

1 **TRUST DEED LAW AMENDMENTS**

2 2001 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Michael G. Waddoups**

5 **This act modifies provisions related to trust deeds. The act alters the qualifications and**
6 **outlines the duties for trustees of trust deeds. The act modifies provisions relating to**
7 **successor trustees. The act alters the trustee's requirements when filing a notice of default.**
8 **The act alters provisions relating to the trustee's sale of trust property and the proceeds of**
9 **the sale. The act modifies the requirements for the sale of trust property by public auction.**
10 **The act amends the requirements for the trustee's course of action once a default under a**
11 **trust deed is cured. The act designates the determinative value for trust property. The act**
12 **establishes the effect of an erroneously recorded reconveyance of a trust deed. The act also**
13 **makes technical corrections.**

14 This act affects sections of Utah Code Annotated 1953 as follows:

15 AMENDS:

16 **57-1-20**, as enacted by Chapter 181, Laws of Utah 1961

17 **57-1-21**, as last amended by Chapter 182, Laws of Utah 1996

18 **57-1-22**, as last amended by Chapter 75, Laws of Utah 2000

19 **57-1-23**, as enacted by Chapter 181, Laws of Utah 1961

20 **57-1-24**, as last amended by Chapter 88, Laws of Utah 1989

21 **57-1-25**, as last amended by Chapter 75, Laws of Utah 2000

22 **57-1-26**, as last amended by Chapter 75, Laws of Utah 2000

23 **57-1-27**, as last amended by Chapter 82, Laws of Utah 1988

24 **57-1-28**, as last amended by Chapter 68, Laws of Utah 1985

25 **57-1-29**, as last amended by Chapter 215, Laws of Utah 1997

26 **57-1-31**, as last amended by Chapter 75, Laws of Utah 2000

27 **57-1-32**, as last amended by Chapter 68, Laws of Utah 1985

28 **57-1-33.1**, as enacted by Chapter 185, Laws of Utah 1995

29 ENACTS:

30 **57-1-21.5**, Utah Code Annotated 1953

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

32 Section 1. Section **57-1-20** is amended to read:

33 **57-1-20. Transfers in trust of real property -- Purposes -- Effect.**

34 Transfers in trust of real property may be made to secure the performance of an obligation
35 of the trustor or any other person named in the trust deed to a beneficiary. All right, title, interest
36 and claim in and to the trust property acquired by the trustor, or [~~his~~] the trustor's successors in
37 interest, subsequent to the execution of the trust deed, shall inure to the trustee as security for the
38 obligation or obligations for which the trust property is conveyed [~~in like manner~~] as if acquired
39 before execution of the trust deed.

40 Section 2. Section **57-1-21** is amended to read:

41 **57-1-21. Trustees of trust deeds -- Qualifications.**

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

43 (i) any active member of the Utah State Bar residing in Utah;

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

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

49 (iv) any title insurance or abstract company authorized to do business and actually doing
50 business in Utah under the laws of Utah;

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

52 (vi) any association or corporation [~~which~~] that is licensed, chartered, or regulated by the
53 Farm Credit Administration or its successor.

54 (b) Subsection (1) is not applicable to a trustee of a trust deed existing prior to the effective
55 date of this chapter, nor to any agreement that is supplemental to that trust deed.

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

58 (3) The power of sale conferred by Section 57-1-23 may only be exercised by the trustee

59 of a trust deed if the trustee is qualified under Subsection (1)(a)(i).

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

64 Section 3. Section **57-1-21.5** is enacted to read:

65 **57-1-21.5. Trustees of trust deeds -- Duties.**

66 (1) The following duties of the trustee, without limitation, may not be delegated:

67 (a) the preparation and execution of:

68 (i) the notice of default and election to sell;

69 (ii) the cancellation of notice of default and election to sell;

70 (iii) the notice of sale;

71 (iv) the trustee's deed; and

72 (v) the deed of reconveyance;

73 (b) the notification of foreclosure through publication, posting, and certified or registered
 74 mail;

75 (c) the receiving and responding to requests for reinstatement or payoff requirements; and

76 (d) the handling of reinstatement or payoff funds.

