

1 **ASSESSMENT AREA FORECLOSURE AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: R. Curt Webb**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

9 This bill amends foreclosure provisions in the Assessment Area Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies the methods by which a local entity may enforce an assessment lien; and
- 13 ▶ makes technical and conforming changes.

14 **Money Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 None

18 **Utah Code Sections Affected:**

19 AMENDS:

20 **11-42-202**, as last amended by Laws of Utah 2015, Chapters 349 and 396

21 **11-42-207**, as last amended by Laws of Utah 2015, Chapter 396

22 **11-42-502**, as enacted by Laws of Utah 2007, Chapter 329

23 ENACTS:

24 **11-42-502.1**, Utah Code Annotated 1953

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

27 Section 1. Section **11-42-202** is amended to read:

28 **11-42-202. Requirements applicable to a notice of a proposed assessment area**
29 **designation.**

- 30 (1) Each notice required under Subsection 11-42-201(2)(a) shall:
- 31 (a) state that the local entity proposes to:
- 32 (i) designate one or more areas within the local entity's jurisdictional boundaries as an
- 33 assessment area;
- 34 (ii) provide an improvement to property within the proposed assessment area; and
- 35 (iii) finance some or all of the cost of improvements by an assessment on benefitted
- 36 property within the assessment area;
- 37 (b) describe the proposed assessment area by any reasonable method that allows an
- 38 owner of property in the proposed assessment area to determine that the owner's property is
- 39 within the proposed assessment area;
- 40 (c) describe, in a general and reasonably accurate way, the improvements to be
- 41 provided to the assessment area, including:
- 42 (i) the nature of the improvements; and
- 43 (ii) the location of the improvements, by reference to streets or portions or extensions
- 44 of streets or by any other means that the governing body chooses that reasonably describes the
- 45 general location of the improvements;
- 46 (d) state the estimated cost of the improvements as determined by a project engineer;
- 47 (e) for the version of notice mailed in accordance with Subsection (4)(b), state the
- 48 estimated total assessment specific to the benefitted property for which the notice is mailed;
- 49 (f) state that the local entity proposes to levy an assessment on benefitted property
- 50 within the assessment area to pay some or all of the cost of the improvements according to the
- 51 estimated benefits to the property from the improvements;
- 52 (g) if applicable, state that an unassessed benefitted government property will receive
- 53 improvements for which the cost will be allocated proportionately to the remaining benefitted
- 54 properties within the proposed assessment area and that a description of each unassessed
- 55 benefitted government property is available for public review at the location or website
- 56 described in Subsection (6);
- 57 (h) state the assessment method by which the governing body proposes to levy the

58 assessment, including, if the local entity is a municipality or county, whether the assessment
59 will be collected:

- 60 (i) by directly billing a property owner; or
- 61 (ii) by inclusion on a property tax notice issued in accordance with Section 59-2-1317
62 and in compliance with Section 11-42-401;

- 63 (i) state:
 - 64 (i) the date described in Section 11-42-203 and the location at which protests against
65 designation of the proposed assessment area or of the proposed improvements are required to
66 be filed;

- 67 (ii) the method by which the governing body will determine the number of protests
68 required to defeat the designation of the proposed assessment area or acquisition or
69 construction of the proposed improvements; and

- 70 (iii) in large, boldface, and conspicuous type that a property owner must protest the
71 designation of the assessment area in writing if the owner objects to the area designation or
72 being assessed for the proposed improvements, operation and maintenance costs, or economic
73 promotion activities;

- 74 (j) state the date, time, and place of the public hearing required in Section 11-42-204;
- 75 (k) if the governing body elects to create and fund a reserve fund under Section
76 11-42-702, include a description of:

- 77 (i) how the reserve fund will be funded and replenished; and
- 78 (ii) how remaining money in the reserve fund is to be disbursed upon full payment of
79 the bonds;

- 80 (l) if the governing body intends to designate a voluntary assessment area, include a
81 property owner consent form that:

- 82 (i) estimates the total assessment to be levied against the particular parcel of property;
- 83 (ii) describes any additional benefits that the governing body expects the assessed
84 property to receive from the improvements; ~~and~~

- 85 (iii) designates the date and time by which the fully executed consent form is required

86 to be submitted to the governing body; and

87 (iv) if the governing body intends to enforce an assessment lien on the property in
88 accordance with Subsection 11-42-502.1(2)(c):

89 (A) appoints a trustee that satisfies the requirements described in Section 57-1-21;

