

**Representative LaVar Christensen** proposes the following substitute bill:

**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 a provision relating to the filing of a substitution of trustee;
- ▶ modifies notice of default provisions;
- ▶ establishes a procedure for deferring a trustee's sale following a notice of default and allowing a lender and borrower to negotiate the terms of the loan if a trustor meets certain requirements, including paying a regular payment each month; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

**AMENDS:**

**57-1-22**, as last amended by Laws of Utah 2002, Chapter 209

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



26           **63I-1-257**, as enacted by Laws of Utah 2010, Chapter 66

27 ENACTS:

28           **57-1-24.5**, Utah Code Annotated 1953

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

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

32           **57-1-22. Successor trustees -- Appointment by beneficiary -- Effect -- Substitution**  
33 **of trustee -- Recording -- Form.**

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

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

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

42           (2) The substitution shall:

43           (a) identify the trust deed by stating:

44           (i) the names of the original parties to the trust deed;

45           (ii) the date of recordation; and

46           (iii) (A) the book and page where the trust deed is recorded; or

47           (B) the entry number;

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

49           (c) state the name and address of the new trustee; and

50           (d) be executed and acknowledged by all of the beneficiaries under the trust deed or  
51 their successors in interest.

52           (3) (a) If not previously recorded[;] at the time of recording a notice of default, the  
53 successor trustee shall file for record, in the office of the county recorder of each county in  
54 which the trust property or some part of it is situated, the substitution of trustee.

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

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

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

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

62 Substitution of Trustee

63 (insert name and address of new trustee)

64 is hereby appointed successor trustee under the trust deed executed by \_\_\_\_ as  
65 trustor, in which \_\_\_\_ is named beneficiary and \_\_\_\_ as trustee, and filed for record  
66 \_\_\_\_\_(month\day\year), and recorded in Book \_\_\_\_, Page \_\_\_\_, Records of \_\_\_\_  
67 County, (or filed for record \_\_\_\_\_(month\day\year), with recorder's entry No. \_\_\_\_, \_\_\_\_  
68 County), Utah.

69 (Insert legal description)

70 Signature\_\_\_\_\_

71 (Certificate of Acknowledgment)

72 Section 2. Section **57-1-24** is amended to read:

73 **57-1-24. Sale of trust property by trustee -- Notice of default.**

74 [~~The power of sale conferred upon the~~] A trustee who is qualified under Subsection  
75 57-1-21(1)(a)(i) or (iv) may not [~~be exercised~~] exercise the power of sale conferred as provided  
76 in Section 57-1-23 until after:

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

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

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

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

87 [~~(2) not less than three months has elapsed from the time the trustee filed for record~~]

88 ~~under Subsection (1); and]~~

89 (d) complies with the requirements of Section 57-1-24.5, if the trust property is  
90 owner-occupied property, as defined in Section 57-1-24.5; and

91 ~~[(3)] (2) [after the lapse of at least three months]~~ the trustee ~~[shall give]~~ gives notice of  
92 sale, as provided in Sections 57-1-25 and 57-1-26, following the lapse of at least three months  
93 from the time the trustee files a notice of default for record under Subsection (1)(a), subject to  
94 Section 57-1-24.5.

95 Section 3. Section **57-1-24.5** is enacted to read:

96 **57-1-24.5. Notice to default trustor -- Right to negotiate alternative to foreclosure**  
97 **-- Requirements -- Deferment.**

98 (1) As used in this section:

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

101 (b) "Deferment period" means the period of tolling under Subsection (4)(a).

102 (c) "Lender" means a person who is:

103 (i) a beneficiary under a trust deed secured by owner-occupied property that is the  
104 subject of a notice of default under Section 57-1-24; and

105 (ii) entitled to direct the trustee to sell the property following a default under the loan.

106 (d) "Loan" means the obligation for which a trust deed is given as security.

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

109 (2) (a) No later than 15 days after a trustee files for recording a notice of default under  
110 Section 57-1-24, the trustee shall send a notice to the default trustor by certified mail.

111 (b) A notice under Subsection (2)(a) shall include:

112 (i) the name, address, telephone number, and email address of an individual with  
113 authority to:

114 (A) negotiate on behalf of the lender with respect to all aspects of the loan, including  
115 regarding foreclosure relief, a loan modification or forbearance, or any other reasonable  
116 alternative to foreclosure; and

117 (B) bind the lender to an agreement with the default trustor under terms that differ from  
118 the terms of the loan;

119 (ii) the name, address, telephone number, and email address of an individual  
120 representing the lender whom the default trustor is required to contact under Subsection (3)(a)  
121 to request to negotiate with the lender as provided in this section;

122 (iii) a description of the deferment opportunity under this section and the requirements  
123 and procedure for obtaining a deferment;

124 (iv) the date by which the default trustor is required to contact the lender to request to  
125 enter into negotiations as provided in this section;

126 (v) the Internet address of the United States Department of Housing and Urban  
127 Development web site identifying approved housing counseling agencies in the state; and

128 (vi) provide information regarding the availability of the federal government's Making  
129 Home Affordable program and the rights and benefits available to the default trustor under the  
130 program.