77 (2) Nothing in this section shall be intended to prevent the trustee from using clerical or
 78 office staff under the trustee's direct and immediate supervision to assist in the duties described
 79 in Subsection (1).

80 Section 4. Section **57-1-22** is amended to read:

81 **57-1-22. Successor trustees -- Appointment by beneficiary -- Effect -- Substitution**
 82 **of trustee -- Recording -- Form.**

83 (1) The beneficiary may appoint a successor trustee at any time by filing for record in the
 84 office of the county recorder of each county in which the trust property or some part [~~thereof~~] of
 85 the trust property is situated, a substitution of trustee. [~~From the time the substitution is filed for~~
 86 ~~record, the~~] The new trustee shall succeed to all the power, duties, authority, and title of the trustee
 87 named in the deed of trust and of any successor trustee. The beneficiary may, by express provision
 88 in the substitution of trustee, ratify and confirm action taken on the beneficiary's behalf by the new
 89 trustee prior to the recording of the substitution of trustee.

90 (2) The substitution shall:

91 (a) identify the trust deed by stating the names of the original parties [~~thereto~~] to the trust
92 deed, the date of recordation, and the book and page where the same is recorded or the entry
93 number;

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

95 (c) state the name of the new trustee; and

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

98 (3) If not previously recorded, at the time of recording [~~the~~] a notice of default, the
99 successor trustee shall file for record, in the office of the county recorder of each county in which
100 the trust property or some part of it is situated, the substitution of trustee[~~, and a~~]. A copy [thereof]
101 of the substitution of trustee shall be sent in the manner provided in [~~Section~~] Subsection
102 57-1-26(2) to all persons to whom a copy of the notice of default would be required to be mailed
103 by [~~Section~~] Subsections 57-1-26(1)(a) and (3). [~~In addition thereto, a copy shall be sent to the~~
104 ~~prior trustee by regular mail to his last-known address.~~]

105 (4) A substitution of trustee shall be sufficient if made in substantially the following form:

106 Substitution of Trustee

107 (insert name and address of new trustee)

108 is hereby appointed successor trustee under the trust deed executed by ____ as
109 trustor, in which ____ is named beneficiary and ____ as trustee, and filed for record
110 _____(month\day\year), and recorded in Book ____, Page ____, Records of ____ County,
111 (or filed for record _____(month\day\year), with recorder's entry No. ____, ____ County),
112 Utah.

113 (Insert legal description)

114 Signature _____

115 (Certificate of Acknowledgment)

116 Section 5. Section **57-1-23** is amended to read:

117 **57-1-23. Sale of trust property -- Power of trustee -- Foreclosure of trust deed.**

118 [~~A power of sale is hereby conferred upon the~~] The trustee who is qualified under
119 Subsection 57-1-21(1)(a)(i) is given the power of sale by which the trustee may exercise and
120 [~~under which~~] cause the trust property [may] to be sold in the manner [hereinafter] provided in

121 Sections 57-1-24 and 57-1-27, after a breach of an obligation for which the trust property is
122 conveyed as security; or, at the option of the beneficiary, a trust deed may be foreclosed in the
123 manner provided by law for the foreclosure of mortgages on real property. The power of sale may
124 be exercised by the trustee without express provision ~~[therefor]~~ for it in the trust deed.

125 Section 6. Section **57-1-24** is amended to read:

126 **57-1-24. Sale of trust property by trustee -- Notice of default.**

127 The power of sale conferred upon the trustee who is qualified under Subsection
128 57-1-21(1)(a)(i) may not be exercised until:

129 (1) the trustee first files for record, in the office of the recorder of each county where the
130 trust property or some part or parcel ~~[thereof]~~ of the trust property is situated, a notice of default,
131 identifying the trust deed by stating the name of the trustor named ~~[therein]~~ in the trust deed and
132 giving the book and page, or the recorder's entry number, where the trust deed is recorded and a
133 legal description of the trust property, and containing a statement that a breach of an obligation for
134 which the trust property was conveyed as security has occurred, and setting forth the nature of that
135 breach and of ~~[his]~~ the trustee's election to sell or cause to be sold the property to satisfy the
136 obligation;

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

139 (3) after the lapse of at least three months the trustee shall give notice of sale as provided
140 in ~~[this act]~~ Sections 57-1-25 and 57-1-26.

