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AN ACT

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

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

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

"48-10-1. SHORT TITLE.-- Chapter 48, Article 10 NMSA
1978 may be cited as the "Deed of Trust Act"."

Section 2. 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 his 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

1 superior in priority to the deed of trust and which liens,
2 mortgages or encumbrances, whether recourse or nonrecourse,
3 are outstanding as provided in the contract or as provided in
4 the deed of trust, together with the amount of other
5 obligations provided in or secured by the deed of trust and
6 the costs of exercising the power of sale and the trustee's
7 sale, including the fees of the trustee and reasonable
8 attorney fees actually incurred by the trustee and the
9 beneficiary;

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

16 E. "person" means an individual or organization;

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

23 G. "junior encumbrancer" means a person holding a
24 lien, mortgage or other encumbrance of record evidencing an
25 interest in the trust real estate that is subordinate in

1 priority to the deed of trust and includes a lienholder, a
2 mortgagee, a seller and a purchaser as provided in a real
3 estate contract and, where the context is applicable, escrow
4 agents as provided in a real estate contract;

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

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

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

25 The character of trust real estate shall be determined

1 as of the date of the deed of trust covering the trust real
2 estate;

3 I. "trustee" means a person qualified as provided
4 in the Deed of Trust Act. The obligations of a trustee to
5 the trustor, beneficiary and other persons are as provided in
6 the Deed of Trust Act, together with any other obligations
7 specified in the deed of trust. Both the beneficiary and the
8 trustee have all the powers of a mortgagee as provided by
9 law; and

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

15 Section 3. Section 48-10-7 NMSA 1978 (being Laws 1987,
16 Chapter 61, Section 7) is amended to read:

17 "48-10-7. APPOINTMENT OF SUCCESSOR TRUSTEE BY
18 BENEFICIARY.--

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

24 B. The beneficiary may remove a trustee at any
25 time for any reason or cause and appoint a successor trustee

1 and the appointment shall constitute a substitution of
2 trustee.

3 C. Substitutions shall be made by recording notice
4 of the substitution in the office of the county clerk of each
5 county in which all or any part of the trust real estate is
6 situated at the time of the substitution. The beneficiary
7 shall give written notice through registered or certified
8 mail, postage prepaid, to the trustor, the trustee and the
9 successor trustee. A notice of substitution of trustee shall
10 be sufficient if acknowledged by all beneficiaries as
11 provided in the deed of trust and prepared in substantially
12 the following form:

13 NOTICE OF SUBSTITUTION OF TRUSTEE

14 The undersigned beneficiary hereby appoints _____
15 _____ successor trustee under the deed of
16 trust executed by _____ as trustor, in which
17 _____ is named beneficiary and
18 _____ as trustee, and recorded _____
19 _____, 20____, in _____ County, New
20 Mexico, in book _____, page _____, and legally
21 describing the trust real estate as:

22 (legal description of trust real estate)

23 Dated this _____ day of _____, 20____.

24 _____

25 Signature

1 (Here add Acknowledgment).

2 D. A notice of substitution is effective
3 immediately on execution.

4 E. A person appointed as a trustee under a deed of
5 trust may resign as trustee at any time. The resignation
6 shall be without liability, provided the person has not
7 agreed in writing to be appointed trustee or he has not acted
8 in the capacity of trustee. The trustee may only resign as
9 provided in the deed of trust and the Deed of Trust Act. If
10 a trustee fails to qualify or is unwilling or unable to serve
11 or resigns, the validity of the deed of trust shall not be
12 affected, except that no action required to be performed by
13 the trustee as provided in the Deed of Trust Act or as
14 provided in the deed of trust may be taken until a successor
15 trustee is appointed by the beneficiary as provided in this
16 section. If the beneficiary fails or refuses to appoint a
17 successor trustee, the terms of Section 47-1-42 NMSA 1978
18 shall be applicable. Resignation by a trustee is made by
19 recordation of a notice of resignation in the office of the
20 county clerk of each county in which all or any part of the
21 trust real estate is situated at the time of the resignation.
22 Written notice shall be given through registered or certified
23 mail, postage prepaid, to the trustor and the beneficiary. A
24 notice of resignation of trustee is sufficient if
25 acknowledged by the trustee and prepared in substantially the

1 following form:

2 NOTICE OF RESIGNATION OF TRUSTEE

3 The undersigned trustee hereby resigns as trustee under the
4 deed of trust executed by _____, as
5 trustor, in which _____ is named
6 beneficiary, and recorded _____, 20____,
7 in _____ County, New Mexico, in
8 book _____, page _____, and legally describing
9 the trust real estate as:

10 (legal description of trust real estate)

11 Dated this _____ day of _____,
12 20_____.

13 _____
14 Signature

15 (Here add Acknowledgment)."

