

STATE OF IDAHO
IDAHO ESCROW ACT



(UNOFFICIAL COPY)

DEPARTMENT OF FINANCE

(Amended through 2010)

IDAHO ESCROW ACT

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CHAPTER 9, TITLE 30, IDAHO CODE

30-901. SHORT TITLE. (1) This chapter shall be known and may be cited as the "Idaho Escrow Act."

(2) It is the intent of the legislature that the escrow industry be supervised and regulated by the department of finance in order to protect the citizens of the state and to provide that the business practices of the escrow industry are fair and orderly, with due regard to the ultimate consumers in this important area of property protection.

30-902. DEFINITIONS. As used in this chapter and in rules promulgated pursuant to this chapter:

(1) "Act" means the "Idaho Escrow Act," chapter 9, title 30, Idaho Code.

(2) "Department" means the Idaho department of finance.

(3) "Director" means the director of the Idaho department of finance.

(4) "Escrow" means any transaction in which any person, for the purpose of effecting the sale, transfer, encumbrance, or lease of real or personal property to another person, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by that third person until the happening of a specified event or the performance of a prescribed condition, when the instrument, money, evidence of title or thing of value is then to be delivered by the third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor, or any agent or employee of any of the latter, pursuant to written instructions.

(5) "Escrow agency" means any person engaged in the business of accepting or receiving escrows for deposit or delivery by any means, including over the internet, or by any other electronic means.

(6) "Escrow agent" means any person engaged in the business of accepting or receiving escrows for deposit or delivery on behalf of an escrow agency.

(7) "License" means a license issued pursuant to this chapter.

(8) "Licensee" means a person holding a valid license as an escrow agency under this chapter.

(9) "Person" means an individual, cooperative, association, company, firm, partnership, corporation, limited liability company, or other legal entity, or the plural thereof, whether or not resident, nonresident or citizen.

30-903. LICENSE REQUIRED. (1) It shall be unlawful for any person to directly or indirectly engage in or carry on, or purport to engage in or carry on, the business of, or act in the capacity of, an escrow agency in or from Idaho without first obtaining a license under this chapter.

(2) The requirements of this chapter shall also apply to any escrow transaction effecting the sale, transfer, encumbrance or lease to another person of any real or personal property located in Idaho.

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30-904. PLACE OF BUSINESS. No licensee under this chapter shall engage in the escrow business at any place of business for which it does not hold a license, nor shall it engage in business under any other name than that on the license. Every escrow agency licensed under this chapter shall maintain a home office as its principal location for the transaction of escrow business. The director may, on application, issue additional branch licenses to the same escrow agency licensee upon compliance with all the provisions of this chapter governing the issuance of a single escrow agency license.

30-905. EXEMPT PERSONS AND TRANSACTIONS. The requirements of this chapter do not apply to:

(1) Any person licensed to practice law in this state while engaged in the performance of his professional duties, except an attorney or law firm actively engaging in a separate business as an escrow agency;

(2) Any person licensed or chartered under the laws of any state or of the United States as a bank, savings and loan association, credit union or industrial loan company as well as wholly-owned subsidiaries and affiliates of such organizations;

(3) Title insurance companies having a valid certificate of authority, and title insurance agents having a valid license as a title insurance agent, issued by the Idaho department of insurance;

(4) Any real estate company, broker or salesperson licensed by and subject to the jurisdiction of the Idaho real estate commission, while performing acts in the course of or incidental to sales or purchases of real or personal property handled or negotiated by such real estate company, broker or salesperson;

(5) Any receiver, trustee in bankruptcy, executor, administrator, guardian or other person acting under the supervision or order of any court of this state or of any federal court;

(6) A person licensed in this state as a certified public accountant while engaged in the performance of his professional duties who is not actively engaged in a separate business as an escrow agency;

(7) Any state or federally chartered nondepository financial institution;

(8) Regulated lenders subject to the requirements of the Idaho credit code, chapters 41 through 46, title 28, Idaho Code, to the extent not engaged in a separate business as an escrow agency;

(9) Agencies of the United States and agencies of this state and their political subdivisions;

(10) Mortgage brokers and mortgage lenders subject to the requirements of the Idaho residential mortgage practices act, chapter 31, title 26, Idaho Code, to the extent not engaged in a separate business as an escrow agency; or

(11) A mortgage company to the extent that such mortgage company is regularly engaged in the business of a mortgage company as defined in the mortgage company act, chapter 28, title 26, Idaho Code.

