

**REAL PROPERTY - PARTIAL RELEASE OR
PARTIAL RECONVEYANCE**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Thomas V. Hatch

House Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill addresses partial releases and reconveyances of real property.

Highlighted Provisions:

This bill:

- ▶ expands the definition of "delivery" applicable to reconveyances and releases of real property;
- ▶ eliminates the need to record a copy of a release or reconveyance of a mortgage or trust deed;
- ▶ outlines the method of partially reconveying or partially releasing real property subject to a trust deed or mortgage;
- ▶ provides forms for certain documents required to partially reconvey or partially release real property subject to a trust deed or mortgage; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 57-1-39, as last amended by Chapter 298, Laws of Utah 2003

29 57-1-40, as last amended by Chapter 40, Laws of Utah 2002

30 ENACTS:

31 57-1-40.5, Utah Code Annotated 1953



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

34 Section 1. Section 57-1-39 is amended to read:

35 **57-1-39. Definitions.**

36 As used in Sections 57-1-40 and 57-1-44:

37 (1) "Beneficiary" means the record owner of the beneficiary's interest under a trust
38 deed, including successors in interest.

39 (2) "Deliver" or "delivered" means by:

40 (a) [~~by~~] overnight delivery by a reputable carrier; [~~or~~]

41 (b) [~~by~~] United States certified mail or express mail[-];

42 (c) hand delivery with receipt acknowledged in writing; or

43 (d) facsimile or electronic mail belonging to the beneficiary, mortgagee, or servicer.

44 (3) "Mortgage" is as described in Section 57-1-14.

45 (4) "Mortgagee" means the record owner of the mortgagee's interest under a mortgage,
46 including a successor in interest.

47 (5) "Satisfactory evidence of the full payment of the obligation secured by a trust deed
48 or mortgage" means written information adequate, in the opinion of a title insurer or title agent,
49 to establish that the obligation secured by the trust deed or mortgage has been paid in full.

50 (6) "Servicer" means a person or entity that collects loan payments on behalf of a
51 beneficiary or mortgagee.

52 (7) "Title agent" means a title insurance producer licensed as an organization under
53 Title 31A, Chapter 23a, Part 2, Producers and Consultants.

54 (8) "Title insurer" means a title insurer authorized to conduct business in the state
55 under Title 31A, Chapter 23a, Part 2, Producers and Consultants.

56 (9) "Trust deed" is as defined in Subsection 57-1-19(3).

57 Section 2. Section 57-1-40 is amended to read:

58 **57-1-40. Reconveyance of trust deed or release of mortgage -- Procedures --**

59 **Forms.**

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

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

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

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

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

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

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

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

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

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

84 **NOTICE OF INTENT TO RELEASE OR RECONVEY**

85 Notice is hereby given to you as follows:

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

87 (Trustor or Mortgagor): _____

88 (Beneficiary or Mortgagee): _____

89 Recording information: _____

90 Entry Number: _____

91 Book Number: _____

92 Page Number: _____

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

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

100 ~~[4. A copy of the (release of mortgage or reconveyance of trust deed) is enclosed with~~
101 ~~this notice.]~~

102 (Signature of title insurer or title agent)

103 (Address of title insurer or title agent)

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

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

114 RECONVEYANCE OF TRUST DEED

115 (Name of title insurer or title agent), a (title insurer or title agent) authorized to conduct
116 business in the state does hereby reconvey, without warranty, the following trust property
117 located in (name of county) County, state of Utah, that is covered by a trust deed naming (name
118 of trustor) as trustor, and (name of beneficiary) as beneficiary and was recorded on (date) in
119 Book _____ at Page _____ as Entry Number _____: (insert a description of the
120 trust property.)

121 The undersigned title insurer or title agent certifies as follows:

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

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

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

133 _____
134 (Notarization) (Signature of title insurer or title agent)

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

137 RELEASE OF MORTGAGE

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

144 The undersigned title insurer or title agent certifies as follows:

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

148 2. In accordance with the requirements of Utah Code Annotated Subsections 57-1-40(3)
149 and (4), the title insurer or title agent delivered to the mortgagee or servicer a notice of intent to
150 release or reconvey [~~and a copy of the release~~].

151 3. The mortgage has not been released and the title insurer or title agent did not

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

156 _____
157 (Notarization) (Signature of title insurer or title agent)

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

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

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

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

170 Section 3. Section 57-1-40.5 is enacted to read:

171 **57-1-40.5. Partial reconveyance of trust deed or release of mortgage -- Procedures**
172 **-- Forms.**

173 (1) (a) If a trustor or mortgagor pledges more than one parcel of real property as
174 collateral under a trust deed or mortgage, the beneficiary, mortgagee, or servicer may agree for
175 a sum certain to release a portion of the real property pledged on the trust deed or mortgage
176 when a sum certain is paid.

177 (b) When the sum certain is paid, a title insurer or title agent may partially convey a
178 trust deed or partially release a mortgage in accordance with the provisions of Subsections (2)
179 through (6) if:

180 (i) the sum certain that is part of the obligation secured by the trust deed or mortgage
181 has been paid by the title insurer or title agent to release or reconvey a portion of the real
182 property pledged as collateral; or

183 (ii) the title insurer or title agent possesses satisfactory evidence of the payment of the
184 sum certain thus authorizing release or reconveyance of a portion of the real property pledged.

