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House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
First Regular Session
2003

HOUSE BILL 2111

AN ACT

AMENDING SECTIONS 33-801 AND 33-803, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 6.1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-803.01; AMENDING SECTIONS 33-807, 33-808, 33-809, 33-810, 33-811, 33-812 AND 33-813, ARIZONA REVISED STATUTES; RELATING TO DEEDS OF TRUST.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-801, Arizona Revised Statutes, is amended to
3 read:

4 33-801. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Beneficiary" means the person named or otherwise designated in a
7 trust deed as the person for whose benefit a trust deed is given, or the
8 person's successor in interest.

9 2. "BUSINESS DAY" MEANS ANY DAY OTHER THAN A SATURDAY OR A LEGAL
10 HOLIDAY.

11 ~~2.~~ 3. "Cash" means United States currency.

12 ~~3.~~ 4. "Contract" means a promise or a set of promises for the breach
13 of which the law gives a remedy, or the performance of which the law in some
14 way recognizes as a duty, including but not limited to a note, A promissory
15 note or provisions of any trust deed.

16 ~~4.~~ 5. "Credit bid" means a bid made by the beneficiary in full or
17 partial satisfaction of the contract or contracts which are secured by the
18 trust deed. Such credit bid may only include an amount up to the full amount
19 of the contract or contracts secured by the trust deed, less any amount owing
20 on liens or encumbrances with interest which are superior in priority to the
21 trust deed and which the beneficiary is obligated to pay under the contract
22 or contracts or under the trust deed, together with the amount of other
23 obligations provided in or secured by the trust deed and the costs and
24 expenses of exercising the power of sale and the sale, including the
25 trustee's fees and reasonable attorney fees actually incurred.

26 6. "FORCE MAJEURE" MEANS AN ACT OF GOD OR OF NATURE, A SUPERIOR OR
27 OVERPOWERING FORCE, OR AN EVENT OR EFFECT THAT CANNOT REASONABLY BE
28 ANTICIPATED OR CONTROLLED AND THAT PREVENTS ACCESS TO THE SALE LOCATION FOR
29 CONDUCT OF A SALE.

30 ~~5.~~ 7. "Parent corporation" means a corporation which owns eighty per
31 cent or more of every class of the issued and outstanding stock of another
32 corporation or, in the case of a savings and loan association, eighty per
33 cent or more of its issued and outstanding guaranty capital.

34 ~~6.~~ 8. "Trust deed" or "deed of trust" means a deed executed in
35 conformity with this chapter and conveying trust property to a trustee or
36 trustees qualified under section 33-803 to secure the performance of a
37 contract or contracts, other than a trust deed which encumbers in whole or in
38 part trust property located in Arizona and in one or more other states.

39 ~~7.~~ 9. "Trust property" means any legal, equitable, leasehold or other
40 interest in real property which is capable of being transferred, whether or
41 not it is subject to any prior mortgages, trust deeds, contracts for
42 conveyance of real property or other liens or encumbrances.

43 ~~8.~~ 10. "Trustee" means an individual, association or corporation
44 qualified pursuant to section 33-803, or the successor in interest thereto,
45 to whom trust property is conveyed by trust deed. The trustee's obligations

1 to the trustor, beneficiary and other persons are as specified in this
2 chapter, together with any other obligations specified in the trust deed.

3 ~~9-~~ 11. "Trustor" means the person conveying trust property by a trust
4 deed as security for the performance of a contract or contracts, or the
5 successor in interest of such person.

6 Sec. 2. Section 33-803, Arizona Revised Statutes, is amended to read:

7 33-803. Trustee of trust deed; qualifications

8 A. Except as provided in subsection B, the trustee of a trust deed
9 shall be:

10 1. An association or corporation doing business under the laws of this
11 state as a bank, trust company, savings and loan association, credit union,
12 insurance company, escrow agent or consumer lender.

13 2. A person who is a member of the state bar of Arizona.

14 3. A person who is a licensed real estate broker under the laws of
15 this state.

16 4. A person who is a licensed insurance producer under the laws of
17 this state.

18 5. An association or corporation which is licensed, chartered or
19 regulated by the federal deposit insurance corporation, the comptroller of
20 the currency, the federal home loan bank, the national credit union
21 administration, the farm credit administration or any successors.

22 6. The parent corporation of any association or corporation referred
23 to in this subsection or any corporation all the stock of which is owned by
24 or held solely for the benefit of any such association or corporation
25 referred to in this subsection, **INCLUDING THE SUBSIDIARIES OF A BANK HOLDING
26 COMPANY THAT ARE ENGAGED IN THE BUSINESS OF MORTGAGE LENDING OR THE PRINCIPAL
27 ACTIVITY OF WHICH IS TO SERVE AS A TRUSTEE ON DEEDS OF TRUST.**

28 B. An individual trustee of a trust deed who qualifies under ~~the~~
29 ~~provisions of~~ subsection A shall not be the beneficiary of the trust, but
30 such restriction shall not preclude a corporate or association trustee which
31 qualifies under ~~the provisions of~~ subsection A and while acting in good faith
32 from being the beneficiary, or after appointment from acquiring the interest
33 of the beneficiary by succession, conveyance, grant, descent or devise.

