

**RECONVEYANCE OF TRUST DEED OR
RELEASE OF MORTGAGE**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Thomas V. Hatch

This act amends Title 57, Real Estate. The act adds a new definition and modifies another. The act eliminates the requirement that a title insurer or title agent wait 30 days after payment in full of an obligation secured by a trust deed or mortgage to give to the beneficiary, mortgagee, or loan servicer a notice of intent to release or reconvey. This act makes technical corrections.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

57-1-39, as enacted by Chapter 185, Laws of Utah 1995

57-1-40, as enacted by Chapter 185, Laws of Utah 1995

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

Section 1. Section **57-1-39** is amended to read:

57-1-39. Definitions.

As used in Sections 57-1-40 and 57-1-44:

(1) "Beneficiary" means the record owner of the beneficiary's interest under a trust deed, including successors in interest.

(2) "Deliver" or "delivered" means:

(a) by overnight delivery by a reputable carrier; or

(b) by United States certified mail or express mail.

~~[(2)]~~ (3) "Mortgage" is as described in Section 57-1-14.

~~[(3)]~~ (4) "Mortgagee" means the record owner of the mortgagee's interest under a mortgage, including a successor in interest.

~~[(4)]~~ (5) "Satisfactory evidence of the full payment of the obligation secured by a trust deed or mortgage" means ~~[the original cancelled check or a copy of a check, including a voucher copy, payable to the beneficiary or a servicer, and reasonable documentary evidence that the check~~

~~was intended to effect full payment under the trust deed or an encumbrance upon the property covered by the trust deed]~~ written information adequate, in the opinion of a title insurer or title agent, to establish that the obligation secured by the trust deed or mortgage has been paid in full.

~~[(5)]~~ (6) "Servicer" means a person or entity that collects loan payments on behalf of a beneficiary or mortgagee.

~~[(6)]~~ (7) "Title agent" means a title insurance agent licensed as an organization under Title 31A, Chapter 23, Part II, Licensing of Agents, Brokers and Consultants.

~~[(7)]~~ (8) "Title insurer" means a title insurer authorized to conduct business in the state under Title 31A, Chapter 23, Part II, Licensing of Agents, Brokers and Consultants.

~~[(8)]~~ (9) "Trust deed" is as defined in Subsection 57-1-19(3).

Section 2. Section **57-1-40** is amended to read:

57-1-40. Reconveyance of trust deed or release of mortgage -- Procedures -- Forms.

(1) A title insurer or title agent may reconvey a trust deed or release a mortgage in accordance with the provisions of Subsections (2) through (6) if:

(a) the obligation secured by the trust deed or mortgage has been fully paid by the title insurer or title agent; or

(b) the title insurer or title agent possesses satisfactory evidence of the full payment of the obligation secured by a trust deed or mortgage.

(2) A title insurer or title agent may reconvey a trust deed or release a mortgage under Subsection (1) regardless of whether the title insurer or title agent is named as a trustee under a trust deed or has the authority to release a mortgage.

(3) ~~[No sooner than 30 days after payment in full of the obligation secured by a trust deed or mortgage]~~ At the time the obligation secured by the trust deed or mortgage is paid in full, or at any time thereafter, the title insurer or title agent shall deliver a notice of intent to release or reconvey and a copy of the release or reconveyance to be recorded, as described in Subsection (4), to the beneficiary, mortgagee, or servicer~~[, or send by certified mail to the beneficiary, mortgagee, or servicer]~~ at:

(a) the address specified in the trust deed or mortgage~~[, at]~~;

(b) any address for the beneficiary or mortgagee specified in the last recorded assignment of the trust deed or mortgage~~[-and at];~~

(c) any address for the beneficiary, mortgagee, or servicer specified in a request for notice recorded under Section 57-1-26~~[-a notice of intent to release or reconvey and a copy of the release or reconveyance to be recorded as provided in Sections (4) and (5).]; or~~

(d) the address shown on any payoff statement received by the title insurer or agent from the beneficiary, mortgagee, or servicer.

(4) The notice of intent to release or reconvey shall contain the name of the beneficiary or mortgagee and the servicer if loan payments on the trust deed or mortgage are collected by a servicer, the name of the title insurer or title agent, the date, and be substantially in the following form:

NOTICE OF INTENT TO RELEASE OR RECONVEY

Notice is hereby given to you as follows:

1. This notice concerns the (trust deed or mortgage) described as follows:

(Trustor or Mortgagor): _____

(Beneficiary or Mortgagee): _____

Recording information: _____

Entry Number: _____

Book Number: _____

Page Number: _____

2. The undersigned claims to have paid in full or possesses satisfactory evidence of the full payment of the obligation secured by the trust deed or mortgage described above.

3. The undersigned will fully release the mortgage or reconvey the trust deed described in this notice unless, within 60 days from the date stated on this notice, the undersigned has received by certified mail a notice stating that the obligation secured by the trust deed or mortgage has not been paid in full or that you otherwise object to the release of the mortgage or the reconveyance of the trust deed. Notice shall be mailed to the address stated on this form.

