



TD SERVICE COMPANY

April 29, 2011

Dear Customer:

Utah Senate Bill 261 adds Section 57-1-23.5, 57-1-24.5 and amends Section 57-1-25 becomes effective on May 10, 2011.

SB Section 57-1-23.5 allows homeowners to seek actual damages or \$2,000.00, whichever is greater, plus plaintiff's costs and attorney fees for the conduct of an unauthorized sale. Unauthorized sale means the exercise of a power of sale by an unauthorized person. An unauthorized person is a person who does not qualify as a trustee under 57-1-21.

SB Section 57-1-24.5 requires the beneficiary or their agent to deliver or send a notice by certified mail return receipt requested to the trustor when an agreement is reached to accept reduced payment(s) within the 3 month period from the recordation of the Notice of Default.

The letter must contain verbiage informing the trustor that, despite the reduced payment arrangement, the beneficiary or their agent does not intend to instruct the trustee to defer giving notice of sale. The letter must be sent within 30 days of the recordation of the notice of default or within 10 days after the beneficiary or their agent agrees to accept the reduced payments. A copy of the letter must also be sent to the trustee. If the beneficiary or their agent fails to send the notice to the trustor, they are liable to the trustor for actual damages suffered or \$2,000.00, whichever is greater, plus plaintiff's costs and attorney fees.

Section 57-1-25 imposes a duty on the trustee who exercises a power of sale "not to defraud, or conspire or scheme to defraud, the trustor".

A copy of SB 261 is attached. If you have any questions or concerns, feel free to contact me at (714) 480-5640 lkidder@tdsf.com or Michelle Pino at (714) 480-5413 mpino@tdsf.com.

You may also view state specific information on the Legislative Update Section on our website. Simply go to www.tdsf.com and click on the "Legislative Updates" Tab from our Home Page.

We appreciate your continued support of T.D. Service Company.

Sincerely,

Linda Kidder
Senior Vice President/Operations

Attachments SB 261

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S.B. 261 Enrolled

1

CHANGES TO TRUST DEED FORECLOSURE PROVISIONS

2

2011 GENERAL SESSION

3

STATE OF UTAH

4

Chief Sponsor: Curtis S. Bramble

5

House Sponsor: Brad R. Wilson

6

7

LONG TITLE

8

General Description:

9

This bill modifies provisions relating to trust deed foreclosures.

10

Highlighted Provisions:

11

This bill:

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. imposes civil liability on a person who violates specified trustee provisions;

13

. modifies a provision relating to successor trustees;

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. imposes a duty on a trustee who exercises a power of sale; and

15

. requires a beneficiary or the beneficiary's agent to provide notice to a trustor on a

16

residential property if the beneficiary or agent does not intend to instruct a trustee to

17

defer a notice of sale despite a temporary reduced payment arrangement and

18

imposes civil liability for a failure to do so.

19

Money Appropriated in this Bill:

20

None

21

Other Special Clauses:

22

None

23

Utah Code Sections Affected:

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AMENDS:

25

57-1-22, as last amended by Laws of Utah 2002, Chapter 209

26

57-1-25, as last amended by Laws of Utah 2010, Chapter 66

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ENACTS:

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57-1-23.5, Utah Code Annotated 1953

29

57-1-24.5, Utah Code Annotated 1953

30

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

32 Section 1. Section 57-1-22 is amended to read:

33 **57-1-22. Successor trustees -- Appointment by beneficiary -- Effect -- Substitution**
34 **of trustee -- Recording -- Form.**

35 (1) (a) The beneficiary may appoint a successor trustee at any time by filing for record
36 in the office of the county recorder of each county in which the trust property or some part

of

37 the trust property is situated, a substitution of trustee.

38 (b) The new trustee shall succeed to all the power, duties, authority, and title of the
39 trustee named in the deed of trust and of any successor trustee.

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

the

42 substitution of trustee.

43 (2) The substitution shall:

44 (a) identify the trust deed by stating:

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

46 (ii) the date of recordation; and

47 (iii) (A) the book and page where the trust deed is recorded; or

48 (B) the entry number;

49 (b) include the legal description of the trust property;

50 (c) state the name and address of the new trustee; and

51 (d) be executed and acknowledged by all of the beneficiaries under the trust deed or
52 their successors in interest.

53 (3) (a) If not previously recorded[,] at the time of recording a notice of default, the
54 successor trustee shall file for record, in the office of the county recorder of each county in
55 which the trust property or some part of it is situated, the substitution of trustee.