30-906. EXEMPTION -- BURDEN OF PROOF. In any proceeding or action under this chapter, the burden of proving an exemption from the requirements of this chapter is upon the person claiming the exemption.

30-907. DIRECTOR'S ISSUANCE OR DENIAL OF LICENSE. (1) The director shall receive and act upon all applications for licenses to engage in business as an escrow agency under this chapter. If the director finds that all requirements of statute and rule have been met and all applicable fees paid, and the applicant is not otherwise unqualified for licensure, the director shall issue a license to the applicant.

(2) An application for a license as an escrow agency shall be in writing and filed with the director in such form as is prescribed by the director, shall include such information as the director may reasonably require, and shall be verified on oath by the applicant. Such information shall be updated and filed with the director as necessary to keep the information current. The application for licensure shall be accompanied by an application fee of three hundred fifty dollars (\$350). When an application for licensure is denied or withdrawn, the director shall retain all fees paid by the applicant.

(3) An application for an escrow agency license under this chapter may be denied if the director finds that:

(a) The escrow agency's business was or will be formed for any business other than legitimate escrow services, or proposes to use a name that is misleading or in conflict with the name of an existing licensee;

(b) Any incorporator, officer, director, member, general partner, employee or agent of the escrow agency applicant has been:

(i) Convicted of, or received a withheld judgment for, any felony; or

(ii) Convicted of, or received a withheld judgment for, a misdemeanor involving dishonesty or moral turpitude; or

(iii) Committed any crime or act involving dishonesty, fraud or deceit, which crime or act is substantially related to the qualifications, functions or duties of a person engaged in an escrow business;

(c) There is no natural person possessing a minimum of three (3) years of supervisory experience in relation to an escrow business supervising each escrow agency office;

(d) The applicant or any officer, director, member, general partner, employee or agent of the applicant has demonstrated lack of fitness to transact escrow business;

(e) The applicant has made any false statement of a material fact in the application for a license; or

(f) The applicant, any officer, director, member, general partner or any person owning or controlling, directly or indirectly, ten percent (10%) or more of the outstanding equity securities of the applicant has violated any provision of this chapter or rules promulgated thereunder, or any similar regulatory scheme in this state or in any foreign jurisdiction.

30-908. RENEWAL OF LICENSE. (1) On or before April 30 of each year, every licensee under this chapter shall pay an annual license renewal fee of one hundred fifty dollars (\$150), and shall file with the director a renewal form containing such information as the director may require.

(2) As a condition of renewal, each licensee shall file with the director a statement of its financial condition and status of its escrow transactions as of the preceding December 31. The financial statement must be in a form and contain the information prescribed by the director.

(3) Each license under this chapter shall remain in full force and effect unless the licensee fails to timely satisfy the renewal requirements of this section, or the license is relinquished, suspended or revoked; provided however, branch licenses shall be terminated upon the

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relinquishment or revocation of a home office license. Any licensee may relinquish the license by notifying the director of its relinquishment, but this relinquishment shall not affect the licensee's liability for acts previously committed, and may not occur after the filing of a complaint for revocation or suspension of the license.

(4) Following the failure of a licensee to satisfy the renewal requirements of this section, a person previously licensed as an escrow agency may, for an additional nonrefundable fee of two hundred dollars (\$200), apply for the reinstatement of its previous license provided that he satisfies the renewal requirements of this section no later than the last business day of May immediately following expiration of such license.

