

FORECLOSURE OF RESIDENTIAL RENTAL PROPERTY

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Steve Eliason

LONG TITLE

Committee Note:

The Business and Labor Interim Committee recommended this bill.

General Description:

This bill enacts and amends provisions related to foreclosure of residential rental property.

Highlighted Provisions:

This bill:

- ▶ under certain circumstances, allows a preexisting tenant to continue to occupy, for a limited amount of time, a residential rental property after a forced sale at public auction;
- ▶ repeals a sunset provision; and
- ▶ eliminates a sunset repeal date.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-1-25, as last amended by Laws of Utah 2011, Chapter 228

63I-1-257, as last amended by Laws of Utah 2015, Chapter 233



28 **78B-6-802**, as last amended by Laws of Utah 2010, Chapter 66

29 **78B-6-901.5**, as enacted by Laws of Utah 2010, Chapter 66

30 ENACTS:

31 **57-1-25.5**, Utah Code Annotated 1953

32 **78B-6-802.7**, Utah Code Annotated 1953



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

35 Section 1. Section **57-1-25** is amended to read:

36 **57-1-25. Notice of trustee's sale -- Description of property -- Time and place of**
37 **sale.**

38 (1) The trustee shall give written notice of the time and place of sale particularly
39 describing the property to be sold:

40 (a) by publication of the notice:

41 (i) (A) at least three times;

42 (B) at least once a week for three consecutive weeks;

43 (C) the last publication to be at least 10 days but not more than 30 days before the date
44 the sale is scheduled; and

45 (D) in a newspaper having a general circulation in each county in which the property to
46 be sold, or some part of the property to be sold, is situated; and

47 (ii) in accordance with Section **45-1-101** for 30 days before the date the sale is
48 scheduled;

49 (b) by posting the notice:

50 (i) at least 20 days before the date the sale is scheduled; and

51 (ii) (A) in some conspicuous place on the property to be sold; and

52 (B) at the office of the county recorder of each county in which the trust property, or
53 some part of it, is located; and

54 (c) if the stated purpose of the obligation for which the trust deed was given as security
55 is to finance residential rental property:

56 (i) by posting the notice, including the statement required under Subsection (3)(b):

57 (A) on the primary door of each dwelling unit on the property to be sold, if the property
58 to be sold has fewer than nine dwelling units; or

59 (B) in at least two conspicuous places on the property to be sold, in addition to the
60 posting required under Subsection (1)(b)(ii)(A), if the property to be sold has nine or more
61 dwelling units; or

62 (ii) by mailing the notice, including the statement required under Subsection (3)(b), to
63 the occupant of each dwelling unit on the property to be sold.

64 (2) (a) The sale shall be held at the time and place designated in the notice of sale.

65 (b) The time of sale shall be between the hours of 8 a.m. and 5 p.m.

66 (c) The place of sale shall be clearly identified in the notice of sale under Subsection
67 (1) and shall be at a courthouse serving the county in which the property to be sold, or some
68 part of the property to be sold, is located.

69 (3) (a) The notice of sale shall be in substantially the following form:

70 Notice of Trustee's Sale

71 The following described property will be sold at public auction to the highest bidder,
72 payable in lawful money of the United States at the time of sale, at (insert location of sale)
73 _____ on _____ (month\day\year), at __.m. of said day, for the purpose of
74 foreclosing a trust deed originally executed by ____ (and ____, his wife,) as trustors, in favor
75 of ____, covering real property located at ____, and more particularly described as:

76 (Insert legal description)

77 The current beneficiary of the trust deed is _____ and the record
78 owners of the property as of the recording of the notice of default are _____ and
79 _____.

80 Dated _____ (month\day\year).

81 _____
Trustee

82 (b) If the stated purpose of the obligation for which the trust deed was given as security
83 is to finance residential rental property, the notice required under Subsection (1)(c) shall
84 include a statement, in at least 14-point font, substantially as follows:

85 "Notice to Tenant

86 As stated in the accompanying Notice of Trustee's Sale, this property is scheduled to be
87 sold at public auction to the highest bidder unless the default in the obligation secured by this
88 property is cured. If the property is sold, you may be allowed under [~~federal law~~] Utah Code
89 Section 57-1-25.5 to continue to occupy your rental unit until your rental agreement expires, or

90 until 90 days after the date you are served with a notice to vacate, whichever is later. If your
91 rental or lease agreement expires after the 90-day period, you may need to provide a copy of
92 your rental or lease agreement to the new owner to prove your right to remain on the property
93 longer than 90 days after the sale of the property.

94 You must continue to pay your rent and comply with other requirements of your rental
95 or lease agreement or you will be subject to eviction for violating your rental or lease
96 agreement.

97 The new owner or the new owner's representative will probably contact you after the
98 property is sold with directions about where to pay rent.

99 The new owner of the property may or may not want to offer to enter into a new rental
100 or lease agreement with you at the expiration of the period described above."

101 (4) The failure to provide notice as required under Subsections (1)(c) and (3)(b) or a
102 defect in that notice may not be the basis for challenging or invalidating a trustee's sale.

103 (5) A trustee qualified under Subsection 57-1-21(1)(a)(i) or (iv) who exercises a power
104 of sale has a duty to the trustor not to defraud, or conspire or scheme to defraud, the trustor.

105 Section 2. Section 57-1-25.5 is enacted to read:

106 **57-1-25.5. Foreclosure of residential rental property -- Effect on tenancy.**

107 (1) As used in this section:

108 (a) "Bona fide residential rental agreement" means an agreement, for a property
109 secured by a trust deed:

110 (i) that was the result of an arm's-length transaction;

111 (ii) established before:

112 (A) the trustee records a notice of default for the property under Section 57-1-24; or

113 (B) the trustee or beneficiary files an action to foreclose the trust property under Title

114 78B, Chapter 6, Part 9, Mortgage Foreclosure;

115 (iii) that provides an individual the right to exclusive use and occupancy of the
116 residential property:

117 (A) on an at-will basis; or

118 (B) for a period specified by the agreement; and

119 (iv) that requires the individual to pay rent in an amount that:

120 (A) is not substantially less than fair market rent for the property; or

- 121 (B) is less than fair market rent due to a federal, state, or local subsidy.
- 122 (b) "Bona fide tenant" means an individual who:
- 123 (i) has the right to occupy a residential property under a bona fide residential rental
- 124 agreement;
- 125 (ii) is not the trustor; and
- 126 (iii) is not the trustor's child, spouse, or parent.
- 127 (c) "Foreclosed rental property" means a property that:
- 128 (i) is the subject of a bona fide residential rental agreement; and
- 129 (ii) (A) is the subject of a trustee's sale as provided in this chapter; or
- 130 (B) is foreclosed under Title 78B, Chapter 6, Part 9, Mortgage Foreclosure.
- 131 (d) "New owner" means the immediate successor in interest of a foreclosed rental
- 132 property following a foreclosure or trustee's sale of the property.
- 133 (2) (a) Except as provided in Subsection (2)(b), a new owner assumes ownership of a
- 134 foreclosed rental property subject to a bona fide tenant's right to occupy the foreclosed rental
- 135 property:
- 136 (i) according to the terms of a bona fide residential rental agreement; and
- 137 (ii) until the end of the term of the bona fide residential rental agreement.
- 138 (b) Subject to Subsection (3), a new owner who intends to occupy a foreclosed rental
- 139 property as the new owner's primary residence may terminate:
- 140 (i) the bona fide residential rental agreement; and
- 141 (ii) the bona fide tenant's occupancy of the foreclosed rental property.
- 142 (3) (a) A new owner who terminates a bona fide tenant's occupancy of a foreclosed
- 143 rental property shall serve, to the bona fide tenant, a notice to vacate:
- 144 (i) at least 90 days before the day on which the new owner requires the bona fide tenant
- 145 to vacate the foreclosed rental property; and
- 146 (ii) as provided in Section [57-1-25](#).
- 147 (b) A notice to vacate under Subsection (3)(a) shall:
- 148 (i) be in at least 14-point font;
- 149 (ii) state the new owner's name, address, and contact information;
- 150 (iii) explain the reason the new owner requires the bona fide tenant to vacate the rental
- 151 property;

152 (iv) state the date on which the bona fide tenant is required to vacate the rental
153 property; and

154 (v) refer to this section as the law under which the notice to vacate is provided.

155 (4) This section does not modify the requirements for termination of a federally
156 subsidized tenancy.

157 Section 3. Section **63I-1-257** is amended to read:

158 **63I-1-257. Repeal dates, Title 57.**

159 [~~(1) Subsections 57-1-25(1)(c), (3)(b), and (4) are repealed December 31, 2016.~~]

160 [~~(2)~~] (1) Subsection 57-16-4(12), on July 1, 2017, is modified to read as follows:

161 "(12) The mobile home park shall have a copy of this chapter posted at all times in a
162 conspicuous place in a common area of the mobile home park."

163 [~~(3)~~] (2) Title 57, Chapter 16a, Mobile Home Park Helpline, is repealed July 1, 2017.

