

HB0164S01 compared with HB0164

~~{deleted text}~~ shows text that was in HB0164 but was deleted in HB0164S01.

inserted text shows text that was not in HB0164 but was inserted into HB0164S01.

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.

Representative LaVar Christensen proposes the following substitute bill:

TRUST DEED FORECLOSURE CHANGES

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ requires a beneficiary or ~~{special}~~servicer to appoint a single point of contact upon determining that a loan secured by a trust deed on owner-occupied residential~~;~~
~~owner-occupied~~ property is in default;
- ▶ requires notice to a default trustor before ~~{and within 30 days after }~~a notice of default is filed;
- ▶ allows a default trustor to make application for foreclosure relief if the beneficiary or ~~{to enter into negotiations for}~~servicer offers foreclosure relief;
- ▶ establishes duties ~~{in}~~of the ~~{process of negotiating foreclosure relief}~~;

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- requires foreclosure proceedings to be suspended; single point of contact during the three-month period following a notice of default; and
- ▶ makes provisions applicable if a default trustor ~~{successfully perform trial period modifications and the beneficiary or special servicer has the legal ability to do so;~~ and
- allows a default trustor to extend the foreclosure period by a month, no more than twice, by paying a monthly payment under the loan; applies for foreclosure relief.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

57-1-24.3, Utah Code Annotated 1953

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

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

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

(1) As used in this section:

~~{~~ (a) "Beneficiary" means the legal holder of a note and trust deed.

† ~~{(b)}~~ (a) "Default trustor" means a trustor under a trust deed ~~{secured by}~~ encumbering owner-occupied residential property that is the subject of a notice of default under Section 57-1-24.

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

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

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

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

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

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

(f) "Single point of contact" means a person authorized by the beneficiary or servicer who:

(i) exercises authority to direct the trustee under a trust deed to file a notice of default under Section 57-1-24;

(ii) is the sole manager of the promissory note~~{ and }~~, trust deed~~{ and of }~~, and communications on behalf of the beneficiary or servicer with the default trustor and any other primary obligors on the loan; and

(iii) has authority to represent the beneficiary or servicer in communications with the default trustor ~~{ and other primary obligors; and~~

~~—— (iii) has authority or can obtain authority to negotiate}~~ concerning any modification program or foreclosure relief ~~{ with a default trustor.~~

~~—— (f) "Special servicer" means a person duly authorized to act on behalf of a beneficiary}~~ option offered by the beneficiary or servicer.

(2) Upon determining that a loan is in default, a beneficiary or ~~{ special }~~ servicer shall appoint a single point of contact to represent the interests of the beneficiary or servicer in all matters concerning the default trustor.

(3) (a) ~~{ No later than 30 days before the filing of }~~ Before a notice of default is filed for record under Section 57-1-24~~{ and in an effort to encourage the default trustor to contact the beneficiary or special servicer to determine whether there is a reasonable prospect for successful foreclosure mitigation, the }~~, a single point of contact, on behalf of the beneficiary or ~~{ special }~~ servicer, shall send notice by United States mail to the default trustor~~{ of the intent of the beneficiary or special servicer to file a notice of default }~~.

(b) A notice under Subsection (3)(a) shall ~~{ include:~~

~~—— (i) the name, telephone number, email address, physical location, and other direct contact information of the single point of contact;~~

~~—— (ii) the reason for the intent};~~

(i) advise the default trustor of the intent of the beneficiary or servicer to file a notice of

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default; ~~and~~

~~(iii) ii~~ state:

(A) the full nature of the default:

(B) the total amount the default trustor is required to pay in order to cure the default and avoid the filing of a notice of default, broken down itemized by the type and amount of each component adding up to part of the full total cure amount; and

(C) the date by which the default trustor is required to pay that the amount;

~~(4) (a) No later than 30 days after to cure the date default and avoid the filing of a notice of default is filed under Section 57-1-24, the single point of contact, on behalf of the beneficiary or servicer, shall send a notice to the default trustor by United States mail.~~

~~(b) A notice under Subsection (4)(a) shall include:~~

~~(i) iii disclose the name, telephone number, email address, physical location, and other direct contact information mailing address of the single point of contact;~~

~~(ii) the reason the notice of default was filed;~~

~~(iii) the full amount the default trustor is required to pay in order to cure the default and avoid the posting of a notice of sale of the trust property, broken down by the type of each component adding up to the full amount, and the date by which the trustor is required to pay that amount; and~~

~~(iv) a description of any mortgage modification program or other foreclosure relief option available that may, at the reasonable discretion of the lender, provide} appointed by the beneficiary or servicer; and~~

(iv) identify the foreclosure relief for assistance in obtaining} available through the beneficiary or servicer for which a default trustor may apply, if the beneficiary or servicer offers foreclosure relief{, if the default trustor qualifies}.

