

**Representative David Clark** proposes the following substitute bill:

**TRUST DEEDS AMENDMENTS**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: David Clark**

**This act modifies the Real Estate Title to address provisions related to trust deeds. The act modifies qualifications and duties of a trustee of a trust deed. The act prohibits certain actions by a trustee. This act addresses requirements for the sale of property. This act addresses delivery of trust deeds. This act requires detailed accounting in certain circumstances. This act makes technical changes. This act provides revisors instructions.**

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

AMENDS:

**57-1-21**, as last amended by Chapter 236, Laws of Utah 2001

**57-1-21.5**, as enacted by Chapter 236, Laws of Utah 2001

**57-1-22**, as last amended by Chapter 236, Laws of Utah 2001

**57-1-25**, as last amended by Chapter 236, Laws of Utah 2001

**57-1-26**, as last amended by Chapter 236, Laws of Utah 2001

**57-1-28**, as last amended by Chapter 236, Laws of Utah 2001

ENACTS:

**57-1-31.5**, Utah Code Annotated 1953

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

Section 1. 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~~] **ĥ [that] WHO:**

**(A) RESIDES IN UTAH; OR**

**(B) ĥ maintains a bona fide**

office in the state;



26 (ii) any depository institution as defined in Section 7-1-103, or insurance company  
 27 authorized to do business and actually doing business in Utah under the laws of Utah or the United  
 28 States;

29 (iii) any corporation authorized to conduct a trust business and actually conducting a trust  
 30 business in Utah under the laws of Utah or the United States;

31 (iv) any title insurance [~~or abstract~~] company [~~authorized to do business and~~] or agency  
 32 that:

33 (A) holds a certificate of authority or license under Title 31A, Insurance Code, to conduct  
 34 insurance business in the state;

35 (B) is actually doing business in [~~Utah under the laws of Utah;~~] the state; and

36 (C) maintains a bona fide office in the state;

37 (v) any agency of the United States government; or

38 (vi) any association or corporation that is licensed, chartered, or regulated by the Farm  
 39 Credit Administration or its successor.

40 (b) For purposes of this Subsection (1), a person maintains a bona fide office within the  
 41 state if that person maintains a physical office in the state:

42 (i) that is open to the public;

43 (ii) that is staffed <sup>h</sup> [~~from 8 a.m. to 5 p.m.~~] **DURING REGULAR BUSINESS HOURS** <sup>h</sup> on  
 43a regular business days; and

44 (iii) at which a trustor of a trust deed may in person:

45 (A) request information regarding a trust deed; or

46 (B) deliver funds, including reinstatement or payoff funds.

47 ~~[(b)]~~ (c) Subsection (1) is not applicable to a trustee of a trust deed existing prior to [~~the~~  
 48 ~~effective date of this chapter~~] May 14, 1963, nor to any agreement that is supplemental to that trust  
 49 deed.

50 (d) The amendments in this act to <sup>h</sup> THIS <sup>h</sup> Subsection (1) apply only to a trustee that is  
 50a appointed  
 51 on or after May 6, 2002.

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

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

56 (4) A trust deed with an unqualified trustee or without a trustee shall be effective to create

57 a lien on the trust property, but the power of sale and other trustee powers under the trust deed may  
 58 be exercised only if~~[-, prior to the exercise of those powers,]~~ the beneficiary has appointed a  
 59 qualified successor trustee under Section 57-1-22.

60 Section 2. Section **57-1-21.5** is amended to read:

61 **57-1-21.5. Trustees of trust deeds -- Duties.**

62 (1) ~~[The]~~ Except as provided in Subsection (2), the following duties of the trustee may not  
 63 be delegated:

64 (a) the preparation and execution of:

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

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

67 (iii) the notice of sale; and

68 (iv) the trustee's deed; ~~[and]~~

69 ~~[(v) the deed of reconveyance;]~~

70 (b) the notification of foreclosure through publication, posting, and certified or registered  
 71 mail;

72 (c) the receiving and responding to requests for reinstatement or payoff requirements; and

73 (d) the handling of reinstatement or payoff funds.

