

Representative LaVar Christensen proposes the following substitute bill:

TRUST DEED FORECLOSURE CHANGES

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to the foreclosure of trust deeds.

Highlighted Provisions:

This bill:

- ▶ modifies a provision relating to the filing of a substitution of trustee;
- ▶ modifies notice of default provisions;
- ▶ establishes a procedure for a loan servicer and borrower in foreclosure to negotiate regarding foreclosure relief; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-1-22, as last amended by Laws of Utah 2002, Chapter 209

57-1-24, as last amended by Laws of Utah 2001, Chapter 236

63I-1-257, as enacted by Laws of Utah 2010, Chapter 66



26 ENACTS:

27 **57-1-24.5**, Utah Code Annotated 1953



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

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

31 **57-1-22. Successor trustees -- Appointment by beneficiary -- Effect -- Substitution**
32 **of trustee -- Recording -- Form.**

33 (1) (a) The beneficiary may appoint a successor trustee at any time by filing for record
34 in the office of the county recorder of each county in which the trust property or some part of
35 the trust property is situated, a substitution of trustee.

36 (b) The new trustee shall succeed to all the power, duties, authority, and title of the
37 trustee named in the deed of trust and of any successor trustee.

38 (c) The beneficiary may, by express provision in the substitution of trustee, ratify and
39 confirm action taken on the beneficiary's behalf by the new trustee prior to the recording of the
40 substitution of trustee.

41 (2) The substitution shall:

42 (a) identify the trust deed by stating:

43 (i) the names of the original parties to the trust deed;

44 (ii) the date of recordation; and

45 (iii) (A) the book and page where the trust deed is recorded; or

46 (B) the entry number;

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

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

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

51 (3) (a) If not previously recorded[;] at the time of recording a notice of default, the
52 successor trustee shall file for record, in the office of the county recorder of each county in
53 which the trust property or some part of it is situated, the substitution of trustee.

54 (b) A copy of the substitution of trustee shall be sent in the manner provided in
55 Subsection 57-1-26(2) to any:

56 (i) person who requests a copy of any notice of default or notice of sale under

57 Subsection 57-1-26(1)(a); and

58 (ii) person who is a party to the trust deed to whom a copy of a notice of default would
59 be required to be mailed by Subsection 57-1-26(3).

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

61 Substitution of Trustee

62 (insert name and address of new trustee)

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

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

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

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

67 County), Utah.

68 (Insert legal description)

69 Signature_____

70 (Certificate of Acknowledgment)

71 Section 2. Section **57-1-24** is amended to read:

72 **57-1-24. Sale of trust property by trustee -- Notice of default.**

73 The power of sale conferred upon the trustee who is qualified under Subsection
74 57-1-21(1)(a)(i) or (iv) may not be exercised until:

75 (1) the trustee first files for record, in the office of the recorder of each county where
76 the trust property or some part or parcel of the trust property is situated, a notice of default,
77 identifying the trust deed by stating the name of the trustor named in the trust deed and giving
78 the book and page, or the recorder's entry number, where the trust deed is recorded and a legal
79 description of the trust property, and containing a statement that a breach of an obligation for
80 which the trust property was conveyed as security has occurred, and setting forth the nature of
81 that breach and of the trustee's election to sell or cause to be sold the property to satisfy the
82 obligation;

83 (2) the trustee or special servicer complies with the requirements of Section 57-1-24.5,
84 if the trust property is owner-occupied property, as defined in Section 57-1-24.5;

85 [~~2~~] (3) not less than three months has elapsed from the time the trustee filed for
86 record under Subsection (1); and

87 [~~3~~] (4) after the lapse of at least three months the trustee shall give notice of sale as

88 provided in Sections 57-1-25 and 57-1-26.

89 Section 3. Section **57-1-24.5** is enacted to read:

90 **57-1-24.5. Notice to default trustor -- Right to negotiate alternative to foreclosure**
91 **-- Duties of servicer.**

92 (1) As used in this section:

93 (a) "Default trustor" means a trustor under a trust deed secured by owner-occupied
94 property that is the subject of a notice of default under Section 57-1-24.

95 (b) "Loan" means the obligation for which a trust deed is given as security.

96 (c) "Owner-occupied property" means real property that is occupied by its owner as the
97 owner's primary residence.

98 (d) "Special servicer" means a person who exercises authority to direct the trustee to
99 file a notice of default under Section 57-1-24.

100 (2) (a) No later than five days after a trustee files for recording a notice of default under
101 Section 57-1-24, the special servicer or trustee shall send a notice to the default trustor by
102 certified mail.

103 (b) A notice under Subsection (2)(a) shall include:

104 (i) the name, address, telephone number, email address, and other direct contact
105 information for an individual authorized to act with respect to the special servicer's
106 responsibilities under this section;

107 (ii) a summary of the default trustor's rights and foreclosure relief options under this
108 section;

109 (iii) a description of any state or federal program known to the trustee or special
110 servicer that provides foreclosure relief or assistance in obtaining foreclosure relief; and

111 (iv) any website or other available information needed to make contact with the state or
112 federal agency providing relief or assistance referred to in Subsection (2)(b)(iii).

113 (3) Upon receiving a notice under Subsection (2), a default trustor may request the
114 special servicer to enter into negotiations as provided in this section.

115 (4) A special servicer shall:

116 (a) represent the interests of the beneficiary; and

117 (b) negotiate on behalf of the beneficiary with respect to all aspects of the foreclosure,
118 including regarding foreclosure relief, a loan modification or forbearance, a deed in lieu of

119 foreclosure, or any other reasonable alternative to foreclosure.

120 (5) A special servicer has an express duty to:

121 (a) be reasonably available for and cooperate in negotiations with a default trustor
122 during the three-month period under Subsection 57-1-24(2); and

123 (b) negotiate with a default trustor regarding any reasonable alternative to foreclosure,
124 including a loan modification or forbearance, discounted payoff, deed in lieu of foreclosure, or
125 other foreclosure relief.

126 (6) In all negotiations with each other, a default trustor and special servicer shall at all
127 times act in compliance with the covenant of good faith and fair dealing.

128 (7) A default trustor shall provide sufficient financial information to the special
129 servicer to enable the special servicer to give reasonable consideration to the default trustor's
130 request for foreclosure relief.

131 (8) A special servicer and default trustor may, by mutual agreement, conduct
132 negotiations under this section with the assistance of a mediator.

133 (9) In negotiating with a default trustor, a servicer shall give reasonable consideration
134 to:

135 (a) how long the default trustor has lived at the trust property, the default trustor's
136 payment history over the life of the loan before the default, the circumstances, including any
137 hardship, that led to the default trustor's inability to meet the obligations of the loan, the
138 reasonable likelihood that those circumstances would be resolved if the default trustor were
139 given foreclosure relief or a loan modification, and any other equitable factors relevant to the
140 default trustor's circumstances; and

141 (b) the market value of the trust property and the financial interests that the servicer
142 represents.

143 Section 4. Section **63I-1-257** is amended to read:

144 **63I-1-257. Repeal dates, Title 57.**

145 (1) Section 57-1-24.5 is repealed December 31, 2013.

146 (2) Subsections 57-1-25(1)(c), (3)(b), and (4) are repealed December 31, 2012.

FISCAL NOTE

H.B. 326 2nd Sub. (Gray)

SHORT TITLE: Trust Deed Foreclosure Changes

SPONSOR: Christensen, L.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.