

REFERENCE TITLE: foreclosed properties; maintenance; abatement

State of Arizona  
House of Representatives  
Fiftieth Legislature  
Second Regular Session  
2012

# HB 2301

Introduced by  
Representatives Patterson, Tovar: McCune Davis

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.

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

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

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

26 ~~I.~~ J. For THE purposes of this section:  
 27 1. "Property" includes buildings, grounds, lots and tracts of land.  
 28 2. "Structures" includes buildings, improvements and other structures  
 29 that are constructed or placed on land.

30 Sec. 2. Section 11-268, Arizona Revised Statutes, is amended to read:  
 31 11-268. Removal of rubbish, trash, weeds, filth, debris and  
 32 dilapidated buildings; violation; classification;  
 33 removal by county; costs assessed; collection;  
 34 priority of lien; definition

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

42 1. Reasonable written notice to the owner, any lienholder, the  
 43 occupant or the lessee. The notice shall be given not less than thirty days  
 44 before the day set for compliance and shall include the estimated cost to the  
 45 county for the removal if the owner, occupant or lessee does not comply. The

1 notice shall be either personally served or mailed by certified mail to the  
2 owner, occupant or lessee at his last known address, or the address to which  
3 the tax bill for the property was last mailed. If the owner does not reside  
4 on the property, a duplicate notice shall also be sent to the owner at the  
5 owner's last known address.

6 2. Provisions for appeal to the board of supervisors on both the  
7 notice and the assessments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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