

**TRUST DEED FORECLOSURE CHANGES**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: LaVar Christensen**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to the foreclosure of trust deeds.

**Highlighted Provisions:**

This bill:

- ▶ modifies successor trustee provisions;
- ▶ requires successor lenders to record a notice of acquisition of beneficial interest;
- ▶ modifies notice of default provisions;
- ▶ requires trustees to mail a notice of default to the trustor;
- ▶ provides for additional information to be included in a notice of default;
- ▶ allows a trustor to request mediation following a notice of default;
- ▶ provides for a tolling of the period required before a notice of sale if the trustor

makes a monthly payment;

- ▶ modifies a provision relating to reinstatement or payoff statements; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



28           **57-1-22**, as last amended by Laws of Utah 2002, Chapter 209  
 29           **57-1-24**, as last amended by Laws of Utah 2001, Chapter 236  
 30           **57-1-31.5**, as last amended by Laws of Utah 2010, Chapter 24

31 ENACTS:

32           **57-1-22.5**, Utah Code Annotated 1953  
 33           **57-1-24.5**, Utah Code Annotated 1953



35 *Be it enacted by the Legislature of the state of Utah:*

36           Section 1. Section **57-1-22** is amended to read:

37           **57-1-22. Successor trustees -- Appointment by beneficiary -- Effect -- Substitution**  
 38 **of trustee -- Recording -- Form.**

39           (1) (a) The beneficiary may appoint a successor trustee at any time by filing for record  
 40 in the office of the county recorder of each county in which the trust property or some part of  
 41 the trust property is situated, a substitution of trustee.

42           (b) The new trustee shall succeed to all the power, duties, authority, and title of the  
 43 trustee named in the deed of trust and of any successor trustee.

44           (c) The beneficiary may, by express provision in the substitution of trustee, ratify and  
 45 confirm action taken on the beneficiary's behalf by the new trustee prior to the recording of the  
 46 substitution of trustee.

47           (2) The substitution shall:

48           (a) identify the trust deed by stating:

- 49           (i) the names of the original parties to the trust deed;
- 50           (ii) the date of recordation; and
- 51           (iii) (A) the book and page where the trust deed is recorded; or

52           (B) the entry number;

53           (b) include the legal description of the trust property;

54           (c) state the name and address of the new trustee; [~~and~~]

55           (d) be executed and acknowledged by all of the beneficiaries under the trust deed or  
 56 their successors in interest[~~;~~]; and

57           (e) within 10 days after being executed, be submitted for recording to the office of the  
 58 recorder of the county in which the trust property is located.

59 (3) (a) If not previously recorded because the 10-day period under Subsection (2)(e)  
60 has not lapsed, at the time of recording a notice of default, the successor trustee shall file for  
61 record, in the office of the county recorder of each county in which the trust property or some  
62 part of it is situated, the substitution of trustee.

63 (b) A copy of the substitution of trustee shall be sent in the manner provided in  
64 Subsection 57-1-26(2) to any:

65 (i) person who requests a copy of any notice of default or notice of sale under  
66 Subsection 57-1-26(1)(a); and

67 (ii) person who is a party to the trust deed to whom a copy of a notice of default would  
68 be required to be mailed by Subsection 57-1-26(3).

69 (4) A substitution of trustee shall be in substantially the following form:

70 Substitution of Trustee

71 (insert name and address of new trustee)

72 is hereby appointed successor trustee under the trust deed executed by \_\_\_\_ as

73 trustor, in which \_\_\_\_ is named beneficiary and \_\_\_\_ as trustee, and filed for record

74 \_\_\_\_\_(month\day\year), and recorded in Book \_\_\_\_, Page \_\_\_\_, Records of \_\_\_\_

75 County, (or filed for record \_\_\_\_\_(month\day\year), with recorder's entry No. \_\_\_\_, \_\_\_\_  
76 County), Utah.

77 (Insert legal description)

78 Signature\_\_\_\_\_

79 (Certificate of Acknowledgment)

80 Section 2. Section **57-1-22.5** is enacted to read:

81 **57-1-22.5. Successor lenders -- Notice of acquisition of beneficial interest.**

82 (1) As used in this section:

83 (a) "Loan" has the same meaning as defined in Section 57-1-24.5.

