

SENATE BILL 313

Introduced by Mazurek

2/02	Introduced
2/02	Referred to Business & Industry
2/14	Hearing
2/17	Committee Report--Bill Passed as Amended
2/20	2nd Reading Passed as Amended
2/21	3rd Reading Passed

Transmitted to House

2/22	Referred to Business & Economic Development
3/08	Hearing
3/14	Committee Report--Bill Concurred
3/28	2nd Reading Not Concurred
3/28	Motion Failed to Reconsider

1 State BILL NO. 313
 2 INTRODUCED BY Freymuth
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING FORECLOSURE
 5 PROCEDURES UNDER THE SMALL TRACT FINANCING ACT OF MONTANA
 6 AND OTHER MORTGAGE LAWS; PROVIDING A REMEDY FOR WASTE OF
 7 ENCUMBERED REAL PROPERTY; DEFINING CIRCUMSTANCES UNDER WHICH
 8 DEFICIENCY JUDGMENTS CAN BE OBTAINED ON RESIDENTIAL AND
 9 NONRESIDENTIAL PROPERTIES; AND AMENDING SECTIONS 71-1-106,
 10 71-1-222, 71-1-303, AND 71-1-317, MCA."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 NEW SECTION. **Section 1.** Nonresidential and
 14 residential property defined. For the purposes of 71-1-222
 15 and 71-1-317, the following definitions apply:

16 (1) "Nonresidential property" means all real property
 17 not included in subsection (2) of this section.

18 (2) "Residential property" means property that, at the
 19 time the trust indenture is executed or within 60 days
 20 thereafter, is the principal place of residence of the
 21 grantor. The term includes but is not limited to:

22 (a) a single-family residence or a condominium as
 23 defined in Title 70, chapter 23;

24 (b) a duplex, one unit of which is the principal place
 25 of residence of the grantor; or

1 (c) a mobile home as defined in 61-4-109 or a trailer
 2 if the mobile home or trailer is described in the trust
 3 indenture and is placed on or affixed to the real property
 4 that is the subject of the trust indenture.

5 **Section 2.** Section 71-1-106, MCA, is amended to read:

6 "71-1-106. Waste prohibited -- additional remedy. (1)
 7 No A person whose interest is subject to the lien of a
 8 mortgage or the beneficial interest of a trust indenture may
 9 do not perform any act which that will substantially impair
 10 the mortgagee's security or the beneficiary's interest in
 11 the trust indenture.

12 (2) For purposes of this section, "substantial
 13 impairment" includes but is not limited to the mortgagor's
 14 or grantor's:

15 (a) actions or omissions causing waste or significant
 16 deterioration of the physical condition of the property; or

17 (b) failure to abide by any other covenant or
 18 obligation of the mortgage or trust indenture if that
 19 failure poses an immediate threat to the value of the
 20 mortgage security or trust indenture interest.

21 (3) In addition to any remedies provided in 71-1-222
 22 and 71-1-317, the holder of a mortgage of real property or
 23 the beneficiary of a trust indenture may maintain an
 24 independent action to recover damages for violation of this
 25 section. An action under this section may be filed at the

same time as or subsequent to any judicial or nonjudicial proceeding brought by a mortgagee, trustee, or beneficiary to foreclose or recover the interest in the real property involved."

Section 3. Section 71-1-222, MCA, is amended to read:

"71-1-222. Proceedings in foreclosure suits. (1) There Except as provided in 71-1-106 and subsections (4) and (5) of this section, there is but one action for the recovery of debt or the enforcement of any right secured by mortgage upon real estate, which action must be in accordance with the provisions of this part. In such action the court may, by its judgment, direct:

(a) a sale of the encumbered property (or so much thereof as may be necessary);

(b) the application of the proceeds of the sale; and

(c) the payment of the costs of the court, the expenses of the sale, and the amount due the plaintiff.

(2) If it appears from the sheriff's return that the proceeds are insufficient and a balance still remains due, judgment can then be docketed for such balance against the defendant or defendants personally liable for the debt, and it becomes a lien upon the real estate of such judgment debtor, as in other cases on which execution may be issued.

