

Senator Curtis S. Bramble proposes the following substitute bill:

CHANGES TO TRUST DEED FORECLOSURE PROVISIONS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Brad R. Wilson

LONG TITLE

General Description:

This bill modifies provisions relating to trust deed foreclosures.

Highlighted Provisions:

This bill:

- ▶ provides a civil penalty for a person who violates specified trustee provisions;
- ▶ modifies a provision relating to successor trustees;
- ▶ imposes a duty on a trustee who exercises a power of sale; and
- ▶ requires a beneficiary or the beneficiary's agent to provide notice to a trustor on a

residential property if the beneficiary or agent does not intend to instruct a trustee to defer a notice of sale despite a temporary reduced payment arrangement.

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

57-1-25, as last amended by Laws of Utah 2010, Chapter 66



26 ENACTS:

27 57-1-23.5, Utah Code Annotated 1953

28 57-1-24.5, Utah Code Annotated 1953

29

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

31 Section 1. Section 57-1-22 is amended to read:

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

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

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

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

42 (2) The substitution shall:

43 (a) identify the trust deed by stating:

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

45 (ii) the date of recordation; and

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

47 (B) the entry number;

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

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

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

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

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

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

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

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

62 Substitution of Trustee

63 (insert name and address of new trustee)

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

69 (Insert legal description)

70
71 Signature_____

72 (Certificate of Acknowledgment)

73 Section 2. Section 57-1-23.5 is enacted to read:

74 **57-1-23.5. Civil penalty for unauthorized person who exercises power of sale.**

75 (1) As used in this section, "unauthorized person" means a person who does not qualify
76 as a trustee under Subsection 57-1-21(1)(a)(i) or (iv).

77 (2) (a) ~~§~~ **[An]** The attorney general may assess an ~~§~~ unauthorized person who
77a exercises a power of sale ~~§~~ **[is subject to]** ~~§~~ a civil
78 penalty in the amount of \$2,000.

79 (b) In an action to ~~§~~ **[impose]** collect ~~§~~ a civil penalty under Subsection (2)(a), the
79a court shall
80 require ~~§~~ **[a]** an unauthorized ~~§~~ person found to ~~§~~ **[violate Subsection (2)(a)]** have
80a exercised a power of sale ~~§~~ to pay the plaintiff's costs and attorney fees.

80b ~~§~~ **(c) A civil penalty collected under this section shall be deposited into the General Fund.** ~~§~~

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

82 **57-1-24.5. Notice to trustor of intent not to defer notice of sale.**

83 (1) A beneficiary, or the beneficiary's authorized agent, shall deliver or send a notice to
84 a trustor as provided in Subsection (2) if:

- 85 (a) the trust property is residential;
- 86 (b) a notice of default is filed under Section 57-1-24 with respect to the trust property;
- 87 (c) during the three-month period described in Subsection 57-1-24(3), the beneficiary

88 or agent agrees to accept reduced payments from the trustor on a temporary basis; and
89 (d) notwithstanding the reduced payment arrangement, the beneficiary or agent does
90 not intend to instruct the trustee to defer giving notice of sale under Section 57-1-25 later than
91 the earliest time allowed under Subsection 57-1-24(3).

92 (2) A notice under Subsection (1) shall:

93 (a) be in writing;

94 (b) (i) be hand delivered to the trustor; or

95 (ii) be sent by certified mail, return receipt requested, to the trustor at the address of the
96 trust property;

97 (c) be delivered or sent on or before the date that is 30 days after the notice of default is
98 filed or 10 days after the beneficiary or agent agrees to accept reduced payments, whichever is
99 later; and

100 (d) inform the trustor that, despite the reduced payment arrangement, the beneficiary or
101 agent does not intend to instruct the trustee to defer giving notice of sale under Section 57-1-25
102 later than the earliest time allowed under Subsection 57-1-24(3).

103 Section 4. Section **57-1-25** is amended to read:

104 **57-1-25. Notice of trustee's sale -- Description of property -- Time and place of**
105 **sale.**

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

108 (a) by publication of the notice:

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

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

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

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

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

117 (b) by posting the notice:

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

119 (ii) (A) in some conspicuous place on the property to be sold; and
120 (B) at the office of the county recorder of each county in which the trust property, or
121 some part of it, is located; and

122 (c) if the stated purpose of the obligation for which the trust deed was given as security
123 is to finance residential rental property:

124 (i) by posting the notice, including the statement required under Subsection (3)(b):

125 (A) on the primary door of each dwelling unit on the property to be sold, if the property
126 to be sold has fewer than nine dwelling units; or

127 (B) in at least two conspicuous places on the property to be sold, in addition to the
128 posting required under Subsection (1)(b)(ii)(A), if the property to be sold has nine or more
129 dwelling units; or

130 (ii) by mailing the notice, including the statement required under Subsection (3)(b), to
131 the occupant of each dwelling unit on the property to be sold.

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

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

134 (c) The place of sale shall be clearly identified in the notice of sale under Subsection
135 (1) and shall be at a courthouse serving the county in which the property to be sold, or some
136 part of the property to be sold, is located.

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

138 Notice of Trustee's Sale

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

144 (Insert legal description)

145 The current beneficiary of the trust deed is _____ and the record
146 owners of the property as of the recording of the notice of default are _____ and
147 _____.

148 Dated _____(month\day\year).

Trustee

150 (b) If the stated purpose of the obligation for which the trust deed was given as security
151 is to finance residential rental property, the notice required under Subsection (1)(c) shall
152 include a statement, in at least 14-point font, substantially as follows:

153 "Notice to Tenant

154 As stated in the accompanying Notice of Trustee's Sale, this property is scheduled to be
155 sold at public auction to the highest bidder unless the default in the obligation secured by this
156 property is cured. If the property is sold, you may be allowed under federal law to continue to
157 occupy your rental unit until your rental agreement expires, or until 90 days after the date you
158 are served with a notice to vacate, whichever is later. If your rental or lease agreement expires
159 after the 90-day period, you may need to provide a copy of your rental or lease agreement to the
160 new owner to prove your right to remain on the property longer than 90 days after the sale of
161 the property.

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

165 The new owner or the new owner's representative will probably contact you after the
166 property is sold with directions about where to pay rent.

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

169 (4) The failure to provide notice as required under Subsections (1)(c) and (3)(b) or a
170 defect in that notice may not be the basis for challenging or invalidating a trustee's sale.

171 (5) A trustee qualified under Subsection 57-1-21(1)(a)(i) or (iv) who exercises a power
172 of sale has a duty to the trustor not to defraud, or conspire or scheme to defraud, the trustor.

FISCAL NOTE

S.B. 261 2nd Sub. (Salmon)

SHORT TITLE: **Changes to Trust Deed Foreclosure Provisions**

SPONSOR: **Bramble, C.**

2011 GENERAL SESSION, STATE OF UTAH

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

Any civil penalties would be collected by the Commerce Department, Real Estate Division. There is not enough data to make an estimate of the total amount.

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 may result in a civil penalty of \$2,000 and payment of the plaintiff's costs and attorney fees for individuals who are found to be an "unauthorized person" exercising a power of sale.