

TRUST DEED LAW AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

This act modifies provisions related to trust deeds. The act alters the qualifications and outlines the duties for trustees of trust deeds. The act modifies provisions relating to successor trustees. The act alters the trustee's requirements when filing a notice of default. The act alters provisions relating to the trustee's sale of trust property and the proceeds of the sale. The act modifies the requirements for the sale of trust property by public auction. The act amends the requirements for the trustee's course of action once a default under a trust deed is cured. The act designates the determinative value for trust property. The act establishes the effect of an erroneously recorded reconveyance of a trust deed. The act also makes technical corrections.

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

AMENDS:

57-1-20, as enacted by Chapter 181, Laws of Utah 1961

57-1-21, as last amended by Chapter 182, Laws of Utah 1996

57-1-22, as last amended by Chapter 75, Laws of Utah 2000

57-1-23, as enacted by Chapter 181, Laws of Utah 1961

57-1-24, as last amended by Chapter 88, Laws of Utah 1989

57-1-25, as last amended by Chapter 75, Laws of Utah 2000

57-1-26, as last amended by Chapter 75, Laws of Utah 2000

57-1-27, as last amended by Chapter 82, Laws of Utah 1988

57-1-28, as last amended by Chapter 68, Laws of Utah 1985

57-1-29, as last amended by Chapter 215, Laws of Utah 1997

57-1-31, as last amended by Chapter 75, Laws of Utah 2000

57-1-32, as last amended by Chapter 68, Laws of Utah 1985

57-1-33.1, as enacted by Chapter 185, Laws of Utah 1995

ENACTS:

57-1-21.5, Utah Code Annotated 1953

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

Section 1. Section **57-1-20** is amended to read:

57-1-20. Transfers in trust of real property -- Purposes -- Effect.

Transfers in trust of real property may be made to secure the performance of an obligation of the trustor or any other person named in the trust deed to a beneficiary. All right, title, interest and claim in and to the trust property acquired by the trustor, or [his] the trustor's successors in interest, subsequent to the execution of the trust deed, shall inure to the trustee as security for the obligation or obligations for which the trust property is conveyed [~~in like manner~~] as if acquired before execution of the trust deed.

Section 2. Section **57-1-21** is amended to read:

57-1-21. Trustees of trust deeds -- Qualifications.

(1) (a) The trustee of a trust deed shall be:

- (i) any active member of the Utah State Bar residing in Utah;
- (ii) any depository institution as defined in Section 7-1-103, or insurance company authorized to do business and actually doing business in Utah under the laws of Utah or the United States;
- (iii) any corporation authorized to conduct a trust business and actually conducting a trust business in Utah under the laws of Utah or the United States;
- (iv) any title insurance or abstract company authorized to do business and actually doing business in Utah under the laws of Utah;
- (v) any agency of the United States government; or
- (vi) any association or corporation [~~which~~] that is licensed, chartered, or regulated by the Farm Credit Administration or its successor.

(b) Subsection (1) is not applicable to a trustee of a trust deed existing prior to the effective date of this chapter, nor to any agreement that is supplemental to that trust deed.

(2) The trustee of a trust deed may not be the beneficiary of the trust deed, unless the beneficiary is qualified to be a trustee under Subsection (1)(a)(ii), (iii), (v), or (vi).

(3) The power of sale conferred by Section 57-1-23 may only be exercised by the trustee of a trust deed if the trustee is qualified under Subsection (1)(a)(i) or (iv).

(4) A trust deed with an unqualified trustee or without a trustee shall be effective to create a lien on the trust property, but the power of sale and other trustee powers under the trust deed may be exercised only if, prior to the exercise of those powers, the beneficiary has appointed a qualified successor trustee under Section 57-1-22.

Section 3. Section **57-1-21.5** is enacted to read:

57-1-21.5. Trustees of trust deeds -- Duties.

(1) The following duties of the trustee may not be delegated:

(a) the preparation and execution of:

(i) the notice of default and election to sell;

(ii) the cancellation of notice of default and election to sell;

(iii) the notice of sale;

(iv) the trustee's deed; and

(v) the deed of reconveyance;

(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.

(2) Nothing in this section is intended to prevent the trustee from using clerical or office staff employed by the trustee and under the trustee's direct and immediate supervision to assist in the duties described in Subsection (1) or from using the services of others for publication, posting, marketing, or advertising the sale.

