

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

February 18, 2004 LB 999

basically that caused some additional problems, not only for the mortgage holder, but also held up the judicial confirmation of the sale, too. It determined in that case--and I can give you the cite right here; I've got it. It's called In Re Deanna Dieken. It's case number 03-40428. And it was in Bankruptcy Court in the state of Nebraska. It determined a debtor's rights in property sold at a trustee sale were not terminated until the trustee sale...or until the trustee's deed was executed and delivered to the buyer. In that particular case, as I understand it, what happened was, is that pretty close to after the sale took place, but before the deed could be executed and delivered, the bankruptcy was filed, which...

SENATOR CUDABACK: Time. Thank you, Senator Beutler. (Visitors introduced.) On with discussion of the committee amendments offered by Banking, Commerce, and Insurance Committee. Senator Beutler.

SENATOR BEUTLER: So the...to continue our discussion, Senator Quandahl, the point of this amendment is to preclude the necessity of the mortgagee coming into Bankruptcy Court and identifying this as a secured transaction?

SENATOR QUANDAHL: No. No. I mean, I don't think that that's...because they'd have to do that in any event. It just...what it does is, is that as the section reads right now, actually it does need to be confirmed by a court. A judicial foreclosure sale has to still be confirmed by the court. But what it would do in effect was, is that if the...a title transfers, if you will, at the time that the bid is accepted, at the time of the sale, it would...basically it would make it easier, or it would preclude a creditor from having to go into the bankruptcy court to ask for relief from the stay to go back into the judicial foreclosure sale to complete the sale at that process. What happens, I guess, quite often, I would imagine, is, is that in that case a bankruptcy debtor would remain in possession of the property until the Bankruptcy Court has lifted the automatic stay which is imposed on all creditors. And this would merely...I guess it would help the mortgagor from having to go through that process and obtain the property back.