

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 236

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO FORECLOSURES AND DEFICIENCY JUDGMENTS; AMENDING  
 2 SECTION 6-101, IDAHO CODE, TO PROVIDE FOR BUT ONE ACTION  
 3 AGAINST OBLIGORS AND GUARANTORS FOR RECOVERY OF ANY DEBT  
 4 OR THE ENFORCEMENT OF ANY RIGHT SECURED BY MORTGAGE UPON  
 5 REAL ESTATE, TO REVISE A DEFINITION AND TO MAKE TECHNICAL  
 6 CORRECTIONS; AMENDING SECTION 6-108, IDAHO CODE, TO REVISE HOW  
 7 AND WHEN THE VALUE OF MORTGAGED PROPERTY IS DETERMINED,  
 8 TO PROVIDE A LIMITATION ON A DEFICIENCY JUDGMENT, TO PROVIDE  
 9 FOR APPLICATION OF PROCEEDS FROM THE SALE OF THE PROPERTY,  
 10 TO PROVIDE A CERTAIN CREDIT AGAINST A DEFICIENCY OWING, TO  
 11 APPLY THE PROTECTIONS OF THE SECTION TO CERTAIN PERSONS WITH  
 12 A QUALIFICATION, TO REQUIRE A DEFICIENCY ACTION BE BROUGHT IN  
 13 ONE ACTION AGAINST CERTAIN PERSONS AND TO PROVIDE THAT ANY  
 14 ATTEMPT BY CONTRACT OR OTHERWISE TO WAIVE ANY PROVISION OF THE  
 15 SECTION SHALL BE VOID AS AGAINST PUBLIC POLICY; AND DECLARING AN  
 16 EMERGENCY.  
 17

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

19 SECTION 1. That Section 6-101, Idaho Code, be, and the same is hereby amended to  
 20 read as follows:

21 6-101. PROCEEDINGS IN FORECLOSURE – CONSTRUCTION OF SECTION  
 22 – MEANING OF "ACTION" – EFFECT OF FORECLOSURE ON HOLDER OF  
 23 UNRECORDED LIEN. (1) There can be but one (1) action against obligors and guarantors  
 24 for the recovery of any debt, or the enforcement of any right secured by mortgage upon real estate  
 25 which action must be in accordance with the provisions of this chapter. In such action the court  
 26 may, by its judgment, direct a sale of the ~~incumbered~~ encumbered property, ~~(or so much thereof~~  
 27 ~~as may be necessary)~~, and the application of the proceeds of the sale to the payment of the  
 28 costs of the court and the expenses of the sale, and the amount due to the plaintiff; and sales  
 29 of real estate under judgments of foreclosure of mortgages and liens are subject to redemption  
 30 as in the case of sales under execution; (and if it appear from the sheriff's return that the  
 31 proceeds are insufficient, and a balance still remains due, judgment can then be docketed for  
 32 such balance against the defendant or defendants personally liable for the debt), and it becomes  
 33 a lien on the real estate of such judgment debtor, as in other cases on which execution may be  
 34 issued.

35 (2) The provisions of this section must be construed in order to permit a secured creditor  
 36 to realize upon collateral for a debt or other obligation agreed upon by the debtor and creditor.

37 (3) As used in this section, an "action" does not include any of the following acts or  
 38 proceedings:

- 1 (a) To appoint a receiver for, or obtain possession of, any real or personal property  
 2 collateral for the debt or other obligation;
- 3 (b) To enforce a security interest in, or the assignment of, any rents, issues, profits or  
 4 other income of any real or personal property;
- 5 (c) To enforce a mortgage or other lien upon any real or personal property collateral  
 6 located outside of the state which is security for the same debt or other obligation;
- 7 (d) To secure a judgment outside of this state on a debt or other obligation secured by  
 8 real property in this state and by real or personal property collateral located outside this  
 9 state;
- 10 (e) For the exercise, pursuant to section 45-1505, Idaho Code, of a power of sale  
 11 conferred pursuant to section 45-1503, Idaho Code;
- 12 (f) For the exercise of any right or remedy authorized by:
- 13 (i) The Idaho uniform commercial code, title 28, Idaho Code, except the securing  
 14 of a judgment on the secured debt, including a deficiency judgment, in a court in  
 15 Idaho; or
- 16 (ii) The uniform commercial code as enacted in any other state;
- 17 (g) For claim and delivery of personal property pursuant to chapter 3, title 8, Idaho Code;
- 18 (h) For the exercise of any right to set off a deposit account, or to enforce a pledge in a  
 19 deposit account pursuant to a written agreement or pledge or to enforce a banker's lien;
- 20 (i) To draw under a letter of credit;
- 21 (j) To collect any debt, or enforce any obligation or right, secured by a mortgage or  
 22 other lien on real property if the property has been sold to a person other than the creditor  
 23 to satisfy, in whole or in part, a debt or other obligation or right secured by a senior  
 24 mortgage or other senior lien on the property;
- 25 (k) Relating to any proceeding in bankruptcy, including the filing of a proof of claim,  
 26 seeking relief from an automatic stay and any other action to determine the amount or  
 27 validity of a debt or other obligation;
- 28 (l) For filing a claim pursuant to the Idaho uniform probate code, title 15, Idaho Code, or  
 29 to enforce such a claim which has been disallowed;
- 30 ~~(m) Which does not include the collection of the debt or enforcement of the obligation or~~  
 31 ~~realization of the collateral securing the debt or other obligation;~~
- 32 ~~(n) Which is exempted from the provisions of this section by specific statute;~~
- 33 ~~(o) To recover costs of suit, costs and expenses of sale, attorney's fees and other~~  
 34 ~~incidental relief in connection with any action authorized in this subsection.~~
- 35 (4) No person holding a conveyance from or under the mortgagor of the property  
 36 mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the  
 37 proper office at the commencement of the action, need be made a party to such action; and the  
 38 judgment therein rendered, and the proceedings therein had, are as conclusive against the party  
 39 holding such unrecorded conveyance or lien as if he had been made a party to the action.

40 SECTION 2. That Section 6-108, Idaho Code, be, and the same is hereby amended to  
 41 read as follows:

42 6-108. DEFICIENCY JUDGMENTS – AMOUNT RESTRICTED. (1) No court in the  
 43 state of Idaho shall have jurisdiction to enter a deficiency judgment in any case involving a  
 44 foreclosure of a mortgage on real property in any amount greater than the difference between

1 the mortgage indebtedness, as determined by the decree, plus costs of foreclosure and sale, and  
2 the ~~reasonable~~ fair market value of the mortgaged property, at the time of sale.

3 (2) Fair market value, as provided for in subsection (1) of this section, is to be  
4 determined by the court in the decree ~~upon the taking of~~ after receiving evidence of such value.

5 (3) In no event may the deficiency judgment exceed the difference between the amount  
6 for which such property was sold and the entire amount of the indebtedness secured by the  
7 mortgage.

8 (4) Any proceeds received from the sale of the property shall be applied to reduce the  
9 indebtedness secured by the mortgage. If mortgage insurance on the obligation is paid for by  
10 the obligor or guarantor, any proceeds paid or payable to the secured creditor for such policy  
11 shall be credited against the deficiency owing.

12 (5) The protections of this section apply to guarantors or co-obligors of any obligation  
13 secured by a mortgage to the same extent as they apply to the grantor of such mortgage,  
14 provided that in applying the deficiency limitation of this section to guarantors, the amount  
15 of indebtedness used in determining the deficiency shall be the amount guaranteed in the  
16 guarantee agreement, if different than the indebtedness secured by the mortgage.

17 (6) An action for a deficiency must be brought in one (1) action against mortgagors and  
18 guarantors of indebtedness secured by the mortgage.

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

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