34 **C. A TRUSTEE OF A TRUST DEED WHO QUALIFIES UNDER SUBSECTION A SHALL
35 NOT LEND OR DELEGATE THE TRUSTEE'S NAME OR CORPORATE CAPACITY TO ANY
36 INDIVIDUAL OR ENTITY THAT DOES NOT QUALIFY AS A TRUSTEE OF A TRUST DEED. AN
37 INDIVIDUAL, COMPANY, ASSOCIATION OR CORPORATION SHALL NOT CIRCUMVENT THE
38 REQUIREMENTS OF SUBSECTION A BY ACTING IN CONCERT WITH A NONQUALIFYING
39 TRUSTEE.**

40 Sec. 3. Title 33, chapter 6.1, article 1, Arizona Revised Statutes, is
41 amended by adding section 33-803.01, to read:

42 33-803.01. Trustee of trust deed; delegation of duties

43 A. A TRUSTEE SHALL NOT DELEGATE THE FOLLOWING DUTIES:

44 1. THE PREPARATION AND EXECUTION OF ANY OF THE FOLLOWING:

45 (a) THE NOTICE OF TRUSTEE SALE.

1 (b) THE CANCELLATION OF NOTICE OF SALE.

2 (c) THE TRUSTEE'S DEED UPON SALE.

3 2. THE RECEIPT AND RESPONSE TO REQUESTS FOR REINSTATEMENT OR PAYOFF
4 AMOUNTS.

5 B. NOTHING IN THIS SECTION IS INTENDED TO PREVENT THE TRUSTEE FROM
6 USING CLERICAL OR OFFICE STAFF EMPLOYED BY THE TRUSTEE AND UNDER THE
7 TRUSTEE'S DIRECT AND IMMEDIATE SUPERVISION TO ASSIST IN THE DUTIES PRESCRIBED
8 BY SUBSECTION A.

9 Sec. 4. Section 33-807, Arizona Revised Statutes, is amended to read:

10 33-807. Sale of trust property; power of trustee; foreclosure
11 of trust deed

12 A. By virtue of his position, a power of sale is conferred upon the
13 trustee of a trust deed under which the trust property may be sold, in the
14 manner provided in this chapter, after a breach or default in performance of
15 the contract or contracts, for which the trust property is conveyed as
16 security, or a breach or default of the trust deed. At the option of the
17 beneficiary, a trust deed may be foreclosed in the manner provided by law for
18 the foreclosure of mortgages on real property in which event ~~the provisions~~
19 ~~of~~ chapter 6 of this title ~~govern~~ GOVERNS the proceedings. The beneficiary
20 or trustee shall constitute the proper and complete party plaintiff in any
21 action to foreclose a deed of trust. The power of sale may be exercised by
22 the trustee without express provision therefor in the trust deed.

23 B. The trustee or beneficiary may file and maintain an action to
24 foreclose a deed of trust at any time before the trust property has been sold
25 under the power of sale. A sale of trust property under the power of sale
26 shall not be held after an action to foreclose the deed of trust has been
27 filed unless the foreclosure action has been dismissed.

28 C. The trustee or beneficiary may file an action for the appointment
29 of a receiver according to sections 12-1241 and 33-702. The right to
30 appointment of a receiver shall be independent of and may precede the
31 exercise of any other right or remedy.

32 D. The power of sale of trust property conferred upon the trustee
33 shall not be exercised before the ~~expiration of ninety days from~~ NINETY-FIRST
34 DAY AFTER the DATE OF THE recording of the notice of the sale. THE SALE
35 SHALL NOT BE SET FOR A SATURDAY OR LEGAL HOLIDAY. THE TRUSTEE MAY SCHEDULE
36 MORE THAN ONE SALE FOR THE SAME DATE, TIME AND PLACE.

37 E. The trustee need only be joined as a party in legal actions
38 pertaining to a breach of the trustee's obligation under this chapter or
39 under the deed of trust. Any order of the court entered against the
40 beneficiary is binding upon the trustee with respect to any actions which the
41 trustee is authorized to take by the trust deed or by this chapter. If the
42 trustee is joined as a party in any other action, the trustee is entitled to
43 be immediately dismissed and to recover costs and reasonable attorney fees
44 from the person joining the trustee.

1 Sec. 5. Section 33-808, Arizona Revised Statutes, is amended to read:

2 33-808. Notice of trustee's sale

3 A. The trustee shall give written notice of the time and place of sale
4 legally describing the trust property to be sold by each of the following
5 methods:

6 1. Recording a notice in the office of the recorder of each county
7 where the trust property is situated.

8 2. Giving notice as provided in section 33-809 to the extent
9 applicable.

10 3. Posting a COPY OF THE notice OF SALE, at least twenty days before
11 the date of sale in some conspicuous place on the trust property to be sold,
12 if posting can be accomplished without a breach of the peace. If access to
13 the trust property is denied because a common entrance to the property is
14 restricted by a limited access gate or similar impediment, the property shall
15 be posted by posting notice at that gate or impediment. Notice shall also be
16 posted at one of the places provided for posting public notices at any
17 building that serves as a location of the superior court in the county where
18 the trust property is to be sold. Posting is deemed completed on the date
19 the ~~first notice~~ TRUST PROPERTY is posted. THE POSTING OF NOTICE AT THE
20 SUPERIOR COURT LOCATION IS DEEMED A MINISTERIAL ACT.

