

1                                   **FORECLOSURE PROCESSES ON**  
2                                   **RESIDENTIAL RENTAL PROPERTIES**

3                                   2010 GENERAL SESSION

4                                   STATE OF UTAH

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6   **LONG TITLE**

7   **General Description:**

8           This bill establishes requirements relating to foreclosure on a residential property  
9           subject to a residential lease agreement or a residential rental agreement.

10 **Highlighted Provisions:**

11       This bill:

- 12       ▶ requires an additional notice of default to a residential leasee or a residential tenant;
- 13       ▶ requires that a judgment on a mortgaged property include notice to a residential  
14       leasee or a residential tenant;
- 15       ▶ allows, with certain exceptions, a residential leasee or a residential tenant of a  
16       foreclosed property to continue leasing or renting the property until the later of:
  - 17           • subject to certain exceptions, the expiration of the residential lease or residential  
18           rental agreement; or
  - 19           • 90 days after the day on which the foreclosed property is sold; and
- 20       ▶ makes technical changes.

21 **Monies Appropriated in this Bill:**

22       None

23 **Other Special Clauses:**

24       None

25 **Utah Code Sections Affected:**

26 AMENDS:

27       **57-1-24**, as last amended by Laws of Utah 2001, Chapter 236

28       **57-1-28**, as last amended by Laws of Utah 2002, Chapter 209

29       **78B-6-901**, as last amended by Laws of Utah 2009, Chapter 146

30 ENACTS:

31       **57-1-28.5**, Utah Code Annotated 1953

32           **78B-6-910**, Utah Code Annotated 1953

33

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

35           Section 1. Section **57-1-24** is amended to read:

36           **57-1-24. Sale of trust property by trustee -- Notice of default.**

37           ~~[The power of sale conferred upon the trustee who is]~~ (1) A trustee qualified under  
38 Subsection 57-1-21(1)(a)(i) or (iv) may not ~~[be exercised]~~ exercise the trustee's power of sale  
39 until:

40           ~~[(1)]~~ (a) the trustee first files for record, in the office of the recorder of each county  
41 where the trust property or some part or parcel of the trust property is situated, a notice of  
42 default;

43           (i) identifying the trust deed by stating the name of the trustor named in the trust deed  
44 [and giving];

45           (ii) identifying the book and page, or the recorder's entry number, where the trust deed  
46 is recorded [and];

47           (iii) giving a legal description of the trust property ~~[- and containing]~~;

48           (iv) including a statement that a breach of an obligation for which the trust property was  
49 conveyed as security has occurred ~~[- and setting forth]~~;

50           (v) identifying the nature of ~~[that]~~ the breach ~~[and of the]~~; and

51           (vi) stating the trustee's election to sell or cause to be sold the property to satisfy the  
52 obligation;

53           (b) if the property is subject to an existing written or unwritten residential lease  
54 agreement or an existing written or unwritten residential rental agreement, the trustee has, in  
55 accordance with Subsection (2), given written notice of the default within 45 days after the day  
56 on which the trustee first filed the notice of default for record in accordance with Subsection  
57 (1)(a);

58           ~~[(2)]~~ (c) ~~[not less than three months has elapsed from the time]~~ at least 90 days after the  
59 day on which the trustee filed a notice of default for record under Subsection (1)(a); and

60           ~~[(3)]~~ (d) ~~[after the lapse of at least three months]~~ the trustee ~~[shall give]~~ gives notice of  
61 sale ~~[as provided]~~ in accordance with Sections 57-1-25 and 57-1-26 after the 90 day period  
62 described in Subsection (1)(c).

63 (2) The notice described in Subsection (1)(b) shall:

64 (a) be posted on the primary door of, or, if a multi-tenant residence, each primary door  
65 of, the property to be sold;

66 (b) be in at least a 14-point font; and

67 (c) be in substantially the following form:

68 "Notice of Default

69 The following described property is in default and, if not remedied, will be sold at  
70 public auction to the highest bidder for the purpose of foreclosing a trust deed originally  
71 executed by \_\_\_\_\_ (and \_\_\_\_\_) as trustors, in favor of \_\_\_\_\_, covering real  
72 property located at \_\_\_\_\_, and more particularly described as: (insert legal description).

73 A notice of sale of the property will be provided a minimum of 20 days before the day  
74 of the public auction. The current beneficiary of the trust deed is \_\_\_\_\_ and the record  
75 owners of the property as of the recording of the notice of default are \_\_\_\_\_ and  
76 \_\_\_\_\_.

77 Subject to certain exceptions, Section 57-1-28.5 of the Utah Code permits a residential  
78 tenant or leasee to continue to rent or lease a foreclosed property until the expiration of the  
79 tenant's residential rental agreement or the leasee's residential lease or for 90 days after the day  
80 on which the foreclosed property is sold, whichever is later.

81 Date \_\_\_\_\_

82 Trustee \_\_\_\_\_".

83 Section 2. Section **57-1-28** is amended to read:

84 **57-1-28. Sale of trust property by trustee -- Payment of bid -- Trustee's deed**  
85 **delivered to purchaser -- Recitals -- Effect.**

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

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

89 (i) the unpaid principal owed;

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

91 (iii) advances for the payment of:

92 (A) taxes;

93 (B) insurance; and

94 (C) maintenance and protection of the trust property;

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

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

97 (2) (a) (i) Within three business days ~~of~~ after the day on which the trustee receives  
98 payment of the price bid, the trustee shall make the trustee's deed available to the purchaser.

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

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

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

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

107 (iii) the conduct of sale.

