

REAL ESTATE TRUSTEE AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gene Davis

House Sponsor: Brian S. King

LONG TITLE

General Description:

This bill amends provisions related to real estate trustees.

Highlighted Provisions:

This bill:

- ▶ provides that an entity in good standing that provides licensed professional legal services, employs an active member of the Utah State Bar, and maintains an office in the state may act as a real estate trustee under certain circumstances;
- ▶ provides that a claimant may file a petition for adjudication of priority to trustee sale funds if the claimant pays the court clerk a filing fee; and
- ▶ modifies the number of days in which a person may contest a petition for adjudication of priority to trustee sale funds.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-1-21, as last amended by Laws of Utah 2008, Chapter 250

57-1-29, as last amended by Laws of Utah 2008, Chapter 230



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

29 Section 1. Section **57-1-21** is amended to read:

30 **57-1-21. Trustees of trust deeds -- Qualifications.**

31 (1) (a) The trustee of a trust deed shall be:

32 (i) any ~~H~~→ individual who is an active member of the Utah State Bar, or any ←~~H~~ entity
 32a in good standing that ~~H~~→ [~~provides~~] is organized to provide ←~~H~~ licensed professional legal
 32b services ~~H~~→ [~~s~~] and ←~~H~~

33 employs an active member of the Utah State Bar [~~who maintains a place within~~], ~~H~~→ [~~and~~]
 33a if the individual or entity is able to do business in the state and ←~~H~~ maintains
 34 an office in the state where the trustor or other interested parties may meet with the trustee to:

35 (A) request information about what is required to reinstate or payoff the obligation
 36 secured by the trust deed;

37 (B) deliver written communications to the lender as required by both the trust deed and
 38 by law;

39 (C) deliver funds to reinstate or payoff the loan secured by the trust deed; or

40 (D) deliver funds by a bidder at a foreclosure sale to pay for the purchase of the
 41 property secured by the trust deed;

42 (ii) any depository institution as defined in Section [7-1-103](#), or insurance company
 43 authorized to do business and actually doing business in Utah under the laws of Utah or the
 44 United States;

45 (iii) any corporation authorized to conduct a trust business and actually conducting a
 46 trust business in Utah under the laws of Utah or the United States;

47 (iv) any title insurance company or agency that:

48 (A) holds a certificate of authority or license under Title 31A, Insurance Code, to
 49 conduct insurance business in the state;

50 (B) is actually doing business in the state; and

51 (C) maintains a bona fide office in the state;

52 (v) any agency of the United States government; or

53 (vi) any association or corporation that is licensed, chartered, or regulated by the Farm
 54 Credit Administration or its successor.

55 (b) For purposes of this Subsection (1), a person maintains a bona fide office within the
 56 state if that person maintains a physical office in the state:

57 (i) that is open to the public;

58 (ii) that is staffed during regular business hours on regular business days; and

59 (iii) at which a trustor of a trust deed may in person:

60 (A) request information regarding a trust deed; or

61 (B) deliver funds, including reinstatement or payoff funds.

62 (c) This Subsection (1) is not applicable to a trustee of a trust deed existing prior to

63 May 14, 1963, nor to any agreement that is supplemental to that trust deed.

64 (d) The amendments in Laws of Utah 2002, Chapter 209, to this Subsection (1) apply

65 only to a trustee that is appointed on or after May 6, 2002.

65a **H→ (e) For an entity that acts as a trustee under Subsection (1)(a)(i), only a member**
 65b **attorney of the entity who is currently licensed to practice law in the state may sign documents**
 65c **on behalf of the entity in the entity's capacity as trustee. ←H**

66 (2) The trustee of a trust deed may not be the beneficiary of the trust deed, unless the
 67 beneficiary is qualified to be a trustee under Subsection (1)(a)(ii), (iii), (v), or (vi).

68 (3) The power of sale conferred by Section 57-1-23 may only be exercised by the
 69 trustee of a trust deed if the trustee is qualified under Subsection (1)(a)(i) or (iv).

70 (4) A trust deed with an unqualified trustee or without a trustee shall be effective to
 71 create a lien on the trust property, but the power of sale and other trustee powers under the trust
 72 deed may be exercised only if the beneficiary has appointed a qualified successor trustee under
 73 Section 57-1-22.

74 Section 2. Section 57-1-29 is amended to read:

75 **57-1-29. Proceeds of trustee's sale -- Disposition.**

76 (1) (a) The trustee shall apply the proceeds of a trustee's sale in the following order:

77 (i) first, to the costs and expenses of exercising the power of sale and of the sale,
 78 including the payment of the trustee's and attorney fees actually incurred not to exceed any
 79 amount provided for in the trust deed;

80 (ii) second, to payment of the obligation secured by the trust deed; and

81 (iii) (A) the balance, if any, to the person or persons legally entitled to the proceeds; or

82 (B) the trustee, in the trustee's discretion, may deposit the balance of the proceeds with
 83 the clerk of the district court of the county in which the sale took place.

84 (b) If the proceeds are deposited with the clerk of the district court, the trustee shall file
 85 an affidavit with the clerk setting forth the facts of the deposit and a list of all known claimants,
 86 including known addresses.

87 (c) Upon depositing the balance and filing the affidavit, the trustee is discharged from
 88 all further responsibility and the clerk shall deposit the proceeds with the state treasurer subject
 89 to the order of the district court.

90 (2) The clerk shall give notice of the deposited funds to all claimants listed in the
91 trustee's affidavit within 15 days of receiving the affidavit of deposit from the trustee.

92 (3) (a) ~~Any~~ A claimant may file a petition for adjudication of priority to the funds if
93 the claimant pays to the court clerk a filing fee in the amount of \$50.

94 (b) A petitioner requesting funds under Subsection (3)(a) shall give notice of the
95 petition to all claimants listed in the trustee's affidavit and to any other claimants known to the
96 petitioner.

97 (c) The petitioner's notice under Subsection (3)(b) shall specify that all claimants have
98 ~~[45]~~ 60 days to contest the petition by affidavit or counter-petition.

99 (d) If no affidavit or counter-petition is filed within ~~[45]~~ 60 days of the notice required
100 by Subsection (3)(c), the court shall, without a hearing, enter an order directing the clerk of the
101 court or the county treasurer to disburse the funds to the petitioner according to the petition.

102 (4) (a) If a petition for adjudication is contested by affidavit or counter-petition, the
103 district court shall, within 20 days, conduct a hearing to establish the priorities of the parties to
104 the deposited funds and give notice to all known claimants of the date and time of the hearing.

105 (b) At a hearing under Subsection (4)(a), the court shall establish the priorities of the
106 parties to the deposited funds and enter an order directing the clerk of the court or county
107 treasurer to disburse the funds according to the court's determination.

108 (5) A person having or claiming to have an interest in the disposition of funds
109 deposited with the court under Subsection (1) who fails to appear and assert the person's claim
110 is barred from any claim to the funds after the entry of the court's order under Subsection (4).

Legislative Review Note
Office of Legislative Research and General Counsel