

1 **TRUSTEES SALE - PROCESS FOR EXCESS**

2 **PROCEEDS**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Gene Davis**

6 House Sponsor: Kevin S. Garn

8 **LONG TITLE**

9 **General Description:**

10 This bill lengthens the period of time during which a person may contest another
11 person's claim against the excess proceeds from a trustee's sale of real property.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ lengthens the period of time during which a person may contest another person's
15 claim against the excess proceeds from a trustee's sale of real property from 20 days
16 to 45 days; and
- 17 ▶ makes technical changes.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **57-1-29**, as last amended by Laws of Utah 2001, Chapter 236

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

27 Section 1. Section **57-1-29** is amended to read:

28 **57-1-29. Proceeds of trustee's sale -- Disposition.**

29 (1) (a) The trustee shall apply the proceeds of [~~the~~] a trustee's sale[;] in the following

30 order:

31 (i) first, to the costs and expenses of exercising the power of sale and of the sale,
32 including the payment of the trustee's and ~~[attorney's]~~ attorney fees actually incurred not to
33 exceed ~~[the]~~ any amount ~~[which may be]~~ provided for in the trust deed[;];

34 (ii) second, to payment of the obligation secured by the trust deed[;]; and

35 (iii) (A) the balance, if any, to the person or persons legally entitled to the proceeds[;];

36 or

37 (B) the trustee, in the trustee's discretion, may deposit the balance of the proceeds with
38 the clerk of the district court of the county in which the sale took place.

39 (b) If the proceeds are deposited with the clerk of the district court, the trustee shall file
40 an affidavit with the clerk setting forth the facts of the deposit and a list of all known claimants,
41 including known addresses.

42 (c) Upon depositing the balance and filing the affidavit, the trustee ~~[shall be]~~ is
43 discharged from all further responsibility and the clerk shall deposit the proceeds with the state
44 treasurer subject to the order of the district court.

45 (2) The clerk shall give notice of the deposited funds to all claimants listed in the
46 trustee's ~~[affidavits]~~ affidavit within 15 days of receiving the affidavit of deposit from the
47 trustee.

48 (3) (a) Any claimant may file a petition for adjudication of priority to the funds. ~~[The]~~

49 (b) A petitioner requesting ~~[the]~~ funds under Subsection (3)(a) shall give notice of the
50 petition to all claimants listed in the trustee's affidavit and to any other claimants known to the
51 petitioner.

52 (c) The petitioner's notice ~~[must]~~ under Subsection (3)(b) shall specify that all claimants
53 have ~~[20]~~ 45 days to contest the petition by affidavit or counter-petition.

54 (d) If no affidavit or counter-petition is filed within ~~[20]~~ 45 days of the notice required
55 by Subsection (3)(c), the court shall, without a hearing, enter an order directing the clerk of the
56 court or the county treasurer to disburse the funds to the petitioner according to the petition.

57 (4) (a) If a petition for adjudication is contested by affidavit or counter-petition, the

58 district court shall, within 20 days, conduct a hearing to establish the priorities of the parties to
59 the deposited funds and give notice to all known claimants of the date and time of the hearing.

60 (b) At ~~[the]~~ a hearing under Subsection (4)(a), the court ~~[will]~~ shall establish the
61 priorities of the parties to the deposited funds and enter an order directing the clerk of the court
62 or county treasurer to disburse the funds according to the court's determination.

63 (5) ~~[All persons]~~ A person having or claiming to have an interest in the disposition of
64 funds deposited with the court under Subsection (1) who ~~[fail]~~ fails to appear and assert ~~[their~~
65 ~~claims are]~~ the person's claim is barred from any claim to the funds after the entry of the court's
66 order under Subsection (4).