

REFERENCE TITLE: **loan servicers; foreclosures; enforcement**

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

HB 2682

Introduced by
Representatives McCune Davis, Farley, Hobbs, Patterson, Tovar: Alston, Arredondo, Campbell, Chabin, Gallego, Gonzales, Hale, Meyer, Miranda C, Miranda R, Pancrazi, Saldate

AN ACT

AMENDING SECTION 33-808, ARIZONA REVISED STATUTES; AMENDING TITLE 44, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 26; AMENDING SECTION 44-1533, ARIZONA REVISED STATUTES; RELATING TO COMMERCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 33-808, Arizona Revised Statutes, is amended to
3 read:

4 **33-808. Notice of trustee's sale**

5 A. The trustee shall give written notice of the time and place of sale
6 legally describing the trust property to be sold by each of the following
7 methods:

8 1. Recording a notice in the office of the recorder of each county
9 where the trust property is situated.

10 2. Giving notice as provided in section 33-809 to the extent
11 applicable.

12 3. Posting a copy of the notice of sale, at least twenty days before
13 the date of sale in some conspicuous place on the trust property to be sold,
14 if posting can be accomplished without a breach of the peace. If access to
15 the trust property is denied because a common entrance to the property is
16 restricted by a limited access gate or similar impediment, the property shall
17 be posted by posting notice at that gate or impediment. Notice shall also be
18 posted at one of the places provided for posting public notices at any
19 building that serves as a location of the superior court in the county where
20 the trust property is to be sold. Posting is deemed completed on the date
21 the trust property is posted. The posting of notice at the superior court
22 location is deemed a ministerial act.

23 4. Publication of the notice of sale in a newspaper of general
24 circulation in each county in which the trust property to be sold is
25 situated. The notice of sale shall be published at least once a week for
26 four consecutive weeks. The last date of publication shall not be less than
27 ten days ~~prior to~~ BEFORE the date of sale. Publication is deemed completed
28 on the date of the first of the four publications of the notice of sale
29 pursuant to this paragraph.

30 B. The sale shall be held at the time and place designated in the
31 notice of sale on a day other than a Saturday or legal holiday between
32 9:00 a.m. and 5:00 p.m. mountain standard time at a specified place on the
33 trust property, at a specified place at any building that serves as a
34 location of the superior court or at a specified place at a place of business
35 of the trustee, in any county in which part of the trust property to be sold
36 is situated.

37 C. The notice of sale shall contain:

38 1. The date, time and place of the sale. The date, time and place
39 shall be set pursuant to section 33-807, subsection D. The date shall be no
40 sooner than the ninety-first day after the date that the notice of sale was
41 recorded.

42 2. The street address, if any, or identifiable location as well as the
43 legal description of the trust property.

3. The county assessor's tax parcel number for the trust property or
the tax parcel number of a larger parcel of which the trust property is a
part.

4 4. The original principal balance as shown on the deed of trust. If
5 the amount is not shown on the deed of trust, it shall be listed as
6 "unspecified".

7 5. The names and addresses, as of the date the notice of sale is
8 recorded, of the beneficiary and the trustee, the name and address of the
9 original trustor as stated in the deed of trust, the signature of the trustee
10 and the basis for the trustee's qualification pursuant to section 33-803,
11 subsection A, including an express statement of the paragraph under
12 subsection A on which the qualification is based. The address of the
13 beneficiary shall not be in care of the trustee.

14 6. The telephone number of the trustee.

15 7. The name of the state or federal licensing or regulatory body or
16 controlling agency of the trustee as prescribed by section 33-803,
17 subsection A.

18 8. A STATEMENT THAT THE TRUSTEE MAY POSTPONE THE TRUSTEE'S SALE ONE OR
19 MORE TIMES AND ON REQUEST SHALL MAKE AVAILABLE TO INTERESTED PERSONS THE DATE
20 AND TIME OF THE RESCHEDULED SALE.

