

REFERENCE TITLE: foreclosed properties; maintenance; abatement

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

HB 2321

Introduced by
Representatives Patterson, Campbell CH, Pancrazi: Antenori, Campbell CL,
Chabin, Deschene, Farley

AN ACT

AMENDING SECTIONS 9-499, 11-268 AND 33-807, ARIZONA REVISED STATUTES;
RELATING TO FORECLOSURE OF DEEDS OF TRUST.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 9-499, Arizona Revised Statutes, is amended to
3 read:

4 9-499. Removal of rubbish, trash, weeds, filth, debris and
5 dilapidated structures: removal by city: costs
6 assessed: collection: priority of assessment:
7 definitions

8 A. The governing body of a city or town, by ordinance, shall compel
9 the owner, lessee or occupant of property **OR THE BENEFICIARY OF A DEED OF**
10 **TRUST AS PROVIDED IN SUBSECTION G OF THIS SECTION** to remove rubbish, trash,
11 weeds or other accumulation of filth, debris or dilapidated structures ~~which~~
12 **THAT** constitute a hazard to public health and safety from buildings, grounds,
13 lots, contiguous sidewalks, streets and alleys. An ordinance shall require:

14 1. Written notice to the owner, the owner's authorized agent or the
15 owner's statutory agent and to the occupant or lessee. The notice shall be
16 served either by personal service or by certified mail. If notice is served
17 by certified mail, the notice shall be mailed to the last known address of
18 the owner, the owner's authorized agent or the owner's statutory agent and to
19 the address to which the tax bill for the property was last mailed. The
20 notice shall be given not less than thirty days before the day set for
21 compliance and shall include the legal description of the property and the
22 cost of such removal to the city or town if the owner, occupant or lessee
23 does not comply. The owner shall be given not less than thirty days to
24 comply. The city or town may record the notice in the county recorder's
25 office in the county in which the property is located. If the notice is
26 recorded and compliance with the notice is subsequently satisfied, the city
27 or town shall record a release of the notice.

28 2. Provisions for appeal to and a hearing by the governing body of the
29 city or town or a board of citizens that is appointed by the governing body
30 on both the notice and the assessments, unless the removal or abatement is
31 ordered by a court.

32 3. That any person, firm or corporation that places any rubbish,
33 trash, filth or debris upon any private or public property not owned or under
34 the control of that person, firm or corporation is guilty of a class 1
35 misdemeanor or a civil violation and, in addition to any fine or penalty
36 which may be imposed for a violation ~~of any provision~~ of this section, is
37 liable for all costs which may be assessed pursuant to this section for
38 removing, abating or enjoining the rubbish, trash, filth or debris.

39 B. The ordinance may provide that if any person with an interest in
40 the property, including an owner, lienholder, lessee or occupant, after
41 notice as required by subsection A, paragraph 1 of this section does not
42 remove such rubbish, trash, weeds, filth, debris or dilapidated structures
43 and abate the condition ~~which~~ **THAT** constitutes a hazard to public health and
44 safety, the city or town may remove, abate, enjoin or cause their removal.

1 C. The governing body of the city or town may prescribe by ordinance a
2 procedure for the removal or abatement, and for making the actual cost of the
3 removal or abatement, including the actual costs of any additional inspection
4 and other incidental connected costs, an assessment upon the property from
5 which the rubbish, trash, weeds or other accumulations are removed or abated.

6 D. The ordinance may provide that the cost of removal, abatement or
7 injunction of such rubbish, trash, weeds, filth, debris or dilapidated
8 structures from any lot or tract of land, and associated legal costs for
9 abatement or injunctions, shall be assessed on the property from which the
10 rubbish, trash, weeds, accumulations or dilapidated structures are removed,
11 abated or enjoined. The city or town may record the assessment in the county
12 recorder's office in the county in which the property is located, including
13 the date and amount of the assessment, the legal description of the property
14 and the name of the city or town imposing the assessment. Any assessment
15 recorded after July 15, 1996 is prior and superior to all other liens,
16 obligations, mortgages or other encumbrances, except liens for general taxes.
17 A sale of the property to satisfy an assessment obtained under ~~the provisions~~
18 ~~of~~ this section shall be made upon judgment of foreclosure and order of sale.
19 A city or town shall have the right to bring an action to enforce the
20 assessment in the superior court in the county in which the property is
21 located at any time after the recording of the assessment, but failure to
22 enforce the assessment by such action shall not affect its validity. The
23 recorded assessment shall be prima facie evidence of the truth of all matters
24 recited in the assessment and of the regularity of all proceedings prior to
25 the recording of the assessment.

26 E. Assessments that are imposed under subsection D of this section run
27 against the property until paid and are due and payable in equal annual
28 installments as follows:

29 1. Assessments of less than five hundred dollars shall be paid within
30 one year after the assessment is recorded.