30-909. FINANCIAL RESPONSIBILITY -- FIDELITY BOND -- ERRORS AND OMISSIONS POLICY -- SURETY BOND. At the time of filing an application for an escrow agency license, and at the time of any renewal or reinstatement of such license, the applicant or licensee shall provide satisfactory evidence to the director of having obtained the following as evidence of financial responsibility:

(1) A fidelity bond providing coverage in the aggregate amount of two hundred thousand dollars (\$200,000) with a deductible no greater than ten thousand dollars (\$10,000) covering the applicant or licensee, as well as each corporate officer, partner, managing member, escrow agent and employee of the applicant or licensee;

(2) An errors and omissions policy issued to the escrow agency providing coverage in the minimum aggregate amount of fifty thousand dollars (\$50,000) or, alternatively, cash or securities in such amount deposited in a depository approved by the director on condition that they be available for payment of any claim payable under an equivalent errors and omissions policy in such amount; and

(3) A surety bond in an amount as set forth in paragraphs (a) through (f) of this subsection. The surety bond shall be in a form provided by the director and the applicant shall be named as principal. The bond shall be executed by the applicant as obligor and by a company authorized to do a surety business in Idaho. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted thereunder, and shall be liable for reimbursement to all persons who suffer loss by reason of a violation of this chapter or rules adopted thereunder. The surety bond provided shall be in an amount based upon the average month-end balance of the escrow trust accounts of the applicant or licensee for the preceding calendar year, in increments as described in the following subsections:

(a) For average month-end escrow trust account balances of fifty thousand dollars (\$50,000) or less, a surety bond in the amount of twenty thousand dollars (\$20,000) is required;

(b) For average month-end escrow trust account balances of more than fifty thousand dollars (\$50,000) but not more than two hundred fifty thousand dollars (\$250,000), a surety bond in the amount of fifty thousand dollars (\$50,000) is required;

(c) For average month-end escrow trust account balances of more than two hundred fifty thousand dollars (\$250,000) but not more than five hundred thousand dollars (\$500,000), a surety bond in the amount of one hundred thousand dollars (\$100,000) is required;

(d) For average month-end escrow trust account balances of more than five hundred thousand dollars (\$500,000) but not more than seven hundred fifty thousand dollars (\$750,000), a surety bond in the amount of one hundred fifty thousand dollars (\$150,000) is required;

(e) For average month-end escrow trust account balances of more than seven hundred fifty thousand dollars (\$750,000) but not more than one million dollars (\$1,000,000), a surety bond in the amount of two hundred thousand dollars (\$200,000) is required;

(f) For average month-end escrow trust account balances of more than one million dollars (\$1,000,000), a surety bond in the amount of two hundred fifty thousand dollars (\$250,000) is required.

(4) The escrow agency licensee shall place on file with the director the surety bond and proof of its errors and omissions coverage and its fidelity bond, which bonds and insurance coverage shall be continuous during the period of licensure of the licensee whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced or modified, including increases or decreases in the penal sum. The surety upon the bond shall not be liable in an aggregate amount exceeding the penal sum set forth on the face of the bond.

(5) The surety bond shall name as beneficiaries:

(a) The state, for payment of any costs incurred and charges made in connection with any escrow agency's insolvency or default, including costs and charges relating to an examination and receivership of any escrow agency; and

(b) Any person who has a claim against the surety on the bonds based on any default or violation of any duty or obligation of the escrow agency.

(6) In lieu of the bonds required by this section, a certificate of deposit issued by a financial institution authorized to conduct business in Idaho and made payable to the director may be provided to the director in the same principal amount as required for the bonds. The interest on the certificate of deposit shall be payable to the escrow agency licensee. The certificate of deposit shall be maintained at all times during which the licensee is authorized to engage in business as an escrow agency under this chapter, and must provide that it will remain in effect for at least three (3) years following discontinuance of operations unless released earlier by the director.

(7) The director may, in the public interest and for good cause shown, waive or modify any requirements of this section.

30-910. CANCELLATION OF FIDELITY BOND, SURETY BOND, OR BOTH -- NEW BOND REQUIRED. Prior to cancellation of either the fidelity bond or the surety bond required by section 30-909, Idaho Code, or both, the escrow agency licensee shall file with the director satisfactory evidence of a new bond in the appropriate amount with no lapse in coverage from the canceled bond. Failure to do so shall be grounds for the suspension or revocation of the escrow agency's license.