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

18 "48-10-10. SALE OF TRUST REAL ESTATE--POWER OF
19 TRUSTEE--FORECLOSURE OF DEED OF TRUST.--

20 A. By virtue of his position, a power of sale is
21 conferred upon the trustee of a deed of trust under which the
22 trust real estate may be sold as provided in the Deed of
23 Trust Act after a breach or default in performance of the
24 contract for which the trust real estate is granted or
25 mortgaged as security or a breach or default in performance

1 of the deed of trust. Except as specifically provided in the
2 Deed of Trust Act, the trustee shall not delegate the duties
3 of the trustee as provided in the Deed of Trust Act. At the
4 option of the beneficiary, a deed of trust may be foreclosed
5 in the manner provided by law for the foreclosure of
6 mortgages on real estate. Either the beneficiary or the
7 trustee shall constitute the proper and complete party
8 plaintiff in any action to foreclose a deed of trust.

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

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

20 D. The trustee need only be joined as a party in
21 separate civil actions pertaining to a breach of an
22 obligation of a trustee as provided in the Deed of Trust Act
23 or as provided in the deed of trust. Any order of the court
24 entered against the beneficiary is binding upon the trustee
25 with respect to any actions that the trustee is authorized to

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

9 Section 5. Section 48-10-11 NMSA 1978 (being Laws 1987,
10 Chapter 61, Section 11) is amended to read:

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

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

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

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

20 (3) giving notice as provided in Section
21 48-10-12 NMSA 1978 to the extent applicable.

22 B. The sale shall be held at the time and place
23 designated in the notice of sale on a day other than a
24 Saturday, Sunday, legal holiday or nonbanking day and at the
25 time provided by law for the foreclosure sale of real estate

1 under real estate mortgages on the front steps of the
2 courthouse of the county in which the trust real estate is
3 located. If the trust real estate is located in more than
4 one county, the sale may be held in any county in which part
5 of the trust real estate is located.

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

16 NOTICE OF TRUSTEE'S SALE

17 The following legally described trust real estate will be
18 sold, pursuant to the power of sale as provided in the deed
19 of trust recorded in book _____ at page _____,
20 _____ County, New Mexico records, at public
21 auction to the highest bidder on the front steps of the
22 county courthouse in _____ County, New
23 Mexico, in or near _____, New Mexico,
24 on _____, 20_____, at _____
25 o'clock ___m. of that day:

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

4 Dated this _____ day of _____,
5 20____.

6 _____
7 (Name of Trustor) (Name of Trustee)

8 _____
9 Signature

10 (Here add Acknowledgment)."

11 Section 6. Section 48-10-13 NMSA 1978 (being Laws 1987,
12 Chapter 61, Section 13) is amended to read:

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

15 A. On the date and at the time and place
16 designated in the notice of sale, the trustee shall sell the
17 trust real estate at public auction for cash to the highest
18 bidder. To determine the highest bidder, the trustor or
19 beneficiary present at the sale may suggest the then existing
20 and legally described and established lots, blocks, tracts or
21 parcels of the trust real estate in which the trust real
22 estate may be sold. The trustee shall ascertain all such
23 suggestions, shall conditionally sell the trust real estate
24 under each suggestion and, in addition, shall sell the trust
25 real estate as a whole. The trustee shall determine which

