

# State of South Dakota

EIGHTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2009

664Q0512

## SENATE BILL NO. 84

Introduced by: Senators Knudson, Gray, and Turbak Berry and Representatives Lust, Cutler,  
and Feinstein

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 ~~shall be~~ is due from the mortgagor to the mortgagee,  
12 constitute a continuing lien against the real property covered thereby for the amount stated in  
13 the 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 ~~which states a maturity date of the instrument secured~~  
7 ~~thereby of five years or less is effective until such maturity date~~ for a period of five years from  
8 the date of filing and thereafter for a period of sixty days. ~~Any other filed collateral real estate~~  
9 ~~mortgage is effective for a period of five years from the date of filing and thereafter for a period~~  
10 ~~of sixty days. A filed collateral real estate mortgage which states that the instrument secured~~  
11 ~~thereby is payable on demand is effective for five years from the date of filing and thereafter for~~  
12 ~~a period of sixty days. The effectiveness of a filed collateral real estate mortgage lapses upon~~  
13 ~~the expiration of the sixty-day period unless an addendum to the collateral real estate mortgage~~  
14 ~~extending its effective date is filed prior to the lapse. Upon such lapse, the lien created by the~~  
15 ~~collateral real estate mortgage shall terminate. An addendum continuing the effectiveness of the~~  
16 ~~lien of the collateral real estate mortgage may be filed by the mortgagee:~~

17 ~~—(1)— Within six months before and sixty days after a stated maturity date of five years or~~  
18 ~~less; and~~

19 ~~—(2)— Otherwise within six months before and sixty days after the expiration of the five~~  
20 ~~year effective date period. No sums advanced subsequent to the end of the sixty-day~~  
21 ~~period, save and except sums advanced for protection of the real estate collateral and~~  
22 ~~for real property taxes or insurance, are secured by the collateral real estate mortgage~~  
23 ~~unless an addendum to the collateral real estate mortgage extending its effective date~~  
24 ~~is filed prior to the end of the sixty-day period. An addendum continuing the~~

1           effectiveness of the collateral real estate mortgage may be filed by the mortgagee  
2           within six months before and sixty days after the expiration of the five-year effective  
3           date.

4           An addendum to a collateral real estate mortgage for the sole purpose of continuing the  
5 effectiveness of its lien need be signed only by the mortgagee. Upon the timely filing of such  
6 an addendum to a collateral real estate mortgage, the effectiveness of the collateral real estate  
7 mortgage will be continued for five years after the stated maturity date in those instances where  
8 the original collateral real estate mortgage provided a maturity date or for five years after the  
9 expiration of the five-year period whereupon it shall lapse in the same manner as provided  
10 above unless another addendum to the collateral real estate mortgage continuing the  
11 effectiveness of its lien is filed prior to such lapse. Succeeding addendums to collateral real  
12 estate mortgages may be filed in the same manner to continue the effectiveness of the lien of the  
13 collateral real estate mortgage.