30-911. LIMITATION OF ACTIONS ON BOND. No action may be brought on an escrow agency licensee's bond by any person after the expiration of three (3) years from the time when the act or default complained of becomes known or should have become known.

30-912. TRANSFERABILITY. A license issued under this chapter is not transferable or assignable, and control of a license shall not be acquired through stock purchase or other device without the prior written consent of the director.

30-913. UNLAWFUL ACTS. Any person, except a person exempt under section 30-905, Idaho Code, who engages in activity as an escrow agency without first obtaining a license in

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accordance with this chapter, shall be guilty of a felony. Such person is also subject to a civil penalty in an amount no greater than five thousand dollars (\$5,000) for each violation of this chapter or rule or order thereunder, in addition to other sanctions allowed by law.

30-914. ACCOUNTS TO BE MAINTAINED -- RECORDS OPEN TO INSPECTION -- RETENTION OF RECORDS -- TRUST ACCOUNT -- INTEREST ON ESCROW ACCOUNTS. (1) Each licensee shall maintain sufficient books, accounts and records readily accessible to the department for the department to determine at any time the licensee's financial condition, what duties and responsibilities the licensee has undertaken to perform and whether it is properly performing all such duties, and any other information considered necessary by the director to determine whether the licensee is operating in a safe, competent and lawful manner. The books, records and accounts shall be maintained in accordance with generally accepted accounting principles and sound business practice.

(2) For each individual escrow account, the licensee shall maintain the escrow agreement and all amendments, all instructions affecting the agreement, all related correspondence, and an individual ledger reflecting all activity pertinent to that account.

(3) Each licensee shall continuously maintain the following general accounts:

- (a) A general ledger reflecting assets, liabilities, income, expenses and equity accounts;
- (b) An escrow liability control ledger for all escrow accounts;
- (c) A cash receipts and disbursements journal; and
- (d) Copies of all receipts and disbursements used as a medium of posting to individual escrow accounts.

(4) (a) Every licensee shall keep a separate escrow trust fund account established at a financial institution approved by the director, in which shall be kept separate, distinct and apart and segregated from the licensee's own funds, all funds or moneys of clients which are being held in trust by the licensee pending the closing of an escrow transaction or the full performance of the escrow agreement. All trust funds shall be deposited not later than the first banking day following receipt thereof. Such funds, when deposited, shall be designated as "escrow accounts" or given some other appropriate designation indicating that the funds are not the funds of the licensee.

(b) Every licensee shall maintain all other assets or property received pursuant to an escrow in accordance with a written escrow agreement in a manner which will reasonably preserve and protect the property from loss, theft or damage, and which will otherwise comply with all duties and responsibilities of a fiduciary or bailee generally.

(5) The records referenced in this section shall be reconciled at least monthly.

(6) All records referenced in this section shall be maintained by the licensee for seven (7) years following the close of each account.

(7) Any interest received on funds deposited with an escrow agency in connection with an escrow must be paid over to the depositing party to the escrow and may not be transferred to an account of the escrow agency. This section shall not limit the right of the escrow agency to contract with the depositing party with respect to the interest received on the deposits by independent agreement.

30-915. NOTICE OF CONFLICT OF INTEREST -- CLOSING STATEMENT. (1) An escrow agency licensee shall act without partiality to any of the parties to the escrow. An escrow

agency may not close a transaction where it has, directly or indirectly, a monetary interest in the subject property either as buyer or seller. If an escrow agency has a business interest in the escrow transaction other than as the escrow agency licensee, the relationship or interest must be disclosed in the written escrow instructions. After noting such interest, an additional statement shall appear as follows: "We call this interest to your attention for disclosure purposes. This interest will not, in our opinion, prevent us from being a fair and impartial escrow agency in this transaction, but you are, nevertheless, free to request the transaction be handled by some other escrow agency."

