

TITLE 45
LIENS, MORTGAGES AND PLEDGES

CHAPTER 15
TRUST DEEDS

45-1502. DEFINITIONS -- TRUSTEE'S CHARGE. As used in this act:

(1) "Beneficiary" means the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or his successor in interest, and who shall not be the trustee.

(2) "Grantor" means the person conveying real property by a trust deed as security for the performance of an obligation.

(3) "Trust deed" means a deed executed in conformity with this act and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the deed to a beneficiary.

(4) "Trustee" means a person to whom title to real property is conveyed by trust deed, or his successor in interest for the limited purpose of the power of sale contained in this chapter upon the occurrence of certain contingencies set forth in such trust deed, and the obligation to reconvey the deed of trust pursuant to section [45-1514](#), Idaho Code. All other incidents of ownership of such real property shall remain with the grantor. For the purpose of section [45-1506](#)(2)(c), Idaho Code, a trustee is not a party requiring notice of sale.

(5) "Real property" means any right, title, interest and claim in and to real property owned by the grantor at the date of execution of the deed of trust or acquired thereafter by said grantor or his successors in interest. Provided, nevertheless, real property as so defined which may be transferred in trust under this act shall be limited to: (a) any real property located within an incorporated city or village at the time of the transfer; (b) any real property not exceeding eighty (80) acres, regardless of its location, provided that such real property is not principally used for the agricultural production of crops, livestock, dairy or aquatic goods; or (c) any real property not exceeding forty (40) acres regardless of its use or location.

(6) The trustee shall be entitled to a reasonable charge for duties or services performed pursuant to the trust deed and this chapter, including compensation for reconveyance services notwithstanding any provision of a deed of trust prohibiting payment of a reconveyance fee by the grantor or beneficiary, or any provision of a deed of trust which limits or otherwise restricts the amount of a reconveyance fee to be charged and collected by the trustee. A trustee shall be entitled to refuse to reconvey a deed of trust until the trustee's reconveyance fees and recording costs for recording the reconveyance instruments are paid in full. The trustee shall not be entitled to a foreclosure fee in the event of judicial foreclosure or work done prior to the recording of a notice of default. If the default is cured prior to the time of the last newspaper publication of the notice of sale, the trustee shall be paid a reasonable fee.

[45-1502, added 1957, ch. 181, sec. 2, p. 345; am. 1967, ch. 118, sec. 2, p. 251; am. 1970, ch. 42, sec. 1, p. 89; am. 1983, ch. 190, sec. 1, p. 515; am. 1995, ch. 326, sec. 2, p. 1095; am. 1996, ch. 248, sec. 1, p. 783; am. 1997, ch. 387, sec. 1, p. 1242; am. 2008, ch. 365, sec. 1, p. 1000; am. 2016, ch. 227, sec. 1, p. 624.]

45-1503. TRANSFERS IN TRUST TO SECURE OBLIGATION -- FORECLOSURE. (1) Transfers in trust of any estate in real property as defined in section [45-1502](#)(5), Idaho Code, may hereafter be made to secure the performance of an obligation of the grantor or any other person named in the deed to a beneficiary. Where any transfer in trust of any estate in real property is hereafter made to secure the performance of such an obligation, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is security, and a deed of trust executed in conformity with this act may be foreclosed by advertisement and sale in the manner hereinafter provided, or, at the option of beneficiary, by foreclosure as provided by law for the foreclosure of mortgages on real property. If any obligation secured by a trust deed is breached, the beneficiary may not institute a judicial action against the grantor or his successor in interest to enforce an obligation owed by the grantor or his successor in interest unless:

(a) The trust deed has been foreclosed by advertisement and sale in the manner provided in this chapter and the judicial action is brought pursuant to section [45-1512](#), Idaho Code; or

(b) The action is one for foreclosure as provided by law for the foreclosure of mortgages on real property; or

(c) The beneficiary's interest in the property covered by the trust deed is substantially valueless as defined in subsection (2) of this section, in which case the beneficiary may bring an action against the grantor or his successor in interest to enforce the obligation owed by grantor or his successor in interest without first resorting to the security; or

(d) The action is one excluded from the meaning of "action" under the provisions of section [6-101](#)(3), Idaho Code.

(2) As used in this section, "substantially valueless" means that the beneficiary's interest in the property covered by the trust deed has become valueless through no fault of the beneficiary, or that the beneficiary's interest in such property has little or no practical value to the beneficiary after taking into account factors such as the nature and extent of the estate in real property which was transferred in trust; the existence of senior liens against the property; the cost to the beneficiary of satisfying or making current payments on senior liens; the time and expense of marketing the property covered by the deed of trust; the existence of liabilities in connection with the property for clean up of hazardous substances, pollutants or contaminants; and such other factors as the court may deem relevant in determining the practical value to the beneficiary of the beneficiary's interest in the real property covered by the trust deed.