21 4. Publication of THE NOTICE OF sale notice in a newspaper of general
22 circulation in each county in which THE trust property to be sold is
23 situated. THE NOTICE OF sale notice shall be published at least once a week
24 for four consecutive weeks. The last date of publication shall not be less
25 than ten days prior to the date of sale. Publication is deemed completed on
26 the date of the first ~~publication~~ of THE FOUR PUBLICATIONS OF THE notice OF
27 SALE pursuant to this paragraph.

28 B. The sale shall be held at the time and place designated in the
29 notice of sale on a day other than a Saturday or legal holiday between 9:00
30 a.m. and 5:00 p.m. MOUNTAIN STANDARD TIME at a specified place on the trust
31 property, at a specified place at any building that serves as a location of
32 the superior court or at a specified place at a place of business of the
33 trustee, in any county in which part of the trust property to be sold is
34 situated.

35 C. The notice of sale shall contain:

36 1. The date, time and place of the sale. THE DATE, TIME AND PLACE
37 SHALL BE SET PURSUANT TO SECTION 33-807, SUBSECTION D. ~~This~~ THE date shall
38 be ~~at least ninety days~~ NO SOONER THAN THE NINETY-FIRST DAY after the date
39 that the notice of sale was recorded.

40 2. The street address, if any, or identifiable location as well as
41 the legal description of the trust property.

42 3. The county assessor's tax parcel number for the trust property or
43 the tax parcel number of a larger parcel of which the trust property is a
44 part.

1 IF THERE IS AN ERROR OR OMISSION IN THE LEGAL DESCRIPTION SO THAT THE TRUST
2 PROPERTY CANNOT BE IDENTIFIED, OR IF THERE IS AN ERROR IN THE DATE, TIME OR
3 PLACE OF SALE, THE TRUSTEE SHALL RECORD A CANCELLATION OF NOTICE OF SALE. The
4 trustee or any person furnishing information to the trustee shall not be
5 subject to liability for any error or omission in the information required by
6 subsection C of this section except for the wilful and intentional failure to
7 provide such information. This subsection does not apply to claims made by an
8 insured under any policy of title insurance.

9 F. THE NOTICE OF TRUSTEE SALE MAY NOT BE RERECORDED FOR ANY REASON.
10 THIS SUBSECTION DOES NOT PROHIBIT THE RECORDING OF A NEW OR SUBSEQUENT NOTICE
11 OF SALE REGARDING THE SAME PROPERTY.

12 Sec. 6. Section 33-809, Arizona Revised Statutes, is amended to read:
13 33-809. Request for copies of notice of sale; mailing by
14 trustee; disclosure of information regarding trustee
15 sale

16 A. A person desiring a copy of a notice of sale under a trust deed, at
17 any time subsequent to the recording of the trust deed and prior to the
18 recording of a notice of sale pursuant thereto, shall record in the office of
19 the county recorder in any county in which part of the trust property is
20 situated a duly acknowledged request for a copy of any such notice of sale.
21 The request shall set forth the name and address of the person or persons
22 requesting a copy of such notice and shall identify the trust deed by setting
23 forth the county, docket or book and page of the recording data thereof and
24 by stating the names of the original parties to such deed, the date the deed
25 was recorded and the legal description of the entire trust property and shall
26 be in substantially the following form:

27 Request for Notice

28 Request is hereby made that a copy of any notice of sale
29 under the trust deed recorded in docket or book _____ at
30 page _____, records of _____ county, Arizona,
31 _____, _____,

32 (legal description of trust property)

33 Executed by _____ as trustor, in which
34 _____ is named as beneficiary and _____
35 as trustee, be mailed to _____ at
36 _____.

37 Dated this _____ day of _____, ____.

38 _____
39 Signature

40 (Acknowledgement)

41 B. Not later than thirty days after recording the notice of sale, the
42 trustee ~~or beneficiary~~ shall mail by certified or registered mail, with
43 postage prepaid, a copy of the NOTICE OF sale ~~notice~~ which reflects the
44 recording date together with any notice required to be given by subsection C
45 of this section, addressed as follows:

1 1. To each person whose name and address are set forth in a request
2 for notice, which has been recorded prior to the recording of the notice of
3 sale, directed to the address designated in such request.

4 2. To each person who, at the time of recording of the notice of sale,
5 appears on the records of the county recorder in the county in which any part
6 of the trust property is situated to have an interest in any of the trust
7 property. The copy of the notice sent pursuant to this paragraph shall be
8 addressed to the person whose interest appears of record at the address set
9 forth in the document. If no address for the person is set forth in the
10 document, the copy of the notice may be addressed in care of the person to
11 whom the recorded document evidencing such interest was directed to be mailed
12 at the time of its recording or to any other address of the person known or
13 ascertained by the trustee. If the interest which appears on the records of
14 the county recorder is a deed of trust, a copy of the notice only needs to be
15 mailed to the beneficiary under the deed of trust. If any person having an
16 interest of record or the trustor, or any person who has recorded a request
17 for notice, desires to change the address to which notice shall be mailed,
18 the change shall be accomplished by a request as provided under this section.

