

Senator Curtis S. Bramble proposes the following substitute bill:

TRUST DEED AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to trust deeds.

Highlighted Provisions:

This bill:

- ▶ modifies how fair market value may be calculated for purposes of some trust property involved in a trustee's sale;
- ▶ enacts provisions relating to certain loans by member-based lenders, as defined, including:
 - provisions relating to borrowers, guarantors, and sureties on those loans; and
 - mediation; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-1-32, as last amended by Laws of Utah 2001, Chapter 236



ENACTS:

57-1-32.5, Utah Code Annotated 1953

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

Section 1. Section **57-1-32** is amended to read:

57-1-32. Sale of trust property by trustee -- Action to recover balance due upon obligation for which trust deed was given as security -- Collection of costs and attorney fees.

(1) At any time within three months after any sale of property under a trust deed as provided in Sections 57-1-23, 57-1-24, and 57-1-27 and subject to Section 57-1-32.5, an action may be commenced to recover the balance due upon the obligation for which the trust deed was given as security, and in that action the complaint shall set forth the entire amount of the indebtedness that was secured by the trust deed, the amount for which the property was sold, and the fair market value of the property at the date of sale.

(2) (a) Before rendering judgment, the court shall find the fair market value of the property at the date of sale[-], subject to Subsection (2)(b).

(b) In an action under this section to recover the balance due upon an obligation that is a member loan, as defined in Section 57-1-32.5, the court may find the fair market value of the property as of a date that is after default but earlier than the date of sale if the court finds that:

(i) the plaintiff, without reasonable justification, causes a delay in the proceedings relating to the trustee's sale;

(ii) without the delay, the property could have been sold at trustee's sale at the earlier date; and

(iii) the property's fair market value at the earlier date is higher than the fair market value of the property at the date of sale.

(3) The court may not render judgment for more than the amount by which the amount of the indebtedness with interest, costs, and expenses of sale, including ~~[trustee's]~~ trustee and ~~[attorney's]~~ attorney fees, exceeds the fair market value of the property as of the date ~~[of the sale]~~ determined under Subsection (2).

(4) In any action brought under this section, the prevailing party shall be entitled to collect its costs and reasonable attorney fees incurred.

Section 2. Section **57-1-32.5** is enacted to read:

57-1-32.5. Member loans.

(1) As used in this section:

(a) "Foreclosure sale" means:

(i) a trustee's sale under Section 57-1-28; or

(ii) a sheriff's sale pursuant to a mortgage foreclosure action, if the beneficiary chooses under Section 57-1-23 to foreclose the trust deed in the manner provided by law for the foreclosure of a mortgage.

(b) "Member-based lender":

(i) means a financial institution organized in whole or in part for the benefit of its members, including:

(A) a credit union subject to Title 7, Chapter 9, Utah Credit Union Act;

(B) a federally chartered credit union; and

(C) a cooperative or other association organized for the purpose of promoting thrift among its members; and

(ii) does not include:

(A) a bank, as defined in Section 7-1-103;

(B) a federal savings bank;

(C) a savings bank or savings and loan association that is subject to Title 7, Chapter 7, Savings and Loan Associations Act;

(D) an industrial bank that is subject to Title 7, Chapter 8, Industrial Banks; or

(E) a federal savings and loan association.

(c) "Member loan" means a debt:

(i) owing to a member-based lender;

(ii) secured by one or more trust deeds; and

(iii) partly or entirely owed or guaranteed by one or more members of the member-based lender, regardless of whether any of those members ceased to be a member during or after the term of the debt.

(2) (a) Before a member-based lender may commence, join, facilitate, or continue an action against a borrower, guarantor, or surety under a member loan for amounts owing on the loan, the member-based lender shall first pursue all remedies under this chapter with respect to:

88 (i) the foreclosure sale of the trust property; and
89 (ii) all other security for the loan.
90 (b) A court may not enter an order or judgment against a borrower, guarantor, or surety
91 of a member loan before:
92 (i) the foreclosure sale of the trust property; and
93 (ii) all other security for the loan is exhausted.
94 (c) Except as provided in Subsection (2)(d), a court may not enforce a modification or
95 waiver of any of the provisions of Subsection (2)(a) or (b).
96 (d) A court may enforce a modification or waiver of any of the provisions of
97 Subsection (2)(a) or (b) if the court finds, upon clear and convincing evidence, that the contract
98 containing the modification or waiver:
99 (i) is executed on or after July 1, 2011; and
100 (ii) conspicuously contains unambiguous modification or waiver language that is:
101 (A) surrounded by bold black lines;
102 (B) in highlighted or all capitalized boldface type that is at least 12 point font in size;
103 and
104 (C) specifically initialed or signed by each borrower, guarantor, and surety under the
105 contract.
106 (3) A member-based lender shall act in a commercially reasonable manner in relation
107 to the debt and each borrower, guarantor, and surety.
108 (4) Before a member-based lender may sue for or obtain a judgment on an obligation
109 created by a member loan, the member-based lender shall:
110 (a) submit the claim to mediation under Title 78B, Chapter 10, Utah Uniform
111 Mediation Act, or as ordered by the court; and
112 (b) participate in good faith in the mediation with each opposing party.

FISCAL NOTE

S.B. 218 1st Sub. (Green)

SHORT TITLE: **Trust Deed Amendments**

SPONSOR: **Bramble, 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.