~~(5) 4} Upon} After receiving a notice under Subsection (3), a default trustor may:~~

~~(a) make application} apply directly with the single point of contact for the beneficiary or servicer's foreclosure relief for assistance; or~~

~~(b) enter into negotiations as provided in this section.~~

~~(6) The} identified under Subsection (3)(b)(iv).~~

(5) A default trustor shall provide all financial and other information requested by the single point of contact shall.

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- ~~_____ (a) represent the interests of the beneficiary; and~~
- ~~_____ (b) negotiate in good faith on behalf of the beneficiary with respect to all aspects of the foreclosure, including foreclosure relief, loan modification or forbearance, deed in lieu of foreclosure, consideration of a short sale, or any other reasonable alternative to foreclosure.~~
- ~~_____ (7) Any action that a default trustor may take under this section may be taken by the default trustor's authorized representative.~~
- ~~_____ (8) A single point of contact, on behalf of } to enable the beneficiary or {special servicer, has an express duty to:~~
- ~~_____ (a) be reasonably available for and cooperate in negotiations with a } servicer to determine whether the default trustor {during} qualifies for the foreclosure relief for which the default trustor has applied.~~
- (6) During the three-month period described in Subsection 57-1-24(2) } and
- ~~_____ (b) negotiate with a default trustor regarding any reasonable alternative to foreclosure, including a loan modification or forbearance, discounted payoff, short sale, or deed in lieu of foreclosure.~~
- ~~_____ (9) A beneficiary or special servicer shall suspend foreclosure proceedings if:~~
- ~~_____ (a) a default trustor successfully performs trial period modifications; and~~
- ~~_____ (b) the beneficiary or special servicer has the legal ability to do so under any applicable servicing contract.~~
- ~~_____ (10) A default trustor engaged in good faith negotiations under this section with a single point of contact for foreclosure relief may extend the period described in Subsection 57-1-24(2) by one month, no more than twice, by paying the beneficiary during the period described in Subsection 57-1-24(2), or during an extension of that time under this Subsection (8), an amount equal to a full month's payment due under the loan.~~
- ~~_____ (11) A beneficiary, special servicer, and } , the single point of contact shall {align their}:~~
- (a) be reasonably available for and responsive to communications with a default trustor, including communications regarding the foreclosure relief offered by the beneficiary or servicer for which the default trustor has applied; and
- (b) notify the default trustor of the decision of the beneficiary or servicer regarding the foreclosure relief for which the default trustor has applied.

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

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

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

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

(9) (a) A beneficiary or servicer and a default trustor may, by mutual agreement, postpone a trustee's sale of the trust property in order to allow further time for good faith negotiations relating to foreclosure relief.

(b) A postponement of a trustee's sale under Subsection (9)(a) does not require the trustee to file for record a new or additional notice of default under Section 57-1-24.

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

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

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

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

(a) establish foreclosure relief; or

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

(12) A beneficiary and servicer shall each take reasonable measures to ensure that their respective practices in the foreclosure of owner-occupied residential property and any ~~modification of~~ foreclosure relief with respect to a loan ~~secured by that property~~ comply with all applicable federal and state fair lending statutes.

~~(12) A default trustor shall provide to a single point of contact all financial information and other reasonable information requested by a beneficiary or special servicer within the time required by~~ 13) This section does not apply if the beneficiary ~~for special~~

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~~servicer, to enable the beneficiary or special servicer to give reasonable consideration to the default trustor's request for foreclosure relief.~~

Legislative Review Note

~~as of 2-2-12 9:25 AM~~

~~Office of Legislative Research and General Counsel;~~ under a trust deed securing a loan is an individual.