

**FORECLOSURE PROCESSES ON
RESIDENTIAL RENTAL PROPERTIES**

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to the foreclosure of residential rental property.

Highlighted Provisions:

This bill:

- ▶ modifies requirements for notices of trustee's sale if the property to be sold is residential rental property;
- ▶ modifies unlawful detainer provisions relating to foreclosed residential rental property;
- ▶ enacts provisions relating to a tenant's right to occupy residential rental property after foreclosure and requiring notice to tenants of foreclosed residential rental property; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-1-25, as last amended by Laws of Utah 2009, Chapter 388



28 78B-6-802, as last amended by Laws of Utah 2009, Chapter 146

29 78B-6-802.5, as enacted by Laws of Utah 2009, Chapter 184

30 ENACTS:

31 78B-6-802.7, Utah Code Annotated 1953

32 78B-6-901.5, Utah Code Annotated 1953



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

35 Section 1. Section 57-1-25 is amended to read:

36 **57-1-25. Notice of trustee's sale -- Description of property -- Time and place of**
37 **sale.**

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

40 (a) by publication of the notice:

41 (i) (A) at least three times;

42 (B) once a week for three consecutive weeks;

43 (C) the last publication to be at least 10 days but not more than 30 days before the date
44 the sale is scheduled; and

45 (D) in a newspaper having a general circulation in each county in which the property to
46 be sold, or some part of the property to be sold, is situated; and

47 (ii) in accordance with Section 45-1-101 for 30 days before the date the sale is
48 scheduled; and

49 (b) by posting the notice:

50 (i) at least 20 days before the date the sale is scheduled; and

51 (ii) (A) in some conspicuous place on the property to be sold; ~~and~~

52 (B) at the office of the county recorder of each county in which the trust property, or
53 some part of it, is located[-]; and

54 (C) if the property to be sold is subject to a residential rental agreement, as defined in
55 Section 78B-6-802.7, on the primary door of each dwelling unit on the property to be sold.

56 (2) (a) The sale shall be held at the time and place designated in the notice of sale.

57 (b) The time of sale shall be between the hours of 8 a.m. and 5 p.m.

58 (c) The place of sale shall be clearly identified in the notice of sale under Subsection

59 (1) and shall be at a courthouse serving the county in which the property to be sold, or some
60 part of the property to be sold, is located.

61 (3) (a) The notice of sale shall be in substantially the following form:

62 Notice of Trustee's Sale

63 The following described property will be sold at public auction to the highest bidder,
64 payable in lawful money of the United States at the time of sale, at (insert location of sale)
65 _____ on _____(month\day\year), at __.m. of said day, for the purpose of
66 foreclosing a trust deed originally executed by ____ (and ____, his wife,) as trustors, in favor
67 of ____, covering real property located at ____, and more particularly described as:

68 (Insert legal description)

69 The current beneficiary of the trust deed is _____ and the record
70 owners of the property as of the recording of the notice of default are _____ and
71 _____.

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

73 Trustee

74 (b) If the property to be sold is subject to a residential rental agreement, as defined in
75 Section 78B-6-802.7, the notice shall include a statement, in at least 14-point font, substantially
76 as follows:

77 "Notice to Tenant

78 As stated in the accompanying Notice of Trustee's Sale, this property is scheduled to be
79 sold at public auction to the highest bidder unless the default in the obligation secured by this
80 property is cured. If the property is sold, you may be allowed under Utah law (Utah Code
81 Section 78B-6-802.7) to continue to occupy your rental unit until your rental agreement
82 expires, or until 90 days after the date you are served with a notice to vacate, whichever is later.
83 If your rental or lease agreement expires after the 90-day period, you will need to provide a
84 copy of your rental or lease agreement to the new owner to prove your right to remain on the
85 property longer than 90 days after the sale of the property.

86 You must continue to pay your rent and comply with other requirements of your rental
87 or lease agreement or you will be subject to eviction for violating your rental or lease
88 agreement.

89 The new owner should contact you after the property is sold with directions about

90 where to pay rent.

91 The new owner of the property may or may not want to offer to enter into a new rental
92 or lease agreement with you at the expiration of the period described above."