(2) On completion of an escrow transaction, the escrow agency licensee shall deliver to each principal a signed written closing statement. The closing statement shall show all receipts and disbursements relating to the escrow transaction. Any charges by, or disbursements to, the escrow agency shall be clearly noted.

30-916. ATTACHMENT. Funds or other value received by a licensee under this chapter pursuant to an escrow or trust funds are not subject to execution or attachment in any claim against the licensee.

30-917. EXAMINATION AND INVESTIGATIONS. (1) The director shall examine the books, records and accounts of each licensee, within or without the state of Idaho, at intervals he deems necessary for the protection of the public. The licensee so examined shall pay a fee for the examination at the rate fixed annually by the director, not to exceed fifty dollars (\$50.00) per examination hour. If it is necessary for the examination to be conducted outside of Idaho, the actual cost of travel for the examiners shall be reimbursed to the department of finance by the licensee so examined. The director, upon his prior written approval, may accept an equivalent examination of a licensee by another state or federal agency as a substitute for the examination pursuant to this section.

(2) The director may make necessary public or private investigations within or outside of Idaho to determine whether any person has violated or is about to violate this chapter or any rule or order under this chapter.

(3) For the purpose of any investigation or other proceeding under this chapter, the director or any officer designated by the director may administer oaths or affirmations, and upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, and require the production of any matter which is relevant to the investigation or other proceeding, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence. Upon failure to obey a subpoena or to answer questions proposed by the investigating officer and upon reasonable notice to all persons affected thereby, the director may apply to any district court for an order compelling compliance.

(4) Except as otherwise provided in this chapter, all proceedings under this chapter shall be conducted in accordance with the administrative procedure act, chapter 52, title 67, Idaho Code.

30-918. POWERS AND DUTIES OF THE DIRECTOR. (1) In addition to any other powers and duties of the director authorized by law, the director may issue orders and promulgate rules that, in the opinion of the director, are necessary to execute, enforce and effectuate the purposes of this chapter.

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(2) The director shall also:

- (a) Administer and enforce the provisions and requirements of this chapter; and
- (b) Require that all funds collected by the department under this chapter be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code.

30-919. PROHIBITED PRACTICES. No escrow agency licensee or person required to be licensed under this chapter, or any of its officers, directors, members, general partners, employees or agents shall:

(1) Issue, circulate, make use of, publish or advertise, by any means of communication, that a person is engaged in accepting or receiving escrows if that person is not licensed under this chapter;

(2) Solicit or accept an escrow instruction or amended or supplemental escrow instruction containing any blank to be filled in after signing or initialing of the escrow instruction or permitting any person to make any addition to, deletion from, or alteration of an escrow instruction or amended or supplemental escrow instruction unless the addition, deletion or alteration is signed or initialed by any affected party who signed or initialed the escrow instruction or amended or supplemental escrow instruction prior to the addition, deletion or alteration;

(3) Fail to carry out an escrow transaction pursuant to the written escrow instructions unless amended by the written agreement of all parties to the escrow agreement or their assigns;

(4) Accept funds or papers in escrow without a dated, written instruction signed by the parties, or their authorized representatives, adequate to administer the escrow account and to provide for sufficient funds and documents to carry out the terms of the escrow instructions. Funds and documents deposited shall be used only in accordance with such written instruction; provided that if additional specific instructions are needed, the escrow agency shall obtain the consent of both parties or such representatives to the escrow or an order of a court of competent jurisdiction at the expense of the escrow parties;

(5) Fail to promptly distribute funds, deeds or other personal property or instruments pursuant to escrow instructions;

(6) Fail to submit to an examination by the department of its books, records and accounts, or refuse to provide to the department, within a reasonable time, all information requested by the department pursuant to this chapter;

(7) Fail to deliver, without reasonable cause, within a reasonable time after the close of an escrow, to the respective parties of an escrow transaction, any money, documents or other properties held in escrow in violation of the provisions of the escrow instructions;

(8) Directly or indirectly employ any scheme, device or artifice to defraud or mislead any person or engage in any unfair or deceptive practice toward any person;

(9) Fail to supervise diligently and control the escrow-related activities of its agents, employees and independent contractors;

