

Senator Michael G. Waddoups proposes to substitute the following bill:

TRUST DEED LAW AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

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

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

AMENDS:

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

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

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

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

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

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

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

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

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

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) or (iv).

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 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 is intended to prevent the trustee from using clerical or office
78 staff employed by the trustee and under the trustee's direct and immediate supervision to assist in
79 the duties described in Subsection (1) or from using the services of others for publication, posting,
80 marketing, or advertising the sale.

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

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

84 (1) The beneficiary may appoint a successor trustee at any time by filing for record in the
85 office of the county recorder of each county in which the trust property or some part [~~thereof~~] of
86 the trust property is situated, a substitution of trustee. [~~From the time the substitution is filed for~~
87 ~~record, the] The new trustee shall succeed to all the power, duties, authority, and title of the trustee~~

88 named in the deed of trust and of any successor trustee. The beneficiary may, by express provision
89 in the substitution of trustee, ratify and confirm action taken on the beneficiary's behalf by the new
90 trustee prior to the recording of the substitution of trustee.

91 (2) The substitution shall:

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

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

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

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

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

106 (4) A substitution of trustee shall be [~~sufficient if made~~] in substantially the following
107 form:

Substitution of Trustee

(insert name and address of new trustee)

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

(Insert legal description)

(Certificate of Acknowledgment)

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

115 **57-1-23. Sale of trust property -- Power of trustee -- Foreclosure of trust deed.**

116 [~~A power of sale is hereby conferred upon the~~] The trustee who is qualified under

119 Subsection 57-1-21(1)(a)(i) or (iv) is given the power of sale by which the trustee may exercise
120 and [~~under which~~] cause the trust property [may] to be sold in the manner [hereinafter] provided
121 in 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) or (iv) 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; and

149 (b) by posting the notice, at least 20 days before the date of sale, in some conspicuous

150 place on the property to be sold and also [~~in at least three public places of each city or county in~~
151 ~~which the property to be sold, or some part thereof, is situated~~] at the office of the county recorder
152 of each county in which the trust property, or some part of it, is located.

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] § 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 shall be clearly identified in the notice of sale under Subsection (1)
157 and shall be one of the following:

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

160 (ii) at the property to be sold, provided that:

161 (A) if the described property comprises more than one acre, the location on the property
162 where the sale will be conducted is specifically described; and

163 (B) the property is accessible to the public at the time of the sale.

164 (3) The notice of sale shall be [~~sufficient if made~~] in substantially the following form:

165 Notice of Trustee's Sale

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

172 (Insert legal description)

173 [(Certificate of Acknowledgment, if recorded)]

174 The current beneficiary of the trust deed is _____ and the record
175 owners of the property as of the recording of the notice of default are _____ and
176 _____.

177 Dated _____ (month\day\year).

Trustee

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

180 **57-1-26. Requests for copies of notice of default and notice of sale -- Mailing by**

181 trustee or beneficiary -- Publication of notice of default.

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

194 REQUEST FOR NOTICE

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

202 (Insert legal description)

203 Signature _____

204 (Certificate of Acknowledgement)

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

210 (2) Not later than ten days after recordation of a notice of default, the trustee or beneficiary
 211 shall mail, by certified or registered mail, with postage prepaid, a copy of [~~such~~] the notice of

212 default with the recording date shown [~~thereon~~], addressed to each person whose name and address
213 are set forth in a request [~~therefor which~~] that has been recorded prior to the filing for record of the
214 notice of default, directed to the address designated in the request. At least 20 days before the date
215 of sale, the trustee shall mail, by certified or registered mail, return receipt requested with postage
216 prepaid, a copy of the notice of the time and place of sale, addressed to each person whose name
217 and address are set forth in a request [~~therefor which~~] that has been recorded prior to the filing for
218 record of the notice of default, directed to the address designated in the request.

