

## HB0164S02 compared with HB0164S01

~~{deleted text}~~ shows text that was in HB0164S01 but was deleted in HB0164S02.

inserted text shows text that was not in HB0164S01 but was inserted into HB0164S02.

**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.

**Representative LaVar Christensen** proposes the following substitute bill:

### TRUST DEED FORECLOSURE CHANGES

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: LaVar Christensen**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill enacts a provision relating to the foreclosure of trust deeds.

##### Highlighted Provisions:

This bill:

- ▶ requires a beneficiary or servicer to appoint a single point of contact upon determining that a loan secured by a trust deed on owner-occupied residential property is in default;
- ▶ requires notice to a default trustor before a notice of default is filed;
- ▶ allows a default trustor to make application for foreclosure relief if the beneficiary or servicer offers foreclosure relief;
- ▶ establishes duties of the single point of contact during the three-month period following a notice of default; and

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- ▶ makes provisions applicable if a default trustor applies for foreclosure relief.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

ENACTS:

**57-1-24.3**, Utah Code Annotated 1953

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

Section 1. Section **57-1-24.3** is enacted to read:

**57-1-24.3. Notices to default trustor -- Opportunity to negotiate foreclosure relief.**

(1) As used in this section:

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

(b) "Foreclosure relief" means a mortgage modification program or other foreclosure relief option offered by a beneficiary or servicer.

(c) "Loan" means an obligation incurred for personal, family, or household purposes, evidenced by a promissory note or other credit agreement for which a trust deed encumbering owner-occupied residential property is given as security.

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

(e) "Servicer" means an entity, retained by the beneficiary:

(i) for the purpose of receiving a scheduled periodic payment from a borrower pursuant to the terms of a loan; or

(ii) that meets the definition of servicer under 12 U.S.C. Sec. 2605(i)(2) with respect to residential mortgage loans.

(f) "Single point of contact" means a person ~~authorized~~ who, as the designated representative of the beneficiary or servicer, is authorized to:

(i) coordinate and ensure effective communication with a default trustor concerning:

(A) foreclosure proceedings initiated by the beneficiary or servicer ~~who~~:

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~~(i) exercises authority to direct the trustee under a trust deed to file} relating to the trust property; and~~

(B) any foreclosure relief offered by or acceptable to the beneficiary or servicer; and

(ii) direct all foreclosure proceedings initiated by the beneficiary or servicer relating to the trust property, including:

(A) the filing of a notice of default under Section 57-1-24{;

~~(ii) is the sole manager of the promissory note, trust deed, and communications on behalf of the beneficiary or servicer with the default trustor and any other primary obligors on the loan; and~~

~~(iii) has authority to represent the beneficiary or servicer in communications with the default trustor concerning any modification program or foreclosure relief option offered by the beneficiary or servicer} and any cancellation of a notice of default;~~

(B) the publication of a notice of trustee's sale under Section 57-1-25; and

(C) the postponement of a trustee's sale under Section 57-1-27 or this section.

(2) Upon determining that a loan is in default, a beneficiary or servicer shall {appoint} designate a single point of contact{ to represent the interests of the beneficiary or servicer in all matters concerning the default trustor}.

(3) (a) Before a notice of default is filed for record under Section 57-1-24, a {single point of contact, on behalf of the } beneficiary or servicer{,} shall send notice by United States mail to the default trustor.

(b) A notice under Subsection (3)(a) shall:

(i) advise the default trustor of the intent of the beneficiary or servicer to file a notice of default;

(ii) state:

(A) the nature of the default;

(B) the total amount the default trustor is required to pay in order to cure the default and avoid the filing of a notice of default, itemized by the type and amount of each component part of the total cure amount; and

(C) the date by which the default trustor is required to pay the amount to cure the default and avoid the filing of a notice of default;

(iii) disclose the name, telephone number, email address, and mailing address of the

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single point of contact ~~{appointed}~~ designated by the beneficiary or servicer; and

(iv) ~~{identify}~~ direct the default trustor to contact the single point of contact regarding foreclosure relief available through the beneficiary or servicer for which a default trustor may apply, if the beneficiary or servicer offers foreclosure relief.