19 C. The trustee ~~or beneficiary~~, within five business days after the
20 recordation of a notice of sale, shall mail by certified or registered mail,
21 with postage prepaid, a copy of ~~any~~ THE notice of sale to each of the persons
22 who were parties to the trust deed except the trustee. The copy of the
23 notice mailed to the parties need not show the recording date of the
24 notice. The notice sent pursuant to this subsection shall be addressed to
25 the mailing address specified in the trust deed. In addition, notice to each
26 party shall contain a statement that a breach or nonperformance of the trust
27 deed or the contract or contracts secured by the trust deed, or both, has
28 occurred, and setting forth the nature of such breach or nonperformance and
29 of the beneficiary's election to sell or cause to be sold the trust property
30 under the trust deed and the additional notice shall be signed by the
31 beneficiary or the beneficiary's agent. A copy of the additional notice
32 shall also be sent with the notice provided for in subsection B, paragraph 2
33 of this section to all persons whose interest in the trust property is
34 subordinate in priority to that of the deed of trust along with a written
35 statement that the interest may be subject to being terminated by the
36 trustee's sale. The written statement may be contained in the statement of
37 breach or nonperformance.

38 D. No request for a copy of a notice recorded pursuant to this
39 section, nor any statement or allegation in any request, nor any record of
40 request, shall affect the title to the trust property or be deemed notice to
41 any person that a person requesting a copy of notice of sale has or claims
42 any interest in, or claim upon, the trust property.

1 E. At any time that the trust deed is subject to reinstatement
2 pursuant to section 33-813, but not sooner than thirty days after recordation
3 of the notice of trustee's sale, the trustee shall upon receipt of a written
4 request, provide, if actually known to the trustee, the following information
5 relating to the trustee's sale and the trust property:

6 1. The unpaid principal balance of the note or other obligation which
7 is secured by the deed of trust.

8 2. The name and address of record of the owner of the trust property
9 as of the date of recordation of the notice of trustee's sale.

10 3. A list of the liens and encumbrances upon the trust property as of
11 the date of recordation of the notice of trustee's sale, excluding those
12 matters set forth in section 33-438, subsection A.

13 If the trustee elects to charge a fee for providing the information
14 requested, the fee shall not exceed ~~one-twentieth~~ FIVE PER CENT of the amount
15 the trustee may charge pursuant to section 33-813, subsection B, paragraph 4,
16 except that the trustee shall not CHARGE A FEE THAT IS MORE THAN ONE HUNDRED
17 DOLLARS OR be required to accept a fee THAT IS less than ~~twenty~~ THIRTY
18 dollars but may accept a lesser fee at the trustee's discretion. The
19 trustee, or any other person furnishing information pursuant to this
20 subsection to the trustee, shall not be subject to liability for any error or
21 omission in providing the information requested, except for the wilful and
22 intentional failure to provide information in the trustee's actual
23 possession.

24 F. Beginning at 9:00 a.m. and continuing until 5:00 p.m. MOUNTAIN
25 STANDARD TIME on the last business day preceding the day of sale and
26 beginning at 9:00 a.m. MOUNTAIN STANDARD TIME and continuing until the time
27 of sale on the day of the sale, the trustee shall ~~provide to any person who~~
28 ~~requests it~~ MAKE AVAILABLE the actual bid or A GOOD FAITH ESTIMATE OF THE
29 credit bid the beneficiary is entitled to make at the sale. If the ~~trustee~~
30 ~~is unable to provide the credit bid~~ ACTUAL BID OR GOOD FAITH ESTIMATE IS NOT
31 AVAILABLE during the prescribed time period, the trustee shall postpone the
32 sale until the trustee is able to comply with this subsection.

33 G. In providing information pursuant to subsections E and F of this
34 section, the trustee ~~may~~, without obligation or liability for the accuracy or
35 completeness of the information, MAY respond to oral requests, respond orally
36 or in writing or provide additional information not required by such
37 subsections. With respect to property which is the subject of a trustee's
38 sale, the beneficiary of such deed of trust or the holder of any prior lien
39 may, but shall not be required to, provide information concerning such deed
40 of trust or any prior lien which is not required by subsection E or F of this
41 section and may charge a reasonable fee for providing the information. The
42 providing of such information by any beneficiary or holder of a prior lien
43 shall be without obligation or liability for the accuracy or completeness of
44 the information.