21 D. The notice of sale shall be sufficient if made in substantially the
22 following form:

Notice of Trustee's Sale

The following legally described trust property will be sold, pursuant to the power of sale under that certain trust deed recorded in docket or book _____ at page _____ records of _____ county, Arizona, at public auction to the highest bidder at (specific place of sale as permitted by law) _____, in _____ county, in or near _____, Arizona, on _____, _____, at _____ o'clock m. of said day:

(street address, if any, or identifiable
location of trust property)

(legal description of trust property)

THE TRUSTEE MAY POSTPONE THE TRUSTEE'S SALE ONE OR MORE TIMES AND ON REQUEST SHALL MAKE AVAILABLE TO INTERESTED PERSONS THE DATE AND TIME OF THE RESCHEDULED SALE.

Tax parcel number _____

Original principal balance \$ _____

Name and address of beneficiary

Name and address of original trustor _____

1 Name, address and telephone number of trustee _____
2 _____
3 _____

4 Signature of trustee _____
5 Manner of trustee qualification _____
6 Name of trustee's regulator _____
7 Dated this _____ day of _____, _____.
8 (Acknowledgement)

9 E. Any error or omission in the information required by subsection C
10 or D of this section, other than an error in the legal description of the
11 trust property or an error in the date, time or place of sale, shall not
12 invalidate a trustee's sale. Any error in the legal description of the trust
13 property shall not invalidate a trustee's sale if considered as a whole the
14 information provided is sufficient to identify the trust property being sold.
15 If there is an error or omission in the legal description so that the trust
16 property cannot be identified, or if there is an error in the date, time or
17 place of sale, the trustee shall record a cancellation of notice of sale.
18 The trustee or any person furnishing information to the trustee shall not be
19 subject to liability for any error or omission in the information required by
20 subsection C of this section except for the wilful and intentional failure to
21 provide such information. This subsection does not apply to claims made by
22 an insured under any policy of title insurance.

23 F. The notice of trustee sale may not be rerecorded for any reason.
24 This subsection does not prohibit the recording of a new or subsequent notice
25 of sale regarding the same property.

26 Sec. 2. Title 44, chapter 9, Arizona Revised Statutes, is amended by
27 adding article 26, to read:

28 ARTICLE 26. MORTGAGE LOAN SERVICERS

29 44-1382. Definitions

30 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

31 1. "AUTHORIZED REPRESENTATIVE" MEANS A PERSON DESIGNATED BY THE
32 BORROWER IN A WRITTEN AUTHORIZATION SIGNED BY THE BORROWER, INCLUDING AN
33 ATTORNEY, EMPLOYEE OR AGENT OF A NONPROFIT HOUSING COUNSELING OR LEGAL
34 SERVICES ORGANIZATION, EXCEPT THAT NOTHING RESTRICTS THE ABILITY OF A
35 SERVICER TO SHARE INFORMATION AND COMMUNICATE VERBALLY WITH A PERSON ACTING
36 ON BEHALF OF A BORROWER FOLLOWING A TAPE RECORDED OR OTHER VERIFIABLE VERBAL
37 CONSENT BY THE BORROWER.

38 2. "HOME AFFORDABLE MORTGAGE PROGRAM" MEANS THE PROGRAM ESTABLISHED BY
39 THE UNITED STATES DEPARTMENT OF THE TREASURY PURSUANT TO SECTIONS 101 AND 109
40 OF THE EMERGENCY ECONOMIC STABILIZATION ACT OF 2008, AS SECTION 109 OF THE
41 ACT HAS BEEN AMENDED BY SECTION 7002 OF THE AMERICAN RECOVERY AND
42 REINVESTMENT ACT OF 2009.

