

SB0261S01 compared with SB0261

~~{deleted text}~~ shows text that was in SB0261 but was deleted in SB0261S01.

inserted text shows text that was not in SB0261 but was inserted into SB0261S01.

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.

~~{WRONGFUL FORECLOSURE ACT}~~ Senator Curtis S. Bramble proposes the following substitute bill:

CHANGES TO TRUST DEED FORECLOSURE PROVISIONS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill ~~{enacts the Wrongful Foreclosure Act}~~ modifies provisions relating to trust deed foreclosures.

Highlighted Provisions:

This bill:

- ▶ ~~{imposes civil and criminal liability on a person who files for recording a wrongful}~~ provides a civil penalty for a person who violates specified trustee provisions;
- ▶ provides that a trustee who conspires or schemes to defraud a trustor is guilty of a class B misdemeanor;
- ▶ requires a notice of default ~~{or who publishes or posts a wrongful}~~ to include a brief description of the foreclosure process; and

SB0261S01 compared with SB0261

- requires a beneficiary or the beneficiary's agent to provide notice to a trustor on a residential property if the beneficiary or agent does not intend to instruct a trustee to defer a notice of sale ~~{with respect to a trust deed foreclosure}~~ despite negotiations between the beneficiary or agent and trustor or a temporary reduced payment arrangement.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-1-21, as last amended by Laws of Utah 2008, Chapter 250

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

ENACTS:

~~{57-1a-101}~~ 57-1-24.5, Utah Code Annotated 1953

~~{57-1a-102, Utah Code Annotated 1953~~

~~57-1a-201, Utah Code Annotated 1953~~

~~57-1a-202, Utah Code Annotated 1953~~

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

Section 1. Section 57-1-21 is amended to read:

57-1-21. Trustees of trust deeds -- Qualifications.

(1) (a) The trustee of a trust deed shall be:

(i) any active member of the Utah State Bar who maintains a place within the state where the trustor or other interested parties may meet with the trustee to:

(A) request information about what is required to reinstate or payoff the obligation secured by the trust deed;

(B) deliver written communications to the lender as required by both the trust deed and by law;

(C) deliver funds to reinstate or payoff the loan secured by the trust deed; or

(D) deliver funds by a bidder at a foreclosure sale to pay for the purchase of the

SB0261S01 compared with SB0261

property secured by the trust deed;

(ii) any depository institution as defined in Section 7-1-103, or insurance company authorized to do business and actually doing business in Utah under the laws of Utah or the United States;

(iii) any corporation authorized to conduct a trust business and actually conducting a trust business in Utah under the laws of Utah or the United States;

(iv) any title insurance company or agency that:

(A) holds a certificate of authority or license under Title 31A, Insurance Code, to conduct insurance business in the state;

(B) is actually doing business in the state; and

(C) maintains a bona fide office in the state;

(v) any agency of the United States government; or

(vi) any association or corporation that is licensed, chartered, or regulated by the Farm Credit Administration or its successor.

(b) For purposes of this Subsection (1), a person maintains a bona fide office within the state if that person maintains a physical office in the state:

(i) that is open to the public;

(ii) that is staffed during regular business hours on regular business days; and

(iii) at which a trustor of a trust deed may in person:

(A) request information regarding a trust deed; or

(B) deliver funds, including reinstatement or payoff funds.

(c) (i) A person who violates Subsection (1)(a) is subject to a civil penalty in the amount of \$2,000.

(ii) In an action to impose a civil penalty under Subsection (1)(c)(i), the court shall require a person found to violate Subsection (1)(a) to pay the plaintiff's costs and attorney fees.

~~(c)~~ (d) This Subsection (1) is not applicable to a trustee of a trust deed existing prior to May 14, 1963, nor to any agreement that is supplemental to that trust deed.

~~(d)~~ (e) The amendments in Laws of Utah 2002, Chapter 209, to this Subsection (1) apply only to a trustee that is appointed on or after May 6, 2002.

(2) The trustee of a trust deed may not be the beneficiary of the trust deed, unless the beneficiary is qualified to be a trustee under Subsection (1)(a)(ii), (iii), (v), or (vi).

SB0261S01 compared with SB0261

(3) The power of sale conferred by Section 57-1-23 may only be exercised by the trustee of a trust deed if the trustee is qualified under Subsection (1)(a)(i) or (iv).

