

MASTER DEEDS OF TRUST OR MORTGAGES

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

AN ACT RELATING TO REAL ESTATE; PROVIDING FOR RECORDING AND INCORPORATION BY REFERENCE OF MASTER DEEDS OF TRUST OR MORTGAGES; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

57-3-201, Utah Code Annotated 1953

57-3-202, Utah Code Annotated 1953

57-3-203, Utah Code Annotated 1953

57-3-204, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

57-3-101, (Renumbered from 57-3-1, as last amended by Chapter 88, Laws of Utah 1989)

57-3-102, (Renumbered from 57-3-2, as last amended by Chapter 88, Laws of Utah 1989)

57-3-103, (Renumbered from 57-3-3, as last amended by Chapter 88, Laws of Utah 1989)

57-3-104, (Renumbered from 57-3-4, as last amended by Chapter 155, Laws of Utah 1988)

57-3-105, (Renumbered from 57-3-10, as last amended by Chapter 155, Laws of Utah 1988)

57-3-106, (Renumbered from 57-3-11, as last amended by Chapter 155, Laws of Utah 1988)

57-3-107, (Renumbered from 57-3-12, as enacted by Chapter 35, Laws of Utah 1990)

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

Section 1. Section **57-3-101**, which is renumbered from Section 57-3-1 is renumbered and amended to read:

Part 1. General Provisions

[**57-3-1**]. **57-3-101**. **Certificate of acknowledgment, proof of execution, jurat, or other certificate required -- Notarial acts affecting real property.**

(1) A certificate of the acknowledgment of any document, or of the proof of the execution of any document, or a jurat as defined in Section 46-1-2, or other notarial certificate containing the

words "subscribed and sworn" or their substantial equivalent, that is signed and certified by the officer taking the acknowledgment, proof, or jurat, as provided in this title, entitles the document and the certificate to be recorded in the office of the recorder of the county where the real property is located.

(2) Notarial acts affecting real property in this state shall also be performed in conformance with Title 46, Chapter 1.

Section 2. Section **57-3-102**, which is renumbered from Section 57-3-2 is renumbered and amended to read:

[57-3-2]. 57-3-102. Record imparts notice -- Change in interest rate -- Validity of document -- Notice of unnamed interests -- Conveyance by grantee.

(1) Each document executed, acknowledged, and certified, in the manner prescribed by this title, each original document or certified copy of a document complying with Section 57-4a-3, whether or not acknowledged, each copy of a notice of location complying with Section 40-1-4, and each financing statement complying with Section 70A-9-402, whether or not acknowledged shall, from the time of filing with the appropriate county recorder, impart notice to all persons of their contents.

(2) If a recorded document was given as security, a change in the interest rate in accordance with the terms of an agreement pertaining to the underlying secured obligation does not affect the notice or alter the priority of the document provided under Subsection (1).

(3) This section does not affect the validity of a document with respect to the parties to the document and all other persons who have notice of the document.

(4) The fact that a recorded document recites only a nominal consideration, names the grantee as trustee, or otherwise purports to be in trust without naming beneficiaries or stating the terms of the trust does not charge any third person with notice of any interest of the grantor or of the interest of any other person not named in the document.

(5) The grantee in a recorded document may convey the interest granted to him free and clear of all claims not disclosed in the document in which he appears as grantee or in any other document recorded in accordance with this title that sets forth the names of the beneficiaries,

specifies the interest claimed, and describes the real property subject to the interest.

Section 3. Section **57-3-103**, which is renumbered from Section 57-3-3 is renumbered and amended to read:

[57-3-3]. 57-3-103. Effect of failure to record.

Each document not recorded as provided in this title is void as against any subsequent purchaser of the same real property, or any portion of it, if:

(1) the subsequent purchaser purchased the property in good faith and for a valuable consideration; and

(2) the subsequent purchaser's document is first duly recorded.

Section 4. Section **57-3-104**, which is renumbered from Section 57-3-4 is renumbered and amended to read:

[57-3-4]. 57-3-104. Certified copies entitled to record in another county -- Effect.

Whenever a document is of record in the office of the county recorder of any county, a copy of the record of the document certified by the county recorder may be recorded in the office of the county recorder of any other county. The recording of a certified copy in the office of the county recorder of another county has the same force and effect as if the original document had been recorded in the other county.

Section 5. Section **57-3-105**, which is renumbered from Section 57-3-10 is renumbered and amended to read:

[57-3-10]. 57-3-105. Legal description of real property and names and addresses required in documents.

(1) A document executed after July 1, 1983, is entitled to be recorded in the office of any county recorder only if the document contains a legal description of the real property affected.

(2) A document affecting title to real property presented for recording after July 1, 1981, is entitled to be recorded in the office of any county recorder only if the document contains the names and mailing addresses of the grantees in addition to the legal description required under Subsection (1).

(3) Each county recorder shall refuse to accept a document for recording if it does not

conform to the requirements under this section.

(4) Notwithstanding Subsections (1), (2), and (3), a master form, as defined in Section 57-3-201, that does not meet the requirements of Subsections (1) and (2) is entitled to be recorded in the office of any county recorder if it complies with Part 2, Master Mortgage and Trust Deeds.

Section 6. Section **57-3-106**, which is renumbered from Section 57-3-11 is renumbered and amended to read:

[57-3-11]. 57-3-106. Original documents required -- Captions -- Legibility.

