

COMMITTEE ON FINANCE
SENATE AMENDMENTS TO S.B. 1271
(Reference to printed bill)

1 Strike everything after enacting clause and insert:

2 "Section 1. Section 33-814, Arizona Revised Statutes, is amended to
3 read:

4 33-814. Action to recover balance after sale or foreclosure on
5 property under trust deed

6 A. Except as provided in subsections F and G of this section, within
7 ninety days after the date of sale of trust property under a trust deed
8 pursuant to section 33-807, an action may be maintained to recover a
9 deficiency judgment against any person directly, indirectly or contingently
10 liable on the contract for which the trust deed was given as security
11 including any guarantor of or surety for the contract and any partner of a
12 trustor or other obligor which is a partnership. In any such action against
13 such a person, the deficiency judgment shall be for an amount equal to the
14 sum of the total amount owed the beneficiary as of the date of the sale, as
15 determined by the court less the fair market value of the trust property on
16 the date of the sale as determined by the court or the sale price at the
17 trustee's sale, whichever is higher. A written application for determination
18 of the fair market value of the real property may be filed by a judgment
19 debtor with the court in the action for a deficiency judgment or in any other
20 action on the contract which has been maintained. Notice of the filing of an
21 application and the hearing shall be given to all parties to the action. The
22 fair market value shall be determined by the court at a priority hearing upon
23 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. **FOR THE PURPOSES OF THIS**

1 SUBSECTION, "fair market value" ~~shall mean~~ MEANS the most probable price, as
2 of the date of the execution sale, in cash, or in terms equivalent to cash,
3 or in other precisely revealed terms, after deduction of prior liens and
4 encumbrances with interest to the date of sale, for which the real property
5 or interest therein would sell after reasonable exposure in the market under
6 conditions requisite to fair sale, with the buyer and seller each acting
7 prudently, knowledgeably and for self-interest, and assuming that neither is
8 under duress. Any deficiency judgment recovered shall include interest on
9 the amount of the deficiency from the date of the sale at the rate provided
10 in the deed of trust or in any of the contracts evidencing the debt, together
11 with any costs and disbursements of the action.

12 B. If a trustee's sale is a sale of less than all of the trust
13 property or is a sale pursuant to one of two or more trust deeds securing the
14 same obligation, the ninety day time limitations of subsection A of this
15 section shall begin on either the date of the trustee's sale of the last of
16 the trust property to be sold or the date of sale under the last trust deed
17 securing the obligation, whichever occurs last.

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

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

1 E. Except as provided in subsection F of this section, the provisions
2 of this chapter do not preclude a beneficiary from foreclosing a deed of
3 trust in the same manner as a real property mortgage. In an action for the
4 foreclosure of a deed of trust as a real property mortgage the provisions of
5 chapter 6, article 2 of this title are applicable.

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

10 G. If trust property of two and one-half acres or less which is
11 limited to and utilized for either a single one-family or a single two-family
12 dwelling **BY THE TRUSTOR UNDER THE DEED OF TRUST FOR AT LEAST SIX CONSECUTIVE**
13 **MONTHS AND FOR WHICH A CERTIFICATE OF OCCUPANCY HAS BEEN ISSUED** is sold
14 pursuant to the trustee's power of sale, no action may be maintained to
15 recover any difference between the amount obtained by sale and the amount of
16 the indebtedness and any interest, costs and expenses. **THE TRUSTOR IS**
17 **RESPONSIBLE FOR DEMONSTRATING THAT THE TRUST PROPERTY WAS USED BY THE TRUSTOR**
18 **AS A ONE-FAMILY OR A SINGLE TWO-FAMILY DWELLING FOR AT LEAST SIX CONSECUTIVE**
19 **MONTHS."**

20 Amend title to conform

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06/08/2009
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C: dmt