

HOUSE BILL 511

Introduced by Mercer, et al.

1/31	Introduced
2/01	Referred to Judiciary
2/17	Hearing
2/18	Committee Report--Bill Passed as Amended
2/20	2nd Reading Passed
2/21	3rd Reading Passed

Transmitted to Senate

2/28	Referred to Judiciary
3/20	Hearing
	Died in Committee

1 *House* BILL NO. *511*
 2 INTRODUCED BY *Mercer Hannah Bordenave*
 3 *Marcus Kelly*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 SMALL TRACT FINANCING ACT OF MONTANA; PROHIBITING A
 6 DEFICIENCY JUDGMENT ON RESIDENTIAL PROPERTY, WHETHER
 7 FORECLOSED BY ADVERTISEMENT AND SALE OR BY JUDICIAL
 8 PROCEEDINGS; PROVIDING THAT A TRUST INDENTURE ON REAL
 9 PROPERTY EXCEEDING 15 ACRES IS INVALID FOR ALL PURPOSES;
 10 REQUIRING THAT A COPY OF THE PROMISSORY NOTE BE ATTACHED TO
 11 A TRUST INDENTURE WHEN IT IS RECORDED; AND AMENDING SECTIONS
 12 71-1-303, 71-1-304, AND 71-1-317, MCA."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 **Section 1.** Section 71-1-303, MCA, is amended to read:

16 "71-1-303. Definitions. As used in this part, unless
 17 the context requires otherwise the following definitions
 18 apply:

19 (1) "Beneficiary" means the person named or otherwise
 20 designated in a trust indenture as the person for whose
 21 benefit a trust indenture is given or his successor in
 22 interest, and who ~~shall~~ may not be the trustee.

23 (2) "Commercial real property" means real property
 24 other than residential real property.

25 (2)(3) "Fifteen acres" means 15 acres of land.

1 (3)(4) "Grantor" means the person conveying real
 2 property by a trust indenture as security for the
 3 performance of an obligation.

4 (5) "Residential real property" means real property
 5 that is a residential dwelling for four or fewer families.

6 (4)(6) "Trust indenture" means an indenture executed
 7 in conformity with this part and conveying real property to
 8 a trustee in trust to secure the performance of an
 9 obligation of the grantor or other person named in the
 10 indenture to a beneficiary.

11 (5)(7) "Trustee" means a person to whom the legal
 12 title to real property is conveyed by a trust indenture or
 13 his successor in interest."

14 **Section 2.** Section 71-1-304, MCA, is amended to read:

15 "71-1-304. Trust indentures authorized -- power of
 16 sale for breach in trustee -- copy of promissory note
 17 attached to trust indenture when recorded. (1) Transfers in
 18 trust of any interest in real property of an area not
 19 exceeding 15 acres may be made to secure the performance of
 20 an obligation of a grantor or any other person named in the
 21 indenture to a beneficiary provided except that it ~~shall~~ is
 22 is unlawful to substitute a trust indenture for any mortgage
 23 in existence on March 5, 1963.

24 (2) ~~Where--any~~ If a transfer in trust of any interest
 25 in real property is hereafter made to secure the performance

1 of ~~such~~ an obligation, a power of sale is hereby conferred
 2 upon the trustee to be exercised after a breach of the
 3 obligation for which ~~such the~~ transfer is security.

4 (3) A trust indenture executed in conformity with this
 5 part may be foreclosed by advertisement and sale in the
 6 manner ~~hereinafter~~ provided in this part or, at the option
 7 of the beneficiary, by judicial procedure as provided by law
 8 for the foreclosure of mortgages on real property. The power
 9 of sale may be exercised by the trustee without an express
 10 provision ~~therefor~~ for that power contained in the trust
 11 indenture.

12 (4) ~~(a) Where-the~~ If a trust indenture states that the
 13 real property involved does not exceed 15 acres, ~~such the~~
 14 statement ~~shall---be~~ is binding upon all parties and
 15 conclusive as to compliance with the provisions of this part
 16 relative to the power to make a transfer, trust, and power
 17 of sale.

18 (b) A transfer in trust of an estate in real property
 19 that exceeds 15 acres is invalid for all purposes.

20 (5) A copy of the promissory note underlying the trust
 21 indenture must be attached to the trust indenture when it is
 22 recorded."

23 **Section 3.** Section 71-1-317, MCA, is amended to read:

24 "71-1-317. Deficiency judgment not allowed. (1) When
 25 If a trust indenture executed in conformity with this part

1 for an estate in residential real property is foreclosed,
 2 whether by advertisement and sale, or by judicial procedure
 3 for the foreclosure of a mortgage, no other or further
 4 action, suit, or proceedings shall may be taken or judgment
 5 entered for any deficiency against the grantor or his
 6 surety, guarantor, or successor in interest, if any, on the
 7 note, bond, or other obligation secured by the trust
 8 indenture or against any other person obligated on such the
 9 note, bond, or other obligation.

