

## HB0404S02 compared with HB0404S01

~~{deleted text}~~ shows text that was in HB0404S01 but was deleted in HB0404S02.

inserted text shows text that was not in HB0404S01 but was inserted into HB0404S02.

**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 bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

~~{Representative Marc K}~~Senator Curtis S. ~~{Roberts}~~Bramble proposes the following substitute bill:

### SHORT SALE AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Marc K. Roberts**

Senate Sponsor: ~~{~~ Curtis S. Bramble

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#### LONG TITLE

##### General Description:

This bill modifies provisions related to the reconveyance of a trust deed or release of a mortgage.

##### Highlighted Provisions:

This bill:

- ▶ ~~{modifies provisions related to the reconveyance of}~~provides that a title insurer or a title agent may reconvey a trust deed or release ~~{of}~~ a mortgage ~~{to include satisfaction}~~if the beneficiary, mortgagee, or servicer agrees that partial payment of the obligation secured by the trust deed or by the mortgage ~~{as an event that makes a trust deed eligible for reconveyance or a mortgage eligible for release}~~is sufficient to reconvey the trust deed or to release the mortgage; and

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- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**57-1-40**, as last amended by Laws of Utah 2006, Chapter 250

**57-1-41**, as enacted by Laws of Utah 1995, Chapter 185

**57-1-42**, as enacted by Laws of Utah 1995, Chapter 185

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

Section 1. Section **57-1-40** is amended to read:

**57-1-40. Reconveyance of trust deed or release of mortgage -- Procedures --**

#### **Forms.**

(1) A title insurer or title agent may reconvey a trust deed or release a mortgage in accordance with the provisions of Subsections (2) through (6) if:

(a) the obligation secured by the trust deed or mortgage has been fully paid by the title insurer or title agent; ~~or~~

~~(b) the obligation secured by the trust deed or mortgage has been partially paid by the title insurer or title agent in an amount agreed to by the beneficiary, mortgagee, or servicer as sufficient to ~~satisfy the obligation and obtain a~~ release ~~of~~ the mortgage or ~~reconveyance of~~ reconvey the trust deed; or~~

~~(b)~~ (c) the title insurer or title agent possesses satisfactory evidence ~~[of the full payment of the obligation secured by a trust deed or mortgage]~~ that an event described in either Subsection (1)(a) or (1)(b) has occurred.

(2) A title insurer or title agent may reconvey a trust deed or release a mortgage under Subsection (1) regardless of whether the title insurer or title agent is named as a trustee under a trust deed or has the authority to release a mortgage.

(3) ~~[At the time]~~ After the obligation secured by the trust deed or mortgage is paid in full~~[, or at any time thereafter]~~ or is partially paid as described in Subsection (1)(b), the title

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insurer or title agent shall deliver a notice of intent to release or reconvey, as described in Subsection (4), to the beneficiary, mortgagee, or servicer at:

(a) the address specified in the trust deed or mortgage;

(b) any address for the beneficiary or mortgagee specified in the last recorded assignment of the trust deed or mortgage;

(c) any address for the beneficiary, mortgagee, or servicer specified in a request for notice recorded under Section 57-1-26; or

(d) the address shown on any payoff statement received by the title insurer or agent from the beneficiary, mortgagee, or servicer.

(4) The notice of intent to release or reconvey shall contain the name of the beneficiary or mortgagee and the servicer if loan payments on the trust deed or mortgage are collected by a servicer, the name of the title insurer or title agent, the date, and be substantially in the following form:

**NOTICE OF INTENT TO RELEASE OR RECONVEY**

Notice is hereby given to you as follows:

1. This notice concerns the (trust deed or mortgage) described as follows:

(Trustor or Mortgagor): \_\_\_\_\_

(Beneficiary or Mortgagee): \_\_\_\_\_

Recording information: \_\_\_\_\_

Entry Number: \_\_\_\_\_

Book Number: \_\_\_\_\_

Page Number: \_\_\_\_\_

2. The undersigned claims [~~to have paid in full or possesses satisfactory evidence of the full payment of the obligation secured by the trust deed or mortgage described above~~] or possesses satisfactory evidence that the obligation secured by the trust deed or mortgage was paid in full or that the obligation secured by the trust deed or mortgage was partially paid in an amount agreed to by the beneficiary, mortgagee, or servicer as sufficient to ~~satisfy the obligation and obtain a } release { of} the mortgage or {reconveyance of} reconvey the trust deed.~~

