

AN ACT

RELATING TO PROPERTY; AMENDING THE DEED OF TRUST ACT;  
AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 48-10-3 NMSA 1978 (being Laws 1987,  
Chapter 61, Section 3, as amended) is amended to read:

"48-10-3. DEFINITIONS.--As used in the Deed of Trust  
Act, unless the context otherwise requires:

A. "beneficiary" means the person named or  
otherwise designated in a deed of trust as the person for  
whose benefit a deed of trust is given or the person's  
successor in interest;

B. "contract" means an agreement between or among  
two or more persons, including, without limitation, a note,  
promissory note, guarantee or the terms of any deed of trust;

C. "credit bid" means a bid made by the  
beneficiary in full or partial satisfaction of the contract  
that is secured by the deed of trust. A credit bid may only  
include an amount owing on a contract with interest secured by  
liens, mortgages, deeds of trust or encumbrances that are  
superior in priority to the deed of trust and which liens,  
mortgages or encumbrances, whether recourse or nonrecourse,  
are outstanding as provided in the contract or as provided in  
the deed of trust, together with the amount of other

obligations provided in or secured by the deed of trust and the costs of exercising the power of sale and the trustee's sale, including the fees of the trustee and reasonable attorney fees actually incurred by the trustee and the beneficiary;

D. "parent corporation" means a corporation that owns eighty percent or more of each class of the issued and outstanding stock of another corporation or, in the case of a savings and loan association, eighty percent or more of the issued and outstanding guaranty capital of the savings and loan association;

E. "person" means an individual or organization;

F. "deed of trust" means a document by way of mortgage in substance executed in conformity with the Deed of Trust Act and in conformity with Section 47-1-39 NMSA 1978 granting or mortgaging trust real estate to a trustee qualified under the Deed of Trust Act to secure the performance of a contract;

G. "junior encumbrancer" means a person holding a lien, mortgage or other encumbrance of record evidencing an interest in the trust real estate that is subordinate in priority to the deed of trust and includes a lienholder, a mortgagee, a seller and a purchaser as provided in a real estate contract and, where the context is applicable, escrow agents as provided in a real estate contract;

H. "trust real estate" means any legal, equitable, leasehold or other interest in real estate, including the term "real estate" as defined in Section 47-1-1 NMSA 1978 and any improvements and fixtures, which is capable of being transferred whether or not the interest is subject to any prior mortgages, deeds of trust, contracts for conveyance of real estate, real estate contracts or other liens or encumbrances; provided, however, trust real estate shall not include:

(1) any real estate used by the trustor for farming operations, including farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry or livestock, and production of poultry or livestock products in an unmanufactured state; or

(2) oil and other liquid hydrocarbons, or gas, including casinghead gas, condensates and other gaseous petroleum substances, or coal or other minerals in, on or under real estate, including patented and unpatented mining claims, unless such minerals have not been severed from and are included with the surface estate.

The character of trust real estate shall be determined as of the date of the deed of trust covering the trust real estate;

I. "trustee" means a person qualified as provided in the Deed of Trust Act. The obligations of a trustee to the

trustor, beneficiary and other persons are as provided in the Deed of Trust Act, together with any other obligations specified in the deed of trust. Both the beneficiary and the trustee have all the powers of a mortgagee as provided by law; and

J. "trustor" means the person or the person's successor in interest granting or mortgaging trust real estate by a deed of trust as security for the performance of a contract and is the same as a mortgagor granting or mortgaging real estate by way of mortgage as provided by law."

Section 2. Section 48-10-7 NMSA 1978 (being Laws 1987, Chapter 61, Section 7) is amended to read:

"48-10-7. APPOINTMENT OF SUCCESSOR TRUSTEE BY BENEFICIARY.--

A. If a person appointed as trustee fails to qualify, is unwilling, unqualified or unable to serve or resigns as trustee, the beneficiary may appoint a successor trustee and the appointment shall constitute a substitution of trustee.

B. The beneficiary may remove a trustee at any time for any reason or cause and appoint a successor trustee, and the appointment shall constitute a substitution of trustee.

