

HB0385S01 compared with HB0385

~~deleted text~~ shows text that was in HB0385 but was deleted in HB0385S01.

inserted text shows text that was not in HB0385 but was inserted into HB0385S01.

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Representative V. Lowry Snow proposes the following substitute bill:

DUTIES AND WITHDRAWAL OF TRUSTEE

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: _____

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

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

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

(a) ~~the~~ a preparation and execution of:

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

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

(iii) ~~the~~ a notice of sale; and

(iv) ~~the~~ a trustee's deed;

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

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

and

(d) the handling of reinstatement or payoff funds.

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

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

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

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

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

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

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

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

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

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

(b) ~~[Fees]~~ A fee prohibited under Subsection ~~[(4)(a) include]~~ (5)(a) includes:

(i) a commission;

(ii) a referral based fee, including a fee for the referral of:

(A) title work;

(B) posting services; or

(C) publishing services; or

(iii) a fee similar to a fee described in Subsection ~~[(4)]~~ (5)(b)(i) or (ii).

(c) Subsection ~~[(4)]~~ (5)(a) does not apply to:

(i) ~~[fees]~~ a fee received by a trustee for the trustee acting as co-legal counsel, if the trustee is otherwise permitted by law to receive fees as co-legal counsel; or

(ii) a nonpreferred participation in net profits based upon an ownership interest or franchise relationship that is not otherwise prohibited by law.

~~[(5)]~~ (6) A trustee may not require the following to pay any costs that exceed the actual costs incurred by the trustee:

(a) a trustor reinstating or paying off a loan; or

(b) a beneficiary acquiring property through foreclosure.

~~[(6)]~~ (7) (a) A person that violates Subsection ~~[(4)]~~ (5) or ~~[(5)]~~ (6) is guilty of a class B misdemeanor.

(b) In addition to a person's liability under Subsection ~~[(6)]~~ (7)(a), if a person violates Subsection ~~[(4) or (5), that]~~ (5) or (6), the person is liable to the trustor for an amount equal to the greater of:

(i) the actual damages of the trustor as a result of the violation; or

(ii) \$1,000.

(c) In an action brought under Subsection ~~[(6)]~~ (7)(b), the party that does not prevail in

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the action that is brought under Subsection [(6)] (7)(b) shall pay the attorney fees of the prevailing party.

Section 2. Section 57-1-22 is amended to read:

57-1-22. Successor trustees -- Appointment by beneficiary -- Effect -- Substitution of trustee -- Recording -- Form.

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

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

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

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

(a) identify the trust deed by stating:

(i) the names of the original parties to the trust deed;

(ii) the date of recordation; and

(iii) (A) the book and page where the trust deed is recorded; or

(B) the entry number;

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

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

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

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

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

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

(ii) person who is a party to the trust deed to whom a copy of a notice of default would

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be required to be mailed by Subsection 57-1-26(3).

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

Substitution of Trustee

(insert name and address of new trustee)

is hereby appointed successor trustee under the trust deed executed by ____ as trustor, in which ____ is named beneficiary and ____ as trustee, and filed for record _____(month\day\year), and recorded in Book ____, Page ____, Records of ____ County, (or filed for record _____(month\day\year), with recorder's entry No. ____, ____ County), Utah.

(Insert legal description)

Signature _____

(Certificate of Acknowledgment)

(5) (a) A trustee of a trust deed may, in accordance with this Subsection (5), resign as trustee by filing for record in the office of the recorder of each county in which the trust property is located, a resignation of trustee.

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

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

"Resignation of Trustee

(Insert name and address of trustee) hereby resigns as trustee under the trust deed executed by (insert name of trustor) as trustor, in which (insert name of the beneficiary) is named beneficiary and (insert name of trustee) as trustee, and filed for record (insert the month, day, and year the trust deed was recorded), and recorded in Book ____, Page ____, Records of _____ County, (or with recorder's entry no. _____, _____ County), Utah.

(Insert legal description)

Signature _____

(Certificate of acknowledgment)"

(d) (i) Within three days after the day on which a trustee resigns under this Subsection (5), the trustee shall deliver written notice of the trustee's resignation to each party in any legal action pending against the trustee that is related to or arises from the trustee's performance of a

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duty of a trustee.

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

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

(iv) ~~{Subsections}~~ Subsection (5)(d)(ii) and (5)(d)(iii) do not apply to a cause of action against a trustee that alleges negligent or intentional misconduct~~;~~

Legislative Review Note

as of 2-27-13 3:20 PM

~~Office of Legislative Research and General Counsel;~~ by the withdrawn trustee.

(e) The withdrawal of a trustee of a trust deed under this section does not affect the validity of the trust deed.