43 3. "LOAN MODIFICATION" MEANS THE WAIVER, MODIFICATION OR VARIATION OF
44 ANY MATERIAL TERM OF THE MORTGAGE LOAN, WHETHER THE DURATION IS SHORT-TERM,
45 LONG-TERM OR LIFE-OF-LOAN, THAT CHANGES THE INTEREST RATE, FORBEARS OR

1 FORGIVES THE PAYMENT OF PRINCIPAL OR INTEREST OR EXTENDS THE FINAL MATURITY
2 DATE OF THE LOAN.

3 4. "LOSS MITIGATION OPTION" MEANS AN ALTERNATIVE TO FORECLOSURE,
4 INCLUDING LOAN MODIFICATION, REINSTATEMENT, FORBEARANCE, DEED-IN-LIEU AND
5 SHORT SALE.

6 5. "MORTGAGE LOAN" MEANS A LOAN FOR PERSONAL, FAMILY OR HOUSEHOLD USE
7 THAT IS SECURED BY A MORTGAGE, DEED OF TRUST OR OTHER EQUIVALENT CONSENSUAL
8 SECURITY INTEREST ON A DWELLING, AS DEFINED IN THE TRUTH IN LENDING ACT (15
9 UNITED STATES CODE SECTION 1602(V)), OR FOR RESIDENTIAL REAL ESTATE ON WHICH
10 A DWELLING IS CONSTRUCTED OR INTENDED TO BE CONSTRUCTED.

11 6. "SERVICER" MEANS THE PERSON RESPONSIBLE FOR SERVICING A MORTGAGE
12 LOAN, INCLUDING THE PERSON WHO MAKES OR HOLDS A LOAN IF THE PERSON ALSO
13 SERVICES THE MORTGAGE LOAN.

14 7. "SERVICING" MEANS RECEIVING ANY SCHEDULED PERIODIC PAYMENTS FROM A
15 BORROWER PURSUANT TO THE TERMS OF ANY MORTGAGE LOAN, INCLUDING AMOUNTS FOR
16 ESCROW ACCOUNTS, AND MAKING THE PAYMENTS OF PRINCIPAL AND INTEREST AND OTHER
17 PAYMENTS WITH RESPECT TO THE AMOUNTS RECEIVED FROM THE BORROWER THAT ARE
18 REQUIRED PURSUANT TO THE TERMS OF THE MORTGAGE LOAN.

19 44-1382.01. Applicability

20 A. THIS ARTICLE SHALL NOT BE CONSTRUED AS AUTHORIZING CONDUCT FOR
21 WHICH A LICENSE WOULD BE REQUIRED UNDER TITLE 6, CHAPTER 9, ARTICLE 4.

22 B. THIS ARTICLE SHALL NOT BE CONSTRUED TO REQUIRE A SERVICER TO
23 PERFORM SERVICES IN A MANNER THAT IS INCONSISTENT WITH THE ENFORCEABLE TERMS
24 OF A NOTE, MORTGAGE OR CONTRACT FOR THE SERVICING OF A MORTGAGE LOAN OR WITH
25 THE REGULATIONS OR GUIDELINES IMPLEMENTING THE HOME AFFORDABLE MORTGAGE
26 PROGRAM.

27 44-1382.02. Servicer duties: trustee's sales

28 A. A SERVICER HAS A DUTY OF GOOD FAITH AND FAIR DEALING IN ITS
29 COMMUNICATIONS, TRANSACTIONS AND COURSE OF DEALINGS WITH EACH BORROWER IN
30 CONNECTION WITH THE SERVICING OF THE BORROWER'S MORTGAGE LOAN, INCLUDING A
31 DUTY TO DO ALL OF THE FOLLOWING:

32 1. ACT WITH REASONABLE SKILL, CARE AND DILIGENCE.

33 2. EDUCATE BORROWERS IN OR AT RISK OF DEFAULT ABOUT AVAILABLE LOSS
34 MITIGATION OPTIONS AND SERVICES.

