

58-2343. Assignment of rents of real property; lien; action upon default. (a) As used in this section:

(1) "Assignment instrument" means any mortgage, deed of trust, or other instrument or agreement by which a borrower assigns, transfers, pledges, or otherwise grants a lien upon or encumbers its rights to rents of real property therein described to or for the benefit of a lender as security for the repayment of any indebtedness or the performance of any obligations.

(2) "Borrower" means any mortgagor, deed of trust grantor, assignor, or debtor of any lender.

(3) "Lender" means any mortgagee, deed of trust beneficiary, assignee, or creditor, or its assigns, holding an assignment instrument.

(4) "Rents" includes the rents, income, proceeds, profits, royalties and other sums which (A) are derived under present and future leases, licenses, contracts and other agreements for the use or possession of real property and (B) are either in the possession or control of the borrower or are due and unpaid or are to become due and payable.

(b) The lien of an assignment instrument shall be a good, valid and enforceable lien on the rents from the real property therein described. Such lien shall be valid and binding against, unavoidable by and fully perfected as to the borrower and all subsequent purchasers, mortgagees, lien creditors, other lienholders and other persons for all purposes from the time of filing the assignment instrument or an affidavit of assignment of rents signed by the borrower for record in accordance with K.S.A. 58-2221 and amendments thereto, with a priority dating from the time of such filing, without any necessity for the lender to take possession or control of such rents or the property from which such rents are derived, to take any action tantamount to the taking of such possession or control, or to take other action whatsoever.

(c) Upon default by a borrower under the terms of an assignment instrument, the lender shall be entitled to enforce the assignment instrument in accordance with its terms and applicable law, and may apply to the district court having jurisdiction for appropriate relief to gain possession and control of the rents in enforcement of the assignment instrument. Upon such application, the court shall enter such orders and take such actions as appear necessary to collect, protect and preserve the rents and protect and preserve the lender's interest therein pending final disposition of an action upon the obligations secured by the assignment instrument.

(d) Any tenant who, upon due notice from the lender, makes rent payments to the lender in accordance with the terms of the assignment instrument shall be given credit for such payment as if the payments had been made to the borrower, but nothing herein shall affect the other rights and obligations of the borrower or the tenant as to one another.

History: L. 1991, ch. 161, § 1; May 23.