

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~~] who:

(A) resides in Utah; or

(B) maintains a bona fide office in the state;

(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~~] or agency that:

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

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

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

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

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

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

(i) that is open to the public;

(ii) that is staffed during regular business hours on regular business days; and

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

(A) request information regarding a trust deed; or

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

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

(d) The amendments in this act to this Subsection (1) apply only to a trustee that is appointed on or after May 6, 2002.

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

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

(1) [~~The~~] Except as provided in Subsection (2), 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; and

(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:

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

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

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

(b) the 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:

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

(ii) Subsection (1)(d).

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

(4) (a) Except as provided in Subsection (4)(c), a trustee may not solicit or receive any fee for referring business to a third party.

(b) Fees prohibited under Subsection (4)(a) include:

(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 (4)(b)(i) or (ii).

(c) Subsection (4)(a) does not apply to:

(i) fees 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.

(5) 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.

(6) (a) A person that violates Subsection (4) or (5) is guilty of a class B misdemeanor.

(b) In addition to a person's liability under Subsection (6)(a), if a person violates Subsection (4) or (5), that 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 (6)(b), the party that does not prevail in the action that is brought under Subsection (6)(b) shall pay the attorney fees of the prevailing party.

Section 3. Section **57-1-22** is amended to read:

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

(1) (a) 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 of the trust property is situated, a substitution of trustee.

(b) 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.

(c) 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:

(i) the names of the original parties to the trust deed~~;~~;

(ii) the date of recordation~~;~~; and

(iii) (A) the book and page where the ~~[same]~~ trust deed is recorded~~;~~; or

(B) the entry number;

(b) include the legal description of the trust property;

(c) state the name and address 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) (a) If not previously recorded, at the time of recording 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.

(b) A copy of the substitution of trustee shall be sent in the manner provided in Subsection 57-1-26(2) to ~~[all persons to]~~ any:

(i) person who requests a copy of any notice of default or notice of sale under Subsection 57-1-26(1)(a); and

(ii) person who is a party to the trust deed to whom a copy of a notice of default would be required to be mailed by [Subsections] Subsection 57-1-26~~(1)(a) and~~ (3).

(4) A substitution of trustee shall be 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 4. 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[;];

(i) at least three times[;];

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

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

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

(b) by posting the notice[;];

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

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

(B) 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.

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

(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 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 (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)

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 5. 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 -- Notice to parties of trust deed.

(1) (a) Any person desiring a copy of any notice of default and of any notice of sale under any trust deed 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 of the trust deed,]~~ file for record ~~[in the office of the county recorder of any county in which 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~~[-]~~:

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

(ii) at any time:

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

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

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

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

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

(ii) identify the trust deed by stating:

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

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

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

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

(D) the legal description of the trust property.

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

REQUEST FOR NOTICE

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 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]~~

(e) If a request for a copy of a notice of default and notice of sale is filed for record under this section, the recorder shall index the request in:

- (i) the mortgagor's index[;];
- (ii) mortgagee's index[;]; and
- (iii) abstract record.

(f) Except as provided in Subsection (3), the trustee under any 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 in this Subsection (1)[~~(a)~~].

(2) (a) 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 signed copy of the notice of default:

- (i) by certified or registered mail, with postage prepaid;
- (ii) with the recording date shown[;];
- (iii) addressed to each person whose name and address are set forth in a request that has been recorded prior to the filing for record of the notice of default[;]; and
- (iv) directed to the address designated in the request.

(b) 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 signed copy of the notice of the time and place of sale[;];

- (i) by certified or registered mail, return receipt requested, with postage prepaid;
- (ii) addressed to each person whose name and address are set forth in a request that has been recorded prior to the filing for record of the notice of default[;]; and
- (iii) directed to the address designated in the request.

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

(b) A copy of any notice of default and of any notice of sale shall be mailed to 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 had been filed by each person as provided in Subsection (1)~~[(a)-]~~ except that a trustee shall include with a signed copy of a notice of default and the signed copy of a notice of sale the following information current as of the time the notice of default and the notice of sale is provided:

(i) the name of the trustee;

(ii) the mailing address of the trustee;

(iii) if the trustee maintains a bona fide office in the state meeting the requirements of Subsection 57-1-21(1)(b), the address of a bona fide office of the trustee meeting the requirements of Subsection 57-1-21(1)(b);

(iv) the hours during which the trustee can be contacted regarding the notice of default and notice of sale, which hours shall include the period during regular business hours in a regular business day; and

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

(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]~~ a copy of the notice of default shall be:

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

(b) posted on the property.

(5) ~~[No request for a copy of any notice filed for record under Subsections (1) and (3), nor any statement or allegation in any of those requests, nor any record of those requests,]~~ The following shall not 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~~[-]~~:

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

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

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

Section 6. 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) (a) The purchaser at the sale shall pay the price bid as directed by the trustee.

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

(i) the unpaid principal owed[;];

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

(iii) advances for the payment of:

(A) taxes[;];

(B) insurance[;]; and

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

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

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

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

(ii) If the trustee does not comply with this Subsection (2)(a), the trustee is liable for any loss incurred by the purchaser because of the trustee's failure to comply with this Subsection (2)(a).

(b) 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 in the trustee's deed, including recitals concerning:

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

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

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

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

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

(ii) are conclusive evidence in favor of bona fide purchasers and encumbrancers for value and without notice.

~~[(2)]~~ (3) 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 the trustor's successors in interest and of all persons claiming by, through, or under them, in and to the property sold, including all right, title, interest, and claim in and to the property acquired by the trustor or 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 7. Section **57-1-31.5** is enacted to read:

57-1-31.5. Accounting of costs and fees paid -- Disclosure.

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

- (a) services;
- (b) personal or real property; or
- (c) other thing of value.

(2) If a trustee receives a request from the trustor for a statement as to the amount required to be paid to reinstate or payoff a loan, the trustee shall include with that statement:

(a) a detailed listing of any of the following that the trustor would be required to pay to reinstate or payoff the loan:

- (i) attorney's fees;
- (ii) trustee fees; or
- (iii) any costs including:
 - (A) title fees;
 - (B) publication fees; or
 - (C) posting fees; and

(b) subject to Subsection (3), a disclosure of:

(i) any relationship that the trustee has with a third party that provides services related to the foreclosure of the loan; and

(ii) whether the relationship described in Subsection (2)(b)(i) is created by:

(A) an ownership interest in the third party; or

(B) contract or other agreement.

(3) Subsection (2)(b) does not require a trustee to provide a trustor:

(i) a copy of any contract or agreement described in Subsection (2)(b);

(ii) specific detail as to the nature of the ownership interest described in Subsection (2)(b);

or

(iii) the amount of compensation the trustee receives related to the foreclosure of the loan under a relationship described in Subsection (2)(b).

Section 8. Revisors instructions.

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