4. A copy of the (release of mortgage or reconveyance of trust deed) is enclosed with this notice.

(Signature of title insurer or title agent)

(Address of title insurer or title agent)

(5) (a) If, within 60 days from the day on which the title insurer or title agent delivered [~~or mailed~~] the notice of intent to release or reconvey in accordance with Subsections (3) and (4), a reconveyance of trust deed or release of mortgage is not recorded, and the beneficiary, mortgagee, or servicer does not send by certified mail to the title insurer or title agent a notice that the obligation secured by the trust deed or mortgage has not been paid in full or that the beneficiary, mortgagee, or servicer objects to the release of the mortgage or reconveyance of the trust deed, the title insurer or title agent may execute, acknowledge, and record a reconveyance of a trust deed or release of a mortgage.

(b) A reconveyance of a trust deed under Subsection (5)(a) shall be in substantially the following form:

RECONVEYANCE OF TRUST DEED

(Name of title insurer or title agent), a (title insurer or title agent) authorized to conduct business in the state does hereby reconvey, without warranty, the following trust property located in (name of county) County, state of Utah, that is covered by a trust deed naming (name of trustor) as trustor, and (name of beneficiary) as beneficiary and was recorded on (date) in Book _____ at Page _____ as Entry Number _____: (insert a description of the trust property.)

The undersigned title insurer or title agent certifies as follows:

1. The undersigned title insurer or title agent has fully paid the obligation secured by the trust deed or possesses satisfactory evidence of the full payment of the obligation secured by the trust deed.

2. [~~No sooner than 30 days after payment in full of the obligation secured by the trust deed, the~~] In accordance with the requirements of Utah Code Annotated Subsections 57-1-40(3) and (4), ~~the~~ the title insurer or title agent delivered [~~or sent by certified mail~~] to the beneficiary or servicer [~~at the address specified in the trust deed, at any address for the beneficiary specified in the last recorded assignment of the trust deed, and at any address for the beneficiary or servicer specified in a request for notice recorded under Section 57-1-26~~], a notice of intent to release or reconvey and a copy of

the reconveyance.

3. The trust deed has not been reconveyed and the title insurer or title agent did not receive, within 60 days from the day on which the title insurer or title agent delivered [~~or mailed~~] the notice of intent to release or reconvey, a notice from the beneficiary or servicer sent by certified mail that the obligation secured by the trust deed has not been paid in full or that the beneficiary or servicer objects to the reconveyance of the trust deed.

(Notarization)

(Signature of title insurer or title agent)

(c) A release of a mortgage under Subsection (5)(a) shall be in substantially the following form:

RELEASE OF MORTGAGE

(Name of title insurer or title agent), a (title insurer or title agent) authorized to conduct business in the state does hereby release the mortgage on the following property located in (name of county) County, state of Utah, that is covered by a mortgage naming (name of mortgagor) as mortgagor, and (name of mortgagee) as mortgagee and was recorded on (date) in Book _____ at Page _____ as Entry Number _____: (insert a description of the trust property.)

The undersigned title insurer or title agent certifies as follows:

1. The undersigned title insurer or title agent has fully paid the obligation secured by the mortgage or possesses satisfactory evidence of the full payment of the obligation secured by the mortgage.

2. [~~No sooner than 30 days after payment in full of the obligation secured by the mortgage, the~~] In accordance with the requirements of Utah Code Annotated Subsections 57-1-40(3) and (4), the title insurer or title agent delivered to the mortgagee [~~or sent by certified mail to the mortgagee~~] or servicer [~~at the address specified in the mortgage and at any address for the mortgagee specified in the last recorded assignment of the mortgage;~~] a notice of intent to release or reconvey and a copy of the release.

3. The mortgage has not been released and the title insurer or title agent did not receive, within 60 days from the day on which the title insurer or title agent delivered [~~or mailed~~] the notice

of intent to release or reconvey, a notice from the mortgagee or servicer sent by certified mail that the obligation secured by the mortgage has not been paid in full or that the mortgagee or servicer objects to the release of the mortgage.

(Notarization)

(Signature of title insurer or title agent)

(d) (i) A release of mortgage or reconveyance of trust deed that is executed and notarized in accordance with ~~[Subsections]~~ Subsection (5)(b) or (c) is entitled to recordation.

(ii) (A) Except as provided in Subsection (5)(d)(ii)(B), a reconveyance of a trust deed or release of a mortgage that is recorded under Subsection (5)(d)(i) is valid regardless of any deficiency in the release or reconveyance procedure not disclosed in the release of mortgage or reconveyance of trust deed.

(B) If the title insurer's or title agent's signature on a release of mortgage or reconveyance of trust deed recorded under Subsection (5)(d)(ii)(A) is forged, the release of mortgage or reconveyance of trust deed is void.

(6) A release of mortgage or reconveyance of trust deed under this section does not, by itself, discharge ~~[an]~~ any promissory note or other obligation that was secured by the trust deed or mortgage at the time the trust deed was reconveyed or the mortgage was released.