

NONJUDICIAL FORECLOSURE OF TRUST DEEDS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to nonjudicial foreclosures of trust deeds.

Highlighted Provisions:

This bill:

- ▶ modifies a provision containing requirements for a notice of default relating to a nonjudicial foreclosure of a trust deed;
- ▶ requires the notice of default to include specified information; and
- ▶ requires a trustee's deed to contain a certification by the trustee that applicable law has been complied with.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-1-24, as last amended by Laws of Utah 2001, Chapter 236

57-1-28, as last amended by Laws of Utah 2010, Chapter 381

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

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



28 **57-1-24. Sale of trust property by trustee -- Notice of default.**

29 ~~[The power of sale conferred upon the]~~ A trustee who is qualified under Subsection
 30 57-1-21(1)(a)(i) or (iv) may not ~~[be exercised]~~ exercise the power of sale conferred as provided
 31 in Section 57-1-23 until after:

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

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

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

40 (c) states the trustee's election to sell the property or cause ~~[to be sold]~~ the property to
 41 be sold to satisfy the obligation;

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

44 (d) includes current and accurate information regarding the current holder of the
 45 beneficial interest in the trust deed sufficient to enable the trustor to obtain current information
 46 about the loan, including its status and the procedure following default; and

47 (e) includes information sufficient to enable the trustor to contact a local housing
 48 counseling agency approved by the United States Department of Housing and Urban
 49 Development; and

50 ~~[(3)]~~ (2) ~~[after the lapse of at least three months]~~ the trustee ~~[shall give]~~ gives notice of
 51 sale, as provided in Sections 57-1-25 and 57-1-26, following the lapse of at least three months
 52 from the time the trustee files a notice of default for record under Subsection (1).

53 Section 2. Section **57-1-28** is amended to read:

54 **57-1-28. Sale of trust property by trustee -- Payment of bid -- Trustee's deed**
 55 **delivered to purchaser -- Recitals -- Effect.**

56 (1) (a) The purchaser at the sale shall pay the price bid as directed by the trustee.

57 (b) The beneficiary shall receive a credit on the beneficiary's bid in an amount not to
 58 exceed the amount representing:

- 59 (i) the unpaid principal owed;
- 60 (ii) accrued interest as of the date of the sale;
- 61 (iii) advances for the payment of:
- 62 (A) taxes;
- 63 (B) insurance; and
- 64 (C) maintenance and protection of the trust property;
- 65 (iv) the beneficiary's lien on the trust property; and
- 66 (v) costs of sale, including reasonable trustee's and [attorney's] attorney fees.
- 67 (2) (a) (i) Within three business days of the day the trustee receives payment of the
- 68 price bid, the trustee shall make the trustee's deed available to the purchaser.
- 69 (ii) If the trustee does not comply with this Subsection (2)(a), the trustee is liable for
- 70 any loss incurred by the purchaser because of the trustee's failure to comply with this
- 71 Subsection (2)(a).
- 72 (b) The trustee's deed may contain recitals of compliance with the requirements of
- 73 Sections 57-1-19 through 57-1-36 relating to the exercise of the power of sale and sale of the
- 74 property described in the trustee's deed, including recitals concerning:
- 75 (i) any mailing, personal delivery, and publication of the notice of default;
- 76 (ii) any mailing and the publication and posting of the notice of sale; and
- 77 (iii) the conduct of sale.
- 78 (c) The recitals described in Subsection (2)(b):
- 79 (i) constitute prima facie evidence of compliance with Sections 57-1-19 through
- 80 57-1-36; and
- 81 (ii) are conclusive evidence in favor of bona fide purchasers and encumbrancers for
- 82 value and without notice.
- 83 (d) The trustee's deed shall contain the trustee's certification that:
- 84 (i) the trustee has complied with all applicable duties of a trustee under the law; and
- 85 (ii) the nonjudicial foreclosure proceedings culminating in the trustee's deed have been
- 86 conducted in accordance with all applicable provisions of this chapter.
- 87 (3) The trustee's deed shall operate to convey to the purchaser, without right of
- 88 redemption, the trustee's title and all right, title, interest, and claim of the trustor and the
- 89 trustor's successors in interest and of all persons claiming by, through, or under them, in and to

90 the property sold, including all right, title, interest, and claim in and to the property acquired by
91 the trustor or the trustor's successors in interest subsequent to the execution of the trust deed,
92 which trustee's deed shall be considered effective and relate back to the time of the sale.

93 (4) In accordance with Section 57-3-106, an interest of a purchaser in a trustee's deed
94 that is recorded with the county recorder may not be divested if a person records an affidavit or
95 other document purporting to rescind or cancel the trustee's deed.

Legislative Review Note
as of 2-3-11 1:15 PM

Office of Legislative Research and General Counsel