REFERENCE TITLE: foreclosures; mandatory mediation

State of Arizona
House of Representatives
Forty-ninth Legislature
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HB 2739

Introduced by
Representatives Tovar, Cajero Bedford, Deschene, Meza, Patterson, Sinema, Young Wright, Senator Miranda: Representatives Ableser, Campbell CH, Campbell CL, Chabin, Farley, Garcia M, Heinz, Miranda B, Pancrazi, Quelland

AN ACT

AMENDING SECTION 33-807, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 6.1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-807.01; RELATING TO FORECLOSURE OF DEEDS OF TRUST.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 33-807, Arizona Revised Statutes, is amended to read:

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

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

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

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

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

E. FOR OWNER-OCCUPIED RESIDENTIAL PROPERTY, THE POWER OF SALE OF TRUST PROPERTY CONFERRED UPON THE TRUSTEE SHALL NOT BE EXERCISED BEFORE THE RECORDING OF THE NOTICE FROM THE COURT AS PROVIDED IN SECTION 33-807.01, SUBSECTION F THAT THE MEDIATION PROCESS HAS BEEN SATISFACTORILY COMPLETED.

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

Sec. 2. Title 33, chapter 6.1, article 1, Arizona Revised Statutes, is amended by adding section 33-807.01, to read:

33-807.01. Mandatory foreclosure mediation; fee; stay; report; applicability; program termination

A. THE MANDATORY FORECLOSURE MEDIATION PROGRAM IS ESTABLISHED IN THE ADMINISTRATIVE OFFICE OF THE COURTS. THE SUPREME COURT SHALL OVERSEE THE MANDATORY FORECLOSURE MEDIATION PROGRAM TO PROVIDE MEDIATION IN THE SUPERIOR COURT FOR NONJUDICIAL FORECLOSURES OF DEEDS OF TRUST ON OWNER-OCCUPIED RESIDENTIAL PROPERTY.

B. THE PROGRAM SHALL ADDRESS ALL ISSUES OF FORECLOSURE, INCLUDING REINSTATEMENT OF THE DEED OF TRUST, MODIFICATION OF THE LOAN AND RESTRUCTURING OF THE DEBT. MEDIATIONS CONDUCTED PURSUANT TO THE PROGRAM SHALL USE THE CALCULATIONS, ASSUMPTIONS AND FORMS THAT ARE ESTABLISHED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION AND PUBLISHED IN THE FEDERAL DEPOSIT INSURANCE CORPORATION LOAN MODIFICATION PROGRAM GUIDE AS SET OUT ON THE FEDERAL DEPOSIT INSURANCE CORPORATION'S PUBLICLY ACCESSIBLE WEBSITE. COMMUNICATIONS DURING MEDIATION ARE CONFIDENTIAL AND MAY NOT BE USED IN ANY SUBSEQUENT LEGAL PROCEEDINGS. THE TRUSTOR'S, TRUSTEE'S AND BENEFICIARY'S RIGHTS IN THE NONJUDICIAL FORECLOSURE ARE NOT WAIVED BY PARTICIPATING IN THE PROGRAM.

C. THE SUPERIOR COURT SHALL PROVIDE MEDIATION SERVICES UNDER THIS SECTION. THE COURT SHALL ESTABLISH A FEE FOR MEDIATION SERVICES TO BE PAID FOR BY THE BENEFICIARY. THE COURT MAY ESTABLISH A TRAINING PROGRAM FOR MEDIATORS AND REQUIRE THAT MEDIATORS RECEIVE THAT TRAINING BEFORE BEING APPOINTED. THE COURT SHALL ASSIGN MEDIATORS WHO:

1. ARE TRAINED IN MEDIATION AND ALL RELEVANT ASPECTS OF THE LAW.

2. HAVE KNOWLEDGE OF COMMUNITY-BASED RESOURCES THAT ARE AVAILABLE IN THE JUDICIAL DISTRICTS IN WHICH THEY SERVE.

3. HAVE KNOWLEDGE OF MORTGAGE ASSISTANCE PROGRAMS.

4. ARE TRAINED IN USING THE RELEVANT FEDERAL DEPOSIT INSURANCE CORPORATION FORMS AND WORKSHEETS.

D. A MEDIATOR SHALL INCLUDE IN THE MEDIATION PROCESS UNDER THIS SECTION ANY PERSON THE MEDIATOR DETERMINES IS NECESSARY FOR EFFECTIVE MEDIATION. MEDIATION AND APPEARANCE IN PERSON IS MANDATORY FOR:

1. THE BENEFICIARY, EXCEPT THAT THE BENEFICIARY MAY PARTICIPATE BY TELEPHONE. A REPRESENTATIVE OF THE BENEFICIARY MUST HAVE SUFFICIENT AUTHORITY TO AGREE TO A PROPOSED SETTLEMENT, LOAN MODIFICATION OR DISMISSAL OF THE LOAN.