1 Sec. 7. Section 33-810, Arizona Revised Statutes, is amended to read:

2 33-810. Sale by public auction; postponement of sale

3 A. On the date and at the time and place designated in the notice of
4 sale, the trustee shall offer to sell the trust property at public auction
5 for cash to the highest bidder. **THE TRUSTEE MAY SCHEDULE MORE THAN ONE SALE**
6 **FOR THE SAME DATE, TIME AND PLACE.** The attorney or agent for the trustee may
7 conduct the sale and act at such sale as the auctioneer for the trustee. Any
8 person, including the trustee or beneficiary, may bid at the sale. Only the
9 beneficiary may make a credit bid in lieu of cash at sale. The trustee shall
10 require every bidder except the beneficiary to provide a one thousand dollar
11 deposit in cash or in any other form that is satisfactory to the trustee as a
12 condition of entering a bid. The trustee shall not refuse cash as a form of
13 payment of the bidder's deposit. **THE TRUSTEE OR AUCTIONEER MAY CONTROL THE**
14 **MEANS AND MANNER OF THE AUCTION.** Every bid shall be deemed an irrevocable
15 offer until the sale is completed, except that a subsequent bid by the same
16 bidder for a higher amount shall cancel that bidder's lower bid. To determine
17 the highest price bid, the trustor or beneficiary present at the sale may
18 recommend the manner in which the known lots, parcels or divisions of the
19 trust property **DESCRIBED IN THE NOTICE OF SALE** be sold. The trustee shall
20 conditionally sell the trust property under each recommendation, and, in
21 addition, shall conditionally sell the trust property as a whole. The
22 trustee shall determine which conditional sale or sales result in the highest
23 total price bid for all of the trust property. The trustee shall return
24 deposits to all but the bidder or bidders whose bid or bids result in the
25 highest bid price. The sale shall be completed on payment by the purchaser
26 of the price bid in a form satisfactory to the trustee. The subsequent
27 execution, delivery and recordation of the trustee's deed as prescribed by
28 section 33-811 are ministerial acts. If the trustee's deed is recorded in
29 the county in which the trust property is located within fifteen business
30 days after the date of the sale, the trustee's sale is deemed perfected at
31 the appointed date and time of the trustee's sale.

32 B. The person conducting the sale may, ~~for any cause deemed in the~~
33 ~~interest of the beneficiary or trustor, or both,~~ postpone or continue the
34 sale from time to time or change the place of the sale to any other location
35 authorized pursuant to this chapter by giving notice of the new date, time
36 and place by public declaration at the time and place last appointed for the
37 sale. Any new sale date shall be a fixed date within ninety calendar days of
38 the date of the declaration. No other notice of the postponed, continued or
39 relocated sale is required except as provided in subsection C of this
40 section.

41 C. A sale shall not be complete if the sale as held is contrary to or
42 in violation of any federal statute in effect because of an unknown or
43 undisclosed bankruptcy. A sale so held shall be deemed to be continued to a
44 date, time and place announced by the trustee at the sale and shall comply
45 with subsection B of this section or, if not announced, shall be continued to

1 the same place and at the same time twenty-eight days later, unless the
2 twenty-eighth day falls on a Saturday or legal holiday, in which event it
3 shall be continued to the first business day thereafter. In the event a sale
4 is continued because of an unknown or undisclosed bankruptcy, the trustee
5 shall notify by registered or certified mail, with postage prepaid, all
6 bidders who provide their names, addresses and telephone numbers in writing
7 to the party conducting the sale of the continuation of the sale.

8 D. A SALE IS POSTPONED BY OPERATION OF LAW TO THE NEXT BUSINESS DAY AT
9 THE SAME SCHEDULED TIME AND PLACE IF AN ACT OF FORCE MAJEURE PREVENTS ACCESS
10 TO THE SALE LOCATION FOR THE CONDUCT OF THE SALE.

11 Sec. 8. Section 33-811, Arizona Revised Statutes, is amended to read:

12 33-811. Payment of bid; trustee's deed

13 A. The highest bidder at the sale, other than the beneficiary to the
14 extent of the credit bid, shall pay the price bid by no later than 5:00 p.m.
15 MOUNTAIN STANDARD TIME of the following day, other than a Saturday or legal
16 holiday. If the highest bidder fails to pay the amount bid for the property
17 struck off to the bidder at the sale, the trustee, in the trustee's sole
18 discretion, shall either continue the sale to reopen bidding or immediately
19 offer the trust property to the second highest bidder who may purchase the
20 trust property at that bidder's bid price. The deposit of the highest bidder
21 who fails to pay the amount bid shall be forfeited and shall be treated as
22 additional sale proceeds to be applied in accordance with section 33-812,
23 subsection A. If the second highest bidder does not pay that bidder's bid
24 price by 5:00 p.m. MOUNTAIN STANDARD TIME of the next day excluding Saturdays
25 and legal holidays after the property has been offered to that bidder by the
26 trustee, the trustee shall either continue the sale to reopen bidding or
27 offer the trust property to each of the prior bidders on successive days
28 excluding Saturdays and legal holidays in order of their highest bid, until a
29 bid price is paid, or if there is no other bidder, the sale shall be deemed
30 to be continued to a time and place designated by the trustee, or if not
31 designated, the sale shall be continued to the same place and at the same
32 time twenty-eight days after the last scheduled sale date. If the
33 twenty-eighth day is a Saturday or legal holiday, the sale shall be continued
34 to the next business day. If the sale is continued, the trustee shall
35 provide notice of the continuation of the sale by registered or certified
36 mail, with postage prepaid, to all bidders who provide their names, addresses
37 and telephone numbers in writing to the party conducting the sale. In
38 addition to the forfeit of deposit, a highest bidder who fails to pay the
39 amount bid by that bidder is liable to any person who suffers loss or
40 expenses as a result, including attorney fees. In any subsequent sale of
41 trust property, the trustee may ~~reject~~ REFUSE TO ACCEPT any bid of that
42 person. In any sale that is continued pursuant to this subsection, the
43 trustee shall reject the bid from any previous bidder who elected not to pay
44 that bidder's bid price.