(1) (a) Unless otherwise provided, documents presented for recording in the office of the county recorder shall:

(i) be originals; and [shall]

(ii) contain a brief caption stating the nature of the document.

(b) If a document is a master form, as defined in Section 57-3-201, the caption required by Subsection (1)(a)(ii) shall state that the document is a master form.

(2) Documents presented for recording shall also be sufficiently legible for the recorder to make certified copies.

Section 7. Section **57-3-107**, which is renumbered from Section 57-3-12 is renumbered and amended to read:

[57-3-12]. 57-3-107. Removal of unenforceable covenants.

(1) Restrictions on alienation of real property contained in a document to be recorded under this chapter, which are based on race, gender, national origin, marital status, or similar classification determined to be unenforceable under state or federal law, do not affect the eligibility of that document for recording under this chapter.

(2) A restriction described in Subsection (1) may be removed from a document eligible for recording under this section by any of the following means:

(a) A purchaser or seller of real estate may amend a prior recorded restriction by causing a corrected copy of the documents to be prepared for recording which deletes the unenforceable language from the document.

(b) A purchaser or seller of real estate may cause a copy of the documents to be prepared on

which the unenforceable language has been overwritten or stamped with words such as "VOID", "UNENFORCEABLE UNDER LAW", or words of similar meaning.

(c) A purchaser or seller of real estate may cause a copy of the documents to be prepared on which appears the statement "Any provision of this document which violates state or federal law is void."

(3) The cost of preparing and filing a document under Subsection (2) shall be the responsibility of the purchaser or seller making the correction and not that of the county recorder.

Section 8. Section **57-3-201** is enacted to read:

Part 2. Master Mortgage and Trust Deeds

57-3-201. Definitions.

As used in this part, "master form" means a mortgage or trust deed used as a master or similar standardized form that is drafted and recorded in accordance with this part to be incorporated in whole or in part into multiple mortgages or trust deeds.

Section 9. Section **57-3-202** is enacted to read:

57-3-202. Recording master mortgage and trust deed -- Requirements for master form -- Indexing by county recorder.

(1) (a) A person may record a master form in the office of the county recorder.

(b) A person who files a master form shall state in the caption required under Section 57-3-106 that the instrument is a master form.

(2) A master form is not required to:

(a) contain identification or description of any specific real property; or

(b) name a specific:

(i) mortgagor;

(ii) trustor; or

(iii) trustee.

(3) A master form shall:

(a) name a specific mortgagee or beneficiary;

(b) contain an acknowledgment, proof, or certification; and

(c) identify the person causing the recording of the master form.

(4) A county recorder shall:

(a) index a master form in the same manner as the county recorder indexes mortgages and trust deeds in accordance with Section 17-21-6; and

(b) indicate on all indices and records of the county referencing the master form that the instrument is a master form.

(5) (a) If a county recorder receives a document for recording that contains both a master form and a mortgage or trust deed, the county recorder:

(i) is not required to:

(A) separate the master form from the mortgage or trust deed; or

(B) record the master form and the mortgage or trust deed as separate instruments; but

(ii) may separate the master form from the mortgage or trust deed and record only the master form if the unrecorded portion is clearly designated or marked as a section not recorded.

(b) A master form recorded under Subsection (5)(a), is considered as a master form under this part for purposes of the incorporation by reference of a previously recorded master form.

Section 10. Section **57-3-203** is enacted to read:

57-3-203. Authorization to incorporate master form by reference -- Referencing a master form -- Prohibiting the reference of legal descriptions.

(1) (a) After a master form is recorded in accordance with Section 57-3-202, any provision of that master form may be incorporated in a mortgage or trust deed without setting the provision in full by making reference to the master form in the manner provided in this section.

(b) The incorporation of a provision of a master form is effective for purposes of this chapter only if it complies with the provision of this section.

(2) To incorporate a provision of a master form:

(a) the master form shall be of record in any county in which the mortgage or trust deed incorporating the master form provision is recorded;

(b) the mortgage or trust deed incorporating the master form provision shall contain a statement for each county in which the mortgage or trust deed is to be recorded that:

(i) gives the specific date on which the referenced master form was recorded in that county;
(ii) identifies the referenced master form by reference to the indexing information for the
referenced master form from the county records of that county, providing:

(A) the entry number; and

(B) the book and first page number of the records or book where the recorded master form
appears; and

(iii) if less than all of the provisions of the referenced master form are incorporated,
identifies by paragraph, section, or other method which provision is incorporated into the mortgage
or trust deed.

(3) In the absence of a statement identifying which provision is to be incorporated as
described in Subsection (2)(b)(iii), the entire referenced master form is considered incorporated.

(4) A party may not incorporate by reference the legal description of the real property
affected by the mortgage or trust deed being recorded.

Section 11. Section **57-3-204** is enacted to read:

57-3-204. Constructive notice -- Effect as between direct parties to mortgage or trust
deed.

(1) The recording of a mortgage or trust deed that incorporates a provision of a master form
in accordance with Section 57-3-203, operates as constructive notice of the mortgage or trust deed,
including all incorporated provisions of the referenced master form.

(2) Nothing in this part modifies the law regarding the effectiveness of a mortgage, trust
deed, or contract as between:

(a) the mortgagor and mortgagee of the mortgage; or

(b) the trustor, beneficiary, and trustee under a trust deed.

Section 12. **Effective date.**

This act takes effect on July 1, 1998.