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

226 (4) If no address of the trustor is set forth in the trust deed and if no request for notice by
227 the trustor has been recorded as provided in this section, a copy of the notice of default shall, no
228 later than 15 days after the filing for record of the notice of default, either be:

229 (a) mailed to the address of the property described in the notice of default; or

230 (b) posted on the property.

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

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

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

244 **57-1-27. Sale of trust property by public auction -- Postponement of sale.**

245 (1) (a) On the date and at the time and place designated in the notice of sale, the trustee
 246 or the attorney for the trustee shall sell the property at public auction to the highest bidder. The
 247 trustee, or the attorney for the trustee, may conduct the sale and act as the auctioneer. The trustor,
 248 or ~~his~~ the trustor's successor in interest, if present at the sale, may direct the order in which the
 249 trust property shall be sold, if the property consists of several known lots or parcels which can be
 250 sold ~~[to advantage]~~ separately. The trustee or attorney for the trustee shall follow these directions.
 251 Any person, including the beneficiary or trustee, may bid at the sale. The trustee may bid for the
 252 beneficiary. Each bid is considered an irrevocable offer~~[, and if].~~ If the [purchaser] highest bidder
 253 refuses to pay the amount bid by [him] the highest bidder for the property ~~[sold to him at the sale],~~
 254 the trustee, or the attorney for the trustee, ~~[may again sell the property at any time to the highest~~
 255 ~~bidder. The party] shall either:~~

256 (i) renounce the sale in the same manner as notice of the original sale is required to be
 257 given; or

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

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

262 (2) The person conducting the sale may, for any cause he considers expedient, postpone
 263 the sale ~~[up to a period not to exceed 72 hours]. [If the last hour of the postponement falls on a~~
 264 ~~Saturday, a Sunday, or a legal holiday, the sale may be postponed until the same hour of the next~~
 265 ~~day which is not a Saturday, a Sunday, or a legal holiday.]~~ The person conducting the sale shall
 266 give notice of ~~[the] each~~ each postponement by public declaration, by written notice or oral
 267 postponement, at the time and place last appointed for the sale. No other notice of the postponed
 268 sale is required, unless the ~~[sale is postponed for longer than 72 hours beyond the date designated~~
 269 ~~in the notice of sale. In the event of a longer postponement, the sale shall be cancelled and~~
 270 ~~renoticed in the same]~~ postponement exceeds 45 days. In that event, the sale shall be renoticed in
 271 the same manner as the original notice of sale is required to be given.

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

273 **57-1-28. Sale of trust property by trustee -- Payment of bid -- Trustee's deed**

274 **delivered to purchaser -- Recitals -- Effect.**

275 (1) The purchaser at the sale shall pay the price bid as directed by the trustee [~~and upon~~].
276 The beneficiary shall receive a credit on the beneficiary's bid within an amount not to exceed the
277 amount representing the unpaid principal owed, accrued interest as of the date of the sale, advances
278 for the payment of taxes, insurance, and maintenance and protection of the trust property and the
279 beneficiary's lien on the trust property, and costs of sale, including reasonable trustee's and
280 attorney's fees. Upon receipt of payment, the trustee shall execute and deliver [his] the trustee's
281 deed to [such] the purchaser. The trustee's deed may contain recitals of compliance with the
282 requirements of Sections 57-1-19 through 57-1-36 relating to the exercise of the power of sale and
283 sale of the property described [therein] in the trustee's deed, including recitals concerning any
284 mailing, personal delivery, and publication of the notice of default, any mailing and the publication
285 and posting of the notice of sale, and the conduct of sale. These recitals constitute prima facie
286 evidence of [such] compliance with Sections 57-1-19 through 57-1-36, and are conclusive
287 evidence in favor of bona fide purchasers and encumbrancers for value and without notice.

288 (2) The trustee's deed shall operate to convey to the purchaser, without right of redemption,
289 the trustee's title and all right, title, interest, and claim of the trustor and [his] the trustor's
290 successors in interest and of all persons claiming by, through, or under them, in and to the property
291 sold, including all [such] right, title, interest, and claim in and to [such] the property acquired by
292 the trustor or [his] the trustor's successors in interest subsequent to the execution of the trust deed,
293 which trustee's deed shall be considered effective and relate back to the time of the sale.