31 2. Assessments of five hundred dollars or more but less than one
32 thousand dollars shall be paid within two years after the assessment is
33 recorded.

34 3. Assessments of one thousand dollars or more but less than five
35 thousand dollars shall be paid within three years after the assessment is
36 recorded.

37 4. Assessments of five thousand dollars or more but less than ten
38 thousand dollars shall be paid within six years after the assessment is
39 recorded.

40 5. Assessments of ten thousand dollars or more shall be paid within
41 ten years after the assessment is recorded.

42 F. An assessment that is past due accrues interest at the rate
43 prescribed by section 44-1201.

44 G. FOR ANY RESIDENTIAL PROPERTY FOR WHICH THE CITY OR TOWN RECEIVES A
45 NOTICE OF PENDING FORECLOSURE PURSUANT TO SECTION 33-807, THE CITY OR TOWN ON

1 ITS OWN MOTION MAY INSPECT THE EXTERIOR OF THE PROPERTY AND SEND NOTICE
2 PURSUANT TO SUBSECTION A OF THIS SECTION TO THE BENEFICIARY OF THE DEED OF
3 TRUST TO REMOVE RUBBISH, TRASH, WEEDS OR OTHER ACCUMULATION OF FILTH, DEBRIS
4 OR DILAPIDATED STRUCTURES THAT CONSTITUTE A HAZARD TO PUBLIC HEALTH AND
5 SAFETY FROM BUILDINGS, GROUNDS AND LOTS OF THE TRUST PROPERTY. THEREAFTER,
6 THE BENEFICIARY IS PROPERLY NOTICED AS A PARTY TO ANY ORDER TO REMOVE OR
7 ABATE THE HAZARD PURSUANT TO THIS SECTION, INCLUDING ANY ORDER REGARDING
8 PAYMENT OF COSTS OR AN ASSESSMENT. THE TRUSTEE SHALL PAY ALL ASSESSMENTS
9 LEVIED PURSUANT TO THIS SECTION AGAINST THE TRUST PROPERTY AND, ON
10 RECORDATION OF A RELEASE OF ASSESSMENT LIEN BY THE CITY OR TOWN, MAY PROCEED
11 WITH A NOTICE OF SALE PURSUANT TO SECTION 33-807. IF THE CITY OR TOWN DOES
12 NOT SEND A NOTICE PURSUANT TO SUBSECTION A OF THIS SECTION TO THE BENEFICIARY
13 WITHIN NINETY DAYS AFTER RECEIVING THE NOTICE OF PENDING FORECLOSURE, THE
14 CITY OR TOWN WAIVES ITS AUTHORITY TO ORDER ANY REMOVAL AGAINST THE
15 BENEFICIARY PURSUANT TO THIS SECTION, AND THE BENEFICIARY MAY PROCEED WITH A
16 NOTICE OF SALE PURSUANT TO SECTION 33-807.

17 ~~G.~~ H. A prior assessment for the purposes provided in this section
18 shall not be a bar to a subsequent assessment or assessments for these
19 purposes, and any number of assessments on the same lot or tract of land may
20 be enforced in the same action.

21 ~~H.~~ I. This section applies to all cities and towns organized and
22 operating under the general law of this state, and cities and towns organized
23 and operating under a special act or charter.

24 ~~I.~~ J. For THE purposes of this section:

- 25 1. "Property" includes buildings, grounds, lots and tracts of land.
- 26 2. "Structures" includes buildings, improvements and other structures
27 that are constructed or placed on land.

28 Sec. 2. Section 11-268, Arizona Revised Statutes, is amended to read:

29 11-268. Removal of rubbish, trash, weeds, filth, debris and
30 dilapidated buildings; violation; classification;
31 removal by county; costs assessed; collection;
32 priority of lien; definition

33 A. The board of supervisors, by ordinance, shall compel the owner,
34 lessee or occupant, ~~OR THE BENEFICIARY OF A DEED OF TRUST AS PROVIDED IN~~
35 ~~SUBSECTION F OF THIS SECTION~~, of buildings, grounds or lots located in the
36 unincorporated areas of the county to remove rubbish, trash, weeds, filth,
37 debris or dilapidated buildings ~~which~~ THAT constitute a hazard to public
38 health and safety from buildings, grounds, lots, contiguous sidewalks,
39 streets and alleys. Any such ordinance shall require and include:

- 40 1. Reasonable written notice to the owner, any lienholder, THE
41 occupant or THE lessee. The notice shall be given not less than thirty days
42 before the day set for compliance and shall include the estimated cost to the
43 county for the removal if the owner, occupant or lessee does not comply. The
44 notice shall be either personally served or mailed by certified mail to the
45 owner, occupant or lessee at his last known address, or the address to which

1 the tax bill for the property was last mailed. If the owner does not reside
2 on the property, a duplicate notice shall also be sent to the owner at the
3 owner's last known address.

