

1 **FORECLOSURE PROCESSES ON**
2 **RESIDENTIAL RENTAL PROPERTIES**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Wayne A. Harper**

6 Senate Sponsor: Ross I. Romero

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions relating to the foreclosure of residential rental property.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ modifies requirements for notices of trustee's sale if the property to be sold is
14 residential rental property;

15 ▶ modifies unlawful detainer provisions relating to foreclosed residential rental
16 property;

17 ▶ enacts a provision requiring a notice to a tenant of property that is subject to a
18 mortgage foreclosure proceeding;

19 ▶ provides a sunset for provisions enacted in this bill; and

20 ▶ makes technical changes.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **57-1-25**, as last amended by Laws of Utah 2009, Chapter 388

28 **63I-1-278**, as last amended by Laws of Utah 2009, Chapters 161 and 334

29 **78B-6-802**, as last amended by Laws of Utah 2009, Chapter 146

30 ENACTS:

31 **63I-1-257**, Utah Code Annotated 1953

32 **78B-6-901.5**, Utah Code Annotated 1953

33

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

35 Section 1. Section **57-1-25** is amended to read:

36 **57-1-25. Notice of trustee's sale -- Description of property -- Time and place of**
37 **sale.**

38 (1) The trustee shall give written notice of the time and place of sale particularly
39 describing the property to be sold:

40 (a) by publication of the notice:

41 (i) (A) at least three times;

42 (B) once a week for three consecutive weeks;

43 (C) the last publication to be at least 10 days but not more than 30 days before the date
44 the sale is scheduled; and

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

47 (ii) in accordance with Section 45-1-101 for 30 days before the date the sale is
48 scheduled; [~~and~~]

49 (b) by posting the notice:

50 (i) at least 20 days before the date the sale is scheduled; and

51 (ii) (A) in some conspicuous place on the property to be sold; and

52 (B) at the office of the county recorder of each county in which the trust property, or
53 some part of it, is located[-]; and

54 (c) if the stated purpose of the obligation for which the trust deed was given as
55 security is to finance residential rental property:

56 (i) by posting the notice, including the statement required under Subsection (3)(b):

57 (A) on the primary door of each dwelling unit on the property to be sold, if the

58 property to be sold has fewer than nine dwelling units; or

59 (B) in at least two conspicuous places on the property to be sold, in addition to the
60 posting required under Subsection (1)(b)(ii)(A), if the property to be sold has nine or more
61 dwelling units; or

62 (ii) by mailing the notice, including the statement required under Subsection (3)(b), to
63 the occupant of each dwelling unit on the property to be sold.

64 (2) (a) The sale shall be held at the time and place designated in the notice of sale.

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

66 (c) The place of sale shall be clearly identified in the notice of sale under Subsection
67 (1) and shall be at a courthouse serving the county in which the property to be sold, or some
68 part of the property to be sold, is located.

69 (3) (a) The notice of sale shall be in substantially the following form:

70 Notice of Trustee's Sale

71 The following described property will be sold at public auction to the highest bidder,
72 payable in lawful money of the United States at the time of sale, at (insert location of sale)
73 _____ on _____(month\day\year), at __.m. of said day, for the purpose of
74 foreclosing a trust deed originally executed by ____ (and ____, his wife,) as trustors, in favor
75 of ____, covering real property located at ____, and more particularly described as:

76 (Insert legal description)

77 The current beneficiary of the trust deed is _____ and the record
78 owners of the property as of the recording of the notice of default are _____
79 and _____.

80 Dated _____(month\day\year).

Trustee

82 (b) If the stated purpose of the obligation for which the trust deed was given as
83 security is to finance residential rental property, the notice required under Subsection (1)(c)
84 shall include a statement, in at least 14-point font, substantially as follows:

85 "Notice to Tenant

86 As stated in the accompanying Notice of Trustee's Sale, this property is scheduled to be
87 sold at public auction to the highest bidder unless the default in the obligation secured by this
88 property is cured. If the property is sold, you may be allowed under federal law to continue to
89 occupy your rental unit until your rental agreement expires, or until 90 days after the date you
90 are served with a notice to vacate, whichever is later. If your rental or lease agreement expires
91 after the 90-day period, you may need to provide a copy of your rental or lease agreement to
92 the new owner to prove your right to remain on the property longer than 90 days after the sale
93 of the property.

