

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 235

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO FORECLOSURES AND DEFICIENCY JUDGMENTS; AMENDING
 2 SECTION 45-1503, IDAHO CODE, TO PROVIDE LIMITATIONS ON THE
 3 INSTITUTION OF CERTAIN JUDICIAL ACTIONS AGAINST CERTAIN PERSONS,
 4 TO REVISE TERMINOLOGY, TO REMOVE PROVISIONS ALLOWING THE
 5 BENEFICIARY TO BRING AN ACTION WITHOUT CERTAIN CONSEQUENCES,
 6 WAIVERS OR ALTERNATE PLEADING REQUIREMENTS, TO PROVIDE THAT IN
 7 A CERTAIN ACTION THE BENEFICIARY MAY SEEK JUDICIAL FORECLOSURE
 8 WITHOUT AFFECTING THE PRIORITY OF THE LIEN AND TO PROVIDE THAT
 9 IF THE BENEFICIARY OBTAINS A JUDGMENT, THE LIEN SHALL NOT ATTACH
 10 TO SUBSTANTIALLY VALUELESS PROPERTY; AMENDING SECTION 45-1512,
 11 IDAHO CODE, TO PROVIDE AGAINST WHOM A MONEY JUDGMENT MAY
 12 BE SOUGHT, TO PROVIDE FOR APPLICATION OF ANY PROCEEDS RECEIVED
 13 FROM THE PROPERTY SALE, TO PROVIDE A CERTAIN CREDIT AGAINST
 14 A DEFICIENCY OWING, TO PROVIDE FOR THE APPLICATION OF CERTAIN
 15 LIMITATIONS TO THE AMOUNT OF INDEBTEDNESS OF A GUARANTOR, TO
 16 PROVIDE THAT ANY ATTEMPT BY CONTRACT OR OTHERWISE TO WAIVE
 17 ANY PROVISION OF THE SECTION SHALL BE VOID AS AGAINST PUBLIC
 18 POLICY AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN
 19 EMERGENCY.
 20

21 Be It Enacted by the Legislature of the State of Idaho:

22 SECTION 1. That Section 45-1503, Idaho Code, be, and the same is hereby amended to
 23 read as follows:

24 45-1503. TRANSFERS IN TRUST TO SECURE OBLIGATION –
 25 FORECLOSURE. (1) Transfers in trust of any estate in real property as defined in section
 26 45-1502(5), Idaho Code, may hereafter be made to secure the performance of an obligation of
 27 the grantor or any other person named in the deed to a beneficiary. Where any transfer in trust
 28 of any estate in real property is hereafter made to secure the performance of such an obligation,
 29 a power of sale is hereby conferred upon the trustee to be exercised after a breach of the
 30 obligation for which such transfer is security, and a deed of trust executed in conformity with
 31 this act may be foreclosed by advertisement and sale in the manner hereinafter provided, or, at
 32 the option of beneficiary, by foreclosure as provided by law for the foreclosure of mortgages on
 33 real property. If any obligation secured by a trust deed is breached, the beneficiary may not
 34 institute a judicial action against the grantor, obligor or guarantor of the obligation secured
 35 thereby, or his successor in interest to enforce an obligation owed ~~by the grantor or his~~
 36 ~~successor in interest~~ unless:

1 (a) The trust deed has been foreclosed by advertisement and sale in the manner provided
 2 in this chapter and the judicial action is brought pursuant to section 45-1512, Idaho Code;
 3 or

4 (b) The action is one for foreclosure as provided by law for the foreclosure of mortgages
 5 on real property; or

6 (c) The beneficiary's interest in the property covered by the trust deed is substantially
 7 valueless as defined in subsection (2) of this section, in which case the beneficiary may
 8 bring an action in a single proceeding against the grantor, obligor or guarantor of the
 9 obligation secured thereby, or his successor in interest to enforce the obligation owed ~~by~~
 10 ~~grantor or his successor in interest without first~~ in lieu of resorting to the security; or

11 (d) The action is one excluded from the meaning of "action" under the provisions of
 12 section 6-101(3), Idaho Code.

