

FORECLOSURE CLARIFICATIONS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory H. Hughes

Senate Sponsor: _____

LONG TITLE

General Description:

This bill requires lenders to foreclose against real estate before pursuing remedies from a guarantor.

Highlighted Provisions:

This bill:

- ▶ modifies the "one-action rule" to clarify that only one action may be pursued with regard to obligations secured by a mortgage or trust deed;
- ▶ defines "obligation," "action," and "fair market value";
- ▶ creates consistency between the "one-action rule" and the Utah Trust Deed Act; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-1-32, as last amended by Laws of Utah 2001, Chapter 236

78B-6-901, as last amended by Laws of Utah 2008, Chapter 123 and renumbered and amended by Laws of Utah 2008, Chapter 3



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

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

30 **57-1-32. Sale of trust property by trustee -- Action to recover balance due upon**
31 **obligation for which trust deed was given as security -- Collection of costs and attorney**
32 **fees.**

33 (1) For purposes of this section, "fair market value" means the price which would
34 result from a mutual agreement between a vendor who is willing, but not compelled to sell, and
35 a willing purchaser.

36 (2) At any time within three months after any sale of property under a trust deed as
37 provided in Sections 57-1-23, 57-1-24, and 57-1-27, an action may be commenced to recover:

38 (a) the balance due upon the obligation for which the trust deed was given as security[;
39 and in that action the complaint shall set forth];

40 (b) any obligation relating to the obligation for which the trust deed was given as
41 surety; or

42 (c) the entire amount of the indebtedness that was secured by the trust deed, the amount
43 for which the property was sold, and the fair market value of the property at the date of sale.

44 (3) (a) Before rendering judgment[;] with respect to any obligation relating to the
45 obligation for which a trust deed is given as surety, the court shall find the fair market value of
46 the property at the date of sale.

47 (b) The court may not render judgment for more than the amount by which the amount
48 of the indebtedness with interest, costs, and expenses of sale, including trustee's and attorney's
49 fees, exceeds the fair market value of the property as of the date of the sale. In any action
50 brought under this section, the prevailing party shall be entitled to collect its costs and
51 reasonable attorney fees incurred.

52 (c) A judgment may be rendered with respect to an obligation incurred in connection to
53 an obligation secured by a trust deed only after the court finds the fair market value, as of the
54 date of sale, of the property subject to the trust deed.

55 (4) No person may waive or modify any restrictions on the court or the court's
56 obligations under this section, except that a trust deed may by express language, prohibit the
57 recovery of any balance due after property is sold pursuant to the trustee's power of sale or the
58 trust deed is foreclosed.

59 (5) This section applies to a foreclosure action under a trust deed or a mortgage.

60 Section 2. Section **78B-6-901** is amended to read:

61 **78B-6-901. Form of action -- Judgment -- Special execution.**

62 (1) For purposes of this chapter and Title 57, Chapter 1, Conveyances:

63 (a) "action" includes any foreclosure on a mortgage, trust deed or similar instrument,
64 and the obtaining of a judgment for payment or performance against a guarantor, indemnitor, or
65 surety; and

66 (b) "obligation" includes any guarantee, indemnity, or other obligation of a guarantor,
67 indemnitor, or surety.

68 [~~(1)~~] (2) There is only one action for the recovery of [any] the following and that action
69 shall be in accordance with this chapter:

70 (a) any debt or the enforcement of any right or obligation secured [surety] by a
71 mortgage or trust deed upon real estate; and [that action shall be in accordance with the
72 provisions of this chapter.]

73 (b) any right or obligation created in connection with a debt or right obligation secured
74 by a mortgage or trust deed upon real estate.

75 [~~(2)~~] (3) A judgment shall include:

76 (a) the amount due, with costs and disbursements;

77 (b) an order for the sale of mortgaged property, or a portion of it to satisfy the amount
78 and accruing costs;

79 (c) direction to the sheriff to proceed and sell the property according to the provisions
80 of law relating to sales on execution; and

81 (d) a special execution or order of sale [~~shall be~~] issued for that purpose.

82 (4) A person may not waive or modify any of the restrictions on the court or the court's
83 obligations under this section, except that a mortgage may, by express language, prohibit the
84 recovery of any balance due after the mortgage is foreclosed.

Legislative Review Note
as of 3-2-09 2:53 PM

Office of Legislative Research and General Counsel

H.B. 438 - Foreclosure Clarifications

Fiscal Note

2009 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
