

**Representative LaVar Christensen** proposes the following substitute bill:

**TRUST DEED FORECLOSURE CHANGES**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: LaVar Christensen**

Senate Sponsor: John L. Valentine

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**LONG TITLE**

**General Description:**

This bill enacts a provision relating to the foreclosure of trust deeds.

**Highlighted Provisions:**

This bill:

- ▶ requires a beneficiary or servicer to appoint a single point of contact upon determining that a loan secured by a trust deed on owner-occupied residential property is in default;
- ▶ requires notice to a default trustor before a notice of default is filed;
- ▶ allows a default trustor to make application for foreclosure relief if the beneficiary or servicer offers foreclosure relief;
- ▶ establishes duties of the single point of contact during the three-month period following a notice of default; and
- ▶ makes provisions applicable if a default trustor applies for foreclosure relief.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



26 ENACTS:

27 **57-1-24.3**, Utah Code Annotated 1953



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

30 Section 1. Section **57-1-24.3** is enacted to read:

31 **57-1-24.3. Notices to default trustor -- Opportunity to negotiate foreclosure relief.**

32 (1) As used in this section:

33 (a) "Default trustor" means a trustor under a trust deed that secures a loan that the  
34 beneficiary or servicer claims is in default.

35 (b) "Foreclosure relief" means a mortgage modification program or other foreclosure  
36 relief option offered by a beneficiary or servicer.

37 (c) "Loan" means an obligation incurred for personal, family, or household purposes,  
38 evidenced by a promissory note or other credit agreement for which a trust deed encumbering  
39 owner-occupied residential property is given as security.

40 (d) "Owner-occupied residential property" means real property that is occupied by its  
41 owner as the owner's primary residence.

42 (e) "Servicer" means an entity, retained by the beneficiary:

43 (i) for the purpose of receiving a scheduled periodic payment from a borrower pursuant  
44 to the terms of a loan; or

45 (ii) that meets the definition of servicer under 12 U.S.C. Sec. 2605(i)(2) with respect to  
46 residential mortgage loans.

47 (f) "Single point of contact" means a person who, as the designated representative of  
48 the beneficiary or servicer, is authorized to:

49 (i) coordinate and ensure effective communication with a default trustor concerning:

50 (A) foreclosure proceedings initiated by the beneficiary or servicer relating to the trust  
51 property; and

52 (B) any foreclosure relief offered by or acceptable to the beneficiary or servicer; and

53 (ii) direct all foreclosure proceedings initiated by the beneficiary or servicer relating to  
54 the trust property, including:

55 (A) the filing of a notice of default under Section 57-1-24 and any cancellation of a  
56 notice of default;

57 (B) the publication of a notice of trustee's sale under Section 57-1-25; and  
58 (C) the postponement of a trustee's sale under Section 57-1-27 or this section.  
59 (2) (a) Before a notice of default is filed for record under Section 57-1-24, a beneficiary  
60 or servicer shall:  
61 (i) designate a single point of contact; and  
62 (ii) send notice by United States mail to the default trustor.  
63 (b) A notice under Subsection (2)(a)(ii) shall:  
64 (i) advise the default trustor of the intent of the beneficiary or servicer to file a notice of  
65 default;  
66 (ii) state:  
67 (A) the nature of the default;  
68 (B) the total amount the default trustor is required to pay in order to cure the default  
69 and avoid the filing of a notice of default, itemized by the type and amount of each component  
70 part of the total cure amount; and  
71 (C) the date by which the default trustor is required to pay the amount to cure the  
72 default and avoid the filing of a notice of default;  
73 (iii) disclose the name, telephone number, email address, and mailing address of the  
74 single point of contact designated by the beneficiary or servicer; and  
75 (iv) direct the default trustor to contact the single point of contact regarding foreclosure  
76 relief available through the beneficiary or servicer for which a default trustor may apply, if the  
77 beneficiary or servicer offers foreclosure relief.  
78 (3) Before the expiration of the three-month period described in Subsection 57-1-24(2),  
79 a default trustor may apply directly with the single point of contact for any available  
80 foreclosure relief.  
81 (4) A default trustor shall, within the time required by the beneficiary or servicer,  
82 provide all financial and other information requested by the single point of contact to enable  
83 the beneficiary or servicer to determine whether the default trustor qualifies for the foreclosure  
84 relief for which the default trustor applies.  
85 (5) The single point of contact shall:  
86 (a) inform the default trustor about and make available to the default trust any available  
87 foreclosure relief;

88 (b) undertake reasonable and good faith efforts, consistent with applicable law, to  
89 consider the default trustor for foreclosure relief for which the default trustor is eligible;

90 (c) ensure timely and appropriate communication with the default trustor concerning  
91 foreclosure relief for which the default trustor applies; and

92 (d) notify the default trustor by United States mail of the decision of the beneficiary or  
93 servicer regarding the foreclosure relief for which the default trustor applies.

94 (6) Notice of a trustee's sale may not be given under Section 57-1-25 with respect to  
95 the trust property of a default trustor who has applied for foreclosure relief until after the single  
96 point of contact provides the notice required by Subsection (5)(d).

97 (7) A beneficiary or servicer may cause a notice of a trustee's sale to be given with  
98 respect to the trust property of a default trustor who has applied for foreclosure relief if, in the  
99 exercise of the sole discretion of the beneficiary or servicer, the beneficiary or servicer:

100 (a) determines that the default trustor does not qualify for the foreclosure relief for  
101 which the default trustor has applied; or

102 (b) elects not to enter into a written agreement with the default trustor to implement the  
103 foreclosure relief.

104 (8) (a) A beneficiary or servicer may postpone a trustee's sale of the trust property in  
105 order to allow further time for negotiations relating to foreclosure relief.

106 (b) A postponement of a trustee's sale under Subsection (8)(a) does not require the  
107 trustee to file for record a new or additional notice of default under Section 57-1-24.

108 (9) A beneficiary or servicer shall cause the cancellation of a notice of default filed  
109 under Section 57-1-24 on the trust property of a default trustor if the beneficiary or servicer:

110 (a) determines that the default trustor qualifies for the foreclosure relief for which the  
111 default trustor has applied; and

112 (b) enters into a written agreement with the default trustor to implement the foreclosure  
113 relief.

114 (10) This section may not be construed to require a beneficiary or servicer to:

115 (a) establish foreclosure relief; or

116 (b) approve an application for foreclosure relief submitted by a default trustor.

117 (11) A beneficiary and servicer shall each take reasonable measures to ensure that their  
118 respective practices in the foreclosure of owner-occupied residential property and any

119 foreclosure relief with respect to a loan:

120 (a) comply with all applicable federal and state fair lending statutes; and

121 (b) ensure appropriate treatment of default trustors in the foreclosure process.

122 (12) This section does not apply if the beneficiary under a trust deed securing a loan is  
123 an individual.

124 (13) A beneficiary or servicer is considered to have complied with the requirements of  
125 this section if the beneficiary or servicer designates and uses a single point of contact in

126 compliance with federal law, rules, regulations, guidance, or guidelines governing the

127 beneficiary or servicer and issued by, as applicable, the Board of Governors of the Federal

128 Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of

129 the Currency, ~~§~~ [or] ~~§~~ the ~~§~~ { National Credit Union Administration } , or the ~~§~~

129a1 Consumer Financial Protection

129a Bureau ~~§~~ .

129b ~~§~~ **(14) The failure of a beneficiary or servicer to comply with a requirement of this**

129c **section does not affect the validity of a trustee's sale of the trust property to a bona fide**

129d **purchaser.** ~~§~~