84 (b) "Owner-occupied property" has the same meaning as defined in Section 57-1-24.5.

85 (c) "Successor lender" has the same meaning as defined in Section 57-1-24.5.

86 (2) No later than 10 days after acquiring a beneficial interest under a trust deed secured  
87 by owner-occupied property, a successor lender shall file for recording in the office of the  
88 recorder in which the trust property is located a notice of acquisition of beneficial interest.

89 (3) A successor lender who fails to comply with Subsection (2) may not collect costs or

90 attorney fees in any judicial or nonjudicial foreclosure proceeding on the trust deed securing  
 91 the loan.

92 (4) A notice under Subsection (2) shall include:

93 (a) the name, address, telephone number, and email address of the successor lender;  
 94 and

95 (b) the name and contact information, including mailing address, telephone number,  
 96 and email address, of a person with authority to represent the successor lender for all purposes  
 97 relating to the loan.

98 Section 3. Section **57-1-24** is amended to read:

99 **57-1-24. Sale of trust property by trustee -- Notice of default.**

100 [~~The power of sale conferred upon the~~] (1) A trustee who is qualified under Subsection  
 101 57-1-21(1)(a)(i) or (iv) may not [~~be exercised~~] exercise the power of sale conferred as provided  
 102 in Section 57-1-23 until after:

103 [~~(1)~~] (a) the trustee [~~first~~] files for record, in the office of the recorder of each county  
 104 where the trust property or some part or parcel of the trust property is situated, a notice of  
 105 default[~~, identifying~~] that:

106 (i) identifies the trust deed by stating the name of the trustor named in the trust deed  
 107 and giving the book and page, or the recorder's entry number, where the trust deed is recorded  
 108 and a legal description of the trust property[~~, and containing~~];

109 (ii) contains a statement that a breach of an obligation for which the trust property was  
 110 conveyed as security has occurred, and setting forth the nature of that breach [~~and of~~];

111 (iii) states the trustee's election to sell the property or cause [~~to be sold~~] the property to  
 112 be sold to satisfy the obligation; and

113 [~~(2) not less than three months has elapsed from the time the trustee filed for record~~  
 114 ~~under Subsection (1); and]~~

115 (iv) complies with the requirements of Subsection 57-1-24.5(2), if the trust property is  
 116 owner-occupied property, as defined in Section 57-1-24.5; and

117 [~~(3)~~] (b) [~~after the lapse of at least three months~~] the trustee [~~shall give~~] gives notice of  
 118 sale, as provided in Sections 57-1-25 and 57-1-26, following the lapse of at least three months  
 119 from the time the trustee files a notice of default for record under Subsection (1)(a), subject to  
 120 Subsections 57-1-24.5(3) and (4).

121 (2) Within three business days after filing a notice of default for recording under  
122 Subsection (1)(a) for a property that is owner-occupied property, as defined in Section  
123 57-1-24.5, a trustee shall send, by certified mail, a copy of the notice of default to the trustor at  
124 the address of the trust property.

125 Section 4. Section **57-1-24.5** is enacted to read:

126 **57-1-24.5. Additional requirements for notice of default -- Mediation -- Tolling of**  
127 **period before notice of sale.**

128 (1) As used in this section:

129 (a) "Default beneficiary" means a lender or successor lender who owns some or all of  
130 the beneficial interest under a trust deed secured by owner-occupied property at the time that a  
131 notice of default is given under Section 57-1-24.

132 (b) "Default trustor" means a trustor under a trust deed secured by owner-occupied  
133 property that is the subject of a notice of default under Section 57-1-24.

134 (c) "Lender" means a person who loans money for which a trust deed on  
135 owner-occupied property is given as security.

136 (d) "Loan" means the obligation for which a trust deed on owner-occupied property is  
137 given as security.

138 (e) "Owner-occupied property" means real property that is occupied by its owner as the  
139 owner's primary residence.

140 (f) "Successor lender" means a person who succeeds to the interest of the lender,  
141 including a person who succeeds to a partial interest.