94 You must continue to pay your rent and comply with other requirements of your rental
95 or lease agreement or you will be subject to eviction for violating your rental or lease
96 agreement.

97 The new owner or the new owner's representative will probably contact you after the
98 property is sold with directions about where to pay rent.

99 The new owner of the property may or may not want to offer to enter into a new rental
100 or lease agreement with you at the expiration of the period described above."

101 (4) The failure to provide notice as required under Subsections (1)(c) and (3)(b) or a
102 defect in that notice may not be the basis for challenging or invalidating a trustee's sale.

103 Section 2. Section **63I-1-257** is enacted to read:

104 **63I-1-257. Repeal dates, Title 57.**

105 Subsections 57-1-25(1)(c), (3)(b), and (4) are repealed December 31, 2012.

106 Section 3. Section **63I-1-278** is amended to read:

107 **63I-1-278. Repeal dates, Title 78A and Title 78B.**

108 (1) The Office of the Court Administrator, created in Section 78A-2-105, is repealed
109 July 1, 2018.

110 (2) The case management program coordinator in Subsection 78A-2-108(4) is
111 repealed July 1, 2009.

112 (3) Section 78B-3-421, regarding medical malpractice arbitration agreements, is
113 repealed July 1, 2019.

114 (4) Alternative Dispute Resolution Act, created in Title 78B, Chapter 6, Part 2, is
115 repealed July 1, 2016.

116 (5) The following are repealed December 31, 2012:

117 (a) Subsection 78B-6-802(1)(i);

118 (b) the language in Subsection 78B-6-802(1)(a) that states "except as provided in
119 Subsection (1)(i)"; and

120 (c) the language in Subsection 78B-6-802(1)(b) that states "and except as provided in
121 Subsection (1)(i)".

122 (6) Section 78B-6-901.5, regarding notice to tenants on residential rental property to
123 be foreclosed, is repealed December 31, 2012.

124 Section 4. Section **78B-6-802** is amended to read:

125 **78B-6-802. Unlawful detainer by tenant for a term less than life.**

126 (1) A tenant holding real property for a term less than life, is guilty of an unlawful
127 detainer if the tenant:

128 (a) except as provided in Subsection (1)(i), continues in possession, in person or by
129 subtenant, of the property or any part of it, after the expiration of the specified term or period
130 for which it is let to him, which specified term or period, whether established by express or
131 implied contract, or whether written or parol, shall be terminated without notice at the
132 expiration of the specified term or period;

133 (b) having leased real property for an indefinite time with monthly or other periodic
134 rent reserved and except as provided in Subsection (1)(i):

135 (i) continues in possession of it in person or by subtenant after the end of any month
136 or period, in cases where the owner, the owner's designated agent, or any successor in estate of
137 the owner, 15 calendar days or more prior to the end of that month or period, has served notice
138 requiring the tenant to quit the premises at the expiration of that month or period; or

139 (ii) in cases of tenancies at will, remains in possession of the premises after the
140 expiration of a notice of not less than five calendar days;

141 (c) continues in possession, in person or by subtenant, after default in the payment of

142 any rent or other amounts due and after a notice in writing requiring in the alternative the
143 payment of the rent and other amounts due or the surrender of the detained premises, has
144 remained uncomplied with for a period of three calendar days after service, which notice may
145 be served at any time after the rent becomes due;

146 (d) assigns or sublets the leased premises contrary to the covenants of the lease, or
147 commits or permits waste on the premises after service of a three calendar days' notice to quit;

148 (e) sets up or carries on any unlawful business on or in the premises after service of a
149 three calendar days' notice to quit;

150 (f) suffers, permits, or maintains on or about the premises any nuisance, including
151 nuisance as defined in Section 78B-6-1107 after service of a three calendar days' notice to
152 quit;

153 (g) commits a criminal act on the premises and remains in possession after service of a
154 three calendar days' notice to quit; ~~or~~

