

HB0326S02 compared with HB0326S01

~~{deleted text}~~ shows text that was in HB0326S01 but was deleted in HB0326S02.

inserted text shows text that was not in HB0326S01 but was inserted into HB0326S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Representative LaVar Christensen proposes the following substitute bill:

TRUST DEED FORECLOSURE CHANGES

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to the foreclosure of trust deeds.

Highlighted Provisions:

This bill:

- ▶ modifies a provision relating to the filing of a substitution of trustee;
- ▶ modifies notice of default provisions;
- ▶ establishes a procedure for ~~{deferring a trustee's sale following a notice of default and allowing }~~ a ~~{lender}~~ loan servicer and borrower ~~{to negotiate the terms of the loan if a trustor meets certain requirements, including paying a regular payment each month}~~ in foreclosure to negotiate regarding foreclosure relief; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

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None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-1-22, as last amended by Laws of Utah 2002, Chapter 209

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

63I-1-257, as enacted by Laws of Utah 2010, Chapter 66

ENACTS:

57-1-24.5, Utah Code Annotated 1953

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

Section 1. Section **57-1-22** is amended to read:

57-1-22. Successor trustees -- Appointment by beneficiary -- Effect -- Substitution of trustee -- Recording -- Form.

(1) (a) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the county recorder of each county in which the trust property or some part of the trust property is situated, a substitution of trustee.

(b) The new trustee shall succeed to all the power, duties, authority, and title of the trustee named in the deed of trust and of any successor trustee.

(c) The beneficiary may, by express provision in the substitution of trustee, ratify and confirm action taken on the beneficiary's behalf by the new trustee prior to the recording of the substitution of trustee.

(2) The substitution shall:

(a) identify the trust deed by stating:

(i) the names of the original parties to the trust deed;

(ii) the date of recordation; and

(iii) (A) the book and page where the trust deed is recorded; or

(B) the entry number;

(b) include the legal description of the trust property;

(c) state the name and address of the new trustee; and

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(d) be executed and acknowledged by all of the beneficiaries under the trust deed or their successors in interest.

(3) (a) If not previously recorded[5] at the time of recording a notice of default, the successor trustee shall file for record, in the office of the county recorder of each county in which the trust property or some part of it is situated, the substitution of trustee.

(b) A copy of the substitution of trustee shall be sent in the manner provided in Subsection 57-1-26(2) to any:

(i) person who requests a copy of any notice of default or notice of sale under Subsection 57-1-26(1)(a); and

(ii) person who is a party to the trust deed to whom a copy of a notice of default would be required to be mailed by Subsection 57-1-26(3).

(4) A substitution of trustee shall be in substantially the following form:

Substitution of Trustee

(insert name and address of new trustee)

is hereby appointed successor trustee under the trust deed executed by _____ as trustor, in which _____ is named beneficiary and _____ as trustee, and filed for record _____(month\day\year), and recorded in Book _____, Page _____, Records of _____ County, (or filed for record _____(month\day\year), with recorder's entry No. _____, _____ County), Utah.

(Insert legal description)

Signature _____

(Certificate of Acknowledgment)

Section 2. Section 57-1-24 is amended to read:

57-1-24. Sale of trust property by trustee -- Notice of default.

~~{} The power of sale conferred upon the {} A {} trustee who is qualified under Subsection 57-1-21(1)(a)(i) or (iv) may not {} be exercised {} exercise the power of sale conferred as provided in Section 57-1-23 until after {} be exercised until:~~

(1) the trustee ~~{} first {}~~ files for record, in the office of the recorder of each county where the trust property or some part or parcel of the trust property is situated, a notice of default ~~{} , identifying {} that:~~

~~_____ (a) identifies {} the trust deed by stating the name of the trustor named in the trust deed~~

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and giving the book and page, or the recorder's entry number, where the trust deed is recorded and a legal description of the trust property ~~{}~~, and containing ~~{}~~:

~~—— (b) contains~~ a statement that a breach of an obligation for which the trust property was conveyed as security has occurred, and setting forth the nature of that breach ~~{}~~ and of ~~{}~~:

~~—— (c) states~~ the trustee's election to sell ~~{the property}~~ or cause ~~{}~~ to be sold ~~{}~~ the property ~~{ to be sold}~~ to satisfy the obligation; ~~{ and~~

~~—— [(2) not less than three months has elapsed from the time the trustee filed for record under Subsection (1); and]~~

~~—— (d) }~~

(2) the trustee or special servicer complies with the requirements of Section 57-1-24.5, if the trust property is owner-occupied property, as defined in Section 57-1-24.5;

[(2)] (3) not less than three months has elapsed from the time the trustee filed for record under Subsection (1); and

[(3)] (4) {} after the lapse of at least three months ~~{}~~ the trustee ~~{}~~ shall give ~~{}~~ ~~{gives}~~ notice of sale ~~{,}~~ as provided in Sections 57-1-25 and 57-1-26 ~~{, following the lapse of at least three months from the time the trustee files a notice of default for record under Subsection (1)(a), subject to Section 57-1-24.5}~~.

Section 3. Section 57-1-24.5 is enacted to read:

57-1-24.5. Notice to default trustor -- Right to negotiate alternative to foreclosure
-- ~~{Requirements -- Deferment}~~ Duties of servicer.

(1) As used in this section:

(a) "Default trustor" means a trustor under a trust deed secured by owner-occupied property that is the subject of a notice of default under Section 57-1-24.

~~{ —— (b) "Deferment period" means the period of tolling under Subsection (4)(a):~~

~~—— (c) "Lender" means a person who is:~~

~~—— (i) a beneficiary under a trust deed secured by owner-occupied property that is the subject of a notice of default under Section 57-1-24; and~~

~~—— (ii) entitled to direct the trustee to sell the property following a default under the loan.~~

~~{ (d) }b~~ "Loan" means the obligation for which a trust deed is given as security.

~~{ (e) }c~~ "Owner-occupied property" means real property that is occupied by its owner as the owner's primary residence.

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(d) "Special servicer" means a person who exercises authority to direct the trustee to file a notice of default under Section 57-1-24.

(2) (a) No later than ~~{15}~~ five days after a trustee files for recording a notice of default under Section 57-1-24, the special servicer or trustee shall send a notice to the default trustor by certified mail.

(b) A notice under Subsection (2)(a) shall include:

(i) the name, address, telephone number, ~~{and}~~ email address ~~{of an individual with authority to:~~

~~—— (A), and other direct contact information for an individual authorized to act with respect to the special servicer's responsibilities under this section:~~

~~(ii) a summary of the default trustor's rights and foreclosure relief options under this section;~~

~~(iii) a description of any state or federal program known to the trustee or special servicer that provides foreclosure relief or assistance in obtaining foreclosure relief; and~~

~~(iv) any website or other available information needed to make contact with the state or federal agency providing relief or assistance referred to in Subsection (2)(b)(iii).~~

(3) Upon receiving a notice under Subsection (2), a default trustor may request the special servicer to enter into negotiations as provided in this section.

(4) A special servicer shall:

(a) represent the interests of the beneficiary; and

(b) negotiate on behalf of the ~~{lender}~~ beneficiary with respect to all aspects of the ~~{loan}~~ foreclosure, including regarding foreclosure relief, a loan modification or ~~{forebearance}~~ forbearance, a deed in lieu of foreclosure, or any other reasonable alternative to foreclosure ~~{, and}~~.

~~{B} bind the lender to an agreement with the default trustor under terms that differ from the terms of the loan;~~

~~—— (ii) the name, address, telephone number, and email address of an individual representing the lender whom the default trustor is required to contact under Subsection (3)(a) to request to negotiate with the lender as provided in this section;~~

~~—— (iii) a description of the deferment opportunity under this section and the requirements and procedure for obtaining a deferment;~~

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~~_____ (iv) the date by which the default trustor is required to contact the lender to request to enter into negotiations as provided in this section;~~

~~_____ (v) the Internet address of the United States Department of Housing and Urban Development web site identifying approved housing counseling agencies in the state; and~~

~~_____ (vi) provide information regarding the availability of the federal government's Making Home Affordable program and the rights and benefits available to the default trustor under the program.~~

~~_____ (3) (a) Subject to Subsections (3)(d) and (e), a lender shall make itself~~ 5) A special servicer has an express duty to:

(a) be reasonably available for and cooperate in negotiations with a default trustor {regarding the terms of the loan, including regarding foreclosure relief, a loan modification or forbearance, or any other mutually acceptable} during the three-month period under Subsection 57-1-24(2); and

(b) negotiate with a default trustor regarding any reasonable alternative to foreclosure, if:

~~_____ (i) within 20 days after the trustee sends notice under Subsection (2), the~~ including a loan modification or forbearance, discounted payoff, deed in lieu of foreclosure, or other foreclosure relief.

(6) In all negotiations with each other, a default trustor {contacts the lender to request negotiations regarding the loan;

~~_____ (ii) the default trustor:~~

~~_____ (A) occupied the trust property as the trustor's primary residence at the time the notice of default was recorded and during the 90-day period immediately before the notice of default was recorded;~~

~~_____ (B) intends to continue to reside at the trust property; and~~

~~_____ (C) is personally obligated on the loan; and~~

~~_____ (iii) the loan:~~

~~_____ (A) was incurred for primarily personal, family, or household purposes; and~~

~~_____ (B) is secured by a trust deed on the trust property that is the subject of the notice of default.~~

~~_____ (b)~~ and special servicer shall at all times act in compliance with the covenant of good

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faith and fair dealing.