(4) A trust deed with an unqualified trustee or without a trustee shall be effective to create a lien on the trust property, but the power of sale and other trustee powers under the trust deed may be exercised only if the beneficiary has appointed a qualified successor trustee under Section 57-1-22.

(5) A trustee who conspires or schemes to defraud a trustor is guilty of a class B misdemeanor.

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

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

(1) The power of sale conferred upon the trustee who is qualified under Subsection 57-1-21(1)(a)(i) or (iv) may not be exercised until:

{(+)} (a) 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 the trust deed by stating the name of the trustor named in the trust deed 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 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 the trustee's election to sell or cause to be sold the property to satisfy the obligation;

{(2)} (b) not less than three months has elapsed from the time the trustee filed for record under Subsection (1); and

{(3)} (c) after the lapse of at least three months the trustee shall give notice of sale as provided in Sections 57-1-25 and 57-1-26.

(2) A notice of default under Subsection (1)(a) shall include a brief description of the foreclosure process.

Section {1} 3. Section {57-1a-101} 57-1-24.5 is enacted to read:

~~{CHAPTER 1a. WRONGFUL FORECLOSURE ACT~~

~~Part 1. General Provisions~~

~~{~~ {57-1a-101} 57-1-24.5. ~~{~~ Title:

———— This chapter is known as the "Wrongful Foreclosure Act."

SB0261S01 compared with SB0261

~~Section 2. Section 57-1a-102 is enacted to read:~~

~~57-1a-102. Definitions:~~

~~As used in this chapter:~~

~~(1) "Beneficiary" means a person named or designated in a trust deed as the person for whose benefit the trust deed is given, and includes any successor in interest to some or all of the beneficial interest under the trust deed.~~

~~(2) "Lawful trustee" means:~~

~~(a) the original trustee named in a trust deed at the time the trust deed is executed; or~~

~~(b) a successor trustee appointed by a beneficiary under a substitution of trustee under Section 57-1-22 that is recorded before} Notice to trustor of intent not to defer notice of sale.~~

(1) A beneficiary, or the beneficiary's authorized agent, shall provide written notice to a trustor as provided under Subsection (2) if:

(a) the trust property is residential property;

(b) a notice of default is filed ~~{for recording.~~

~~(3) "Retract" means:~~

~~(a) (i) for a wrongful notice of default, to file for recording a cancellation of the wrongful notice of default; or~~

~~(ii) for a wrongful notice of sale, to publish and post, in the same manner as the wrongful notice of sale was published and posted, a cancellation of the wrongful notice of sale; and~~

~~(b) to provide notice to each person to whom notice of the wrongful notice of default or wrongful notice of sale was provided under Section 57-1-26.~~

~~(4) "Trust obligation" means the obligation, evidenced by a trust deed note or other instrument, for which a trust deed is given as security.~~

~~(5) "Trustor" means the person or persons who convey real property in trust by trust deed to a trustee as security for a trust obligation, and includes any successor in interest.~~

~~(6) "Wrongful notice of default" means a notice of default} with respect to the trust property under Section 57-1-24; that a person files for recording in a county recorder's office if, at the time it is filed for recording;~~

SB0261S01 compared with SB0261

- ~~_____ (a) the trustor is not in default under the terms of the trust obligation;~~
- ~~_____ (b) the person designated as trustee under the trust deed does not qualify};~~
- (c) during the three-month period described in Subsection 57-1-24(1)(c), the beneficiary or agent:
- (i) enters negotiations with the trustor regarding a loan modification or foreclosure relief; or
- (ii) agrees to accept reduced payments from the trustor on a temporary basis; and
- (d) notwithstanding the negotiations or reduced payment arrangement, the beneficiary or agent does not intend to instruct the trustee to defer giving notice of sale under Section 57-1-25 later than the earliest time allowed under Subsection ~~57-1-21(1)(a)(i) or (iv)~~;
- ~~_____ (c) the trustee submitting the notice of default is not the lawful trustee; or~~
- ~~_____ (d) the person named in the notice of default as beneficiary under the trust deed is not an actual beneficiary under the trust deed.~~
- ~~_____ (7) "Wrongful notice of sale" means a notice of a trustee's sale that a person publishes or posts under Sections 57-1-25 and 57-1-26 if at the time of publication or posting:~~
- ~~_____ (a) the trustor is not in default under the terms of the trust obligation;~~
- ~~_____ (b) the person designated as trustee under the trust deed does not qualify};~~
- 57-1-24(1)(c).
- (2) A written notice under Subsection ~~57-1-21(1)(a)(i) or (iv)~~;
- ~~_____ (c) the trustee submitting the notice of default is not the lawful trustee; or~~
- ~~_____ (d) the person named in the ~~}(1)~~ shall inform the trustor that, despite the negotiations between the beneficiary or agent and trustor or the reduced payment arrangement, the beneficiary or agent does not intend to instruct the trustee to defer giving notice of sale ~~fas~~ beneficiary under the trust deed is not an actual beneficiary under the trust deed.~~
- ~~_____ Section 3. Section 57-1a-201 is enacted to read:~~