1 B. The price bid shall be paid at the office of the trustee or the
2 trustee's agent, or any other reasonable place designated by the
3 trustee. The payment of the bid price may be made at a later time if agreed
4 upon in writing by the trustee. **THE PURCHASER'S BID PRICE SHALL BE DEEMED**
5 **ADEQUATE FOR ALL PURPOSES.** The trustee shall execute and deliver the
6 trustee's deed to the purchaser within seven business days after receipt of
7 payment by the trustee or the trustee's agent made in a form that is
8 satisfactory to the trustee. **THE RECORDING OF THE TRUSTEE'S DEED UPON SALE**
9 **MAY ALSO CONSTITUTE DELIVERY OF THE DEED TO THE PURCHASER. THE TRUSTEE IS**
10 **NOT LIABLE FOR ANY DAMAGES RESULTING FROM THE FAILURE TO RECORD THE TRUSTEE'S**
11 **DEED UPON SALE AFTER PHYSICAL DELIVERY OF THE DEED TO THE PURCHASER.** The
12 trustee's deed shall raise the presumption of compliance with the
13 requirements of the deed of trust and this chapter relating to the exercise
14 of the power of sale and the sale of the trust property, including recording,
15 mailing, publishing and posting of notice of sale and the conduct of the
16 sale. A trustee's deed shall constitute conclusive evidence of the meeting
17 of those requirements in favor of purchasers or encumbrancers for value and
18 without actual notice. Knowledge of the trustee shall not be imputed to the
19 beneficiary.

20 C. The trustor, its successors or assigns, and all persons to whom the
21 trustee mails a notice of a sale under a trust deed pursuant to section
22 33-809 shall waive all defenses and objections to the sale not raised in an
23 action that results in the issuance of a court order granting relief pursuant
24 to rule 65, Arizona rules of civil procedure, entered before 5:00 p.m. on the
25 last day other than Saturday, Sunday or other legal holiday before the
26 scheduled date of the sale. A copy of the order, the application for the
27 order and the complaint shall be delivered to the trustee within twenty-four
28 hours after entering the order.

29 D. A sale is not complete if the sale violates subsection C of this
30 section because of an undisclosed order entered by the court within the time
31 provided for in subsection C of this section. A sale held in violation of
32 subsection C of this section shall be continued to a date, time and place
33 announced by the trustee at the sale and shall comply with section 33-810,
34 subsection B. If not announced, the sale shall be continued to the same
35 place and at the same time twenty-eight days later. If the twenty-eighth day
36 falls on a Saturday, Sunday or other legal holiday, the sale shall be
37 continued to the next business day. If the sale is continued because of an
38 unknown or undisclosed order as provided in this subsection, the trustee
39 shall notify by registered or certified mail, with postage prepaid, all
40 bidders who provide names, addresses and telephone numbers in writing to the
41 party conducting the sale of the continuation of the sale.

42 E. The trustee's deed shall operate to convey to the purchaser the
43 title, interest and claim of the trustee, the trustor, the beneficiary, their
44 respective successors in interest and all persons claiming the trust property
45 sold by or through them, including all interest or claim in the trust

1 property acquired subsequent to the recording of the deed of trust and prior
2 to delivery of the trustee's deed. That conveyance shall be absolute without
3 right of redemption and clear of all liens, claims or interests that have a
4 priority subordinate to the deed of trust and shall be subject to all liens,
5 claims or interests that have a priority senior to the deed of trust.

6 Sec. 9. Section 33-812, Arizona Revised Statutes, is amended to read:

7 **33-812. Disposition of proceeds of sale**

8 A. The trustee shall apply the proceeds of the trustee's sale in the
9 following order of priority:

10 1. To the costs and expenses of exercising the power of sale and the
11 sale, including the payment of the trustee's fees and reasonable attorney's
12 fees actually incurred.

13 2. To the payment of the contract or contracts secured by the trust
14 deed.

15 3. To the payment of all other obligations provided in or secured by
16 the trust deed and actually paid by the beneficiary before the trustee's
17 sale.

18 4. To the junior lienholders or encumbrancers in order of their
19 priority as they existed at the time of the sale. After payment in full to
20 all junior lienholders and encumbrancers payment shall be made to the
21 trustor, except that if the trustor has sold or transferred the property to
22 another owner before the trustee's sale, payment shall be made to the person
23 who is the owner of record at the time of the trustee's sale.

24 B. ~~The trustee may,~~ In the trustee's discretion, ~~AND~~ instead of any
25 one or more of the applications specified in subsection A of this section,
26 **THE TRUSTEE MAY** elect to deposit the balance of the proceeds with the county
27 treasurer in the county in which the sale took place pending an order of the
28 superior court in the county. On deposit of the balance of the monies and
29 after complying with subsection C of this section, the trustee shall be
30 discharged from all responsibility for acts performed in good faith according
31 to this chapter. The county treasurer shall reject any deposit that does not
32 comply with subsection C of this section.