1 conditional sale results in the highest total price bid for
2 all of the trust real estate. The lawyer for the trustee may
3 conduct the sale and may act at the sale as the auctioneer
4 for the trustee. Any person, including the trustee or
5 beneficiary, may bid at the sale. Only the beneficiary may
6 make a credit bid, instead of cash, at the sale. A junior
7 encumbrancer may bid the amount or value of the obligation
8 secured by the lien, mortgage, encumbrance or real estate
9 contract, as the case may be, owed to the junior
10 encumbrancer, less the amount or value of any prior deeds of
11 trust, mortgages, liens, encumbrances or real estate
12 contracts, if any, instead of cash, at the sale. In
13 appropriate circumstances, the trustee may sell the trust
14 real estate subject to prior deeds of trust, mortgages,
15 liens, encumbrances or real estate contracts which are not
16 being foreclosed. Every bid shall be deemed an irrevocable
17 offer until the sale is completed and the sale shall not be
18 deemed completed until the purchaser pays the price bid in
19 immediately collectible or available federal funds. If the
20 purchaser fails to pay the amount bid by the purchaser for
21 the trust real estate struck off to the purchaser at the sale
22 as provided in the Deed of Trust Act, the trustee may accept
23 the next highest bid or proceed with the sale of the trust
24 real estate to the highest bidder. The person who fails to
25 make the payment shall be liable to any person who suffers

1 loss or expenses, including reasonable attorney fees actually
2 incurred by the trustee and beneficiary occasioned by the
3 failure, and the trustee may subsequently in any postponed or
4 continued sale of the trust real estate reject any bid of the
5 person failing to pay the amount bid.

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

13 C. A sale shall not be complete if the sale as
14 held is contrary to or in violation of any federal statute in
15 effect because of an unknown or undisclosed bankruptcy. A
16 sale so held shall be deemed to be continued to a date, time
17 and place announced by the trustee at the sale and shall
18 comply with Subsection B of this section or, if not
19 announced, shall be continued to the same place and time
20 twenty-eight days later, unless the twenty-eighth day falls
21 on a legal holiday, in which event it shall be continued to
22 the first business day thereafter. In the event a sale is
23 continued because of an unknown or undisclosed bankruptcy,
24 the trustee shall notify, by registered or certified mail,
25 all bidders who provide their names, addresses and telephone

1 numbers in writing to the party conducting the sale or the
2 continuation of the sale."

3 Section 7. A new section of the Deed of Trust Act,
4 Section 48-10-16.1 NMSA 1978, is enacted to read:

5 "48-10-16.1. REDEMPTION.--

6 A. Except as provided in Subsection B of this
7 section, after the sale of trust real estate pursuant to
8 Section 48-10-13 NMSA 1978, the trust real estate may be
9 redeemed by the beneficiary, or by any junior encumbrancer,
10 by paying the purchaser at any time within nine months from
11 the date of the sale, the amount paid with interest from the
12 date of purchase at the rate of ten percent a year, together
13 with all taxes, and interest and penalties thereon, and all
14 payments made to satisfy in whole or in part any prior lien
15 or mortgage not foreclosed, paid by the purchaser, with
16 interest on such taxes, interest, penalties and payments made
17 on liens or mortgages at the rate of ten percent a year from
18 the date of payment.

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

21 Section 8. Section 48-10-17 NMSA 1978 (being Laws 1987,
22 Chapter 61, Section 17, as amended) is amended to read:

23 "48-10-17. ACTION TO RECOVER BALANCE AFTER SALE OR
24 FORECLOSURE ON TRUST REAL ESTATE AS PROVIDED IN DEED OF
25 TRUST--ACTION TO RECOVER BALANCE PROHIBITED ON LOANS SECURED

1 BY LOW-INCOME HOUSEHOLDS.--

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

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

22 C. Except as provided in Subsections D and E of
23 this section, the Deed of Trust Act does not preclude a
24 beneficiary or a trustee from foreclosing a deed of trust in
25 the same manner provided by law for the foreclosure of

1 mortgages on real estate.

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

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

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

22 G. As used in this section, "low-income household"
23 means a household that the New Mexico mortgage finance
24 authority certifies as low income at the time of the closing
25 of the contract."

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Section 9. REPEAL.--Sections 48-10-2, 48-10-4 and
48-10-16 NMSA 1978 (being Laws 1987, Chapter 61, Sections 2, 4
and 16, as amended) are repealed. _____