141 Section 7. Section **57-1-25** is amended to read:

142 **57-1-25. Notice of trustee's sale -- Description of property -- Time and place of sale.**

143 (1) The trustee shall give written notice of the time and place of sale particularly describing
144 the property to be sold:

145 (a) by publication of the notice, at least three times, once a week for three consecutive
146 weeks, the last publication to be at least ten days but not more than 30 days prior to the sale, in
147 ~~[some]~~ a newspaper having a general circulation in each county in which the property to be sold,
148 or some part ~~[thereof]~~ of the property to be sold, is situated, or in a newspaper of general statewide
149 daily publication; and

150 (b) by posting the notice, at least 20 days before the date of sale, in some conspicuous
151 place on the property to be sold ~~[and also in at least three public places of each city or county in~~

152 which the property to be sold, or some part thereof, is situated].

153 (2) (a) The sale shall be held at the time and place designated in the notice of sale [which].

154 (b) The time of sale shall be between the hours of [9] 8 a.m. and 5 p.m. [and at the
155 courthouse of the county in which the property to be sold, or some part thereof, is situated.]

156 (c) The place of sale, as designated in the notice of sale under Subsection (1), shall be one
157 of the following:

158 (i) at the property to be sold;

159 (ii) at a courthouse serving the county in which the property to be sold, or some part of the
160 property to be sold, is located; or

161 (iii) at the office of the trustee.

162 (3) The notice of sale shall be sufficient if made in substantially the following form:

163 Notice of Trustee's Sale

164 The following described property will be sold at public auction to the highest bidder,
165 payable in lawful money of the United States at the time of sale, at [the _____ in _____,
166 ~~County, Utah,~~] (insert location of sale) _____ on _____ (month\day\year), at
167 __.m. of said day, for the purpose of foreclosing a trust deed originally executed by ____ (and
168 _____, his wife,) as trustors, in favor of _____, covering real property located at _____, and more
169 particularly described as:

170 (Insert legal description)

171 [(Certificate of Acknowledgment, if recorded)]

172 The current beneficiary of the trust deed is _____ and the current
173 owners of the property are _____ and _____.

174 Dated _____ (month\day\year). _____

175 Trustee

176 Section 8. Section **57-1-26** is amended to read:

177 **57-1-26. Requests for copies of notice of default and notice of sale -- Mailing by**
178 **trustee or beneficiary -- Publication of notice of default.**

179 (1) (a) Any person desiring a copy of any notice of default and of any notice of sale under
180 any trust deed may, at any time subsequent to the filing for record of the trust deed and prior to the
181 filing for record of a notice of default [~~thereunder~~] of the trust deed, file for record in the office of
182 the county recorder of any county in which [~~any part or parcel of~~] the trust property, or any part

183 of the trust property, is situated, a duly acknowledged request for a copy of any notice of default
 184 and notice of sale. ~~[The]~~ Except as provided in Subsection (3), the request may not be included
 185 in any other recorded instrument. The request shall set forth the name and address of the ~~[person~~
 186 ~~or]~~ persons requesting copies of ~~[such]~~ those notices and shall identify the trust deed by stating the
 187 names of the original parties ~~[thereto]~~ to the trust deed, the date of filing for record ~~[thereof]~~ of the
 188 trust deed, the book and page where ~~[the same]~~ the date of filing for record of the trust deed is
 189 recorded or the recorder's entry number, and the legal description of the trust property. The request
 190 shall be in substantially the following form:

191 REQUEST FOR NOTICE

192 ~~[Request is hereby made]~~ The undersigned requests that a copy of any notice of default and
 193 a copy of notice of sale under the trust deed filed for record _____(month\day\year), and
 194 recorded in Book ____, Page ____, Records of ____ County, (or filed for record
 195 _____(month\day\year), with recorder's entry number ____, _____ County), Utah,
 196 executed by ____ and _____ as ~~[trustor]~~ trustors, in which ____ is named as
 197 beneficiary and ____ as trustee, be mailed to ____ (insert name) ____ at ____ (insert address)
 198 _____