(3) The beneficiary may bring an action to enforce an obligation owed by grantor or his successor in interest alleging that the beneficiary's interest in the property covered by the trust deed is substantially valueless without affecting the priority of the lien of the trust deed and without waiving his right to require the trust deed to be foreclosed by advertisement and sale and the beneficiary may, but shall not be required to, plead an alternative claim for foreclosure of the trust deed as a mortgage in the same action. If the court finds that the property is not substantially valueless, the beneficiary may seek judicial foreclosure of the trust deed, or he may dismiss the action and foreclose the trust deed by advertisement and sale in the manner provided in this chapter. If the court finds that the beneficiary's interest in the property covered by the trust deed is substantially

valueless and enters a judgment upon the obligation, when that judgment becomes final the beneficiary shall execute a written request to the trustee to reconvey to the grantor or his successor in interest the estate in real property described in the trust deed. If the beneficiary obtains judgment on an obligation secured by a trust deed pursuant to subsection (1)(c) of this section, the lien of the judgment shall not relate back to the date of the lien of the trust deed.

[45-1503, added 1957, ch. 181, sec. 3, p. 345; am. 1967, ch. 118, sec. 3, p. 251; am. 1989, ch. 340, sec. 1, p. 861; am. 1993, ch. 281, sec. 2, p. 951.]

45-1504. TRUSTEE OF TRUST DEED -- WHO MAY SERVE -- SUCCESSORS. (1) The trustee of a trust deed under this act shall be:

- (a) Any member of the Idaho state bar;
- (b) Any bank or savings and loan association authorized to do business under the laws of Idaho or the United States;
- (c) An authorized trust institution having a charter under [chapter 32, title 26](#), Idaho Code, or any corporation authorized to conduct a trust business under the laws of the United States; or
- (d) A licensed title insurance agent or title insurance company authorized to transact business under the laws of the state of Idaho.

(2) The trustee may resign at its own election or be replaced by the beneficiary. The trustee shall give prompt written notice of its resignation to the beneficiary. The resignation of the trustee shall become effective upon the recording of the notice of resignation in each county in which the deed of trust is recorded. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a successor trustee. Upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.

[45-1504, added 1957, ch. 181, sec. 4, p. 345; am. 1969, ch. 155, sec. 1, p. 482; am. 1983, ch. 190, sec. 2, p. 515; am. 2005, ch. 236, sec. 3, p. 726.]

45-1505. FORECLOSURE OF TRUST DEED, WHEN. The trustee may foreclose a trust deed by advertisement and sale under this act if:

(1) The trust deed, any assignments of the trust deed by the trustee or the beneficiary and any appointment of a successor trustee are recorded in mortgage records in the counties in which the property described in the deed is situated; and

(2) There is a default by the grantor or other person owing an obligation the performance of which is secured by the trust deed or by their successors in interest with respect to any provision in the deed which authorizes sale in the event of default of such provision; and

(3) The trustee or beneficiary shall have (a) filed for record in the office of the recorder in each county wherein the trust property, or some part or parcel, is situated, a notice of default identifying the deed of trust by stating the name or names of the trustor or trustors and giving the book and page where the same is recorded, or a description of the trust property, and containing a statement that a breach of the obligation for which

the transfer in trust is security has occurred, and setting forth the nature of such breach and his election to sell or cause to be sold such property to satisfy such obligation; and (b) mailed a copy of such notice by registered or certified mail, return receipt requested, to any person requesting such notice of record as provided in section [45-1511](#), Idaho Code. Service by mail in accordance with this subsection (3) shall be deemed effective at the time of mailing. In addition, the trustee shall mail the notice required in this section to any individual who owns an interest in property which is the subject of this section. Such notice shall be accompanied by and affixed to the following notice in twelve (12) point boldface type, on a separate sheet of paper, no smaller than eight and one-half (8 1/2) inches by eleven (11) inches:

"NOTICE REQUIRED BY IDAHO LAW

Mortgage foreclosure is a legal proceeding where a lender terminates a borrower's interest in property to satisfy unpaid debt secured by the property. This can mean that when a homeowner gets behind on his or her mortgage payments, the lender forces a sale of the home on which the mortgage loan is based. Some individuals or businesses may say they can "save" your home from foreclosure. You should be cautious about such claims. It is important that you understand all the terms of a plan to "rescue" you from mortgage foreclosure and how it will affect you. It may result in your losing valuable equity that you may have in your home. If possible, you should consult with an attorney or financial professional to find out what other options you may have. Do not delay seeking advice, because the longer you wait, the fewer options you may have. Under Idaho law, you have five (5) days to rescind or undo certain contracts or agreements that relate to transferring interests in property or money in a foreclosure situation. An attorney or financial professional can tell you more about this option."

If the trust deed, or any assignments of the trust deed, are in the Spanish language, the written notice set forth in this section shall be in the Spanish language on a form to be prepared and made available by the office of the attorney general.

