

**TRUST DEED AMENDMENTS**

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 deeds.

**Highlighted Provisions:**

This bill:

▶ modifies the calculation of fair market value 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;
- quitclaiming in lieu of a foreclosure sale; 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:



28 57-1-32.5, Utah Code Annotated 1953



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

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

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

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

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

43 (b) The fair market value of property securing a member loan, as defined in Section  
44 57-1-32.5, is the greater of:

45 (i) the property's fair market value on the date of the sale of the property at a trustee's  
46 sale under Section 57-1-28; and

47 (ii) the fair market value of the property on the date of the earliest default under the  
48 member loan.

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

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

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

56 **57-1-32.5. Member loans.**

57 (1) As used in this section:

58 (a) "Foreclosure sale" means:

59 (i) a trustee's sale under Section 57-1-28; or  
60 (ii) a sheriff's sale pursuant to a mortgage foreclosure action, if the beneficiary chooses  
61 under Section 57-1-23 to foreclose the trust deed in the manner provided by law for the  
62 foreclosure of a mortgage.

63 (b) "Member-based lender":

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

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

67 (B) a federally chartered credit union; and

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

70 (ii) does not include:

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

72 (B) a federal savings bank;

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

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

76 (E) a federal savings and loan association.

77 (c) "Member loan" means a debt:

78 (i) owing to a member-based lender;

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

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

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

86 (i) the foreclosure sale of the trust property; and

87 (ii) all other security for the loan.

88 (b) A court may not enter an order or judgment against a borrower, guarantor, or surety  
89 of a member loan before:

90 (i) the foreclosure sale of the trust property; and

91 (ii) all other security for the loan is exhausted.

92 (c) (i) The provisions of Subsections (2)(a) and (b) may not be modified or waived by a  
93 member-based lender or a trustor, borrower, guarantor, or surety under a member loan.

94 (ii) A court may not enforce a modification or waiver of any of the provisions of  
95 Subsection (2)(a) or (b).

96 (3) (a) At any time after the recording of a notice of default under Section 57-1-24, an  
97 owner of trust property described in a trust deed granted or assigned to a member-based lender  
98 to secure some or all of a member loan may, in lieu of a foreclosure sale of the property, record  
99 a quitclaim deed granting to the member-based lender all of the owner's right, title, and interest  
100 in the trust property.

101 (b) A quitclaim deed under Subsection (3)(a) constitutes satisfaction and full discharge  
102 of the obligations of each borrower, guarantor, and surety under the member loan secured by  
103 the trust deed if the fair market value of the trust property quitclaimed to the member-based  
104 lender exceeds the principal amount of the obligation secured by the trust deed, including  
105 interest.

106 (c) (i) If there is a dispute as to whether the fair market value of the trust property  
107 exceeds the principal and interest of the obligation, the member-based lender may, within 60  
108 days after the quitclaim deed is recorded, bring an action against the trust property to determine  
109 its fair market value.

110 (ii) In an action under Subsection (3)(c)(i), the court shall determine the fair market  
111 value of the trust property, after giving effect to all admissible evidence, including all valid  
112 liens of record subject to which the trust property was quitclaimed.

113 (4) Before a member-based lender may sue for or obtain a judgment on an obligation  
114 created by a member loan, the member-based lender shall:

115 (a) demonstrate that it has engaged in a commercially reasonable manner in relation to  
116 the debt and each borrower, guarantor, and surety;

117 (b) submit the claim to mediation under Title 78B, Chapter 10, Utah Uniform  
118 Mediation Act, or as ordered by the court; and

119 (c) participate in good faith in the mediation with each opposing party.

**Legislative Review Note**  
**as of 2-2-11 4:44 PM**

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

S.B. 218

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.