33 C. If the trustee elects to deposit the balance of the sale proceeds
34 as prescribed by subsection B of this section, the trustee as plaintiff shall
35 commence a civil action in the superior court in the county in which the sale
36 occurred. The action shall name the applicable county treasurer as the
37 defendant, **HOWEVER THE COUNTY TREASURER HAS NO OBLIGATION TO RESPOND TO THE**
38 **COMPLAINT OR APPEAR IN THE ACTION.** The trustee shall mail by certified or
39 registered mail, with postage prepaid, a conformed copy of the complaint that
40 displays the filing stamp of the court clerk to **THE COUNTY TREASURER AND** all
41 persons, other than the beneficiary, who are entitled to notice pursuant to
42 section 33-809 and to any other person known by the trustee to have an
43 interest of record in the property at the time of the sale. The trustee
44 shall incorporate in or attach to the complaint:

45 1. A copy of any one of the following:

1 (a) The trustee sale guarantee.

2 (b) The title search used by the trustee in connection with the
3 trustee's sale of the subject property.

4 (c) A detailed description of the liens and encumbrances used by the
5 trustee in connection with the trustee's sale of the property.

6 2. A copy of the list of the persons and each of the addresses to
7 which the complaint will be mailed.

8 3. A detailed description of any disbursements made by the trustee
9 pursuant to this section.

10 The trustee may withhold from the proceeds of the sale a reasonable trustee's
11 fee, a reasonable attorney's fee actually incurred and the costs of filing
12 the complaint, depositing the proceeds and mailing the notices.

13 D. Upon filing the complaint, the trustee as plaintiff is discharged
14 without prejudice from the proceedings.

15 E. Any person with a recorded or other legal interest in the property
16 at the time of the sale may apply for the release of the proceeds by filing
17 an application for distribution in the civil action that was filed by the
18 trustee pursuant to subsection C of this section. The applicant shall mail
19 postage prepaid by any form of mail that requires a signed and returned
20 receipt a copy of the application to all persons at each of the addresses
21 named on the list of persons that is incorporated in or attached to the
22 complaint. On return of the signed receipt or the undelivered or unclaimed
23 original envelope, the applicant shall file with the court an affidavit that
24 states that the application was mailed to the person and that the application
25 was either:

26 1. Received, as evidenced by the receipt. The applicant shall attach
27 to the affidavit a copy of the receipt.

28 2. Not received, as evidenced by the original returned envelope. The
29 applicant shall attach to the affidavit the original unopened and undelivered
30 or unclaimed returned envelope.

31 F. Any person who receives the application or who claims a right to
32 the proceeds may file a response to the application within thirty days of the
33 mailing of the application. The person filing a response shall mail a copy
34 of the response to each applicant. Within ten calendar days from the date
35 the response is mailed, an applicant may file with the clerk and mail to each
36 respondent a reply to the response. On expiration of the time for filing a
37 reply, an applicant shall provide the court with postage prepaid business
38 envelopes that are addressed to all persons who are entitled to receive
39 copies of the complaint pursuant to subsection C of this section.

40 G. The court shall issue an order to the county treasurer to release
41 the proceeds deposited with the county treasurer to the party entitled to
42 receive them after applying the priorities prescribed by subsection A of this
43 section. On notice to all persons who have received a copy of the complaint
44 or who have filed a responsive pleading, the court may, and if there are
45 competing claims to the proceeds, the court shall, hold a hearing to

1 determine entitlement to the proceeds. If the court finds that a person
2 other than an applicant or respondent has a superior right to receive the
3 proceeds, the court shall not issue an order on the proceeds until one
4 hundred eighty days from the date the complaint was filed. At any time
5 before the expiration of the one hundred eighty day period, an applicant or
6 respondent may move for a hearing to determine whether the claimed superior
7 right is valid or enforceable and whether the claim is entitled to receive
8 priority over the claim of the applicant or respondent. The motion shall set
9 forth the specific facts and evidence that support the applicant's or
10 respondent's position and shall be mailed to all persons who have received a
11 copy of the complaint or filed a responsive pleading. If a response is not
12 filed within the one hundred eighty day period by the person found by the
13 court to have a superior right to receive the proceeds, the court shall enter
14 an order in favor of any applicant or respondent entitled to the proceeds. On
15 release of the proceeds, the county treasurer may assess and deduct from the
16 proceeds a reasonable fee not to exceed one hundred dollars for the
17 treasurer's costs associated with the civil action.