10 (2) If a trust indenture executed in conformity with
 11 this part for an estate in commercial real property is
 12 foreclosed by advertisement and sale, no other or further
 13 action, suit, or proceedings may be taken or judgment
 14 entered for any deficiency against the grantor or his
 15 surety, guarantor, or successor in interest, if any, on the
 16 note, bond, or other obligation secured by the trust
 17 indenture or against any other person obligated on the note,
 18 bond, or other obligation."

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 511

INTRODUCED BY MERCER, HANNAH, BARDANOUVE,

PINSONEAULT, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE SMALL TRACT FINANCING ACT OF MONTANA; PROHIBITING A DEFICIENCY JUDGMENT ON RESIDENTIAL PROPERTY, WHETHER FORECLOSED BY ADVERTISEMENT AND SALE OR BY JUDICIAL PROCEEDINGS; PROVIDING THAT A TRUST INDENTURE ON REAL PROPERTY EXCEEDING 15 ACRES IS INVALID FOR ALL PURPOSES; REQUIRING THAT A COPY OF THE PROMISSORY NOTE BE ATTACHED TO A TRUST INDENTURE WHEN IT IS RECORDED; AND AMENDING SECTIONS 71-1-303, 71-1-304, AND 71-1-317, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 71-1-303, MCA, is amended to read:

"71-1-303. Definitions. As used in this part, unless the context requires otherwise the following definitions apply:

(1) "Beneficiary" means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given or his successor in interest, and who ~~shall~~ may not be the trustee.

(2) "Commercial real property" means real property

other than residential real property.

~~(2)~~(3) "Fifteen acres" means 15 acres of land.

~~(3)~~(4) "Grantor" means the person conveying real property by a trust indenture as security for the performance of an obligation.

(5) "Residential real property" means real property that is a residential dwelling for four or fewer families.

~~(4)~~(6) "Trust indenture" means an indenture executed in conformity with this part and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.

~~(5)~~(7) "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture or his successor in interest."

Section 2. Section 71-1-304, MCA, is amended to read:

"71-1-304. Trust indentures authorized -- power of sale for breach in trustee -- copy of promissory note attached to trust indenture when recorded. (1) Transfers in trust of any interest in real property of an area not exceeding 15 acres may be made to secure the performance of an obligation of a grantor or any other person named in the indenture to a beneficiary provided except that it ~~shall be~~ is unlawful to substitute a trust indenture for any mortgage in existence on March 5, 1963.

(2) ~~Where-any~~ If a transfer in trust of any interest in real property is hereafter made to secure the performance of such an obligation, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such the transfer is security.

(3) A trust indenture executed in conformity with this part may be foreclosed by advertisement and sale in the manner ~~hereinafter~~ provided in this part or, at the option of the beneficiary, by judicial procedure as provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without ~~an~~ express provision ~~therefor~~ for that power contained in the trust indenture.

(4) ~~(a) Where-the~~ IF a trust indenture states that the real property involved does not exceed 15 acres, such the statement shall--be is binding upon all parties and conclusive as to compliance with the provisions of this part relative to the power to make a transfer, trust, and power of sale.

(b) A transfer in trust of an estate in real property that exceeds 15 acres is invalid for all purposes.

(5) A copy of the promissory note underlying the trust indenture must be attached to the trust indenture when it is recorded."

Section 3. Section 71-1-317, MCA, is amended to read:

"71-1-317. Deficiency judgment not allowed. (1) When
If a trust indenture executed in conformity with this part
for an estate in residential real property is foreclosed,
whether by advertisement and sale, or by judicial procedure
for the foreclosure of a mortgage, no other or further
action, suit, or proceedings shall may be taken or judgment
entered for any deficiency against the grantor or his
surety, guarantor, or successor in interest, if any, on the
note, bond, or other obligation secured by the trust
indenture or against any other person obligated on such the
note, bond, or other obligation.

(2) If a trust indenture executed in conformity with this part for an estate in commercial real property is foreclosed by advertisement and sale, no other or further action, suit, or proceedings may be taken or judgment entered for any deficiency against the grantor or his surety, guarantor, or successor in interest, if any, on the note, bond, or other obligation secured by the trust indenture or against any other person obligated on the note, bond, or other obligation."

NEW SECTION. SECTION 4. APPLICABILITY. [THIS ACT]
APPLIES TO TRUST INDENTURES ENTERED INTO ON OR AFTER [THE
EFFECTIVE DATE OF THIS ACT].

-End-

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(2) If a trust indenture executed in conformity with this part for an estate in commercial real property is foreclosed by advertisement and sale, no other or further action, suit, or proceedings may be taken or judgment entered for any deficiency against the grantor or his surety, guarantor, or successor in interest, if any, on the note, bond, or other obligation secured by the trust indenture or against any other person obligated on the note, bond, or other obligation."

NEW SECTION. SECTION 4. APPLICABILITY. [THIS ACT] APPLIES TO TRUST INDENTURES ENTERED INTO ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT].

-End-