



OLD REPUBLIC
National Title Insurance Company

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Memorandum

To: All Agents in the State of New Mexico
From: David W. Rhodes
Date: April 28, 2006
Re: Deed of Trust Act

The recent session of the Legislature amended the Deed of Trust Act effective May 17, 2006. The amendments will allow a non-judicial foreclosure under a deed of trust used to secure the repayment of a loan secured by certain described real property. The sale will be conducted by a Trustee named in the deed of trust. Lenders will find this a very attractive alternative to the more expensive and lengthy judicial foreclosure of a mortgage.

Under a deed of trust used to secure a debt against real property; the Trustee named in the deed of trust is given the power of sale. If the Trustee refuses to act, becomes incapacitated or resigns, 48-10-7 NMSA 1978 allows the beneficiary (the Lender) to appoint a successor trustee. Subsection C. sets out the suggested language for use in giving notice of the Substitution of Trustee. The notice must be in writing, from the beneficiary, through registered or certified mail to the trustor, the current trustee and the successor trustee. A trustee may resign by recording a notice of resignation in the office of the county clerk of the county in which all or part of the property is located. A suggested form of a "Notice of Resignation of Trustee" is given in the Act.

48-10-10 NMSA 1978, prohibits a non-judicial sale before the expiration of 90 days from the recording of the Notice of sale. The deed of trust may also be foreclosed with a judicial foreclosure as provided for the foreclosure of mortgages. Once a suit to judicially foreclose the deed of trust has been commenced, a non-judicial foreclosure under the power of sale granted in the deed of trust cannot be held unless the foreclosure action has been dismissed.

Section 48-10-11 NMSA 1978 requires written notice of the time and place of the sale including a legal description of the property. The Notice can then be published in three ways.

- 1.) Publication of the Notice as required for the foreclosure of a mortgage on real estate.
- 2.) Recording of the Notice in the appropriate County Clerk's office;
- 3.) Giving the Notice of Sale to anyone who has requested notice pursuant to 48-10-12 NMSA 1978. This section does require notice to junior encumbrance (2nd lien holders) who have recorded their security document in the real property records.

The sale is to be held at the time and place designated in the Notice of Sale on the front steps of the county in which the real property is located.

May 9, 2006

A suggested form of "Notice of Trustee's Sale" is given. The street as well as the legal description is required.

The property may be redeemed within nine months of the date of the sale by the beneficiary or any junior encumbrancers. The parties to the deed of trust may in the deed of trust shorten the redemption period to not less than one month.

48-10-17 NSMA 1978 allows a civil action to recover a deficiency judgment for the balance due on the debt less the amount received at the foreclosure sale. No such civil action can be filed on a deed of trust encumbering real estate occupied by a low income household as certified by the New Mexico mortgage finance authority.

If you have any questions concerning a non-judicial foreclosure, please call Old Republic National Title Insurance at 888-678-7100.