

TRUSTEES OF TRUST DEEDS AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: David Clark

This act modifies qualifications of trustees of trust deeds, of trustees' use of staff or others, and obligations of a trustee to provide notice.

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

AMENDS:

57-1-21, as last amended by Chapter 236, Laws of Utah 2001

57-1-21.5, as enacted by Chapter 236, Laws of Utah 2001

57-1-22, as last amended by Chapter 236, Laws of Utah 2001

57-1-26, as last amended by Chapter 236, Laws of Utah 2001

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

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

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

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

(i) any active member of the Utah State Bar [~~residing in Utah~~];

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

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

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

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

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



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

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

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

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

38 Section 2. Section **57-1-21.5** is amended to read:

39 **57-1-21.5. Trustees of trust deeds -- Duties.**

40 (1) The following duties of the trustee may not be delegated:

41 (a) the preparation and execution of:

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

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

44 (iii) the notice of sale;

45 (iv) the trustee's deed; and

46 (v) the deed of reconveyance;

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

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

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

51 (2) Nothing in this section is intended to prevent the trustee from using clerical or office
52 staff employed by the beneficiary or the trustee and under the trustee's [~~direct and immediate~~]
53 supervision to assist in the duties described in Subsection (1) or from using the services of others
54 for publication, posting, marketing, or advertising the sale.

55 Section 3. Section **57-1-22** is amended to read:

56 **57-1-22. Successor trustees -- Appointment by beneficiary -- Effect -- Substitution**
57 **of trustee -- Recording -- Form.**

58 (1) The beneficiary may appoint a successor trustee at any time by filing for record in the

59 office of the county recorder of each county in which the trust property or some part of the trust
60 property is situated, a substitution of trustee. The new trustee shall succeed to all the power, duties,
61 authority, and title of the trustee named in the deed of trust and of any successor trustee. The
62 beneficiary may, by express provision in the substitution of trustee, ratify and confirm action taken
63 on the beneficiary's behalf by the new trustee prior to the recording of the substitution of trustee.

64 (2) The substitution shall:

65 (a) identify the trust deed by stating the names of the original parties to the trust deed, the
66 date of recordation, and the book and page where the same is recorded or the entry number;

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

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

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

71 (3) If not previously recorded, at the time of recording a notice of default, the successor
72 trustee shall file for record, in the office of the county recorder of each county in which the trust
73 property or some part of it is situated, the substitution of trustee. A copy of the substitution of
74 trustee shall be sent in the manner provided in Subsection 57-1-26(2) to ~~[all persons to]~~ any:

75 (a) person who requests a copy of any notice of default or notice of sale under Subsection
76 57-1-26(1)(a); and

77 (b) person who is a party to the trust deed to whom a copy of a notice of default would be
78 required to be mailed by [Subsections] Subsection 57-1-26[~~(1)(a) and~~] (3).

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

80 Substitution of Trustee

81 (insert name and address of new trustee)

82 is hereby appointed successor trustee under the trust deed executed by ____ as

83 trustor, in which ____ is named beneficiary and ____ as trustee, and filed for record

84 _____(month\day\year), and recorded in Book ____, Page ____, Records of ____ County,

85 (or filed for record _____(month\day\year), with recorder's entry No. ____, ____ County),

86 Utah.

87 (Insert legal description)

88 Signature_____

89 (Certificate of Acknowledgment)

90 Section 4. Section **57-1-26** is amended to read:

91 **57-1-26. Requests for copies of notice of default and notice of sale -- Mailing by**
 92 **trustee or beneficiary -- Publication of notice of default -- Notice to parties of trust deed.**

93 (1) (a) Any person desiring a copy of any notice of default and of any notice of sale under
 94 any trust deed shall~~[-at any time subsequent to the filing for record of the trust deed and prior to~~
 95 ~~the filing for record of a notice of default of the trust deed;]~~ file for record [in the office of the
 96 county recorder of any county in which the trust property, or any part of the trust property, is
 97 situated;] a duly acknowledged request for a copy of any notice of default and notice of sale[-]:

98 (i) in the office of the county recorder of any county in which the trust property or any part
 99 of the trust property is situated; and

100 (ii) at any time:

101 (A) subsequent to the filing for record of the trust deed; and

102 (B) prior to the filing for record of a notice of default.

103 (b) Except as provided in Subsection (3), the request described in Subsection (1)(a) may
 104 not be included in any other recorded instrument.