35 3. PROVIDE TRAINED PERSONNEL AND TELEPHONE FACILITIES SUFFICIENT TO
36 RESPOND PROMPTLY TO A BORROWER'S INQUIRIES REGARDING THE BORROWER'S MORTGAGE
37 LOANS.

38 4. PURSUE LOSS MITIGATION WITH THE BORROWER WHENEVER POSSIBLE IN
39 ACCORDANCE WITH THE HOME AFFORDABLE MORTGAGE PROGRAM OR THE SERVICER'S OWN
40 PROGRAMS.

41 5. PURSUE FORECLOSURE ON A PRIMARY RESIDENCE ONLY WHEN THE RIGHT TO
42 PROCEED IS CLEARLY ESTABLISHED AND ONLY AFTER IT HAS BEEN DETERMINED THAT THE
43 BORROWER IS NOT ELIGIBLE FOR OR CANNOT QUALIFY FOR ANY AVAILABLE LOSS
44 MITIGATION OPTION.

1 6. ENSURE THAT ALL FORECLOSURE DOCUMENTS FILED OR RECORDED ARE
2 ACCURATE, VERIFIED OR ACKNOWLEDGED BY AN INDIVIDUAL WITH PERSONAL KNOWLEDGE
3 OF THE INFORMATION CONTAINED IN THE DOCUMENTS AND SUBMITTED IN COMPLIANCE
4 WITH APPLICABLE LAWS.

5 B. A SERVICER SHALL COMPLY WITH THE LENDER AND BENEFICIARY OBLIGATIONS
6 IN TRUSTEE'S SALES AS SET FORTH IN SECTION 33-807.01.

7 44-1382.03. Prohibited acts

8 SERVICER SHALL NOT:

9 1. ENGAGE IN UNLAWFUL PRACTICES IN CONNECTION WITH THE SERVICING OF A
10 BORROWER'S MORTGAGE LOAN.

11 2. MISREPRESENT OR OMIT ANY MATERIAL INFORMATION IN CONNECTION WITH
12 THE SERVICING OF THE BORROWER'S MORTGAGE LOAN, INCLUDING:

13 (a) THE AMOUNT OR TERMS OF ANY FEE OR PAYMENT DUE OR CLAIMED TO BE DUE
14 ON A LOAN OR PURSUANT TO A LOAN MODIFICATION AGREEMENT.

15 (b) THE TERMS AND CONDITIONS OF THE SERVICING AGREEMENT.

16 (c) THE BORROWER'S OBLIGATIONS UNDER THE LOAN OR LOAN MODIFICATION
17 AGREEMENT.

18 (d) THE NATURE, EFFECT OR TIME FRAMES OF LOSS MITIGATION OPTIONS,
19 INCLUDING LOAN MODIFICATIONS.

20 (e) THE REASON WHY THE SERVICER DENIED THE BORROWER'S REQUEST FOR A
21 LOAN MODIFICATION OR OTHER LOSS MITIGATION OPTION.

22 44-1382.04. Loss mitigation options; servicer duties; loan
23 modifications

24 A. SERVICERS SHALL MAKE REASONABLE AND GOOD FAITH EFFORTS CONSISTENT
25 WITH USUAL AND CUSTOMARY INDUSTRY STANDARDS AND THIS ARTICLE TO ENGAGE IN
26 APPROPRIATE LOSS MITIGATION OPTIONS, INCLUDING LOAN MODIFICATIONS, TO AVOID
27 FORECLOSURE. SERVICERS MUST HAVE ADEQUATE STAFFING, WRITTEN PROCEDURES,
28 RESOURCES AND FACILITIES TO PROVIDE TIMELY AND APPROPRIATE RESPONSES TO
29 BORROWER INQUIRIES AND COMPLAINTS REGARDING AVAILABLE LOSS MITIGATION OPTIONS
30 AND TO ENSURE THAT BORROWERS ARE NOT REQUIRED TO SUBMIT MULTIPLE COPIES OF
31 REQUIRED DOCUMENTS DURING CONSIDERATION FOR A LOSS MITIGATION OPTION. ON
32 REQUEST, THE SERVICERS SHALL PROVIDE THE WRITTEN PROCEDURES TO BORROWERS OR
33 ANY HOUSING COUNSELING AGENCY THAT IS APPROVED BY THE UNITED STATES
34 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