(4) No action, suit or proceeding has been instituted to recover the debt then remaining secured by the trust deed, or any part thereof, or if such action or proceeding has been instituted, the action or proceeding has been dismissed.

[45-1505, added 1957, ch. 181, sec. 5, p. 345; am. 1990, ch. 401, sec. 1, p. 1123; am. 2008, ch. 192, sec. 2, p. 603; am. 2009, ch. 136, sec. 1, p. 417.]

45-1506. MANNER OF FORECLOSURE -- NOTICE -- SALE. (1) A trust deed may be foreclosed in the manner provided in this section.

(2) Subsequent to recording notice of default as hereinbefore provided, and at least one hundred twenty (120) days before the day fixed by the trustee for the trustee's sale, notice of such sale shall be given by registered or certified mail, return receipt requested, to the last known address of the following persons or their legal representatives, if any:

(a) The grantor in the trust deed and any person requesting notice of record as provided in section [45-1511](#), Idaho Code.

(b) Any successor in interest of the grantor including, but not limited to, a grantee, transferee or lessee, whose interest appears of record prior to the recording of the notice of default, or where the trustee or the beneficiary has actual notice of such interest.

(c) Any person having a lien or interest subsequent to the interest of the trustee in the trust deed where such lien or interest appears of record prior to the recording of the notice of default, or where the trustee or the beneficiary has actual notice of such lien or interest.

(3) The disability, insanity or death of any person to whom notice of sale is to be given under subsection (2) of this section shall not delay or impair in any way the trustee's right under a trust deed to proceed with a sale under such deed, provided the notice of sale required under subsection (2) of this section has been mailed as provided by law for service of summons upon incompetents or to the administrator or executor of the estate of such person.

(4) The notice of sale shall set forth:

(a) The names of the grantor, trustee and beneficiary in the trust deed.

(b) A description of the property covered by the trust deed.

(c) The book and page of the mortgage records or the recorder's instrument number where the trust deed is recorded.

(d) The default for which the foreclosure is made.

(e) The sum owing on the obligation secured by the trust deed.

(f) The date, time and place of the sale which shall be held at a designated time after 9:00 a.m. and before 4:00 p.m., standard time, and at a designated place in the county or one (1) of the counties where the property is located.

(5) At least three (3) good faith attempts shall be made on different days over a period of not less than seven (7) days, each of which attempts must be made at least thirty (30) days prior to the day of the sale, to serve a copy of the notice of sale upon an adult occupant of the real property in the manner in which a summons is served. At the time of each such attempt, a copy of the notice of sale shall be posted in a conspicuous place on the real property unless the copy of the notice of sale previously posted remains conspicuously posted. Provided, however, that if during such an attempt personal service is made upon an adult occupant and a copy of the notice is posted, then no further attempt at personal service and no further posting shall be required. Provided, further, that if the adult occupant personally served is a person to whom the notice of sale was required to be mailed, and was mailed, pursuant to the foregoing subsections of this section, then no posting of the notice of sale shall be required.

(6) A copy of the notice of sale shall be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four (4) successive weeks, making four (4) publishings in all, with the last publication to be at least thirty (30) days prior to the day of sale. It shall be unlawful for the trustee for the trustee's sale to have a financial interest in a newspaper publishing such notice or to profit, directly or indirectly, based on the publication of such notice of sale and such conduct shall constitute a misdemeanor, punishable by imprisonment in the county jail for a term not to exceed one (1) year, or by a fine not to exceed one thousand dollars (\$1,000), or by both such fine and imprisonment.

(7) An affidavit of mailing notice of sale and an affidavit of posting, when required, and publication of notice of sale as required by subsection (6) of this section shall be recorded in the mortgage records in the counties in which the property described in the deed is situated at least twenty (20) days prior to the date of sale.

(8) The sale shall be held on the date and at the time and place designated in the notice of sale or notice of rescheduled sale as provided in section [45-1506A](#), Idaho Code, unless the sale is postponed as provided in this subsection or as provided in section [45-1506B](#), Idaho Code, respecting the effect of an intervening stay or injunctive relief order. The trustee shall sell the property in one (1) parcel or in separate parcels at auction to the highest bidder. Any person, including the beneficiary under the trust deed, may bid at the trustee's sale. The attorney for such trustee may conduct the sale and act in such sale as the auctioneer of trustee. The trustee may postpone the sale of the property upon request of the beneficiary by publicly announcing at the time and place originally fixed for the sale the postponement to a stated subsequent date and hour. No sale may be postponed to a date more than thirty (30) days subsequent to the date from which the sale is postponed. A postponed sale may itself be postponed in the same manner and within the same time limitations as provided in this subsection. For any loan made by a state or federally regulated beneficiary, which loan is secured by a deed of trust encumbering the borrower's primary residence as determined pursuant to section [45-1506C](#)(1), Idaho Code, the trustee, prior to conducting any trustee's sale previously postponed pursuant to this section, shall mail notice of such trustee sale at least fourteen (14) days prior to conducting such sale by the same means and to the same persons as provided in subsection (2) of this section. The trustee or beneficiary shall, prior to conducting the trustee's sale, record an affidavit of mailing confirming that such notice has been mailed as required by this section. The filing of such affidavit of mailing is conclusive evidence of compliance with this section as to any party relying on said affidavit of mailing.