142 (2) A notice of default under Subsection 57-1-24(1) for a trust property that is an  
143 owner-occupied property shall include:

144 (a) information sufficient to enable the default trustor to contact an individual with  
145 authority to negotiate on behalf of the lender or successor lender with respect to all aspects of  
146 the loan, including regarding a loan modification or forbearance; and

147 (b) a plain and simple explanation of the default trustor's rights under this section.

148 (3) (a) A default trustor may elect to enter into mediation with the lender or successor  
149 lender as provided in this Subsection (3) for the purpose of negotiating a modification of the  
150 terms of the loan.

151 (b) A default trustor who elects to enter into mediation under Subsection (3)(a) shall

152 send written notification to the trustee and the lender or successor lender by certified mail  
153 within 45 days after the notice of default is recorded.

154 (c) A default trustor who fails to mail written notification under Subsection (3)(a)  
155 within the time specified is considered to have waived mediation.

156 (d) A default trustor may waive mediation by giving the trustee written notification of  
157 the trustor's election to waive mediation.

158 (e) If a default trustor elects to enter into mediation as provided in this Subsection (3):

159 (i) mediation between the default trustor and the lender or successor lender shall be  
160 held as provided in Title 78B, Chapter 10, Utah Uniform Mediation Act;

161 (ii) the default trustor and the lender or successor lender shall attend and participate in  
162 good faith in the mediation;

163 (iii) the lender or successor lender shall consider in good faith all reasonably available  
164 options to foreclosure;

165 (iv) the three-month period described in Subsection 57-1-24(1)(b) is tolled from the  
166 date the default trustor mails the notification under Subsection (3)(b) electing to enter into  
167 mediation until the date the mediation is concluded; and

168 (v) unless the default trustor and lender or successor lender otherwise agree:

169 (A) half of the cost of mediation shall be paid by the default trustor and half of the cost  
170 of mediation shall be paid by the lender or successor lender; and

171 (B) the cost of mediation may not exceed \$600.

172 (f) A mediation under this Subsection (3) may be conducted by teleconference, video  
173 conference, or other electronic means that allows each participant to hear all other participants,  
174 except during negotiation between the mediator and one of the parties as part of the mediation  
175 process.

176 (g) In a mediation under this Subsection (3), a lender or successor lender shall:

177 (i) provide the default trustor a copy of the trust deed and trust deed loan with respect  
178 to which the notice of default was filed; and

179 (ii) be represented at mediation by someone who:

180 (A) has authority to negotiate a loan modification and foreclosure relief on behalf of  
181 the lender or successor lender; or

182 (B) is able to be in immediate communication with someone who has authority to

183 negotiate a loan modification and foreclosure relief on behalf of the lender or successor lender.

184 (h) (i) If a lender or successor lender fails to attend mediation, fails to provide the  
185 documents required by Subsection (3)(g)(i), or fails to be represented at mediation as required  
186 by Subsection (3)(g)(ii), the district court for the county in which the trust property is located  
187 may enter an order, pursuant to the default trustor's petition, requiring a loan modification or a  
188 stay of foreclosure as the court determines proper.

189 (ii) If a default trustor fails to attend mediation, the mediation is considered concluded  
190 for purposes of this section.

191 (4) (a) A default trustor's payment, after a notice of default is recorded under Section  
192 57-1-24, of the amount of a regular monthly payment under the loan tolls the three-month  
193 period described in Subsection 57-1-24(1)(b) for one month.

194 (b) The cumulative tolling period under Subsection (4)(a) may not exceed six months,  
195 unless the lender or successor lender agrees to a longer period.

196 Section 5. Section **57-1-31.5** is amended to read:

197 **57-1-31.5. Reinstatement or payoff statement -- Timeliness of request -- Trustee's**  
198 **duty to provide statement -- Statement to include accounting of costs and fees.**

199 (1) As used in this section:

200 (a) "Approved delivery method" means delivery by:

201 (i) certified or registered United States mail with return receipt requested; or

202 (ii) a nationally recognized letter or package delivery or courier service operating in the  
203 state that provides a service for:

204 (A) tracking the delivery of an item; or

205 (B) documenting:

206 (I) that the item was received by the intended recipient; or

207 (II) a refusal to accept delivery of the item.