~~(7) A default trustor {may contact a lender under Subsection (3)(a) by telephone, mail, electronically, or in person:~~

~~—— (c) A default trustor is ineligible to request the lender to negotiate regarding the loan or to a deferment as provided in this section if;~~ shall provide sufficient financial information to the special servicer to enable the special servicer to give reasonable consideration to the default trustor:

~~—— (i) abandons the trust property;~~

~~—— (ii) has been discharged within the preceding 12 months in a Chapter 7 bankruptcy in which the trust property was property of the bankruptcy estate;~~

~~—— (iii) has been discharged within the preceding 12 months in a Chapter 13 bankruptcy with a modified loan agreement for which the trust property is security; or~~

~~—— (iv) previously received a foreclosure deferment;~~ trustor's request for foreclosure relief.

(8) A special servicer and default trustor may, by mutual agreement, conduct negotiations under this section with {respect to }the {same loan, including any modification} assistance of {the loan} a mediator.

~~(~~d~~9) In negotiating with {the} a default trustor {under this section and determining whether to agree to an alternative to foreclosure, a lender shall:~~

~~—— (i) consider the default trustor's household expenses and gross monthly income, the nature of the loan, any written loan modification agreement between the default trustor and the lender that was executed during the preceding 12 months, and any other relevant factors;~~

~~—— (ii) apply an analysis that is consistent with the net present value test set out in the Federal Deposit Insurance Corporation Loan Modification Program guidelines, effective October 2008, designed to indicate:~~

~~—— (A) what the default trustor is able to pay on a sustainable basis for monthly housing expenses, including principal, interest, taxes, insurance, and any applicable homeowner association dues; and~~

~~—— (B) whether the lender would be likely to be paid more from the modification necessary to achieve a monthly payment that the default trustor is able to pay, as determined under Subsection (3)(d)(ii)(A), than the lender would be likely to be paid from a completed foreclosure;~~

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~~_____ (iii) make available to the default trustor the full rights and benefits of the federal government's Making Home Affordable program, to the extent the program applies; and~~

~~_____ (iv) }, a servicer shall give reasonable consideration to:~~

~~_____ (a) how long the default trustor has lived at the trust property, the default trustor's payment history over the life of the loan before the default, the circumstances, including any hardship, that led to the default trustor's inability to meet the obligations of the loan, the reasonable likelihood that those circumstances would be ~~{substantially improved}~~ resolved if the default trustor were given foreclosure relief or a loan modification, and any other equitable factors relevant to the default trustor's circumstances};~~

~~_____ (e) A lender and default trustor shall participate in and conduct negotiations under this section consistent with the implied covenant of good faith and fair dealing that applies under the loan;~~

~~_____ (4) (a) The three-month period required to lapse under Section 57-1-24 before a trustee may give notice of sale is tolled from the date that a default trustor contacts the lender under Subsection (3)(a)(i) until 90 days after that date, unless earlier terminated under Subsection (4)(b), if:~~

~~_____ (i) the default trustor contacts the lender as provided in Subsection (3)(a)(i);~~

~~_____ (ii) the default trustor meets the criteria of Subsection (3)(a)(ii);~~

~~_____ (iii) the loan meets the criteria of Subsection (3)(a)(iii);~~

~~_____ (iv) the default trustor is not ineligible under Subsection (3)(c);~~

~~_____ (v) within 10 days after contacting the lender as provided in Subsection (3)(a)(i), the default trustor pays to the lender the amount of a regular monthly payment under the loan; and~~

~~_____ (vi) the default trustor pays to the lender the amount of a regular monthly payment under the loan within each 30-day period following a payment under Subsection (4)(a)(v);~~

~~_____ (b) A default trustor may make a payment under Subsection (4)(a)(v) or (vi) electronically or by certified funds delivered by a method that provides evidence of the date of payment;~~

~~_____ (c) A deferment period under Subsection (4)(a) terminates if:~~

~~_____ (i) the default trustor abandons the trust property;~~

~~_____ (ii) the default trustor fails to comply with the conditions of foreclosure deferment, including a failure to make a payment as required under Subsection (4)(a)(v) or (vi);~~

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~~(iii) the default trustor conveys, transfers, or further encumbers}; and
(b) the market value of the trust property ~~{in violation of the trust deed;~~
~~(iv) a person holding another lien on the trust property has initiated foreclosure;~~
~~(v) the default trustor files for bankruptcy during the deferment period; or~~
~~(vi) the negotiations between the lender and the default trustor are concluded.~~
~~(d) A lender's acceptance of a payment under Subsection (4)(a)(v) or (vi) does not~~
~~constitute a waiver of default or a modification of any amount due on the loan or of any other~~
~~right the lender has under the loan}; and the financial interests that the servicer represents.~~~~

Section 4. Section **63I-1-257** is amended to read:

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

(1) Section 57-1-24.5 is repealed December 31, 2013.

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