(9) The purchaser at the sale shall forthwith pay the price bid and upon receipt of payment the trustee shall execute and deliver the trustee's deed to such purchaser, provided that in the event of any refusal to pay purchase money, the officer making such sale shall have the right to resell or reject any subsequent bid as provided by law in the case of sales under execution.

(10) The trustee's deed shall convey to the purchaser the interest in the property which the grantor had, or had the power to convey, at the time of the execution by him of the trust deed together with any interest the grantor or his successors in interest acquired after the execution of such trust deed.

(11) The purchaser at the trustee's sale shall be entitled to possession of the property on the tenth day following the sale, and any persons remaining in possession thereafter under any interest except one prior to the deed of trust shall be deemed to be tenants at sufferance.

(12) Whenever all or a portion of any obligation secured by a deed of trust which has become due by reason of a default of any part of that obligation, including taxes, assessments, premiums for insurance or advances made by a beneficiary in accordance with the terms of the deed of trust, the grantor or his successor in interest in the trust property or any part thereof, or any beneficiary under a subordinate deed of trust or any person having a subordinate lien or encumbrance of record thereon, at any time within one hundred fifteen (115) days of the recording of the notice of

default under such deed of trust, if the power of sale therein is to be exercised, or otherwise at any time prior to the entry of a decree of foreclosure, may pay to the beneficiary or their successors in interest, respectively, the entire amount then due under the terms of the deed of trust and the obligation secured thereby, including costs and expenses actually incurred in enforcing the terms of such obligation and a reasonable trustee's fee subject to the limitations imposed by subsection (6) of section [45-1502](#), Idaho Code, and attorney's fees as may be provided in the promissory note, other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued and the obligation and deed of trust shall be reinstated and shall be and remain in force and effect, the same as if no acceleration had occurred.

(13) Any mailing to persons outside the United States and its territories required by this chapter may be made by ordinary first class mail if certified or registered mail service is unavailable.

(14) Service by mail in accordance with the provisions of this section shall be deemed effective at the time of mailing.

(15) On or after the tenth day, as provided in subsection (11) of this section, if the property is reasonably determined by the purchaser to be unoccupied, the purchaser may:

(a) Dispose of any titled personal property remaining on the premises in the manner described by applicable law; and

(b) Remove any nontitled personal property from the premises and place it in suitable storage. The purchaser may dispose of the nontitled personal property only after providing ninety (90) days' written notice as follows:

(i) First class mail to the last known address of the last known occupant of the property; and

(ii) Posting a notice in a conspicuous place on the premises that such nontitled personal property may be disposed of following such ninety (90) day period, and providing a name, address and phone number to contact regarding further information as to the location and disposition of such nontitled personal property; and

(iii) The notice shall generally describe the nontitled personal property that was left on the premises and that the purchaser intends to dispose of the property and the anticipated method of disposition.

(c) If the owner of the nontitled personal property fails to claim the nontitled personal property within ninety (90) days of the date that written notice was provided under paragraph (b) of this subsection, then any and all of his rights in said property shall extinguish, and the purchaser shall have no further liability regarding said property or to any potential claimants of said property.

[45-1506, added 1957, ch. 181, sec. 6, p. 345; am. 1967, ch. 74, sec. 1, p. 170; am. 1983, ch. 190, sec. 3, p. 516; am. 1990, ch. 401, sec. 2, p. 1123; am. 2011, ch. 323, sec. 1, p. 939; am. 2012, ch. 326, sec. 1, p. 905; am. 2016, ch. 364, sec. 1, p. 1071.]

45-1506A. RESCHEDULED SALE -- ORIGINAL SALE BARRED BY STAY -- NOTICE OF RESCHEDULED SALE. (1) In the event a sale cannot be held at the time scheduled by reason of automatic stay provisions of the U.S. bankruptcy code (11 U.S.C.

362), or a stay order issued by any court of competent jurisdiction, then the sale may be rescheduled and conducted following expiration or termination of the effect of the stay in the manner provided in this section.

(2) Notice of the rescheduled sale shall be given at least thirty (30) days before the day of the rescheduled sale by registered or certified mail to the last known address of all persons who were entitled to notice by mail of the original sale and to any person who shall have recorded a request for notice of sale at least forty-five (45) days prior to the rescheduled sale date in the form and manner required by section [45-1511](#), Idaho Code, provided that recording the request prior to notice of default is, for the purposes of this section only, waived.