199 (Insert legal description)

200 Signature _____

201 (Certificate of Acknowledgement)

202 (b) Upon filing for record of a request for notice, the recorder shall index the request in
 203 the mortgagor's index, mortgagee's index, and abstract record. Except as provided in this ~~[section]~~
 204 Subsection (3), the trustee under any ~~[such]~~ deed of trust is not required to send notice of default
 205 or notice of sale to any person not filing a request for notice as described ~~[herein]~~ in Subsection
 206 (1)(a).

207 (2) Not later than ten days after recordation of a notice of default, the trustee or beneficiary
 208 shall mail, by certified or registered mail, with postage prepaid, a copy of ~~[such]~~ the notice of
 209 default with the recording date shown ~~[thereon]~~, addressed to each person whose name and address
 210 are set forth in a request ~~[therefor which]~~ that has been recorded prior to the filing for record of the
 211 notice of default, directed to the address designated in the request. At least 20 days before the date
 212 of sale, the trustee shall mail, by certified or registered mail, return receipt requested with postage
 213 prepaid, a copy of the notice of the time and place of sale, addressed to each person whose name

214 and address are set forth in a request [~~therefor which~~] that has been recorded prior to the filing for
 215 record of the notice of default, directed to the address designated in the request.

216 (3) Any trust deed may contain a request that a copy of any notice of default and a copy
 217 of any notice of sale [~~thereunder~~] under the trust deed be mailed to any person who is a party
 218 [~~thereto~~] to the trust deed at the address of the person set forth [~~therein, and a~~] in the trust deed.
 219 A copy of any notice of default and of any notice of sale shall be mailed to [~~each such~~] any person
 220 who is a party to the trust deed at the same time and in the same manner required in Subsection
 221 (2) as though a separate request [~~therefor~~] had been filed by each [~~of such persons~~] person as
 222 provided in [~~this section~~] Subsection (1)(a).

223 [~~(4) If no address of the trustor is set forth in the trust deed and if no request for notice by~~
 224 ~~the trustor has been recorded as provided in this section, a copy of the notice of default shall be~~
 225 ~~published at least three times, once a week for three consecutive weeks, in a newspaper of general~~
 226 ~~circulation in each county in which the trust property, or some part thereof, is situated, such~~
 227 ~~publication to commence not later than ten days after the filing for record of the notice of default.~~
 228 ~~In lieu of this publication, a copy of the notice of default may be delivered personally to the trustor~~
 229 ~~within the ten days or at any time before publication is completed.]~~

230 [~~(5)~~] (4) No request for a copy of any notice filed for record [~~pursuant to this section~~]
 231 under Subsections (1) and (3), nor any statement or allegation in any [~~such request~~] of those
 232 requests, nor any record [~~thereof~~] of those requests, shall affect the title to trust property or be
 233 considered notice to any person that any person requesting copies of notice of default or of notice
 234 of sale has or claims any right, title or interest in, or lien or claim upon, the trust property.

235 Section 9. Section **57-1-27** is amended to read:

236 **57-1-27. Sale of trust property by public auction -- Postponement of sale.**

237 (1) (a) On the date and at the time and place designated in the notice of sale, the trustee
 238 or the attorney for the trustee shall sell the property at public auction to the highest bidder. The
 239 trustee, or the attorney for the trustee, may conduct the sale and act as the auctioneer. The trustor,
 240 or [~~his~~] the trustor's successor in interest, if present at the sale, may direct the order in which the
 241 trust property shall be sold, if the property consists of several known lots or parcels which can be
 242 sold [~~to advantage~~] separately. The trustee or attorney for the trustee shall follow these directions.
 243 Any person, including the beneficiary or trustee, may bid at the sale. The trustee may bid for the
 244 beneficiary, but not for the trustee. Each bid is considered an irrevocable offer [~~, and if~~]. If the

245 [~~purchaser~~] highest bidder refuses to pay the amount bid by [~~him~~] the highest bidder for the
 246 property [~~sold to him at the sale~~], the trustee, or the attorney for the trustee, [~~may again sell the~~
 247 ~~property at any time to the highest bidder.~~ The party] shall either:

248 (i) renotify the sale in the same manner as the original sale is required to be given; or

249 (ii) sell the property to the next highest bidder.

