

SENATE BILL NO. 386

INTRODUCED BY M. NOLAND

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO REAL ESTATE TRANSACTIONS; REVISING SPECIFIC PERFORMANCE LAWS RELATING TO CERTAIN CONTRACTS; REVISING ESCROW AND MORTGAGE LAWS; REMOVING AN EXEMPTION FOR ATTORNEYS IN THE ESCROW ACT; PROVIDING THAT UNAUTHORIZED BUSINESS PRACTICES INCLUDE REAL ESTATE TITLES IN CERTAIN INSTANCES; INCREASING FINES; AMENDING THE SMALL TRACT FINANCING ACT TO REQUIRE AN ACCOUNTING TO THE GRANTOR AFTER A TRUSTEE'S SALE; AND AMENDING SECTIONS 27-1-411, 32-7-103, 32-7-121, 32-7-124, 71-1-212, AND 71-1-316, MCA."

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

Section 1. Section 27-1-411, MCA, is amended to read:

"27-1-411. When specific performance of an obligation may be compelled. (1) Except as otherwise provided in this part and Title 28, chapter 2, parts 16 and 17, the specific performance of an obligation may be compelled when:

(1)(a) the act to be done is in the performance, wholly or partly, of an express trust;

(2)(b) the act to be done is such that pecuniary compensation for its nonperformance would not afford adequate relief;

(c) the act to be done is by a person pursuant to a settlement agreement;

(3)(d) it would be extremely difficult to ascertain the actual damage caused by the nonperformance of the act to be done; or

(4)(e) it has been expressly agreed in writing, between the parties to the contract, that specific performance thereof of an obligation may be required by either party or that damages shall may not be considered adequate relief.

(2) Failure to act as set forth in subsection (1)(c) constitutes negligence, including professional negligence, where applicable."

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Section 2. Section 32-7-103, MCA, is amended to read:

"32-7-103. Exemptions. (1) The provisions of this part do not apply to the following:

~~(a)~~ a person licensed by this state pursuant to Title 37, chapter 61, as an attorney at law who is not actively engaged in the escrow business;

~~(b)~~(a) a person licensed by this state pursuant to Title 37, chapter 50, as a public accountant who is not actively engaged in the escrow business;

~~(c)~~(b) a person whose principal business is that of preparing abstracts or making searches of title that are used as a basis for the issuance of any title insurance policy by a company doing business under the laws of this state relating to insurance companies and the person is regulated by the commissioner of insurance;

~~(d)~~(c) a person licensed pursuant to Title 32, chapter 9, part 1, as a mortgage broker, mortgage lender, or mortgage servicer, except that a licensed mortgage broker, mortgage lender, or mortgage servicer that provides escrow services in relation to contracts, agreements, or transactions besides residential mortgage loan agreements also must be licensed under this part as an escrow business;

~~(e)~~(d) a financial institution, as defined in 32-6-103, that has its escrow accounts regularly audited or examined. The financial institution shall supply a copy of the most recently prepared audit or examination to the department upon the department's request.

~~(f)~~(e) except as provided in subsection (2), any broker licensed by the Montana board of realty regulation if the broker is performing an act in the course of or incidental to a single real estate transaction for which a real estate license is required;

~~(g)~~(f) any person furnishing escrow services under the order of a court; and

~~(h)~~(g) a loan closer if the loan closer:

(i) is employed by an exempt financial institution; or

(ii) is an independent contractor acting only as a courier and who does not take possession of the funds for deposit or subsequent disbursement.

(2) A trust account of a broker licensed by the Montana board of realty regulation is not an escrow account within the meaning of this part."

1 **Section 3.** Section 32-7-121, MCA, is amended to read:

2 **"32-7-121. Unauthorized business practices -- penalty.** Unauthorized business practices of escrow
3 businesses include but are not limited to the following:

4 (1) issuing, circulating, making use of, or publishing, by any means of communication, an
5 advertisement indicating that a person is in the escrow business if that person is not a licensed escrow
6 business;

7 (2) soliciting or accepting an escrow instruction or amended or supplemental escrow instruction
8 containing any blank to be filled in after the signing or initialing of the escrow instruction or permitting any
9 person to make any addition to, deletion from, or alteration of an escrow instruction or amended or
10 supplemental escrow instruction unless the addition, deletion, or alteration is signed or initialed by the affected
11 party who signed or initialed the escrow instruction or amended or supplemental escrow instruction prior to the
12 addition, deletion, or alteration;

13 (3) failing to carry out the escrow transactions pursuant to the written escrow instructions unless
14 amended by the written agreement of all parties to the escrow agreement or their assigns;

15 (4) accepting any escrow transaction that requires or has required the prepayment, deduction, or
16 withholding of any sum to cover payments on the indebtedness or any prior encumbrance if the payments are
17 not due and payable to the mortgagee or obligee at the time the escrow is established. However, payments
18 may be made on property taxes for the current year or for the next annual premium on hazard insurance.

19 (5) refusing to allow parties to an escrow transaction or designated agents of those parties access
20 to the records of the escrow transaction; ~~and~~

21 (6) failing to promptly distribute funds pursuant to escrow instructions; ~~and~~

22 (7) failing to place a title on real property into escrow within 30 days when the title is subject to
23 litigation or a settlement agreement."

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25 **Section 4.** Section 32-7-124, MCA, is amended to read:

26 **"32-7-124. Hearings -- penalties.** (1) The department may impose a civil penalty not to exceed
27 ~~\$1,000~~ \$10,000 for each violation if the department finds, after providing a 14-day written notice of alleged
28 violations and opportunity for administrative hearing, that any person, any licensee, or any officer, agent,

1 employee, or representative of the person or licensee, whether licensed or unlicensed, has:

2 (a) violated any of the provisions of this part;

3 (b) failed to comply with the rules or orders promulgated by the department;

4 (c) failed or refused to make required reports to the department;

5 (d) furnished false information to the department; or

6 (e) operated without a required license.

7 (2) The department may issue an order requiring restitution to parties and reimbursement of the
8 department's costs of bringing an administrative action. In addition, the department may issue an order
9 revoking, conditioning, or suspending the right of the licensee, directly or through another, to engage in escrow
10 business activities in this state.

11 (3) All hearing schedules and orders must be mailed to the person or licensee by certified mail to
12 the address for which the license was issued or, in the case of an unlicensed business, to the last-known
13 address of record.

14 (4) For purposes of this part, the department is considered to have complied with the requirements
15 of law concerning service of process by sending by common courier with tracking capability any notice required
16 under this part, postage prepaid and addressed to:

17 (a) the last-known address of the licensee's registered agent for service of process on file with the
18 department;

19 (b) the last-known address of the licensee on file with the department for an in-state licensee; or

20 (c) the last-known address of an unlicensed person.

21 (5) In a judicial action, suit, or proceeding arising under this part or any administrative rule adopted
22 pursuant to this part between the department and a licensee who does not maintain a physical office in this
23 state, venue is in the district court of Lewis and Clark County.

24 (6) The provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to
25 a contested case brought under this part."

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27 **Section 5.** Section 71-1-212, MCA, is amended to read:

28 **"71-1-212. Penalties for failure to give certificate of discharge or release after full performance.**

1 After the full performance of the conditions of a mortgage and whether before or after a breach of the mortgage,
2 a mortgagee or the personal representative or assignee of the mortgagee who refuses or neglects to execute,
3 acknowledge, and deliver to the mortgagor a certificate of discharge or release of the mortgage within 90 days
4 after a request for one is liable to the mortgagor or the mortgagor's heirs or assigns in the sum of ~~\$500~~ \$10,000
5 and all actual damages resulting from the neglect or refusal."
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7 **Section 6.** Section 71-1-316, MCA, is amended to read:

8 **"71-1-316. Disposition of proceeds of sale -- notice -- surplus funds -- attorney fees.** (1) (a) The
9 trustee shall apply the proceeds of the trustee's sale as follows:

10 (i) to the costs and expenses of exercising the power of sale and of the sale, including reasonable
11 trustee's fees and attorney fees;

12 (ii) to the obligation secured by the trust indenture that is the subject of the sale.

13 (b) The trustee shall mail notice of the amount of the successful bid at the sale and an accounting
14 of the disposition of the proceeds of the sale to the grantor at the grantor's address as set forth in the trust
15 indenture or, if the grantor's address is not set forth in the trust indenture, at the grantor's last-known address.

16 ~~(b)~~(c) Any surplus funds must be deposited with the clerk and recorder of the county in which the sale
17 took place, along with written notice of the amount of the surplus funds and a copy of the notice of the trustee's
18 sale. The trustee shall mail copies of the notice of the surplus funds, the notice of the trustee's sale, and the
19 affidavit of mailing required under 71-1-315(2) to each party who was sent notice under 71-1-315.

20 (2) Upon the deposit of the surplus funds, the trustee is discharged from all further responsibility
21 for the surplus funds. The clerk and recorder shall deposit the surplus funds with the county treasurer.

22 (3) (a) A party seeking disbursement of the surplus funds shall file a petition to request an order for
23 disbursement in the district court for the county in which the surplus funds are deposited. The district court shall
24 determine the order of priority of any interests in or liens or claims of liens against the surplus and shall issue a
25 written order directing the county treasurer to disburse the surplus funds in accordance with the order.

26 (b) A party with an interest, lien, or claim that was junior to the interest that was the subject of the
27 sale has an interest in the surplus funds in the same order of priority that existed in the property at the time of
28 the sale.