(3) Notice of the rescheduled sale shall be published in the newspaper of original publication once a week for three (3) successive weeks, making three (3) publishings in all, with the last publication to be at least ten (10) days prior to the day of sale.

(4) The trustee shall make an affidavit stating that he or she has complied with subsections (2) and (3) of this section. The trustee shall make the above affidavit available for inspection at the time of the rescheduled sale together with any affidavit of mailing and posting, when required, which was not of record as required by subsection (7) of section [45-1506](#), Idaho Code, when the stay became effective. The affidavit or affidavits shall be attached to or incorporated in the trustee's deed.

[45-1506A, added 1983, ch. 190, sec. 4, p. 518; am. 1987, ch. 166, sec. 1, p. 327.]

45-1506B. POSTPONEMENT OF SALE -- INTERVENTION OF STAY. (1) If a stay as set out in subsection (1) of section [45-1506A](#), Idaho Code, which would otherwise have stopped a foreclosure sale is terminated or lifted prior to the date of sale, then any person having a right to reinstate the deed of trust pursuant to subsection (12) of section [45-1506](#), Idaho Code, may request the trustee to postpone the sale for a period of time which shall allow at least one hundred fifteen (115) days to elapse from the recording of the notice of default to the rescheduled date of sale exclusive of the period of time during which such stay was in effect.

(2) Written request for postponement must be served upon the trustee prior to the time set for the original sale.

(3) If the foreclosure has proceeded in compliance with all requirements of subsections (2) through and including (6), of section [45-1506](#), Idaho Code, prior to the intervention of the stay, then at the time appointed for the original sale, the trustee shall announce the date and time of the rescheduled sale to be conducted at the place originally scheduled and no further or additional notice of any kind shall be required.

(4) If the foreclosure has proceeded in compliance with subsections (2) through and including (5), of section [45-1506](#), Idaho Code, prior to the intervention of the stay, then the foreclosure process may be resumed if timely compliance can be had with publication of the original notice of sale under subsection (6) of section [45-1506](#), Idaho Code. If timely compliance under subsection (6) of section [45-1506](#), Idaho Code, is not possible, the partially completed foreclosure process shall be discontinued and any further sale proceeding shall require new compliance with all notice of sale procedures as provided in section [45-1506](#), Idaho Code.

(5) Nothing in this section shall be construed to create a right to cure the default and reinstate the deed of trust under subsection (12) of section

[45-1506](#), Idaho Code, for a period of time longer than one hundred fifteen (115) days from the recording of the notice of default exclusive of the time during which a stay is in effect and if no request is made to postpone the sale under the circumstances provided in this section, the computation of time under this chapter shall be deemed unaffected by any intervening stay.

[45-1506B, added 1983, ch. 190, sec. 5, p. 519.]

45-1506C. SUPPLEMENTAL NOTICE -- OPPORTUNITY TO REQUEST LOAN MODIFICATION. (1) In the case of a loan made by a state or federally regulated beneficiary, which loan is secured by a deed of trust encumbering a borrower's primary residential property for any noncommercial loan, the notice provided in this section shall accompany the notice of default provided to the grantor. The beneficiary or its agent shall determine whether the subject real property is a borrower's primary residence by searching the county assessor's tax rolls prior to recording a notice of default to confirm whether such real property has been granted a homeowner's property tax exemption pursuant to section [63-602G](#), Idaho Code. Any property for which a homeowner's property tax exemption has been granted for the year in which the notice of default is recorded shall be deemed to be a borrower's primary residential dwelling. If no homeowner's property tax exemption has been granted for the year in which the notice of default is recorded, the provisions of this section shall not apply. The notice, if required, shall be printed in at least 14-point type and substantially conform to the following form:

IMPORTANT NOTICE:
YOU ARE IN DANGER OF LOSING YOUR PROPERTY
IF YOU DO NOT TAKE ACTION IMMEDIATELY

This notice concerns the mortgage loan for your property at (enter the complete address).

You have not fulfilled your contractual obligations under the terms of your mortgage loan. Under Idaho law, the holder of your loan, "the beneficiary," can sell your property to satisfy your obligation.

As of (enter the date), you needed to pay \$(enter the amount owed) to bring your mortgage loan current. That amount may have increased since that date and may include additional costs and fees described in the loan documents.

The beneficiary can provide you with the exact amount that you owe, but you have to ask. Call (enter the toll-free telephone number) to find out the exact amount you must pay to bring your mortgage loan current and to obtain other details about your loan. You also can send a written request for this information by certified mail to: (enter the complete address).

LOAN MODIFICATION ASSISTANCE

If you want to save your home from foreclosure but you cannot afford your current loan payments, you need to contact the beneficiary immediately to ask about any available loss mitigation programs. You may or may not qualify for a loan modification or other alternative to foreclosure.

You may request to meet with the beneficiary to discuss options for modifying your loan.

IF YOU WANT TO APPLY FOR A MODIFICATION OF YOUR LOAN, YOU MUST COMPLETE AND RETURN THE ENCLOSED "MODIFICATION REQUEST FORM" BY CERTIFIED MAIL, RETURN

RECEIPT REQUESTED. THE BENEFICIARY MUST RECEIVE THE FORM ON OR BEFORE (enter the date), WHICH IS THIRTY (30) DAYS AFTER THE DATE BELOW.

WARNING: You may get offers from people who tell you they can help you keep your property. Never pay someone to help you obtain a loan modification. Help is available for free from housing counselors who are certified through the department of housing and urban development. Visit www.hud.gov for a current list of certified housing counselors in Idaho.

DATED: (enter the date)

Beneficiary name: (print name)

Beneficiary or beneficiary's agent's signature: (sign name)

Beneficiary's telephone number: (enter the toll-free telephone number)

(2) (a) The notice required under subsection (1) of this section must be accompanied by a form to request a loan modification. The form must include the address to which and state the date by which the grantor must return the form. The form may state that the grantor must disclose current information about the grantor's income and expenses, the grantor's address, phone number and electronic mail address and other facts that may affect the grantor's eligibility for a loan modification.

(b) If the trust deed, or any assignments of the trust deed, is in the Spanish language, the notice required under subsection (1) of this section and the form identified in paragraph (a) of this subsection shall be in the Spanish language.

(3) If a grantor returns the form identified in subsection (2) of this section to the beneficiary by the date specified on the form, the beneficiary or the beneficiary's agent shall review the information the grantor provided in the form and shall evaluate the grantor's request. The beneficiary or the beneficiary's agent, as soon as reasonably practicable but not later than forty-five (45) days after receiving the form, shall notify the grantor in writing whether the beneficiary approves or denies the request or requires additional information. A trustee's sale for the property subject to the loan may not occur until after the beneficiary or the beneficiary's agent timely responds to the grantor. During the forty-five (45) day period, the beneficiary or the beneficiary's agent may request the grantor to provide additional information required to determine whether the loan can be modified.

(4) (a) Except as provided in paragraph (b) of this subsection, if the grantor timely requests a meeting with the beneficiary, the beneficiary or the beneficiary's agent shall either meet with the grantor in person or speak to the grantor by telephone before the beneficiary or the beneficiary's agent responds to the grantor's request to modify the loan. If the grantor requests the meeting, the beneficiary or the beneficiary's agent shall schedule the meeting by contacting the grantor at the grantor's last known address or telephone number or at the grantor's electronic mail address, if the grantor indicates on the loan modification form that the beneficiary or the beneficiary's agent can contact the grantor at the electronic mail address.

(b) A beneficiary or the beneficiary's agent complies with the provisions of paragraph (a) of this subsection even if the beneficiary or the beneficiary's agent does not speak to or meet with the grantor if, within seven (7) business days after the beneficiary or the bene-

ficiary's agent attempts to contact the grantor, the grantor does not schedule a meeting, or fails to attend a scheduled meeting or telephone call.

(c) The beneficiary or the beneficiary's agent that meets with the grantor shall have or be able to obtain authority to modify the loan.

(5) At least twenty (20) days prior to the date of sale, the trustee shall file for record in the office of the recorder in each county wherein the trust property, or some part or parcel, is situated, an affidavit substantially in the following form from the beneficiary or the beneficiary's agent which states that the beneficiary or the beneficiary's agent has complied with the provisions of this section. The filing of the following affidavit of compliance is conclusive evidence of compliance with this section as to any party relying on said affidavit of compliance:

AFFIDAVIT OF COMPLIANCE WITH IDAHO CODE /SECTION 45-1506C

COMES NOW....., being first duly sworn, deposes and says:

1. I am the (title -- officer or agent) of (name of beneficiary), the beneficiary of the Deed of Trust recorded as instrument number (recorder's instrument number), County of (County), Idaho, the "Deed of Trust."

2. Beneficiary or Beneficiary's agent has complied with section 45-1506C, Idaho Code, in by: (a) providing the notice required in section 45-1506C(1), Idaho Code; (b) providing the loan modification request form required in section 45-1506C(2), Idaho Code; (c) evaluating the request for modification and providing a written response to the request as required in section 45-1506C(3), Idaho Code; and (d) scheduling, and if attended by the grantor of the Deed of Trust, attending, in person or by telephone, the meeting required in section 45-1506C(4), Idaho Code.

.....
SIGNATURE

(INSERT NOTARY SUBSCRIPTION FOR STATE IN WHICH AFFIDAVIT IS EXECUTED; IDAHO FORM OF SUBSCRIPTION IS SET OUT BELOW)

STATE OF IDAHO)
)
County of.....)

On this..... day of (month), 20.., before me,....., a Notary Public in and for said state, personally appeared....., known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that such officer or agent executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

.....
Notary Public for Idaho
Residing at.....

