

Representative Marc K. Roberts proposes the following substitute bill:

SHORT SALE AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marc K. Roberts

Senate Sponsor: Curtis S. Bramble

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 a trust deed or release of a mortgage to include satisfaction of the obligation secured by the trust deed or mortgage as an event that makes a trust deed eligible for reconveyance or a mortgage eligible for release; and
- ▶ 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



26 57-1-42, as enacted by Laws of Utah 1995, Chapter 185



27
28 *Be it enacted by the Legislature of the state of Utah:*

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

30 **57-1-40. Reconveyance of trust deed or release of mortgage -- Procedures --**
31 **Forms.**

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

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

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

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

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

46 (3) ~~[At the time]~~ **After** the obligation secured by the trust deed or mortgage is paid in
47 full~~[, or at any time thereafter]~~ **or is partially paid as described in Subsection (1)(b),** the title
48 insurer or title agent shall deliver a notice of intent to release or reconvey, as described in
49 Subsection (4), to the beneficiary, mortgagee, or servicer at:

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

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

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

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

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

61 NOTICE OF INTENT TO RELEASE OR RECONVEY

62 Notice is hereby given to you as follows:

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

64 (Trustor or Mortgagor): _____

65 (Beneficiary or Mortgagee): _____

66 Recording information: _____

67 Entry Number: _____

68 Book Number: _____

69 Page Number: _____

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

76 3. The undersigned will fully release the mortgage or reconvey the trust deed described
77 in this notice unless, within 60 days from the date stated on this notice, the undersigned has
78 received by certified mail a notice stating that the obligation secured by the trust deed or
79 mortgage has not been paid in full [~~or that you otherwise object~~], that satisfaction in an amount
80 less than the whole obligation was not agreed to or was not received by the beneficiary,
81 mortgagee, or servicer, or that the beneficiary, mortgagee, or servicer otherwise objects to the
82 release of the mortgage or the reconveyance of the trust deed. Notice shall be mailed to the
83 address stated on this form.

84 (Signature of title insurer or title agent)

85 (Address of title insurer or title agent)

86 (5) (a) If, within 60 days from the day on which the title insurer or title agent delivered
87 the notice of intent to release or reconvey in accordance with Subsections (3) and (4), a

88 reconveyance of trust deed or release of mortgage is not recorded, and the beneficiary,
 89 mortgagee, or servicer does not send by certified mail to the title insurer or title agent a notice
 90 that the obligation secured by the trust deed or mortgage has not been paid in full, that
 91 satisfaction in an amount less than the whole obligation was not agreed to or was not received
 92 by the beneficiary, mortgagee, or servicer, or that the beneficiary, mortgagee, or servicer
 93 objects to the release of the mortgage or reconveyance of the trust deed, the title insurer or title
 94 agent may execute, acknowledge, and record a reconveyance of a trust deed or release of a
 95 mortgage.

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

98 RECONVEYANCE OF TRUST DEED

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

105 The undersigned title insurer or title agent certifies as follows:

106 1. The undersigned title insurer or title agent;

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

108 b. has partially paid the obligation secured by the trust deed in an amount agreed to by
 109 the beneficiary or servicer as sufficient to satisfy the obligation;

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

112 d. possesses satisfactory evidence of partial payment of the obligation secured by the
 113 trust deed in an amount agreed to by the beneficiary or servicer as sufficient to satisfy the
 114 obligation.

115 2. In accordance with the requirements of Utah Code Annotated Subsections
 116 57-1-40(3) and (4), the title insurer or title agent delivered to the beneficiary or servicer, a
 117 notice of intent to release or reconvey and a copy of the reconveyance.

118 3. The trust deed has not been reconveyed and the title insurer or title agent did not

119 receive, within 60 days from the day on which the title insurer or title agent delivered the notice
120 of intent to release or reconvey, a notice from the beneficiary or servicer sent by certified mail
121 that the obligation secured by the trust deed has not been paid in full, that satisfaction in an
122 amount less than the whole obligation secured by the trust deed was not agreed to or was not
123 received by the beneficiary or servicer, or that the beneficiary or servicer objects to the
124 reconveyance of the trust deed.

125 _____
126 (Notarization) (Signature of title insurer or title agent)

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

129 RELEASE OF MORTGAGE

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

136 The undersigned title insurer or title agent certifies as follows:

137 1. The undersigned title insurer or title agent;

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

139 b. has partially paid the obligation secured by the mortgage in an amount agreed to by
140 the mortgagee or servicer as sufficient to satisfy the obligation;

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

143 d. possesses satisfactory evidence of partial payment of the obligation secured by the
144 mortgage in an amount agreed to by the mortgagee or servicer as sufficient to satisfy the
145 obligation.

146 2. In accordance with the requirements of Utah Code Annotated Subsections
147 57-1-40(3) and (4), the title insurer or title agent delivered to the mortgagee or servicer a notice
148 of intent to release or reconvey.

149 3. The mortgage has not been released and the title insurer or title agent did not

150 receive, within 60 days from the day on which the title insurer or title agent delivered the notice
151 of intent to release or reconvey, a notice from the mortgagee or servicer sent by certified mail
152 that the obligation secured by the mortgage has not been paid in full, that satisfaction in an
153 amount less than the whole obligation secured by the mortgage was not agreed to or was not
154 received by the mortgagee or servicer, or that the mortgagee or servicer objects to the release of
155 the mortgage.

156 _____
157 (Notarization) (Signature of title insurer or title agent)

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

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

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

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

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

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

172 **57-1-41. Objections to reconveyance or release.**

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

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

178 (2) satisfaction in an amount less than the whole obligation was not agreed to or was
179 not received by the beneficiary, mortgagee, or servicer; or

180 (3) the beneficiary, mortgagee, or servicer objects to the release of the mortgage or

181 reconveyance of the trust deed under Subsection 57-1-40(5)(a).

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

183 **57-1-42. Liability of title insurer or title agent.**

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

187 (1) the obligation secured by the trust deed or mortgage has:

188 (a) not been fully paid; [~~and~~] or

189 (b) has not been partially paid in an amount agreed to by the beneficiary, mortgagee, or
190 servicer as sufficient to satisfy the obligation; and

191 (2) (a) the title insurer or title agent failed to comply with the provisions of Sections
192 57-1-40 and 57-1-41; or

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