

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.

*House* BILL NO. *347*

INTRODUCED BY

*Doak*

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. In no event shall  
16 trustees' fees and attorneys' fees be charged to a grantor  
17 on account of any services rendered prior to the  
18 commencement of foreclosure."

-End-

Approved by Committee  
on Judiciary

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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.

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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.

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3 in his discretion, thereafter reject any other bid of such  
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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."

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(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;

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at such address;

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(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.

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6 thereof is situated, affidavits of mailing, posting, and  
7 publication showing compliance with the requirements of this  
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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  
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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--

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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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  
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19 grantor on account of any services rendered prior to the  
20 commencement of foreclosure."

-End-