

TRUST DEED FORECLOSURE AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: R. Curt Webb

LONG TITLE

General Description:

This bill amends the requirements related to trust deed foreclosures, including communications with a default trustor.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends the qualifications and obligations of a single point of contact;
- ▶ limits the requirements described in this bill to a beneficiary that is also a financial institution;
- ▶ clarifies the requirements of the written notice that a beneficiary or servicer must give to a default trustor;
- ▶ clarifies the relationship between federal law and Section 57-1-24.3;
- ▶ provides that, under certain circumstances, failure to comply with a requirement of Section 57-1-24.3 does not affect the validity of a trustee's sale to a beneficiary; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **57-1-24.3**, as last amended by Laws of Utah 2013, Chapter 278



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

32 Section 1. Section **57-1-24.3** is amended to read:

33 **57-1-24.3. Notices to default trustor -- Opportunity to negotiate foreclosure relief.**

34 (1) As used in this section:

35 (a) "Beneficiary" means a financial institution that is the record owner of the beneficial
36 interest under a trust deed, including a successor in interest.

37 (b) "Current address" means the address at which a person has agreed or requested to
38 receive notices.

39 [~~a~~] (c) "Default trustor" means a trustor under a trust deed that secures a loan that the
40 beneficiary or servicer claims is in default.

41 (d) "Financial institution" means:

42 (i) a state or federally chartered:

43 (A) bank;

44 (B) savings and loan association;

45 (C) savings bank;

46 (D) industrial bank; or

47 (E) credit union; or

48 (ii) any other entity under the jurisdiction of the commissioner of financial institutions
49 as provided in Title 7, Financial Institutions Act.

50 [~~b~~] (e) "Foreclosure relief" means a mortgage modification program or other
51 foreclosure relief option offered by a beneficiary or servicer.

52 [~~c~~] (f) "Loan" means an obligation incurred for personal, family, or household
53 purposes, evidenced by a promissory note or other credit agreement for which a trust deed
54 encumbering owner-occupied residential property is given as security.

55 [~~d~~] (g) "Owner-occupied residential property" means real property that is occupied by
56 its owner as the owner's primary residence.

57 [~~e~~] (h) "Servicer" means an entity, retained by the beneficiary:

58 (i) for the purpose of receiving a scheduled periodic payment from a borrower pursuant

59 to the terms of a loan; or

60 (ii) that meets the definition of servicer under 12 U.S.C. Sec. 2605(i)(2) with respect to
61 residential mortgage loans.

62 ~~[(f)]~~ (i) "Single point of contact" means a person who, as the designated representative
63 of the beneficiary or servicer, is authorized to:

64 (i) coordinate and ensure effective communication with a default trustor concerning:

65 (A) foreclosure proceedings initiated by the beneficiary or servicer relating to the trust
66 property; and

67 (B) any foreclosure relief offered by or acceptable to the beneficiary or servicer; and

68 (ii) ~~[direct]~~ represent the beneficiary or servicer with respect to all foreclosure
69 proceedings initiated by the beneficiary or servicer relating to the trust property, including:

70 (A) the filing of a notice of default under Section 57-1-24 and any cancellation of a
71 notice of default;

72 (B) the publication of a notice of trustee's sale under Section 57-1-25; and

73 (C) the postponement of a trustee's sale under Section 57-1-27 or this section.

74 (2) (a) Before a notice of default is filed for record under Section 57-1-24, a beneficiary
75 or servicer shall:

76 (i) designate a single point of contact; and

77 (ii) send written notice ~~[by United States mail]~~ to the default trustor at the default
78 trustor's current address or, if none is provided, the address of the property described in the
79 trust deed.

80 (b) A notice under Subsection (2)(a)(ii) shall:

81 (i) advise the default trustor of the intent of the beneficiary or servicer to file a notice of
82 default;

83 (ii) state:

84 (A) the nature of the default;

85 (B) the total amount the default trustor is required to pay in order to cure the default
86 and avoid the filing of a notice of default, itemized by the type and amount of each component
87 part of the total cure amount; and

88 (C) ~~[the date]~~ a date, not fewer than 30 days after the day on which the beneficiary or
89 servicer sends the notice, by which the default trustor ~~[is required to]~~ must pay the amount to

90 cure the default and avoid the filing of a notice of default;

91 (iii) disclose the name, telephone number, email address, and mailing address of the
92 single point of contact designated by the beneficiary or servicer; and

93 (iv) direct the default trustor to contact the single point of contact regarding foreclosure
94 relief available through the beneficiary or servicer for which a default trustor may apply, if the
95 beneficiary or servicer offers foreclosure relief.

96 (3) Before the expiration of the three-month period described in Subsection 57-1-24(2),
97 a default trustor may apply directly with the single point of contact for any available
98 foreclosure relief.

99 (4) A default trustor shall, within the time required by the beneficiary or servicer,
100 provide all financial and other information requested by the single point of contact to enable
101 the beneficiary or servicer to determine whether the default trustor qualifies for the foreclosure
102 relief for which the default trustor applies.

103 (5) The single point of contact shall:

104 (a) inform the default trustor about and make available to the default trustor any
105 available foreclosure relief;

106 (b) undertake reasonable and good faith efforts, consistent with applicable law, to
107 consider the default trustor for foreclosure relief for which the default trustor is eligible;

108 (c) ensure timely and appropriate communication with the default trustor concerning
109 foreclosure relief for which the default trustor applies; and

110 (d) notify the default trustor by [~~United States mail~~] written notice of the decision of
111 the beneficiary or servicer regarding the foreclosure relief for which the default trustor applies.

112 (6) Notice of a trustee's sale may not be given under Section 57-1-25 with respect to
113 the trust property of a default trustor who has applied for foreclosure relief until after the single
114 point of contact provides the notice required by Subsection (5)(d).

115 (7) A beneficiary or servicer may cause a notice of a trustee's sale to be given with
116 respect to the trust property of a default trustor who has applied for foreclosure relief if, in the
117 exercise of the sole discretion of the beneficiary or servicer, the beneficiary or servicer:

118 (a) determines that the default trustor does not qualify for the foreclosure relief for
119 which the default trustor has applied; or

120 (b) elects not to enter into a written agreement with the default trustor to implement the

121 foreclosure relief.

122 (8) (a) A beneficiary or servicer may postpone a trustee's sale of the trust property in
123 order to allow further time for negotiations relating to foreclosure relief.

124 (b) A postponement of a trustee's sale under Subsection (8)(a) does not require the
125 trustee to file for record a new or additional notice of default under Section 57-1-24.

126 (9) A beneficiary or servicer shall cause the cancellation of a notice of default filed
127 under Section 57-1-24 on the trust property of a default trustor if the beneficiary or servicer:

128 (a) determines that the default trustor qualifies for the foreclosure relief for which the
129 default trustor has applied; and

130 (b) enters into a written agreement with the default trustor to implement the foreclosure
131 relief.

132 (10) This section may not be construed to require a beneficiary or servicer to:

133 (a) establish foreclosure relief; or

134 (b) approve an application for foreclosure relief submitted by a default trustor.

135 (11) A beneficiary and servicer shall each take reasonable measures to ensure that their
136 respective practices in the foreclosure of owner-occupied residential property and any
137 foreclosure relief with respect to a loan:

138 (a) comply with all applicable federal and state fair lending statutes; and

139 (b) ensure appropriate treatment of default trustors in the foreclosure process.

140 [~~(12) This section does not apply if the beneficiary under a trust deed securing a loan is~~
141 ~~an individual.~~]

142 [~~(13)~~] (12) A beneficiary or servicer is considered to have complied with the
143 requirements of this section if the beneficiary or servicer designates and uses [~~a single point of~~
144 ~~contact~~] assigned personnel in compliance with 12 C.F.R. 1024, Real Estate Settlement
145 Procedures Act, or other federal law, rules, regulations, guidance, or guidelines governing the
146 beneficiary or servicer and issued by, as applicable, the Board of Governors of the Federal
147 Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of
148 the Currency, the National Credit Union Administration, or the Consumer Financial Protection
149 Bureau.

150 [~~(14)~~] (13) The failure of a beneficiary or servicer to comply with a requirement of this
151 section does not affect the validity of a trustee's sale of the trust property to:

152 (a) a bona fide purchaser[-]; or

153 (b) a beneficiary of the trust deed after ~~the beneficiary sells~~ the trust property

153a ~~is sold~~ to a bona

154 fide purchaser.

154a ~~H~~ (14) Subsection (13) does not affect:

154b (a) a beneficiary's or a servicer's liability under applicable law; or

154c (b) a default trustor's right to pursue other available remedies, including money

154d damages, against a beneficiary or a servicer. ~~H~~

Legislative Review Note
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Office of Legislative Research and General Counsel