250 (b) A bidder refusing to pay the bid price is liable for any loss occasioned by the refusal,
 251 including interest, costs, and trustee's and reasonable attorneys' fees. The trustee or the attorney for
 252 the trustee may thereafter reject any other bid of that person for the property.

253 (2) The person conducting the sale may, for any cause he considers expedient, postpone
 254 the sale [~~up to a period not to exceed 72 hours~~]. [~~If the last hour of the postponement falls on a~~
 255 ~~Saturday, a Sunday, or a legal holiday, the sale may be postponed until the same hour of the next~~
 256 ~~day which is not a Saturday, a Sunday, or a legal holiday.~~] The person conducting the sale shall
 257 give notice of the postponement by public declaration, by written notice or oral postponement, at
 258 the time and place last appointed for the sale. No other notice of the postponed sale is required[;
 259 ~~unless the sale is postponed for longer than 72 hours beyond the date designated in the notice of~~
 260 ~~sale. In the event of a longer postponement, the sale shall be cancelled and renoticed in the same~~
 261 ~~manner as the original notice of sale is required to be given].~~

262 Section 10. Section **57-1-28** is amended to read:

263 **57-1-28. Sale of trust property by trustee -- Payment of bid -- Trustee's deed**
 264 **delivered to purchaser -- Recitals -- Effect.**

265 (1) The purchaser at the sale shall pay the price bid as directed by the trustee [~~and upon~~].
 266 The beneficiary shall receive a credit on the beneficiary's bid for the amount representing the
 267 unpaid principal owed, accrued interest as of the date of the sale, advances for the payment of
 268 taxes, insurance, and maintenance and protection of the trust property, or the beneficiary's lien on
 269 the trust property, and costs of sale, including reasonable trustee's and attorney's fees. Upon receipt
 270 of payment, the trustee shall execute and deliver [his] the trustee's deed to [such] the purchaser.
 271 The trustee's deed may contain recitals of compliance with the requirements of Sections 57-1-19
 272 through 57-1-36 relating to the exercise of the power of sale and sale of the described property
 273 [~~described therein~~] in the trustee's deed, including recitals concerning any mailing, personal
 274 delivery, and publication of the notice of default, any mailing and the publication and posting of
 275 the notice of sale, and the conduct of sale. These recitals constitute prima facie evidence of [~~such~~]

276 compliance with Sections 57-1-19 through 57-1-36, and are conclusive evidence in favor of bona
277 fide purchasers and encumbrancers for value and without notice.

278 (2) The trustee's deed shall operate to convey to the purchaser, without right of redemption,
279 the trustee's title and all right, title, interest, and claim of the trustor and [~~his~~] the trustor's
280 successors in interest and of all persons claiming by, through, or under them, in and to the property
281 sold, including all [~~such~~] right, title, interest, and claim in and to [~~such~~] the property acquired by
282 the trustor or [~~his~~] the trustor's successors in interest subsequent to the execution of the trust deed,
283 which conveyance shall be considered effective and relate back to the time of the sale.

284 Section 11. Section **57-1-29** is amended to read:

285 **57-1-29. Proceeds of trustee's sale -- Disposition.**

286 (1) The trustee shall apply the proceeds of the trustee's sale, first, to the costs and expenses
287 of exercising the power of sale and of the sale, including the payment of the trustee's and attorney's
288 fees actually incurred not to exceed the amount which may be provided for in the trust deed,
289 second, to payment of the obligation secured by the trust deed, and the balance, if any, to the
290 person or persons legally entitled to the proceeds, or the trustee, in [~~his~~] the trustee's discretion,
291 may deposit the balance of the proceeds with the clerk of the district court of the county in which
292 the sale took place. If the proceeds are deposited with the clerk of the district court, the trustee
293 shall file an affidavit with the clerk setting forth the facts of the deposit and a list of all known
294 claimants, including known addresses. Upon depositing the balance and filing the affidavit, the
295 trustee shall be discharged from all further responsibility and the clerk shall deposit the proceeds
296 with the state treasurer subject to the order of the district court.

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

299 (3) Any claimant may file a petition for adjudication of priority to the funds. The
300 petitioner requesting the funds shall give notice of the petition to all claimants listed in the trustee's
301 affidavit and to any other claimants known to the petitioner. The petitioner's notice must specify
302 that all claimants have 20 days to contest the petition by affidavit or counter-petition. If no
303 affidavit or counter-petition is filed within 20 days, the court shall enter an order directing the clerk
304 of the court or the county treasurer to disburse the funds to the petitioner according to the petition.

305 (4) If a petition for adjudication is contested by affidavit or counter-petition, the district
306 court shall conduct a hearing to establish the priorities of the parties to the deposited funds and

307 give notice to all known claimants of the date and time of the hearing. At the hearing, the court
 308 will establish the priorities of the parties to the deposited funds and enter an order directing the
 309 clerk of the court or county treasurer to disburse the funds according to the court's determination.

310 (5) All persons having or claiming to have an interest in the disposition of funds deposited
 311 with the court under Subsection (1) who fail to appear and assert their claims are barred from any
 312 claim to the funds after the entry of the court's order under Subsection (4).

313 Section 12. Section **57-1-31** is amended to read:

314 **57-1-31. Trust deeds -- Default in performance of obligations secured --**

315 **Reinstatement -- Cancellation of recorded notice of default.**

316 (1) Whenever all or a portion of the principal sum of any obligation secured by a trust deed
 317 has, prior to the maturity date fixed in the obligation, become due or been declared due by reason
 318 of a breach or default in the performance of any obligation secured by the trust deed, including a
 319 default in the payment of interest or of any installment of principal, or by reason of failure of the
 320 trustor to pay, in accordance with the terms of the trust deed, taxes, assessments, premiums for
 321 insurance, or advances made by the beneficiary in accordance with terms of the obligation or of
 322 the trust deed, the trustor or ~~[his]~~ the trustor's successor in interest in the trust property or any part
 323 ~~[thereof]~~ of the trust property or any other person having a subordinate lien or encumbrance of
 324 record ~~[thereon]~~ on the trust property or any beneficiary under a subordinate trust deed, at any time
 325 within three months of the filing for record of notice of default under the trust deed, if the power
 326 of sale is to be exercised, may pay to the beneficiary or ~~[his]~~ the beneficiary's successor in interest
 327 the entire amount then due under the terms of the trust deed (including costs and expenses actually
 328 incurred in enforcing the terms of the obligation, or trust deed, and the trustee's and attorney's fees
 329 actually incurred) other than that portion of the principal as would not then be due had no default
 330 occurred, and thereby cure the existing default ~~[theretofore existing and, thereupon, all proceedings~~
 331 ~~theretofore had or instituted shall be dismissed or discontinued and]~~. After the beneficiary or
 332 beneficiary's successor in interest has been paid and the default cured, the obligation and trust deed
 333 shall be reinstated ~~[and shall be and remain in force and effect the same]~~ as if no ~~[such]~~
 334 acceleration had occurred.

335 (2) If the default is cured and the trust deed reinstated in the manner provided in
 336 Subsection (1), the ~~[beneficiary, or his assignee, shall, on demand of any person having an interest~~
 337 ~~in the trust property, execute and deliver to him a request to the]~~ trustee ~~[to]~~ shall execute,

338 acknowledge, and deliver a cancellation of the recorded notice of default under the trust deed; and
 339 any ~~[beneficiary under a trust deed, or his assignee,]~~ trustee who~~[-, for a period of 30 days after such~~
 340 ~~demand,]~~ refuses to ~~[request the trustee to]~~ execute and ~~[deliver]~~ record this cancellation within
 341 30 days is liable to the person ~~[entitled to such request]~~ curing the default for all actual damages
 342 resulting from this refusal. A ~~[release and]~~ reconveyance given by the trustee ~~[or beneficiary, or~~
 343 ~~both,]~~ or the execution of a trustee's deed constitutes a cancellation of a notice of default.
 344 Otherwise, a cancellation of a recorded notice of default under a trust deed is, when acknowledged,
 345 entitled to be recorded and is sufficient if made and executed by the trustee in substantially the
 346 following form:

