

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 76

BY BUSINESS COMMITTEE

AN ACT

RELATING TO TRUST DEEDS; AMENDING SECTION 45-1510, IDAHO CODE, TO REVISE A  
PROVISION RELATING TO AN INVALID TRUSTEE'S SALE AND TO MAKE A TECHNICAL  
CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 45-1510, Idaho Code, be, and the same is hereby  
amended to read as follows:

45-1510. TRUSTEE'S DEED -- RECORDING -- EFFECT. (1) When the trustee's  
deed is recorded in the deed records of the county where the property de-  
scribed in the deed is located, the recitals contained in the deed and in the  
affidavits required under section 45-1506, ~~subsection (7)~~, Idaho Code, shall  
be prima facie evidence in any court of the truth of the recitals and the af-  
fidavits. However, the recitals and affidavits are conclusive in favor of a  
purchaser in good faith for value or any successor in interest thereof. For  
purposes of this section, the trustee's deed shall be deemed effective as of  
the date and time on which the sale was held if such deed is recorded within  
fifteen (15) days after the date of sale or the first business day following  
the fifteenth day if the county recorder of the county in which the property  
is located is closed on the fifteenth day.

(2) Where a trustee's sale held pursuant to section 45-1506, Idaho  
Code, is invalid by reason of automatic stay provisions of the U.S. bank-  
ruptcy code, or a stay order issued by any court of competent jurisdiction  
or otherwise, recordation of a notice of rescission of the trustee's deed  
shall restore the condition of record title to the real property described  
in the trustee's deed and the existence and priority of all lienholders to  
the status quo prior to the ~~recordation of the trustee's deed upon~~ sale. Only  
the trustee or beneficiary who caused the trustee's deed to be recorded, or  
his/its successor in interest, may record a notice of rescission. The notice  
of rescission shall accurately identify the deed of trust, the recording  
instrument numbers used by the county recorder or the book and pages at which  
the trustee's deed and deed of trust are recorded, the names of all grantors,  
trustors and beneficiaries, the location of the property subject to the deed  
of trust and the reason for rescission. Such notice of rescission shall be in  
substantially the following form:

NOTICE OF RESCISSION OF TRUSTEE'S DEED UPON SALE

This Notice of Rescission is made this day .... with respect to the  
following:

1. THAT .... is the duly appointed Trustee under the certain Deed  
of Trust dated .... and recorded .... as instrument number .... in

1 book . . . . , page . . . . , wherein . . . . and . . . . are named as Trustors,  
 2 . . . . is named as Trustee, . . . . is named as Beneficiary;  
 3 2. THAT . . . . is the Beneficiary of record under said Deed of Trust;  
 4 3. THAT THE DEED OF TRUST encumbers real property located in the  
 5 County of . . . . , State of Idaho, described as follows:  
 6 Property Description  
 7 4. THAT BY VIRTUE OF a default under the terms of the Deed of Trust,  
 8 the Beneficiary did declare a default, as set forth in a Notice of  
 9 Default recorded . . . . as instrument number . . . . in book . . . . , page  
 10 . . . . , in the office of the Recorder of . . . . County, State of Idaho;  
 11 5. THAT THE TRUSTEE has been informed by the Beneficiary that the  
 12 Beneficiary desires to rescind the Trustee's Deed recorded upon the  
 13 foreclosure sale that was conducted in error due to a failure to  
 14 communicate timely, notice of conditions that would have warranted  
 15 a cancellation of the foreclosure that did occur on . . . . ;  
 16 6. THAT THE EXPRESS PURPOSE of this Notice of Rescission is to re-  
 17 turn the priority and existence of all title and lienholders to the  
 18 status quo ante as existed prior to the Trustee's sale.

19 NOW THEREFORE, THE UNDERSIGNED HEREBY RESCINDS THE TRUSTEE'S SALE  
 20 AND PURPORTED TRUSTEE'S DEED UPON SALE AND HEREBY ADVISES ALL PER-  
 21 SONS THAT THE TRUSTEE'S DEED UPON SALE DATED . . . . AND RECORDED . . . .  
 22 AS . . . . INSTRUMENT NUMBER . . . . IN THE COUNTY OF . . . . , STATE OF  
 23 IDAHO, FROM . . . . (TRUSTEE) TO . . . . (GRANTEE) IS HEREBY RESCINDED,  
 24 AND IS AND SHALL BE OF NO FORCE AND EFFECT WHATSOEVER. THE DEED OF  
 25 TRUST DATED . . . . , RECORDED . . . . AS INSTRUMENT NUMBER . . . . IN BOOK  
 26 . . . . , PAGE . . . . , IS IN FULL FORCE AND EFFECT.

27 .....  
 28 Authorized Signatory

29 Acknowledgment