Section 4. Section **57-1-22** is amended to read:

57-1-22. Successor trustees -- Appointment by beneficiary -- Effect -- Substitution of trustee -- Recording -- Form.

(1) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the county recorder of each county in which the trust property or some part ~~thereof~~ of the

trust property is situated, a substitution of trustee. ~~[From the time the substitution is filed for record, the]~~ The new trustee shall succeed to all the power, duties, authority, and title of the trustee named in the deed of trust and of any successor trustee. The beneficiary may, by express provision in the substitution of trustee, ratify and confirm action taken on the beneficiary's behalf by the new trustee prior to the recording of the substitution of trustee.

(2) The substitution shall:

- (a) identify the trust deed by stating the names of the original parties ~~[thereto]~~ to the trust deed, the date of recordation, and the book and page where the same is recorded or the entry number;
- (b) include the legal description of the trust property;
- (c) state the name of the new trustee; and
- (d) be executed and acknowledged by all of the beneficiaries under the trust deed or their successors in interest.

(3) If not previously recorded, at the time of recording ~~[the]~~ a notice of default, the successor trustee shall file for record, in the office of the county recorder of each county in which the trust property or some part of it is situated, the substitution of trustee~~[-and a]~~. A copy [thereof] of the substitution of trustee shall be sent in the manner provided in [Section] Subsection 57-1-26(2) to all persons to whom a copy of [the] a notice of default would be required to be mailed by [Section] Subsections 57-1-26(1)(a) and (3). ~~[In addition thereto, a copy shall be sent to the prior trustee by regular mail to his last-known address.]~~

(4) A substitution of trustee shall be ~~[sufficient if made]~~ in substantially the following form:

Substitution of Trustee

(insert name and address of new trustee)

is hereby appointed successor trustee under the trust deed executed by ____ as trustor, in which ____ is named beneficiary and ____ as trustee, and filed for record _____(month\day\year), and recorded in Book ____, Page ____, Records of ____ County, (or filed for record _____(month\day\year), with recorder's entry No. ____, ____ County), Utah.

(Insert legal description)

Signature _____

(Certificate of Acknowledgment)

Section 5. Section **57-1-23** is amended to read:

57-1-23. Sale of trust property -- Power of trustee -- Foreclosure of trust deed.

~~[A power of sale is hereby conferred upon the]~~ The trustee who is qualified under Subsection 57-1-21(1)(a)(i) or (iv) is given the power of sale by which the trustee may exercise and [under which] cause the trust property [may] to be sold in the manner [hereinafter] provided in Sections 57-1-24 and 57-1-27, after a breach of an obligation for which the trust property is conveyed as security; or, at the option of the beneficiary, a trust deed may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision [therefor] for it in the trust deed.

Section 6. Section **57-1-24** is amended to read:

57-1-24. Sale of trust property by trustee -- Notice of default.

The power of sale conferred upon the trustee who is qualified under Subsection 57-1-21(1)(a)(i) or (iv) may not be exercised until:

(1) the trustee first files for record, in the office of the recorder of each county where the trust property or some part or parcel ~~[thereof]~~ of the trust property is situated, a notice of default, identifying the trust deed by stating the name of the trustor named ~~[therein]~~ in the trust deed and giving the book and page, or the recorder's entry number, where the trust deed is recorded and a legal description of the trust property, and containing a statement that a breach of an obligation for which the trust property was conveyed as security has occurred, and setting forth the nature of that breach and of ~~[his]~~ the trustee's election to sell or cause to be sold the property to satisfy the obligation;

(2) not less than three months has ~~[thereafter]~~ elapsed from the time the trustee filed for record under Subsection (1); and

(3) after the lapse of at least three months the trustee shall give notice of sale as provided in ~~[this act]~~ Sections 57-1-25 and 57-1-26.

Section 7. Section **57-1-25** is amended to read:

57-1-25. Notice of trustee's sale -- Description of property -- Time and place of sale.

(1) The trustee shall give written notice of the time and place of sale particularly describing the property to be sold:

(a) by publication of the notice, at least three times, once a week for three consecutive weeks, the last publication to be at least ten days but not more than 30 days prior to the sale, in ~~[some]~~ a newspaper having a general circulation in each county in which the property to be sold, or some part ~~[thereof]~~ of the property to be sold, is situated; and

(b) by posting the notice, at least 20 days before the date of sale, in some conspicuous place on the property to be sold and also ~~[in at least three public places of each city or county in which the property to be sold, or some part thereof, is situated]~~ at the office of the county recorder of each county in which the trust property, or some part of it, is located.

(2) (a) The sale shall be held at the time and place designated in the notice of sale ~~[which].~~

(b) The time of sale shall be between the hours of [9] 8 a.m. and [5] 8 p.m. ~~[and at the courthouse of the county in which the property to be sold, or some part thereof, is situated.]~~

(c) The place of sale shall be clearly identified in the notice of sale under Subsection (1) and shall be one of the following:

(i) at a courthouse serving the county in which the property to be sold, or some part of the property to be sold, is located; or

(ii) at the property to be sold, provided that:

(A) if the described property comprises more than one acre, the location on the property where the sale will be conducted is specifically described; and

(B) the property is accessible to the public at the time of the sale.

(3) The notice of sale shall be ~~[sufficient if made]~~ in substantially the following form:

Notice of Trustee's Sale

The following described property will be sold at public auction to the highest bidder, payable in lawful money of the United States at the time of sale, at ~~[the _____ in _____, _____ County, Utah,]~~ (insert location of sale) _____ on _____ (month\day\year), at __.m. of said day, for the purpose of foreclosing a trust deed originally executed by ____ (and _____, his wife,) as trustors, in favor of _____, covering real property located at _____, and more particularly described

as:

(Insert legal description)

~~[(Certificate of Acknowledgment, if recorded)]~~

The current beneficiary of the trust deed is _____ and the record owners of the property as of the recording of the notice of default are _____ and _____.

Dated _____ (month\day\year).

Trustee

Section 8. Section **57-1-26** is amended to read:

57-1-26. Requests for copies of notice of default and notice of sale -- Mailing by trustee or beneficiary -- Publication of notice of default.

(1) (a) Any person desiring a copy of any notice of default and of any notice of sale under any trust deed [~~may~~ shall], at any time subsequent to the filing for record of the trust deed and prior to the filing for record of a notice of default [~~thereunder~~ of the trust deed], file for record in the office of the county recorder of any county in which [~~any part or parcel of~~ of the trust property], or any part of the trust property, is situated, a duly acknowledged request for a copy of any notice of default and notice of sale. [~~The~~ Except as provided in Subsection (3), the request may not be included in any other recorded instrument. The request shall set forth the name and address of the [~~person or~~ persons requesting copies of [~~such~~ those notices and shall identify the trust deed by stating the names of the original parties [~~thereto~~ to the trust deed], the date of filing for record [~~thereof~~ of the trust deed], the book and page where [~~the same~~ the trust deed is recorded or the recorder's entry number, and the legal description of the trust property. The request shall be in substantially the following form:

REQUEST FOR NOTICE

~~[Request is hereby made]~~ The undersigned requests that a copy of any notice of default and a copy of notice of sale under the trust deed filed for record _____ (month\day\year), and recorded in Book ____, Page ____, Records of ____ County, (or filed for record _____ (month\day\year), with recorder's entry number ____, _____ County), Utah, executed

by _____ and _____ as ~~[trustor]~~ trustors, in which _____ is named as beneficiary and _____ as trustee, be mailed to _____ (insert name) _____ at _____ (insert address) _____.

(Insert legal description)

Signature _____

(Certificate of Acknowledgement)

(b) Upon filing for record of a request for notice, the recorder shall index the request in the mortgagor's index, mortgagee's index, and abstract record. Except as provided in ~~[this section]~~ Subsection (3), the trustee under any ~~[such]~~ deed of trust is not required to send notice of default or notice of sale to any person not filing a request for notice as described ~~[herein]~~ in Subsection (1)(a).

(2) Not later than ten days after recordation of a notice of default, the trustee or beneficiary shall mail, by certified or registered mail, with postage prepaid, a copy of ~~[such]~~ the notice of default with the recording date shown ~~[thereon]~~, addressed to each person whose name and address are set forth in a request ~~[therefor which]~~ that has been recorded prior to the filing for record of the notice of default, directed to the address designated in the request. At least 20 days before the date of sale, the trustee shall mail, by certified or registered mail, return receipt requested with postage prepaid, a copy of the notice of the time and place of sale, addressed to each person whose name and address are set forth in a request ~~[therefor which]~~ that has been recorded prior to the filing for record of the notice of default, directed to the address designated in the request.