Part 2. Civil and Criminal Penalties

- ~~_____ 57-1a-201. Civil liability for wrongful notice of default or wrongful notice of sale.~~
- ~~_____ (1) (a) A person who files a wrongful notice of default for recording in a county recorder's office is liable to the trustor for any actual damages proximately caused by the wrongful notice of default.~~
- ~~_____ (b) A person who publishes or posts a wrongful notice of sale is liable to the trustor for~~

SB0261S01 compared with SB0261

~~any actual damages proximately caused by the wrongful notice of sale:~~

~~—— (2) A person who fails to retract a wrongful notice of default or wrongful notice of sale within 20 days after the date of a written notice from a trustor delivered or mailed to the person is liable to the trustor for:~~

~~—— (a) the amount of \$5,000 or treble the trustor's actual damages, whichever is greater; and~~

~~—— (b) costs and reasonable attorney fees that the trustor incurs to enforce the trustor's rights or pursue the trustor's remedies under this chapter.~~

~~—— (3) A person who files a wrongful notice of default for recording in the office of a county recorder or publishes or posts a wrongful notice of sale is liable to a trustor for \$3,000 or treble the trustor's actual damages, whichever is greater, if the person knows or has reason to know that the wrongful notice of default or wrongful notice of sale:~~

~~—— (a) is groundless; or~~

~~—— (b) contains a material misstatement or false claim.~~

~~—— Section 4. Section 57-1a-202 is enacted to read:~~

~~—— **57-1a-202. Criminal liability for wrongful notice of default or wrongful notice of sale:**~~

~~—— (1) (a) A person who intentionally files a notice of default under Section 57-1-24 for recording in a county recorder's office knowing it to be a wrongful notice of default is guilty of a class B misdemeanor:~~

~~—— (b) A person who intentionally publishes or posts a notice of sale under Sections 57-1-25 and 57-1-26 for recording in a county recorder's office knowing it to be a wrongful notice of sale is guilty of a class B misdemeanor.~~

~~—— (2) (a) It is an affirmative defense to a charge under Subsection (1) that the person retracted the wrongful notice of default or wrongful notice of sale within 20 days after the date of a written notice from a trustor delivered or mailed to the person.~~

~~—— (b) A person charged with an offense under Subsection (1) has the burden of proving an affirmative defense under Subsection (2)(a) by a preponderance of the evidence.~~

~~—— (3) A person is guilty of a third degree felony if the person files a wrongful notice of default for recording in a county recorder's office or publishes or posts a wrongful notice of sale if, at the time of filing, publishing, or posting, the person knows that:~~

SB0261S01 compared with SB0261

- ~~—— (a) the trustor was not in default under the trust obligation;~~
- ~~—— (b) the person designated as trustee under the trust deed does not qualify under Subsection 57-1-21(1)(a)(i) or (iv);~~
- ~~—— (c) the trustee submitting the notice of default is not the lawful trustee; or~~
- ~~—— (d) the person named in the notice of sale as beneficiary under the trust deed is not an actual beneficiary under the trust deed.~~
- ~~—— (4) This section may not be construed to bar a prosecution for an act in violation of Section 76-8-414.~~

Legislative Review Note

~~—— as of 2-18-11 10:59 AM~~

~~Office of Legislative Research and General Counsel~~; under Section 57-1-25 later than the earliest time allowed Subsection 57-1-24(1)(c).