3. The undersigned will fully release the mortgage or reconvey the trust deed described in this notice unless, within 60 days from the date stated on this notice, the undersigned has

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received by certified mail a notice stating that the obligation secured by the trust deed or mortgage has not been paid in full [~~or that you otherwise object~~], that ~~{satisfaction in}~~ payment of an amount less than the whole obligation was not agreed to or was not received by the beneficiary, mortgagee, or servicer, or that the beneficiary, mortgagee, or servicer otherwise objects to the release of the mortgage or the reconveyance of the trust deed. Notice shall be mailed to the address stated on this form.

(Signature of title insurer or title agent)

(Address of title insurer or title agent)

(5) (a) If, within 60 days from the day on which the title insurer or title agent delivered the notice of intent to release or reconvey in accordance with Subsections (3) and (4), a reconveyance of trust deed or release of mortgage is not recorded, and the beneficiary, mortgagee, or servicer does not send by certified mail to the title insurer or title agent a notice that the obligation secured by the trust deed or mortgage has not been paid in full, that ~~{satisfaction in}~~ payment of an amount less than the whole obligation was not agreed to or was not received by the beneficiary, mortgagee, or servicer, or that the beneficiary, mortgagee, or servicer objects to the release of the mortgage or reconveyance of the trust deed, the title insurer or title agent may execute, acknowledge, and record a reconveyance of a trust deed or release of a mortgage.

(b) A reconveyance of a trust deed under Subsection (5)(a) shall be in substantially the following form:

### RECONVEYANCE OF TRUST DEED

(Name of title insurer or title agent), a (title insurer or title agent) authorized to conduct business in the state does hereby reconvey, without warranty, the following trust property located in (name of county) County, state of Utah, that is covered by a trust deed naming (name of trustor) as trustor, and (name of beneficiary) as beneficiary and was recorded on (date) in Book \_\_\_\_\_ at Page \_\_\_\_\_ as Entry Number \_\_\_\_\_: (insert a description of the trust property.)

The undersigned title insurer or title agent certifies as follows:

1. The undersigned title insurer or title agent:

a. has fully paid the obligation secured by the trust deed [~~or~~];

b. has partially paid the obligation secured by the trust deed in an amount agreed to by

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the beneficiary or servicer as sufficient to ~~}{satisfy}~~reconvey the ~~}{obligation}~~trust deed:

c. possesses satisfactory evidence of ~~[the]~~ full payment of the obligation secured by the trust deed~~[-]; or~~

d. possesses satisfactory evidence of partial payment of the obligation secured by the trust deed in an amount agreed to by the beneficiary or servicer as sufficient to ~~}{satisfy}~~reconvey the ~~}{obligation}~~trust deed.

2. In accordance with the requirements of Utah Code Annotated Subsections 57-1-40(3) and (4), the title insurer or title agent delivered to the beneficiary or servicer, a notice of intent to release or reconvey and a copy of the reconveyance.

3. The trust deed has not been reconveyed and the title insurer or title agent did not receive, within 60 days from the day on which the title insurer or title agent delivered the notice of intent to release or reconvey, a notice from the beneficiary or servicer sent by certified mail that the obligation secured by the trust deed has not been paid in full, that ~~}{satisfaction in}~~payment of an amount less than the whole obligation secured by the trust deed was not agreed to or was not received by the beneficiary or servicer, or that the beneficiary or servicer objects to the reconveyance of the trust deed.

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(Notarization)

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(Signature of title insurer or title agent)

(c) A release of a mortgage under Subsection (5)(a) shall be in substantially the following form:

### RELEASE OF MORTGAGE

(Name of title insurer or title agent), a (title insurer or title agent) authorized to conduct business in the state does hereby release the mortgage on the following property located in (name of county) County, state of Utah, that is covered by a mortgage naming (name of mortgagor) as mortgagor, and (name of mortgagee) as mortgagee and was recorded on (date) in Book \_\_\_\_\_ at Page \_\_\_\_\_ as Entry Number \_\_\_\_\_: (insert a description of the trust property.)

