

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

**TRUST DEED FORECLOSURE CHANGES**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: LaVar Christensen**

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

---

---

**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
- ▶ 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:**



26 ENACTS:

27 **57-1-24.3**, Utah Code Annotated 1953



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

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

31 **57-1-24.3. Notices to default trustor -- Opportunity to negotiate foreclosure relief.**

32 (1) As used in this section:

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

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

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

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

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

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

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

47 (f) "Single point of contact" means a person authorized by the beneficiary or servicer  
48 who:

49 (i) exercises authority to direct the trustee under a trust deed to file a notice of default  
50 under Section 57-1-24;

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

54 (iii) has authority to represent the beneficiary or servicer in communications with the  
55 default trustor concerning any modification program or foreclosure relief option offered by the  
56 beneficiary or servicer.

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

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

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

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

66 (ii) state:

67 (A) the nature of the default;

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

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

73 (iii) disclose the name, telephone number, email address, and mailing address of the  
74 single point of contact appointed by the beneficiary or servicer; and

75 (iv) identify the foreclosure relief available through the beneficiary or servicer for  
76 which a default trustor may apply, if the beneficiary or servicer offers foreclosure relief.

77 (4) After receiving a notice under Subsection (3), a default trustor may apply directly  
78 with the single point of contact for the beneficiary or servicer's foreclosure relief identified  
79 under Subsection (3)(b)(iv).

80 (5) A default trustor shall provide all financial and other information requested by the  
81 single point of contact to enable the beneficiary or servicer to determine whether the default  
82 trustor qualifies for the foreclosure relief for which the default trustor has applied.

83 (6) During the three-month period described in Subsection 57-1-24(2), the single point  
84 of contact shall:

85 (a) be reasonably available for and responsive to communications with a default  
86 trustor, including communications regarding the foreclosure relief offered by the beneficiary or  
87 servicer for which the default trustor has applied; and

88 (b) notify the default trustor of the decision of the beneficiary or servicer regarding the  
89 foreclosure relief for which the default trustor has applied.

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

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

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

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

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

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

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

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

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

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

112 (a) establish foreclosure relief; or

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

114 (12) A beneficiary and servicer shall each take reasonable measures to ensure that their  
115 respective practices in the foreclosure of owner-occupied residential property and any  
116 foreclosure relief with respect to a loan comply with all applicable federal and state fair lending  
117 statutes.

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

119 an individual.