(3) Any trust deed may contain a request that a copy of any notice of default and a copy of any notice of sale ~~[thereunder]~~ under the trust deed be mailed to any person who is a party ~~[thereto]~~ to the trust deed at the address of the person set forth ~~[therein, and a]~~ in the trust deed. A copy of any notice of default and of any notice of sale shall be mailed to ~~[each such]~~ any person requesting the notice who is a party to the trust deed at the same time and in the same manner required in Subsection (2) as though a separate request ~~[therefor]~~ had been filed by each ~~[of such persons]~~ person as provided in ~~[this section]~~ Subsection (1)(a).

(4) If no address of the trustor is set forth in the trust deed and if no request for notice by the trustor has been recorded as provided in this section, a copy of the notice of default shall, no later than 15 days after the filing for record of the notice of default, either be:

(a) mailed to the address of the property described in the notice of default; or

(b) posted on the property.

~~[(4) If no address of the trustor is set forth in the trust deed and if no request for notice by the trustor has been recorded as provided in this section, a copy of the notice of default shall be published at least three times, once a week for three consecutive weeks, in a newspaper of general circulation in each county in which the trust property, or some part thereof, is situated, such publication to commence not later than ten days after the filing for record of the notice of default. In lieu of this publication, a copy of the notice of default may be delivered personally to the trustor within the ten days or at any time before publication is completed.]~~

(5) No request for a copy of any notice filed for record ~~[pursuant to this section]~~ under Subsections (1) and (3), nor any statement or allegation in any ~~[such request]~~ of those requests, nor any record ~~[thereof]~~ of those requests, shall affect the title to trust property or be considered notice to any person that any person requesting copies of notice of default or of notice of sale has or claims any right, title or interest in, or lien or claim upon, the trust property.

Section 9. Section **57-1-27** is amended to read:

57-1-27. Sale of trust property by public auction -- Postponement of sale.

(1) (a) On the date and at the time and place designated in the notice of sale, the trustee or the attorney for the trustee shall sell the property at public auction to the highest bidder. The trustee, or the attorney for the trustee, may conduct the sale and act as the auctioneer. The trustor, or ~~[his]~~ the trustor's successor in interest, if present at the sale, may direct the order in which the trust property shall be sold, if the property consists of several known lots or parcels which can be sold ~~[to advantage]~~ separately. The trustee or attorney for the trustee shall follow these directions. Any person, including the beneficiary or trustee, may bid at the sale. The trustee may bid for the beneficiary. Each bid is considered an irrevocable offer~~[-and if].~~ If the [purchaser] highest bidder refuses to pay the amount bid by ~~[him]~~ the highest bidder for the property ~~[sold to him at the sale]~~, the trustee, or the attorney for the trustee, ~~[may again sell the property at any time to the highest bidder. The party]~~ shall either:

(i) renounce the sale in the same manner as notice of the original sale is required to be given;

or

(ii) sell the property to the next highest bidder.

(b) A bidder refusing to pay the bid price is liable for any loss occasioned by the refusal, including interest, costs, and trustee's and reasonable attorneys' fees. The trustee or the attorney for the trustee may thereafter reject any other bid of that person for the property.

(2) The person conducting the sale may, for any cause he considers expedient, postpone the sale [~~up to a period not to exceed 72 hours~~]. [~~If the last hour of the postponement falls on a Saturday, a Sunday, or a legal holiday, the sale may be postponed until the same hour of the next day which is not a Saturday, a Sunday, or a legal holiday.~~] The person conducting the sale shall give notice of [~~the~~] each postponement by public declaration, by written notice or oral postponement, at the time and place last appointed for the sale. No other notice of the postponed sale is required, unless the [~~sale is postponed for longer than 72 hours beyond the date designated in the notice of sale. In the event of a longer postponement, the sale shall be cancelled and renoticed in the same~~] postponement exceeds 45 days. In that event, the sale shall be renoticed in the same manner as the original notice of sale is required to be given.

Section 10. Section **57-1-28** is amended to read:

57-1-28. Sale of trust property by trustee -- Payment of bid -- Trustee's deed delivered to purchaser -- Recitals -- Effect.