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

58

(i) person who requests a copy of any notice of default or notice of sale under

59 Subsection 57-1-26 (1)(a); and

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

62 (4) A substitution of trustee shall be in substantially the following form:
63

Substitution of Trustee

64

(insert name and address of new trustee)

65 is hereby appointed successor trustee under the trust deed executed by ____ as
66 trustor, in which ____ is named beneficiary and ____ as trustee, and filed for record
67 _____(month\day\year), and recorded in Book ____, Page ____, Records of ____
68 County, (or filed for record _____(month\day\year), with recorder's entry No. ____,

69 County), Utah.

70

(Insert legal description)

71
72 Signature _____
73

(Certificate of Acknowledgment)

74 Section 2. Section 57-1-23.5 is enacted to read:
75 **57-1-23.5. Civil liability for unauthorized person who exercises power of sale.**

76 *(1) As used in this section:*

77 *(a) "Unauthorized person" means a person who does not qualify as a trustee under*
78 *Subsection 57-1-21 (1)(a)(i) or (iv).*

79 *(b) "Unauthorized sale" means the exercise of a power of sale by an unauthorized*
80 *person.*

81 *(2) (a) An unauthorized person who conducts an unauthorized sale is liable to the*
82 *trustor for the actual damages suffered by the trustor as a result of the unauthorized sale*

or

83 *\$2,000, whichever is greater.*

84 *(b) In an action under Subsection (2)(a), the court shall award a prevailing plaintiff the*
85 *plaintiff's costs and attorney fees.*

86

Section 3. Section 57-1-24.5 is enacted to read:

87 **57-1-24.5. Notice to trustor of intent not to defer notice of sale.**

88 *(1) A beneficiary, or the beneficiary's authorized agent, shall deliver or send a notice to*
89 *a trustor as provided in Subsection (2) if:*

90 *(a) the trust property is residential;*

91 *(b) a notice of default is filed under Section 57-1-24 with respect to the trust property;*

92 *(c) during the three-month period described in Subsection 57-1-24 (3), the beneficiary*
93 *or agent agrees to accept reduced payments from the trustor on a temporary basis; and*

94 *(d) notwithstanding the reduced payment arrangement, the beneficiary or agent does*
95 *not intend to instruct the trustee to defer giving notice of sale under Section 57-1-25 later*

than

96 *the earliest time allowed under Subsection 57-1-24 (3).*

97 *(2) A notice under Subsection (1) shall:*

98 *(a) be in writing;*

99 *(b) (i) be hand delivered to the trustor; or*

100 *(ii) be sent by certified mail, return receipt requested, to the trustor at the address of*

the

101 *trust property;*

102 *(c) be delivered or sent on or before the date that is 30 days after the notice of default*

is

103 *filed or 10 days after the beneficiary or agent agrees to accept reduced payments,*

whichever is

104 *later; and*

105 *(d) inform the trustor that, despite the reduced payment arrangement, the beneficiary*

or

106 *agent does not intend to instruct the trustee to defer giving notice of sale under Section*

57-1-25

107 *later than the earliest time allowed under Subsection 57-1-24 (3).*

108 *(3) A beneficiary or agent who sends or delivers notice to a trustor under this section*

109 shall mail a copy of the notice to the trustee.
 110 (4) The failure of a beneficiary or agent to comply with a requirement of this section
 111 does not affect the validity of a trustee's sale of the trust property.
 112 (5) (a) A beneficiary or agent who fails to send or deliver a notice to a trustor as
 113 required in this section is liable to the trustor for the actual damages suffered by the
trustor as a

114 result of the failure or \$2,000, whichever is greater.

115 (b) In an action under Subsection (5)(a), the court shall award a prevailing plaintiff the
 116 plaintiff's costs and attorney fees.

117 Section 4. Section 57-1-25 is amended to read:

118 **57-1-25. Notice of trustee's sale -- Description of property -- Time and place of**
 119 **sale.**

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

122 (a) by publication of the notice:

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

124 (B) once a week for three consecutive weeks;

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

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

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

131 (b) by posting the notice:

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

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

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

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

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

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

141 (B) in at least two conspicuous places on the property to be sold, in addition to the

142 posting required under Subsection (1)(b)(ii)(A), if the property to be sold has nine or more
 143 dwelling units; or

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

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

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

148 (c) The place of sale shall be clearly identified in the notice of sale under Subsection

149 (1) and shall be at a courthouse serving the county in which the property to be sold, or

some

150 part of the property to be sold, is located.

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

152

Notice of Trustee's Sale

153 The following described property will be sold at public auction to the highest bidder,
 154 payable in lawful money of the United States at the time of sale, at (insert location of sale)
 155 _____ on _____ (month\day\year), at __.m. of said day, for the purpose
 of
 156 foreclosing a trust deed originally executed by ____ (and ____, his wife,) as trustors, in
 favor
 157 of ____, covering real property located at ____, and more particularly described as:
 158

(Insert legal description)

159 The current beneficiary of the trust deed is _____ and the record
 160 owners of the property as of the recording of the notice of default are
 _____ and

161 _____
 162 Dated _____ (month\day\year).

163 _____
 Trustee

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

167 "Notice to Tenant

168 As stated in the accompanying Notice of Trustee's Sale, this property is scheduled to be
 169 sold at public auction to the highest bidder unless the default in the obligation secured by
 this

170
 property is cured. If the property is sold, you may be allowed under federal law to continue to
 171 occupy your rental unit until your rental agreement expires, or until 90 days after the date
 you
 172 are served with a notice to vacate, whichever is later. If your rental or lease agreement
 expires
 173 after the 90-day period, you may need to provide a copy of your rental or lease agreement
 to the
 174 new owner to prove your right to remain on the property longer than 90 days after the sale
 of
 175 the property.

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

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

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

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

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

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