90 (B) gives the trustee the power of sale; and

91 (C) explains that if an assessment or an installment of an assessment is not paid when
92 due, the local entity may sell the property owner's property to satisfy the amount due plus
93 interest, penalties, and costs, in the manner described in Title 57, Chapter 1, Conveyances;

94 (m) if the local entity intends to levy an assessment to pay operation and maintenance
95 costs or for economic promotion activities, include:

96 (i) a description of the operation and maintenance costs or economic promotion
97 activities to be paid by assessments and the initial estimated annual assessment to be levied;

98 (ii) a description of how the estimated assessment will be determined;

99 (iii) a description of how and when the governing body will adjust the assessment to
100 reflect the costs of:

101 (A) in accordance with Section 11-42-406, current economic promotion activities; or

102 (B) current operation and maintenance costs;

103 (iv) a description of the method of assessment if different from the method of
104 assessment to be used for financing any improvement; and

105 (v) a statement of the maximum number of years over which the assessment will be
106 levied for:

107 (A) operation and maintenance costs; or

108 (B) economic promotion activities;

109 (n) if the governing body intends to divide the proposed assessment area into
110 classifications under Subsection 11-42-201(1)(b), include a description of the proposed
111 classifications;

112 (o) if applicable, state the portion and value of the improvement that will be increased
113 in size or capacity to serve property outside of the assessment area and how the increases will

114 be financed; and

115 (p) state whether the improvements will be financed with a bond and, if so, the
116 currently estimated interest rate and term of financing, subject to Subsection (2), for which the
117 benefitted properties within the assessment area may be obligated.

118 (2) The estimated interest rate and term of financing in Subsection (1)(p) may not be
119 interpreted as a limitation to the actual interest rate incurred or the actual term of financing as
120 subject to the market rate at the time of the issuance of the bond.

121 (3) A notice required under Subsection 11-42-201(2)(a) may contain other information
122 that the governing body considers to be appropriate, including:

123 (a) the amount or proportion of the cost of the improvement to be paid by the local
124 entity or from sources other than an assessment;

125 (b) the estimated total amount of each type of assessment for the various improvements
126 to be financed according to the method of assessment that the governing body chooses; and

127 (c) provisions for any improvements described in Subsection 11-42-102(25)(a)(ii).

128 (4) Each notice required under Subsection 11-42-201(2)(a) shall:

129 (a) (i) (A) be published in a newspaper of general circulation within the local entity's
130 jurisdictional boundaries, once a week for four consecutive weeks, with the last publication at
131 least five but not more than 20 days before the day of the hearing required in Section
132 11-42-204; or

133 (B) if there is no newspaper of general circulation within the local entity's jurisdictional
134 boundaries, be posted in at least three public places within the local entity's jurisdictional
135 boundaries at least 20 but not more than 35 days before the day of the hearing required in
136 Section 11-42-204; and

137 (ii) be published on the Utah Public Notice Website described in Section 63F-1-701 for
138 four weeks before the deadline for filing protests specified in the notice under Subsection
139 (1)(i); and

140 (b) be mailed, postage prepaid, within 10 days after the first publication or posting of
141 the notice under Subsection (4)(a) to each owner of property to be assessed within the proposed

142 assessment area at the property owner's mailing address.

143 (5) (a) The local entity may record the version of the notice that is published or posted
144 in accordance with Subsection (4)(a) with the office of the county recorder, by legal description
145 and tax identification number as identified in county records, against the property proposed to
146 be assessed.

147 (b) The notice recorded under Subsection (5)(a) expires and is no longer valid one year
148 after the day on which the local entity records the notice if the local entity has failed to adopt
149 the designation ordinance or resolution under Section 11-42-201 designating the assessment
150 area for which the notice was recorded.

151 (6) A local entity shall make available on the local entity's website, or, if no website is
152 available, at the local entity's place of business, the address and type of use of each unassessed
153 benefitted government property described in Subsection (1)(g).

154 (7) If a governing body fails to provide actual or constructive notice under this section,
155 the local entity may not assess a levy against a benefitted property omitted from the notice
156 unless:

157 (a) the property owner gives written consent;

158 (b) the property owner received notice under Subsection 11-42-401(2)(a)(iii) and did
159 not object to the levy of the assessment before the final hearing of the board of equalization; or

160 (c) the benefitted property is conveyed to a subsequent purchaser and, before the date
161 of conveyance, the requirements of Subsections 11-42-206(3)(a)(i) and (ii), or, if applicable,
162 Subsection 11-42-207(1)(d)(i) are met.

