

LEGISLATIVE BILL 750

Approved by the Governor March 21, 2018

Introduced by Williams, 36.

A BILL FOR AN ACT relating to real property; to amend sections 76-252, 76-1014.01, and 76-2803, Reissue Revised Statutes of Nebraska, and sections 45-737 and 76-238, Revised Statutes Cumulative Supplement, 2016; to change provisions relating to the recording of instruments and the rights and duties of secured creditors with respect to the Residential Mortgage Licensing Act, real estate conveyances, mortgages, trust deeds, and the Nebraska Security Instrument Satisfaction Act; to harmonize provisions; and to repeal the original sections.

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

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

45-737 A licensee licensed as a mortgage banker 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, without charge, 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) Establish and maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers, if the licensee services residential mortgage loans. If a licensee ceases to service residential mortgage loans, it shall continue to maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers for a period of twelve months after the date the licensee ceased to service residential mortgage loans. A telephonic messaging service which does not permit the borrower an option of personal contact with an employee, agent, or contractor of the licensee shall not satisfy the conditions of this section. Each day such licensee fails to comply with this subdivision shall constitute a separate violation of the Residential Mortgage Licensing Act;

(6) Answer in writing, within seven business days after receipt, any written request for payoff information received from a borrower or a borrower's designated representative. This service shall be provided without charge to the borrower, except that when such information is provided upon request within sixty days after the fulfillment of a previous request, a processing fee of up to ten dollars may be charged;

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

(8) Maintain a copy of all documents and records relating to each

residential mortgage loan and application for a residential mortgage loan, including, but not limited to, loan applications, federal Truth in Lending Act statements, good faith estimates, appraisals, notes, rights of rescission, and mortgages or trust deeds for a period of three years after the date the residential mortgage loan is funded or the loan application is denied or withdrawn;

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

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

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

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

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

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

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

(g) The licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law; and

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

(a) Business reorganization;

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

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

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

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

Sec. 2. Section 76-238, Revised Statutes Cumulative Supplement, 2016, is amended to read:

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

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

(3) For purposes of this section:

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

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

(c) Related within the third degree of consanguinity or affinity includes parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and spouses

of the same and any partnership, limited liability company, or corporation in which all of the partners, members, or shareholders are related within the third degree of consanguinity or affinity; and

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

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

~~76-252 Section 76-2803 shall govern the mortgagee's obligation to record or cause to be recorded a release of mortgage and the liability of the mortgagee for failure to timely record or cause to be recorded a release of mortgage. 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 a 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, as directed in the written request.~~

~~Any mortgagee who fails to deliver such a release within sixty days after receipt of such written request shall be liable to the mortgagor or the mortgagor's successor in interest, as the case may be, for five thousand dollars or actual damages resulting from the failure, whichever is greater. In any action against the mortgagee pursuant to this section, the court shall award, in addition to the foregoing amounts, court costs, 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 and shall also include the person issuing a payoff check in accordance with the terms of a payoff letter from a mortgagee.~~

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

~~76-1014.01 Section 76-2803 shall govern the beneficiary's obligation to record or cause to be recorded a deed of reconveyance and the liability of the beneficiary for failure to timely record or cause to be recorded a deed of reconveyance. 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, as directed in the written request, the trust deed 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 fails to deliver such a reconveyance within sixty days after receipt of such written request shall be liable to the trustor or his or her successor in interest, as the case may be, for five thousand dollars or actual damages resulting from such failure, 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, court costs, 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 and shall also include the person issuing a payoff check in accordance with the terms of a payoff letter from a beneficiary.~~

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

~~76-2803 (1) A secured creditor shall, after the secured creditor receives full payment or performance of the secured obligation and receives a written request by the trustor, mortgagor, or grantor, as applicable, or the trustor's, mortgagor's, or grantor's successor in interest or designated representative or by the holder of a junior trust deed, junior mortgage, or other junior security interest, record, or cause to be recorded, a deed of reconveyance or a release or satisfaction of a mortgage or other security instrument, as applicable, interest in the real property records of each county in which the trust deed, mortgage, or other security instrument, as applicable, is recorded. If a trust deed, mortgage, or other security instrument, as applicable, 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 written notification from the obligor or obligors under a line of credit requesting the secured creditor to terminate the line of credit or the secured creditor has received a written notice 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) A secured creditor who fails to record or cause to be recorded a deed of reconveyance or a release or satisfaction of mortgage or other security instrument within sixty days after receiving full payment or performance of the secured obligation and receiving a written request as required under subsection (1) of this section is liable to (a) the trustor, mortgagor, or grantor, or the successor in interest of such trustor, mortgagor, or grantor, as applicable, if such written request was made by such trustor, mortgagor, or grantor, or a~~

~~designated representative of such trustor, mortgagor, or grantor, for the greater of five thousand dollars or actual damages caused by such failure, plus reasonable attorney's fees and costs or (b) a successor in interest of the trustor, mortgagor, or grantor or of a landowner, purchaser, or holder of a junior trust deed, junior mortgage, or other junior security interest, as applicable, if such written request was made by such successor in interest of the trustor, mortgagor, or grantor, or by such landowner, purchaser, or holder of a junior trust deed, junior mortgage, or other junior security interest, for actual damages caused by such failure plus reasonable attorney's fees and costs. The court may further order the trustee to reconvey the property or the mortgagee or grantee to record a release or satisfaction of the mortgage or other security instrument. This subsection does not apply if the secured creditor received full payment or performance before the effective date of this act. 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 July 18, 2008.~~

(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.

~~(4) A beneficiary under a deed of trust shall not be liable under this section if the beneficiary (a) satisfied the conditions set forth under subsection (3) of this section and (b) delivered to the trustee under such deed of trust a written request to execute a deed of reconveyance and the trustee failed to execute such deed of reconveyance, provided that the beneficiary delivered such request within the time provided herein for recording of a deed of reconveyance and the beneficiary subsequently appointed a successor trustee who executed and recorded or caused to be recorded a deed of reconveyance within a reasonable time thereafter.~~

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

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