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

188 (3) At the time the obligation secured by the trust deed or mortgage is paid as required
189 by Subsection (1), or at any later time, the title insurer or title agent shall deliver a notice of
190 intent to partially release or partially reconvey, and a copy of the partial release or partial
191 reconveyance that is to be recorded, as described in Subsection (4), to the beneficiary,
192 mortgagee, or servicer at:

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

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

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

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

200 (4) The notice of intent to partially release or partially reconvey shall:

201 (a) contain the name of:

202 (i) the beneficiary or mortgagee;

203 (ii) the servicer, if any;

204 (iii) the title insurer or title agent;

205 (b) contain the date; and

206 (c) be substantially in the following form:

207 NOTICE OF INTENT TO PARTIALLY RELEASE OR PARTIALLY RECONVEY

208 Notice is hereby given to you as follows:

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

210 (Trustor or Mortgagor): _____

211 (Beneficiary or Mortgagee): _____

212 Recording Information: _____

213 Entry Number: _____

214 Book Number: _____

215 Page Number: _____

216 2. To release only a portion of the real property pledged as collateral, the undersigned
217 claims to have paid or possess satisfactory evidence of the payment of a sum certain necessary
218 to release or reconvey a specific portion of the real property pledged as collateral under the
219 mortgage or trust deed.

220 3. Within 60 days after the date stated on this notice, the undersigned will partially
221 release the mortgage or partially reconvey the trust deed described in this notice unless the
222 undersigned receives by certified mail a notice stating that the sum certain that is part of the
223 obligation secured by the trust deed or mortgage has not been paid or that you otherwise object
224 to the partial release of the mortgage or the partial reconveyance of the trust deed. Notice shall
225 be mailed to the address stated on this form.

226 4. A copy of the partial release of mortgage or partial reconveyance of trust deed is
227 enclosed with this Notice.

228 (Signature of title insurer or title agent)

229 (Address of title insurer or title agent)

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

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

240 PARTIAL RECONVEYANCE OF TRUST DEED

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

245 _____ at Page _____ as Entry Number _____ : (insert a description of the
246 specific trust property to be reconveyed.)

247 The undersigned title insurer or title agent certifies as follows:

248 1. To release only this portion of the real property pledged as collateral, the
249 undersigned has paid or possesses satisfactory evidence of the payment of a sum certain
250 necessary to reconvey a specific portion of the real property pledged as collateral under the
251 trust deed.

252 2. In accordance with the requirements of Utah Code Subsections 57-1-40.5(3) and (4),
253 the title insurer or title agent delivered to the beneficiary or servicer, a notice of intent to
254 partially release or partially reconvey and a copy of the partial reconveyance.

255 3. The trust deed has not been reconveyed, as to this property, and the title insurer or
256 title agent did not receive, within 60 days after the day the title insurer or title agent delivered
257 the notice of intent to partially release or partially reconvey, a notice from the beneficiary or
258 servicer sent by certified mail stating the sum certain necessary to reconvey a specific portion
259 of the real property pledged as collateral under the trust deed or that the beneficiary or servicer
260 objects to the partial reconveyance of the trust deed.

261 _____
262 (Notarization) (Signature of title insurer or title agent)

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

265 PARTIAL RELEASE OF MORTGAGE

266 (Name of title insurer or title agent), a (title insurer or title agent) authorized to conduct
267 business in the state partially releases the mortgage only on the following property located in
268 (name of county) County, state of Utah, that is covered by a mortgage naming (name of
269 mortgagor) as mortgagor, and (name of mortgagee) as mortgagee and was recorded on (date) in
270 Book _____ at Page _____ as Entry Number _____ : (insert a description of the specific
271 property.)

272 The undersigned title insurer or title agent certifies as follows:

273 1. To release only this portion of the real property pledged as collateral, the
274 undersigned has paid or possesses satisfactory evidence of the payment of a sum certain
275 necessary to release a specific portion of the real property pledged as collateral under the

276 mortgage.

277 2. In accordance with the requirements of Utah Code Subsections 57-1-40.5(3) and (4),
278 the title insurer or title agent delivered to the mortgagee or servicer, a notice of intent to
279 partially release or partially reconvey and a copy of the partial release.

280 3. The trust deed has not been released, as to this property, and the title insurer or title
281 agent did not receive, within 60 days after the day the title insurer or title agent delivered the
282 notice of intent to partially release or partially reconvey, a notice from the beneficiary or
283 servicer sent by certified mail stating the sum certain necessary to release a specific portion of
284 the real property pledged as collateral under the mortgage or that the mortgagee or servicer
285 objects to the partial release of the mortgage.

286 _____

287 (Notarization)

(Signature of title insurer or title agent)

288 (d) (i) A partial release of mortgage or partial reconveyance of trust deed that is
289 executed or notarized in accordance with Subsection (5)(b) or (c) is entitled to be recorded.

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

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

297 (6) A partial release of mortgage or partial reconveyance of trust deed under this
298 section does not, by itself, discharge any promissory note or other obligation secured by the
299 trust deed or mortgage at the time the trust deed is partially reconveyed or the mortgage is
300 partially released.

Legislative Review Note

as of 1-31-06 11:29 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0205

Real Property - Partial Release or Partial Reconveyance

07-Feb-06

7:58 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst