

Senator Curtis S. Bramble proposes the following substitute bill:

SHORT SALE AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marc K. Roberts

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies provisions related to the reconveyance of a trust deed or release of a mortgage.

Highlighted Provisions:

This bill:

- ▶ provides that a title insurer or a title agent may reconvey a trust deed or release a mortgage if the beneficiary, mortgagee, or servicer agrees that partial payment of the obligation secured by the trust deed or by the mortgage is sufficient to reconvey the trust deed or to release the mortgage; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-1-40, as last amended by Laws of Utah 2006, Chapter 250

57-1-41, as enacted by Laws of Utah 1995, Chapter 185



26 57-1-42, as enacted by Laws of Utah 1995, Chapter 185



27
28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section 57-1-40 is amended to read:

30 **57-1-40. Reconveyance of trust deed or release of mortgage -- Procedures --**
31 **Forms.**

32 (1) A title insurer or title agent may reconvey a trust deed or release a mortgage in
33 accordance with the provisions of Subsections (2) through (6) if:

34 (a) the obligation secured by the trust deed or mortgage has been fully paid by the title
35 insurer or title agent; ~~[or]~~

36 (b) the obligation secured by the trust deed or mortgage has been partially paid by the
37 title insurer or title agent in an amount agreed to by the beneficiary, mortgagee, or servicer as
38 sufficient to release the mortgage or reconvey the trust deed; or

39 ~~[(b)] (c) the title insurer or title agent possesses satisfactory evidence [of the full~~
40 ~~payment of the obligation secured by a trust deed or mortgage] that an event described in either~~
41 ~~Subsection (1)(a) or (1)(b) has occurred.~~

42 (2) A title insurer or title agent may reconvey a trust deed or release a mortgage under
43 Subsection (1) regardless of whether the title insurer or title agent is named as a trustee under a
44 trust deed or has the authority to release a mortgage.

45 (3) ~~[At the time]~~ After the obligation secured by the trust deed or mortgage is paid in
46 full~~[-, or at any time thereafter]~~ or is partially paid as described in Subsection (1)(b), the title
47 insurer or title agent shall deliver a notice of intent to release or reconvey, as described in
48 Subsection (4), to the beneficiary, mortgagee, or servicer at:

49 (a) the address specified in the trust deed or mortgage;

50 (b) any address for the beneficiary or mortgagee specified in the last recorded
51 assignment of the trust deed or mortgage;

52 (c) any address for the beneficiary, mortgagee, or servicer specified in a request for
53 notice recorded under Section 57-1-26; or

54 (d) the address shown on any payoff statement received by the title insurer or agent
55 from the beneficiary, mortgagee, or servicer.

56 (4) The notice of intent to release or reconvey shall contain the name of the beneficiary

57 or mortgagee and the servicer if loan payments on the trust deed or mortgage are collected by a
58 servicer, the name of the title insurer or title agent, the date, and be substantially in the
59 following form:

60 NOTICE OF INTENT TO RELEASE OR RECONVEY

61 Notice is hereby given to you as follows:

62 1. This notice concerns the (trust deed or mortgage) described as follows:

63 (Trustor or Mortgagor): _____

64 (Beneficiary or Mortgagee): _____

65 Recording information: _____

66 Entry Number: _____

67 Book Number: _____

68 Page Number: _____

69 2. The undersigned claims [~~to have paid in full or possesses satisfactory evidence of~~
70 ~~the full payment of the obligation secured by the trust deed or mortgage described above~~] or
71 possesses satisfactory evidence that the obligation secured by the trust deed or mortgage was
72 paid in full or that the obligation secured by the trust deed or mortgage was partially paid in an
73 amount agreed to by the beneficiary, mortgagee, or servicer as sufficient to release the
74 mortgage or reconvey the trust deed.