74 (2) Nothing in this section is intended to prevent:

75 (a) the trustee from using clerical or office staff ~~[employed by the trustee and];~~

76 (i) that is under the trustee's direct and immediate supervision; and

77 (ii) to assist in the duties described in Subsection (1) ~~[or];~~

78 (b) the trustee from using the services of others for publication, posting, marketing, or  
 79 advertising the sale[-]; or

80 (c) a beneficiary of a trust deed or the servicing agent of the beneficiary from directly  
 81 performing the functions described in:

82 (i) Subsection (1)(c); or

83 (ii) Subsection (1)(d).

84 (3) The amendments in this act to Subsection (2) do not apply to a foreclosure if the notice  
 85 of default related to the foreclosure was filed before May 6, 2002.

86 (4) (a) Except as provided in Subsection (4)(c), a trustee may not solicit or receive any fee

87 h [from a third party based on the trustee] FOR h referring business to h [the] A h third party.

88 (b) Fees prohibited under Subsection (4)(a) include:  
 89 (i) a commission;  
 90 (ii) a referral based fee, including a fee for the referral of:  
 91 (A) title work;  
 92 (B) posting services; or  
 93 (C) publishing services; or  
 94 (iii) a fee similar to a fee described in Subsection (4)(b)(i) or (ii).  
 95 (c) Subsection (4)(a) does not apply to ~~h~~ :  
 95a (i) ~~h~~ fees received by a trustee for the trustee acting as  
 96 co-legal counsel, if the trustee is otherwise permitted by law to receive fees as co-legal counsel  
 96a ~~h~~ ; OR  
 96b (ii) A NON-PREFERRED PARTICIPATION IN NET PROFITS BASED UPON AN OWNERSHIP  
 96c INTEREST OR FRANCHISE RELATIONSHIP THAT IS NOT OTHERWISE PROHIBITED BY LAW ~~h~~ .  
 97 (5) A trustee may not ~~h~~ [~~charge a borrower a fee for publishing or posting a notice that~~  
 97a ~~§ [REQUIRE A TRUSTOR REINSTATING OR PAYING OFF A LOAN TO PAY ANY COSTS THAT ~~h~~~~  
 98 ~~h [exceeds] EXCEED ~~h~~ the actual costs incurred by the trustee ~~h~~ [to publish or post the notice for that~~  
 98a ~~borrower] ~~h~~ .] REQUIRE THE FOLLOWING TO PAY ANY COSTS THAT EXCEED THE ACTUAL COSTS~~  
 98b INCURRED BY THE TRUSTEE:  
 98c (a) A TRUSTOR REINSTATING OR PAYING OFF A LOAN; OR  
 98d (b) A BENEFICIARY ACQUIRING PROPERTY THROUGH FORECLOSURE. §  
 99 (6) (a) A person that violates Subsection (4) or (5) is guilty of a class B misdemeanor.  
 100 (b) In addition to a person's liability under Subsection (6)(a), if a person violates  
 101 Subsection (4) or (5), that person is liable to the trustor for an amount equal to the greater of:  
 102 (i) the actual damages of the trustor as a result of the violation; or  
 103 (ii) \$1,000.  
 104 (c) In an action brought under Subsection (6)(b), the party that does not prevail in the  
 105 action that is brought under Subsection (6)(b) shall pay the attorney fees of the prevailing party.  
 106 Section 3. Section **57-1-22** is amended to read:  
 107 **57-1-22. Successor trustees -- Appointment by beneficiary -- Effect -- Substitution**  
 108 **of trustee -- Recording -- Form.**  
 109 (1) (a) The beneficiary may appoint a successor trustee at any time by filing for record in  
 110 the office of the county recorder of each county in which the trust property or some part of the trust  
 111 property is situated, a substitution of trustee.  
 112 (b) The new trustee shall succeed to all the power, duties, authority, and title of the trustee  
 113 named in the deed of trust and of any successor trustee.  
 114 (c) The beneficiary may, by express provision in the substitution of trustee, ratify and  
 115 confirm action taken on the beneficiary's behalf by the new trustee prior to the recording of the  
 116 substitution of trustee.  
 117 (2) The substitution shall:  
 118 (a) identify the trust deed by stating:

- 119 (i) the names of the original parties to the trust deed[;];
- 120 (ii) the date of recordation[;]; and
- 121 (iii) (A) the book and page where the [~~same~~] trust deed is recorded; or
- 122 (B) the entry number;
- 123 (b) include the legal description of the trust property;
- 124 (c) state the name and address of the new trustee; and
- 125 (d) be executed and acknowledged by all of the beneficiaries under the trust deed or their
- 126 successors in interest.