131 (3) (a) Subject to Subsections (3)(d) and (e), a lender shall make itself available for and  
132 cooperate in negotiations with a default trustor regarding the terms of the loan, including  
133 regarding foreclosure relief, a loan modification or forbearance, or any other mutually  
134 acceptable reasonable alternative to foreclosure, if:

135 (i) within 20 days after the trustee sends notice under Subsection (2), the default trustor  
136 contacts the lender to request negotiations regarding the loan;

137 (ii) the default trustor:

138 (A) occupied the trust property as the trustor's primary residence at the time the notice  
139 of default was recorded and during the 90-day period immediately before the notice of default  
140 was recorded;

141 (B) intends to continue to reside at the trust property; and

142 (C) is personally obligated on the loan; and

143 (iii) the loan:

144 (A) was incurred for primarily personal, family, or household purposes; and

145 (B) is secured by a trust deed on the trust property that is the subject of the notice of  
146 default.

147 (b) A default trustor may contact a lender under Subsection (3)(a) by telephone, mail,  
148 electronically, or in person.

149 (c) A default trustor is ineligible to request the lender to negotiate regarding the loan or

150 to a deferment as provided in this section if the default trustor:

151 (i) abandons the trust property;

152 (ii) has been discharged within the preceding 12 months in a Chapter 7 bankruptcy in  
153 which the trust property was property of the bankruptcy estate;

154 (iii) has been discharged within the preceding 12 months in a Chapter 13 bankruptcy  
155 with a modified loan agreement for which the trust property is security; or

156 (iv) previously received a foreclosure deferment under this section with respect to the  
157 same loan, including any modification of the loan.

158 (d) In negotiating with the default trustor under this section and determining whether to  
159 agree to an alternative to foreclosure, a lender shall:

160 (i) consider the default trustor's household expenses and gross monthly income, the  
161 nature of the loan, any written loan modification agreement between the default trustor and the  
162 lender that was executed during the preceding 12 months, and any other relevant factors;

163 (ii) apply an analysis that is consistent with the net present value test set out in the  
164 Federal Deposit Insurance Corporation Loan Modification Program guidelines, effective  
165 October 2008, designed to indicate:

166 (A) what the default trustor is able to pay on a sustainable basis for monthly housing  
167 expenses, including principal, interest, taxes, insurance, and any applicable homeowner  
168 association dues; and

169 (B) whether the lender would be likely to be paid more from the modification  
170 necessary to achieve a monthly payment that the default trustor is able to pay, as determined  
171 under Subsection (3)(d)(ii)(A), than the lender would be likely to be paid from a completed  
172 foreclosure;

173 (iii) make available to the default trustor the full rights and benefits of the federal  
174 government's Making Home Affordable program, to the extent the program applies; and

175 (iv) give reasonable consideration to how long the default trustor has lived at the trust  
176 property, the default trustor's payment history over the life of the loan before the default, the  
177 circumstances, including any hardship, that led to the default trustor's inability to meet the  
178 obligations of the loan, the reasonable likelihood that those circumstances would be  
179 substantially improved if the default trustor were given foreclosure relief or a loan  
180 modification, and any other equitable factors relevant to the default trustor's circumstances.

181 (e) A lender and default trustor shall participate in and conduct negotiations under this  
182 section consistent with the implied covenant of good faith and fair dealing that applies under  
183 the loan.

184 (4) (a) The three-month period required to lapse under Section 57-1-24 before a trustee  
185 may give notice of sale is tolled from the date that a default trustor contacts the lender under  
186 Subsection (3)(a)(i) until 90 days after that date, unless earlier terminated under Subsection  
187 (4)(b), if:

- 188 (i) the default trustor contacts the lender as provided in Subsection (3)(a)(i);
- 189 (ii) the default trustor meets the criteria of Subsection (3)(a)(ii);
- 190 (iii) the loan meets the criteria of Subsection (3)(a)(iii);
- 191 (iv) the default trustor is not ineligible under Subsection (3)(c);
- 192 (v) within 10 days after contacting the lender as provided in Subsection (3)(a)(i), the  
193 default trustor pays to the lender the amount of a regular monthly payment under the loan; and  
194 (vi) the default trustor pays to the lender the amount of a regular monthly payment  
195 under the loan within each 30-day period following a payment under Subsection (4)(a)(v).

196 (b) A default trustor may make a payment under Subsection (4)(a)(v) or (vi)  
197 electronically or by certified funds delivered by a method that provides evidence of the date of  
198 payment.

199 (c) A deferment period under Subsection (4)(a) terminates if:

- 200 (i) the default trustor abandons the trust property;
- 201 (ii) the default trustor fails to comply with the conditions of foreclosure deferment,  
202 including a failure to make a payment as required under Subsection (4)(a)(v) or (vi);
- 203 (iii) the default trustor conveys, transfers, or further encumbers the trust property in  
204 violation of the trust deed;

205 (iv) a person holding another lien on the trust property has initiated foreclosure;

206 (v) the default trustor files for bankruptcy during the deferment period; or

207 (vi) the negotiations between the lender and the default trustor are concluded.

208 (d) A lender's acceptance of a payment under Subsection (4)(a)(v) or (vi) does not  
209 constitute a waiver of default or a modification of any amount due on the loan or of any other  
210 right the lender has under the loan.

211 Section 4. Section **63I-1-257** is amended to read:

212           **63I-1-257. Repeal dates, Title 57.**

213           (1) Section 57-1-24.5 is repealed December 31, 2013.

214           (2) Subsections 57-1-25(1)(c), (3)(b), and (4) are repealed December 31, 2012.

# FISCAL NOTE

H.B. 326 1st Sub. (Buff)

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.