

PROTECTED DRAFT

Representative Wayne A. Harper proposes the following substitute bill:

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

3 2010 GENERAL SESSION

4 STATE OF UTAH

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

6 Senate Sponsor: _____

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions relating to the foreclosure of residential rental property.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ modifies requirements for notices of trustee's sale if the property to be sold is
- 14 residential rental property;
- 15 ▶ modifies unlawful detainer provisions relating to foreclosed residential rental
- 16 property;
- 17 ▶ enacts provisions relating to a tenant's right to occupy residential rental property
- 18 after foreclosure and requiring notice to tenants of foreclosed residential rental
- 19 property;
- 20 ▶ provides a sunset for provisions enacted in this bill; and
- 21 ▶ makes technical changes.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **57-1-25**, as last amended by Laws of Utah 2009, Chapter 388

29 **63I-1-278**, as last amended by Laws of Utah 2009, Chapters 161 and 334

30 **78B-6-802**, as last amended by Laws of Utah 2009, Chapter 146

31 **78B-6-802.5**, as enacted by Laws of Utah 2009, Chapter 184

32 ENACTS:

33 **63I-1-257**, Utah Code Annotated 1953

34 **78B-6-802.7**, Utah Code Annotated 1953

35 **78B-6-901.5**, Utah Code Annotated 1953

36

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

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

39 **57-1-25. Notice of trustee's sale -- Description of property -- Time and place of**
40 **sale.**

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

43 (a) by publication of the notice:

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

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

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

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

50 (ii) in accordance with Section 45-1-101 for 30 days before the date the sale is
51 scheduled; [~~and~~]

52 (b) by posting the notice:

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

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

55 (B) at the office of the county recorder of each county in which the trust property, or
56 some part of it, is located[-:]; and

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

59 (i) by posting the notice:

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

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

65 (ii) by mailing the notice to the occupant of each dwelling unit on the property to be
66 sold.

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

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

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

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

73 Notice of Trustee's Sale

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

79 (Insert legal description)

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

83 Dated _____ (month\day\year). _____

84 Trustee

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

88 "Notice to Tenant

89 As stated in the accompanying Notice of Trustee's Sale, this property is scheduled to be
90 sold at public auction to the highest bidder unless the default in the obligation secured by this
91 property is cured. If the property is sold, you may be allowed under Utah law (Utah Code
92 Section 78B-6-802.7) to continue to occupy your rental unit until your rental agreement
93 expires, or until 90 days after the date you are served with a notice to vacate, whichever is later.
94 If your rental or lease agreement expires after the 90-day period, you will need to provide a
95 copy of your rental or lease agreement to the new owner to prove your right to remain on the
96 property longer than 90 days after the sale of the property.

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

100 The new owner should contact you after the property is sold with directions about
101 where to pay rent.

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

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

106 Section 2. Section **63I-1-257** is enacted to read:

107 **63I-1-257. Repeal dates, Title 57.**

108 Subsections 57-1-25(1)(c) and (3)(b) are repealed July 1, 2013.

109 Section 3. Section **63I-1-278** is amended to read:

110 **63I-1-278. Repeal dates, Title 78A and Title 78B.**

111 (1) The Office of the Court Administrator, created in Section 78A-2-105, is repealed
112 July 1, 2018.

113 (2) The case management program coordinator in Subsection 78A-2-108(4) is repealed
114 July 1, 2009.

115 (3) Section 78B-3-421, regarding medical malpractice arbitration agreements, is
116 repealed July 1, 2019.

117 (4) Alternative Dispute Resolution Act, created in Title 78B, Chapter 6, Part 2, is
118 repealed July 1, 2016.

119 (5) The following are repealed July 1, 2013:

120 (a) Subsection 78B-6-802(1)(i);

121 (b) the language in Subsection 78B-6-802(1)(a) that states "except as provided in
122 Subsection (1)(i)"; and

123 (c) the language in Subsection 78B-6-802(1)(b) that states "and except as provided in
124 Subsection (1)(i)".

125 (6) Section 78B-6-802.7, regarding rights of tenants in foreclosed residential rental
126 property, is repealed July 1, 2013.

127 (7) The language in Subsection 78B-6-802.5(2) that states "subject to Subsection
128 78B-6-802.7," is repealed July 1, 2013;

129 (8) Section 78B-6-901.5, regarding notice to tenants on residential rental property to be
130 foreclosed, is repealed July 1, 2013.

131 Section 4. Section **78B-6-802** is amended to read:

132 **78B-6-802. Unlawful detainer by tenant for term less than life.**

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

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

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

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

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

148 (c) continues in possession, in person or by subtenant, after default in the payment of
149 any rent or other amounts due and after a notice in writing requiring in the alternative the

150 payment of the rent and other amounts due or the surrender of the detained premises, has
151 remained uncomplished with for a period of three calendar days after service, which notice may
152 be served at any time after the rent becomes due;

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

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

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

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

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

167 (i) (i) is a bona fide tenant, as defined in Section 57-1-802.7, of foreclosed rental
168 property, as defined in Section 57-1-802.7; and

169 (ii) continues in possession after the date on which a notice to vacate under Subsection
170 57-1-802.7(3) requires the tenant to vacate the foreclosed rental property.

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

177 (3) Unlawful detainer by an owner resident of a mobile home is determined under Title
178 57, Chapter 16, Mobile Home Park Residency Act.