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

295 **57-1-29. Proceeds of trustee's sale -- Disposition.**

296 (1) The trustee shall apply the proceeds of the trustee's sale, first, to the costs and expenses
297 of exercising the power of sale and of the sale, including the payment of the trustee's and attorney's
298 fees actually incurred not to exceed the amount which may be provided for in the trust deed,
299 second, to payment of the obligation secured by the trust deed, and the balance, if any, to the
300 person or persons legally entitled to the proceeds, or the trustee, in [his] the trustee's discretion,
301 may deposit the balance of the proceeds with the clerk of the district court of the county in which
302 the sale took place. If the proceeds are deposited with the clerk of the district court, the trustee
303 shall file an affidavit with the clerk setting forth the facts of the deposit and a list of all known
304 claimants, including known addresses. Upon depositing the balance and filing the affidavit, the

305 trustee shall be discharged from all further responsibility and the clerk shall deposit the proceeds
306 with the state treasurer subject to the order of the district court.

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

309 (3) Any claimant may file a petition for adjudication of priority to the funds. The
310 petitioner requesting the funds shall give notice of the petition to all claimants listed in the trustee's
311 affidavit and to any other claimants known to the petitioner. The petitioner's notice must specify
312 that all claimants have 20 days to contest the petition by affidavit or counter-petition. If no
313 affidavit or counter-petition is filed within 20 days, the court shall, without a hearing, enter an
314 order directing the clerk of the court or the county treasurer to disburse the funds to the petitioner
315 according to the petition.

316 (4) If a petition for adjudication is contested by affidavit or counter-petition, the district
317 court shall, within 20 days, conduct a hearing to establish the priorities of the parties to the
318 deposited funds and give notice to all known claimants of the date and time of the hearing. At the
319 hearing, the court will establish the priorities of the parties to the deposited funds and enter an
320 order directing the clerk of the court or county treasurer to disburse the funds according to the
321 court's determination.

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

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

326 **57-1-31. Trust deeds -- Default in performance of obligations secured --**

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

328 (1) Whenever all or a portion of the principal sum of any obligation secured by a trust deed
329 has, prior to the maturity date fixed in the obligation, become due or been declared due by reason
330 of a breach or default in the performance of any obligation secured by the trust deed, including a
331 default in the payment of interest or of any installment of principal, or by reason of failure of the
332 trustor to pay, in accordance with the terms of the trust deed, taxes, assessments, premiums for
333 insurance, or advances made by the beneficiary in accordance with terms of the obligation or of
334 the trust deed, the trustor or ~~[his]~~ the trustor's successor in interest in the trust property or any part
335 ~~[thereof]~~ of the trust property or any other person having a subordinate lien or encumbrance of

336 record [~~thereon~~] on the trust property or any beneficiary under a subordinate trust deed, at any time
 337 within three months of the filing for record of notice of default under the trust deed, if the power
 338 of sale is to be exercised, may pay to the beneficiary or [~~his~~] the beneficiary's successor in interest
 339 the entire amount then due under the terms of the trust deed (including costs and expenses actually
 340 incurred in enforcing the terms of the obligation, or trust deed, and the trustee's and attorney's fees
 341 actually incurred) other than that portion of the principal as would not then be due had no default
 342 occurred, and thereby cure the existing default [~~theretofore existing and, thereupon, all proceedings~~
 343 ~~theretofore had or instituted shall be dismissed or discontinued and~~]. After the beneficiary or
 344 beneficiary's successor in interest has been paid and the default cured, the obligation and trust deed
 345 shall be reinstated [~~and shall be and remain in force and effect the same~~] as if no [~~such~~]
 346 acceleration had occurred.

