

FORECLOSURE SUNSET DATES AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Jon Hawkins

LONG TITLE**General Description:**

This bill modifies provisions related to foreclosure of residential property.

Highlighted Provisions:

This bill:

- removes references to repealed provisions related to the effect of a residential foreclosure on a tenant; and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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:****57-1-25**, as last amended by Laws of Utah 2016, Chapter 325**78B-6-802**, as last amended by Laws of Utah 2016, Chapter 325**78B-6-901.5**, as last amended by Laws of Utah 2016, Chapter 325

*Be it enacted by the Legislature of the state of Utah:*Section 1. Section **57-1-25** is amended to read:

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

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

(a) by publication of the notice:

(i) (A) at least three times;

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

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

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

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

(b) by posting the notice:

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

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

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

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

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

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

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

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

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

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

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

(1) and shall be at a courthouse serving the county in which the property to be sold, or some part of the property to be sold, is located.

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

Notice of Trustee's Sale

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

(Insert legal description)

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

Dated _____ (month\day\year).

Trustee

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

"Notice to Tenant

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

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

The new owner or the new owner's representative will probably contact you after the

property is sold with directions about where to pay rent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) (i) is a ~~[bona fide tenant of a foreclosed rental property, as defined in Section 57-1-25.5 or Section 78B-6-802.7]~~ tenant under a bona fide tenancy as described in Section 702 of the Protecting Tenants at Foreclosure Act ~~§→ [of 2009] ←§~~ ; and

(ii) continues in possession after the effective date of a notice to vacate given in accordance with ~~[Subsection 57-1-25.5(3) or Subsection 78B-6-802.7(3)]~~ Section 702 of the Protecting Tenants at Foreclosure Act ~~§→ [of 2009] ←§~~ .

(2) Within three calendar days after the service of the notice, the tenant, any subtenant in actual occupation of the premises, any mortgagee of the term, or other person interested in its continuance may perform the condition or covenant and thereby save the lease from forfeiture, except that if the covenants and conditions of the lease violated by the lessee cannot afterwards be performed, or the violation cannot be brought into compliance, the notice provided for in Subsections (1)(d) through (g) may be given.

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

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

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

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

(1) As used in this section, "residential rental property" means property on which a

mortgage was given to secure an obligation the stated purpose of which is to finance residential rental property.

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

(a) post a notice:

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

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

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

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

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

(b) include the name and address of:

(i) the owner of the property;

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

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

(iv) the beneficiary, if the instrument is a trust deed;

(c) contain the legal description and address of the property; and

(d) include a statement in substantially the following form:

"Notice to Tenant

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

If the property is sold, you may be allowed under [~~Utah Code Section 78B-6-802.7~~] federal law to continue to occupy your rental unit until your rental agreement expires, or until [45] 90 days after the sale of the property at auction, whichever is later. If your rental or lease agreement expires after the [45] 90-day period, you may need to provide a copy of your rental 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 invaliding a sale of
193 the property pursuant to a foreclosure action.