208 (b) "Compensation" means anything of economic value that is paid, loaned, granted,  
209 given, donated, or transferred to a trustee for or in consideration of:

210 (i) services;

211 (ii) personal or real property; or

212 (iii) other thing of value.

213 (c) "Interested party" means a person with a right under Subsection 57-1-31(1) to

214 reinstate an obligation secured by a trust deed.

215 (d) "Payoff statement" means a statement under Subsection (2) that an interested party  
216 requests in order to obtain the amount required to pay off a loan secured by a trust deed.

217 (e) "Reinstatement statement" means a statement under Subsection (2) that an  
218 interested party requests in order to obtain the amount required under Subsection 57-1-31(1) to  
219 reinstate an obligation secured by a trust deed.

220 (2) (a) (i) An interested party may submit a written request to [a] the trustee of record  
221 for a statement of the amount required to be paid:

222 (A) to reinstate an obligation secured by a trust deed; or

223 (B) to pay off a loan secured by a trust deed.

224 (ii) (A) A request for a reinstatement statement is not timely unless the trustee receives  
225 the request at least 10 business days before expiration of the three-month period under Section  
226 57-1-31 to reinstate an obligation.

227 (B) A request for a payoff statement is not timely unless the trustee receives the request  
228 at least 10 business days before the trustee's sale.

229 (iii) An interested party submitting a reinstatement statement or payoff statement to a  
230 trustee shall submit the statement to the trustee:

231 (A) at the address specified in the trust deed for notices to the trustee; or

232 (B) at an alternate address approved by the trustee for delivery of mail or notices.

233 (iv) A trustee is considered to have received a request submitted under Subsection

234 (2)(a)(i) if:

235 (A) the interested party submitted the request through an approved delivery method;

236 and

237 (B) documentation provided under the approved delivery method indicates that:

238 (I) the request was delivered to the trustee; or

239 (II) delivery of the request was refused.

240 (b) (i) A trustee who receives a written request under Subsection (2)(a) shall provide  
241 the statement to the interested party.

242 (ii) A trustee is considered to have provided the statement requested under Subsection  
243 (2)(a) on the date that the trustee deposits the statement with an approved delivery method:

244 (A) with all delivery costs prepaid; and



245 (B) addressed to the interested party at the address provided in the request.

246 (c) (i) If the trustee provides a requested reinstatement statement later than five  
247 business days after the request is received, the time to reinstate under Section 57-1-31 is tolled  
248 from the date of the request to the date that the trustee provides the statement.

249 (ii) If, after scheduling a trustee's sale, the trustee fails to provide a requested payoff  
250 statement within five business days after the request is received, the trustee shall:

251 (A) cancel the trustee's sale; or

252 (B) postpone the trustee's sale to a date at least 10 business days after the trustee  
253 provides the statement.

254 (3) A trustee shall include with each statement required under Subsection (2)(a):

255 (a) a detailed listing of any of the following that the trustor would be required to pay to  
256 reinstate or payoff the loan:

257 (i) attorney fees;

258 (ii) trustee fees; or

259 (iii) any costs including:

260 (A) title fees;

261 (B) publication fees; or

262 (C) posting fees; and

263 (b) subject to Subsection (4), a disclosure of:

264 (i) any relationship that the trustee has with a third party that provides services related  
265 to the foreclosure of the loan; and

266 (ii) whether the relationship described in Subsection (3)(b)(i) is created by:

267 (A) an ownership interest in the third party; or

268 (B) contract or other agreement.

269 (4) Subsection (3)(b) does not require a trustee to provide a trustor:

270 (a) a copy of any contract or agreement described in Subsection (3)(b);

271 (b) specific detail as to the nature of the ownership interest described in Subsection  
272 (3)(b); or

273 (c) the amount of compensation the trustee receives related to the foreclosure of the  
274 loan under a relationship described in Subsection (3)(b).

**Legislative Review Note**  
**as of 2-14-11 6:15 AM**

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 326

SHORT TITLE: **Trust Deed Foreclosure Changes**

SPONSOR: **Christensen, L.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.