105 (c) The request described in Subsection (1)(a) shall:

106 (i) set forth the name and address of the one or more persons requesting copies of [~~those~~
 107 ~~notices]~~ the notice of default and the notice of sale; and [shall]

108 (ii) identify the trust deed by stating:

109 (A) the names of the original parties to the trust deed[-];

110 (B) the date of filing for record of the trust deed[-];

111 (C) (I) the book and page where the trust deed is recorded; or

112 (II) the recorder's entry number[-]; and

113 (D) the legal description of the trust property.

114 (d) The request described in Subsection (1)(a) shall be in substantially the following form:

115 **REQUEST FOR NOTICE**

116 The undersigned requests that a copy of any notice of default and a copy of notice of sale
 117 under the trust deed filed for record _____(month\day\year), and recorded in Book _____,

118 Page _____, Records of _____ County, (or filed for record _____(month\day\year), with

119 recorder's entry number _____, _____ County), Utah, executed by _____ and _____

120 as trustors, in which _____ is named as beneficiary and _____ as trustee, be mailed to _____ (insert

121 name) _____ at _____ (insert address) _____.

122 (Insert legal description)

123 Signature _____

124 (Certificate of Acknowledgement)

125 ~~[(b) Upon filing for record of]~~

126 (e) If a request for a copy of a notice of default and notice of sale is filed for record under
127 this section, the recorder shall index the request in:

128 (i) the mortgagor's index[;];

129 (ii) mortgagee's index[;]; and

130 (iii) abstract record.

131 (f) Except as provided in Subsection (3), the trustee under any deed of trust is not required
132 to send notice of default or notice of sale to any person not filing a request for notice as described
133 in this Subsection (1)[(a)].

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

137 (i) by certified or registered mail, with postage prepaid;

138 (ii) with the recording date shown[;];

139 (iii) addressed to each person whose name and address are set forth in a request that has
140 been recorded prior to the filing for record of the notice of default[;]; and

141 (iv) directed to the address designated in the request.

142 (b) At least 20 days before the date of sale, the trustee shall mail[~~, by certified or registered~~
143 mail, return receipt requested with postage prepaid,] a copy of the notice of the time and place of
144 sale[;];

145 (i) by certified or registered mail, return receipt requested, with postage prepaid;

146 (ii) addressed to each person whose name and address are set forth in a request that has
147 been recorded prior to the filing for record of the notice of default[;]; and

148 (iii) directed to the address designated in the request.

149 (3) (a) Any trust deed may contain a request that a copy of any notice of default and a copy
150 of any notice of sale under the trust deed be mailed to any person who is a party to the trust deed
151 at the address of the person set forth in the trust deed.

152 (b) A copy of any notice of default and of any notice of sale shall be mailed to any person
153 requesting the notice who is a party to the trust deed at the same time and in the same manner
154 required in Subsection (2) as though a separate request had been filed by each person as provided
155 in Subsection (1)~~[(a):]~~ except that a trustee shall include with the copy of a notice of default and
156 the copy of a notice of sale the following information current as of the time the notice of default
157 and the notice of sale is provided:

158 (i) the name of the trustee;

159 (ii) the mailing address of the trustee;

160 (iii) the address of the principal business office of the trustee;

161 (iv) if the trustee has an office or agent in the state, the address of the office or agent in the
162 state that the person can contact regarding the notice of default and the notice of sale;

163 (v) the hours during which the trustee can be contacted regarding the notice of default and
164 notice of sale, which hours shall include the period between 9 a.m. and 4 p.m. in a regular business
165 day; and

166 (vi) a telephone number that the person may use to contact the trustee during the hours
167 described in Subsection (3)(b)(v).

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

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

173 (b) posted on the property.

174 (5) ~~[No request for a copy of any notice filed for record under Subsections (1) and (3), nor~~
175 ~~any statement or allegation in any of those requests, nor any record of those requests,]~~ The
176 following shall not affect the title to trust property or be considered notice to any person that any
177 person requesting copies of notice of default or of notice of sale has or claims any right, title or
178 interest in, or lien or claim upon, the trust property~~[-]~~:

179 (a) a request for a copy of any notice filed for record under Subsections (1) and (3);

180 (b) any statement or allegation in any request described in Subsection (5)(a); or

181 (c) any record of a request described in Subsection (5)(a).

Legislative Review Note
as of 11-16-01 9:25 AM

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

Office of Legislative Research and General Counsel

Committee Note

The Business and Labor Interim Committee recommended this bill.