(1) The purchaser at the sale shall pay the price bid as directed by the trustee [~~and upon~~]. The beneficiary shall receive a credit on the beneficiary's bid in an amount not to exceed the amount representing the unpaid principal owed, accrued interest as of the date of the sale, advances for the payment of taxes, insurance, and maintenance and protection of the trust property and the beneficiary's lien on the trust property, and costs of sale, including reasonable trustee's and attorney's fees. Upon receipt of payment, the trustee shall execute and deliver [his] the trustee's deed to [such] the purchaser. The trustee's deed may contain recitals of compliance with the requirements of Sections 57-1-19 through 57-1-36 relating to the exercise of the power of sale and sale of the property described [therein] in the trustee's deed, including recitals concerning any mailing, personal delivery, and publication of the notice of default, any mailing and the publication and posting of the

notice of sale, and the conduct of sale. These recitals constitute prima facie evidence of [~~such~~] compliance with Sections 57-1-19 through 57-1-36, and are conclusive evidence in favor of bona fide purchasers and encumbrancers for value and without notice.

(2) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest, and claim of the trustor and [~~his~~] the trustor's successors in interest and of all persons claiming by, through, or under them, in and to the property sold, including all [~~such~~] right, title, interest, and claim in and to [~~such~~] the property acquired by the trustor or [~~his~~] the trustor's successors in interest subsequent to the execution of the trust deed, which trustee's deed shall be considered effective and relate back to the time of the sale.

Section 11. Section **57-1-29** is amended to read:

57-1-29. Proceeds of trustee's sale -- Disposition.

(1) The trustee shall apply the proceeds of the trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's and attorney's fees actually incurred not to exceed the amount which may be provided for in the trust deed, second, to payment of the obligation secured by the trust deed, and the balance, if any, to the person or persons legally entitled to the proceeds, or the trustee, in [~~his~~] the trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place. If the proceeds are deposited with the clerk of the district court, the trustee shall file an affidavit with the clerk setting forth the facts of the deposit and a list of all known claimants, including known addresses. Upon depositing the balance and filing the affidavit, the trustee shall be discharged from all further responsibility and the clerk shall deposit the proceeds with the state treasurer subject to the order of the district court.

(2) The clerk shall give notice of the deposited funds to all claimants listed in the trustee's affidavits within 15 days of receiving the affidavit of deposit from the trustee.

(3) Any claimant may file a petition for adjudication of priority to the funds. The petitioner requesting the funds shall give notice of the petition to all claimants listed in the trustee's affidavit and to any other claimants known to the petitioner. The petitioner's notice must specify that all claimants have 20 days to contest the petition by affidavit or counter-petition. If no affidavit or

counter-petition is filed within 20 days, the court shall, without a hearing, enter an order directing the clerk of the court or the county treasurer to disburse the funds to the petitioner according to the petition.

(4) If a petition for adjudication is contested by affidavit or counter-petition, the district court shall, within 20 days, conduct a hearing to establish the priorities of the parties to the deposited funds and give notice to all known claimants of the date and time of the hearing. At the hearing, the court will establish the priorities of the parties to the deposited funds and enter an order directing the clerk of the court or county treasurer to disburse the funds according to the court's determination.

(5) All persons having or claiming to have an interest in the disposition of funds deposited with the court under Subsection (1) who fail to appear and assert their claims are barred from any claim to the funds after the entry of the court's order under Subsection (4).

Section 12. Section **57-1-31** is amended to read:

57-1-31. Trust deeds -- Default in performance of obligations secured -- Reinstatement -- Cancellation of recorded notice of default.

(1) Whenever all or a portion of the principal sum of any obligation secured by a trust deed has, prior to the maturity date fixed in the obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust deed, including a default in the payment of interest or of any installment of principal, or by reason of failure of the trustor to pay, in accordance with the terms of the trust deed, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with terms of the obligation or of the trust deed, the trustor or ~~his~~ the trustor's successor in interest in the trust property or any part ~~thereof~~ of the trust property or any other person having a subordinate lien or encumbrance of record ~~thereon~~ on the trust property or any beneficiary under a subordinate trust deed, at any time within three months of the filing for record of notice of default under the trust deed, if the power of sale is to be exercised, may pay to the beneficiary or ~~his~~ the beneficiary's successor in interest the entire amount then due under the terms of the trust deed (including costs and expenses actually incurred in enforcing the terms of the obligation, or trust deed, and the trustee's and attorney's fees actually incurred) other than that portion of the principal as would not then be due had no default occurred,

and thereby cure the existing default [~~theretofore existing and, thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued and~~]. After the beneficiary or beneficiary's successor in interest has been paid and the default cured, the obligation and trust deed shall be reinstated [~~and shall be and remain in force and effect the same~~] as if no [~~such~~] acceleration had occurred.