4 2. Provisions for appeal to the board of supervisors on both the
5 notice and the assessments.

6 3. That any person, firm or corporation that places any rubbish,
7 trash, filth or debris upon any private or public property located in the
8 unincorporated areas of the county not owned or under the control of the
9 person, firm or corporation is guilty of a class 1 misdemeanor and, in
10 addition to any fine which may be imposed for a violation ~~of any provision~~ of
11 this section, is liable for all costs which may be assessed pursuant to this
12 section for the removal of the rubbish, trash, filth or debris.

13 B. The ordinance may provide that if any person with an interest in
14 the property, including an owner, lienholder, lessee or occupant of the
15 buildings, grounds or lots, after notice as required by subsection A,
16 paragraph 1, does not remove the rubbish, trash, weeds, filth, debris or
17 dilapidated buildings and abate the condition ~~which~~ THAT constitutes a hazard
18 to public health and safety, the county ~~may~~, at the expense of the owner,
19 lessee or occupant, ~~MAY~~ remove, abate, enjoin or cause the removal of the
20 rubbish, trash, weeds, filth, debris or dilapidated buildings.

21 C. The board of supervisors may prescribe by the ordinance a procedure
22 for such removal or abatement and for making the actual cost of such removal
23 or abatement, including the actual costs of any additional inspection and
24 other incidental costs in connection with the removal or abatement, an
25 assessment upon the lots and tracts of land from which the rubbish, trash,
26 weeds, filth, debris or dilapidated buildings are removed.

27 D. The ordinance may provide that the cost of removal, abatement or
28 injunction of the rubbish, trash, weeds, filth, debris or dilapidated
29 buildings from any lot or tract of land located in the unincorporated areas
30 of the county and associated legal costs be assessed in the manner and form
31 prescribed by ordinance of the county upon the property from which the
32 rubbish, trash, weeds, filth, debris or dilapidated buildings are removed,
33 abated or enjoined. The county shall record the assessment in the county
34 recorder's office in the county in which the property is located, including
35 the date and amount of the assessment and the legal description of the
36 property. Any assessment recorded after ~~the effective date of this amendment~~
37 ~~to this section~~ AUGUST 6, 1999 is prior and superior to all other liens,
38 obligations or other encumbrances, except liens for general taxes and prior
39 recorded mortgages. A sale of the property to satisfy an assessment obtained
40 under this section shall be made on judgment of foreclosure and order of
41 sale. The county may bring an action to enforce the lien in the superior
42 court in the county in which the property is located at any time after the
43 recording of the assessment, but failure to enforce the lien by such action
44 does not affect its validity. The recorded assessment is prima facie

1 evidence of the truth of all matters recited in the assessment and of the
2 regularity of all proceedings before the recording of the assessment.

3 E. Assessments that are imposed under subsection D run against the
4 property until they are paid and are due and payable in equal annual
5 installments as follows:

6 1. Assessments of less than five hundred dollars shall be paid within
7 one year after the assessment is recorded.

8 2. Assessments of five hundred dollars or more but less than one
9 thousand dollars shall be paid within two years after the assessment is
10 recorded.

11 3. Assessments of one thousand dollars or more but less than five
12 thousand dollars shall be paid within three years after the assessment is
13 recorded.

14 4. Assessments of five thousand dollars or more but less than ten
15 thousand dollars shall be paid within six years after the assessment is
16 recorded.

17 5. Assessments of ten thousand dollars or more shall be paid within
18 ten years after the assessment is recorded.

19 F. FOR ANY RESIDENTIAL PROPERTY FOR WHICH THE COUNTY RECEIVES A NOTICE
20 OF PENDING FORECLOSURE PURSUANT TO SECTION 33-807, THE COUNTY ON ITS OWN
21 MOTION MAY INSPECT THE EXTERIOR OF THE PROPERTY AND SEND NOTICE PURSUANT TO
22 SUBSECTION A OF THIS SECTION TO THE BENEFICIARY OF THE DEED OF TRUST TO
23 REMOVE RUBBISH, TRASH, WEEDS OR OTHER ACCUMULATION OF FILTH, DEBRIS OR
24 DILAPIDATED STRUCTURES THAT CONSTITUTE A HAZARD TO PUBLIC HEALTH AND SAFETY
25 FROM BUILDINGS, GROUNDS AND LOTS OF THE TRUST PROPERTY. THEREAFTER, THE
26 BENEFICIARY IS PROPERLY NOTICED AS A PARTY TO ANY ORDER TO REMOVE OR ABATE
27 THE HAZARD PURSUANT TO THIS SECTION, INCLUDING ANY ORDER REGARDING PAYMENT OF
28 COSTS OR AN ASSESSMENT. THE TRUSTEE SHALL PAY ALL ASSESSMENTS LEVIED
29 PURSUANT TO THIS SECTION AGAINST THE TRUST PROPERTY AND, ON RECORDATION OF A
30 RELEASE OF ASSESSMENT LIEN BY THE COUNTY, MAY PROCEED WITH A NOTICE OF SALE
31 PURSUANT TO SECTION 33-807. IF THE COUNTY DOES NOT SEND A NOTICE PURSUANT TO
32 SUBSECTION A OF THIS SECTION TO THE BENEFICIARY WITHIN NINETY DAYS AFTER
33 RECEIVING THE NOTICE OF PENDING FORECLOSURE, THE COUNTY WAIVES ITS AUTHORITY
34 TO ORDER ANY REMOVAL AGAINST THE BENEFICIARY PURSUANT TO THIS SECTION, AND
35 THE BENEFICIARY MAY PROCEED WITH A NOTICE OF SALE PURSUANT TO SECTION 33-807.

36 ~~F.~~ G. A prior assessment for the purposes provided in this section is
37 not a bar to a subsequent assessment or assessments for such purposes, and
38 any number of liens on the same lot or tract of land may be enforced in the
39 same action.

40 ~~G.~~ H. Before the removal of a dilapidated building the board of
41 supervisors shall consult with the state historic preservation officer to
42 determine if the building is of historical value.

43 ~~H.~~ I. If a county removes a dilapidated building pursuant to this
44 section, the county assessor shall adjust the valuation of the property on
45 the property assessment tax rolls from the date of removal.

1 ~~I.~~ J. As used in this section, occupant does not include any
2 corporation or association operating or maintaining rights-of-way for and on
3 behalf of the United States government, either under contract or under
4 federal law.

5 ~~J.~~ K. ~~As used in~~ FOR THE PURPOSES OF this section, "dilapidated
6 building" means any real property structure that is in such disrepair or is
7 damaged to the extent that its strength or stability is substantially less
8 than a new building or it is likely to burn or collapse and its condition
9 endangers the life, health, safety or property of the public.

10 Sec. 3. Section 33-807, Arizona Revised Statutes, is amended to read:

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

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

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

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

33 D. EXCEPT FOR RESIDENTIAL PROPERTY, the power of sale of trust
34 property conferred upon the trustee shall not be exercised before the
35 ninety-first day after the date of the recording of the notice of the sale.
36 The sale shall not be set for a Saturday or legal holiday. The trustee may
37 schedule more than one sale for the same date, time and place.

38 E. FOR RESIDENTIAL PROPERTY, THE POWER OF SALE OF TRUST PROPERTY
39 CONFERRED ON THE TRUSTEE SHALL NOT BE EXERCISED UNTIL AFTER DELIVERY OF A
40 NOTICE OF PENDING FORECLOSURE TO THE CITY, TOWN OR COUNTY IN WHICH THE TRUST
41 PROPERTY IS LOCATED. ON RECEIPT OF THE NOTICE OF PENDING FORECLOSURE, THE
42 CITY, TOWN OR COUNTY MAY ISSUE AN ORDER TO THE BENEFICIARY AND TAKE OTHER
43 ACTION AGAINST THE BENEFICIARY PURSUANT TO SECTION 9-499 OR 11-268. ON
44 COMPLIANCE WITH ANY ORDERS AND DISCHARGE OF ANY ASSESSMENT LIEN, THE
45 BENEFICIARY AND TRUSTEE MAY PROCEED WITH A NOTICE OF SALE ON THE TRUST

1 PROPERTY. ON EXPIRATION OF NINETY DAYS AFTER THE CITY, TOWN OR COUNTY
2 RECEIVED THE NOTICE OF PENDING FORECLOSURE AND IF NO ORDER TO REMOVE, ABATE
3 OR OTHERWISE COMPLY WITH SECTION 9-499 OR 11-268 IS ISSUED BY THE CITY, TOWN
4 OR COUNTY AGAINST THE BENEFICIARY, THE BENEFICIARY OR TRUSTEE MAY PROCEED
5 WITH A NOTICE OF SALE ON THE TRUST PROPERTY.

6 ~~E.~~ F. The trustee need only be joined as a party in legal actions
7 pertaining to a breach of the trustee's obligation under this chapter or
8 under the deed of trust. Any order of the court entered against the
9 beneficiary is binding upon the trustee with respect to any actions that the
10 trustee is authorized to take by the trust deed or by this chapter. If the
11 trustee is joined as a party in any other action, the trustee is entitled to
12 be immediately dismissed and to recover costs and reasonable attorney fees
13 from the person joining the trustee.