

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 503**

Introduced by Flood, 19.

Read first time January 19, 2021

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to the Nebraska Trust Deeds Act; to amend
- 2 sections 76-1011 and 76-1018, Reissue Revised Statutes of Nebraska;
- 3 to authorize attorney's fees to be paid from trustee's sale proceeds
- 4 for certain actions and judgments; to harmonize provisions; and to
- 5 repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1           Section 1. If a court enters a judgment in favor of the holder of a  
2 trust deed, mortgage, or other lien in any interpleader action, action  
3 for declaratory judgment, or any other similar action resulting from an  
4 objection to or the uncertainty of the proposed payment of proceeds of  
5 the trustee's sale by the trustee to such holders of trust deeds,  
6 mortgages, or other liens, the court shall order the objecting party or  
7 parties who, without a good faith reason, objected to the proposed  
8 payment of proceeds of the trustee's sale by the trustee, to pay the  
9 reasonable attorney's fees and court costs of any such holder. A judgment  
10 in favor of the holder of a trust deed, mortgage, or other lien in an  
11 amount equal to or greater than the portion of funds paid into the court  
12 by the trustee to which such holder claimed to be entitled shall be a  
13 rebuttable presumption that the objecting party or parties did not have a  
14 good faith reason to object.

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

17           76-1011 (1) The trustee shall apply the proceeds of the trustee's  
18 sale in the following order of priority: The trustee shall apply the  
19 proceeds of the trustee's sale, first, to the costs and expenses of  
20 exercising the power of sale and of the sale, including the payment of  
21 the trustee's fees actually incurred not to exceed the amount which may  
22 be provided for in the trust deed, second, to payment of the obligation  
23 secured by the trust deed, third, to the payment of junior trust deeds,  
24 mortgages, or other lienholders, and the balance, if any, to the person  
25 or persons legally entitled thereto.

26           (a) First, the proceeds shall be applied to the costs and expenses  
27 of exercising the power of sale and of the sale, including the payment of  
28 the trustee's fees actually incurred not to exceed the amount which may  
29 be provided for in the trust deed;

30           (b) Second, the proceeds shall be applied to payment of the  
31 obligation secured by the trust deed;

1       (c) Third, the proceeds shall be applied to the payment of junior  
2 trust deeds, mortgages, or other lienholders; and

3       (d) Fourth, the balance of the proceeds, if any, shall be applied to  
4 the person or persons legally entitled to any remaining proceeds.

5       (2) Whether the proceeds are disbursed by the trustee pursuant to  
6 subsection (1) of this section or pursuant to an action described in  
7 section (1) of this section, the payment of any attorney's fees and costs  
8 incurred by the trustee in connection with the distribution of proceeds  
9 of the trustee's sale shall be deducted from the proceeds prior to the  
10 payment of junior trust deeds, mortgages, or other lien holders, or to  
11 any other person or persons legally entitled thereto.

12       Sec. 3. Section 76-1018, Reissue Revised Statutes of Nebraska, is  
13 amended to read:

14       76-1018 Sections 76-1001 to 76-1018 and section 1 of this act shall  
15 be known and may be cited as Nebraska Trust Deeds Act.

16       Sec. 4. Original sections 76-1011 and 76-1018, Reissue Revised  
17 Statutes of Nebraska, are repealed.