

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

771S0504

SENATE BILL NO. 110

Introduced by: Senators Rave, Buhl, Johnston, Nygaard, and Rampelberg and
Representatives Novstrup (David), Hawley, Jones, Solum, and Willadsen

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to collateral real estate
2 mortgages.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 44-8-26 be amended to read as follows:

5 44-8-26. A mortgage which contains the following statement in printed or typed capital
6 letters: THE PARTIES AGREE THAT THIS MORTGAGE CONSTITUTES A
7 COLLATERAL REAL ESTATE MORTGAGE PURSUANT TO SDCL 44-8-26, is subject to
8 the provisions of this section. A mortgage executed pursuant to this section shall be entitled in
9 printed or typed capital letters: MORTGAGE--COLLATERAL REAL ESTATE MORTGAGE.

10 A mortgage made pursuant to this section shall, notwithstanding the fact that from time to time
11 during the term thereof no indebtedness is due from the mortgagor to the mortgagee, constitute
12 a continuing lien against the real property covered thereby for the amount stated in the
13 mortgage. Any sums not exceeding the face amount of the mortgage, together with interest
14 thereon as provided in the instrument secured by the mortgage, advanced by the mortgagee prior
15 to or during the term of the mortgage have a lien priority as of the date the mortgage was filed.



1 At any time the indebtedness due the mortgagee is zero, the mortgagor may demand in writing
2 that the mortgage be satisfied, and the mortgagee shall within ten days thereafter execute and
3 record a satisfaction thereof. Collateral real estate mortgages may be used to secure commercial,
4 agricultural or consumer loans or lines of credit including, but not limited to, revolving notes
5 and credits and over-draft checking plans.

6 A filed collateral real estate mortgage is effective for a period of five years from the date of
7 filing and thereafter for a period of sixty days. No sums advanced subsequent to the end of the
8 sixty-day period, save and except sums advanced for protection of the real estate collateral and
9 for real property taxes or insurance, are secured by the collateral real estate mortgage unless an
10 addendum to the collateral real estate mortgage extending its effective date is filed prior to the
11 end of the sixty-day period. An addendum continuing the effectiveness of the collateral real
12 estate mortgage may be filed by the mortgagee within six months before and sixty days after the
13 expiration of the five-year effective date.

14 An addendum to a collateral real estate mortgage for the sole purpose of continuing the
15 effectiveness of its lien need be signed only by the mortgagee. Upon the timely filing of such
16 an addendum to a collateral real estate mortgage, the effectiveness of the collateral real estate
17 mortgage will be continued for five years ~~after the stated maturity date in those instances where~~
18 ~~the original collateral real estate mortgage provided a maturity date or for five years after the~~
19 ~~expiration of the five-year period whereupon it shall lapse in the same manner and sixty days~~
20 after the addendum filing date. Thereafter, the addendum shall lose effectiveness to secure sums
21 advanced after the sixty day period to the extent as provided above, unless another addendum
22 to the collateral real estate mortgage continuing the effectiveness of its lien is filed prior to ~~such~~
23 ~~lapse~~ the end of the sixty day period. Succeeding addendums to collateral real estate mortgages
24 may be filed in the same manner to continue the effectiveness of the lien of the collateral real

1 estate mortgage.