75 3. The undersigned will fully release the mortgage or reconvey the trust deed described
76 in this notice unless, within 60 days from the date stated on this notice, the undersigned has
77 received by certified mail a notice stating that the obligation secured by the trust deed or
78 mortgage has not been paid in full [~~or that you otherwise object~~], that payment of an amount
79 less than the whole obligation was not agreed to or was not received by the beneficiary,
80 mortgagee, or servicer, or that the beneficiary, mortgagee, or servicer otherwise objects to the
81 release of the mortgage or the reconveyance of the trust deed. Notice shall be mailed to the
82 address stated on this form.

83 (Signature of title insurer or title agent)

84 (Address of title insurer or title agent)

85 (5) (a) If, within 60 days from the day on which the title insurer or title agent delivered
86 the notice of intent to release or reconvey in accordance with Subsections (3) and (4), a
87 reconveyance of trust deed or release of mortgage is not recorded, and the beneficiary,

88 mortgagee, or servicer does not send by certified mail to the title insurer or title agent a notice
89 that the obligation secured by the trust deed or mortgage has not been paid in full, that payment
90 of an amount less than the whole obligation was not agreed to or was not received by the
91 beneficiary, mortgagee, or servicer, or that the beneficiary, mortgagee, or servicer objects to the
92 release of the mortgage or reconveyance of the trust deed, the title insurer or title agent may
93 execute, acknowledge, and record a reconveyance of a trust deed or release of a mortgage.

94 (b) A reconveyance of a trust deed under Subsection (5)(a) shall be in substantially the
95 following form:

96 RECONVEYANCE OF TRUST DEED

97 (Name of title insurer or title agent), a (title insurer or title agent) authorized to conduct
98 business in the state does hereby reconvey, without warranty, the following trust property
99 located in (name of county) County, state of Utah, that is covered by a trust deed naming (name
100 of trustor) as trustor, and (name of beneficiary) as beneficiary and was recorded on (date) in
101 Book _____ at Page _____ as Entry Number _____: (insert a description of the
102 trust property.)

103 The undersigned title insurer or title agent certifies as follows:

104 1. The undersigned title insurer or title agent:

105 a. has fully paid the obligation secured by the trust deed [~~or~~];

106 b. has partially paid the obligation secured by the trust deed in an amount agreed to by
107 the beneficiary or servicer as sufficient to reconvey the trust deed;

108 c. possesses satisfactory evidence of [~~the~~] full payment of the obligation secured by the
109 trust deed[-]; or

110 d. possesses satisfactory evidence of partial payment of the obligation secured by the
111 trust deed in an amount agreed to by the beneficiary or servicer as sufficient to reconvey the
112 trust deed.

113 2. In accordance with the requirements of Utah Code Annotated Subsections
114 57-1-40(3) and (4), the title insurer or title agent delivered to the beneficiary or servicer, a
115 notice of intent to release or reconvey and a copy of the reconveyance.

116 3. The trust deed has not been reconveyed and the title insurer or title agent did not
117 receive, within 60 days from the day on which the title insurer or title agent delivered the notice
118 of intent to release or reconvey, a notice from the beneficiary or servicer sent by certified mail

119 that the obligation secured by the trust deed has not been paid in full, that payment of an
120 amount less than the whole obligation secured by the trust deed was not agreed to or was not
121 received by the beneficiary or servicer, or that the beneficiary or servicer objects to the
122 reconveyance of the trust deed.

123 _____
124 (Notarization) (Signature of title insurer or title agent)

125 (c) A release of a mortgage under Subsection (5)(a) shall be in substantially the
126 following form:

127 RELEASE OF MORTGAGE

128 (Name of title insurer or title agent), a (title insurer or title agent) authorized to conduct
129 business in the state does hereby release the mortgage on the following property located in
130 (name of county) County, state of Utah, that is covered by a mortgage naming (name of
131 mortgagor) as mortgagor, and (name of mortgagee) as mortgagee and was recorded on (date) in
132 Book _____ at Page _____ as Entry Number _____: (insert a description of the
133 trust property.)

