

**TRUST DEED FORECLOSURE CHANGES**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: LaVar Christensen**

Senate Sponsor: \_\_\_\_\_

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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 special servicer to appoint a single point of contact upon determining that a loan secured by a trust deed on 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 or to enter into negotiations for foreclosure relief;

▶ establishes duties in the process of negotiating foreclosure relief;

▶ requires foreclosure proceedings to be suspended 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.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 ENACTS:

31 **57-1-24.3**, Utah Code Annotated 1953



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

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

35 **57-1-24.3. Notices to default trustor -- Opportunity to negotiate foreclosure relief.**

36 (1) As used in this section:

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

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

40 (c) "Loan" means an obligation, evidenced by a note, for which a trust deed is given as  
41 security.

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

44 (e) "Single point of contact" means a person who:

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

47 (ii) is the sole manager of the note and trust deed and of communications with the  
48 default trustor and other primary obligors; and

49 (iii) has authority or can obtain authority to negotiate foreclosure relief with a default  
50 trustor.

51 (f) "Special servicer" means a person duly authorized to act on behalf of a beneficiary.

52 (2) Upon determining that a loan is in default, a beneficiary or special servicer shall  
53 appoint a single point of contact.

54 (3) (a) No later than 30 days before the filing of a notice of default under Section  
55 57-1-24 and in an effort to encourage the default trustor to contact the beneficiary or special  
56 servicer to determine whether there is a reasonable prospect for successful foreclosure  
57 mitigation, the single point of contact, on behalf of the beneficiary or special servicer, shall  
58 send notice by United States mail to the default trustor of the intent of the beneficiary or special

59 servicer to file a notice of default.

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

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

63 (ii) the reason for the intent to file a notice of default; and

64 (iii) the full amount the default trustor is required to pay in order to cure the default and  
65 avoid the filing of a notice of default, broken down by the type of each component adding up to  
66 the full amount, and the date by which the default trustor is required to pay that amount.

67 (4) (a) No later than 30 days after the date a notice of default is filed under Section  
68 57-1-24, the single point of contact, on behalf of the beneficiary or special servicer, shall send a  
69 notice to the default trustor by United States mail.

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

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

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

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

78 (iv) a description of any mortgage modification program or other foreclosure relief  
79 option available that may, at the reasonable discretion of the lender, provide foreclosure relief  
80 or assistance in obtaining foreclosure relief, if the default trustor qualifies.

81 (5) Upon receiving a notice under Subsection (3), a default trustor may:

82 (a) make application directly with the single point of contact for foreclosure relief or  
83 assistance; or

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

85 (6) The single point of contact shall:

86 (a) represent the interests of the beneficiary; and

87 (b) negotiate in good faith on behalf of the beneficiary with respect to all aspects of the  
88 foreclosure, including foreclosure relief, loan modification or forbearance, deed in lieu of  
89 foreclosure, consideration of a short sale, or any other reasonable alternative to foreclosure.

90           (7) Any action that a default trustor may take under this section may be taken by the  
91 default trustor's authorized representative.

92           (8) A single point of contact, on behalf of the beneficiary or special servicer, has an  
93 express duty to:

94           (a) be reasonably available for and cooperate in negotiations with a default trustor  
95 during the three-month period described in Subsection 57-1-24(2); and

96           (b) negotiate with a default trustor regarding any reasonable alternative to foreclosure,  
97 including a loan modification or forbearance, discounted payoff, short sale, or deed in lieu of  
98 foreclosure.

99           (9) A beneficiary or special servicer shall suspend foreclosure proceedings if:

100           (a) a default trustor successfully performs trial period modifications; and

101           (b) the beneficiary or special servicer has the legal ability to do so under any applicable  
102 servicing contract.

103           (10) A default trustor engaged in good faith negotiations under this section with a  
104 single point of contact for foreclosure relief may extend the period described in Subsection  
105 57-1-24(2) by one month, no more than twice, by paying the beneficiary during the period  
106 described in Subsection 57-1-24(2), or during an extension of that time under this Subsection  
107 (8), an amount equal to a full month's payment due under the loan.

108           (11) A beneficiary, special servicer, and single point of contact shall align their  
109 practices in the foreclosure of owner-occupied residential property and any modification of a  
110 loan secured by that property with all applicable federal and state fair lending statutes.

111           (12) A default trustor shall provide to a single point of contact all financial information  
112 and other reasonable information requested by a beneficiary or special servicer within the time  
113 required by the beneficiary or special servicer, to enable the beneficiary or special servicer to  
114 give reasonable consideration to the default trustor's request for foreclosure relief.

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**Legislative Review Note**  
as of 2-2-12 9:25 AM

**Office of Legislative Research and General Counsel**