

SENATE BILL NO. 190

INTRODUCED BY LYBECK, BECK, DRISCOLL, RAPP-SVRCEK,
RUSSELL, IVERSON, STRATFORD, ELLISON

IN THE SENATE

JANUARY 21, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

JANUARY 29, 1987 COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

JANUARY 30, 1987 PRINTING REPORT.

FEBRUARY 2, 1987 SECOND READING, DO PASS.

FEBRUARY 3, 1987 ENGROSSING REPORT.

FEBRUARY 4, 1987 THIRD READING, PASSED.
AYES, 39; NOES, 11.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 11, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

APRIL 8, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

APRIL 10, 1987 SECOND READING, CONCURRED IN AS
AMENDED.

APRIL 13, 1987 THIRD READING, CONCURRED IN.
AYES, 92; NOES, 2.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 14, 1987 ON MOTION, RULES SUSPENDED TO ALLOW
TO ALLOW RECEIPT AFTER DEADLINE; VAN VAL

APRIL 16, 1987

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 17, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 ~~Senate~~ BILL NO. 190
 2 INTRODUCED BY Lylech Beach, Dinnell Kopp, Dinnell
 3 Dinnell, Strafford, Eberin

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A MORTGAGOR
 5 TO ACKNOWLEDGE THAT MORTGAGED REAL PROPERTY IS NOT EXEMPT
 6 FROM EXECUTION AS A HOMESTEAD; AND PROVIDING AN
 7 APPLICABILITY DATE."
 8

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

10 Section 1. Homestead subject to execution for
 11 mortgage -- separate writing required. (1) If a mortgagor
 12 mortgages property that otherwise would qualify as the
 13 homestead under Title 70, chapter 32, he shall execute and
 14 sign a document, separate from the mortgage agreement,
 15 acknowledging that the real property is not exempt from
 16 execution as the homestead because under 70-32-202 it is
 17 subject to execution or forced sale to satisfy a judgment
 18 obtained on a debt secured by a mortgage on the premises.

19 (2) The mortgagee shall retain a copy of the document
 20 provided for in subsection (1) until the mortgage is paid or
 21 otherwise satisfied or discharged.

22 Section 2. Codification instruction. Section 1 is
 23 intended to be codified as an integral part of Title 71,
 24 chapter 1, part 2, and the provisions of Title 71, chapter
 25 1, part 2, apply to section 1.

1 Section 3. Applicability. This act applies to
 2 mortgages of real property created after the effective date
 3 of this act.

-End-



APPROVED BY COMMITTEE
ON JUDICIARY

1 *Senate* BILL NO. *190*
2 INTRODUCED BY *Lybuck Beard, Chairman & Roger J. Smith*
3 *Russell J. Stafford, Eileen*

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A MORTGAGOR
5 TO ACKNOWLEDGE THAT MORTGAGED REAL PROPERTY IS NOT EXEMPT
6 FROM EXECUTION AS A HOMESTEAD; AND PROVIDING AN
7 APPLICABILITY DATE."
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12 mortgages property that otherwise would qualify as the
13 homestead under Title 70, chapter 32, he shall execute and
14 sign a document, separate from the mortgage agreement,
15 acknowledging that the real property is not exempt from
16 execution as the homestead because under 70-32-202 it is
17 subject to execution or forced sale to satisfy a judgment
18 obtained on a debt secured by a mortgage on the premises.

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23 intended to be codified as an integral part of Title 71,
24 chapter 1, part 2, and the provisions of Title 71, chapter
25 1, part 2, apply to section 1.

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2 mortgages of real property created after the effective date
3 of this act.

-End-



-2- SECOND READING
SB-190

1 *Senate* BILL NO. *190*
 2 INTRODUCED BY *Lybick Beach Dineen Kopp Smith*
 3 *Russell Straford Eileen*

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A MORTGAGOR
 5 TO ACKNOWLEDGE THAT MORTGAGED REAL PROPERTY IS NOT EXEMPT
 6 FROM EXECUTION AS A HOMESTEAD; AND PROVIDING AN
 7 APPLICABILITY DATE."
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 11 mortgage -- separate writing required. (1) If a mortgagor
 12 mortgages property that otherwise would qualify as the
 13 homestead under Title 70, chapter 32, he shall execute and
 14 sign a document, separate from the mortgage agreement,
 15 acknowledging that the real property is not exempt from
 16 execution as the homestead because under 70-32-202 it is
 17 subject to execution or forced sale to satisfy a judgment
 18 obtained on a debt secured by a mortgage on the premises.

19 (2) The mortgagee shall retain a copy of the document
 20 provided for in subsection (1) until the mortgage is paid or
 21 otherwise satisfied or discharged.

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 23 intended to be codified as an integral part of Title 71,
 24 chapter 1, part 2, and the provisions of Title 71, chapter
 25 1, part 2, apply to section 1.

1 Section 3. Applicability. This act applies to
 2 mortgages of real property created after the effective date
 3 of this act.

