

REQUIREMENTS FOR RECORDING CERTAIN

REAL ESTATE DOCUMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: David Clark

LONG TITLE

General Description:

This bill modifies provisions regarding the recording of documents of real estate.

Highlighted Provisions:

This bill:

- ▶ eliminates the requirement that in order for a full reconveyance of a trust deed and full release of mortgage to be recorded in the office of any county recorder a document must contain a legal description of the real property affected; and

- ▶ requires a full reconveyance of trust deed and full release of mortgage to be recorded if it contains a reference to the book and page where the description of the real property is recorded.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-1-40, as last amended by Chapter 40, Laws of Utah 2002

57-3-105, as last amended by Chapter 320, Laws of Utah 2000

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



Section 1. Section **57-1-40** is amended to read:

57-1-40. Reconveyance of trust deed or release of mortgage -- Procedures -- Forms.

(1) A title insurer or title agent may reconvey a trust deed or release a mortgage in accordance with the provisions of Subsections (2) through (6) if:

(a) the obligation secured by the trust deed or mortgage has been fully paid by the title insurer or title agent; or

(b) the title insurer or title agent possesses satisfactory evidence of the full payment of the obligation secured by a trust deed or mortgage.

(2) A title insurer or title agent may reconvey a trust deed or release a mortgage under Subsection (1) regardless of whether the title insurer or title agent is named as a trustee under a trust deed or has the authority to release a mortgage.

(3) At the time the obligation secured by the trust deed or mortgage is paid in full, or at any time thereafter, the title insurer or title agent shall deliver a notice of intent to release or reconvey and a copy of the release or reconveyance to be recorded, as described in Subsection (4), to the beneficiary, mortgagee, or servicer at:

(a) the address specified in the trust deed or mortgage;

(b) any address for the beneficiary or mortgagee specified in the last recorded assignment of the trust deed or mortgage;

(c) any address for the beneficiary, mortgagee, or servicer specified in a request for notice recorded under Section 57-1-26; or

(d) the address shown on any payoff statement received by the title insurer or agent from the beneficiary, mortgagee, or servicer.

(4) The notice of intent to release or reconvey shall contain the name of the beneficiary or mortgagee and the servicer if loan payments on the trust deed or mortgage are collected by a servicer, the name of the title insurer or title agent, the date, and be substantially in the following form:

NOTICE OF INTENT TO RELEASE OR RECONVEY

Notice is hereby given to you as follows:

1. This notice concerns the (trust deed or mortgage) described as follows:

(Trustor or Mortgagor): _____

(Beneficiary or Mortgagee):_____

Recording information:_____

Entry Number:_____

Book Number:_____

Page Number:_____

2. The undersigned claims to have paid in full or possesses satisfactory evidence of the full payment of the obligation secured by the trust deed or mortgage described above.

3. The undersigned will fully release the mortgage or reconvey the trust deed described in this notice unless, within 60 days from the date stated on this notice, the undersigned has received by certified mail a notice stating that the obligation secured by the trust deed or mortgage has not been paid in full or that you otherwise object to the release of the mortgage or the reconveyance of the trust deed. Notice shall be mailed to the address stated on this form.

4. A copy of the (release of mortgage or reconveyance of trust deed) is enclosed with this notice.

(Signature of title insurer or title agent)

(Address of title insurer or title agent)

(5) (a) If, within 60 days from the day on which the title insurer or title agent delivered the notice of intent to release or reconvey in accordance with Subsections (3) and (4), a reconveyance of trust deed or release of mortgage is not recorded, and the beneficiary, mortgagee, or servicer does not send by certified mail to the title insurer or title agent a notice that the obligation secured by the trust deed or mortgage has not been paid in full or that the beneficiary, mortgagee, or servicer objects to the release of the mortgage or reconveyance of the trust deed, the title insurer or title agent may execute, acknowledge, and record a reconveyance of a trust deed or release of a mortgage.

(b) A reconveyance of a trust deed under Subsection (5)(a) shall be in substantially the following form:

FULL RECONVEYANCE OF TRUST DEED

(Name of title insurer or title agent), a (title insurer or title agent) authorized to conduct business in the state does hereby reconvey, without warranty, the following trust property located in (name of county) County, state of Utah, that is covered by a trust deed naming (name of trustor) as trustor, and (name of beneficiary) as beneficiary and was recorded on (date) in

Book _____ at Page _____ as Entry Number _____ [:(insert a description of the trust property:)].

