

IN THE SENATE

SENATE BILL NO. 1315

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

RELATING TO FORECLOSURE; AMENDING SECTION 45-1506, IDAHO CODE, TO PROVIDE THAT A PURCHASER AT A TRUSTEE'S SALE SHALL BE ENTITLED TO DISPOSE OF ANY NONTITLED PERSONAL PROPERTY UNDER CERTAIN CONDITIONS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 45-1506, Idaho Code, be, and the same is hereby amended to read as follows:

45-1506. MANNER OF FORECLOSURE -- NOTICE -- SALE. (1) A trust deed may be foreclosed in the manner provided in this section.

(2) Subsequent to recording notice of default as hereinbefore provided, and at least one hundred twenty (120) days before the day fixed by the trustee for the trustee's sale, notice of such sale shall be given by registered or certified mail, return receipt requested, to the last known address of the following persons or their legal representatives, if any:

(a) The grantor in the trust deed and any person requesting notice of record as provided in section 45-1511, Idaho Code.

(b) Any successor in interest of the grantor including, but not limited to, a grantee, transferee or lessee, whose interest appears of record prior to the recording of the notice of default, or where the trustee or the beneficiary has actual notice of such interest.

(c) Any person having a lien or interest subsequent to the interest of the trustee in the trust deed where such lien or interest appears of record prior to the recording of the notice of default, or where the trustee or the beneficiary has actual notice of such lien or interest.

(3) The disability, insanity or death of any person to whom notice of sale is to be given under subsection (2) of this section shall not delay or impair in any way the trustee's right under a trust deed to proceed with a sale under such deed, provided the notice of sale required under subsection (2) of this section has been mailed as provided by law for service of summons upon incompetents or to the administrator or executor of the estate of such person.

(4) The notice of sale shall set forth:

(a) The names of the grantor, trustee and beneficiary in the trust deed.

(b) A description of the property covered by the trust deed.

(c) The book and page of the mortgage records or the recorder's instrument number where the trust deed is recorded.

(d) The default for which the foreclosure is made.

(e) The sum owing on the obligation secured by the trust deed.

(f) The date, time and place of the sale which shall be held at a designated time after 9:00 a.m. and before 4:00 p.m., standard time, and at a

1 designated place in the county or one (1) of the counties where the prop-  
2 erty is located.

3 (5) At least three (3) good faith attempts shall be made on different  
4 days over a period of not less than seven (7) days, each of which attempts  
5 must be made at least thirty (30) days prior to the day of the sale, to serve  
6 a copy of the notice of sale upon an adult occupant of the real property in  
7 the manner in which a summons is served. At the time of each such attempt,  
8 a copy of the notice of sale shall be posted in a conspicuous place on the  
9 real property unless the copy of the notice of sale previously posted re-  
10 mains conspicuously posted. Provided, however, that if during such an at-  
11 tempt personal service is made upon an adult occupant and a copy of the notice  
12 is posted, then no further attempt at personal service and no further posting  
13 shall be required. Provided, further, that if the adult occupant personally  
14 served is a person to whom the notice of sale was required to be mailed, and  
15 was mailed, pursuant to the foregoing subsections of this section, then no  
16 posting of the notice of sale shall be required.

17 (6) A copy of the notice of sale shall be published in a newspaper of  
18 general circulation in each of the counties in which the property is situ-  
19 ated once a week for four (4) successive weeks, making four (4) publishings  
20 in all, with the last publication to be at least thirty (30) days prior to the  
21 day of sale. It shall be unlawful for the trustee for the trustee's sale to  
22 have a financial interest in a newspaper publishing such notice or to profit,  
23 directly or indirectly, based on the publication of such notice of sale and  
24 such conduct shall constitute a misdemeanor, punishable by imprisonment in  
25 the county jail for a term not to exceed one (1) year, or by a fine not to ex-  
26 ceed one thousand dollars (\$1,000), or by both such fine and imprisonment.

27 (7) An affidavit of mailing notice of sale and an affidavit of posting,  
28 when required, and publication of notice of sale as required by subsection  
29 (6) of this section shall be recorded in the mortgage records in the counties  
30 in which the property described in the deed is situated at least twenty (20)  
31 days prior to the date of sale.

