

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: _____

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;
 - ▶ provides that a trustee who conspires or schemes to defraud a trustor is guilty of a class B misdemeanor;
 - ▶ requires a notice of default to include a brief description of the foreclosure process;
- 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 negotiations between the beneficiary or agent and trustor or a temporary reduced payment arrangement.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

27 **57-1-21**, as last amended by Laws of Utah 2008, Chapter 250

28 **57-1-24**, as last amended by Laws of Utah 2001, Chapter 236

29 ENACTS:

30 **57-1-24.5**, Utah Code Annotated 1953

31

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

33 Section 1. Section **57-1-21** is amended to read:

34 **57-1-21. Trustees of trust deeds -- Qualifications.**

35 (1) (a) The trustee of a trust deed shall be:

36 (i) any active member of the Utah State Bar who maintains a place within the state
37 where the trustor or other interested parties may meet with the trustee to:

38 (A) request information about what is required to reinstate or payoff the obligation
39 secured by the trust deed;

40 (B) deliver written communications to the lender as required by both the trust deed and
41 by law;

42 (C) deliver funds to reinstate or payoff the loan secured by the trust deed; or

43 (D) deliver funds by a bidder at a foreclosure sale to pay for the purchase of the
44 property secured by the trust deed;

45 (ii) any depository institution as defined in Section 7-1-103, or insurance company
46 authorized to do business and actually doing business in Utah under the laws of Utah or the
47 United States;

48 (iii) any corporation authorized to conduct a trust business and actually conducting a
49 trust business in Utah under the laws of Utah or the United States;

50 (iv) any title insurance company or agency that:

51 (A) holds a certificate of authority or license under Title 31A, Insurance Code, to
52 conduct insurance business in the state;

53 (B) is actually doing business in the state; and

54 (C) maintains a bona fide office in the state;

55 (v) any agency of the United States government; or

56 (vi) any association or corporation that is licensed, chartered, or regulated by the Farm

57 Credit Administration or its successor.

58 (b) For purposes of this Subsection (1), a person maintains a bona fide office within the
59 state if that person maintains a physical office in the state:

60 (i) that is open to the public;

61 (ii) that is staffed during regular business hours on regular business days; and

62 (iii) at which a trustor of a trust deed may in person:

63 (A) request information regarding a trust deed; or

64 (B) deliver funds, including reinstatement or payoff funds.

65 (c) (i) A person who violates Subsection (1)(a) is subject to a civil penalty in the
66 amount of \$2,000.

67 (ii) In an action to impose a civil penalty under Subsection (1)(c)(i), the court shall
68 require a person found to violate Subsection (1)(a) to pay the plaintiff's costs and attorney fees.

69 [~~(c)~~] (d) This Subsection (1) is not applicable to a trustee of a trust deed existing prior
70 to May 14, 1963, nor to any agreement that is supplemental to that trust deed.

71 [~~(d)~~] (e) The amendments in Laws of Utah 2002, Chapter 209, to this Subsection (1)
72 apply only to a trustee that is appointed on or after May 6, 2002.

73 (2) The trustee of a trust deed may not be the beneficiary of the trust deed, unless the
74 beneficiary is qualified to be a trustee under Subsection (1)(a)(ii), (iii), (v), or (vi).

75 (3) The power of sale conferred by Section 57-1-23 may only be exercised by the
76 trustee of a trust deed if the trustee is qualified under Subsection (1)(a)(i) or (iv).

77 (4) A trust deed with an unqualified trustee or without a trustee shall be effective to
78 create a lien on the trust property, but the power of sale and other trustee powers under the trust
79 deed may be exercised only if the beneficiary has appointed a qualified successor trustee under
80 Section 57-1-22.

81 (5) A trustee who conspires or schemes to defraud a trustor is guilty of a class B
82 misdemeanor.

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

84 **57-1-24. Sale of trust property by trustee -- Notice of default.**

85 (1) The power of sale conferred upon the trustee who is qualified under Subsection
86 57-1-21(1)(a)(i) or (iv) may not be exercised until:

87 [~~(1)~~] (a) the trustee first files for record, in the office of the recorder of each county

88 where the trust property or some part or parcel of the trust property is situated, a notice of
89 default, identifying the trust deed by stating the name of the trustor named in the trust deed and
90 giving the book and page, or the recorder's entry number, where the trust deed is recorded and
91 a legal description of the trust property, and containing a statement that a breach of an
92 obligation for which the trust property was conveyed as security has occurred, and setting forth
93 the nature of that breach and of the trustee's election to sell or cause to be sold the property to
94 satisfy the obligation;

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

97 ~~[(3)]~~ (c) after the lapse of at least three months the trustee shall give notice of sale as
98 provided in Sections 57-1-25 and 57-1-26.

99 (2) A notice of default under Subsection (1)(a) shall include a brief description of the
100 foreclosure process.

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

102 **57-1-24.5. Notice to trustor of intent not to defer notice of sale.**

103 (1) A beneficiary, or the beneficiary's authorized agent, shall provide written notice to a
104 trustor as provided under Subsection (2) if:

105 (a) the trust property is residential property;

106 (b) a notice of default is filed with respect to the trust property under Section 57-1-24;

107 (c) during the three-month period described in Subsection 57-1-24(1)(c), the

108 beneficiary or agent:

109 (i) enters negotiations with the trustor regarding a loan modification or foreclosure
110 relief; or

111 (ii) agrees to accept reduced payments from the trustor on a temporary basis; and

112 (d) notwithstanding the negotiations or reduced payment arrangement, the beneficiary
113 or agent does not intend to instruct the trustee to defer giving notice of sale under Section
114 57-1-25 later than the earliest time allowed under Subsection 57-1-24(1)(c).

115 (2) A written notice under Subsection (1) shall inform the trustor that, despite the
116 negotiations between the beneficiary or agent and trustor or the reduced payment arrangement,
117 the beneficiary or agent does not intend to instruct the trustee to defer giving notice of sale
118 under Section 57-1-25 later than the earliest time allowed Subsection 57-1-24(1)(c).