35 B. WHEN A BORROWER WHO IS IN OR AT RISK FOR DEFAULT CONTACTS THE
36 SERVICER WITH RESPECT TO A LOAN MODIFICATION OR OTHER LOSS MITIGATION
37 ASSISTANCE, THE SERVICER SHALL DO ALL OF THE FOLLOWING:

38 1. ESTABLISH A SINGLE POINT OF CONTACT FOR THE BORROWER TO COMMUNICATE
39 REGARDING THE STATUS OF THE LOAN AND ALL LOAN ENFORCEMENT EFFORTS.

40 2. INFORM THE BORROWER OF THE FACTS CONCERNING THE LOAN, THE NATURE
41 AND EXTENT OF THE DELINQUENCY OR DEFAULT, THE SERVICER'S LOSS MITIGATION
42 PROTOCOLS, THE LOSS MITIGATION OPTIONS AND SERVICES OFFERED BY THE SERVICER
43 AND HOW LOSS MITIGATION OPTIONS MAY AFFECT THE BORROWER'S CREDIT.

44 3. IF REQUESTED BY THE BORROWER, NEGOTIATE WITH THE BORROWER IN GOOD
45 FAITH, SUBJECT TO THE SERVICER'S DUTIES AND OBLIGATIONS UNDER THE MORTGAGE

1 SERVICING CONTRACT, IF ANY, TO ATTEMPT A RESOLUTION OR WORKOUT OF THE
2 DELINQUENCY OR TO PREVENT THE BORROWER'S DEFAULT, INCLUDING A LOAN
3 MODIFICATION.

4 C. SERVICERS SHALL UNDERTAKE REASONABLE, GOOD FAITH EFFORTS TO AVOID
5 FORECLOSURE, INCLUDING CONSIDERING A LOAN MODIFICATION AS AN ALTERNATIVE WHEN
6 BOTH OF THE FOLLOWING APPLY:

7 1. THE BORROWER DEMONSTRATES THAT THE BORROWER IS IN IMMINENT RISK OF
8 DEFAULTING ON THE MORTGAGE LOAN AS A RESULT OF A FINANCIAL HARDSHIP OR HAS
9 EXPERIENCED A FINANCIAL HARDSHIP AND IS UNABLE TO MAINTAIN THE PAYMENT AT THE
10 CURRENT AMOUNT REQUIRED UNDER THE MORTGAGE LOAN OR IS UNABLE TO MAKE UP THE
11 DELINQUENT PAYMENTS.

12 2. THE NET PRESENT VALUE OF THE INCOME STREAM EXPECTED OF THE MODIFIED
13 LOAN IS GREATER THAN THE NET PRESENT VALUE OF THE INCOME STREAM THAT IS
14 EXPECTED TO BE RECOVERED THROUGH THE DISPOSITION OF THE PROPERTY THROUGH A
15 FORECLOSURE SALE.

16 D. WHEN A LOAN MODIFICATION IS A REASONABLE ALTERNATIVE TO
17 FORECLOSURE, A SERVICER SHALL MAKE GOOD FAITH EFFORTS TO STRUCTURE THE
18 MODIFICATION TO RESULT IN PAYMENTS THAT ARE AFFORDABLE AND SUSTAINABLE FOR
19 THE BORROWER. SERVICERS THAT ARE PARTICIPATING IN THE HOME AFFORDABLE
20 MORTGAGE PROGRAM SHALL OFFER LOAN MODIFICATIONS IN COMPLIANCE WITH THE HOME
21 AFFORDABLE MORTGAGE PROGRAM GUIDELINES OR DIRECTIVES, INCLUDING USING
22 REASONABLE EFFORTS TO REMOVE PROHIBITIONS OR IMPEDIMENTS TO THEIR AUTHORITY
23 AND TO OBTAIN THIRD-PARTY CONSENTS AND WAIVERS THAT ARE REQUIRED, BY CONTRACT
24 OR LAW, IN ORDER TO EFFECTUATE A LOAN MODIFICATION UNDER THE HOME AFFORDABLE
25 MORTGAGE PROGRAM.

