

REFERENCE TITLE: foreclosure; homeowner protection

State of Arizona
House of Representatives
Forty-eighth Legislature
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2007

HB 2689

Introduced by
Representatives Alvarez, Ableser, Kirkpatrick, Tom: Brown, Burns J, Cajero
Bedford, Campbell CH, DeSimone, Garcia M, Lopez, McGuire, Rios P,
Thrasher, Ulmer

AN ACT

AMENDING SECTIONS 12-1566, 33-729 AND 33-814, ARIZONA REVISED STATUTES;
RELATING TO JUDGMENTS AGAINST REAL PROPERTY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-1566, Arizona Revised Statutes, is amended to
3 read:

4 12-1566. Execution on judgments for debts secured by real
5 property; fair market value; hearing; redemption
6 rights; guarantees; applicability

7 A. This section applies to execution ~~upon~~ ON real property under a
8 judgment obtained pursuant to section 33-725, ~~or~~ obtained pursuant to section
9 33-814 or obtained against a guarantor or any other person directly,
10 indirectly or contingently liable on a debt for which a judgment under
11 section 33-725 or 33-814 may be obtained.

12 B. Any sale of real property under this section shall be a credit on
13 the amount of the judgment in the amount of either the fair market value of
14 the real property determined under subsection C of this section or the sales
15 price of the real property at a sheriff's sale, whichever is greater.

16 C. Any judgment debtor against whom a judgment has been entered
17 pursuant to section 33-725 or 33-814 ~~may~~, not later than thirty days after
18 sale of the real property, **MAY** file a written application with the court for
19 determination of the fair market value of the real property ~~which~~ THAT has
20 been sold. Notice of filing the application and of the hearing shall be
21 given to all parties to the action. The fair market value shall be
22 determined by the court at a priority hearing ~~which~~ THAT shall be held ~~upon~~
23 ON such evidence as the court may allow. The court shall issue an order
24 crediting the amount due on the judgment with the greater of the sales price
25 or the fair market value of the real property. "Fair market value" ~~shall~~
26 ~~mean~~ **MEANS** the most probable price, as of the date of the execution sale, in
27 cash, or in terms equivalent to cash, or in other precisely revealed terms,
28 after deduction of prior liens and encumbrances with interest to the date of
29 sale, for which the real property or interest therein would sell after
30 reasonable exposure in the market under conditions requisite to a fair sale,
31 with the buyer and seller each acting prudently, knowledgeably and for
32 self-interest, and assuming that neither is under duress. If an application
33 has been filed, there shall be no right to redemption as to the real property
34 sold as provided in sections 12-1281, 12-1282 and 12-1283, except creditors
35 having a junior lien to the lien foreclosed may redeem by five day successive
36 periods as provided in section 12-1282, subsection C, commencing sixty days
37 after the sale of the real property. The redemption price shall be
38 calculated on the sales price of the real property.

39 D. Except when the primary residence has been given as security
40 pursuant to a mortgage or deed of trust, no primary residence occupied by a
41 judgment debtor covered by subsection A of this section may be sold under
42 execution until all other sales under execution of real property of the
43 judgment debtor in this state have been held and, if timely requested, the
44 hearing pursuant to subsection C of this section has been held. The judgment
45 debtor, within thirty days after entry of judgment, may file with the court a

1 certified list and legal description of the debtor's real property within
2 thirty days after entry of the judgment. This subsection shall not apply to
3 any real property ~~which~~ THAT the judgment holder does not have actual
4 knowledge of at the time of entry of judgment or real property not listed on
5 a certified list filed by the judgment debtor. This subsection shall not
6 require the judgment holder to sell real property ~~which~~ THAT the judgment
7 holder has released from the judgment lien.

8 E. The obligation of a guarantor may be enforced without regard to
9 this section in accordance with the terms and conditions of the contract
10 between the lender and the guarantor in an action independent of any other
11 action or judgment. A guarantor of the debt or any other person directly,
12 indirectly or contingently liable for the debt who is not a judgment debtor
13 in an action for foreclosure of a mortgage or deed of trust or an action for
14 deficiency judgment shall receive the same credit as the judgment debtor
15 receives pursuant to this section or section 33-814.

16 F. This section shall not abate, suspend or bar the right of the
17 holder of a debt secured by real property to abandon and release the lien on
18 the real property ~~which~~ THAT secures the debt and proceed against any
19 borrower or guarantor. Abandonment and release shall be evidenced by a
20 recorded release of the lien.

21 G. This section shall not abate, suspend or bar any action of the
22 holder of the judgment to realize ~~upon~~ ON or satisfy the judgment from
23 personal property of a judgment debtor or guarantor or any other person
24 directly, indirectly or contingently liable for the debt.

25 H. The sheriff's deed given pursuant to a sale held under execution or
26 a trustee's deed ~~upon~~ ON sale under power of sale shall constitute conclusive
27 evidence of the meeting of such requirements in favor of purchasers or
28 encumbrancers for value and without actual notice that any requirements of
29 this section have not been met.

30 I. For the purposes of subsection D of this section:

31 1. "Primary residence" means a real property ~~of two and one-half acres~~
32 ~~or less which~~ THAT is limited to and utilized for either a single one-family
33 or a single two-family dwelling.

34 2. "Real property of the judgment debtor" means only real property or
35 an interest therein of the judgment debtor at the time of entry of judgment.

36 Sec. 2. Section 33-729, Arizona Revised Statutes, is amended to read:
37 33-729. Purchase money mortgage; limitation on liability

38 A. Except as provided in subsection B, if a mortgage is given to
39 secure the payment of the balance of the purchase price, or to secure a loan
40 to pay all or part of the purchase price, of a parcel of real property ~~of two~~
41 ~~and one-half acres or less which~~ THAT is limited to and utilized for either a
42 single one-family or single two-family dwelling, the lien of judgment in an
43 action to foreclose such mortgage shall not extend to any other property of
44 the judgment debtor, nor may general execution be issued against the judgment
45 debtor to enforce ~~such~~ THE judgment, and if the proceeds of the mortgaged

1 real property sold under special execution are insufficient to satisfy the
2 judgment, the judgment may not otherwise be satisfied out of other property
3 of the judgment debtor, notwithstanding any agreement to the contrary.

4 B. The balance due on a mortgage foreclosure judgment after sale of
5 the mortgaged property shall constitute a lien against other property of the
6 judgment debtor, general execution may be issued thereon, and the judgment
7 may be otherwise satisfied out of other property of the judgment debtor, if
8 the court determines, after sale ~~upon~~ ON special execution and ~~upon~~ ON
9 written application and such notice to the judgment debtor as the court may
10 require, that the sale price was less than the amount of the judgment because
11 of diminution in the value of such real property while ~~such~~ THE property was
12 in the ownership, possession, ~~or~~ or control of the judgment debtor because of
13 voluntary waste committed or permitted by the judgment debtor, not to exceed
14 the amount of diminution in value as determined by ~~such~~ THE court.

15 Sec. 3. Section 33-814, Arizona Revised Statutes, is amended to read:

16 33-814. Action to recover balance after sale or foreclosure on
17 property under trust deed

18 A. Except as provided in subsections F and G of this section, within
19 ninety days after the date of sale of trust property under a trust deed
20 pursuant to section 33-807, an action may be maintained to recover a
21 deficiency judgment against any person directly, indirectly or contingently
22 liable on the contract for which the trust deed was given as security
23 including any guarantor of or surety for the contract and any partner of a
24 trustor or other obligor ~~which~~ THAT is a partnership. In any such action
25 against such a person, the deficiency judgment shall be for an amount equal
26 to the sum of the total amount owed the beneficiary as of the date of the
27 sale, as determined by the court less the fair market value of the trust
28 property on the date of the sale as determined by the court or the sale price
29 at the trustee's sale, whichever is higher. A written application for
30 determination of the fair market value of the real property may be filed by a
31 judgment debtor with the court in the action for a deficiency judgment or in
32 any other action on the contract ~~which~~ THAT has been maintained. Notice of
33 the filing of an application and the hearing shall be given to all parties to
34 the action. The fair market value shall be determined by the court at a
35 priority hearing ~~upon~~ ON such evidence as the court may allow. The court
36 shall issue an order crediting the amount due on the judgment with the
37 greater of the sales price or the fair market value of the real property.
38 **FOR THE PURPOSES OF THIS SUBSECTION, "fair market value" ~~shall mean~~ MEANS** the
39 most probable price, as of the date of the execution sale, in cash, or in
40 terms equivalent to cash, or in other precisely revealed terms, after
41 deduction of prior liens and encumbrances with interest to the date of sale,
42 for which the real property or interest therein would sell after reasonable
43 exposure in the market under conditions requisite to fair sale, with the
44 buyer and seller each acting prudently, knowledgeably and for self-interest,
45 and assuming that neither is under duress. Any deficiency judgment recovered

1 shall include interest on the amount of the deficiency from the date of the
2 sale at the rate provided in the deed of trust or in any of the contracts
3 evidencing the debt, together with any costs and disbursements of the action.

4 B. If a trustee's sale is a sale of less than all of the trust
5 property or is a sale pursuant to one of two or more trust deeds securing the
6 same obligation, the ninety day time limitations of subsection A of this
7 section shall begin on either the date of the trustee's sale of the last of
8 the trust property to be sold or the date of sale under the last trust deed
9 securing the obligation, whichever occurs last.

10 C. The obligation of a person who is not a trustor to pay, satisfy or
11 purchase all or a part of the balance due on a contract secured by a trust
12 deed may be enforced, if the person has so agreed, in an action regardless of
13 whether a trustee's sale is held. If, however, a trustee's sale is held, the
14 liability of a person who is not a trustor for the deficiency is determined
15 pursuant to subsection A of this section and any judgment for the deficiency
16 against the person shall be reduced in accordance with subsection A of this
17 section. If any such action is commenced after a trustee's sale has been
18 held, it is subject, in addition, to the ninety day time limitations of
19 subsections A and B of this section.

20 D. If no action is maintained for a deficiency judgment within the
21 time period prescribed in subsections A and B of this section, the proceeds
22 of the sale, regardless of amount, shall be deemed to be in full satisfaction
23 of the obligation and no right to recover a deficiency in any action shall
24 exist.

25 E. Except as provided in subsection F of this section, ~~the provisions~~
26 ~~of~~ this chapter ~~do~~ DOES not preclude a beneficiary from foreclosing a deed of
27 trust in the same manner as a real property mortgage. In an action for the
28 foreclosure of a deed of trust as a real property mortgage ~~the provisions of~~
29 chapter 6, article 2 of this title ~~are applicable~~ APPLIES.

30 F. A deed of trust ~~may~~, by express language, MAY validly prohibit the
31 recovery of any balance due after trust property is sold pursuant to the
32 trustee's power of sale, or the trust deed is foreclosed in the manner
33 provided by law for the foreclosure of mortgages on real property.

34 G. If trust property ~~of two and one-half acres or less which~~ THAT is
35 limited to and utilized for either a single one-family or a single two-family
36 dwelling is sold pursuant to the trustee's power of sale, no action may be
37 maintained to recover any difference between the amount obtained by sale and
38 the amount of the indebtedness and any interest, costs and expenses.