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

181 Section 5. Section **78B-6-802.5** is amended to read:

182 **78B-6-802.5. Unlawful detainer after foreclosure or forced sale.**

183 A previous owner, trustor, or mortgagor of a property is guilty of unlawful detainer if
184 the ~~[person]~~ previous owner, trustor, or mortgagor:

185 (1) defaulted on his or her obligations resulting in disposition of the property by a
186 trustee's sale or sheriff's sale; and

187 (2) subject to Section 78B-6-802.7, continues to occupy the property after the trustee's
188 sale or sheriff's sale after being served with a notice to quit by the purchaser.

189 Section 6. Section **78B-6-802.7** is enacted to read:

190 **78B-6-802.7. Rights of tenant in foreclosed residential rental property -- 90-day**
191 **notice to vacate required.**

192 (1) As used in this section:

193 (a) "Bona fide tenant" means a person, other than the borrower or the borrower's child,
194 spouse, or parent, who has the right to occupy a residential dwelling under a residential rental
195 agreement.

196 (b) "Borrower" means:

197 (i) for property secured by a trust deed, the trustor; or

198 (ii) for property secured by a mortgage, the mortgagor.

199 (c) "Foreclosed rental property" means property that is:

200 (i) subject to a residential rental agreement; and

201 (ii) the subject of a foreclosure.

202 (d) "Foreclosure" means:

203 (i) for trust property, as defined in Section 57-1-19:

204 (A) a trustee's sale of the trust property as provided in Sections 57-1-19 through
205 57-1-36; or

206 (B) if the trust deed beneficiary chooses to foreclose the trust property in the manner
207 provided by law for a mortgage, as allowed under Section 57-1-23, a sheriff's sale of the trust
208 property under the process provided in Part 9, Mortgage Foreclosure; or

209 (ii) for property secured by a mortgage, a sheriff's sale of the property under the process
210 provided in Part 9, Mortgage Foreclosure.

211 (e) "New owner" means the immediate successor in interest with respect to the

212 foreclosed rental property following foreclosure.

213 (f) "Residential rental agreement" means a written or oral agreement:

214 (i) established:

215 (A) through an arms-length transaction; and

216 (B) before:

217 (I) for property secured by a trust deed:

218 (Aa) a notice of default is recorded under Section 57-1-24; or

219 (Bb) an action to foreclose the trust property under Part 9, Mortgage Foreclosure, is

220 filed, if the trust deed beneficiary chooses to foreclose the trust property in the manner

221 provided by law for a mortgage, as allowed under Section 57-1-23; or

222 (II) for property secured by a mortgage, the filing of an action to foreclose the
223 mortgage under Part 9, Mortgage Foreclosure;

224 (ii) that establishes the terms, conditions, or other provisions governing the use and
225 occupancy of a residential dwelling;

226 (iii) under which a bona fide tenant has the right to exclusive use and occupancy of the
227 residential dwelling, whether on an at-will basis or for a period specified under the agreement;

228 and

229 (iv) that provides for the payment of rent:

230 (A) in an amount that is not substantially less than fair market rent; or

231 (B) that is reduced in amount or subsidized due to a federal, state, or local subsidy.

232 (2) (a) Except as provided in Subsection (2)(b), a new owner assumes ownership of
233 foreclosed rental property subject to a tenant's right to occupy the property:

234 (i) according to the terms of the residential rental agreement; and

235 (ii) until the end of the term of the residential rental agreement.

236 (b) Subject to Subsection (3), a new owner who will occupy the foreclosed rental
237 property as a primary residence may terminate:

238 (i) the residential rental agreement; and

239 (ii) the tenant's occupancy of the foreclosed rental property.

240 (3) (a) A new owner who desires to terminate a tenant's occupancy of foreclosed rental
241 property, whether at the end of the term of the residential rental agreement or otherwise, shall

242 serve a notice to vacate on the tenant:

243 (i) at least 90 days before the date on which the new owner requires the tenant to
244 vacate; and

245 (ii) as provided in Section 78B-6-805.

246 (b) A notice to vacate under Subsection (3)(a) shall:

247 (i) be in at least 14-point font;

248 (ii) state the new owner's name, address, and contact information;

249 (iii) explain the reason the new owner requires the tenant to vacate the foreclosed rental
250 property;

251 (iv) state the date on which the tenant is required to vacate the foreclosed rental
252 property; and

253 (v) refer to this section as the law under which the notice to vacate is provided.

254 (4) Nothing in this section may be construed to affect the requirements for termination
255 of a federally subsidized tenancy.

256 Section 7. Section **78B-6-901.5** is enacted to read:

257 **78B-6-901.5. Notice to tenant on residential property to be foreclosed.**

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

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

263 (a) post a notice:

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

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

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

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

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

272 (b) include the name and address of:

273 (i) the owner of the property;

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

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

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

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

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

280 "Notice to Tenant

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

285 If the property is sold, you are allowed under Utah law (Utah Code Section
286 78B-6-802.7) to continue to occupy your rental unit until your rental agreement expires, or
287 until 90 days after the sale of the property at auction, whichever is later. If your rental or lease
288 agreement expires after the 90-day period, you will need to provide a copy of your rental or
289 lease agreement to the new owner to prove your right to remain on the property longer than 90
290 days after the sale of the property.

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

294 The new owner should contact you after the property is sold with directions about
295 where to pay rent.

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

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