127 (3) (a) If not previously recorded, at the time of recording a notice of default, the successor

128 trustee shall file for record, in the office of the county recorder of each county in which the trust

129 property or some part of it is situated, the substitution of trustee.

130 (b) A copy of the substitution of trustee shall be sent in the manner provided in Subsection

131 57-1-26(2) to [~~all persons to~~] any:

132 (i) person who requests a copy of any notice of default or notice of sale under Subsection

133 57-1-26(1)(a); and

134 (ii) person who is a party to the trust deed to whom a copy of a notice of default would be

135 required to be mailed by [Subsections] Subsection 57-1-26[~~(1)(a) and~~] (3).

136 (4) A substitution of trustee shall be in substantially the following form:

Substitution of Trustee

(insert name and address of new trustee)

139 is hereby appointed successor trustee under the trust deed executed by \_\_\_\_ as

140 trustor, in which \_\_\_\_ is named beneficiary and \_\_\_\_ as trustee, and filed for record

141 \_\_\_\_\_(month\day\year), and recorded in Book \_\_\_\_, Page \_\_\_\_, Records of \_\_\_\_ County,

142 (or filed for record \_\_\_\_\_(month\day\year), with recorder's entry No. \_\_\_\_, \_\_\_\_ County),

143 Utah.

(Insert legal description)

Signature\_\_\_\_\_

(Certificate of Acknowledgment)

147 Section 4. Section **57-1-25** is amended to read:

148 **57-1-25. Notice of trustee's sale -- Description of property -- Time and place of sale.**

149 (1) The trustee shall give written notice of the time and place of sale particularly describing

150 the property to be sold:

151 (a) by publication of the notice[;];

152 (i) at least three times[;];

153 (ii) once a week for three consecutive weeks[;];

154 (iii) the last publication to be at least ten days but not more than 30 days ~~[prior to]~~ before  
155 the date the sale[;] is scheduled; and

156 (iv) in a newspaper having a general circulation in each county in which the property to  
157 be sold, or some part of the property to be sold, is situated; and

158 (b) by posting the notice[;];

159 (i) at least 20 days before the date ~~[of]~~ the sale[;] is scheduled; and

160 (ii) (A) in some conspicuous place on the property to be sold; and ~~[also]~~

161 (B) at the office of the county recorder of each county in which the trust property, or some  
162 part of it, is located.

163 (2) (a) The sale shall be held at the time and place designated in the notice of sale.

164 (b) The time of sale shall be between the hours of 8 a.m. and ~~[8]~~ 5 p.m.

165 (c) The place of sale shall be clearly identified in the notice of sale under Subsection (1)

166 and shall be ~~[one of the following: (i)]~~ at a courthouse serving the county in which the property to  
167 be sold, or some part of the property to be sold, is located~~[; or].~~

168 ~~[(ii) at the property to be sold, provided that:]~~

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

171 ~~[(B) the property is accessible to the public at the time of the sale.]~~

172 (3) The notice of sale shall be in substantially the following form:

173 Notice of Trustee's Sale

174 The following described property will be sold at public auction to the highest bidder,  
175 payable in lawful money of the United States at the time of sale, at (insert location of sale)

176 \_\_\_\_\_on \_\_\_\_\_(month\day\year), at \_\_.m. of said day, for the purpose of

177 foreclosing a trust deed originally executed by \_\_\_\_ (and \_\_\_\_, his wife,) as trustors, in favor of  
178 \_\_\_\_, covering real property located at \_\_\_\_, and more particularly described as:

179 (Insert legal description)

180

181 The current beneficiary of the trust deed is \_\_\_\_\_ and the record  
182 owners of the property as of the recording of the notice of default are \_\_\_\_\_ and  
183 \_\_\_\_\_.