347 Cancellation of Notice of Default

348 The undersigned hereby cancels the notice of default filed for record
 349 _____(month\day\year), and recorded in Book ____, Page ____, Records of ____ County,
 350 (or filed of record _____(month\day\year), with recorder's entry No. ____, ____ County),
 351 Utah, which notice of default refers to the trust deed executed by ____ and _____ as
 352 ~~[trustor]~~ trustors, in which ____ is named as beneficiary and ____ as trustee, and filed for record
 353 _____(month\day\year), and recorded in Book ____, Page ____, Records of ____ County,
 354 (or filed of record _____(month\day\year), with recorder's entry No. ____, ____ County),
 355 Utah.

356 (legal description)

357 Signature of Trustee _____

358 Section 13. Section **57-1-32** is amended to read:

359 **57-1-32. Sale of trust property by trustee -- Action to recover balance due upon**
 360 **obligation for which trust deed was given as security -- Collection of costs and attorney's**
 361 **fees.**

362 At any time within three months after any sale of property under a trust deed[;] as
 363 ~~[hereinafter]~~ provided in Sections 57-1-23, 57-1-24, and 57-1-27, an action may be commenced
 364 to recover the balance due upon the obligation for which the trust deed was given as security~~[-, and~~
 365 ~~in such action the complaint shall set forth the entire amount of the indebtedness which was~~
 366 ~~secured by such trust deed, the amount for which such property was sold, and the fair market value~~
 367 ~~thereof at the date of sale].~~ Before rendering judgment, the court shall find the ~~[fair market]~~ value
 368 of the property at the date of sale ~~[of the property sold]~~. Absent evidence to the contrary, the

369 amount for which the property was sold shall be determinative of the value. If other evidence is
 370 considered in determining the value, the court shall take into account the marketing period, holding
 371 costs, and anticipated costs of sale for the plaintiff. The court may not render judgment for more
 372 than the amount by which the amount of the indebtedness with interest, costs, and expenses of sale,
 373 including trustee's and attorney's fees, exceeds the [~~fair-market~~] value of the property as of the date
 374 of the sale. In any action brought under this section, the prevailing party shall be entitled to collect
 375 its costs and reasonable attorney fees incurred [~~in bringing an action under this section~~].

376 Section 14. Section **57-1-33.1** is amended to read:

377 **57-1-33.1. Reconveyance of a trust deed -- Erroneous reconveyance.**

378 (1) (a) When an obligation secured by a trust deed has been satisfied, the trustee shall,
 379 upon written request by the beneficiary, reconvey the trust property.

380 (b) At the time the beneficiary requests a reconveyance under Subsection (1)(a), the
 381 beneficiary shall deliver to the trustee or the trustee's successor in interest the trust deed and the
 382 note or other evidence that the obligation securing the trust deed has been satisfied.

383 (2) The reconveyance under Subsection (1) may designate the grantee as "the person or
 384 persons entitled thereto."

385 (3) If a reconveyance is erroneously recorded by a beneficiary, the effect of the
 386 reconveyance may be nullified and the trust deed reinstated by the recording of a corrective
 387 affidavit or similar instrument describing the trust deed and setting forth the fact of the erroneous
 388 reconveyance. Upon the recording of a corrective affidavit or similar instrument, the trust deed
 389 will have the same priority as it did prior to the erroneous reconveyance. However, any lien or
 390 interest that was recorded or attached to the trust deed property between the time of the recording
 391 of the erroneous reconveyance and the recording of the corrective affidavit or similar instrument
 392 shall have priority over the reinstated trust deed, unless the lien or interest was recorded or attached
 393 with actual knowledge that the trust deed had been reconveyed erroneously.

Legislative Review Note
as of 12-28-00 12:37 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel