

DUTIES AND WITHDRAWAL OF TRUSTEE

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies provisions relating to a trustee under a trust deed.

Highlighted Provisions:

This bill:

- ▶ provides that a trustee under a trust deed has no duty to a beneficiary until given written instruction to exercise powers;
- ▶ authorizes and provides a procedure for a trustee to resign as trustee; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-1-21.5, as last amended by Laws of Utah 2008, Chapter 250

57-1-22, as last amended by Laws of Utah 2011, Chapter 228

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

Section 1. Section **57-1-21.5** is amended to read:

57-1-21.5. Trustees of trust deeds -- Duties -- Prohibited conduct -- Penalties.

(1) Until a beneficiary under a trust deed or the beneficiary's agent provides a trustee of the trust deed written instructions directing the trustee to exercise powers under this chapter,

30 the trustee has no duty or obligation to the beneficiary or to the agent of a beneficiary.

31 [~~(1)~~] (2) Except as provided in Subsection [~~(2)~~] (3), the following duties of [~~the~~] a
32 trustee may not be delegated:

33 (a) [~~the~~] a preparation and execution of:

34 (i) [~~the~~] a notice of default and election to sell;

35 (ii) [~~the~~] a cancellation of notice of default and election to sell;

36 (iii) [~~the~~] a notice of sale; and

37 (iv) [~~the~~] a trustee's deed;

38 (b) the notification of foreclosure through publication, posting, and certified or
39 registered mail;

40 (c) the receiving and responding to requests for reinstatement or payoff requirements;

41 and

42 (d) the handling of reinstatement or payoff funds.

43 [~~(2)~~] (3) Nothing in this section is intended to prevent:

44 (a) [~~the~~] a trustee from using clerical or office staff:

45 (i) that is under the trustee's direct and immediate supervision; and

46 (ii) to assist in the duties described in Subsection [~~(1)~~] (2);

47 (b) [~~the~~] a trustee from using the services of others for publication, posting, marketing,
48 or advertising the sale; or

49 (c) a beneficiary of a trust deed or the servicing agent of the beneficiary from directly
50 performing the functions described in~~[-]~~ Subsection (2)(c) or (d).

51 [~~(i) Subsection (1)(c); or~~]

52 [~~(ii) Subsection (1)(d).]~~

53 [~~(3)~~] (4) The amendments in Laws of Utah 2002, Chapter 209, to Subsection [~~(2)~~] (3)
54 do not apply to a foreclosure if the notice of default related to the foreclosure was filed before
55 May 6, 2002.

56 [~~(4)~~] (5) (a) Except as provided in Subsection [~~(4)~~] (5)(c), a trustee may not solicit or
57 receive any fee for referring business to a third party.

58 (b) [~~Fees~~] A fee prohibited under Subsection [~~(4)(a) include~~] (5)(a) includes:
59 (i) a commission;
60 (ii) a referral based fee, including a fee for the referral of:
61 (A) title work;
62 (B) posting services; or
63 (C) publishing services; or
64 (iii) a fee similar to a fee described in Subsection [~~(4)~~] (5)(b)(i) or (ii).
65 (c) Subsection [~~(4)~~] (5)(a) does not apply to:
66 (i) [~~fees~~] a fee received by a trustee for the trustee acting as co-legal counsel, if the
67 trustee is otherwise permitted by law to receive fees as co-legal counsel; or
68 (ii) a nonpreferred participation in net profits based upon an ownership interest or
69 franchise relationship that is not otherwise prohibited by law.
70 [~~(5)~~] (6) A trustee may not require the following to pay any costs that exceed the actual
71 costs incurred by the trustee:
72 (a) a trustor reinstating or paying off a loan; or
73 (b) a beneficiary acquiring property through foreclosure.
74 [~~(6)~~] (7) (a) A person that violates Subsection [~~(4)~~] (5) or [~~(5)~~] (6) is guilty of a class B
75 misdemeanor.
76 (b) In addition to a person's liability under Subsection [~~(6)~~] (7)(a), if a person violates
77 Subsection [~~(4) or (5), that~~] (5) or (6), the person is liable to the trustor for an amount equal to
78 the greater of:
79 (i) the actual damages of the trustor as a result of the violation; or
80 (ii) \$1,000.
81 (c) In an action brought under Subsection [~~(6)~~] (7)(b), the party that does not prevail in
82 the action that is brought under Subsection [~~(6)~~] (7)(b) shall pay the attorney fees of the
83 prevailing party.
84 Section 2. Section **57-1-22** is amended to read:
85 **57-1-22. Successor trustees -- Appointment by beneficiary -- Effect -- Substitution**

86 **of trustee -- Recording -- Form.**

87 (1) (a) The beneficiary may appoint a successor trustee at any time by filing for record
88 in the office of the county recorder of each county in which the trust property or some part of
89 the trust property is situated, a substitution of trustee.

90 (b) The new trustee shall succeed to all the power, duties, authority, and title of the
91 trustee named in the deed of trust and of any successor trustee.

92 (c) The beneficiary may, by express provision in the substitution of trustee, ratify and
93 confirm action taken on the beneficiary's behalf by the new trustee prior to the recording of the
94 substitution of trustee.

95 (2) ~~[The]~~ A substitution of trustee shall:

96 (a) identify the trust deed by stating:

- 97 (i) the names of the original parties to the trust deed;
- 98 (ii) the date of recordation; and
- 99 (iii) (A) the book and page where the trust deed is recorded; or
100 (B) the entry number;

101 (b) include the legal description of the trust property;

102 (c) state the name and address of the new trustee; and

103 (d) be executed and acknowledged by all of the beneficiaries under the trust deed or
104 their successors in interest.

105 (3) (a) If not previously recorded at the time of recording a notice of default, the
106 successor trustee shall file for record, in the office of the county recorder of each county in
107 which the trust property or some part of it is situated, the substitution of trustee.

108 (b) A copy of the substitution of trustee shall be sent in the manner provided in
109 Subsection 57-1-26(2) to any:

110 (i) person who requests a copy of any notice of default or notice of sale under
111 Subsection 57-1-26(1)(a); and

112 (ii) person who is a party to the trust deed to whom a copy of a notice of default would
113 be required to be mailed by Subsection 57-1-26(3).

114 (4) A substitution of trustee shall be in substantially the following form:

115 Substitution of Trustee

116 (insert name and address of new trustee)

117 is hereby appointed successor trustee under the trust deed executed by ____ as

118 trustor, in which ____ is named beneficiary and ____ as trustee, and filed for record

119 _____(month\day\year), and recorded in Book ____, Page ____, Records of ____

120 County, (or filed for record _____(month\day\year), with recorder's entry No. ____, ____

121 County), Utah.

122 (Insert legal description)

123

124 Signature _____

125 (Certificate of Acknowledgment)

126 (5) (a) A trustee of a trust deed may, in accordance with this Subsection (5), resign as

127 trustee by filing for record in the office of the recorder of each county in which the trust

128 property is located, a resignation of trustee.

129 (b) A trustee's resignation under this Subsection (5) takes effect upon the recording of a

130 resignation of trustee.

131 (c) A resignation of trustee shall be in substantially the following form:

132 "Resignation of Trustee

133 (Insert name and address of trustee) hereby resigns as trustee under the trust deed

134 executed by (insert name of trustor) as trustor, in which (insert name of the beneficiary) is

135 named beneficiary and (insert name of trustee) as trustee, and filed for record (insert the month,

136 day, and year the trust deed was recorded), and recorded in Book ____, Page ____, Records of

137 _____ County, (or with recorder's entry no. ____, _____ County), Utah.

138 (Insert legal description)

139 Signature _____

140 (Certificate of acknowledgment)"

141 (d) (i) Within three days after the day on which a trustee resigns under this Subsection

142 (5), the trustee shall deliver written notice of the trustee's resignation to each party in any legal
143 action pending against the trustee that is related to or arises from the trustee's performance of a
144 duty of a trustee.

145 (ii) Except as provided in Subsection (5)(d)(iv), within 10 days after the day on which
146 a party receives a notice described in Subsection (5)(d)(i), the party may move the court to
147 substitute the beneficiary of the trust deed as defendant in the action in the place of the trustee
148 until a successor trustee is appointed. When a successor trustee is appointed, the successor
149 trustee shall be substituted as defendant in place of the beneficiary.

150 (iii) Except as provided in Subsection (5)(d)(iv), if, after the expiration of the time
151 described in Subsection (5)(d)(ii), a party does not move the court to substitute the beneficiary
152 or the successor trustee in place of the trustee as defendant, the court shall dismiss with
153 prejudice all claims against the withdrawn trustee.

154 (iv) Subsection (5)(d)(ii) and (5)(d)(iii) do not apply to a cause of action against a
155 trustee that alleges negligent or intentional misconduct by the withdrawn trustee.

156 (e) (i) The withdrawal of a trustee of a trust deed under this section does not affect the
157 validity or the priority of the trust deed.

158 (ii) After a trustee withdraws under this part, only a qualified successor trustee
159 appointed by the beneficiary under Section 57-1-22 may exercise trustee powers, including the
160 power of sale.