(3) No person holding a conveyance from or under the mortgagor of the property mortgaged or having a lien

thereon, which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, need be made a party to such action. The judgment therein rendered and the proceedings therein had are as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action.

(4) When a mortgage or trust indenture is foreclosed, judicially as a mortgage, by power of sale as provided in this part, or by advertisement and sale as provided in 71-1-315, nothing in this chapter precludes the holder of the mortgage or trust indenture from realizing other collateral pursuant to a security agreement or other consensual or nonconsensual security interest or lien covering other real or personal property pledged as security for the note, bond, or other obligation secured by the mortgage or trust indenture or under which a sheriff's sale or trustee's sale has been made.

(5) This section does not prohibit an action, suit, or proceeding against a guarantor or surety on the note, bond, or other obligation secured by a mortgage or trust indenture encompassing nonresidential property as defined in [section 1] against a guarantor or surety on the note, bond, or other obligation secured by a mortgage, or against any person other than the mortgagor or grantor obligated on the note,

bond, or other obligation."

Section 4. Section 71-1-303, MCA, is amended to read:

"71-1-303. Definitions. As used in 71-1-106, 71-1-222, and 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 not be the trustee.

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

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

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

Section 5. Section 71-1-317, MCA, is amended to read:

"71-1-317. ~~Deficiency-----judgment-----not-----allowed~~
Restrictions on deficiency judgments. (1) When Except as provided in 71-1-222(4), when a trust indenture executed in

conformity with this part is foreclosed by advertisement and sale pursuant to 71-1-315 or when a trust indenture encompassing only residential property, as defined in [section 1], is foreclosed by judicial procedure as a mortgage, no other or further action, suit, or proceedings shall 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 note, bond, or other obligation.

(2) A mortgage instrument that is given under part 2 of this chapter and that encompasses residential property is governed by the provisions of 71-1-222 and not by the provisions of this part.

(3) When a trust indenture encompassing nonresidential property, as defined in [section 1], executed in conformity with this part, is foreclosed by judicial procedure as a mortgage, the provisions of 71-1-222 apply. Nothing in this section prohibits a deficiency judgment when a trust indenture that is executed in conformity with this part and that encompasses nonresidential property is foreclosed by judicial procedure as a mortgage."

NEW SECTION. Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 71, chapter 1, part 3, and the provisions of Title

LC 0928/01

1 71, chapter 1, part 3, apply to (section 1).

-End-

APPROVED BY COMM. ON
BUSINESS & INDUSTRY

SENATE BILL NO. 313

INTRODUCED BY MAZUREK

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING FORECLOSURE PROCEDURES UNDER THE SMALL TRACT FINANCING ACT OF MONTANA AND OTHER MORTGAGE LAWS; PROVIDING A REMEDY FOR WASTE OF ENCUMBERED REAL PROPERTY; DEFINING CIRCUMSTANCES UNDER WHICH DEFICIENCY JUDGMENTS CAN BE OBTAINED ON RESIDENTIAL AND NONRESIDENTIAL PROPERTIES; AND AMENDING SECTIONS 71-1-106, 71-1-222, 71-1-303, AND 71-1-317, MCA."

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

NEW SECTION. **Section 1.** Nonresidential and residential property defined. For the purposes of 71-1-222 and 71-1-317, the following definitions apply:

(1) "Nonresidential property" means all real property not included in subsection (2) of this section.

(2) "Residential property" means property that, at the time the trust indenture is executed or within 60 days thereafter, is the principal place of residence of the grantor. The term ~~includes-but~~ is not limited to:

(a) a single-family residence or a SINGLE UNIT OF A condominium as defined in Title 70, chapter 23;

(b) a duplex, one unit of which is the principal place of residence of the grantor; or

(c) a mobile home as defined in 61-4-309 or a trailer if the mobile home or trailer is described in the trust indenture and is placed on or affixed to the real property that is the subject of the trust indenture.