2. THE TRUSTOR AND ANY COUNSEL FOR THE TRUSTOR.

3. THE TRUSTEE, EXCEPT THAT THE TRUSTEE MAY PARTICIPATE BY TELEPHONE.

E. THE PARTIES SHALL MEDIATE AND ATTEMPT TO RESOLVE THE ISSUES IN THE FORECLOSURE. THE MEDIATOR SHALL ENSURE THAT THE PARTIES COMPLETE IN FULL AND IN GOOD FAITH THE NET PRESENT VALUE WORKSHEET IN THE FEDERAL DEPOSIT INSURANCE CORPORATION LOAN MODIFICATION PROGRAM GUIDE. THE MEDIATOR SHALL RETAIN A COPY OF THE WORKSHEET UNTIL COMPLETION OF THE FORECLOSURE

PROCEEDINGS. THE MEDIATOR SHALL SUBMIT A REPORT TO THE COURT ON THE OUTCOME OF THE MEDIATION AND SHALL INCLUDE THE OUTCOMES OF THE NET PRESENT VALUE WORKSHEET.

F. DURING THE MEDIATION PROCESS, THE BENEFICIARY AND THE TRUSTEE SHALL NOT TAKE ANY FURTHER ACTION IN THE FORECLOSURE, AND ANY RELATED COURT PROCESS IS STAYED DURING THE MEDIATION PROCESS PURSUANT TO THIS SECTION. THE FORECLOSURE PROCESS MAY COMMENCE AGAIN ONLY ON CERTIFICATION AND RECORDATION OF NOTICE FROM THE COURT THAT REQUIREMENTS UNDER THE PROGRAM WERE SATISFIED, AS DETERMINED BY THE COURT. ALL FEES AND COSTS RELATED TO THE FORECLOSURE AND DELINQUENCY, INCLUDING INTEREST, REMAIN FIXED FROM THE DATE OF THE SCHEDULED MEDIATION UNTIL THE DATE THAT THE NOTICE OF SATISFACTION IS RECORDED BY THE COURT.

G. IF THE COURT FINDS THAT EITHER PARTY FAILED TO MAKE A GOOD FAITH EFFORT TO MEDIATE, THE COURT MAY IMPOSE SANCTIONS THAT INCLUDE A STAY ON THE FORECLOSURE WITH PAYMENT OF COSTS AND FEES.

H. WITH THE COURT'S APPROVAL, A TRUSTOR MAY WAIVE THE MEDIATION REQUIREMENT UNDER THIS SECTION UNDER THE FOLLOWING CONDITIONS:

1. THE TRUSTOR DESIRES FORECLOSURE BECAUSE OF PERSONAL CIRCUMSTANCES AND HAS CERTIFICATION BY AN INDEPENDENT THIRD-PARTY COUNSELOR OR ATTORNEY THAT THE DEFENDANT UNDERSTANDS WHAT IT MEANS TO WAIVE THE MEDIATION.

2. THE WAIVER INCLUDES LANGUAGE THAT PROHIBITS THE HOMEOWNER FROM SIGNING AWAY ANY CLAIM RELATED TO THE MORTGAGE ORIGINATION AND PROHIBITS A FINDING OF ANY DEFICIENCY.

I. THIS SECTION APPLIES TO OWNER-OCCUPIED RESIDENTIAL PROPERTIES FOR WHICH A NOTICE OF SALE HAS NOT BEEN RECORDED ON OR BEFORE THE EFFECTIVE DATE OF THIS SECTION.

J. THE PROGRAM ESTABLISHED BY THIS SECTION ENDS ON JULY 1, 2020 PURSUANT TO SECTION 41-3102.