134 The undersigned title insurer or title agent certifies as follows:

135 1. The undersigned title insurer or title agent:

136 a. has fully paid the obligation secured by the mortgage [~~or~~];

137 b. has partially paid the obligation secured by the mortgage in an amount agreed to by
138 the mortgagee or servicer as sufficient to release the mortgage;

139 c. possesses satisfactory evidence of [~~the~~] full payment of the obligation secured by the
140 mortgage[~~;~~]; or

141 d. possesses satisfactory evidence of partial payment of the obligation secured by the
142 mortgage in an amount agreed to by the mortgagee or servicer as sufficient to release the
143 mortgage.

144 2. In accordance with the requirements of Utah Code Annotated Subsections
145 57-1-40(3) and (4), the title insurer or title agent delivered to the mortgagee or servicer a notice
146 of intent to release or reconvey.

147 3. The mortgage has not been released and the title insurer or title agent did not
148 receive, within 60 days from the day on which the title insurer or title agent delivered the notice
149 of intent to release or reconvey, a notice from the mortgagee or servicer sent by certified mail

150 that the obligation secured by the mortgage has not been paid in full, that payment of an
151 amount less than the whole obligation secured by the mortgage was not agreed to or was not
152 received by the mortgagee or servicer, or that the mortgagee or servicer objects to the release of
153 the mortgage.

154 _____
155 (Notarization) (Signature of title insurer or title agent)

156 (d) (i) A release of mortgage or reconveyance of trust deed that is executed and
157 notarized in accordance with Subsection (5)(b) or (c) is entitled to recordation.

158 (ii) (A) Except as provided in Subsection (5)(d)(ii)(B), a reconveyance of a trust deed
159 or release of a mortgage that is recorded under Subsection (5)(d)(i) is valid regardless of any
160 deficiency in the release or reconveyance procedure not disclosed in the release of mortgage or
161 reconveyance of trust deed.

162 (B) If the title insurer's or title agent's signature on a release of mortgage or
163 reconveyance of trust deed recorded under Subsection (5)(d)(ii)(A) is forged, the release of
164 mortgage or reconveyance of trust deed is void.

165 (6) A release of mortgage or reconveyance of trust deed under this section does not, by
166 itself, discharge any promissory note or other obligation that was secured by the trust deed or
167 mortgage at the time the trust deed was reconveyed or the mortgage was released.

168 (7) This section does not limit or modify the application of Section 57-1-33.1.

169 Section 2. Section **57-1-41** is amended to read:

170 **57-1-41. Objections to reconveyance or release.**

171 A title insurer or title agent may not record a reconveyance of trust deed or release of
172 mortgage if, within 60 days from the day on which the title insurer or title agent delivered or
173 mailed the notice of intent to release or reconvey in accordance with Subsections 57-1-40(3)
174 and (4), the beneficiary, mortgagee, or servicer sends a notice that:

175 (1) the obligation secured by the trust deed or mortgage has not been paid in full [or];

176 (2) payment of an amount less than the whole obligation was not agreed to or was not
177 received by the beneficiary, mortgagee, or servicer; or

178 (3) the beneficiary, mortgagee, or servicer objects to the release of the mortgage or
179 reconveyance of the trust deed under Subsection 57-1-40(5)(a).

180 Section 3. Section **57-1-42** is amended to read:

181 **57-1-42. Liability of title insurer or title agent.**

182 A title insurer or title agent purporting to act under the provisions of Section 57-1-40
183 who reconveys a trust deed or releases a mortgage is liable to the beneficiary or mortgagee for
184 the damages suffered as a result of the reconveyance if:

185 (1) the obligation secured by the trust deed or mortgage [~~has~~]:

186 (a) has not been fully paid; [~~and~~] or

187 (b) has not been partially paid in an amount agreed to by the beneficiary, mortgagee, or
188 servicer as sufficient to release the mortgage or reconvey the trust deed; and

189 (2) (a) the title insurer or title agent failed to comply with the provisions of Sections
190 57-1-40 and 57-1-41; or

191 (b) the title insurer or title agent acted with gross negligence or in bad faith in
192 reconveying the trust deed.