-End-

SENATE BILL NO. 190

INTRODUCED BY LYBECK, BECK, DRISCOLL, RAPP-SVRCEK,
RUSSELL, IVERSON, STRATFORD, ELLISON

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A MORTGAGOR
BORROWER TO ACKNOWLEDGE THAT MORTGAGED CERTAIN ENCUMBERED
REAL PROPERTY IS NOT EXEMPT FROM EXECUTION AS A HOMESTEAD;
AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Homestead subject to execution for mortgage

~~-----separate-writing-required:--(1)--if-a-mortgagor-mortgages
property-that-otherwise-would-qualify-as-the-homestead-under
title-70,chapter-32,he-shall-execute-and-sign-a--document,
separate-from-the-mortgage-agreement,acknowledging-that-the
real-property-is-not-exempt-from-execution-as-the-homestead
because-under-70-32-202-it-is-subject-to-execution-or-forced
sale-to-satisfy-a-judgment-obtained-on-a-debt-secured--by--a
mortgage--on--the--premises. CERTAIN JUDGMENTS -- SEPARATE
ACKNOWLEDGMENT REQUIRED. (1) IF A BORROWER BORROWING MONEY
FROM A BANK--AS--DEFINED--IN-32-1-102, A BUILDING-AND-LOAN
ASSOCIATION-AS-DEFINED-IN-32-2-101,OR--A--CREDIT--UNION--AS
DEFINED--IN--32-3-102, REGULATED LENDER AS DEFINED IN
31-1-111, A MUTUAL OR STOCK INSURANCE COMPANY REGULATED BY
ANY STATE, OR A FARM CREDIT SYSTEM LENDER ENCUMBERS REAL~~

PROPERTY THAT OTHERWISE WOULD QUALIFY AS A HOMESTEAD UNDER
TITLE 70, CHAPTER 32, THE FINANCIAL INSTITUTION SHALL
REQUIRE THE BORROWER TO SIGN A WRITTEN STATEMENT
ACKNOWLEDGING THAT THE REAL PROPERTY IS NOT EXEMPT FROM
EXECUTION AS A HOMESTEAD BECAUSE UNDER 70-32-202 IT IS
SUBJECT TO EXECUTION OR FORCED SALE TO SATISFY A JUDGMENT
OBTAINED ON A DEBT SECURED BY A MORTGAGE OR OTHER
ENCUMBRANCE ON THE PREMISES. THE WRITTEN ACKNOWLEDGMENT MAY
BE IN A DOCUMENT SEPARATE FROM, OR MAY BE INCLUDED IN, THE
LOAN AGREEMENT OR LOAN DOCUMENTS AND MUST BE PRINTED IN
CAPITAL LETTERS OF NOT LESS THAN 10-POINT BOLDFACED TYPE AND
SIGNED SEPARATELY BY THE BORROWER.

(2) The mortgagee FINANCIAL INSTITUTION shall retain a
copy of the document ACKNOWLEDGMENT provided for in
subsection (1) until the mortgage OR OTHER ENCUMBRANCE is
paid or otherwise satisfied or discharged UNLESS THE
ACKNOWLEDGMENT IS OF RECORD IN THE OFFICE OF THE CLERK AND
RECORDER.

~~Section-2--Codification--instruction:--Section--1--is
intended--to--be--codified--as--an--integral--part--of--Title--71,
chapter-1,part-2, and the provisions of Title--71,--chapter
1,part-2,apply-to-section-1.~~

Section 2. Applicability. This act applies to
mortgages AND OTHER ENCUMBRANCES of real property created
after the effective date of this act.

-End-
-2-



COMMITTEE OF THE WHOLE AMENDMENT

34

HOUSE

4-10-87

DATE

10:58

TIME

MR. CHAIRMAN: I MOVE TO AMEND SB 190

3rd reading copy (blue) as follows:
Color

PASSED

AMENDING THE HOUSE JUDICIARY STANDING COMMITTEE REPORT DATED 4-8-87, AMENDING SENATE BILL 190.

1) Instruction No.3, lines 4 through 6.

Strike: "bank as defined in 32-1-102, a building and loan association as defined in 32-2-101, or a credit union as defined in 32-3-102"

Insert: "regulated lender as defined in 31-1-111, a mutual or stock insurance company regulated by any state, or a farm credit system lender"

ADOPT

REJECT

4101058S.CW

L. Rapp-Svrcek

Rep. Rapp-Svrcek

TR

STANDING COMMITTEE REPORT

HOUSE

APRIL 8, 1987 19

JUDICIARY COMMITTEE

AMENDMENTS TO SB #190/PAGE TWO
APRIL 8, 1987

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL, NO. 190

- do pass
- be concurred in
- as amended
- do not pass
- be not concurred in
- statement of intent attached

Callahan

 Chairman

- 1. Title, line 4.
Strike: "MORTGAGOR"
Insert: "BORROWER"
- 2. Title, line 5.
Strike: "MORTGAGED"
Insert: "CERTAIN ENCUMBERED"

3. Page 1, lines 11 through 18.
Strike: lines 11 through 18 in their entirety
Insert: "certain judgments -- separate acknowledgment required.
(1) If a borrower borrowing money from a bank as defined in 32-1-102, a building and loan association as defined in 32-2-101, or a credit union as defined in 32-3-102, encumbers real property that otherwise would qualify as a homestead under Title 70, chapter 32, the financial institution shall require the borrower to sign a written statement acknowledging that the real property is not exempt from execution as a homestead because under 70-32-202 it is subject to execution or forced sale to satisfy a judgment obtained on a debt secured by a mortgage or other encumbrance on the premises. The written acknowledgement may be in a document separate from, or may be included in, the loan agreement or loan documents and must be printed in capital letters of not less than 10-point boldfaced type and signed separately by the borrower."

4. Page 1, line 19.
Strike: "mortgagee"
Insert: "financial institution"
Strike: "document"
Insert: "acknowledgement"

5. Page 1, line 20.
Following: "mortgage"

Insert: "or other encumbrance"

6. Page 1, line 21.
Following: "discharged"
Insert: ", unless the acknowledgement is of record in the office of the clerk and recorder"

7. Page 1, lines 22 through 25.
Strike: section 2 of the bill in its entirety

Renumber: subsequent section

8. Page 2, line 2.
Following: "mortgages"
Insert: "and other encumbrances"

MS

[Handwritten signature]

MS

[Handwritten signature]

THIRD reading copy (BLUE color)

REP. RAPP-SVCEK WILL CARRY THE BILL!