

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 551

BY BUSINESS COMMITTEE

AN ACT

RELATING TO TRUST DEEDS; AMENDING SECTION 45-1506, IDAHO CODE, TO PROVIDE PROCEDURES FOR POSTPONING A TRUSTEE'S SALE DATE WHEN CERTAIN AFFIDAVITS ARE RECORDED LATER THAN REQUIRED BY LAW AND TO PROVIDE THAT CERTAIN AFFIDAVITS ARE VALID IF RECORDED WITHIN A CERTAIN TIME PERIOD 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., ~~S~~standard ~~T~~time,

1 and at a designated place in the county or one (1) of the counties where
2 the property 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 remains
10 conspicuously posted. Provided, however, that if during such an attempt
11 personal service is made upon an adult occupant and a copy of the notice is
12 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 situated
19 once a week for four (4) successive weeks, making four (4) publishings in
20 all, with the last publication to be at least thirty (30) days prior to the
21 day of sale.

22 (7) An affidavit of mailing notice of sale and an affidavit of posting
23 (when required) and publication of notice of sale as required by subsection
24 (6) of this section shall be recorded in the mortgage records in the counties
25 in which the property described in the deed is situated at least twenty (20)
26 days prior to the date of sale. In the event the affidavit of mailing notice
27 of sale, affidavit of posting (when required) or the publication of notice
28 of sale is recorded later than twenty (20) days prior to the date of sale,
29 the trustee may, without request of the beneficiary, postpone the sale date
30 by publicly announcing, at the time and place originally fixed for the sale,
31 the postponement of the sale to a subsequent date and time. The rescheduled
32 date of sale shall be no later than thirty (30) days from the original date
33 of sale, provided that the affidavit of mailing notice of sale, affidavit of
34 posting (when required) and publication of notice of sale have been recorded
35 in the proper counties prior to the sale date set forth in the notice of
36 trustee's sale. Such affidavits recorded at least twenty (20) days prior
37 to the rescheduled date of sale shall be valid and in compliance with the
38 provisions of this subsection.

39 (8) The sale shall be held on the date and at the time and place
40 designated in the notice of sale or notice of rescheduled sale as provided
41 in section 45-1506A, Idaho Code, unless the sale is postponed as provided in
42 this subsection or as provided in section 45-1506B, Idaho Code, respecting
43 the effect of an intervening stay or injunctive relief order. The trustee
44 shall sell the property in one (1) parcel or in separate parcels at auction
45 to the highest bidder. Any person, including the beneficiary under the
46 trust deed, may bid at the trustee's sale. The attorney for such trustee
47 may conduct the sale and act in such sale as the auctioneer of trustee. The
48 trustee may postpone the sale of the property upon request of the beneficiary
49 by publicly announcing at the time and place originally fixed for the sale,
50 the postponement to a stated subsequent date and hour. No sale may be

1 postponed to a date more than thirty (30) days subsequent to the date from
2 which the sale is postponed. A postponed sale may itself be postponed in
3 the same manner and within the same time limitations as provided in this
4 subsection.

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

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

15 (11) The purchaser at the trustee's sale shall be entitled to
16 possession of the property on the tenth day following the sale, and any
17 persons remaining in possession thereafter under any interest except one
18 prior to the deed of trust shall be deemed to be tenants at sufferance.

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

41 (13) Any mailing to persons outside the United States and its
42 territories required by this chapter may be made by ordinary first class mail
43 if certified or registered mail service is unavailable.

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