

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;
- ▶ 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:



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **57-1-22**, as last amended by Laws of Utah 2013, Chapter 395

34 **57-1-26**, as last amended by Laws of Utah 2002, Chapter 209

35 **57-1-27**, as last amended by Laws of Utah 2001, Chapter 236

36 **57-1-28**, as last amended by Laws of Utah 2010, Chapter 381

37 **57-1-34**, as enacted by Laws of Utah 1961, Chapter 181

38 **57-28-304**, as enacted by Laws of Utah 2015, Chapter 290

39 ENACTS:

40 **57-1-22.1**, Utah Code Annotated 1953



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

43 Section 1. Section **57-1-22** is amended to read:

44 **57-1-22. Successor trustees -- Appointment by beneficiary -- Effect -- Substitution**
45 **of trustee -- Recording -- Form.**

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

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

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

56 (2) ~~[A]~~ An appointment of trustee or a substitution of trustee shall:

57 (a) identify the trust deed by stating:

58 (i) the names of the original parties to the trust deed;

59 (ii) the date of recordation; and
 60 (iii) (A) the book and page where the trust deed is recorded; or
 61 (B) the entry number;
 62 (b) include the legal description of the trust property;
 63 (c) state the name and address of the new trustee; and
 64 (d) be executed and acknowledged by all of the beneficiaries under the trust deed or
 65 their successors in interest.

66 (3) (a) If not previously recorded at the time of recording a notice of default, the
 67 successor trustee shall file for record, in the office of the county recorder of each county in
 68 which the trust property or some part of it is situated, the appointment of trustee or substitution
 69 of trustee.

70 (b) A copy of the appointment of trustee or the substitution of trustee shall be sent in
 71 the manner provided in Subsection 57-1-26(2) to any:

72 (i) person who requests a copy of any notice of default or notice of sale under
 73 Subsection 57-1-26(1)(a); and

74 (ii) person who is a party to the trust deed to whom a copy of a notice of default would
 75 be required to be mailed by Subsection 57-1-26(3).

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

78 ~~[Substitution of Trustee]~~
 79 ~~[(insert name and address of new trustee)]~~
 80 "Appointment or Substitution of Trustee
 81 (name and address of appointed or substituted trustee)
 82 is hereby appointed [~~successor~~] trustee under the trust deed executed by ____ as
 83 trustor, in which ____ is named beneficiary and ____ as trustee, and filed for record
 84 _____(month\day\year), and recorded in Book ____, Page ____, Records of ____
 85 County, [~~Utah~~] or filed for record _____(month\day\year), with recorder's entry No.
 86 ____, ____ County), Utah.

87 (Insert legal description)

88 Signature _____

89 (Certificate of Acknowledgment)"

90 (5) (a) A trustee of a trust deed may, in accordance with this Subsection (5), resign as
91 trustee by filing for record in the office of the recorder of each county in which the trust
92 property is located, a resignation of trustee.

93 (b) A trustee's resignation under this Subsection (5) takes effect upon the recording of a
94 resignation of trustee.

95 (c) A resignation of trustee shall be in substantially the following form:

96 "Resignation of Trustee
97 _____ ([Insert] insert name and address of resigned trustee)
98 hereby resigns as trustee under the trust deed executed by (insert name of trustor) as trustor, in
99 which (insert name of the beneficiary) is named beneficiary and (insert name of trustee) as
100 trustee, and filed for record (insert the month, day, and year the trust deed was recorded), and
101 recorded in Book ____, Page ____, Records of _____ County, [~~f~~]Utah or with
102 recorder's entry no. ____, _____ County[~~}]~~, Utah.
103 (Insert legal description)
104 Signature _____
105 (Certificate of acknowledgment)"

106 (d) (i) Within three days after the day on which a trustee resigns under this Subsection
107 (5), the trustee shall [~~deliver~~] provide written notice of the trustee's resignation to each party in
108 any legal action pending against the trustee that is related to or arises from the trustee's
109 performance of a duty of a trustee.

110 (ii) (A) Except as provided in Subsection (5)(d)(iv), within 10 days after the day on
111 which a party [~~receives~~] is provided a notice described in Subsection (5)(d)(i), the party may
112 move the court to substitute the beneficiary of the trust deed as defendant in the action in the
113 place of the trustee until a successor trustee is appointed. [~~When a successor trustee is~~
114 ~~appointed, the]~~

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

118 (iii) Except as provided in Subsection (5)(d)(iv), if, after the expiration of the time
119 described in Subsection (5)(d)(ii)(A), a party does not move the court to substitute the
120 beneficiary or the successor trustee in place of the trustee as defendant, the court shall dismiss

121 with prejudice all claims against the withdrawn trustee.

122 (iv) Subsection (5)(d)(ii) and (5)(d)(iii) do not apply to a cause of action against a
123 trustee that alleges negligent or intentional misconduct by the withdrawn trustee.