13 (2) As used in this section, "substantially valueless" means that the beneficiary's
 14 interest in the property covered by the trust deed has become valueless through no fault of
 15 the beneficiary, or that the beneficiary's interest in such property has little or no practical
 16 value to the beneficiary after taking into account factors such as the nature and extent of the
 17 estate in real property which was transferred in trust; the existence of senior liens against the
 18 property; the cost to the beneficiary of satisfying or making current payments on senior liens;
 19 the time and expense of marketing the property covered by the deed of trust; the existence
 20 of liabilities in connection with the property for clean up of hazardous substances, pollutants
 21 or contaminants; and such other factors as the court may deem relevant in determining the
 22 practical value to the beneficiary of the beneficiary's interest in the real property covered by the
 23 trust deed.

24 ~~(3) The beneficiary may bring an action to enforce an obligation owed by grantor or his~~
 25 ~~successor in interest alleging that the beneficiary's interest in the property covered by the trust~~
 26 ~~deed is substantially valueless without affecting the priority of the lien of the trust deed and~~
 27 ~~without waiving his right to require the trust deed to be foreclosed by advertisement and sale~~
 28 ~~and the beneficiary may, but shall not be required to, plead an alternative claim for foreclosure~~
 29 ~~of the trust deed as a mortgage in the same action. In an action to enforce an obligation of a~~
 30 grantor, obligor or guarantor, if the court finds that the property is not substantially valueless,
 31 the beneficiary may, without affecting the priority of the lien of the trust deed, seek judicial
 32 foreclosure of the trust deed, or he may dismiss the action and foreclose the trust deed by
 33 advertisement and sale in the manner provided in this chapter. If the court finds that the
 34 beneficiary's interest in the property covered by the trust deed is substantially valueless and
 35 enters a judgment upon the obligation, when that judgment becomes final the beneficiary shall
 36 execute a written request to the trustee to reconvey to the grantor or his successor in interest
 37 the estate in real property described in the trust deed. If the beneficiary obtains judgment on an
 38 obligation secured by a trust deed pursuant to subsection (1)(c) of this section, the lien of the
 39 judgment shall not relate back to the date of the lien of the trust deed and shall not attach to the
 40 substantially valueless property.

41 SECTION 2. That Section 45-1512, Idaho Code, be, and the same is hereby amended to
 42 read as follows:

43 45-1512. MONEY JUDGMENT – ACTION SEEKING BALANCE DUE ON
 44 OBLIGATION. (1) At any time within three (3) months after any sale under a deed of trust, as

1 hereinbefore provided, a money judgment may be sought against obligors and guarantors for
2 the balance due upon the obligation for which such deed of trust was given as security, ~~and~~.

3 (2) In such action the plaintiff shall set forth in his complaint the entire amount of
4 indebtedness which was secured by such deed of trust and the amount for which the same was
5 sold and the fair market value at the date of sale, together with interest from such date of sale,
6 costs of sale and attorney's fees. Any proceeds received from the sale of the property shall
7 be applied to reduce the indebtedness of obligors and guarantors. If default insurance on the
8 obligation is paid for by the obligor or guarantor, then any proceeds paid or payable to the
9 secured creditor from such policy shall be credited against the deficiency owing.

10 (3) Before rendering judgment the court shall find the fair market value of the real
11 property sold at the time of sale. The court may not render judgment for more than the amount
12 by which the entire amount of indebtedness due at the time of sale exceeds the fair market
13 value at that time, with interest from date of sale, but in no event may the judgment exceed
14 the difference between the amount for which such property was sold and the entire amount
15 of the indebtedness secured by the deed of trust. In applying the limitations of this provision
16 to a guarantor, the entire amount of the indebtedness shall be the amount guaranteed in the
17 guarantee agreement, if different than the indebtedness secured by the deed of trust.

18 (4) Any attempt by contract or otherwise to waive any provision of this section shall be
19 void as against public policy.

20 SECTION 3. An emergency existing therefor, which emergency is hereby declared to
21 exist, this act shall be in full force and effect on and after its passage and approval.