

HOUSE BILL NO. 347

INTRODUCED BY DONALDSON

IN THE HOUSE

January 19, 1983	Introduced and referred to Committee on Judiciary.
January 24, 1983	Committee recommend bill do pass as amended. Report adopted.
January 25, 1983	Bill printed and placed on members' desks.
January 26, 1983	Second reading, do pass.
January 27, 1983	Considered correctly engrossed.
January 28, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 29, 1983	Introduced and referred to Committee on Business and Industry.
February 7, 1983	Committee recommend bill be concurred in as amended. Report adopted. On motion taken from second reading and rereferred to Committee on Business and Industry.
February 9, 1983	Committee recommend bill be concurred in as amended. Report adopted.
February 12, 1983	Second reading, concurred in.
February 15, 1983	Third reading, concurred in. Ayes, 49; Noes, 0.

IN THE HOUSE

February 15, 1983

Returned to House with amendments.

February 17, 1983

On motion, consideration passed until the 46th legislative day.

March 1, 1983

Second reading, amendments concurred in.

March 2, 1983

Third reading, amendments concurred in. Sent to enrolling.

Reported correctly enrolled.

1 House BILL NO. 347
2 INTRODUCED BY Donelson
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE SMALL
5 TRACT FINANCING ACT OF MONTANA BY INCREASING THE LIMIT ON
6 TRUSTEES' AND ATTORNEYS' FEES AND DELETING UNNECESSARY
7 RECORDING LANGUAGE; AMENDING SECTIONS 71-1-315 AND 71-1-320,
8 MCA."
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 Section 1. Section 71-1-315, MCA, is amended to read:
12 "71-1-315. Notice -- sale -- payment. A trust deed may
13 be foreclosed by advertisement and sale in the manner
14 hereinafter provided:
15 (1) The trustee shall give notice of the sale in the
16 following manner:
17 (a) At least 120 days before the date fixed for the
18 trustee's sale, a copy of the recorded notice of sale shall
19 be mailed by registered or certified mail to:
20 (i) the grantor, at the grantor's address as set forth
21 in the trust indenture or (in the event no address of the
22 grantor is set forth in the trust indenture) at the
23 grantor's last known address;
24 (ii) each person designated in the trust indenture to
25 receive notice of sale whose address is set forth therein;

1 at such address;
2 (iii) each person who has filed for record a request
3 for a copy of notice of sale within the time and in the
4 manner hereinafter provided, at the address of such person
5 as set forth in such request;
6 (iv) any successor in interest to the grantor whose
7 interest and address appear of record at the filing date and
8 time of the notice of sale, at such address;
9 (v) any person having a lien or interest subsequent to
10 the interest of the trustee and whose lien or interest and
11 address appear of record at the filing date and time of the
12 notice of sale, at such address.
13 (b) At least 20 days before the date fixed for the
14 trustee's sale, a copy of the recorded notice of sale shall
15 be posted in some conspicuous place on the property to be
16 sold. Upon request of the trustee, the notice of sale shall
17 be posted by a sheriff or constable of the county wherein
18 the property to be sold is located.
19 (c) A copy of the notice of sale shall be published in
20 a newspaper of general circulation published in any county
21 in which the property or some part thereof is situated, at
22 least once each week for 3 successive weeks. If there is no
23 such newspaper, then copies of the notice of sale shall be
24 posted in at least three public places in each county in
25 which the property or some part thereof is situated. The

posting or the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there shall be filed--for--record recorded in the office of the clerk and recorder of each county where the property or some part thereof is situated, affidavits of mailing, posting, and publication showing compliance with the requirements of this section.

(3) On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels, and any person, including the beneficiary under the trust indenture but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given.

(4) The purchaser at the sale shall pay the price bid in cash, and upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to resell the property at any time to the highest bidder. The

party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person."

Section 2. Section 71-1-320, MCA, is amended to read:
 "71-1-320. Trustees' fees and attorneys' fees. Reasonable trustees' fees and attorneys' fees to be charged to the grantor in the event of foreclosure by advertisement and sale shall not exceed, in the aggregate, 5% of the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If prior to the trustee's sale the obligation and the trust indenture shall be reinstated in accordance with provisions of 71-1-312, the reasonable trustees' fees and attorneys' fees to be charged to the grantor shall not exceed \$150 \$250. In no event shall trustees' fees and attorneys' fees be charged to a grantor on account of any services rendered prior to the commencement of foreclosure."

-End-

Approved by Committee
on Judiciary

HOUSE BILL NO. 347

INTRODUCED BY DONALDSON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE SMALL TRACT FINANCING ACT OF MONTANA BY INCREASING THE LIMIT ON TRUSTEES' AND ATTORNEYS' FEES AND DELETING UNNECESSARY RECORDING LANGUAGE; AMENDING SECTIONS 71-1-315 AND 71-1-320, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 71-1-315, MCA, is amended to read:

"71-1-315. Notice -- sale -- payment. A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided:

(1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) the grantor, at the grantor's address as set forth in the trust indenture or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) each person designated in the trust indenture to receive notice of sale whose address is set forth therein,

at such address;

(iii) each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request;

(iv) any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold. Upon request of the trustee, the notice of sale shall be posted by a sheriff or constable of the county wherein the property to be sold is located.

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property or some part thereof is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least three public places in each county in which the property or some part thereof is situated. The

1 posting or the last publication shall be made at least 20
2 days before the date fixed for the trustee's sale.

3 (2) On or before the date of sale, there shall be
4 ~~filed--for--record~~ recorded in the office of the clerk and
5 recorder of each county where the property or some part
6 thereof is situated, affidavits of mailing, posting, and
7 publication showing compliance with the requirements of this
8 section.