184 Dated \_\_\_\_\_(month\day\year). \_\_\_\_\_  
185 \_\_\_\_\_ Trustee

186 Section 5. Section **57-1-26** is amended to read:

187 **57-1-26. Requests for copies of notice of default and notice of sale -- Mailing by**  
188 **trustee or beneficiary -- Publication of notice of default -- Notice to parties of trust deed.**

189 (1) (a) Any person desiring a copy of any notice of default and of any notice of sale under  
190 any trust deed shall~~[-, at any time subsequent to the filing for record of the trust deed and prior to~~  
191 ~~the filing for record of a notice of default of the trust deed,]~~ file for record ~~[in the office of the~~  
192 ~~county recorder of any county in which the trust property, or any part of the trust property, is~~  
193 ~~situated,]~~ a duly acknowledged request for a copy of any notice of default and notice of sale~~[-];~~

194 (i) in the office of the county recorder of any county in which the trust property or any part  
195 of the trust property is situated; and

196 (ii) at any time:

197 (A) subsequent to the filing for record of the trust deed; and

198 (B) prior to the filing for record of a notice of default.

199 (b) Except as provided in Subsection (3), the request described in Subsection (1)(a) may  
200 not be included in any other recorded instrument.

201 (c) The request described in Subsection (1)(a) shall:

202 (i) set forth the name and address of the one or more persons requesting copies of [those  
203 notices] the notice of default and the notice of sale; and [shall]

204 (ii) identify the trust deed by stating:

205 (A) the names of the original parties to the trust deed[-];

206 (B) the date of filing for record of the trust deed[-];

207 (C)(I) the book and page where the trust deed is recorded; or

208 (II) the recorder's entry number[-]; and

209 (D) the legal description of the trust property.

210 (d) The request described in Subsection (1)(a) shall be in substantially the following form:

211 REQUEST FOR NOTICE

212 The undersigned requests that a copy of any notice of default and a copy of notice of sale  
 213 under the trust deed filed for record \_\_\_\_\_(month\day\year), and recorded in Book \_\_\_\_\_,  
 214 Page \_\_\_\_\_, Records of \_\_\_\_\_ County, (or filed for record \_\_\_\_\_(month\day\year), with  
 215 recorder's entry number \_\_\_\_\_, \_\_\_\_\_ County), Utah, executed by \_\_\_\_\_ and \_\_\_\_\_  
 216 as trustors, in which \_\_\_\_\_ is named as beneficiary and \_\_\_\_\_ as trustee, be mailed to \_\_\_\_\_ (insert  
 217 name) \_\_\_\_\_ at \_\_\_\_\_ (insert address) \_\_\_\_\_.

(Insert legal description)

(Certificate of Acknowledgement)

~~[(b) Upon filing for record of]~~

220 ~~[(b) Upon filing for record of]~~  
 221 (e) If a request for a copy of a notice of default and notice of sale is filed for record under  
 222 this section, the recorder shall index the request in:

(i) the mortgagor's index[;];

(ii) mortgagee's index[;]; and

(iii) abstract record.

226 (f) Except as provided in Subsection (3), the trustee under any deed of trust is not required  
 227 to send notice of default or notice of sale to any person not filing a request for notice as described  
 228 in this Subsection (1)[(a)].

229 (2) (a) Not later than ten days after recordation of a notice of default, the trustee or  
 230 beneficiary shall mail[~~by certified or registered mail, with postage prepaid;~~] a signed copy of the  
 231 notice of default;

(i) by certified or registered mail, with postage prepaid;

(ii) with the recording date shown[;];

234 (iii) addressed to each person whose name and address are set forth in a request that has  
 235 been recorded prior to the filing for record of the notice of default[;]; and

(iv) directed to the address designated in the request.

237 (b) At least 20 days before the date of sale, the trustee shall mail[~~by certified or registered~~  
 238 mail, return receipt requested with postage prepaid,] a signed copy of the notice of the time and  
 239 place of sale[;];

(i) by certified or registered mail, return receipt requested, with postage prepaid;

241 (ii) addressed to each person whose name and address are set forth in a request that has  
 242 been recorded prior to the filing for record of the notice of default[;]; and



243 (iii) directed to the address designated in the request.

244 (3) (a) Any trust deed may contain a request that a copy of any notice of default and a copy  
245 of any notice of sale under the trust deed be mailed to any person who is a party to the trust deed  
246 at the address of the person set forth in the trust deed.

