

SB0261S03 compared with SB0261S02

~~{deleted text}~~ shows text that was in SB0261S02 but was deleted in SB0261S03.

inserted text shows text that was not in SB0261S02 but was inserted into SB0261S03.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

~~{Senator Curtis S. Bramble}~~Representative Brad R. Wilson 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}~~imposes civil ~~{penalty for}~~liability on 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 and

SB0261S03 compared with SB0261S02

imposes civil liability for a failure to do so.

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

ENACTS:

57-1-23.5, Utah Code Annotated 1953

57-1-24.5, Utah Code Annotated 1953

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

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

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

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

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

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

(2) The substitution shall:

(a) identify the trust deed by stating:

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

(ii) the date of recordation; and

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

(B) the entry number;

SB0261S03 compared with SB0261S02

- (b) include the legal description of the trust property;
- (c) state the name and address of the new trustee; and
- (d) be executed and acknowledged by all of the beneficiaries under the trust deed or their successors in interest.

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

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

- (i) person who requests a copy of any notice of default or notice of sale under Subsection 57-1-26(1)(a); and
- (ii) person who is a party to the trust deed to whom a copy of a notice of default would be required to be mailed by Subsection 57-1-26(3).

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

Substitution of Trustee

(insert name and address of new trustee)

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

(Insert legal description)

Signature_____

(Certificate of Acknowledgment)

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

57-1-23.5. Civil ~~penalty~~liability for unauthorized person who exercises power of sale.

(1) As used in this section ~~f.i.~~:

(a) "~~unauthorized~~Unauthorized person" means a person who does not qualify as a trustee under Subsection 57-1-21(1)(a)(i) or (iv).

SB0261S03 compared with SB0261S02

(b) "Unauthorized sale" means the exercise of a power of sale by an unauthorized person.

(2) (a) An unauthorized person who ~~exercises a power of sale is subject to a civil penalty in the amount of \$2,000;~~ conducts an unauthorized sale is liable to the trustor for the actual damages suffered by the trustor as a result of the unauthorized sale or \$2,000, whichever is greater.

(b) In an action ~~to impose a civil penalty~~ under Subsection (2)(a), the court shall ~~require~~ award a ~~person found to violate Subsection (2)(a) to pay~~ prevailing plaintiff the plaintiff's costs and attorney fees.

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

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

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

(a) the trust property is residential;

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

(c) during the three-month period described in Subsection 57-1-24(3), the beneficiary or agent agrees to accept reduced payments from the trustor on a temporary basis; and

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

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

(a) be in writing;

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

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

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

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

SB0261S03 compared with SB0261S02

(3) A beneficiary or agent who sends or delivers notice to a trustor under this section shall mail a copy of the notice to the trustee.

(4) The failure of a beneficiary or agent to comply with a requirement of this section does not affect the validity of a trustee's sale of the trust property.

(5) (a) A beneficiary or agent who fails to send or deliver a notice to a trustor as required in this section is liable to the trustor for the actual damages suffered by the trustor as a result of the failure or \$2,000, whichever is greater.

(b) In an action under Subsection (5)(a), the court shall award a prevailing plaintiff the plaintiff's costs and attorney fees.

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

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

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

(a) by publication of the notice:

(i) (A) at least three times;

(B) once a week for three consecutive weeks;

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

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

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

(b) by posting the notice:

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

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

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

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

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

SB0261S03 compared with SB0261S02

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

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

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

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

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

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

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

Notice of Trustee's Sale

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

(Insert legal description)

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

Dated _____ (month\day\year).

Trustee

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

"Notice to Tenant

As stated in the accompanying Notice of Trustee's Sale, this property is scheduled to be sold at public auction to the highest bidder unless the default in the obligation secured by this

SB0261S03 compared with SB0261S02

property is cured. If the property is sold, you may be allowed under federal law to continue to occupy your rental unit until your rental agreement expires, or until 90 days after the date you are served with a notice to vacate, whichever is later. If your rental or lease agreement expires after the 90-day period, you may need to provide a copy of your rental or lease agreement to the new owner to prove your right to remain on the property longer than 90 days after the sale of the property.

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

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

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

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

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