347 (2) If the default is cured and the trust deed reinstated in the manner provided in
 348 Subsection (1), [~~the beneficiary, or his assignee, shall, on demand of any person having an interest~~
 349 ~~in the trust property, execute and deliver to him a request to the~~] and a reasonable fee is paid for
 350 cancellation, including the cost of recording the cancellation of notice of default, the trustee [to]
 351 shall execute, acknowledge, and deliver a cancellation of the recorded notice of default under the
 352 trust deed; and any [~~beneficiary under a trust deed, or his assignee,;~~] trustee who[~~, for a period of~~
 353 ~~30 days after such demand,;~~] refuses to [~~request the trustee to~~] execute and [~~deliver~~] record this
 354 cancellation within 30 days is liable to the person [~~entitled to such request~~] curing the default for
 355 all actual damages resulting from this refusal. A [~~release and~~] reconveyance given by the trustee
 356 [~~or beneficiary, or both,;~~] or the execution of a trustee's deed constitutes a cancellation of a notice
 357 of default. Otherwise, a cancellation of a recorded notice of default under a trust deed is, when
 358 acknowledged, entitled to be recorded and is sufficient if made and executed by the trustee in
 359 substantially the following form:

360 Cancellation of Notice of Default

361 The undersigned hereby cancels the notice of default filed for record
 362 _____(month\day\year), and recorded in Book _____, Page _____, Records of _____ County,
 363 (or filed of record _____(month\day\year), with recorder's entry No. _____, _____ County),
 364 Utah, which notice of default refers to the trust deed executed by _____ and _____ as
 365 [~~trustor~~] trustors, in which _____ is named as beneficiary and _____ as trustee, and filed for record
 366 _____(month\day\year), and recorded in Book _____, Page _____, Records of _____ County,

367 (or filed of record _____(month\day\year), with recorder's entry No. _____, _____ County),
368 Utah.

369 (legal description)

370 Signature of Trustee _____

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

372 **57-1-32. Sale of trust property by trustee -- Action to recover balance due upon**
373 **obligation for which trust deed was given as security -- Collection of costs and attorney's**
374 **fees.**

375 At any time within three months after any sale of property under a trust deed[;] as
376 [~~hereinabove~~] provided in Sections 57-1-23, 57-1-24, and 57-1-27, an action may be commenced
377 to recover the balance due upon the obligation for which the trust deed was given as security, and
378 in [~~such~~] that action the complaint shall set forth the entire amount of the indebtedness [~~which~~] that
379 was secured by [~~such~~] the trust deed, the amount for which [~~such~~] the property was sold, and the
380 fair market value [~~thereof at the~~] of the property at the date of sale. Before rendering judgment,
381 the court shall find the [~~fair market~~] value of the property at the date of sale [~~of the property sold~~].
382 The court may not render judgment for more than the amount by which the amount of the
383 indebtedness with interest, costs, and expenses of sale, including trustee's and attorney's fees,
384 exceeds the fair market value of the property as of the date of the sale. In any action brought under
385 this section, the prevailing party shall be entitled to collect its costs and reasonable attorney fees
386 incurred [~~in bringing an action under this section~~].

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

388 **57-1-33.1. Reconveyance of a trust deed -- Erroneous reconveyance.**

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

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

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

396 (3) If a reconveyance is erroneously recorded by a beneficiary, the effect of the
397 reconveyance may be nullified and the trust deed reinstated by the recording of a corrective

398 affidavit executed by the then current beneficiary describing the trust deed and setting forth the fact
399 of the erroneous reconveyance. Upon the recording of a corrective affidavit or similar instrument,
400 the trust deed has the same priority as it did prior to the erroneous reconveyance. However, any
401 lien or interest that was recorded or attached to the trust deed property between the time of the
402 recording of the erroneous reconveyance and the recording of the corrective affidavit or similar
403 instrument has priority over the reinstated trust deed, unless the lien or interest was recorded or
404 attached with actual knowledge that the trust deed had been reconveyed erroneously.