a

1 borrower's designated representative. This service shall be provided  
2 without charge to the borrower, except that when such information is  
3 provided upon request within sixty days after the fulfillment of a  
4 previous request, a processing fee of up to ten dollars may be charged;

5 (7) Record or cause to be recorded ~~Execute and deliver~~ a release of  
6 mortgage pursuant to the provisions of section 76-2803 ~~76-252~~ or, in the  
7 case of a trust deed, record or cause to be recorded ~~execute and deliver~~  
8 a reconveyance pursuant to the provisions of section 76-2803 ~~76-1014.01~~;

9 (8) Maintain a copy of all documents and records relating to each  
10 residential mortgage loan and application for a residential mortgage  
11 loan, including, but not limited to, loan applications, federal Truth in  
12 Lending Act statements, good faith estimates, appraisals, notes, rights  
13 of rescission, and mortgages or trust deeds for a period of three years  
14 after the date the residential mortgage loan is funded or the loan  
15 application is denied or withdrawn;

16 (9) Notify the director in writing or through the Nationwide  
17 Mortgage Licensing System and Registry within three business days after  
18 the occurrence of any of the following:

19 (a) The filing of a voluntary petition in bankruptcy by the licensee  
20 or notice of a filing of an involuntary petition in bankruptcy against  
21 the licensee;

22 (b) The licensee has lost the ability to fund a loan or loans after  
23 it had made a loan commitment or commitments and approved a loan  
24 application or applications;

25 (c) Any other state or jurisdiction institutes license denial, cease  
26 and desist, suspension, or revocation procedures against the licensee;

27 (d) The attorney general of any state, the Consumer Financial  
28 Protection Bureau, or the Federal Trade Commission initiates an action to  
29 enforce consumer protection laws against the licensee or any of the  
30 licensee's officers, directors, shareholders, partners, members,  
31 employees, or agents;

1 (e) The Federal National Mortgage Association, Federal Home Loan  
2 Mortgage Corporation, Federal Housing Administration, or Government  
3 National Mortgage Association suspends or terminates the licensee's  
4 status as an approved seller or seller and servicer;

5 (f) The filing of a criminal indictment or information against the  
6 licensee or any of its officers, directors, shareholders, partners,  
7 members, employees, or agents; or

8 (g) The licensee or any of the licensee's officers, directors,  
9 shareholders, partners, members, employees, or agents was convicted of,  
10 pleaded guilty to, or was found guilty after a plea of nolo contendere to

11 (i) a misdemeanor under state or federal law which involves dishonesty or  
12 fraud or which involves any aspect of the mortgage banking business,

13 depository institution business, or installment loan company business or  
14 (ii) any felony under state or federal law; and

15 (10) Notify the director in writing or through the Nationwide  
16 Mortgage Licensing System and Registry within thirty days after the  
17 occurrence of a material development other than as described in  
18 subdivision (9) of this section, including, but not limited to, any of  
19 the following:

20 (a) Business reorganization;

21 (b) A change of name, trade name, doing business as designation, or  
22 main office address;

23 (c) The establishment of a branch office. Notice of such  
24 establishment shall be on a form prescribed by the department and  
25 accompanied by a fee of seventy-five dollars for each branch office;

26 (d) The relocation or closing of a branch office; or

27 (e) The entry of an order against the licensee or any of the  
28 licensee's officers, directors, shareholders, partners, members,  
29 employees, or agents, including orders to which the licensee or other  
30 parties consented, by any other state or federal regulator.

31 Sec. 2. Section 76-238, Revised Statutes Cumulative Supplement,

1 2016, is amended to read:

2 76-238 (1) Except as otherwise provided in sections 76-3413 to  
3 76-3415, all deeds, mortgages, and other instruments of writing which are  
4 required to be or which under the laws of this state may be recorded,  
5 shall take effect and be in force from and after the time of delivering  
6 such instruments to the register of deeds for recording, and not before,  
7 as to all creditors and subsequent purchasers in good faith without  
8 notice. All such instruments are void as to all creditors and subsequent  
9 purchasers without notice whose deeds, mortgages, or other instruments  
10 are recorded prior to such instruments. However, such instruments are  
11 valid between the parties to the instrument. The transfer of any debt  
12 secured by a mortgage shall also operate as a transfer of the security of  
13 such debt.

14 (2) For purposes of this section, possession of agricultural real  
15 estate or residential real estate by a party related to the owner of  
16 record of the real estate within the third degree of consanguinity or  
17 affinity shall not serve as notice to a creditor or subsequent purchaser  
18 in any case in which such party is claiming rights in such real estate  
19 pursuant to a lease (a) entered into on or after July 16, 2004; (b)  
20 purporting to extend beyond a term of one year; and (c) which has not  
21 satisfied the requirements of section 76-211, unless the creditor or  
22 subsequent purchaser, in advance of recording a deed, mortgage, or other  
23 instrument, has received a written copy of such lease.

24 (3) For purposes of this section:

25 (a) Agricultural products includes grain and feed crops; forages and  
26 sod crops; and animal production, including breeding, feeding, or grazing  
27 of cattle, horses, swine, sheep, goats, bees, or poultry;

28 (b) Agricultural real estate means land which is primarily used for  
29 the production of agricultural products, including waste land lying in or  
30 adjacent to and in common ownership with land used for the production of  
31 agricultural products;

1 (c) Related within the third degree of consanguinity or affinity  
2 includes parents, grandparents, great-grandparents, children,  
3 grandchildren, great-grandchildren, brothers, sisters, uncles, aunts,  
4 nephews, nieces, and spouses of the same and any partnership, limited  
5 liability company, or corporation in which all of the partners, members,  
6 or shareholders are related within the third degree of consanguinity or  
7 affinity; and

8 (d) Residential real estate means real estate containing not more  
9 than four units designed for use for residential purposes. A condominium  
10 unit that is otherwise residential real estate remains so even though the  
11 condominium development contains more than four dwelling units or units  
12 for nonresidential purposes.

13 Sec. 3. Section 76-252, Reissue Revised Statutes of Nebraska, is  
14 amended to read:

15 76-252 Section 76-2803 shall govern the mortgagee's obligation to  
16 record or cause to be recorded a release of mortgage and the liability of  
17 the mortgagee for failure to timely record or cause to be recorded a  
18 release of mortgage ~~When the obligation secured by any mortgage has been~~  
19 ~~satisfied, the mortgagee shall, upon receipt of a written request by the~~  
20 ~~mortgagor or the mortgagor's successor in interest or designated~~  
21 ~~representative or by a holder of a junior trust deed or junior mortgage,~~  
22 ~~execute and deliver a release of mortgage in recordable form to the~~  
23 ~~mortgagor or mortgagor's successor in interest or designated~~  
24 ~~representative, as directed in the written request.~~

25 ~~Any mortgagee who fails to deliver such a release within sixty days~~  
26 ~~after receipt of such written request shall be liable to the mortgagor or~~  
27 ~~the mortgagor's successor in interest, as the case may be, for five~~  
28 ~~thousand dollars or actual damages resulting from the failure, whichever~~  
29 ~~is greater. In any action against the mortgagee pursuant to this section,~~  
30 ~~the court shall award, in addition to the foregoing amounts, court costs,~~  
31 ~~including reasonable attorney's fees, and may further order the mortgagee~~

1 to execute a release. Successor in interest of the mortgagor shall  
2 include the current owner of the property and shall also include the  
3 person issuing a payoff check in accordance with the terms of a payoff  
4 letter from a mortgagee.

5 Sec. 4. Section 76-1014.01, Reissue Revised Statutes of Nebraska, is  
6 amended to read:

7 76-1014.01 Section 76-2803 shall govern the beneficiary's  
8 obligation to record or cause to be recorded a deed of reconveyance and  
9 the liability of the beneficiary for failure to timely record or cause to  
10 be recorded a deed of reconveyance When the obligation secured by any  
11 trust deed has been satisfied, the beneficiary shall, upon receipt of a  
12 written request by the trustor or the trustor's successor in interest or  
13 designated representative or by the holder of a junior trust deed or  
14 junior mortgage, deliver to the trustor or trustor's successor in  
15 interest or designated representative a reconveyance in recordable form  
16 duly executed by the trustee. The reconveyance may designate the grantee  
17 therein as the person or persons entitled thereto. The beneficiary under  
18 such trust deed shall, upon receipt of a written request, deliver to the  
19 trustor or his or her successor in interest, as directed in the written  
20 request, the trust deed and the note or other evidence of the obligation  
21 so satisfied. If a trustee fails or refuses to execute a reconveyance  
22 required by the beneficiary, the beneficiary shall appoint a successor  
23 trustee that will execute a reconveyance.

