

1 **FORECLOSURE SUNSET DATES AMENDMENTS**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Wayne A. Harper**

5 House Sponsor: Jon Hawkins

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions related to foreclosure of residential property.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ removes references to repealed provisions related to the effect of a residential
- 13 foreclosure on a tenant; and
- 14 ▶ reinstates references to the federal law that governs certain aspects of a foreclosure
- 15 of residential property occupied by a tenant.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **57-1-25**, as last amended by Laws of Utah 2016, Chapter 325

23 **78B-6-802**, as last amended by Laws of Utah 2016, Chapter 325

24 **78B-6-901.5**, as last amended by Laws of Utah 2016, Chapter 325

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

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

28 **57-1-25. Notice of trustee's sale -- Description of property -- Time and place of**
29 **sale.**

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

32 (a) by publication of the notice:

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

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

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

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

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

41 (b) by posting the notice:

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

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

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

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

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

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

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

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

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

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

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

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

62 Notice of Trustee's Sale

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

68 (Insert legal description)

69 The current beneficiary of the trust deed is _____ and the record
70 owners of the property as of the recording of the notice of default are _____ and
71 _____.

72 Dated _____ (month\day\year).

Trustee

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

77 "Notice to Tenant

78 As stated in the accompanying Notice of Trustee's Sale, this property is scheduled to be
79 sold at public auction to the highest bidder unless the default in the obligation secured by this
80 property is cured. If the property is sold, you may be allowed under [~~Utah Code Section~~
81 57-1-25.5] federal law to continue to occupy your rental unit until your rental agreement
82 expires, or until [~~45~~] 90 days after the date you are served with a notice to vacate, whichever is
83 later. If your rental or lease agreement expires after the [~~45~~] 90-day period, you may need to
84 provide a copy of your rental or lease agreement to the new owner to prove your right to remain
85 on the property longer than [~~45~~] 90 days after the sale of the property.

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

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

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

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

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

97 Section 2. Section 78B-6-802 is amended to read:

98 **78B-6-802. Unlawful detainer by tenant for a term less than life.**

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

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

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

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

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

114 (c) continues in possession, in person or by subtenant, after default in the payment of
115 any rent or other amounts due and after a notice in writing requiring in the alternative the
116 payment of the rent and other amounts due or the surrender of the detained premises, has
117 remained uncomplied with for a period of three calendar days after service, which notice may
118 be served at any time after the rent becomes due;

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

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

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

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

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

133 (i) (i) is a [~~bona fide tenant of a foreclosed rental property, as defined in Section~~
134 ~~57-1-25.5 or Section 78B-6-802.7~~] tenant under a bona fide tenancy as described in Section
135 702 of the Protecting Tenants at Foreclosure Act; and

136 (ii) continues in possession after the effective date of a notice to vacate given in
137 accordance with [~~Subsection 57-1-25.5(3) or Subsection 78B-6-802.7(3)~~] Section 702 of the
138 Protecting Tenants at Foreclosure Act.

139 (2) Within three calendar days after the service of the notice, the tenant, any subtenant
140 in actual occupation of the premises, any mortgagee of the term, or other person interested in
141 its continuance may perform the condition or covenant and thereby save the lease from

142 forfeiture, except that if the covenants and conditions of the lease violated by the lessee cannot
143 afterwards be performed, or the violation cannot be brought into compliance, the notice
144 provided for in Subsections (1)(d) through (g) may be given.

145 (3) Unlawful detainer by an owner resident of a mobile home is determined under Title
146 57, Chapter 16, Mobile Home Park Residency Act.

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

149 Section 3. Section 78B-6-901.5 is amended to read:

150 **78B-6-901.5. Notice to tenant on residential property to be foreclosed.**

151 (1) As used in this section, "residential rental property" means property on which a
152 mortgage was given to secure an obligation the stated purpose of which is to finance residential
153 rental property.

154 (2) Within 20 days after filing an action under this part to foreclose property that
155 includes or constitutes residential rental property, the plaintiff in the action shall:

156 (a) post a notice:

157 (i) on the primary door of each dwelling unit on the property that is the subject of the
158 foreclosure action, if the property has fewer than nine dwelling units; or

159 (ii) in at least three conspicuous places on the property that is the subject of the
160 foreclosure action, if the property to be sold has nine or more dwelling units; or

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

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

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

165 (b) include the name and address of:

166 (i) the owner of the property;

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

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

- 170 (iv) the beneficiary, if the instrument is a trust deed;
- 171 (c) contain the legal description and address of the property; and
- 172 (d) include a statement in substantially the following form:

173 "Notice to Tenant

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

178 If the property is sold, you may be allowed under [~~Utah Code Section 78B-6-802.7~~]
179 federal law to continue to occupy your rental unit until your rental agreement expires, or until
180 [45] 90 days after the sale of the property at auction, whichever is later. If your rental or lease
181 agreement expires after the [45] 90-day period, you may need to provide a copy of your rental
182 or lease agreement to the new owner to prove your right to remain on the property longer than
183 [45] 90 days after the sale of the property.

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

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

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

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