

57-1-21.5 Trustees of trust deeds -- Duties -- Prohibited conduct -- Penalties.

- (1) Until a beneficiary under a trust deed or the beneficiary's agent provides a trustee of the trust deed written instructions directing the trustee to exercise powers under this chapter, the trustee has no duty or obligation to the beneficiary or to the agent of a beneficiary.
- (2) Except as provided in Subsection (3), the following duties of a trustee may not be delegated:
 - (a) a preparation and execution of:
 - (i) a notice of default and election to sell;
 - (ii) a cancellation of notice of default and election to sell;
 - (iii) a notice of sale; and
 - (iv) a trustee's deed;
 - (b) the notification of foreclosure through publication, posting, and certified or registered mail;
 - (c) the receiving and responding to requests for reinstatement or payoff requirements; and
 - (d) the handling of reinstatement or payoff funds.
- (3) Nothing in this section is intended to prevent:
 - (a) a trustee from using clerical or office staff:
 - (i) that is under the trustee's direct and immediate supervision; and
 - (ii) to assist in the duties described in Subsection (2);
 - (b) a trustee from using the services of others for publication, posting, marketing, or advertising the sale; or
 - (c) a beneficiary of a trust deed or the servicing agent of the beneficiary from directly performing the functions described in Subsection (2)(c) or (d).
- (4) The amendments in Laws of Utah 2002, Chapter 209, to Subsection (3) do not apply to a foreclosure if the notice of default related to the foreclosure was filed before May 6, 2002.
- (5)
 - (a) Except as provided in Subsection (5)(c), a trustee may not solicit or receive any fee for referring business to a third party.
 - (b) A fee prohibited under Subsection (5)(a) includes:
 - (i) a commission;
 - (ii) a referral based fee, including a fee for the referral of:
 - (A) title work;
 - (B) posting services; or
 - (C) publishing services; or
 - (iii) a fee similar to a fee described in Subsection (5)(b)(i) or (ii).
 - (c) Subsection (5)(a) does not apply to:
 - (i) a fee received by a trustee for the trustee acting as co-legal counsel, if the trustee is otherwise permitted by law to receive fees as co-legal counsel; or
 - (ii) a nonpreferred participation in net profits based upon an ownership interest or franchise relationship that is not otherwise prohibited by law.
- (6) A trustee may not require the following to pay any costs that exceed the actual costs incurred by the trustee:
 - (a) a trustor reinstating or paying off a loan; or
 - (b) a beneficiary acquiring property through foreclosure.
- (7)
 - (a) A person that violates Subsection (5) or (6) is guilty of a class B misdemeanor.
 - (b) In addition to a person's liability under Subsection (7)(a), if a person violates Subsection (5) or (6), the person is liable to the trustor for an amount equal to the greater of:
 - (i) the actual damages of the trustor as a result of the violation; or
 - (ii) \$1,000.

(c) In an action brought under Subsection (7)(b), the party that does not prevail in the action that is brought under Subsection (7)(b) shall pay the attorney fees of the prevailing party.

Amended by Chapter 395, 2013 General Session