163 Section 2. Section 11-42-207 is amended to read:

164 **11-42-207. Adding property to an assessment area.**

165 (1) A local entity may add to a designated assessment area property to be benefitted
166 and assessed if the governing body:

167 (a) finds that the inclusion of the property will not adversely affect the owners of
168 property already in the assessment area;

169 (b) obtains from each owner of property to be added and benefitted a written consent

170 that contains:

171 (i) the owner's consent to:

172 (A) the owner's property being added to the assessment area; and

173 (B) the making of the proposed improvements with respect to the owner's property;

174 (ii) if the assessment area to which the local entity seeks to add property is a voluntary

175 assessment area, the items described in Subsection [11-42-202\(1\)\(1\)](#);

176 [~~(ii)~~] (iii) the legal description and tax identification number of the property to be

177 added; and

178 [~~(iii)~~] (iv) the owner's waiver of any right to protest the creation of the assessment area;

179 (c) amends the designation resolution or ordinance to include the added property; and

180 (d) within 15 days after amending the designation resolution or ordinance:

181 (i) records in the office of the recorder of the county in which the added property is

182 located the original or certified copy of the amended designation resolution or ordinance

183 containing the legal description and tax identification number as identified on county records of

184 each additional parcel of property added to the assessment area and proposed to be assessed;

185 and

186 (ii) gives written notice to the property owner of the inclusion of the owner's property

187 in the assessment area.

188 (2) (a) If a governing body fails to comply with the requirements of Subsection

189 (1)(d)(i):

190 (i) the failure does not invalidate the amended designation resolution or ordinance; and

191 (ii) the local entity may not assess a levy against a subsequent purchaser of a benefitted

192 property that lacked recorded notice unless:

193 (A) the subsequent purchaser gives written consent;

194 (B) the subsequent purchaser has actual notice of the assessment levy; or

195 (C) the subsequent purchaser purchased the property after a corrected notice was filed

196 under Subsection (2)(c).

197 (b) The governing body may file a corrected notice under Subsection (1)(d)(i) if it

198 failed to comply with the date or other requirements for recording notice of the amended
199 designation resolution or ordinance.

200 (c) If a governing body has filed a corrected notice under Subsection (2)(b), the local
201 entity may not retroactively collect or adjust the amount of the levy to recapture lost funds for a
202 levy that the local entity was prohibited from collecting, if applicable, under Subsection (2)(a).

203 (d) A local entity shall pay for a shortfall in assessment funds created under Subsection
204 (2)(a) or (c) from the local entity's general fund and not by increasing or adjusting the
205 assessment of any other property within the assessment area.

206 (3) Except as provided in this section, a local entity may not add to an assessment area
207 property not included in a notice under Section 11-42-202, or provide for making
208 improvements that are not stated in the notice, unless the local entity gives notice as provided
209 in Section 11-42-202 and holds a hearing as required under Section 11-42-204 as to the added
210 property or additional improvements.

211 Section 3. Section 11-42-502 is amended to read:

212 **11-42-502. Enforcement of an assessment lien -- Pre-May 10, 2016, procedure.**

213 (1) The provisions of this section apply to any property that is:

214 (a) (i) located within the boundaries of an assessment area; and

215 (ii) the subject of a foreclosure procedure initiated before May 10, 2016, for an
216 assessment or an installment of an assessment that is not paid when due; or

217 (b) located within the boundaries of an assessment area for which the local entity
218 issued an assessment bond or a refunding assessment bond:

219 (i) before May 10, 2016;

220 (ii) that has not reached final maturity; and

221 (iii) that is not refinanced on or after May 10, 2016.

222 ~~(1)~~ (2) If an assessment or an installment of an assessment is not paid when due, the
223 local entity may sell the property on which the assessment has been levied for the amount due
224 plus interest, penalties, and costs, in the manner provided:

225 (a) by resolution or ordinance of the local entity;

226 (b) in Title 59, Chapter 2, Part 13, Collection of Taxes, for the sale of property for
227 delinquent general property taxes; or

228 (c) in Title 57, Chapter 1, Conveyances, as though the property were the subject of a
229 trust deed in favor of the local entity.

230 ~~[(2)]~~ (3) Except as ~~[modified by]~~ otherwise provided in this chapter, each tax sale
231 under Subsection ~~[(+)]~~ (2)(b) shall be governed by Title 59, Chapter 2, Part 13, Collection of
232 Taxes, to the same extent as if the sale were for the sale of property for delinquent general
233 property taxes.