The undersigned title insurer or title agent certifies as follows:

1. The undersigned title insurer or title agent:

a. has fully paid the obligation secured by the mortgage ~~[or]~~;

b. has partially paid the obligation secured by the mortgage in an amount agreed to by

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the mortgagee or servicer as sufficient to ~~fulfill~~ ~~release~~ the ~~obligation~~ ~~mortgage~~;

c. possesses satisfactory evidence of [the] full payment of the obligation secured by the mortgage[-]; or

d. possesses satisfactory evidence of partial payment of the obligation secured by the mortgage in an amount agreed to by the mortgagee or servicer as sufficient to ~~fulfill~~ ~~release~~ the ~~obligation~~ ~~mortgage~~.

2. In accordance with the requirements of Utah Code Annotated Subsections 57-1-40(3) and (4), the title insurer or title agent delivered to the mortgagee or servicer a notice of intent to release or reconvey.

3. The mortgage has not been released and the title insurer or title agent did not receive, within 60 days from the day on which the title insurer or title agent delivered the notice of intent to release or reconvey, a notice from the mortgagee or servicer sent by certified mail that the obligation secured by the mortgage has not been paid in full, that ~~fulfillment~~ ~~in~~ ~~payment~~ of an amount less than the whole obligation secured by the mortgage was not agreed to or was not received by the mortgagee or servicer, or that the mortgagee or servicer objects to the release of the mortgage.

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(Notarization)

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(Signature of title insurer or title agent)

(d) (i) A release of mortgage or reconveyance of trust deed that is executed and notarized in accordance with Subsection (5)(b) or (c) is entitled to recordation.

(ii) (A) Except as provided in Subsection (5)(d)(ii)(B), a reconveyance of a trust deed or release of a mortgage that is recorded under Subsection (5)(d)(i) is valid regardless of any deficiency in the release or reconveyance procedure not disclosed in the release of mortgage or reconveyance of trust deed.

(B) If the title insurer's or title agent's signature on a release of mortgage or reconveyance of trust deed recorded under Subsection (5)(d)(ii)(A) is forged, the release of mortgage or reconveyance of trust deed is void.

(6) A release of mortgage or reconveyance of trust deed under this section does not, by itself, discharge any promissory note or other obligation that was secured by the trust deed or mortgage at the time the trust deed was reconveyed or the mortgage was released.

(7) This section does not limit or modify the application of Section 57-1-33.1.

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Section 2. Section 57-1-41 is amended to read:

### **57-1-41. Objections to reconveyance or release.**

A title insurer or title agent may not record a reconveyance of trust deed or release of mortgage if, within 60 days from the day on which the title insurer or title agent delivered or mailed the notice of intent to release or reconvey in accordance with Subsections 57-1-40(3) and (4), the beneficiary, mortgagee, or servicer sends a notice that:

(1) the obligation secured by the trust deed or mortgage has not been paid in full ~~[or]~~;

(2) ~~{satisfaction in}~~ payment of an amount less than the whole obligation was not agreed to or was not received by the beneficiary, mortgagee, or servicer; or

(3) the beneficiary, mortgagee, or servicer objects to the release of the mortgage or reconveyance of the trust deed under Subsection 57-1-40(5)(a).

Section 3. Section 57-1-42 is amended to read:

### **57-1-42. Liability of title insurer or title agent.**

A title insurer or title agent purporting to act under the provisions of Section 57-1-40 who reconveys a trust deed or releases a mortgage is liable to the beneficiary or mortgagee for the damages suffered as a result of the reconveyance if:

(1) the obligation secured by the trust deed or mortgage ~~[has]~~:

(a) ~~has~~ ~~{}~~ not been fully paid; ~~[and]~~ ~~or~~

(b) has not been partially paid in an amount agreed to by the beneficiary, mortgagee, or servicer as sufficient to ~~{satisfy}~~ release the mortgage or reconvey the ~~{obligation}~~ trust deed;  
and

(2) (a) the title insurer or title agent failed to comply with the provisions of Sections 57-1-40 and 57-1-41; or

(b) the title insurer or title agent acted with gross negligence or in bad faith in reconveying the trust deed.