

1                                   **REQUIREMENTS OF TRUSTEES OF TRUST**

2   **DEEDS**

3   2004 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: David Clark**

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7   **LONG TITLE**

8   **General Description:**

9           This bill modifies the qualification of a trustee.

10 **Highlighted Provisions:**

11       This bill:

- 12       ▶ eliminates the requirement that a trustee of a trust deed must reside in Utah; and
- 13       ▶ eliminates the requirements that a trustee of a trust deed maintains a bona fide office

14 in the state.

15 **Monies Appropriated in this Bill:**

16       None

17 **Other Special Clauses:**

18       None

19 **Utah Code Sections Affected:**

20 **AMENDS:**

21       **57-1-21**, as last amended by Chapter 209, Laws of Utah 2002

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

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

25       **57-1-21. Trustees of trust deeds -- Qualifications.**

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

27       (i) any active member of the Utah State Bar [~~who~~];



28           ~~[(A) resides in Utah; or]~~

29           ~~[(B) maintains a bona fide office in the state;]~~

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

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

35           (iv) any title insurance company or agency that:

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

38               (B) is actually doing business in the state; and

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

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

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

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

45               (i) that is open to the public;

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

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

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

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

50           (c) Subsection (1) is not applicable to a trustee of a trust deed existing prior to May 14,  
51 1963, nor to any agreement that is supplemental to that trust deed.

52           (d) The amendments in Chapter 209, Laws of Utah 2002, to this Subsection (1) apply  
53 only to a trustee that is appointed on or after May 6, 2002.

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

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

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

59 create a lien on the trust property, but the power of sale and other trustee powers under the trust  
60 deed may be exercised only if the beneficiary has appointed a qualified successor trustee under  
61 Section 57-1-22.

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**Legislative Review Note**  
**as of 9-19-03 8:14 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 12:10 PM**

The Business and Labor Interim Committee recommended this bill.

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**Fiscal Note****Requirements of Trustees of Trust Deeds***17-Jan-04***Bill Number HB0035***1:01 PM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**Some trustees may be able to lower operating costs.

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**Office of the Legislative Fiscal Analyst**