

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

832H0629

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1203 - 01/25/2002

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.

23 Section 4. That § 21-48-23 be amended to read as follows:

24 21-48-23. A record of foreclosure sale must be made as follows:

- 1 (1) An affidavit of the publication of the notice of sale and of any notice of postponement
2 must be made by the printer or publisher of the newspaper in which such notice was
3 published, or some person in his employ knowing the facts;
- 4 (2) An affidavit by the person foreclosing the mortgage, or his attorney, or someone
5 knowing the facts, setting forth the facts relating to the military service status of the
6 owner of the mortgaged premises at the time of sale which affidavit, where such may
7 be required, may also set forth the fact of service of notice of sale upon the secretary
8 of the treasury of the United States of America or his delegate in accordance with the
9 provisions of subsection (c)(1) of section 7425 of the Internal Revenue Code of 1954
10 as amended by Public Law 89-719, known as the Federal Tax Lien Act of 1966, and
11 as amended through January 1, 1987;
- 12 (3) An affidavit executed by the person foreclosing the mortgage, that person's attorney
13 or someone knowing the facts, stating that the mortgagor and any person who is
14 required to receive notice under section 3 of this Act have been given notice of the
15 foreclosure and that no request for foreclosure by action has been made;
- 16 (4) Such affidavits and the certificate of sale hereinabove provided for, must be recorded
17 at length by the register of deeds of the county in which the real property is situated
18 in a book kept for that purpose, and such original instruments, or the records thereof,
19 or certified copies of such records, shall be prima facie evidence of the facts therein
20 contained;
- 21 ~~(4)~~(5) A note shall be made by the register of deeds in the margin of the record of any
22 mortgage which has been foreclosed, showing the book and page where the evidence
23 of such foreclosure sale is recorded.