

Senator Wayne L. Niederhauser proposes the following substitute bill:

1                   **LIMITATION ON ACTION TO RECOVER DEFICIENCY**

2                                   **FOLLOWING SHORT SALE**

3   2012 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Wayne L. Niederhauser**

6   House Sponsor: Daniel McCay

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8                   **LONG TITLE**

9                   **General Description:**

10                   This bill enacts a provision establishing a time limit for an action to recover a  
11                   deficiency following a specified sale of residential real property.

12                   **Highlighted Provisions:**

13                   This bill:

14                   ▶ bars an action to recover a deficiency following a short sale of single-family  
15                   residential property unless the action is commenced no later than three months after  
16                   the short sale.

17                   **Money Appropriated in this Bill:**

18                   None

19                   **Other Special Clauses:**

20                   None

21                   **Utah Code Sections Affected:**

22                   ENACTS:

23                   78B-2-313, Utah Code Annotated 1953

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



26 Section 1. Section **78B-2-313** is enacted to read:

27 **78B-2-313. Action to recover deficiency after short sale.**

28 (1) As used in this section:

29 (a) "Deficiency" means the balance owed to a secured lender under a secured loan after  
30 completion of a short sale of the secured property.

31 (b) "Obligor" means the person or persons obligated to pay a secured loan.

32 (c) "Secured lender" means the person or persons to whom the obligation under a  
33 secured loan is owed.

34 (d) "Secured loan" means an obligation evidenced by a note and secured by a mortgage  
35 or trust deed on secured property.

36 (e) "Secured property" means single-family, residential real property located in the  
37 state that is the subject of a mortgage or trust deed to secure a secured loan.

38 (f) "Short sale" means a sale:

39 (i) of secured property;

40 (ii) by the owner of the secured property;

41 (iii) that results in the secured lender being paid less than the balance owing under the  
42 secured loan; and

43 (iv) made with the secured lender's consent and resulting in the secured lender  
44 releasing the mortgage or reconveying the trust deed on the secured property.

45 (2) An action to recover a deficiency is barred unless it is commenced no more than  
46 three months after the date of recording of a release of mortgage or reconveyance of trust deed  
47 with respect to secured property and resulting from a short sale of that property.

48 (3) Subsection (2) does not apply if the obligor has engaged in fraud in connection with  
49 the short sale.

50 (4) The limitation under Subsection (2) does not apply to an obligation evidenced by an  
51 agreement that:

52 (a) is separate from the secured loan;

53 (b) is executed between an obligor and a secured lender in connection with a short sale;

54 and

55 (c) obligates the obligor to pay some or all of a deficiency.