The undersigned title insurer or title agent certifies as follows:

1. The undersigned title insurer or title agent has fully paid the obligation secured by the trust deed or possesses satisfactory evidence of the full payment of the obligation secured by the trust deed.

2. In accordance with the requirements of Utah Code Annotated Subsections 57-1-40(3) and (4), the title insurer or title agent delivered to the beneficiary or servicer, a notice of intent to release or reconvey and a copy of the reconveyance.

3. The trust deed has not been reconveyed and the title insurer or title agent did not receive, within 60 days from the day on which the title insurer or title agent delivered the notice of intent to release or reconvey, a notice from the beneficiary or servicer sent by certified mail that the obligation secured by the trust deed has not been paid in full or that the beneficiary or servicer objects to the reconveyance of the trust deed.

(Notarization)

(Signature of title insurer or title agent)

(c) A release of a mortgage under Subsection (5)(a) shall be in substantially the following form:

FULL RELEASE OF MORTGAGE

(Name of title insurer or title agent), a (title insurer or title agent) authorized to conduct business in the state does hereby release the mortgage on the following property located in (name of county) County, state of Utah, that is covered by a mortgage naming (name of mortgagor) as mortgagor, and (name of mortgagee) as mortgagee and was recorded on (date) in Book _____ at Page _____ as Entry Number _____ [:(insert a description of the trust property:)].

The undersigned title insurer or title agent certifies as follows:

1. The undersigned title insurer or title agent has fully paid the obligation secured by the mortgage or possesses satisfactory evidence of the full payment of the obligation secured by the mortgage.

2. In accordance with the requirements of Utah Code Annotated Subsections 57-1-40(3) and (4), the title insurer or title agent delivered to the mortgagee or servicer a notice of intent to

release or reconvey and a copy of the release.

3. The mortgage has not been released and the title insurer or title agent did not receive, within 60 days from the day on which the title insurer or title agent delivered the notice of intent to release or reconvey, a notice from the mortgagee or servicer sent by certified mail that the obligation secured by the mortgage has not been paid in full or that the mortgagee or servicer objects to the release of the mortgage.

(Notarization)

(Signature of title insurer or title agent)

(d) (i) A release of mortgage or reconveyance of trust deed that is executed and notarized in accordance with Subsection (5)(b) or (c) is entitled to recordation.

(ii) (A) Except as provided in Subsection (5)(d)(ii)(B), a reconveyance of a trust deed or release of a mortgage that is recorded under Subsection (5)(d)(i) is valid regardless of any deficiency in the release or reconveyance procedure not disclosed in the release of mortgage or reconveyance of trust deed.

(B) If the title insurer's or title agent's signature on a release of mortgage or reconveyance of trust deed recorded under Subsection (5)(d)(ii)(A) is forged, the release of mortgage or reconveyance of trust deed is void.

(6) A release of mortgage or reconveyance of trust deed under this section does not, by itself, discharge any promissory note or other obligation that was secured by the trust deed or mortgage at the time the trust deed was reconveyed or the mortgage was released.

Section 2. Section **57-3-105** is amended to read:

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) 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).

(b) The address of the management committee may be used as the mailing address of a

152 grantee as required in Subsection (2)(a) if the interest conveyed is a timeshare interest as
153 defined by Section 57-19-2.

154 (3) Each county recorder shall refuse to accept a document for recording if it does not
155 conform to the requirements under this section.

156 (4) Notwithstanding Subsections (1), (2), and (3), a master form, as defined in Section
157 57-3-201, that does not meet the requirements of Subsections (1) and (2) is entitled to be
158 recorded in the office of any county recorder if it complies with Part 2, Master Mortgage and
159 Trust Deeds.

160 (5) The legal description requirement in this section does not apply to a Full
161 Reconveyance of Trust Deed or Full Release of Mortgage in Section 57-1-40.

Legislative Review Note
as of 10-24-03 9:51 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-10-03 8:02 AM

The Business and Labor Interim Committee recommended this bill.

Fiscal Note**Requirements for Recording Certain Real Estate Documents***17-Jan-04***Bill Number HB0012***1:00 PM*

State Impact

No fiscal impact.

Individual and Business Impact

May result in a reduction in time to prepare some documents for filing.

Office of the Legislative Fiscal Analyst