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

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

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

130 **57-1-22.1. Effect on trustee of a legal action involving a trust.**

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

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

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

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

142 **57-1-26. Requests for copies of notice of default and notice of sale -- Mailing by**
143 **trustee or beneficiary -- Publication of notice of default -- Notice to parties of trust deed.**

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

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

149 (ii) at any time:

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

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

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

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

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

157 (ii) identify the trust deed by stating:

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

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

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

161 (II) the recorder's entry number; and

162 (D) the legal description of the trust property.

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

165 "REQUEST FOR NOTICE

166 The undersigned requests that a copy of any notice of default and a copy of notice of
167 sale under the trust deed filed for record _____(month\day\year), and recorded in Book
168 ____, Page ____, Records of ____ County, (or filed for record _____(month\day\year),
169 with recorder's entry number ____, _____ County), Utah, executed by ____ and
170 _____ as trustors, in which ____ is named as beneficiary and ____ as trustee, be
171 mailed to ____ (insert name) ____ at ____ (insert address) _____.

172 (Insert legal description)

173 Signature _____

174 (Certificate of Acknowledgement)"

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

177 (i) the mortgagor's index;

178 (ii) mortgagee's index; and

179 (iii) abstract record.

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

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

185 (i) by certified or registered mail, return receipt requested, with postage prepaid;

186 (ii) with the recording date shown;

187 (iii) addressed to each person whose name and address are set forth in a request that
188 has been recorded prior to the filing for record of the notice of default; and

189 (iv) directed to the address designated in the request.

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

192 (i) by certified or registered mail, return receipt requested, with postage prepaid;

193 (ii) addressed to each person whose name and address are set forth in a request that has
194 been recorded prior to the filing for record of the notice of default; and

195 (iii) directed to the address designated in the request.

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

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

205 (i) the name of the trustee;

206 (ii) the mailing address of the trustee;

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

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

213 (v) a telephone number that the person may use to contact the trustee during the hours

214 described in Subsection (3)(b)(iv).

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

- 218 (a) mailed to the address of the property described in the notice of default; or
219 (b) posted on the property.

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

- 223 (a) a request for a copy of any notice filed for record under Subsection (1) or (3);
224 (b) any statement or allegation in any request described in Subsection (5)(a); or
225 (c) any record of a request described in Subsection (5)(a).

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

227 **57-1-27. Sale of trust property by public auction -- Postponement of sale.**

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

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

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

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

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

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

239 (g) A bid is considered an irrevocable offer.

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

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

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

245 given; or

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

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

248 (i) the bidder is liable for any loss occasioned by the refusal, including interest, costs,

249 and trustee's and reasonable ~~[attorneys' fees. The]~~ attorneys fees;

250 (ii) the trustee or the attorney for the trustee may [thereafter], after the bidder's refusal,

251 reject any other bid of that person for the property[-];

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

253 (iv) the bidder's deposit is treated as additional sale proceeds applied in accordance

254 with Section 57-1-29.

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

256 expedient, postpone the sale.

257 (b) The person conducting the sale shall give notice of each postponement by public

258 declaration~~[-, by written notice or oral postponement,]~~ at the time and place last appointed for

259 the sale.

260 (c) No ~~[other]~~ notice of the postponed sale in addition to the notice described in

261 Subsection (2)(b) is required, unless the postponement [exceeds 45 days. In that event,] is for

262 longer than three months after the date designated in the original notice of sale.

263 (d) If the person conducting the sale postpones a sale for longer than the time period

264 described in Subsection (2)(c), the person conducting the sale shall [be renounced] renounce the

265 sale in the same manner [as] required for the original notice of sale [is required to be given].

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

267 **57-1-28. Sale of trust property by trustee -- Payment of bid -- Trustee's deed**

268 **delivered to purchaser -- Recitals -- Effect.**

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

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

271 exceed the amount representing:

272 (i) the unpaid principal owed;

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

274 (iii) advances for the payment of:

275 (A) taxes;

- 276 (B) insurance; and
- 277 (C) maintenance and protection of the trust property;
- 278 (iv) the beneficiary's lien on the trust property; and
- 279 (v) costs of sale, including reasonable trustee's and attorney's fees.

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

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

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

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

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

- 291 (i) any mailing, personal delivery, and publication of the notice of default;
- 292 (ii) any mailing and the publication and posting of the notice of sale; and
- 293 (iii) the conduct of sale.

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

295 (i) constitute prima facie evidence of compliance with Sections 57-1-19 through
296 57-1-36; and

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

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

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

307 other document purporting to rescind or cancel the trustee's deed.

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

309 **57-1-34. Sale of trust property by trustee -- Foreclosure of trust deed --**

310 **Limitation of actions.**

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

315 (1) commence an action to foreclose the trust deed; or

316 (2) file for record a notice of default under Section [57-1-24](#).

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

318 **57-28-304. Foreclosure.**

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

321 (1) ~~[give] send~~ the borrower, by certified mail, return receipt requested, written notice
322 that states the grounds for default and foreclosure; and

323 (2) provide the borrower at least 30 days after the day on which the ~~[borrower receives]~~
324 person sends the notice described in Subsection (1) to cure the borrower's default.