24 Any beneficiary who fails to deliver such a reconveyance within  
25 sixty days after receipt of such written request shall be liable to the  
26 trustor or his or her successor in interest, as the case may be, for five  
27 thousand dollars or actual damages resulting from such failure, whichever  
28 is greater. In any action against the beneficiary or trustee pursuant to  
29 this section, the court shall award, in addition to the foregoing  
30 amounts, court costs, including reasonable attorney's fees, and may  
31 further order the trustee to reconvey the property. Successor in interest

1 ~~of the trustor shall include the current owner of the property and shall~~  
2 ~~also include the person issuing a payoff check in accordance with the~~  
3 ~~terms of a payoff letter from a beneficiary.~~

4 Sec. 5. Section 76-2803, Reissue Revised Statutes of Nebraska, is  
5 amended to read:

6 76-2803 (1) A secured creditor shall, after the secured creditor  
7 receives full payment or performance of the secured obligation and  
8 receives a written request by the trustor, mortgagor, or grantor, as  
9 applicable, or the trustor's, mortgagor's, or grantor's successor in  
10 interest or designated representative or by the holder of a junior trust  
11 deed, junior mortgage, or other junior security interest, record, or  
12 cause to be recorded, a deed of reconveyance or a release or satisfaction  
13 of a mortgage or other security instrument, as applicable, interest in  
14 the real property records of each county in which the trust deed,  
15 mortgage, or other security instrument, as applicable, is recorded. If a  
16 trust deed, mortgage, or other security instrument, as applicable,  
17 secures a line of credit or future advances, the secured obligation is  
18 fully paid or performed if, in addition to full payment or performance,  
19 the secured creditor has received a written notification from the obligor  
20 or obligors under a line of credit requesting the secured creditor to  
21 terminate the line of credit or the secured creditor has received a  
22 written notice containing a statement sufficient to terminate the  
23 effectiveness of the provision for future advances as provided under  
24 section 76-238.01 or 76-1002.

25 (2) A secured creditor who fails to record or cause to be recorded a  
26 deed of reconveyance or a release or satisfaction of mortgage or other  
27 security instrument within sixty days after receiving full payment or  
28 performance of the secured obligation and receiving a written request as  
29 required under subsection (1) of this section is liable to (a) the  
30 trustor, mortgagor, or grantor, or the successor in interest of such  
31 trustor, mortgagor, or grantor, as applicable, if such written request



1 was made by such trustor, mortgagor, or grantor, or a designated  
2 representative of such trustor, mortgagor, or grantor, for the greater of  
3 five thousand dollars or actual damages caused by such failure, plus  
4 reasonable attorney's fees and costs or (b) a successor in interest of  
5 the trustor, mortgagor, or grantor or of a landowner, purchaser, or  
6 holder of a junior trust deed, junior mortgage, or other junior security  
7 interest, as applicable, if such written request was made by such  
8 successor in interest of the trustor, mortgagor, or grantor, or by such  
9 landowner, purchaser, or holder of a junior trust deed, junior mortgage,  
10 or other junior security interest, for actual damages caused by such  
11 failure plus reasonable attorney's fees and costs. The court may further  
12 order the trustee to reconvey the property or the mortgagee or grantee to  
13 record a release or satisfaction of the mortgage or other security  
14 instrument. This subsection does not apply if the secured creditor  
15 received full payment or performance before the effective date of this  
16 act ~~In addition to any other remedy provided by law, a secured creditor~~  
17 ~~who fails to record a deed of reconveyance or a release or satisfaction~~  
18 ~~of a security interest within sixty days after receiving full payment or~~  
19 ~~performance of the secured obligation is liable to the landowner or~~  
20 ~~purchaser for actual damages in the amount of any loss caused by the~~  
21 ~~failure, including reasonable attorney's fees and costs. The provisions~~  
22 ~~of this subsection do not apply if the secured creditor received full~~  
23 ~~payment or performance before July 18, 2008.~~

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

29 (4) A beneficiary under a deed of trust shall not be liable under  
30 this section if the beneficiary (a) satisfies the conditions set forth  
31 under subsection (3) of this section and (b) delivered to the trustee

1 under such deed of trust a written request to execute a deed of  
2 reconveyance and the trustee failed to execute such deed of reconveyance,  
3 provided that the beneficiary delivered such request within the time  
4 provided herein for recording of a deed of reconveyance and the  
5 beneficiary subsequently appoints a successor trustee who executes and  
6 records or causes to be recorded a deed of reconveyance within a  
7 reasonable time thereafter.

8 (5) Successor in interest of a trustor, mortgagor, or grantor shall  
9 include the current owner of the real property and the person issuing a  
10 payoff check in accordance with the terms of a payoff letter from a  
11 beneficiary or mortgagee.

12 Sec. 6. Original sections 76-252, 76-1014.01, and 76-2803, Reissue  
13 Revised Statutes of Nebraska, and sections 45-737 and 76-238, Revised  
14 Statutes Cumulative Supplement, 2016, are repealed.

15 2. On page 1, line 3, strike "section" and insert "sections 45-737  
16 and"; and in line 5 after "creditors" insert "with respect to the  
17 Residential Mortgage Licensing Act, real estate conveyances, mortgages,  
18 trust deeds, and the Nebraska Security Instrument Satisfaction Act" and  
19 after the semicolon insert "to harmonize provisions;".