164 Section 4. Section **78B-6-802** is amended to read:

165 **78B-6-802. Unlawful detainer by tenant for a term less than life.**

166 (1) A tenant holding real property for a term less than life, is guilty of an unlawful
167 detainer if the tenant:

168 (a) except as provided in Subsection (1)(i), continues in possession, in person or by
169 subtenant, of the property or any part of it, after the expiration of the specified term or period
170 for which it is let to him, which specified term or period, whether established by express or
171 implied contract, or whether written or parol, shall be terminated without notice at the
172 expiration of the specified term or period;

173 (b) having leased real property for an indefinite time with monthly or other periodic
174 rent reserved and except as provided in Subsection (1)(i):

175 (i) continues in possession of it in person or by subtenant after the end of any month or
176 period, in cases where the owner, the owner's designated agent, or any successor in estate of the
177 owner, 15 calendar days or more prior to the end of that month or period, has served notice
178 requiring the tenant to quit the premises at the expiration of that month or period; or

179 (ii) in cases of tenancies at will, remains in possession of the premises after the
180 expiration of a notice of not less than five calendar days;

181 (c) continues in possession, in person or by subtenant, after default in the payment of
182 any rent or other amounts due and after a notice in writing requiring in the alternative the

183 payment of the rent and other amounts due or the surrender of the detained premises, has
184 remained uncomplied with for a period of three calendar days after service, which notice may
185 be served at any time after the rent becomes due;

186 (d) assigns or sublets the leased premises contrary to the covenants of the lease, or
187 commits or permits waste on the premises after service of a three calendar days' notice to quit;

188 (e) sets up or carries on any unlawful business on or in the premises after service of a
189 three calendar days' notice to quit;

190 (f) suffers, permits, or maintains on or about the premises any nuisance, including
191 nuisance as defined in Section [78B-6-1107](#) after service of a three calendar days' notice to quit;

192 (g) commits a criminal act on the premises and remains in possession after service of a
193 three calendar days' notice to quit;

194 (h) continues in possession, in person or by subtenant, after a neglect or failure to
195 perform any condition or covenant of the lease or agreement under which the property is held,
196 other than those previously mentioned, and after notice in writing requiring in the alternative
197 the performance of the conditions or covenant or the surrender of the property, served upon the
198 tenant and upon any subtenant in actual occupation of the premises remains uncomplied with
199 for three calendar days after service; or

200 (i) (i) is a bona fide tenant [~~under a bona fide tenancy as provided in Section 702 of the~~
201 ~~Protecting Tenants at Foreclosure Act of 2009, Pub. L. 111-22]~~ of a foreclosed rental property,
202 as defined in Section [57-1-25.5](#) or Section [78B-6-802.7](#); and

203 (ii) continues in possession after the effective date of a notice to vacate given in
204 accordance with [~~Section 702 of the Protecting Tenants at Foreclosure Act of 2009, Pub. L.~~
205 ~~111-22]~~ Subsection [57-1-25.5\(3\)](#) or Subsection [78B-6-802.7\(3\)](#).

206 (2) Within three calendar days after the service of the notice, the tenant, any subtenant
207 in actual occupation of the premises, any mortgagee of the term, or other person interested in
208 its continuance may perform the condition or covenant and thereby save the lease from
209 forfeiture, except that if the covenants and conditions of the lease violated by the lessee cannot
210 afterwards be performed, or the violation cannot be brought into compliance, the notice
211 provided for in Subsections (1)(d) through (g) may be given.

212 (3) Unlawful detainer by an owner resident of a mobile home is determined under Title
213 57, Chapter 16, Mobile Home Park Residency Act.

214 (4) The notice provisions for nuisance in Subsections (1)(d) through (g) do not apply to
215 nuisance actions provided in Sections [78B-6-1107](#) through [78B-6-1114](#).

216 Section 5. Section **78B-6-802.7** is enacted to read:

217 **78B-6-802.7. Foreclosure of residential rental property -- Effect on tenancy.**

218 (1) As used in this section:

219 (a) "Bona fide residential rental agreement" means an agreement, for a property
220 secured by a mortgage:

221 (i) that was the result of an arm's-length transaction;

222 (ii) established before the filing of an action to foreclose the mortgage under Part 9,
223 Mortgage Foreclosure;

224 (iii) that provides an individual the right to exclusive use and occupancy of the
225 residential property:

226 (A) on an at-will basis; or

227 (B) for a period specified by the agreement; and

228 (iv) that requires the individual to pay rent in an amount that:

229 (A) is not substantially less than fair market rent for the property; or

230 (B) is less than fair market rent due to a federal, state, or local subsidy.

231 (b) "Bona fide tenant" means an individual who:

232 (i) has the right to occupy a residential property under a bona fide residential rental
233 agreement;

234 (ii) is not the mortgagor; and

235 (iii) is not the mortgagor's child, spouse, or parent.