26 E. UNLESS A LONGER TIME IS PERMITTED UNDER THE GUIDELINES OR
27 DIRECTIVES IMPLEMENTING THE HOME AFFORDABLE MORTGAGE PROGRAM, WITHIN TEN
28 BUSINESS DAYS AFTER RECEIVING A REQUEST FROM A BORROWER OR AUTHORIZED
29 REPRESENTATIVE FOR A LOSS MITIGATION OPTION, THE SERVICER SHALL TRANSMIT A
30 WRITTEN ACKNOWLEDGEMENT OF THE REQUEST TO THE BORROWER AND, IF APPLICABLE, TO
31 THE AUTHORIZED REPRESENTATIVE. THE ACKNOWLEDGEMENT SHALL IDENTIFY WITH
32 SPECIFICITY ANY INFORMATION NEEDED FROM THE BORROWER IN ORDER FOR THE
33 SERVICER TO REVIEW THE BORROWER'S LOSS MITIGATION REQUEST. THE
34 ACKNOWLEDGEMENT SHALL ALSO INCLUDE THE KEY ELEMENTS OF THE LOSS MITIGATION
35 PROCESS, INCLUDING, AS APPROPRIATE, THE FOLLOWING:

36 1. THE INFORMATION THAT THE BORROWER MAY BE ASKED TO PROVIDE AND
37 THIRD-PARTY APPROVALS THAT MAY BE REQUIRED FOR THE SERVICER TO EVALUATE AND
38 COMPLETE THE REQUEST FOR A LOAN MODIFICATION OR OTHER LOSS MITIGATION OPTION.

39 2. THE AVERAGE LENGTH OF TIME FOR A DECISION TO BE MADE REGARDING A
40 LOAN MODIFICATION OR OTHER LOSS MITIGATION OPTION.

41 3. INFORMATION ABOUT HOW THE BORROWER'S REQUEST FOR A LOSS MITIGATION
42 OPTION MAY AFFECT THE BORROWER'S CREDIT, INCLUDING CREDIT RATING.

43 4. A NOTIFICATION OF THE ACTIONS THE SERVICER, LENDER OR OWNER OF THE
44 MORTGAGE MAY TAKE DURING THE LOSS MITIGATION PROCESS, SUCH AS WHETHER THE
45 BORROWER MAY CONTINUE TO RECEIVE COLLECTION LETTERS OR FORECLOSURE NOTICES,

1 WHETHER THE FORECLOSURE PROCESS WILL CONTINUE OR WHETHER AND TO WHAT EXTENT
2 COLLECTION AND FORECLOSURE WILL BE STAYED.