9 (3) On the date and at the time and place designated
10 in the notice of sale, the trustee or his attorney shall
11 sell the property at public auction to the highest bidder.
12 The property may be sold in one parcel or in separate
13 parcels, and any person, including the beneficiary under the
14 trust indenture but excluding the trustee, may bid at the
15 sale. The person making the sale may, for any cause he deems
16 expedient, postpone the sale for a period not exceeding 15
17 days by public proclamation at the time and place fixed in
18 the notice of sale. No other notice of the postponed sale
19 need be given.

20 (4) The purchaser at the sale shall pay the price bid
21 in cash, and upon receipt of payment, the trustee shall
22 execute and deliver a trustee's deed to the purchaser. In
23 the event the purchaser refuses to pay the purchase price,
24 the person conducting the sale shall have the right to
25 resell the property at any time to the highest bidder. The

1 party refusing to pay shall be liable for any loss
2 occasioned thereby, and the person making the sale may also,
3 in his discretion, thereafter reject any other bid of such
4 person."

5 Section 2. Section 71-1-320, MCA, is amended to read:

6 "71-1-320. Trustees' fees and attorneys' fees.
7 Reasonable trustees' fees and attorneys' fees to be charged
8 to the grantor in the event of foreclosure by advertisement
9 and sale shall not exceed, in the aggregate, 5% of the
10 amount due on the obligation, both principal and interest,
11 at the time of the trustee's sale. If prior to the trustee's
12 sale the obligation and the trust indenture shall be
13 reinstated in accordance with provisions of 71-1-312, the
14 reasonable trustees' fees and attorneys' fees to be charged
15 to the grantor shall not exceed ~~\$150 \$250 3% OF THE AMOUNT~~
16 DUE ON THE OBLIGATION, BOTH PRINCIPAL AND INTEREST AT THE
17 TIME OF DEFAULT. In no event shall trustees' fees and
18 attorneys' fees be charged to a grantor on account of any
19 services rendered prior to the commencement of foreclosure."

-End-

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 71-1-315, MCA, is amended to read:

"71-1-315. Notice -- sale -- payment. A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided:

(1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) the grantor, at the grantor's address as set forth in the trust indenture or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) each person designated in the trust indenture to receive notice of sale whose address is set forth therein;

at such address;

(iii) each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request;

(iv) any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold. Upon request of the trustee, the notice of sale shall be posted by a sheriff or constable of the county wherein the property to be sold is located.

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property or some part thereof is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least three public places in each county in which the property or some part thereof is situated. The

posting or the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there shall be ~~filed--for--record~~ recorded in the office of the clerk and recorder of each county where the property or some part thereof is situated, affidavits of mailing, posting, and publication showing compliance with the requirements of this section.

(3) On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels, and any person, including the beneficiary under the trust indenture but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given.

(4) The purchaser at the sale shall pay the price bid in cash, and upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to resell the property at any time to the highest bidder. The

party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person."

Section 2. Section 71-1-320, MCA, is amended to read:

"71-1-320. Trustees' fees and attorneys' fees. Reasonable trustees' fees and attorneys' fees to be charged to the grantor in the event of foreclosure by advertisement and sale shall not exceed, in the aggregate, 5% of the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If prior to the trustee's sale the obligation and the trust indenture shall be reinstated in accordance with provisions of 71-1-312, the reasonable trustees' fees and attorneys' fees to be charged to the grantor shall not exceed ~~\$150 \$250 3% OF THE AMOUNT~~ DUE ON THE OBLIGATION, BOTH PRINCIPAL AND INTEREST AT THE TIME OF DEFAULT. In no event shall trustees' fees and attorneys' fees be charged to a grantor on account of any services rendered prior to the commencement of foreclosure."

-End-

February 7, 1983

SENATE STANDING COMMITTEE REPORT
(Business & Industry)

That House Bill No. 347 be amended as follows:

1. Page 4, line 15.

Following: "~~\$250~~"

Strike: Remainder of line 15 through "DEFAULT" on line 17.

Insert: "\$250"

February 9, 1983

SENATE STANDING COMMITTEE REPORT
(Business & Industry)

That House Bill No. 347 be amended as follows:

1. Page 4, line 15.

Following: "\$250"

Strike: "3%"

Insert: "the lesser of \$1000 or 1%"

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at such address;

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2 days before the date fixed for the trustee's sale.

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6 thereof is situated, affidavits of mailing, posting, and
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16 expedient, postpone the sale for a period not exceeding 15
17 days by public proclamation at the time and place fixed in
18 the notice of sale. No other notice of the postponed sale
19 need be given.

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21 in cash, and upon receipt of payment, the trustee shall
22 execute and deliver a trustee's deed to the purchaser. In
23 the event the purchaser refuses to pay the purchase price,
24 the person conducting the sale shall have the right to
25 resell the property at any time to the highest bidder. The

1 party refusing to pay shall be liable for any loss
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4 person."

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8 to the grantor in the event of foreclosure by advertisement
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10 amount due on the obligation, both principal and interest,
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12 sale the obligation and the trust indenture shall be
13 reinstated in accordance with provisions of 71-1-312, the
14 reasonable trustees' fees and attorneys' fees to be charged
15 to the grantor shall not exceed ~~\$150~~ ~~1250~~ 3% THE LESSER OF
16 \$1,000 OR 1% OF THE AMOUNT DUE ON THE OBLIGATION, BOTH
17 PRINCIPAL AND INTEREST AT THE TIME OF DEFAULT. In no event
18 shall trustees' fees and attorneys' fees be charged to a
19 grantor on account of any services rendered prior to the
20 commencement of foreclosure."

-End-