236 (c) "Foreclosed rental property" means a property that:

237 (i) is the subject of a bona fide residential rental agreement; and

238 (ii) is foreclosed under Part 9, Mortgage Foreclosure.

239 (d) "New owner" means the immediate successor in interest of a foreclosed rental
240 property following foreclosure of the property.

241 (2) (a) Except as provided in Subsection (2)(b), a new owner assumes ownership of a
242 foreclosed rental property subject to a bona fide tenant's right to occupy the foreclosed rental
243 property:

244 (i) according to the terms of a bona fide residential rental agreement; and

- 245 (ii) until the end of the term of the bona fide residential rental agreement.
- 246 (b) Subject to Subsection (3), a new owner who intends to occupy a foreclosed rental
- 247 property as the new owner's primary residence may terminate:
- 248 (i) the bona fide residential rental agreement; and
- 249 (ii) the bona fide tenant's occupancy of the foreclosed rental property.
- 250 (3) (a) A new owner who terminates a bona fide tenant's occupancy of a foreclosed
- 251 rental property shall serve, to the bona fide tenant, a notice to vacate:
- 252 (i) at least 90 days before the day on which the new owner requires the bona fide tenant
- 253 to vacate the foreclosed rental property; and
- 254 (ii) as provided in Section [78B-6-805](#).
- 255 (b) A notice to vacate under Subsection (3)(a) shall:
- 256 (i) be in at least 14-point font;
- 257 (ii) state the new owner's name, address, and contact information;
- 258 (iii) explain the reason the new owner requires the bona fide tenant to vacate the rental
- 259 property;
- 260 (iv) state the date on which the bona fide tenant is required to vacate the rental
- 261 property; and
- 262 (v) refer to this section as the law under which the notice to vacate is provided.
- 263 (4) This section does not modify the requirements for termination of a federally
- 264 subsidized tenancy.
- 265 Section 6. Section **78B-6-901.5** is amended to read:
- 266 **78B-6-901.5. Notice to tenant on residential property to be foreclosed.**
- 267 (1) As used in this section, "residential rental property" means property on which a
- 268 mortgage was given to secure an obligation the stated purpose of which is to finance residential
- 269 rental property.
- 270 (2) Within 20 days after filing an action under this part to foreclose property that
- 271 includes or constitutes residential rental property, the plaintiff in the action shall:
- 272 (a) post a notice:
- 273 (i) on the primary door of each dwelling unit on the property that is the subject of the
- 274 foreclosure action, if the property has fewer than nine dwelling units; or
- 275 (ii) in at least three conspicuous places on the property that is the subject of the

276 foreclosure action, if the property to be sold has nine or more dwelling units; or

277 (b) mail a notice to the occupant of each dwelling unit on the property that is the
278 subject of the foreclosure action.

279 (3) The notice required under Subsection (2) shall:

280 (a) be in at least 14-point font;

281 (b) include the name and address of:

282 (i) the owner of the property;

283 (ii) the trustor or mortgagor, as the case may be, on the instrument creating a security
284 interest in the property;

285 (iii) the trustee or mortgagee, as the case may be, on the instrument; and

286 (iv) the beneficiary, if the instrument is a trust deed;

287 (c) contain the legal description and address of the property; and

288 (d) include a statement in substantially the following form:

289 "Notice to Tenant

290 An action to foreclose the property described in this notice has been filed. If the
291 foreclosure action is pursued to its conclusion, the described property will be sold at public
292 auction to the highest bidder unless the default in the obligation secured by this property is
293 cured.

294 If the property is sold, you may be allowed under [~~federal law~~] Utah Code Section
295 78B-6-802.7 to continue to occupy your rental unit until your rental agreement expires, or until
296 90 days after the sale of the property at auction, whichever is later. If your rental or lease
297 agreement expires after the 90-day period, you may need to provide a copy of your rental or
298 lease agreement to the new owner to prove your right to remain on the property longer than 90
299 days after the sale of the property.

300 You must continue to pay your rent and comply with other requirements of your rental
301 or lease agreement or you will be subject to eviction for violating your rental or lease
302 agreement.

303 The new owner or the new owner's representative will probably contact you after the
304 property is sold with directions about where to pay rent.

305 The new owner of the property may or may not want to offer to enter into a new rental
306 or lease agreement with you at the expiration of the period described above."

307 (4) The failure to provide notice as required under this section or a defect in that notice
308 may not be the basis for challenging or defending a foreclosure action or for invalidating a sale of
309 the property pursuant to a foreclosure action.

Legislative Review Note
Office of Legislative Research and General Counsel