32 (8) The sale shall be held on the date and at the time and place des-  
33 ignated in the notice of sale or notice of rescheduled sale as provided in  
34 section 45-1506A, Idaho Code, unless the sale is postponed as provided in  
35 this subsection or as provided in section 45-1506B, Idaho Code, respecting  
36 the effect of an intervening stay or injunctive relief order. The trustee  
37 shall sell the property in one (1) parcel or in separate parcels at auction  
38 to the highest bidder. Any person, including the beneficiary under the  
39 trust deed, may bid at the trustee's sale. The attorney for such trustee  
40 may conduct the sale and act in such sale as the auctioneer of trustee. The  
41 trustee may postpone the sale of the property upon request of the beneficiary  
42 by publicly announcing at the time and place originally fixed for the sale,  
43 the postponement to a stated subsequent date and hour. No sale may be post-  
44 poned to a date more than thirty (30) days subsequent to the date from which  
45 the sale is postponed. A postponed sale may itself be postponed in the same  
46 manner and within the same time limitations as provided in this subsection.  
47 For any loan made by a state or federally regulated beneficiary, which loan  
48 is secured by a deed of trust encumbering the borrower's primary residence,  
49 as determined pursuant to section 45-1506C(1), Idaho Code, the trustee,  
50 prior to conducting any trustee's sale previously postponed pursuant to

1 this section, shall mail notice of such trustee sale at least fourteen (14)  
2 days prior to conducting such sale by the same means and to the same persons  
3 as provided in subsection (2) of this section. The trustee or beneficiary  
4 shall, prior to conducting the trustee's sale, record an affidavit of mail-  
5 ing confirming that such notice has been mailed as required by this section.  
6 The filing of such affidavit of mailing is conclusive evidence of compliance  
7 with this section as to any party relying on said affidavit of mailing.

8 (9) The purchaser at the sale shall forthwith pay the price bid and upon  
9 receipt of payment the trustee shall execute and deliver the trustee's deed  
10 to such purchaser, provided that in the event of any refusal to pay purchase  
11 money, the officer making such sale shall have the right to resell or reject  
12 any subsequent bid as provided by law in the case of sales under execution.

13 (10) The trustee's deed shall convey to the purchaser the interest in  
14 the property which the grantor had, or had the power to convey, at the time of  
15 the execution by him of the trust deed together with any interest the grantor  
16 or his successors in interest acquired after the execution of such trust  
17 deed.

18 (11) The purchaser at the trustee's sale shall be entitled to posses-  
19 sion of the property on the tenth day following the sale, and any persons re-  
20 maining in possession thereafter under any interest except one prior to the  
21 deed of trust shall be deemed to be tenants at sufferance. The purchaser at  
22 the trustee's sale shall be entitled to dispose of any nontitled personal  
23 property remaining on the property on the tenth day following the sale with-  
24 out further notice and without liability to any party claiming any interest  
25 in such personal property. Titled personal property shall be disposed of  
26 pursuant to applicable law.

27 (12) Whenever all or a portion of any obligation secured by a deed of  
28 trust which has become due by reason of a default of any part of that obli-  
29 gation, including taxes, assessments, premiums for insurance or advances  
30 made by a beneficiary in accordance with the terms of the deed of trust,  
31 the grantor or his successor in interest in the trust property or any part  
32 thereof, or any beneficiary under a subordinate deed of trust or any per-  
33 son having a subordinate lien or encumbrance of record thereon, at any time  
34 within one hundred fifteen (115) days of the recording of the notice of  
35 default under such deed of trust, if the power of sale therein is to be exer-  
36 cised, or otherwise at any time prior to the entry of a decree of foreclosure,  
37 may pay to the beneficiary or their successors in interest, respectively,  
38 the entire amount then due under the terms of the deed of trust and the obli-  
39 gation secured thereby, including costs and expenses actually incurred in  
40 enforcing the terms of such obligation and a reasonable trustee's fee sub-  
41 ject to the limitations imposed by subsection (6) of section 45-1502, Idaho  
42 Code, and attorney's fees as may be provided in the promissory note, other  
43 than such portion of the principal as would not then be due had no default  
44 occurred, and thereby cure the default theretofore existing, and thereupon,  
45 all proceedings theretofore had or instituted shall be dismissed or discon-  
46 tinued and the obligation and deed of trust shall be reinstated and shall be  
47 and remain in force and effect, the same as if no acceleration had occurred.

48 (13) Any mailing to persons outside the United States and its territo-  
49 ries required by this chapter may be made by ordinary first class mail if cer-  
50 tified or registered mail service is unavailable.

1           (14) Service by mail in accordance with the provisions of this section  
2 shall be deemed effective at the time of mailing.