247 (b) A copy of any notice of default and of any notice of sale shall be mailed to any person  
248 requesting the notice who is a party to the trust deed at the same time and in the same manner  
249 required in Subsection (2) as though a separate request had been filed by each person as provided  
250 in Subsection (1)~~[(a)-]~~ except that a trustee shall include with a signed copy of a notice of default  
251 and the signed copy of a notice of sale the following information current as of the time the notice  
252 of default and the notice of sale is provided:

253 (i) the name of the trustee;

254 (ii) the mailing address of the trustee;

255 (iii) § IF THE TRUSTEE MAINTAINS A BONA FIDE OFFICE IN THE STATE MEETING THE  
256a REQUIREMENTS OF SUBSECTION 57-1-21(1)(b), § the address of a bona fide office of the trustee  
255b meeting the requirements of Subsection  
256 57-1-21(1)(b);

257 (iv) the hours during which the trustee can be contacted regarding the notice of default and  
258 notice of sale, which hours shall include the period between <sup>h</sup> ~~[8 a.m. and 5 p.m.]~~ **DURING REGULAR**  
258a **BUSINESS HOURS** <sup>h</sup> in a regular business  
259 day; and

260 (v) a telephone number that the person may use to contact the trustee during the hours  
261 described in Subsection (3)(b)(iv).

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

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

267 (b) posted on the property.

268 (5) ~~[No request for a copy of any notice filed for record under Subsections (1) and (3), nor~~  
269 ~~any statement or allegation in any of those requests, nor any record of those requests,]~~ The  
270 following shall not affect the title to trust property or be considered notice to any person that any  
271 person requesting copies of notice of default or of notice of sale has or claims any right, title or  
272 interest in, or lien or claim upon, the trust property[-];

273 (a) a request for a copy of any notice filed for record under Subsection (1) or (3);



274 (b) any statement or allegation in any request described in Subsection (5)(a); or

275 (c) any record of a request described in Subsection (5)(a).

276 Section 6. Section **57-1-28** is amended to read:

277 **57-1-28. Sale of trust property by trustee -- Payment of bid -- Trustee's deed**  
 278 **delivered to purchaser -- Recitals -- Effect.**

279 (1) (a) The purchaser at the sale shall pay the price bid as directed by the trustee.

280 (b) The beneficiary shall receive a credit on the beneficiary's bid in an amount not to  
 281 exceed the amount representing:

282 (i) the unpaid principal owed[;];

283 (ii) accrued interest as of the date of the sale[;];

284 (iii) advances for the payment of:

285 (A) taxes[;];

286 (B) insurance[;]; and

287 (C) maintenance and protection of the trust property [~~and~~];

288 (iv) the beneficiary's lien on the trust property[;]; and

289 (v) costs of sale, including reasonable trustee's and attorney's fees. [~~Upon receipt of~~  
 290 ~~payment, the trustee shall execute and deliver the trustee's deed to the purchaser.~~]

291 (2) (a) (i) Within three business days of the day the trustee receives payment of the price  
 292 bid, the trustee shall make the trustee's deed available to the purchaser.

293 (ii) If the trustee does not comply with this Subsection (2)(a), a trustee is liable for any loss  
 294 incurred by the purchaser because of the ~~h~~ [trustees] TRUSTEE'S ~~h~~ failure to comply with this  
 294a Subsection (2)(a).

295 (b) The trustee's deed may contain recitals of compliance with the requirements of Sections  
 296 57-1-19 through 57-1-36 relating to the exercise of the power of sale and sale of the property  
 297 described in the trustee's deed, including recitals concerning:

298 (i) any mailing, personal delivery, and publication of the notice of default[;];

299 (ii) any mailing and the publication and posting of the notice of sale[;]; and

300 (iii) the conduct of sale. [~~These~~]

301 (c) The recitals described in Subsection (2)(b):

302 (i) constitute prima facie evidence of compliance with Sections 57-1-19 through  
 303 57-1-36[;]; and

304 (ii) are conclusive evidence in favor of bona fide purchasers and encumbrancers for value

305 and without notice.

306 § ~~[(2)]~~ **(3)** § The trustee's deed shall operate to convey to the purchaser, without right of redemption,  
 307 the trustee's title and all right, title, interest, and claim of the trustor and the trustor's successors in  
 308 interest and of all persons claiming by, through, or under them, in and to the property sold,  
 309 including all right, title, interest, and claim in and to the property acquired by the trustor or the  
 310 trustor's successors in interest subsequent to the execution of the trust deed, which trustee's deed  
 311 shall be considered effective and relate back to the time of the sale.