18 H. Within ninety days after completion of the sale, the trustee shall
19 apply the proceeds of the sale pursuant to subsection A of this section or
20 shall deposit the proceeds with the treasurer pursuant to subsection B of
21 this section. IF THE TRUSTEE FAILS TO COMPLY WITH THIS SUBSECTION, THE
22 TRUSTEE FORFEITS ANY ENTITLEMENT TO THE FEES AND COSTS PRESCRIBED IN
23 SUBSECTION C OF THIS SECTION AND SHALL PAY INTEREST AT THE RATE PROVIDED FOR
24 JUDGMENTS PURSUANT TO SECTION 44-1201 FROM THE DATE OF COMPLETION OF THE SALE
25 UNTIL THE TRUSTEE COMPLIES WITH THIS SUBSECTION. ANY PERSON WITH A RECORDED
26 OR OTHER LEGAL INTEREST IN THE PROPERTY AT THE TIME OF THE SALE MAY COMMENCE
27 A CIVIL ACTION AGAINST THE TRUSTEE FOR THE TRUSTEE'S FAILURE TO COMPLY WITH
28 THIS SUBSECTION. THE COURT MAY AWARD THE PREVAILING PARTY ITS REASONABLE
29 ATTORNEY FEES INCURRED IN THAT CIVIL ACTION.

30 Sec. 10. Section 33-813, Arizona Revised Statutes, is amended to read:
31 33-813. Default in performance of contract secured;
32 reinstatement; cancellation of recorded notice of
33 sale

34 A. If, prior to the maturity date fixed by the contract or contracts,
35 all or a portion of a principal sum or interest of the contract or contracts
36 secured by a trust deed becomes due or is declared due by reason of a breach
37 or default in the performance of the contract or contracts or of the trust
38 deed, the trustor or the trustor's successor in interest, any person having a
39 subordinate lien or encumbrance of record thereon or any beneficiary under a
40 subordinate trust deed ~~may~~, before 5:00 p.m. MOUNTAIN STANDARD TIME on the
41 last day other than a Saturday or legal holiday before the date of sale or
42 the filing of an action to foreclose the trust deed, MAY reinstate by paying
43 to the beneficiary, the trustee or the trustee's agent in a form acceptable
44 to the beneficiary or the trustee the entire amount then due under the terms
45 of the contract or contracts or trust deed, other than the portion of the

1 principal as would not then be due had no default occurred, by curing all
2 other defaults and by paying the amounts due under subsection B of this
3 section.

4 B. The beneficiary shall notify the trustee in writing of the
5 performance and the name of the person who performed the conditions. The
6 proceedings shall be cancelled and the contract or contracts and trust deed
7 shall be deemed reinstated and in force as if no breach or default had
8 occurred upon performance of those of the following which may be applicable:

9 1. Payment of the entire amount then due.

10 2. Payment of costs and expenses incurred in enforcing the terms of
11 such contract or trust deed. THESE COSTS AND EXPENSES MAY INCLUDE THE
12 FOLLOWING:

13 (a) REASONABLE COSTS FOR MAILING AND PHOTOCOPYING.

14 (b) ACTUAL EXPENSES INCURRED FOR RECORDING, PUBLICATION, POSTING OF
15 NOTICE OF SALE, THE AUCTIONEER'S FEE, POSTPONEMENT FEES AND TITLE COSTS.

16 (c) OTHER REASONABLE COSTS AND EXPENSES.

17 3. Payment of the recording fee for a cancellation of notice of sale.

18 4. Payment of the trustee's fees, in an amount not to exceed six
19 hundred dollars or one-half of one per cent of the entire unpaid principal
20 sum secured, whichever is greater.

21 5. Payment of expenses and reasonable attorney fees that are not
22 otherwise provided for in this section and that are incurred in protecting
23 and preserving the beneficiary's interest in the trust property.

24 C. Upon request, the trustee shall provide to the trustor, or any
25 person entitled to notice pursuant to section 33-809, subsection B, at any
26 time that the trust deed is subject to reinstatement, a good faith estimate
27 of the sums which appear necessary to reinstate the trust deed, separately
28 specifying costs, fees, accrued interest, unpaid principal balance and any
29 other amounts which are required to be paid as a condition to reinstatement
30 of the trust deed.

31 D. If the trust deed is reinstated as provided in subsection B of this
32 section, the trustee shall have a cancellation of the notice of sale recorded
33 in the same county recorder's office where the notice of sale was
34 recorded. A trustee who, for thirty days after reinstatement, fails to have
35 proper notice of the cancellation of the notice of sale recorded is liable to
36 the person who performed the conditions resulting in reinstatement for all
37 actual damages resulting from such failure.

38 E. If the trust deed is paid in full or if the sale is not held or is
39 not properly postponed pursuant to this chapter, the trustee shall record a
40 cancellation of the notice of sale. The cancellation of the notice of sale
41 shall be recorded in the office of the county recorder in which the notice of
42 sale was recorded.

43 F. An acknowledged recorded cancellation of a recorded notice of sale
44 under a trust deed shall be sufficient if it is in substantially the
45 following form:

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Cancellation of Notice of Sale

The undersigned hereby cancels the notice of sale recorded
_____, _____, on trust property legally described as:
(legal description of trust property)
which notice of sale refers to a trust deed executed by
_____ as trustor, in which _____ is named as
beneficiary and _____ as trustee, and recorded
_____, _____, in docket or book _____, at page
_____, records of _____ county, Arizona.

Dated this _____ day of _____, _____.

Signature of trustee

(Acknowledgement)

Sec. 11. Applicability

This act applies only to trustee's sales for which a notice of sale is recorded pursuant to section 33-807, subsection D, Arizona Revised Statutes, on or after the effective date of this act.