(2) If the default is cured and the trust deed reinstated in the manner provided in Subsection (1), [~~the beneficiary, or his assignee, shall, on demand of any person having an interest in the trust property, execute and deliver to him a request to the~~] and a reasonable fee is paid for cancellation, including the cost of recording the cancellation of notice of default, the trustee [to] shall execute, acknowledge, and deliver a cancellation of the recorded notice of default under the trust deed; and any [~~beneficiary under a trust deed, or his assignee,~~] trustee who[~~, for a period of 30 days after such demand,~~] refuses to [~~request the trustee to~~] execute and [~~deliver~~] record this cancellation within 30 days is liable to the person [~~entitled to such request~~] curing the default for all actual damages resulting from this refusal. A [~~release and~~] reconveyance given by the trustee [~~or beneficiary, or both,~~] or the execution of a trustee's deed constitutes a cancellation of a notice of default. Otherwise, a cancellation of a recorded notice of default under a trust deed is, when acknowledged, entitled to be recorded and is sufficient if made and executed by the trustee in substantially the following form:

Cancellation of Notice of Default

The undersigned hereby cancels the notice of default filed for record _____(month\day\year), and recorded in Book ____, Page ____, Records of ____ County, (or filed of record _____(month\day\year), with recorder's entry No. ____, ____ County), Utah, which notice of default refers to the trust deed executed by ____ and _____ as [~~trustor~~] trustors, in which ____ is named as beneficiary and ____ as trustee, and filed for record _____(month\day\year), and recorded in Book ____, Page ____, Records of ____ County, (or filed of record _____(month\day\year), with recorder's entry No. ____, ____ County), Utah.

(legal description)

Signature of Trustee _____

Section 13. Section **57-1-32** is amended to read:

57-1-32. Sale of trust property by trustee -- Action to recover balance due upon obligation for which trust deed was given as security -- Collection of costs and attorney's fees.

At any time within three months after any sale of property under a trust deed[;] as [~~hereinabove~~] provided in Sections 57-1-23, 57-1-24, and 57-1-27, an action may be commenced to recover the balance due upon the obligation for which the trust deed was given as security, and in [~~such~~] that action the complaint shall set forth the entire amount of the indebtedness [~~which~~] that was secured by [~~such~~] the trust deed, the amount for which [~~such~~] the property was sold, and the fair market value [~~thereof at the~~] of the property at the date of sale. Before rendering judgment, the court shall find the fair market value of the property at the date of sale [~~of the property sold~~]. The court may not render judgment for more than the amount by which the amount of the indebtedness with interest, costs, and expenses of sale, including trustee's and attorney's fees, exceeds the fair market value of the property as of the date of the sale. In any action brought under this section, the prevailing party shall be entitled to collect its costs and reasonable attorney fees incurred [~~in bringing an action under this section~~].

Section 14. Section **57-1-33.1** is amended to read:

57-1-33.1. Reconveyance of a trust deed -- Erroneous reconveyance.

(1) (a) When an obligation secured by a trust deed has been satisfied, the trustee shall, upon written request by the beneficiary, reconvey the trust property.

(b) At the time the beneficiary requests a reconveyance under Subsection (1)(a), the beneficiary shall deliver to the trustee or the trustee's successor in interest the trust deed and the note or other evidence that the obligation securing the trust deed has been satisfied.

(2) The reconveyance under Subsection (1) may designate the grantee as "the person or persons entitled thereto."

(3) If a reconveyance is erroneously recorded by a beneficiary, the effect of the reconveyance may be nullified and the trust deed reinstated by the recording of a corrective affidavit executed by the then current beneficiary describing the trust deed and setting forth the fact of the erroneous reconveyance. Upon the recording of a corrective affidavit or similar instrument, the trust deed has the same priority as it did prior to the erroneous reconveyance. However, any lien or interest that

was recorded or attached to the trust deed property between the time of the recording of the erroneous reconveyance and the recording of the corrective affidavit or similar instrument has priority over the reinstated trust deed, unless the lien or interest was recorded or attached with actual knowledge that the trust deed had been reconveyed erroneously.