My Commission expires.....

(6) Whenever the attorney general has reason to believe that any person has failed to follow the requirements of this section and that proceedings would be in the public interest, he may bring an action in the name of the state against such person for enforcement of the provisions of this section with the same procedure and in the same manner as granted the attorney general and district court pursuant to section [48-606](#)(1) (a), (b), (d), (e) and (f) and subsections (2) through (5), Idaho Code, of the Idaho consumer protection act, [chapter 6, title 48](#), Idaho Code.

(7) All penalties, costs and fees received or recovered by the attorney general shall be remitted to the consumer protection account and expended pursuant to section [48-606](#)(5), Idaho Code.

[45-1506C, added 2011, ch. 323, sec. 2, p. 941.]

45-1507. PROCEEDS OF SALE -- DISPOSITION. The trustee shall apply the proceeds of the trustee's sale as follows:

(1) To the expenses of the sale, including a reasonable charge by the trustee and a reasonable attorney's fee.

(2) To the obligation secured by the trust deed.

(3) To any persons having recorded liens subsequent to the interest of the trustee in the trust deed as their interests may appear.

(4) The surplus, if any, to the grantor of the trust deed or to his successor in interest entitled to such surplus.

[45-1507, added 1957, ch. 181, sec. 7, p. 345.]

45-1508. FINALITY OF SALE. A sale made by a trustee under this act shall foreclose and terminate all interest in the property covered by the trust deed of all persons to whom notice is given under section [45-1506](#), Idaho Code, and of any other person claiming by, through or under such persons and such persons shall have no right to redeem the property from the purchaser at the trustee's sale. The failure to give notice to any of such persons by mailing, personal service, posting or publication in accordance with section [45-1506](#), Idaho Code, shall not affect the validity of the sale as to persons so notified nor as to any such persons having actual knowledge of the sale. Furthermore, any failure to comply with the provisions of section [45-1506](#), Idaho Code, shall not affect the validity of a sale in favor of a purchaser in good faith for value at or after such sale, or any successor in interest thereof.

[45-1508, added 1957, ch. 181, sec. 8, p. 345; am. 1990, ch. 401, sec. 3, p. 1126.]

45-1509. TRUSTEE'S DEED -- FORM AND CONTENTS. (1) The trustee's deed to the purchaser at the trustee's sale under this act shall conform to the requirements of subsection (2) of this section.

(2) The trustee's deed shall contain, in addition to a description of the property conveyed, a recital of the facts concerning the default, the mailing and the publication of the notice of sale, the conduct of the sale and the receipt of the purchase money from the purchaser.

[45-1509, added 1957, ch. 181, sec. 9, p. 345.]

45-1510. TRUSTEE'S DEED -- RECORDING -- EFFECT. (1) When the trustee's deed is recorded in the deed records of the county where the property described in the deed is located, the recitals contained in the deed and in the affidavits required under section [45-1506](#)(7), Idaho Code, shall be prima facie evidence in any court of the truth of the recitals and the affidavits. However, the recitals and affidavits are conclusive in favor of a purchaser in good faith for value or any successor in interest thereof. For purposes of this section, the trustee's deed shall be deemed effective as of the date and time on which the sale was held if such deed is recorded within fifteen (15) days after the date of sale or the first business day following the fifteenth day if the county recorder of the county in which the property is located is closed on the fifteenth day.

(2) Where a trustee's sale held pursuant to section [45-1506](#), Idaho Code, is invalid by reason of automatic stay provisions of the U.S. bankruptcy code, or a stay order issued by any court of competent jurisdiction or otherwise, recordation of a notice of rescission of the trustee's deed shall restore the condition of record title to the real property described in the trustee's deed and the existence and priority of all lienholders to the status quo prior to the trustee's sale. Only the trustee or beneficiary who caused the trustee's deed to be recorded, or his/its successor in interest, may record a notice of rescission. The notice of rescission shall accurately identify the deed of trust, the recording instrument numbers used by the county recorder or the book and pages at which the trustee's deed and deed of trust are recorded, the names of all grantors, trustors and beneficiaries, the location of the property subject to the deed of trust and the reason for rescission. Such notice of rescission shall be in substantially the following form:

NOTICE OF RESCISSION OF TRUSTEE'S DEED UPON SALE

This Notice of Rescission is made this day.... with respect to the following:

1. THAT.... is the duly appointed Trustee under the certain Deed of Trust dated.... and recorded.... as instrument number.... in book...., page...., wherein.... and.... are named as Trustors,.... is named as Trustee,.... is named as Beneficiary;

2. THAT... is the Beneficiary of record under said Deed of Trust;

3. THAT THE DEED OF TRUST encumbers real property located in the County of...., State of Idaho, described as follows:

Property Description

4. THAT BY VIRTUE OF a default under the terms of the Deed of Trust, the Beneficiary did declare a default, as set forth in a Notice of Default recorded.... as instrument number.... in book...., page...., in the office of the Recorder of.... County, State of Idaho;

5. THAT THE TRUSTEE has been informed by the Beneficiary that the Beneficiary desires to rescind the Trustee's Deed recorded upon the foreclosure sale that was conducted in error due to a failure to communicate timely, notice of conditions that would have warranted a cancellation of the foreclosure that did occur on....;

6. THAT THE EXPRESS PURPOSE of this Notice of Rescission is to return the priority and existence of all title and lienholders to the status quo ante as existed prior to the Trustee's sale.