C. Substitutions shall be made by recording notice of the substitution in the office of the county clerk of each

county in which all or any part of the trust real estate is situated at the time of the substitution. The beneficiary shall give written notice through registered or certified mail, postage prepaid, to the trustor, the trustee and the successor trustee. A notice of substitution of trustee shall be sufficient if acknowledged by all beneficiaries as provided in the deed of trust and prepared in substantially the following form:

"NOTICE OF SUBSTITUTION OF TRUSTEE

The undersigned beneficiary hereby appoints \_\_\_\_\_  
\_\_\_\_\_ successor trustee under the  
deed of trust executed by \_\_\_\_\_ as  
trustor, in which \_\_\_\_\_ is named  
beneficiary and \_\_\_\_\_ as trustee,  
and recorded \_\_\_\_\_, 20\_\_\_\_\_, in  
\_\_\_\_\_ County, New Mexico, in book  
\_\_\_\_\_, page \_\_\_\_\_, and  
legally describing the trust real estate as:

(legal description of trust real estate)

Dated this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature of Beneficiary

(Here add Acknowledgment).".

D. A notice of substitution of trustee is

effective immediately on execution as provided in Subsection C of this section.

E. A person appointed as a trustee under a deed of trust may resign as trustee at any time. The resignation shall be without liability, provided the person has not agreed in writing to be appointed trustee or has not acted in the capacity of trustee. The trustee may only resign as provided in the deed of trust and the Deed of Trust Act. If a trustee fails to qualify or is unwilling or unable to serve or resigns, the validity of the deed of trust shall not be affected, except that no action required to be performed by the trustee as provided in the Deed of Trust Act or as provided in the deed of trust may be taken until a successor trustee is appointed by the beneficiary as provided in this section. If the beneficiary fails or refuses to appoint a successor trustee, the terms of Section 47-1-42 NMSA 1978 shall be applicable. Resignation by a trustee is made by recordation of a notice of resignation in the office of the county clerk of each county in which all or any part of the trust real estate is situated at the time of the resignation. Written notice shall be given through registered or certified mail, postage prepaid, to the trustor and the beneficiary. A notice of resignation of trustee is sufficient if acknowledged by the trustee and prepared in substantially the following form:

"NOTICE OF RESIGNATION OF TRUSTEE

The undersigned trustee hereby resigns as trustee under the deed of trust executed by

\_\_\_\_\_, as trustor, in which

\_\_\_\_\_ is named

beneficiary, and recorded \_\_\_\_\_,

20\_\_\_\_, in \_\_\_\_\_

County, New Mexico, in book \_\_\_\_\_,

page \_\_\_\_\_, and legally describing the

trust real estate as:

(legal description of trust real estate)

Dated this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

Signature of Trustee

(Here add Acknowledgment)."."

Section 3. Section 48-10-10 NMSA 1978 (being Laws 1987, Chapter 61, Section 10, as amended) is amended to read:

"48-10-10. SALE OF TRUST REAL ESTATE--POWER OF TRUSTEE--FORECLOSURE OF DEED OF TRUST.--

A. By virtue of the trustee's position, a power of sale is conferred upon the trustee of a deed of trust under which the trust real estate may be sold as provided in the Deed of Trust Act after a breach or default in performance of the contract for which the trust real estate is granted or

mortgaged as security or a breach or default in performance of the deed of trust. Except as specifically provided in the Deed of Trust Act, the trustee shall not delegate the duties of the trustee as provided in the Deed of Trust Act. At the option of the beneficiary, a deed of trust may be foreclosed in the manner provided by law for the foreclosure of mortgages on real estate. Either the beneficiary or the trustee shall constitute the proper and complete party plaintiff in any action to foreclose a deed of trust.

B. The trustee or beneficiary may commence an action to foreclose a deed of trust at any time before the trust real estate has been sold as provided in the power of sale. A sale of trust real estate as provided in a power of sale in a deed of trust shall not be held after an action to foreclose the deed of trust has been commenced unless the foreclosure action has been dismissed.

C. The power of sale of trust real estate conferred upon the trustee shall not be exercised before the expiration of ninety days from the recording of the notice of the sale.

D. The trustee need only be joined as a party in separate civil actions pertaining to a breach of an obligation of a trustee as provided in the Deed of Trust Act or as provided in the deed of trust. Any order of the court entered against the beneficiary is binding upon the trustee with



respect to any actions that the trustee is authorized to take by the deed of trust or by the Deed of Trust Act. If the trustee is joined as a party in any other separate civil action, other than an action in which the trustee is an indispensable or necessary party, the trustee is entitled to be immediately dismissed and to recover the costs and reasonable attorney fees actually incurred by the trustee from the person joining the trustee and from the beneficiary, jointly and severally."

