

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

832H0629

## HOUSE BILL NO. 1203

Introduced by: Representative McCaulley and Senator Bogue

1 FOR AN ACT ENTITLED, An Act to revise the procedure for foreclosure by advertisement.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 21-48-6 be amended to read as follows:

4 21-48-6. Notice that such mortgage will be foreclosed by sale of the mortgaged premises,  
5 or some part of them, ~~must~~ shall be given, by publishing the ~~same~~ notice at least once each week  
6 for four successive weeks in a legal newspaper of the county where the premises intended to be  
7 sold, or some of them, are situated, if there be one in the county, and if not, in the nearest  
8 newspaper in the state. Every notice ~~must~~ shall specify:

- 9 (1) The names of the mortgagor and mortgagee, and the assignee, if any;
- 10 (2) The date of the mortgage;
- 11 (3) The amount claimed to be due ~~thereon~~ on the mortgage at the date of the notice;
- 12 (4) A description of the mortgaged premises, conforming substantially to that contained  
13 in the mortgage;
- 14 (5) The time and place of sale;
- 15 (6) A description of the default;



1       (7)    That the mortgagor can apply for foreclosure by action pursuant to § 21-48-9;

2       (8)    The name and address of all persons claiming a lien, encumbrance, or other recorded  
3            ownership interest in the property.

4       Section 2. That § 21-48-9 be amended to read as follows:

5       21-48-9. ~~When~~ If the mortgagee or his the mortgagee's assignee has commenced foreclosure  
6 by advertisement, the mortgagor or his, the mortgagor's successor in interest, or any other  
7 person claiming a lien, encumbrance, or recorded ownership interest in the real property that is  
8 the subject of the foreclosure, may require the owner and holder of the mortgage to foreclose  
9 by action and for that purpose shall present to the court having jurisdiction thereof an application  
10 describing the mortgage and stating ~~his~~ the applicant's interest and stating ~~the fact that he desires~~  
11 why the mortgage should be foreclosed by action without necessity of stating any reasons, and  
12 upon such application the judge of such court shall, by an order to that effect, enjoin the  
13 mortgagee or ~~his~~ the mortgagee's assignee from foreclosing such mortgage by advertisement, and  
14 direct that all further proceedings for the foreclosure be had in the circuit court properly having  
15 jurisdiction of the subject matter; ~~and for.~~ For the purpose of carrying out the provisions of this  
16 section, service may be made upon the attorney or agent of the mortgagee or assignee.

17       Section 3. That chapter 21-48 be amended by adding thereto a NEW SECTION to read as  
18 follows:

19       At least twenty-one days prior to the date set for sale, the foreclosing creditor shall serve a  
20 written copy of the notice of foreclosure sale on the mortgagor and any lien holder or  
21 encumbrancer whose interest in the property being foreclosed would be affected by the  
22 foreclosure.