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

109 (i) constitute prima facie evidence of compliance with Sections 57-1-19 through  
110 57-1-36; and

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

113 (3) The trustee's deed shall operate to convey to the purchaser, without right of  
114 redemption, the trustee's title and all right, title, interest, and claim of the trustor and the  
115 trustor's successors in interest and, subject to Section 57-1-28.5, of all persons claiming by,  
116 through, or under them, in and to the property sold, including all right, title, interest, and claim  
117 in and to the property acquired by the trustor or the trustor's successors in interest subsequent to  
118 the execution of the trust deed, which trustee's deed shall be considered effective and relate  
119 back to the time of the sale.

120 Section 3. Section **57-1-28.5** is enacted to read:

121 **57-1-28.5. Residential tenant of foreclosed trust property.**

122 (1) Except as provided in Subsections (2) and (3), a purchaser of a trust property  
123 subject to a leasee's existing written residential lease agreement or a tenant's existing written  
124 residential rental agreement may not evict the leasee or the tenant before the later of the

125 expiration of the agreement or 90 days after the day on which the purchaser purchases the trust  
126 property, if the agreement:

127 (a) was executed before a notice of default was recorded on the property in accordance  
128 with Section 57-1-24;

129 (b) was negotiated in good faith; and

130 (c) was the result of an arms-length transaction.

131 (2) Except as provided in Subsection (3), a purchaser of a trust property subject to a  
132 leasee's existing written residential lease agreement or a tenant's existing written residential  
133 rental agreement may evict the leasee or the tenant before the expiration of the agreement but  
134 no sooner than 90 days after the day on which the purchaser purchases the trust property if:

135 (a) the agreement meets the criteria described in Subsections (1) (a), (b), and (c); and

136 (b) (i) the leasee's residential lease agreement or the tenant's residential rental  
137 agreement may be terminated at will; or

138 (ii) the purchaser intends to occupy the property as the purchaser's primary residence.

139 (3) Subsections (1) and (2) do not apply if:

140 (a) the trustor, or the trustor's child, spouse, or parent, is the leasee or tenant;

141 (b) the rent for the residential lease or residential rental is at least 20% below the fair  
142 market rent for the lease or rental, unless the rent or lease amount is reduced or subsidized by a  
143 federal, state, or local government subsidy;

144 (c) the residential lease or residential rental agreement was not:

145 (i) negotiated in good faith; or

146 (ii) the result of an arms-length transaction; or

147 (d) the leasee or tenant fails to comply with the terms of the residential lease or  
148 residential rental agreement.

149 (4) If this section conflicts with the termination requirements of any state or federal  
150 subsidized tenancy, the termination requirements of the state or federal subsidized tenancy  
151 prevail.

152 Section 4. Section **78B-6-901** is amended to read:

153 **78B-6-901. Form of action -- Judgment -- Special execution.**

154 (1) There is only one action for the recovery of any debt, or the enforcement of any  
155 right, secured solely by mortgage upon real estate and that action shall be in accordance with

156 the provisions of this chapter.

157 (2) A judgment shall include:

158 (a) the amount due, with costs and disbursements;

159 (b) an order for the sale of mortgaged property, or a portion of it to satisfy the amount  
160 and accruing costs;

161 (c) direction to the sheriff to proceed and sell the property according to the provisions  
162 of law relating to sales on execution; ~~and~~

163 (d) a special execution or order of sale ~~[shall be]~~ issued for ~~[that purpose.]~~ purposes of  
164 Subsection (2)(c); and

165 (e) if the property is subject to an existing residential lease agreement or an existing  
166 residential rental agreement, a notice to the leasee or the tenant that the leasee or the tenant may  
167 continue to lease or rent the foreclosed property subject to the provisions of Section 78B-6-910.

168 Section 5. Section **78B-6-910** is enacted to read:

169 **78B-6-910. Residential tenant of property subject to judgment.**

170 (1) Except as provided in Subsections (2) and (3), a person who purchases a mortgaged  
171 property subject to a leasee's existing written residential lease agreement or a tenant's existing  
172 written residential rental agreement may not evict the leasee or the tenant before the expiration  
173 of the leasee's residential lease agreement or the expiration of the tenant's residential rental  
174 agreement if the agreement:

175 (a) was executed before an action on the property was brought under Section  
176 78B-6-901;

177 (b) was negotiated in good faith; and

178 (c) was the result of an arms-length transaction.

179 (2) Except as provided in Subsection (3), a purchaser of a mortgaged property subject to  
180 a leasee's existing written residential lease agreement or a tenant's existing written residential  
181 rental agreement may evict the leasee or the tenant before the expiration of the agreement but  
182 no sooner than 90 days after the day on which the purchaser purchases the mortgaged property  
183 if:

184 (a) the agreement meets the criteria of Subsections (1) (a), (b), and (c); and

185 (b) (i) the leasee's residential lease agreement or the tenant's residential rental  
186 agreement may be terminated at will; or

- 187            (ii) the purchaser intends to occupy the property as the purchaser's primary residence.  
188            (3) Subsections (1) and (2) do not apply if:  
189            (a) the mortgagor or the mortgagor's child, spouse, or parent, is the leasee or tenant;  
190            (b) the rent for the residential lease or residential rental is at least 20% below the fair  
191 market rent for the lease or rental, unless the rent or lease amount is reduced or subsidized by a  
192 federal, state, or local government subsidy;  
193            (c) the residential lease or residential rental agreement was not:  
194            (i) negotiated in good faith; or  
195            (ii) the result of an arms-length transaction; or  
196            (d) the leasee or tenant fails to comply with the terms of the residential lease or  
197 residential rental agreement.  
198            (4) If this section conflicts with the termination requirements of any state or federal  
199 subsidized tenancy, the termination requirements of the state or federal subsidized tenancy  
200 prevail.

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**Legislative Review Note**  
as of 8-12-09 2:35 PM

**Office of Legislative Research and General Counsel**