

DUTIES OF TRUSTEE ON A TRUST DEED

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to a trustee under a trust deed.

Highlighted Provisions:

This bill:

- ▶ provides that a trustee under a trust deed has no duty to a beneficiary until given written instruction to exercise trustee powers;
- ▶ modifies a provision relating to the time of filing a substitution of trustee; and
- ▶ authorizes a trustee to resign as trustee and establishes a process for doing so.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-1-21.5, as last amended by Laws of Utah 2008, Chapter 250

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

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

Section 1. Section **57-1-21.5** is amended to read:

57-1-21.5. Trustees of trust deeds -- Duties -- Prohibited conduct -- Penalties.



28 (1) Until a beneficiary under a trust deed or a beneficiary's agent provides a trustee of a
29 trust deed written instructions directing the trustee to exercise powers under this chapter, the
30 trustee has no duty or obligation to a beneficiary or to an agent of a beneficiary.

31 [~~(1)~~] (2) Except as provided in Subsection [~~(2)~~] (3), the following duties of the trustee
32 may not be delegated:

33 (a) the preparation and execution of:

34 (i) the notice of default and election to sell;

35 (ii) the cancellation of notice of default and election to sell;

36 (iii) the notice of sale; and

37 (iv) the trustee's deed;

38 (b) the notification of foreclosure through publication, posting, and certified or
39 registered mail;

40 (c) the receiving and responding to requests for reinstatement or payoff requirements;

41 and

42 (d) the handling of reinstatement or payoff funds.

43 [~~(2)~~] (3) Nothing in this section is intended to prevent:

44 (a) the trustee from using clerical or office staff:

45 (i) that is under the trustee's direct and immediate supervision; and

46 (ii) to assist in the duties described in Subsection [~~(1)~~] (2);

47 (b) the trustee from using the services of others for publication, posting, marketing, or
48 advertising the sale; or

49 (c) a beneficiary of a trust deed or the servicing agent of the beneficiary from directly
50 performing the functions described in [~~(i) Subsection (1)(c); or (ii) Subsection (1)(d)]~~

51 Subsection (2)(c) or (d).

52 [~~(3)~~] (4) The amendments in Laws of Utah 2002, Chapter 209, to Subsection [~~(2)~~] (3)
53 do not apply to a foreclosure if the notice of default related to the foreclosure was filed before
54 May 6, 2002.

55 [~~(4)~~] (5) (a) Except as provided in Subsection [~~(4)~~] (5)(c), a trustee may not solicit or
56 receive any fee for referring business to a third party.

57 (b) Fees prohibited under Subsection [~~(4)~~] (5)(a) include:

58 (i) a commission;

- 59 (ii) a referral based fee, including a fee for the referral of:
- 60 (A) title work;
- 61 (B) posting services; or
- 62 (C) publishing services; or
- 63 (iii) a fee similar to a fee described in Subsection [~~(4)~~] (5)(b)(i) or (ii).
- 64 (c) Subsection [~~(4)~~] (5)(a) does not apply to:
- 65 (i) fees received by a trustee for the trustee acting as co-legal counsel, if the trustee is
- 66 otherwise permitted by law to receive fees as co-legal counsel; or
- 67 (ii) a nonpreferred participation in net profits based upon an ownership interest or
- 68 franchise relationship that is not otherwise prohibited by law.
- 69 [~~(5)~~] (6) A trustee may not require the following to pay any costs that exceed the actual
- 70 costs incurred by the trustee:
- 71 (a) a trustor reinstating or paying off a loan; or
- 72 (b) a beneficiary acquiring property through foreclosure.
- 73 [~~(6)~~] (7) (a) A person that violates Subsection [~~(4)~~] (5) or [~~(5)~~] (6) is guilty of a class B
- 74 misdemeanor.
- 75 (b) In addition to a person's liability under Subsection [~~(6)~~] (7)(a), if a person violates
- 76 Subsection [~~(4)~~] (5) or [~~(5)~~] (6), that person is liable to the trustor for an amount equal to the
- 77 greater of:
- 78 (i) the actual damages of the trustor as a result of the violation; or
- 79 (ii) \$1,000.
- 80 (c) In an action brought under Subsection [~~(6)~~] (7)(b), the party that does not prevail in
- 81 the action that is brought under Subsection [~~(6)~~] (7)(b) shall pay the attorney fees of the
- 82 prevailing party.
- 83 Section 2. Section **57-1-22** is amended to read:
- 84 **57-1-22. Successor trustees -- Appointment by beneficiary -- Effect -- Substitution**
- 85 **of trustee -- Recording -- Form.**
- 86 (1) (a) The beneficiary may appoint a successor trustee at any time by filing for record
- 87 in the office of the county recorder of each county in which the trust property or some part of
- 88 the trust property is situated, a substitution of trustee.
- 89 (b) The new trustee shall succeed to all the power, duties, authority, and title of the

90 trustee named in the deed of trust and of any successor trustee.

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

94 (2) The substitution shall:

95 (a) identify the trust deed by stating:

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

97 (ii) the date of recordation; and

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

99 (B) the entry number;

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

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

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

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

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

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

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

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

114 Substitution of Trustee

115 (insert name and address of new trustee)

116 is hereby appointed successor trustee under the trust deed executed by ____ as
117 trustor, in which ____ is named beneficiary and ____ as trustee, and filed for record

118 _____(month\day\year), and recorded in Book ____, Page ____, Records of ____

119 County, (or filed for record _____(month\day\year), with recorder's entry No. ____, ____
120 County), Utah.

121 (Insert legal description)
122 Signature _____

123 (Certificate of Acknowledgment)

124 (5) (a) As provided in this Subsection (5), a trustee of a trust deed may resign as trustee
125 by submitting a resignation of trustee for recording in the office of the recorder of each county
126 in which any part of the trust property is located.

127 (b) A trustee's resignation under this Subsection (5) takes effect upon the recording of a
128 resignation of trustee.

129 (c) A resignation of trustee shall be in substantially the following form:

130 "Resignation of Trustee

131 (Insert name and address of trustee) hereby resigns as trustee under the trust deed
132 executed by (insert name of trustor) as trustor, in which (insert the name of the beneficiary) is
133 named beneficiary and (insert the name of the trustee) as trustee, and filed for record (insert the
134 month, day, and year the trust deed was recorded), and recorded in Book _____, Page _____,
135 Records of _____ County, (or with recorder's entry no. _____, _____ County),
136 Utah.

137 (Insert legal description)
138 Signature _____

139 (Certificate of acknowledgment)"

140 (d) A resignation of trustee under this Subsection (5) may not be considered to cause
141 the trustee any negative legal consequence.

142 (e) (i) Upon a trustee's resignation as trustee under this Subsection (5), any legal action
143 pending against the trustee as trustee shall be immediately dismissed.

144 (ii) A plaintiff in an action that is dismissed against a trustee who resigns as provided
145 in this Subsection (5) may pursue the action against the beneficiary in the place of the trustee
146 until a successor trustee is appointed.

Legislative Review Note
as of 2-18-11 9:41 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 378

SHORT TITLE: **Duties of Trustee on a Trust Deed**

SPONSOR: **Webb, R. C.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.