Section 2. Section 71-1-106, MCA, is amended to read:

"71-1-106. Waste prohibited -- additional remedy. (1) No A person whose interest is subject to the lien of a mortgage or the beneficial interest of a trust indenture may do not perform any act which that will substantially impair the mortgagee's security or the beneficiary's interest in the trust indenture.

(2) For purposes of this section, "substantial impairment" includes but is not limited to the mortgagor's or grantor's:

(a) actions or omissions causing waste or significant deterioration of the physical condition of the property; or

(b) failure to abide by any other covenant or obligation of the mortgage or trust indenture if that failure poses an immediate threat to the value of the mortgage security or trust indenture interest.

(3) In addition to any remedies provided in 71-1-222 and 71-1-317, the holder of a mortgage of real property or the beneficiary of a trust indenture may maintain an independent action to recover damages for violation of this section. An action under this section may be filed at the

same time as or subsequent to any judicial or nonjudicial proceeding brought by a mortgagee, trustee, or beneficiary to foreclose or recover the interest in the real property involved."

Section 3. Section 71-1-222, MCA, is amended to read:

"71-1-222. Proceedings in foreclosure suits. (1) There Except as provided in 71-1-106 and subsections (4) and (5) of this section, there is but one action for the recovery of debt or the enforcement of any right secured by mortgage upon real estate, which action must be in accordance with the provisions of this part. In such action the court may, by its judgment, direct:

(a) a sale of the encumbered property (or so much thereof as may be necessary);

(b) the application of the proceeds of the sale; and

(c) the payment of the costs of the court, the expenses of the sale, and the amount due the plaintiff.

(2) If it appears from the sheriff's return that the proceeds are insufficient and a balance still remains due, judgment can then be docketed for such balance against the defendant or defendants personally liable for the debt, and it becomes a lien upon the real estate of such judgment debtor, as in other cases on which execution may be issued.

(3) No person holding a conveyance from or under the mortgagor of the property mortgaged or having a lien

thereon, which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, need be made a party to such action. The judgment therein rendered and the proceedings therein had are as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action.

(4) When a mortgage or trust indenture is foreclosed, judicially as a mortgage, by power of sale as provided in this part, or by advertisement and sale as provided in 71-1-315, nothing in this chapter precludes the holder of the mortgage or trust indenture from realizing other collateral pursuant to a security agreement or other consensual or nonconsensual security interest or lien covering other real or personal property pledged as security for the note, bond, or other obligation secured by the mortgage or trust indenture or under which a sheriff's sale or trustee's sale has been made.

(5) This section does not prohibit an action, suit, or proceeding against a guarantor or surety on the note, bond, or other obligation secured by a mortgage or trust indenture encompassing nonresidential property as defined in [section 1] against a guarantor or surety on the note, bond, or other obligation secured by a mortgage, or against any person other than the mortgagor or grantor obligated on the note,

1 bond, or other obligation."

2 **Section 4.** Section 71-1-303, MCA, is amended to read:

3 "71-1-303. **Definitions.** As used in 71-1-106, 71-1-222,
4 and this part, unless the context requires otherwise the
5 following definitions apply:

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

10 (2) "Fifteen acres" means 15 acres of land.

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

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

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

22 **Section 5.** Section 71-1-317, MCA, is amended to read:

23 "71-1-317. ~~Deficiency-----judgment-----not-----allowed~~
24 Restrictions on deficiency judgments. (1) When Except as
25 provided in 71-1-222(4), when a trust indenture executed in

1 conformity with this part is foreclosed by advertisement and
2 sale pursuant to 71-1-315 or when a trust indenture
3 encompassing only residential property, as defined in
4 [section 1], is foreclosed by judicial procedure as a
5 mortgage, no other or further action, suit, or proceedings
6 shall be taken or judgment entered for any deficiency
7 against the grantor or his surety, guarantor, or successor
8 in interest, if any, on the note, bond, or other obligation
9 secured by the trust indenture or against any other person
10 obligated on such note, bond, or other obligation.