NOW THEREFORE, THE UNDERSIGNED HEREBY RESCINDS THE TRUSTEE'S SALE AND PURPORTED TRUSTEE'S DEED UPON SALE AND HEREBY ADVISES ALL PERSONS THAT THE TRUSTEE'S DEED UPON SALE DATED.... AND RECORDED.... AS.... INSTRUMENT NUMBER.... IN THE COUNTY OF...., STATE OF IDAHO, FROM.... (TRUSTEE) TO.... (GRANTEE) IS HEREBY RESCINDED, AND IS AND SHALL BE OF NO FORCE AND EFFECT WHATSOEVER. THE DEED OF TRUST DATED...., RECORDED.... AS INSTRUMENT NUMBER.... IN BOOK...., PAGE...., IS IN FULL FORCE AND EFFECT.

.....
Authorized Signatory

Acknowledgment

[45-1510, added 1957, ch. 181, sec. 10, p. 345; am. 1990, ch. 401, sec. 4, p. 1126; am. 2010, ch. 249, sec. 1, p. 639; am. 2013, ch. 174, sec. 1, p. 403.]

45-1511. REQUEST FOR COPY OF NOTICE OF DEFAULT OR NOTICE OF SALE -- MARGINAL RECORDATION THEREOF. Any person desiring a copy of any notice of default or any notice of sale under a deed of trust, as hereinbefore provided, at any time subsequent to the recordation of such deed of trust and prior to the recording of notice of default thereunder, may cause to be filed for record in the office of the recorder of the county or counties in which any part or parcel of the real property is situated a duly acknowledged request for a copy of any such notice of sale or default showing service upon such trustee. The request shall set forth the name and address of the person requesting copies of such notice or notices and shall identify the deed of trust by stating the names of the parties thereto, the date of recordation and the book and page where the same is recorded and the recorder's instrument number. The recorder shall immediately enter on the margin of the record of the deed of trust therein referred to that such request is recorded at a certain book and page in the records of his office; no request or any statement therein contained or the record thereof shall affect the title to said property or be deemed notice to any person that any person so recording such request has any right, title or interest in or lien or charge upon the property in the deed of trust referred to therein.

[45-1511, added 1957, ch. 181, sec. 11, p. 345.]

45-1512. MONEY JUDGMENT -- ACTION SEEKING BALANCE DUE ON OBLIGATION. At any time within 3 months after any sale under a deed of trust, as hereinbefore provided, a money judgment may be sought for the balance due upon the obligation for which such deed of trust was given as security, and in such action the plaintiff shall set forth in his complaint the entire amount of indebtedness which was secured by such deed of trust and the amount for which the same was sold and the fair market value at the date of sale, together with interest from such date of sale, costs of sale and attorney's fees. Before rendering judgment the court shall find the fair market value of the real property sold at the time of sale. The court may not render judgment for more than the

amount by which the entire amount of indebtedness due at the time of sale exceeds the fair market value at that time, with interest from date of sale, but in no event may the judgment exceed the difference between the amount for which such property was sold and the entire amount of the indebtedness secured by the deed of trust.

[45-1512, added 1957, ch. 181, sec. 12, p. 345.]

45-1513. TRANSFERS AND TRUSTS ARE CONVEYANCES. A deed of trust or transfer of any interest in real property in trust to secure the performance of any obligation shall be a conveyance of real property.

[45-1513, added 1957, ch. 181, sec. 13, p. 345.]

45-1514. RECONVEYANCE UPON SATISFACTION OF OBLIGATION. Upon performance of the obligation secured by the deed of trust, the trustee upon written request of the beneficiary shall reconvey the estate of real property described in the deed of trust to the grantor; providing that in the event of such performance and the refusal of any beneficiary to so request or the trustee to so reconvey, as above provided, such beneficiary or trustee shall be liable as provided by law in the case of refusal to execute a discharge or satisfaction of a mortgage on real property.

[45-1514, added 1957, ch. 181, sec. 14, p. 345.]

45-1515. TIME LIMITS FOR FORECLOSURE. The foreclosure of a trust deed by advertisement and sale shall be made and the foreclosure of a trust deed by judicial procedure shall be commenced within the time limited by the same period and according to the same provisions including extensions as provided by law for the foreclosure of a mortgage on real property.

[45-1515, added 1957, ch. 181, sec. 15, p. 345.]