93 Section 2. Section **78B-6-802** is amended to read:

94 **78B-6-802. Unlawful detainer by tenant for term less than life.**

95 (1) A tenant holding real property for a term less than life, is guilty of an unlawful
96 detainer if the tenant:

97 (a) except as provided in Subsection (1)(i), continues in possession, in person or by
98 subtenant, of the property or any part of it, after the expiration of the specified term or period
99 for which it is let to him, which specified term or period, whether established by express or
100 implied contract, or whether written or parol, shall be terminated without notice at the
101 expiration of the specified term or period;

102 (b) having leased real property for an indefinite time with monthly or other periodic
103 rent reserved and except as provided in Subsection (1)(i):

104 (i) continues in possession of it in person or by subtenant after the end of any month or
105 period, in cases where the owner, the owner's designated agent, or any successor in estate of the
106 owner, 15 calendar days or more prior to the end of that month or period, has served notice
107 requiring the tenant to quit the premises at the expiration of that month or period; or

108 (ii) in cases of tenancies at will, remains in possession of the premises after the
109 expiration of a notice of not less than five calendar days;

110 (c) continues in possession, in person or by subtenant, after default in the payment of
111 any rent or other amounts due and after a notice in writing requiring in the alternative the
112 payment of the rent and other amounts due or the surrender of the detained premises, has
113 remained uncomplied with for a period of three calendar days after service, which notice may
114 be served at any time after the rent becomes due;

115 (d) assigns or sublets the leased premises contrary to the covenants of the lease, or
116 commits or permits waste on the premises after service of a three calendar days' notice to quit;

117 (e) sets up or carries on any unlawful business on or in the premises after service of a
118 three calendar days' notice to quit;

119 (f) suffers, permits, or maintains on or about the premises any nuisance, including
120 nuisance as defined in Section 78B-6-1107 after service of a three calendar days' notice to quit;

121 (g) commits a criminal act on the premises and remains in possession after service of a
122 three calendar days' notice to quit; ~~or~~

123 (h) continues in possession, in person or by subtenant, after a neglect or failure to
124 perform any condition or covenant of the lease or agreement under which the property is held,
125 other than those previously mentioned, and after notice in writing requiring in the alternative
126 the performance of the conditions or covenant or the surrender of the property, served upon the
127 tenant and upon any subtenant in actual occupation of the premises remains uncomplied with
128 for three calendar days after service~~[-];~~ or

129 (i) (i) is a bona fide tenant, as defined in Section 57-1-802.7, of foreclosed rental
130 property, as defined in Section 57-1-802.7; and

131 (ii) continues in possession after the date on which a notice to vacate under Subsection
132 57-1-802.7(3) requires the tenant to vacate the foreclosed rental property.

133 (2) Within three calendar days after the service of the notice, the tenant, any subtenant
134 in actual occupation of the premises, any mortgagee of the term, or other person interested in
135 its continuance may perform the condition or covenant and thereby save the lease from
136 forfeiture, except that if the covenants and conditions of the lease violated by the lessee cannot
137 afterwards be performed, or the violation cannot be brought into compliance, the notice
138 provided for in Subsections (1)(d) through (g) may be given.

139 (3) Unlawful detainer by an owner resident of a mobile home is determined under Title
140 57, Chapter 16, Mobile Home Park Residency Act.

141 (4) The notice provisions for nuisance in Subsections (1)(d) through (g) do not apply to
142 nuisance actions provided in Sections 78B-6-1107 through 78B-6-1114.

143 Section 3. Section **78B-6-802.5** is amended to read:

144 **78B-6-802.5. Unlawful detainer after foreclosure or forced sale.**

145 A previous owner, trustor, or mortgagor of a property is guilty of unlawful detainer if
146 the ~~person~~ previous owner, trustor, or mortgagor:

147 (1) defaulted on his or her obligations resulting in disposition of the property by a
148 trustee's sale or sheriff's sale; and

149 (2) subject to Section 78B-6-802.7, continues to occupy the property after the trustee's
150 sale or sheriff's sale after being served with a notice to quit by the purchaser.

151 Section 4. Section **78B-6-802.7** is enacted to read:

152 78B-6-802.7. Rights of tenant in foreclosed residential rental property -- 90-day
153 notice to vacate required.

154 (1) As used in this section:

155 (a) "Bona fide tenant" means a person, other than the borrower or the borrower's child,
156 spouse, or parent, who has the right to occupy a residential dwelling under a residential rental
157 agreement.

158 (b) "Borrower" means:

159 (i) for property secured by a trust deed, the trustor; or

160 (ii) for property secured by a mortgage, the mortgagor.

161 (c) "Foreclosed rental property" means property that is:

162 (i) subject to a residential rental agreement; and

163 (ii) the subject of a foreclosure.

164 (d) "Foreclosure" means:

165 (i) for trust property, as defined in Section 57-1-19:

166 (A) a trustee's sale of the trust property as provided in Sections 57-1-19 through
167 57-1-36; or

168 (B) if the trust deed beneficiary chooses to foreclose the trust property in the manner
169 provided by law for a mortgage, as allowed under Section 57-1-23, a sheriff's sale of the trust
170 property under the process provided in Part 9, Mortgage Foreclosure; or

171 (ii) for property secured by a mortgage, a sheriff's sale of the property under the process
172 provided in Part 9, Mortgage Foreclosure.

173 (e) "New owner" means the immediate successor in interest with respect to the
174 foreclosed rental property following foreclosure.