155 (h) continues in possession, in person or by subtenant, after a neglect or failure to
156 perform any condition or covenant of the lease or agreement under which the property is held,
157 other than those previously mentioned, and after notice in writing requiring in the alternative
158 the performance of the conditions or covenant or the surrender of the property, served upon the
159 tenant and upon any subtenant in actual occupation of the premises remains uncomplied with
160 for three calendar days after service~~[-]; or~~

161 (i) (i) is a tenant under a bona fide tenancy as provided in Section 702 of the
162 Protecting Tenants at Foreclosure Act of 2009, Pub. L. 111-22; and

163 (ii) continues in possession after the effective date of a notice to vacate given in
164 accordance with Section 702 of the Protecting Tenants at Foreclosure Act of 2009, Pub. L.
165 111-22.

166 (2) Within three calendar days after the service of the notice, the tenant, any subtenant
167 in actual occupation of the premises, any mortgagee of the term, or other person interested in
168 its continuance may perform the condition or covenant and thereby save the lease from
169 forfeiture, except that if the covenants and conditions of the lease violated by the lessee cannot

170 afterwards be performed, or the violation cannot be brought into compliance, the notice
171 provided for in Subsections (1)(d) through (g) may be given.

172 (3) Unlawful detainer by an owner resident of a mobile home is determined under
173 Title 57, Chapter 16, Mobile Home Park Residency Act.

174 (4) The notice provisions for nuisance in Subsections (1)(d) through (g) do not apply
175 to nuisance actions provided in Sections 78B-6-1107 through 78B-6-1114.

176 Section 5. Section **78B-6-901.5** is enacted to read:

177 **78B-6-901.5. Notice to tenant on residential property to be foreclosed.**

178 (1) As used in this section, "residential rental property" means property on which a
179 mortgage was given to secure an obligation the stated purpose of which is to finance
180 residential rental property.

181 (2) Within 20 days after filing an action under this part to foreclose property that
182 includes or constitutes residential rental property, the plaintiff in the action shall:

183 (a) post a notice:

184 (i) on the primary door of each dwelling unit on the property that is the subject of the
185 foreclosure action, if the property has fewer than nine dwelling units; or

186 (ii) in at least three conspicuous places on the property that is the subject of the
187 foreclosure action, if the property to be sold has nine or more dwelling units; or

188 (b) mail a notice to the occupant of each dwelling unit on the property that is the
189 subject of the foreclosure action.

190 (3) The notice required under Subsection (2) shall:

191 (a) be in at least 14-point font;

192 (b) include the name and address of:

193 (i) the owner of the property;

194 (ii) the trustor or mortgagor, as the case may be, on the instrument creating a security
195 interest in the property;

196 (iii) the trustee or mortgagee, as the case may be, on the instrument; and

197 (iv) the beneficiary, if the instrument is a trust deed;

198 (c) contain the legal description and address of the property; and

199 (d) include a statement in substantially the following form:

200 "Notice to Tenant

201 An action to foreclose the property described in this notice has been filed. If the
202 foreclosure action is pursued to its conclusion, the described property will be sold at public
203 auction to the highest bidder unless the default in the obligation secured by this property is
204 cured.

205 If the property is sold, you may be allowed under federal law to continue to occupy
206 your rental unit until your rental agreement expires, or until 90 days after the sale of the
207 property at auction, whichever is later. If your rental or lease agreement expires after the
208 90-day period, you may need to provide a copy of your rental or lease agreement to the new
209 owner to prove your right to remain on the property longer than 90 days after the sale of the
210 property.

211 You must continue to pay your rent and comply with other requirements of your rental
212 or lease agreement or you will be subject to eviction for violating your rental or lease
213 agreement.

214 The new owner or the new owner's representative will probably contact you after the
215 property is sold with directions about where to pay rent.

216 The new owner of the property may or may not want to offer to enter into a new rental
217 or lease agreement with you at the expiration of the period described above."

218 (4) The failure to provide notice as required under this section or a defect in that
219 notice may not be the basis for challenging or defending a foreclosure action or for invalidating
220 a sale of the property pursuant to a foreclosure action.