Section 4. Section 48-10-11 NMSA 1978 (being Laws 1987, Chapter 61, Section 11) is amended to read:

"48-10-11. NOTICE OF TRUSTEE'S SALE.--

A. The trustee shall give written notice of the time and place of sale, legally describing the trust real estate to be sold, by each of the following methods:

(1) publication of the notice as provided by law for foreclosure of mortgages on real estate;

(2) recording of the notice in the office of the clerk of each county in which the trust real estate is situated; and

(3) giving notice as provided in Section 48-10-12 NMSA 1978 to the extent applicable.

B. The sale shall be held at the time and place designated in the notice of sale on a day other than a Saturday, Sunday, legal holiday or nonbanking day and at the

time provided by law for the foreclosure sale of real estate under real estate mortgages on the front steps of the courthouse of the county in which the trust real estate is located. If the trust real estate is located in more than one county, the sale may be held in any county in which part of the trust real estate is located.

C. The notice of sale shall contain the street address, if any, or identifiable location as well as the legal description of the trust real estate. Failure to accurately describe within the notice either the street address or the identifiable location of the trust real estate to be sold shall not be grounds for invalidating the sale if the correct legal description of the trust real estate to be sold was contained in the notice of sale. The notice of sale shall be sufficient if made in substantially the following form:

"NOTICE OF TRUSTEE'S SALE

The following legally described trust real estate will be sold, pursuant to the power of sale as provided in the deed of trust recorded in book \_\_\_\_\_ at page \_\_\_\_\_, \_\_\_\_\_ County, New Mexico, records, at public auction to the highest bidder on the front steps of the county courthouse in \_\_\_\_\_ County, New Mexico, in or near \_\_\_\_\_, New Mexico, on

\_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_

o'clock \_\_\_m. of that day:

(street address, if any, or identifiable location  
of trust real estate and legal description of  
trust real estate)

Dated this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

(Name of Trustor)

(Name of Trustee)

\_\_\_\_\_

Signature

(Here add Acknowledgment)."."

Section 5. Section 48-10-13 NMSA 1978 (being Laws 1987,  
Chapter 61, Section 13) is amended to read:

"48-10-13. SALE BY PUBLIC AUCTION--POSTPONEMENT OF  
SALE.--

A. On the date and at the time and place  
designated in the notice of sale, the trustee shall sell the  
trust real estate at public auction for cash to the highest  
bidder. To determine the highest bidder, the trustor or  
beneficiary present at the sale may suggest the then existing  
and legally described and established lots, blocks, tracts or  
parcels of the trust real estate in which the trust real  
estate may be sold. The trustee shall ascertain all such  
suggestions, shall conditionally sell the trust real estate

under each suggestion and, in addition, shall sell the trust real estate as a whole. The trustee shall determine which conditional sale results in the highest total price bid for all of the trust real estate. The lawyer for the trustee may conduct the sale and may act at the sale as the auctioneer for the trustee. Any person, including the trustee or beneficiary, may bid at the sale. Only the beneficiary may make a credit bid, instead of cash, at the sale. A junior encumbrancer may bid the amount or value of the obligation secured by the lien, mortgage, encumbrance or real estate contract, as the case may be, owed to the junior encumbrancer, less the amount or value of any prior deeds of trust, mortgages, liens, encumbrances or real estate contracts, if any, instead of cash, at the sale. In appropriate circumstances, the trustee may sell the trust real estate subject to prior deeds of trust, mortgages, liens, encumbrances or real estate contracts that are not being foreclosed. Every bid shall be deemed an irrevocable offer until the sale is completed and the sale shall not be deemed completed until the purchaser pays the price bid in immediately collectible or available federal funds. If the purchaser fails to pay the amount bid by the purchaser for the trust real estate struck off to the purchaser at the sale as provided in the Deed of Trust Act, the trustee may accept the next highest bid or proceed with the sale of the trust real

estate to the highest bidder. The person who fails to make the payment shall be liable to any person who suffers loss or expenses, including reasonable attorney fees actually incurred by the trustee and beneficiary occasioned by the failure, and the trustee may subsequently in any postponed or continued sale of the trust real estate reject any bid of the person failing to pay the amount bid.

B. The person conducting the sale may, for the purpose of verifying the proper amount to be paid or the availability of immediately collectible federal funds, postpone or continue the sale for a reasonable period by giving notice of the new time by public declaration at the time and place last appointed for the sale. No other notice of the postponed or continued sale is required.

C. A sale is not complete if the sale as held is contrary to or in violation of any federal statute in effect because of an unknown or undisclosed bankruptcy. A sale so held is deemed to be continued to a date, time and place announced by the trustee at the sale and shall comply with Subsection B of this section or, if not announced, is deemed continued to the same place and at the same time twenty-eight days later, unless the twenty-eighth day falls on a Saturday, Sunday or legal holiday, in which event is deemed continued to the first business day thereafter. In the event a sale is continued because of an unknown or undisclosed bankruptcy, the

trustee shall notify by registered or certified mail, with postage prepaid, all bidders who provide their names, addresses and telephone numbers in writing to the party conducting the sale of the continuation of the sale."

Section 6. Section 48-10-16 NMSA 1978 (being Laws 1987, Chapter 61, Section 16) is repealed and a new Section 48-10-16 NMSA 1978 is enacted to read:

"48-10-16. REDEMPTION.--

A. After the sale of trust real estate pursuant to Section 48-10-13 NMSA 1978, the trust real estate may be redeemed by the beneficiary, or by any junior encumbrancer, by paying the purchaser at any time within nine months from the date of the sale the amount paid with interest from the date of purchase at the rate of ten percent a year, together with all taxes, interest and penalties thereon, and all payments made to satisfy in whole or in part any prior lien or mortgage not foreclosed paid by the purchaser, with interest on such taxes, interest, penalties and payments made on liens or mortgages at the rate of ten percent a year from the date of payment.

B. The parties may in the deed of trust shorten the redemption period to not less than one month."

Section 7. Section 48-10-17 NMSA 1978 (being Laws 1987, Chapter 61, Section 17, as amended) is amended to read:

"48-10-17. ACTION TO RECOVER BALANCE AFTER SALE OR

FORECLOSURE ON TRUST REAL ESTATE AS PROVIDED IN DEED OF  
TRUST--ACTION TO RECOVER BALANCE PROHIBITED ON LOANS SECURED  
BY LOW-INCOME HOUSEHOLDS.--

A. Except as provided in Subsections D and E of this section, a separate civil action may be commenced to recover a deficiency judgment for the balance due on the contract for which the deed of trust was given as security. The deficiency judgment shall be for an amount equal to the sum of the total amount owing the beneficiary as of the date of the sale, as determined by the court, and, if applicable, the amount owing on all prior mortgages, deeds of trust, liens and encumbrances and real estate contracts with interest less the sale price at the sale by the trustee of the trust real estate. Any deficiency judgment recovered shall include interest on the amount of the deficiency from the date of the sale at the rate provided in the deed of trust or contract, together with any costs of the action.

B. If no action is commenced for a deficiency judgment as provided in Subsection A of this section, the proceeds of the sale, regardless of amount, shall be deemed to be in full satisfaction of the debt and no right to recover a deficiency in any separate civil action shall exist.

C. Except as provided in Subsections D and E of this section, the Deed of Trust Act does not preclude a beneficiary or a trustee from foreclosing a deed of trust in

the same manner provided by law for the foreclosure of mortgages on real estate.

D. A deed of trust not encumbering real estate occupied by a low-income household may, by express language, validly prohibit the recovery of any balance due after the trust real estate is sold or after the deed of trust is foreclosed in the manner provided by law for the foreclosure of mortgages on real estate.

E. No deficiency judgment shall be sought or obtained under any deed of trust encumbering real estate occupied by a low-income household. A deed of trust encumbering real estate occupied by a low-income household shall expressly prohibit the recovery of any balance due after the trust real estate is sold or after the deed of trust is foreclosed in the manner provided by law for the foreclosure of mortgages on real estate.

F. No deficiency in recovery of any balance due after the sale of trust real estate encumbering real estate occupied by a low-income household shall be reported to any credit reporting agencies or disclosed to any person, other than the trustor, unless the disclosure is required by law or regulation.

G. For the purposes of Subsections D, E and F of this section, "low-income household" means a household that the New Mexico mortgage finance authority certifies as low



income at the time of the closing of the contract."

Section 8. REPEAL.--Sections 48-10-2 and 48-10-4 NMSA  
1978 (being Laws 1987, Chapter 61, Sections 2 and 4, as  
amended) are repealed.

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