11 (2) A mortgage instrument that is given under part 2
12 of this chapter and that encompasses residential property is
13 governed by the provisions of 71-1-222 and not by the
14 provisions of this part.

15 (3) When a trust indenture encompassing nonresidential
16 property, as defined in [section 1], executed in conformity
17 with this part, is foreclosed by judicial procedure as a
18 mortgage, the provisions of 71-1-222 apply. Nothing in this
19 section prohibits a deficiency judgment when a trust
20 indenture that is executed in conformity with this part and
21 that encompasses nonresidential property is foreclosed by
22 judicial procedure as a mortgage."

23 **NEW SECTION. Section 6.** Codification instruction.
24 [Section 1] is intended to be codified as an integral part
25 of Title 71, chapter 1, part 3, and the provisions of Title

SB 0313/02

1 71, chapter 1, part 3, apply to [section 1].

-End-

SENATE BILL NO. 313

INTRODUCED BY MAZUREK

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING FORECLOSURE PROCEDURES UNDER THE SMALL TRACT FINANCING ACT OF MONTANA AND OTHER MORTGAGE LAWS; PROVIDING A REMEDY FOR WASTE OF ENCUMBERED REAL PROPERTY; DEFINING CIRCUMSTANCES UNDER WHICH DEFICIENCY JUDGMENTS CAN BE OBTAINED ON RESIDENTIAL AND NONRESIDENTIAL PROPERTIES; AND AMENDING SECTIONS 71-1-106, 71-1-222, 71-1-303, AND 71-1-317, MCA."

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

NEW SECTION. Section 1. Nonresidential and residential property defined. For the purposes of 71-1-222 and 71-1-317, the following definitions apply:

(1) "Nonresidential property" means all real property not included in subsection (2) of this section.

(2) "Residential property" means property that, at the time the trust indenture is executed or within 60 days thereafter, is the principal place of residence of the grantor. The term ~~includes-but~~ is not limited to:

(a) a single-family residence or a SINGLE UNIT OF A condominium as defined in Title 70, chapter 23;

(b) a duplex, one unit of which is the principal place of residence of the grantor; or

(c) a mobile home as defined in 61-4-309 or a trailer if the mobile home or trailer is described in the trust indenture and is placed on or affixed to the real property that is the subject of the trust indenture.

Section 2. Section 71-1-106, MCA, is amended to read:

"71-1-106. Waste prohibited -- additional remedy. (1) No A person whose interest is subject to the lien of a mortgage or the beneficial interest of a trust indenture may do not perform any act which that will substantially impair the mortgagee's security or the beneficiary's interest in the trust indenture.

(2) For purposes of this section, "substantial impairment" includes but is not limited to the mortgagor's or grantor's:

(a) actions or omissions causing waste or significant deterioration of the physical condition of the property; or

(b) failure to abide by any other covenant or obligation of the mortgage or trust indenture if that failure poses an immediate threat to the value of the mortgage security or trust indenture interest.

(3) In addition to any remedies provided in 71-1-222 and 71-1-317, the holder of a mortgage of real property or the beneficiary of a trust indenture may maintain an independent action to recover damages for violation of this section. An action under this section may be filed at the

1 same time as or subsequent to any judicial or nonjudicial
 2 proceeding brought by a mortgagee, trustee, or beneficiary
 3 to foreclose or recover the interest in the real property
 4 involved."

5 **Section 3.** Section 71-1-222, MCA, is amended to read:

6 "71-1-222. Proceedings in foreclosure suits. (1) There
 7 Except as provided in 71-1-106 and subsections (4) and (5)
 8 of this section, there is but one action for the recovery of
 9 debt or the enforcement of any right secured by mortgage
 10 upon real estate, which action must be in accordance with
 11 the provisions of this part. In such action the court may,
 12 by its judgment, direct:

13 (a) a sale of the encumbered property (or so much
 14 thereof as may be necessary);

15 (b) the application of the proceeds of the sale; and

16 (c) the payment of the costs of the court, the
 17 expenses of the sale, and the amount due the plaintiff.