3 F. WITHIN THIRTY DAYS AFTER RECEIVING ALL REQUIRED DOCUMENTATION FROM
4 THE BORROWER AND THIRD PARTIES, UNLESS A SHORTER TIME IS REQUIRED UNDER
5 REGULATIONS OR GUIDELINES IMPLEMENTING THE HOME AFFORDABLE MORTGAGE PROGRAM,
6 A SERVICER SHALL COMPLETE ITS EVALUATION OF THE BORROWER'S ELIGIBILITY FOR A
7 LOAN MODIFICATION OR OTHER LOSS MITIGATION OPTION REQUESTED BY THE BORROWER
8 AND ADVISE THE BORROWER, AND IF APPLICABLE, THE BORROWER'S AUTHORIZED
9 REPRESENTATIVE, IN WRITING OF ITS DETERMINATION. IF THE SERVICER APPROVES
10 THE BORROWER FOR A LOAN MODIFICATION, INCLUDING A TRIAL MODIFICATION, OR
11 OTHER LOSS MITIGATION OPTION, THE WRITTEN NOTICE MUST PROVIDE THE BORROWER
12 WITH CLEAR AND UNDERSTANDABLE WRITTEN INFORMATION EXPLAINING THE MATERIAL
13 TERMS, COSTS AND RISKS OF THE OPTION OFFERED. IF THE SERVICER DETERMINES
14 THAT THE BORROWER CANNOT BE APPROVED FOR A LOAN MODIFICATION OR OTHER
15 REQUESTED LOSS MITIGATION OPTION, THE WRITTEN NOTICE MUST STATE WITH
16 SPECIFICITY THE REASONS FOR THE DETERMINATION, CONTACT INFORMATION FOR A
17 PERSON AT THE MORTGAGE SERVICER TO RECONSIDER A DENIAL AND ANY OTHER
18 FORECLOSURE PREVENTION ALTERNATIVES FOR WHICH THE BORROWER MAY BE CONSIDERED.

19 G. A SERVICER SHALL TAKE REASONABLE STEPS TO ENSURE THAT ITS STAFF IS
20 AWARE OF PROGRAMS DESIGNED TO ASSIST BORROWERS AVOID FORECLOSURE OR RESOLVE
21 DELINQUENCY. THE SERVICER SHALL MAKE AVAILABLE TO HOMEOWNERS WHO ARE AT
22 LEAST SIXTY DAYS DELINQUENT, OR WHO THE SERVICER HAS REASON TO BELIEVE ARE
23 EXPERIENCING A FINANCIAL HARDSHIP AND ARE IN IMMINENT RISK OF DEFAULT, A LIST
24 OF GOVERNMENT APPROVED NONPROFIT HOUSING COUNSELORS IN THE HOMEOWNER'S
25 GEOGRAPHIC AREA.

26 H. A SERVICER SHALL MAINTAIN AND MAKE AVAILABLE TO BORROWERS AND
27 BORROWERS' AUTHORIZED REPRESENTATIVES CURRENT CONTACT INFORMATION TO
28 COMMUNICATE AND NEGOTIATE WITH THE SERVICER'S DESIGNATED LOSS MITIGATION
29 STAFF WHO ARE AUTHORIZED TO DISCUSS AND NEGOTIATE LOSS MITIGATION OPTIONS.
30 THE CONTACT INFORMATION SHALL INCLUDE TOLL-FREE TELEPHONE NUMBERS FOR DIRECT
31 COMMUNICATION WITH A LOSS MITIGATION STAFF PERSON, FAX NUMBERS FOR RECEIPT OF
32 DOCUMENTS AND E-MAIL ADDRESSES.

33 I. THE SERVICER SHALL ESTABLISH AN EFFECTIVE PROCESS THROUGH WHICH
34 BORROWERS MAY ESCALATE DISAGREEMENTS TO A SUPERVISORY LEVEL WHERE A SEPARATE
35 REVIEW OF THE BORROWER'S ELIGIBILITY OR QUALIFICATION FOR A LOSS MITIGATION
36 OPTION CAN BE PERFORMED. THE SERVICER SHALL ALSO DESIGNATE SPECIAL
37 ESCALATION CONTACTS FOR NONPROFIT HOUSING COUNSELORS, GOVERNMENT
38 REPRESENTATIVES, LEGAL SERVICES ORGANIZATIONS AND ATTORNEYS TO USE WHEN
39 NECESSARY TO REVIEW OR INTERVENE IN THE HANDLING OF A PENDING LOSS MITIGATION
40 MATTER.

