

Senator Wayne L. Niederhauser proposes the following substitute bill:

LIMITATION ON ACTION TO RECOVER DEFICIENCY

FOLLOWING SHORT SALE

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill enacts a provision establishing a time limit for an action to recover a deficiency following a specified sale of residential real property.

Highlighted Provisions:

This bill:

► bars an action to recover a deficiency following a short sale of single-family residential property unless the action is commenced no later than three months after the short sale.

Money Appropriated in this Bill:

None

Other Special Clauses:

⌚→ [None] This bill provides an immediate effective date. ←⌚

Utah Code Sections Affected:

ENACTS:

78B-2-313, Utah Code Annotated 1953

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



26 Section 1. Section **78B-2-313** is enacted to read:

27 **78B-2-313. Action to recover deficiency after short sale.**

28 (1) As used in this section:

29 (a) "Deficiency" means the balance owed to a secured lender under a secured loan after
30 completion of a short sale of the secured property.

31 (b) "Obligor" means the person or persons obligated to pay a secured loan.

32 (c) "Secured lender" means the person or persons to whom the obligation under a
33 secured loan is owed.

34 (d) "Secured loan" means ~~Ŝ→ [an obligation evidenced by a note and]~~ a loan or
34a other credit for personal, family, or household purposes ←Ŝ secured by a mortgage
35 or trust deed on secured property.

36 (e) "Secured property" means single-family, residential real property located in the
37 state that is the subject of a mortgage or trust deed to secure a secured loan.

38 (f) "Short sale" means a sale:

39 (i) of secured property;

40 (ii) by the owner of the secured property;

41 (iii) that results in the secured lender being paid less than the balance owing under the
42 secured loan; and

43 (iv) made with the secured lender's consent and resulting in the secured lender
44 releasing the mortgage or reconveying the trust deed on the secured property.

45 (2) An action to recover a deficiency is barred unless it is commenced no more than
46 three months after the date of recording of a release of mortgage or reconveyance of trust deed
47 with respect to secured property and resulting from a short sale of that property.

48 (3) Subsection (2) does not apply if the obligor ~~Ŝ→ [has]~~ or owner ←Ŝ engaged in fraud in
48a connection with
49 the short sale.

50 (4) ~~Ŝ→ [The limitation under]~~ ←Ŝ Subsection (2) does not apply to ~~Ŝ→ [an obligation~~
50a evidenced by] ←Ŝ an
51 agreement that:

52 Ŝ→ ~~[(a) is separate from the secured loan;]~~ ←Ŝ

53 Ŝ→ ~~[(b)]~~ (a) ←Ŝ is executed ~~Ŝ→~~ :

53a (i) ←Ŝ between ~~Ŝ→ [an obligor]~~ one or more obligors under a secure loan ←Ŝ and
53b Ŝ→ [a] the ←Ŝ secured lender ~~Ŝ→~~ ; and

53c (ii) ←Ŝ in connection with a short sale;

54 and

55 Ŝ→ ~~[(c)]~~ (b) ←Ŝ obligates ~~Ŝ→ [the]~~ an ←Ŝ obligor to pay some or all of a deficiency.

55a Ĥ→ Section 2. Effective date.

55b If approved by two-thirds of all the members elected to each house, this bill takes effect
55c upon approval by the governor, or the day following the constitutional time limit of Utah
55d Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
55e the date of veto override. ←H