175 (f) "Residential rental agreement" means a written or oral agreement:

176 (i) established:

177 (A) through an arms-length transaction; and

178 (B) before:

179 (I) for property secured by a trust deed:

180 (Aa) a notice of default is recorded under Section 57-1-24; or

181 (Bb) an action to foreclose the trust property under Part 9, Mortgage Foreclosure, is
182 filed, if the trust deed beneficiary chooses to foreclose the trust property in the manner

183 provided by law for a mortgage, as allowed under Section 57-1-23; or
184 (II) for property secured by a mortgage, the filing of an action to foreclose the
185 mortgage under Part 9, Mortgage Foreclosure;
186 (ii) that establishes the terms, conditions, or other provisions governing the use and
187 occupancy of a residential dwelling;
188 (iii) under which a bona fide tenant has the right to exclusive use and occupancy of the
189 residential dwelling, whether on an at-will basis or for a period specified under the agreement;
190 and
191 (iv) that provides for the payment of rent:
192 (A) in an amount that is not substantially less than fair market rent; or
193 (B) that is reduced in amount or subsidized due to a federal, state, or local subsidy.
194 (2) (a) Except as provided in Subsection (2)(b), a new owner assumes ownership of
195 foreclosed rental property subject to a tenant's right to occupy the property:
196 (i) according to the terms of the residential rental agreement; and
197 (ii) until the end of the term of the residential rental agreement.
198 (b) Subject to Subsection (3), a new owner who will occupy the foreclosed rental
199 property as a primary residence may terminate:
200 (i) the residential rental agreement; and
201 (ii) the tenant's occupancy of the foreclosed rental property.
202 (3) (a) A new owner who desires to terminate a tenant's occupancy of foreclosed rental
203 property, whether at the end of the term of the residential rental agreement or otherwise, shall
204 serve a notice to vacate on the tenant:
205 (i) at least 90 days before the date on which the new owner requires the tenant to
206 vacate; and
207 (ii) as provided in Section 78B-6-805.
208 (b) A notice to vacate under Subsection (3)(a) shall:
209 (i) be in at least 14-point font;
210 (ii) state the new owner's name, address, and contact information;
211 (iii) explain the reason the new owner requires the tenant to vacate the foreclosed rental
212 property;
213 (iv) state the date on which the tenant is required to vacate the foreclosed rental

214 property; and

215 (v) refer to this section as the law under which the notice to vacate is provided.

216 (4) Nothing in this section may be construed to affect the requirements for termination
217 of a federally subsidized tenancy.

218 Section 5. Section **78B-6-901.5** is enacted to read:

219 **78B-6-901.5. Notice to tenant on residential property to be foreclosed.**

220 (1) As used in this section, "residential rental property" means property that is subject
221 to a residential rental agreement, as defined in Section 78B-6-802.7.

222 (2) Within 20 days after filing an action under this part to foreclose property that
223 includes or constitutes residential rental property, the plaintiff in the action shall post notice on
224 the primary door of each dwelling unit on the residential rental property.

225 (3) The notice required under Subsection (2) shall:

226 (a) be in at least 14-point font;

227 (b) include the name and address of:

228 (i) the owner of the property;

229 (ii) the trustor or mortgagor, as the case may be, on the instrument creating a security
230 interest in the property;

231 (iii) the trustee or mortgagee, as the case may be, on the instrument; and

232 (iv) the beneficiary, if the instrument is a trust deed;

233 (c) contain the legal description and address of the property; and

234 (d) include a statement in substantially the following form:

235 "Notice to Tenant

236 An action to foreclose the property described in this notice has been filed. If the
237 foreclosure action is pursued to its conclusion, the described property will be sold at public
238 auction to the highest bidder unless the default in the obligation secured by this property is
239 cured.

240 If the property is sold, you are allowed under Utah law (Utah Code Section
241 78B-6-802.7) to continue to occupy your rental unit until your rental agreement expires, or
242 until 90 days after the sale of the property at auction, whichever is later. If your rental or lease
243 agreement expires after the 90-day period, you will need to provide a copy of your rental or
244 lease agreement to the new owner to prove your right to remain on the property longer than 90

245 days after the sale of the property.

246 You must continue to pay your rent and comply with other requirements of your rental
247 or lease agreement or you will be subject to eviction for violating your rental or lease
248 agreement.

249 The new owner should contact you after the property is sold with directions about
250 where to pay rent.

251 The new owner of the property may or may not want to offer to enter into a new rental
252 or lease agreement with you at the expiration of the period described above."

Legislative Review Note
as of 1-22-10 3:51 PM

Office of Legislative Research and General Counsel

H.B. 243 - Foreclosure Processes on Residential Rental Properties

Fiscal Note

2010 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 will affect those parties involved in foreclosures on residential rental properties.
