

WRONGFUL FORECLOSURE ACT

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill enacts the Wrongful Foreclosure Act.

Highlighted Provisions:

This bill:

▶ imposes civil and criminal liability on a person who files for recording a wrongful notice of default or who publishes or posts a wrongful notice of sale with respect to a trust deed foreclosure.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

57-1a-101, Utah Code Annotated 1953

57-1a-102, Utah Code Annotated 1953

57-1a-201, Utah Code Annotated 1953

57-1a-202, Utah Code Annotated 1953

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

Section 1. Section **57-1a-101** is enacted to read:



CHAPTER 1a. WRONGFUL FORECLOSURE ACT

Part 1. General Provisions

57-1a-101. Title.

This chapter is known as the "Wrongful Foreclosure Act."

Section 2. Section **57-1a-102** is enacted to read:

57-1a-102. Definitions.

As used in this chapter:

(1) "Beneficiary" means a person named or designated in a trust deed as the person for whose benefit the trust deed is given, and includes any successor in interest to some or all of the beneficial interest under the trust deed.

(2) "Lawful trustee" means:

(a) the original trustee named in a trust deed at the time the trust deed is executed; or

(b) a successor trustee appointed by a beneficiary under a substitution of trustee under Section 57-1-22 that is recorded before a notice of default is filed for recording.

(3) "Retract" means:

(a) (i) for a wrongful notice of default, to file for recording a cancellation of the wrongful notice of default; or

(ii) for a wrongful notice of sale, to publish and post, in the same manner as the wrongful notice of sale was published and posted, a cancellation of the wrongful notice of sale; and

(b) to provide notice to each person to whom notice of the wrongful notice of default or wrongful notice of sale was provided under Section 57-1-26.

(4) "Trust obligation" means the obligation, evidenced by a trust deed note or other instrument, for which a trust deed is given as security.

(5) "Trustor" means the person or persons who convey real property in trust by trust deed to a trustee as security for a trust obligation, and includes any successor in interest.

(6) "Wrongful notice of default" means a notice of default under Section 57-1-24 that a person files for recording in a county recorder's office if, at the time it is filed for recording:

(a) the trustor is not in default under the terms of the trust obligation;

(b) the person designated as trustee under the trust deed does not qualify under Subsection 57-1-21(1)(a)(i) or (iv);

59 (c) the trustee submitting the notice of default is not the lawful trustee; or
 60 (d) the person named in the notice of default as beneficiary under the trust deed is not
 61 an actual beneficiary under the trust deed.

62 (7) "Wrongful notice of sale" means a notice of a trustee's sale that a person publishes
 63 or posts under Sections 57-1-25 and 57-1-26 if at the time of publication or posting:

64 (a) the trustor is not in default under the terms of the trust obligation;
 65 (b) the person designated as trustee under the trust deed does not qualify under
 66 Subsection 57-1-21(1)(a)(i) or (iv);

67 (c) the trustee submitting the notice of default is not the lawful trustee; or
 68 (d) the person named in the notice of sale as beneficiary under the trust deed is not an
 69 actual beneficiary under the trust deed.

70 Section 3. Section **57-1a-201** is enacted to read:

71 **Part 2. Civil and Criminal Penalties**

72 **57-1a-201. Civil liability for wrongful notice of default or wrongful notice of sale.**

73 (1) (a) A person who files a wrongful notice of default for recording in a county
 74 recorder's office is liable to the trustor for any actual damages proximately caused by the
 75 wrongful notice of default.

76 (b) A person who publishes or posts a wrongful notice of sale is liable to the trustor for
 77 any actual damages proximately caused by the wrongful notice of sale.

78 (2) A person who fails to retract a wrongful notice of default or wrongful notice of sale
 79 within 20 days after the date of a written notice from a trustor delivered or mailed to the person
 80 is liable to the trustor for:

81 (a) the amount of \$5,000 or treble the trustor's actual damages, whichever is greater;
 82 and

83 (b) costs and reasonable attorney fees that the trustor incurs to enforce the trustor's
 84 rights or pursue the trustor's remedies under this chapter.

85 (3) A person who files a wrongful notice of default for recording in the office of a
 86 county recorder or publishes or posts a wrongful notice of sale is liable to a trustor for \$3,000
 87 or treble the trustor's actual damages, whichever is greater, if the person knows or has reason to
 88 know that the wrongful notice of default or wrongful notice of sale:

89 (a) is groundless; or

90 (b) contains a material misstatement or false claim.

91 Section 4. Section **57-1a-202** is enacted to read:

92 **57-1a-202. Criminal liability for wrongful notice of default or wrongful notice of**
93 **sale.**

94 (1) (a) A person who intentionally files a notice of default under Section 57-1-24 for
95 recording in a county recorder's office knowing it to be a wrongful notice of default is guilty of
96 a class B misdemeanor.

97 (b) A person who intentionally publishes or posts a notice of sale under Sections
98 57-1-25 and 57-1-26 for recording in a county recorder's office knowing it to be a wrongful
99 notice of sale is guilty of a class B misdemeanor.

100 (2) (a) It is an affirmative defense to a charge under Subsection (1) that the person
101 retracted the wrongful notice of default or wrongful notice of sale within 20 days after the date
102 of a written notice from a trustor delivered or mailed to the person.

103 (b) A person charged with an offense under Subsection (1) has the burden of proving
104 an affirmative defense under Subsection (2)(a) by a preponderance of the evidence.

105 (3) A person is guilty of a third degree felony if the person files a wrongful notice of
106 default for recording in a county recorder's officer or publishes or posts a wrongful notice of
107 sale if, at the time of filing, publishing, or posting, the person knows that:

108 (a) the trustor was not in default under the trust obligation;

109 (b) the person designated as trustee under the trust deed does not qualify under
110 Subsection 57-1-21(1)(a)(i) or (iv);

111 (c) the trustee submitting the notice of default is not the lawful trustee; or

112 (d) the person named in the notice of sale as beneficiary under the trust deed is not an
113 actual beneficiary under the trust deed.

114 (4) This section may not be construed to bar a prosecution for an act in violation of
115 Section 76-8-414.

Legislative Review Note
as of 2-18-11 10:59 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

S.B. 261

SHORT TITLE: **Wrongful Foreclosure Act**

SPONSOR: **Bramble, C.**

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 may lead to penalties for violations incurred by individuals according to 57-1a-201.