(4) After receiving a notice under Subsection (3) and before the expiration of the three-month period described in Subsection 57-1-24(2), a default trustor may apply directly with the single point of contact for ~~{the beneficiary or servicer's}~~ any available foreclosure relief ~~{identified under Subsection (3)(b)(iv)}~~.

(5) A default trustor shall within the time required by the beneficiary or servicer, provide all financial and other information requested by the single point of contact to enable the beneficiary or servicer to determine whether the default trustor qualifies for the foreclosure relief for which the default trustor ~~{has applied}~~.

~~— (6) During the three-month period described in Subsection 57-1-24(2), the~~ applies.

(6) The single point of contact shall:

(a) ~~{be reasonably available for and responsive to communications with a}~~ fully inform the default trustor ~~{, including communications regarding}~~ about and make available to the default trust any available foreclosure relief ~~{ offered by the beneficiary or servicer}~~;

(b) undertake reasonable and good faith efforts, consistent with applicable law, to consider the default trustor for all foreclosure relief for which the default trustor ~~{has applied}~~ and

~~— (b)}~~ is eligible;

(c) ensure timely and appropriate communication with the default trustor concerning foreclosure relief for which the default trustor applies; and

(d) notify the default trustor by United States mail of the decision of the beneficiary or servicer regarding the foreclosure relief for which the default trustor ~~{has applied}~~ applies.

(7) Notice of a trustee's sale may not be given under Section 57-1-25 with respect to the trust property of a default trustor who has applied for foreclosure relief until after the single point of contact provides the notice required by Subsection (6) ~~{(b)}~~ (d).

(8) A beneficiary or servicer may cause a notice of a trustee's sale to be given with respect to the trust property of a default trustor who has applied for foreclosure relief if, in the exercise of the sole discretion of the beneficiary or ~~{servicer's sole discretion}~~ servicer, the

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beneficiary or servicer:

(a) determines that the default trustor does not qualify for the foreclosure relief for which the default trustor has applied; or

(b) elects not to enter into a written agreement with the default trustor to implement the foreclosure relief.

(9) (a) A beneficiary or servicer ~~and a default trustor~~ may ~~by mutual agreement,~~ postpone a trustee's sale of the trust property in order to allow further time for ~~good faith~~ negotiations relating to foreclosure relief.

(b) A postponement of a trustee's sale under Subsection (9)(a) does not require the trustee to file for record a new or additional notice of default under Section 57-1-24.

(10) A beneficiary or servicer shall cause the cancellation of a notice of default filed under Section 57-1-24 on the trust property of a default trustor if the beneficiary or servicer:

(a) determines that the default trustor qualifies for the foreclosure relief for which the default trustor has applied; and

(b) enters into a written agreement with the default trustor to implement the foreclosure relief.

(11) This section may not be construed to require a beneficiary or servicer to:

(a) establish foreclosure relief; or

(b) approve an application for foreclosure relief submitted by a default trustor.

(12) A beneficiary and servicer shall each take reasonable measures to ensure that their respective practices in the foreclosure of owner-occupied residential property and any foreclosure relief with respect to a loan:

(a) comply with all applicable federal and state fair lending statutes; and

(b) ensure appropriate treatment of default trustors in the foreclosure process.

(13) This section does not apply if the beneficiary under a trust deed securing a loan is an individual.

(14) A beneficiary or servicer is considered to have complied with the requirements of this section if the beneficiary or servicer designates and uses a single point of contact in compliance with federal law, rules, regulations, guidance, or guidelines governing the beneficiary or servicer and issued by, as applicable, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of

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the Currency, or the National Credit Union Administration.