18 (2) If it appears from the sheriff's return that the
 19 proceeds are insufficient and a balance still remains due,
 20 judgment can then be docketed for such balance against the
 21 defendant or defendants personally liable for the debt, and
 22 it becomes a lien upon the real estate of such judgment
 23 debtor, as in other cases on which execution may be issued.

24 (3) No person holding a conveyance from or under the
 25 mortgagor of the property mortgaged or having a lien

1 thereon, which conveyance or lien does not appear of record
 2 in the proper office at the time of the commencement of the
 3 action, need be made a party to such action. The judgment
 4 therein rendered and the proceedings therein had are as
 5 conclusive against the party holding such unrecorded
 6 conveyance or lien as if he had been made a party to the
 7 action.

8 (4) When a mortgage or trust indenture is foreclosed,
 9 judicially as a mortgage, by power of sale as provided in
 10 this part, or by advertisement and sale as provided in
 11 71-1-315, nothing in this chapter precludes the holder of
 12 the mortgage or trust indenture from realizing other
 13 collateral pursuant to a security agreement or other
 14 consensual or nonconsensual security interest or lien
 15 covering other real or personal property pledged as security
 16 for the note, bond, or other obligation secured by the
 17 mortgage or trust indenture or under which a sheriff's sale
 18 or trustee's sale has been made.

19 (5) This section does not prohibit an action, suit, or
 20 proceeding against a guarantor or surety on the note, bond,
 21 or other obligation secured by a mortgage or trust indenture
 22 encompassing nonresidential property as defined in (section
 23 1) against a guarantor or surety on the note, bond, or other
 24 obligation secured by a mortgage, or against any person
 25 other than the mortgagor or grantor obligated on the note,

1 bond, or other obligation."

2 **Section 4.** Section 71-1-303, MCA, is amended to read:

3 "71-1-303. Definitions. As used in 71-1-106, 71-1-222,
4 and this part, unless the context requires otherwise the
5 following definitions apply:

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

10 (2) "Fifteen acres" means 15 acres of land.

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

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

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

22 **Section 5.** Section 71-1-317, MCA, is amended to read:

23 "71-1-317. ~~Deficiency-----judgment-----not-----allowed~~
24 Restrictions on deficiency judgments. (1) When Except as
25 provided in 71-1-222(4), when a trust indenture executed in

1 conformity with this part is foreclosed by advertisement and
2 sale pursuant to 71-1-315 or when a trust indenture
3 encompassing only residential property, as defined in
4 [section 1], is foreclosed by judicial procedure as a
5 mortgage, no other or further action, suit, or proceedings
6 shall be taken or judgment entered for any deficiency
7 against the grantor or his surety, guarantor, or successor
8 in interest, if any, on the note, bond, or other obligation
9 secured by the trust indenture or against any other person
10 obligated on such note, bond, or other obligation.

11 (2) A mortgage instrument that is given under part 2
12 of this chapter and that encompasses residential property is
13 governed by the provisions of 71-1-222 and not by the
14 provisions of this part.

15 (3) When a trust indenture encompassing nonresidential
16 property, as defined in [section 1], executed in conformity
17 with this part, is foreclosed by judicial procedure as a
18 mortgage, the provisions of 71-1-222 apply. Nothing in this
19 section prohibits a deficiency judgment when a trust
20 indenture that is executed in conformity with this part and
21 that encompasses nonresidential property is foreclosed by
22 judicial procedure as a mortgage, BUT ONLY IF REPAYMENT OF
23 THE LOAN IS COLLATERALIZED WITH OTHER, NONRESIDENTIAL
24 PROPERTY IN ADDITION TO THE REAL PROPERTY OR ANY INTEREST IN
25 THE REAL PROPERTY THAT IS THE SUBJECT OF THE TRUST

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1 INDENTURE."

2 NEW SECTION. **Section 6.** Codification instruction.

3 [Section 1] is intended to be codified as an integral part
4 of Title 71, chapter 1, part 3, and the provisions of Title
5 71, chapter 1, part 3, apply to [section 1].

-End-