

## SB0261S02 compared with SB0261S01

~~{deleted text}~~ shows text that was in SB0261S01 but was deleted in SB0261S02.

inserted text shows text that was not in SB0261S01 but was inserted into SB0261S02.

**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.

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: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill modifies provisions relating to trust deed foreclosures.

##### Highlighted Provisions:

This bill:

- ▶ 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 to include a brief description of the foreclosure process;~~ modifies a provision relating to successor trustees;

▶ imposes a duty on a trustee who exercises a power of sale; and

- ▶ 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

## SB0261S02 compared with SB0261S01

defer a notice of sale 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}~~57-1-22, as last amended by Laws of Utah ~~{2008}~~2002, Chapter ~~{250}~~209

~~{57-1-24}~~57-1-25, as last amended by Laws of Utah ~~{2001}~~2010, Chapter ~~{236}~~66

ENACTS:

57-1-23.5, Utah Code Annotated 1953

57-1-24.5, Utah Code Annotated 1953

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

Section 1. Section ~~{57-1-21}~~57-1-22 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 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~~

## SB0261S02 compared with SB0261S01

~~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).~~

~~—— (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~~

## SB0261S02 compared with SB0261S01

~~Section 57-1-22.~~

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

### ‡ 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

(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~~;~~ 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

**SB0261S02 compared with SB0261S01**

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}~~57-1-23.5 is ~~{amended}~~enacted 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}~~57-1-23.5. Civil penalty for unauthorized person who exercises power of sale.

(1) As used in this section, "unauthorized person" means a person who does not qualify as a trustee under Subsection 57-1-21(1)(a)(i) or (iv) ~~{may not be exercised until:~~

~~\_\_\_\_\_ [(1)] (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};~~

(2) (a) An unauthorized person who exercises a power of sale is subject to a civil penalty in the amount of \$2,000.

## SB0261S02 compared with SB0261S01

(b) In an action to impose a civil penalty 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;~~ 2)(a), the court shall require a person found to violate Subsection (2)(a) to pay the plaintiff's costs and attorney fees.

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

### **57-1-24.5. Notice to trustor of intent not to defer notice of sale.**

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

(a) the trust property is residential ~~{property}~~;

(b) a notice of default is filed under Section 57-1-24 with respect to the trust property ~~{~~ under Section 57-1-24;

(c) during the three-month period described in Subsection 57-1-24(~~(1)(c)~~ 3), 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 57-1-24(~~(1)(c)~~ 3).

(2) A ~~{written }~~ notice under Subsection (1) shall:

(a) be in writing;

(b) (i) be hand delivered to the trustor; or

(ii) be sent by certified mail, return receipt requested, to the trustor at the address of the trust property;

(c) be delivered or sent on or before the date that is 30 days after the notice of default is filed or 10 days after the beneficiary or agent agrees to accept reduced payments, whichever is later; and

(d) 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

## SB0261S02 compared with SB0261S01

instruct the trustee to defer giving notice of sale under Section 57-1-25 later than the earliest time allowed under Subsection 57-1-24(3).

Section 4. Section 57-1-25 is amended to read:

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

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

(a) by publication of the notice:

(i) (A) at least three times;

(B) once a week for three consecutive weeks;

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

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

(ii) in accordance with Section 45-1-101 for 30 days before the date the sale is scheduled;

(b) by posting the notice:

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

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

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

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

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

(A) on the primary door of each dwelling unit on the property to be sold, if the property to be sold has fewer than nine dwelling units; or

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

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

**SB0261S02 compared with SB0261S01**

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

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

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

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

Notice of Trustee's Sale

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

(Insert legal description)

The current beneficiary of the trust deed is \_\_\_\_\_ and the record owners of the property as of the recording of the notice of default are \_\_\_\_\_ and \_\_\_\_\_:

Dated \_\_\_\_\_ (month\day\year).

\_\_\_\_\_  
Trustee

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

"Notice to Tenant

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

You must continue to pay your rent and comply with other requirements of your rental



## **SB0261S02 compared with SB0261S01**

or lease agreement or you will be subject to eviction for violating your rental or lease agreement.

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

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

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

(5) A trustee qualified under Subsection 57-1-21(1)(a)(i) or (iv) who exercises a power of sale has a duty to the trustor not to defraud, or conspire or scheme to defraud, the trustor.