

AN ACT

ENTITLED, An Act to revise the procedure for foreclosure by advertisement.

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

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

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

- (1) The names of the mortgagor and mortgagee, and the assignee, if any;
- (2) The date of the mortgage;
- (3) The amount claimed to be due on the mortgage at the date of the notice;
- (4) A description of the mortgaged premises, conforming substantially to that contained in the mortgage;
- (5) The time and place of sale;
- (6) A description of the default;
- (7) That the mortgagor can apply for foreclosure by action pursuant to § 21-48-9;
- (8) The name and address of all persons claiming a lien, encumbrance, or other recorded ownership interest in the property.

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

21-48-9. If the mortgagee or the mortgagee's assignee has commenced foreclosure by advertisement, the mortgagor, the mortgagor's successor in interest, or any other person claiming a lien, encumbrance, or recorded ownership interest in the real property that is the subject of the foreclosure, may require the owner and holder of the mortgage to foreclose by action and for that

purpose shall present to the court having jurisdiction thereof an application describing the mortgage and stating the applicant's interest and stating why the mortgage should be foreclosed by action without necessity of stating any reasons, and upon such application the judge of such court shall, by an order to that effect, enjoin the mortgagee or the mortgagee's assignee from foreclosing such mortgage by advertisement, and direct that all further proceedings for the foreclosure be had in the circuit court properly having jurisdiction of the subject matter. For the purpose of carrying out the provisions of this section, service may be made upon the attorney or agent of the mortgagee or assignee.

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

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

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

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

- (1) An affidavit of the publication of the notice of sale and of any notice of postponement must be made by the printer or publisher of the newspaper in which such notice was published, or some person in his employ knowing the facts;
- (2) An affidavit by the person foreclosing the mortgage, or his attorney, or someone knowing the facts, setting forth the facts relating to the military service status of the owner of the mortgaged premises at the time of sale which affidavit, where such may be required, may also set forth the fact of service of notice of sale upon the secretary of the treasury of the United States of America or his delegate in accordance with the provisions of subsection (c)(1) of section 7425 of the Internal Revenue Code of 1954 as amended by Public Law

89-719, known as the Federal Tax Lien Act of 1966, and as amended through January 1, 1987;

- (3) An affidavit executed by the person foreclosing the mortgage, that person's attorney or someone knowing the facts, stating that the mortgagor and any person who is required to receive notice under section 3 of this Act have been given notice of the foreclosure and that no request for foreclosure by action has been made;
- (4) Such affidavits and the certificate of sale hereinabove provided for, must be recorded at length by the register of deeds of the county in which the real property is situated in a book kept for that purpose, and such original instruments, or the records thereof, or certified copies of such records, shall be prima facie evidence of the facts therein contained;
- (5) A note shall be made by the register of deeds in the margin of the record of any mortgage which has been foreclosed, showing the book and page where the evidence of such foreclosure sale is recorded.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1203

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1203

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
SS.

Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State