(10) Engage in fraudulent or dishonest abstraction or misappropriation or embezzlement of funds or other property held in trust;

(11) Pay a fee or give any portion of its fees or charges, including fees for escrow services or other consideration, to any person as an inducement or as compensation for the referral of any escrow business; or

(12) Disburse funds or deliver documents from an escrow for recording or otherwise unless the escrow contains a credit balance consisting of collected funds, other than funds of the escrow agency or its affiliates, sufficient to discharge all monetary conditions of the escrow. This

requirement does not apply to escrows established for the purpose of receiving two (2) or more periodic payments over a total period of time after establishment in excess of thirty (30) days.

30-920. REMEDIES. (1) Whenever it appears to the director that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order thereunder, is conducting its business in an unsafe and injurious manner, or that its capital or assets are impaired, the director may in his discretion:

- (a) Order the person to cease and desist from the violation of any provision of this chapter, rule or order thereunder;
- (b) Issue an order revoking or suspending the licensee's escrow agency license;
- (c) After notice and the opportunity for a hearing, except as otherwise provided in this chapter, issue an order imposing a civil penalty not to exceed five thousand dollars (\$5,000) for each violation of this chapter or any rule or order thereunder;
- (d) After notice and the opportunity for a hearing, issue an order of restitution to any person for loss of money or property resulting from a violation of this chapter; and
- (e) Issue an order, pursuant to section 67-5247, Idaho Code, impounding the accounts, including all operating and trust accounts, of any licensee or person required to be licensed under this chapter.

(2) In addition to such remedies, the director may bring an action in the fourth district court in and for Ada county or in such other court as the director deems appropriate. Upon a proper showing, the court may:

- (a) Issue a permanent or temporary injunction, restraining order, or declaratory judgment;
 - (b) Order other appropriate or ancillary relief, which may include:
 - (i) An asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the director, for the defendant or the defendant's assets;
 - (ii) Ordering the director to take charge and control of a defendant's property, including investment accounts and accounts in a financial institution, rents and profits; to collect debts; and to acquire and dispose of property;
 - (c) Issue an order of restitution to any person for loss of money or property resulting from a violation of this chapter; and
 - (d) Except as otherwise provided by this chapter, impose a civil penalty not to exceed five thousand dollars (\$5,000) for each violation.
- (3) The court may not require the director to post a bond.

30-931. NO IMPAIRMENT OF OTHER REMEDIES. Nothing in this chapter shall be construed so as to impair or affect any statutory or common law right of any person to bring an action in any court having jurisdiction for any act involved in the transaction of an escrow business or the right of the state of Idaho to sanction any person for any violation of any provision of this chapter.

30-932. CONTINUING JURISDICTION. If a license under this chapter is surrendered, suspended or revoked, the former licensee shall continue to be subject to the provisions of this chapter and to the duties previously undertaken for so long as it acts as a fiduciary with respect to any escrow previously undertaken.

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30-933. STATUS OF PREEXISTING ESCROWS. Nothing contained in this chapter shall be so construed as to impair or affect the obligation of any escrow agreement that was lawfully entered into prior to the effective date of this act.

30-934. SEVERABILITY. The provisions of this act are hereby declared to be severable, and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

45-1504. TRUSTEE OF TRUST DEED -- WHO MAY SERVE -- SUCCESSORS. (1)
The trustee of a trust deed under this act shall be:

- (a) Any member of the Idaho state bar;
- (b) Any bank or savings and loan association authorized to do business under the laws of Idaho or the United States;
- (c) An authorized trust institution having a charter under chapter 32, title 26, Idaho Code, or any corporation authorized to conduct a trust business under the laws of the United States; or
- (d) A licensed title insurance agent or title insurance company authorized to transact business under the laws of the state of Idaho.

(2) The trustee may resign at its own election or be replaced by the beneficiary. The trustee shall give prompt written notice of its resignation to the beneficiary. The resignation of the trustee shall become effective upon the recording of the notice of resignation in each county in which the deed of trust is recorded. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a successor trustee. Upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.

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