312 Section 7. Section **57-1-31.5** is enacted to read:

313 **57-1-31.5. Accounting of costs and fees paid.**

314 (1) For purposes of this section, "compensation" means anything of economic value that  
 315 is paid, loaned, granted, given, donated, or transferred to a trustee for or in consideration of:

316 (a) services;

317 (b) personal or real property; or

318 (c) other thing of value.

319 (2) If a trustee receives a request from the trustor for a statement as to the amount required  
 320 to be paid to reinstate or payoff a loan, the trustee shall include with that statement § : (a) § a detailed  
 321 listing of § [:

322 — ~~(a)~~ § any of the following that the trustor would be required to pay to reinstate or payoff the  
 323 loan:

324 (i) § ~~[attorneys]~~ ATTORNEY'S § fees;

325 (ii) trustee fees; or

326 (iii) any costs including:

327 (A) title fees;

328 (B) publication fees; or

329 (C) posting fees;

329a **§ AND §**

330 **§ ~~[(b) any compensation that the trustee pays or receives related to:~~**

331 **— ~~(i) a foreclosure of the loan; or~~**

332 **— ~~(ii) a business operation involving the trustee that is incidental to the foreclosure of the~~**  
 333 **~~loan; and~~**

334 **— ~~(c) any relationship the trustee has with a third party that assists the trustee with the~~**  
 335 **~~ministerial duties related to the foreclosure of the loan including any contracts or other agreements.]~~**

335a **(b) SUBJECT TO SUBSECTION (3), A DISCLOSURE OF:**

335b **(i) ANY RELATIONSHIP THAT THE TRUSTEE HAS WITH A THIRD PARTY THAT PROVIDES**  
 335c **SERVICES RELATED TO THE FORECLOSURE OF THE LOAN; AND §**

335d § (ii) WHETHER THE RELATIONSHIP DESCRIBED IN SUBSECTION (2)(b)(i) IS CREATED BY:  
335e (A) AN OWNERSHIP INTEREST IN THE THIRD PARTY; OR  
335f (B) CONTRACT OR OTHER AGREEMENT;  
335g (3) SUBSECTION (2)(b) DOES NOT REQUIRE A TRUSTEE TO PROVIDE A TRUSTOR:  
335h (i) A COPY OF ANY CONTRACT OR AGREEMENT DESCRIBED IN SUBSECTION (2)(b);  
335i (ii) SPECIFIC DETAIL AS TO THE NATURE OF THE OWNERSHIP INTEREST DESCRIBED IN  
335j SUBSECTION (2)(b); OR  
335k (iii) THE AMOUNT OF COMPENSATION THE TRUSTEE RECEIVES RELATED TO THE  
335l FORECLOSURE OF THE LOAN UNDER A RELATIONSHIP DESCRIBED IN SUBSECTION (2)(b). §

336 Section 8. **Revisors instructions.**

337 It is the intent of the Legislature that, in preparing the Utah Code Database for publication,  
338 the Office of Legislative Research and General Counsel shall replace the reference in Subsections  
339 57-1-21(1)(d) and 57-1-21.5(3) from "this act" to its designated chapter number in the Laws of  
340 Utah.

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**Legislative Review Note**  
**as of 1-17-02 5:56 PM**

The modifications to qualifications of trustees in this bill may raise constitutional issues. The bill requires attorneys and title insurance agencies who serve as trustees to maintain a bona fide office in the state. In striking down the current residency requirement for attorney trustees as unconstitutional, Utah's federal district court indicated that requiring a bona fide office in the state would not implicate constitutional concerns. *See Kleinsmith v. Shurtleff*, No. 2:01cv0310 (D. Utah August 13, 2001). However, United States Supreme Court cases and case law in other courts are mixed on the issue of whether in-state office requirements are constitutional. The rulings are often dependent on the facts of the case with the courts generally looking at what the state's interest is in having an in-state office requirement, whether the in-state office requirement relates to that interest, and whether less burdensome means could be used in achieving that interest. In determining whether the in-state office requirement of this bill is sufficiently related to the state's interests, a court would likely consider the burden of maintaining an office in the state that is staffed and open to the public during business hours.

**Office of Legislative Research and General Counsel**