41 J. IT SHALL BE PRESUMED THAT A SERVICER HAS ENGAGED IN GOOD FAITH LOSS
42 MITIGATION EFFORTS IF THE SERVICER OFFERS LOAN MODIFICATIONS AND OTHER LOSS
43 MITIGATION OPTIONS IN ACCORDANCE WITH THE HOME AFFORDABLE MORTGAGE PROGRAM
44 GUIDELINES OR DIRECTIVES DEVELOPED BY THE UNITED STATES DEPARTMENT OF THE
45 TREASURY.

1 K. THIS SECTION SHALL NOT BE CONSTRUED TO PREVENT A SERVICER FROM
2 OFFERING OR ACCEPTING ALTERNATIVE LOSS MITIGATION OPTIONS, INCLUDING OTHER
3 MODIFICATION PROGRAMS OFFERED BY THE SERVICER, A SHORT SALE, A DEED-IN-LIEU
4 OF FORECLOSURE OR A FORBEARANCE, IF THE BORROWER REQUESTS SUCH AN
5 ALTERNATIVE, IS NOT ELIGIBLE FOR OR DOES NOT QUALIFY FOR A LOAN MODIFICATION
6 UNDER THE HOME AFFORDABLE MORTGAGE PROGRAM OR REJECTS THE SERVICER'S LOSS
7 MITIGATION PROPOSAL.

8 L. A SERVICER SHALL DEVELOP AND IMPLEMENT POLICIES AND PROCEDURES TO
9 PROVIDE NOTIFICATION TO ITS FORECLOSURE ATTORNEYS AND TRUSTEES REGARDING A
10 BORROWER'S STATUS FOR CONSIDERATION OF A LOSS MITIGATION OPTION AND WHETHER
11 THE BORROWER IS BEING EVALUATED FOR, OR IS CURRENTLY IN, A TRIAL OR PERMANENT
12 MODIFICATION. A SERVICER SHALL NOT INITIATE OR ADVANCE A FORECLOSURE ACTION
13 IF THE BORROWER HAS REQUESTED AND IS BEING CONSIDERED FOR A LOSS MITIGATION
14 OPTION OR IF THE BORROWER IS IN A TRIAL OR PERMANENT MODIFICATION AND IS NOT
15 MORE THAN THIRTY DAYS IN DEFAULT UNDER THE MODIFICATION AGREEMENT.

16 44-1382.05. Enforcement and remedies

17 A. AN ACT OR PRACTICE IN VIOLATION OF THIS ARTICLE CONSTITUTES AN
18 UNLAWFUL PRACTICE UNDER SECTION 44-1522. THE ATTORNEY GENERAL SHALL
19 INVESTIGATE AND TAKE APPROPRIATE ACTION AS PRESCRIBED BY CHAPTER 10, ARTICLE
20 7 OF THIS TITLE.

21 B. THE RIGHTS, REMEDIES AND PENALTIES PROVIDED PURSUANT TO THIS
22 ARTICLE ARE CUMULATIVE AND DO NOT ABROGATE AND ARE IN ADDITION TO ANY OTHER
23 RIGHTS, REMEDIES AND PENALTIES THAT MAY EXIST AT LAW OR IN EQUITY.

24 Sec. 3. Section 44-1533, Arizona Revised Statutes, is amended to read:

25 44-1533. Cumulative remedies; private right of action

26 A. The provisions of this article are in addition to all other causes
27 of action, remedies and penalties available to this state.

28 B. The provisions of this article shall not bar any claim against any
29 person who has acquired any monies or property, real or personal, by means of
30 any practice declared to be unlawful by this article.

31 C. A PERSON MAY BRING A PRIVATE RIGHT OF ACTION AGAINST ANOTHER PERSON
32 FOR A VIOLATION OF THIS ARTICLE.

33 Sec. 4. Applicability

34 Section 33-808, Arizona Revised Statutes, as amended by this act,
35 applies to any deed of trust for which a notice of trustee's sale is recorded
36 on or after the effective date of this act.