

SB0220S01 compared with SB0220

~~text~~ shows text that was in SB0220 but was deleted in SB0220S01.

inserted text shows text that was not in SB0220 but was inserted into SB0220S01.

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Senator Wayne A. Harper proposes the following substitute bill:

NON-JUDICIAL FORECLOSURE AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: _____

LONG TITLE

General Description:

This bill amends, enacts, and repeals provisions related to non-judicial foreclosure.

Highlighted Provisions:

This bill:

- ▶ amends provisions related to the appointment or resignation of a trustee;
- ▶ enacts provisions related to joinder of a trustee in a legal action against a beneficiary that does not involve the obligations of the trustee under the law or the trust deed;
- ▶ amends provisions related to notice of default;
- ▶ provides that a trustee in a trustee's sale may require a successful bidder to make a deposit;
- ▶ provides that a successful bidder in a trustee's sale who fails to pay the bid amount forfeits the bidder's deposit;

SB0220S01 compared with SB0220

- ▶ provides that a trustee shall provide an unrecorded copy of a signed trustee's deed to a purchaser upon the purchaser's request;
- ▶ amends a provision limiting the time within which a person may bring a non-judicial foreclosure action;
- ▶ amends a provision related to notice of a foreclosure proceeding on a reverse mortgage; and
- ▶ repeals a provision related to notice to a trustor of intent not to defer notice of sale.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-1-22, as last amended by Laws of Utah 2013, Chapter 395

57-1-26, as last amended by Laws of Utah 2002, Chapter 209

57-1-27, as last amended by Laws of Utah 2001, Chapter 236

57-1-28, as last amended by Laws of Utah 2010, Chapter 381

57-1-34, as enacted by Laws of Utah 1961, Chapter 181

57-28-304, as enacted by Laws of Utah 2015, Chapter 290

ENACTS:

57-1-22.1, Utah Code Annotated 1953

REPEALS:

57-1-24.5, as enacted by Laws of Utah 2011, Chapter 228

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

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

SB0220S01 compared with SB0220

~~substitution of trustee~~ located.

(b) The ~~[new]~~ trustee ~~[shall succeed to all the]~~ appointed under Subsection (1)(a) has the power, duties, authority, and title ~~[of the trustee named]~~ described in the deed of trust ~~[and of any successor trustee]~~.

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

(2) ~~[A]~~ An appointment of trustee or 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 appointment of trustee or substitution of trustee.

(b) A copy of the appointment of trustee or 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 be required to be mailed by Subsection 57-1-26(3).

(4) ~~[A]~~ An appointment of trustee or a substitution of trustee shall be in substantially the following form:

[Substitution of Trustee]

~~[(insert name and address of new trustee)]~~

SB0220S01 compared with SB0220

"Appointment or Substitution of Trustee

_____ (name and address of appointed or substituted 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, [~~]Utah~~ 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]~~ insert name and address of resigned 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, [~~]Utah~~ 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~~] provide 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 duty of a trustee.

(ii) (A) Except as provided in Subsection (5)(d)(iv), within 10 days after the day on

SB0220S01 compared with SB0220

which a party [~~receives~~] is provided 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~~]

(B) If a court substitutes a beneficiary of a trust deed as a defendant in an action under Subsection (5)(d)(ii)(A), the court shall, once a successor trustee is appointed, substitute a successor trustee [~~shall be substituted~~] as a defendant in the action 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), 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) 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 by the withdrawn trustee.

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

(ii) After a trustee withdraws under this part, only a qualified successor trustee appointed by the beneficiary under Section 57-1-22 may exercise trustee powers, including the power of sale.

Section 2. Section **57-1-22.1** is enacted to read:

57-1-22.1. Effect on trustee of a legal action involving a trust.

(1) A party in a legal action that involves a trust ~~deed~~ is not required to join the trustee as a party in the action unless the legal action pertains to a breach of the trustee's obligations under this chapter or under the trust deed.

(2) A trustee of a trust ~~deed~~ is required to act pursuant to a court order against the trust ~~deed~~ beneficiary to the extent the order requires an action that the trustee is authorized to take under this chapter or under the trust deed.

(3) If a party in a legal action that involves a trust ~~deed~~ joins the trustee in an action that does not pertain to the trustee's obligations under this chapter or under the trust deed, the court shall dismiss the action against the trustee and award the trustee reasonable attorney fees arising from the trustee being joined in the legal action.

Section 3. Section **57-1-26** is amended to read:

SB0220S01 compared with SB0220

57-1-26. Requests for copies of notice of default and notice of sale -- Mailing by trustee or beneficiary -- Publication of notice of default -- Notice to parties of trust deed.

(1) (a) Any person desiring a copy of any notice of default and of any notice of sale under any trust deed shall file for record a duly acknowledged request for a copy of any notice of default and notice of sale:

(i) in the office of the county recorder of any county in which the trust property or any part of the trust property is situated; and

(ii) at any time:

(A) subsequent to the filing for record of the trust deed; and

(B) prior to the filing for record of a notice of default.

(b) Except as provided in Subsection (3), the request described in Subsection (1)(a) may not be included in any other recorded instrument.

(c) The request described in Subsection (1)(a) shall:

(i) set forth the name and address of the one or more persons requesting copies of the notice of default and the notice of sale; and

(ii) identify the trust deed by stating:

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

(B) the date of filing for record of the trust deed;

(C) (I) the book and page where the trust deed is recorded; or

(II) the recorder's entry number; and

(D) the legal description of the trust property.

(d) The request described in Subsection (1)(a) shall be in substantially the following form:

"REQUEST FOR NOTICE

The undersigned requests that a copy of any notice of default and a copy of notice of sale under the trust deed 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 number _____, _____ County), Utah, executed by _____ and _____ as trustors, in which _____ is named as beneficiary and _____ as trustee, be mailed to _____ (insert name) _____ at _____ (insert address) _____.

(Insert legal description)

SB0220S01 compared with SB0220

Signature _____

(Certificate of Acknowledgement)"

(e) If a request for a copy of a notice of default and notice of sale is filed for record under this section, the recorder shall index the request in:

- (i) the mortgagor's index;
- (ii) mortgagee's index; and
- (iii) abstract record.

(f) Except as provided in Subsection (3), the trustee under any deed of trust is not required to send notice of default or notice of sale to any person not filing a request for notice as described in this Subsection (1).

(2) (a) Not later than 10 days after [~~recording of~~] the day on which a notice of default is recorded, the trustee or beneficiary shall mail a signed copy of the notice of default:

- (i) by certified or registered mail, return receipt requested, with postage prepaid;
- (ii) with the recording date shown;
- (iii) addressed to each person whose name and address are set forth in a request that has been recorded prior to the filing for record of the notice of default; and
- (iv) directed to the address designated in the request.

(b) At least 20 days before the date of sale, the trustee shall mail a signed copy of the notice of the time and place of sale:

- (i) by certified or registered mail, return receipt requested, with postage prepaid;
- (ii) addressed to each person whose name and address are set forth in a request that has been recorded prior to the filing for record of the notice of default; and
- (iii) directed to the address designated in the request.

(3) (a) Any trust deed may contain a request that a copy of any notice of default and a copy of any notice of sale under the trust deed be mailed to any person who is a party to the trust deed at the address of the person set forth in the trust deed.

(b) A copy of any notice of default and of any notice of sale shall be mailed to any person requesting the notice who is a party to the trust deed at the same time and in the same manner required in Subsection (2) as though a separate request had been filed by each person as provided in Subsection (1) except that a trustee shall include with a signed copy of a notice of default and the signed copy of a notice of sale the following information current as of the

SB0220S01 compared with SB0220

time the notice of default and the notice of sale is provided:

(i) the name of the trustee;

(ii) the mailing address of the trustee;

(iii) if the trustee maintains a bona fide office in the state meeting the requirements of Subsection 57-1-21(1)(b), the address of a bona fide office of the trustee meeting the requirements of Subsection 57-1-21(1)(b);

(iv) the hours during which the trustee can be contacted regarding the notice of default and notice of sale, which hours shall include the period during regular business hours in a regular business day; and

(v) a telephone number that the person may use to contact the trustee during the hours described in Subsection (3)(b)(iv).

(4) If no address of the trustor is set forth in the trust deed and if no request for notice by the trustor has been recorded as provided in this section, no later than 15 days after the filing for record of the notice of default, a copy of the notice of default shall be:

(a) mailed to the address of the property described in the notice of default; or

(b) posted on the property.

(5) The following shall not affect the title to trust property or be considered notice to any person that any person requesting copies of notice of default or of notice of sale has or claims any right, title or interest in, or lien or claim upon, the trust property:

(a) a request for a copy of any notice filed for record under Subsection (1) or (3);

(b) any statement or allegation in any request described in Subsection (5)(a); or

(c) any record of a request described in Subsection (5)(a).

Section 4. Section **57-1-27** is amended to read:

57-1-27. Sale of trust property by public auction -- Postponement of sale.

(1) (a) On the date and at the time and place designated in the notice of sale, the trustee or the attorney for the trustee shall sell the property at public auction to the highest bidder.

(b) The trustee, or the attorney for the trustee, [~~may~~] shall conduct the sale and act as the auctioneer.

(c) The trustor, or the trustor's successor in interest, if present at the sale, may direct the order in which the trust property shall be sold, if the property consists of several known lots or parcels which can be sold separately.

SB0220S01 compared with SB0220

(d) The trustee or attorney for the trustee shall follow ~~[these]~~ the trustor's directions described in Subsection (1)(c).

(e) Any person, including the beneficiary or trustee, may bid at the sale.

(f) The trustee may bid for the beneficiary. ~~[Each]~~

(g) A bid is considered an irrevocable offer.

(h) The trustee may, in the trustee's discretion, require a successful bidder to make a deposit in an amount set forth in the notice of trustee's sale described in Section 57-1-25.

(i) If the highest bidder refuses to pay the amount bid by the highest bidder for the property, the trustee, or the attorney for the trustee, shall either:

(i) renounce the sale in the same manner as notice of the original sale is required to be given; or

(ii) sell the property to the next highest bidder.

~~[(b) A bidder refusing]~~ (j) If a bidder refuses to pay the bid price:

(i) the bidder is liable for any loss occasioned by the refusal, including interest, costs, and trustee's and reasonable ~~[attorneys' fees. The]~~ attorneys fees;

(ii) the trustee or the attorney for the trustee may [thereafter], after the bidder's refusal, reject any other bid of that person for the property[.];

(iii) the bidder forfeits the bidder's deposit; and

(iv) the bidder's deposit is treated as additional sale proceeds applied in accordance with Section 57-1-29.

(2) (a) The person conducting the sale may, for any cause ~~[he]~~ that the person considers expedient, postpone the sale.

(b) The person conducting the sale shall give notice of each postponement by public declaration~~[, by written notice or oral postponement,]~~ at the time and place last appointed for the sale.

(c) No ~~[other]~~ notice of the postponed sale in addition to the notice described in Subsection (2)(b) is required, unless the postponement ~~[exceeds 45 days. In that event,]~~ is for longer than three months after the date designated in the original notice of sale.

(d) If the person conducting the sale postpones a sale for longer than the time period described in Subsection (2)(c), the person conducting the sale shall [be renounced] renounce the sale in the same manner [as] required for the original notice of sale [is required to be given].

SB0220S01 compared with SB0220

Section 5. Section 57-1-28 is amended to read:

57-1-28. Sale of trust property by trustee -- Payment of bid -- Trustee's deed delivered to purchaser -- Recitals -- Effect.

(1) (a) The purchaser at the sale shall pay the price bid as directed by the trustee.

(b) The beneficiary shall receive a credit on the beneficiary's bid in an amount not to exceed the amount representing:

(i) the unpaid principal owed;

(ii) accrued interest as of the date of the sale;

(iii) advances for the payment of:

(A) taxes;

(B) insurance; and

(C) maintenance and protection of the trust property;

(iv) the beneficiary's lien on the trust property; and

(v) costs of sale, including reasonable trustee's and attorney's fees.

(2) (a) (i) Within [~~three~~] five business days of the day the trustee receives payment of the price bid, the trustee shall [~~make the trustee's deed available to the purchaser.]:~~

(A) execute and submit the trustee's deed to the county recorder for recording; and

(B) upon the purchaser's request, provide an unrecorded copy of the signed trustee's deed to the purchaser.

(ii) If the trustee does not comply with this Subsection (2)(a), the trustee is liable for any loss incurred by the purchaser because of the trustee's failure to comply with this Subsection (2)(a).

(b) The trustee's deed may contain recitals of compliance with the requirements of Sections 57-1-19 through 57-1-36 relating to the exercise of the power of sale and sale of the property described in the trustee's deed, including recitals concerning:

(i) any mailing, personal delivery, and publication of the notice of default;

(ii) any mailing and the publication and posting of the notice of sale; and

(iii) the conduct of sale.

(c) The recitals described in Subsection (2)(b):

(i) constitute prima facie evidence of compliance with Sections 57-1-19 through 57-1-36; and

SB0220S01 compared with SB0220

(ii) are conclusive evidence in favor of bona fide purchasers and encumbrancers for value and without notice.

(3) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest, and claim of the trustor and the trustor's successors in interest and of all persons claiming by, through, or under them, in and to the property sold, including all right, title, interest, and claim in and to the property acquired by the trustor or the trustor's successors in interest subsequent to the execution of the trust deed, which trustee's deed shall be considered effective and relate back to the time of the sale.

(4) In accordance with Section 57-3-106, an interest of a purchaser in a trustee's deed that is recorded with the county recorder may not be divested if a person records an affidavit or other document purporting to rescind or cancel the trustee's deed.

Section 6. Section **57-1-34** is amended to read:

57-1-34. Sale of trust property by trustee -- Foreclosure of trust deed --

Limitation of actions.

~~[The trustee's sale of property under a trust deed shall be made, or an action to foreclose a trust deed as provided by law for the foreclosure of mortgages on real property shall be commenced;]~~ A person shall, within the period prescribed by law for the commencement of an action on ~~[the]~~ an obligation secured by ~~[the]~~ a trust deed~~[-]~~:

- (1) commence an action to foreclose the trust deed; or
- (2) file for record a notice of default under Section 57-1-24.

Section 7. Section **57-28-304** is amended to read:

57-28-304. Foreclosure.

Before a person initiates foreclosure proceedings on a reverse mortgage, the person shall:

- (1) ~~[give]~~ send the borrower, by certified mail, return receipt requested, written notice that states the grounds for default and foreclosure; and
- (2) provide the borrower at least 30 days after the day on which the ~~[borrower receives]~~ person sends the notice described in Subsection (1) to cure the borrower's default.

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SB0220S01 compared with SB0220

Legislative Review Note

~~Office of Legislative Research and General Counsel~~; Section 8. Repealer.

This bill repeals:

Section 57-1-24.5, Notice to trustor of intent not to defer notice of sale.