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HOUSE BILL 518

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Zachary J. Cook

AN ACT

RELATING TO PROPERTY; CHANGING UNDER CERTAIN CIRCUMSTANCES THE PERIOD IN WHICH THE POWER OF SALE OF TRUST REAL ESTATE IS EXERCISABLE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 48-10-10 NMSA 1978 (being Laws 1987, Chapter 61, Section 10, as amended) is amended to read:

"48-10-10. SALE OF TRUST REAL ESTATE--POWER OF TRUSTEE--FORECLOSURE OF DEED OF TRUST.--

A. By virtue of the trustee's position, a power of sale is conferred upon the trustee of a deed of trust under which the trust real estate may be sold as provided in the Deed of Trust Act after a breach or default in performance of the contract for which the trust real estate is granted or mortgaged as security or a breach or default in performance of

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1 the deed of trust. Except as specifically provided in the Deed
2 of Trust Act, the trustee shall not delegate the duties of the
3 trustee as provided in the Deed of Trust Act. At the option of
4 the beneficiary, a deed of trust may be foreclosed in the
5 manner provided by law for the foreclosure of mortgages on real
6 estate. Either the beneficiary or the trustee shall constitute
7 the proper and complete party plaintiff in any action to
8 foreclose a deed of trust.

9 B. The trustee or beneficiary may commence an
10 action to foreclose a deed of trust at any time before the
11 trust real estate has been sold as provided in the power of
12 sale. A sale of trust real estate as provided in a power of
13 sale in a deed of trust shall not be held after an action to
14 foreclose the deed of trust has been commenced unless the
15 foreclosure action has been dismissed.

16 C. The power of sale of trust real estate conferred
17 upon ~~[the]~~ a trustee ~~[shall not be exercised before the~~
18 ~~expiration of]~~ is exercisable only after ninety days ~~[from]~~
19 following the recording of the notice of the sale. However, if
20 the sale is of trust real estate that secures a commercial or
21 industrial loan that is evidenced by a promissory note or other
22 contract whose original principal amount or other value is
23 greater than one million dollars (\$1,000,000), then the power
24 of sale is exercisable only after the time allowed by the deed
25 of trust encumbering the real estate, but not less than thirty

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1 days following the recording of the notice of the sale.

2 D. The trustee need only be joined as a party in
3 separate civil actions pertaining to a breach of an obligation
4 of a trustee as provided in the Deed of Trust Act or as
5 provided in the deed of trust. Any order of the court entered
6 against the beneficiary is binding upon the trustee with
7 respect to any actions that the trustee is authorized to take
8 by the deed of trust or by the Deed of Trust Act. If the
9 trustee is joined as a party in any other separate civil
10 action, other than an action in which the trustee is an
11 indispensable or necessary party, the trustee is entitled to be
12 immediately dismissed and to recover the costs and reasonable
13 attorney fees actually incurred by the trustee from the person
14 joining the trustee and from the beneficiary, jointly and
15 severally.

16 E. As used in this section, "commercial or
17 industrial loan" means a loan other than a loan:

18 (1) whose primary purpose is the purchase or
19 finance of a dwelling located in the state; and

20 (2) that is primarily secured by a deed of
21 trust encumbering the dwelling and related trust real estate.

22 F. The determination of whether a loan is a
23 commercial or industrial loan shall be made at the time the
24 loan is made on the basis of information obtained during the
25 loan application process."

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SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.