

Foreclosure Processes on Residential Rental Properties

Business and Labor Interim Committee
July 15, 2015

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Presentation Outline

- Why this issue is on the agenda
- Timeline of events
- Summary of facts
- Some options for action

- Senator Harper, sponsor of 2010 GS legislation
- Comments from affected parties

Why this Issue Is on Agenda

- **63I-1-257. Repeal dates, Title 57.**
 - (1) Subsections 57-1-25(1)(c), (3)(b), and (4) are repealed December 31, 2016.
- Legislative Management Committee has asked the Business and Labor Interim Committee to conduct a sunset review.
- Committee's task is to determine whether these subsections should be reauthorized for up to 10 years, with or without amendments; allowed to expire; or removed from the Sunset Act.

Timeline of Events

- May 20, 2009
 - federal law 'Protecting Tenants at Foreclosure Act of 2009' went into effect
- Act requires anyone acquiring residential property through foreclosure to:
 - honor existing leases; and
 - provide tenants with a minimum 90-day notice to vacate before initiating an eviction action.
- Act had a repeal date of December 31, 2012.

More Provisions of Federal Law

- Lease is bona fide only if:
 - mortgagor is not the tenant;
 - lease was result of an arms-length transaction; and
 - rent is not substantially less than fair market rent
- Purchaser at public auction who will be occupying as a primary residence may cancel existing lease, but 90 day period still applies
- Some exceptions for government subsidized housing

Timeline of Events

2010GS – passed H.B. 243, “Foreclosure Processes on Residential Rental Properties” by Rep. Wayne Harper.

In Title 57, Real Estate, the bill requires:

- lenders to provide foreclosure notice to each renter at the same time the landlord receives the notice of property sale; and
- notice to include statement advising renter of rights under federal law along with other added statements.

In Title 78B, Judicial Code, the bill:

- makes a tenant guilty of unlawful detainer if the tenant remains in the rental unit beyond what the federal law allows; and
- added to the foreclosure statutes the requirement to provide notice to tenant.

Bill had a sunset date of December 31, 2012.

Timeline of Events

- July 21, 2010
 - Congress extended the federal repeal date of the federal law from December 31, 2012, until December 31, 2014.
- 2011 Interim
 - Business and Labor Interim Committee recommended extending sunset date of provisions in Title 57 from December 31, 2012 until December 31, 2014.
 - Judiciary Interim Committee recommended extending sunset date of provisions in Title 78B from December 31, 2012 until December 31, 2014.
- 2012 General Session
 - H.B. 280, "Foreclosure Notice Provisions on Residential Rental Property" by Rep. Wayne Harper, implemented the recommendations for both the Business and Labor Interim Committee and the Judiciary Interim Committee.

Timeline of Events

- 2013 Interim
 - Business and Labor Interim Committee recommended extending sunset date of provisions in Title 57 from December 31, 2014 until December 31, **2016**.
 - Judiciary Interim Committee recommended removing sunset date for provisions in Title 78B thus making the provisions **effective indefinitely**.
- 2014 General Session
 - S.B. 20, "Trustee's Sale for Rental Property – Sunset Act Amendments" by Sen. Harper, implemented the Business and Labor Interim Committee's recommendation.
 - H.B. 279, "Judiciary Interim Committee Sunset Provisions" by Rep. McCliff, implemented the Judiciary Interim Committee's recommendation.

Timeline of Events

- December 31, 2014
 - Federal law expires
- Today (July 15, 2015)
 - Business and Labor Interim Committee conducts a sunset review
- 2016 General Session
 - Legislation to implement the committee's recommendations

Summary of Facts

- Federal law expired on December 31, 2014
- Two bills in Congress to revive federal law
- Utah Titles 57 and 78B contain provisions referencing the expired federal law
- Absent further action by the Legislature, Subsections 57-1-25(1)(c), (3)(b), and (4) are repealed December 31, 2016

Some Options for Action

- Do nothing
 - Subsections 57-1-25(1)(c), (3)(b), and (4) would be repealed on December 31, 2016.
 - Titles 57 and 78B would be inconsistent
 - Title 78B would reference expired federal law
- Make sunset provisions in Titles 57 and 78B consistent (either remove or make same date) and remove references to federal law
- Reverse changes made by 2010 General Session H.B. 243
- Enact Utah provisions similar to expired federal law
- Many other options using your creativity

Questions?