234 ~~[(3)]~~ (4) (a) In a foreclosure under Subsection ~~[(+)]~~ (2)(c):

235 (i) the local entity may bid at the sale;

236 (ii) the local entity's governing body shall designate a trustee satisfying the
237 requirements of Section 57-1-21;

238 (iii) each trustee designated under Subsection ~~[(3)]~~ (4)(a)(ii) has a power of sale with
239 respect to the property that is the subject of the delinquent assessment lien;

240 (iv) the property that is the subject of the delinquent assessment lien is considered to
241 have been conveyed to the trustee, in trust, for the sole purpose of permitting the trustee to
242 exercise the trustee's power of sale under Subsection ~~[(3)]~~ (4)(a)(iii);

243 (v) if no one bids at the sale and pays the local entity the amount due on the
244 assessment, plus interest and costs, the property is considered sold to the local entity for those
245 amounts; and

246 (vi) the local entity's chief financial officer may substitute and appoint one or more
247 successor trustees, as provided in Section 57-1-22.

248 (b) The designation of a trustee under Subsection ~~[(3)]~~ (4)(a)(ii) shall be disclosed in
249 the notice of default that the trustee gives to commence the foreclosure, and need not be stated
250 in a separate instrument.

251 ~~[(4)]~~ (5) (a) The redemption of property that is the subject of a tax sale under
252 Subsection ~~[(+)]~~ (2)(b) is governed by Title 59, Chapter 2, Part 13, Collection of Taxes.

253 (b) The redemption of property that is the subject of a foreclosure proceeding under

254 Subsection ~~[(1)]~~ (2)(c) is governed by Title 57, Chapter 1, Conveyances.

255 ~~[(5)]~~ (6) (a) The remedies ~~[provided for]~~ described in this part for the collection of an
256 assessment and the enforcement of an assessment lien are cumulative.

257 (b) The use of one or more of the remedies ~~[provided for]~~ described in this part ~~[may~~
258 ~~not be considered to]~~ does not deprive the local entity of any other available remedy or means
259 of collecting the assessment or enforcing the assessment lien.

260 Section 4. Section **11-42-502.1** is enacted to read:

261 **11-42-502.1. Enforcement of an assessment lien -- Post-May 10, 2016, procedure.**

262 (1) (a) Except as provided in Subsection (1)(b), the provisions of this section apply to
263 any property that is:

264 (i) located within the boundaries of an assessment area; and

265 (ii) the subject of a foreclosure procedure initiated on or after May 10, 2016, for an
266 assessment or an installment of an assessment that is not paid when due.

267 (b) The provisions of this chapter do not apply to property described in Subsection
268 11-42-502(1)(b).

269 (2) If an assessment or an installment of an assessment is not paid when due, the local
270 entity may sell the property on which the assessment has been levied for the amount due plus
271 interest, penalties, and costs:

272 (a) in the manner provided in Title 59, Chapter 2, Part 13, Collection of Taxes, for the
273 sale of property for delinquent general property taxes;

274 (b) by judicial foreclosure; or

275 (c) in the manner described in Title 57, Chapter 1, Conveyances, if:

276 (i) the property is in a voluntary assessment area; and

277 (ii) the owner of record of the property at the time the local entity initiates the process
278 to sell the property in accordance with Title 57, Chapter 1, Conveyances, executed a property
279 owner's consent form described in Subsection 11-42-202(1)(l) that includes a provision
280 described in Subsection 11-42-202(1)(l)(iv).

281 (3) Except as otherwise provided in this chapter, each tax sale under Subsection (2)(a)

282 shall be governed by Title 59, Chapter 2, Part 13, Collection of Taxes, to the same extent as if
283 the sale were for the sale of property for delinquent general property taxes.

284 (4) (a) The redemption of property that is the subject of a tax sale under Subsection
285 (2)(a) is governed by Title 59, Chapter 2, Part 13, Collection of Taxes.

286 (b) The redemption of property that is the subject of a judicial foreclosure proceeding
287 under Subsection (2)(b) is governed by Title 78B, Chapter 6, Part 9, Mortgage Foreclosure.

288 (c) The redemption of property that is the subject of a foreclosure proceeding under
289 Subsection (2)(c) is governed by Title 57, Chapter 1, Conveyances.

290 (5) (a) The remedies described in this part for the collection of an assessment and the
291 enforcement of an assessment lien are cumulative.

292 (b) The use of one or more of the remedies described in this part does not deprive the
293 local entity of any other available remedy or means of collecting the assessment or enforcing
294 the assessment lien.