REFERENCE TITLE: assignment of tax liens

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HB 2381

Introduced by
Representative Olson

AN ACT

AMENDING TITLE 42, CHAPTER 18, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 6; RELATING TO TAX LIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 42, chapter 18, Arizona Revised Statutes, is amended by adding article 6, to read:

ARTICLE 6. ASSIGNMENT OF TAX LIEN

42-18251. Definition of assignee

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES, "ASSIGNEE" MEANS A PERSON TO WHOM AN ASSIGNMENT OF A TAX LIEN IS MADE UNDER SECTION 42-18252, SUBSECTION A AND THAT PERSON'S SUCCESSOR IN INTEREST.

42-18252. Tax lien assignment; requirements

A. THE COUNTY TREASURER IN A COUNTY WITH A POPULATION OF MORE THAN NINE HUNDRED THOUSAND PERSONS SHALL ASSIGN TO AN ASSIGNEE A LIEN AGAINST REAL PROPERTY THAT ARISES UNDER SECTION 42-17153, IF THE COUNTY TREASURER RECEIVES ALL OF THE FOLLOWING:

1. A SWORN WRITTEN AUTHORIZATION FROM THE OWNER OF THE REAL PROPERTY TO ASSIGN THE LIEN TO THE ASSIGNEE.

2. PAYMENT IN THE AMOUNT OF THE TAXES, INTEREST, CHARGES AND PENALTIES DUE ON THE REAL PROPERTY.

3. A COPY OF THE BOND PRESCRIBED BY SECTION 42-18256 AND CERTIFIED BY THE SURETY OR CUSTODIAN OF THE BOND TO BE A TRUE AND CORRECT COPY OF THE BOND CURRENTLY IN FORCE, OR AN AFFIDAVIT FROM THE ASSIGNEE OR AN AUTHORIZED REPRESENTATIVE OF THE ASSIGNEE ON A FORM PRESCRIBED BY THE SECRETARY OF STATE ATTESTING TO THE ASSIGNEE'S COMPLIANCE WITH SECTION 42-18256.

4. A REGISTRATION SHEET IN A FORMAT PRESCRIBED BY THE COUNTY TREASURER THAT INCLUDES THE ASSIGNEE'S NAME, ADDRESS, TELEPHONE NUMBER, FEDERAL TAXPAYER IDENTIFICATION NUMBER AND E-MAIL ADDRESS.

B. THE COUNTY TREASURER SHALL ASSIGN THE LIEN TO THE ASSIGNEE BY:

1. ISSUING TO THE ASSIGNEE AN ACKNOWLEDGMENT OF THE ASSIGNMENT THAT INCLUDES THE LEGAL DESCRIPTION AND PARCEL NUMBER OF THE REAL PROPERTY, THE NAME AND MAILING ADDRESS OF THE ASSIGNEE AND THE DATE THE ASSIGNMENT WAS RECORDED.

2. ISSUING TO THE ASSIGNEE A RECEIPT FOR PAYMENT IN THE FORM PRESCRIBED BY SECTION 42-18055.

3. NOTING RECEIPT OF THE PAYMENT AND LIEN ASSIGNMENT IN THE RECORD OF TAX LIEN SALES MAINTAINED UNDER SECTION 42-18117.

C. AN ASSIGNMENT OF A LIEN DOES NOT AFFECT THE PRIORITY PRESCRIBED BY SECTION 42-17153.

D. A PROPERTY OWNER MAY AUTHORIZE THE ASSIGNMENT OF A TAX LIEN ONLY BEFORE THE SALE OF THE LIEN PURSUANT TO SECTION 42-18114 OR 42-18122 AND MAY NOT AUTHORIZE AN ASSIGNMENT IF THERE IS AN UNREDEEMED TAX LIEN THAT WAS SOLD FOR ANY OF THE PRIOR TEN TAX YEARS.

E. WHEN RECORDED WITH THE COUNTY RECORDER, THE SWORN WRITTEN AUTHORIZATION UNDER SUBSECTION A, PARAGRAPH 1 OF THIS SECTION AND THE ACKNOWLEDGMENT AND RECEIPT UNDER SUBSECTION B, PARAGRAPHS 1 AND 2 OF THIS SECTION CONSTITUTE PRIMA FACIE EVIDENCE OF THE VALID ASSIGNMENT AND PRIORITY OF THE LIEN.

42-18253. Payment agreement

A. THE OWNER OF THE REAL PROPERTY AND THE ASSIGNEE MAY ENTER INTO AN AGREEMENT FOR PAYMENT OF ALL AMOUNTS SECURED BY A TAX LIEN, INCLUDING:

1. AMOUNTS PAID AS CONSIDERATION FOR AN ASSIGNMENT UNDER THIS ARTICLE.

2. REASONABLE AND NECESSARY TRANSACTION COSTS INCURRED BY THE ASSIGNEE, WHICH MAY NOT BE MORE THAN FOUR HUNDRED DOLLARS FOR CLASS THREE PROPERTY PRESCRIBED BY SECTION 42-12003.

3. INTEREST ON THE AMOUNTS UNDER PARAGRAPHS 1 AND 2 OF THIS SUBSECTION AT AN INTEREST RATE OF NOT MORE THAN THE RATE PRESCRIBED BY SECTION 42-18053.

4. REASONABLE AND NECESSARY COSTS INCURRED BY THE ASSIGNEE TO ENFORCE AND COLLECT ON THE PAYMENT AGREEMENT OR THE TAX LIEN, INCLUDING INSUFFICIENT FUNDS PROCESSING PAYMENTS, LIEN RELEASE RECORDATION EXPENSES, AMOUNTS EXPENDED TO REDEEM A SUBSEQUENT TAX LIEN UNDER SECTION 42-18151, ATTORNEY FEES AND COSTS AND OTHER EXPENSES RELATING TO FORECLOSURE OR FAILURE TO PERFORM UNDER THE PAYMENT AGREEMENT.

B. IF AFTER THE EFFECTIVE DATE OF A PAYMENT AGREEMENT THAT AUTHORIZES THE ASSIGNEE'S PAYMENT OF ADDITIONAL TAXES LEVIED AGAINST THE PROPERTY THAT HAVE BECOME DELINQUENT THE ASSIGNEE PAYS THE AMOUNTS OWED, THE COUNTY TREASURER SHALL ASSIGN THE ADDITIONAL LIEN TO THE ASSIGNEE. IF THE ASSIGNEE DOES NOT PAY THE ADDITIONAL TAXES LEVIED, THE PRIORITY OF THE ORIGINAL TAX LIEN ASSIGNED UNDER SECTION 42-18252 IS SUBORDINATE TO ANY LIEN SUBSEQUENTLY SOLD AS PRESCRIBED BY SECTION 42-18114 OR 42-18122.

C. IF THE PROPERTY OWNER DEFAULTS ON THE PAYMENT AGREEMENT, THE ASSIGNEE MAY FILE AN ACTION TO FORECLOSE AS PRESCRIBED BY SECTION 33-721 NOT EARLIER THAN THREE YEARS AFTER THE DATE OF THE PROPERTY OWNER'S AUTHORIZATION UNDER SECTION 42-18252, SUBSECTION A, PARAGRAPH 1.

42-18254. Foreclosure; notice; other liens; sale

A. AT LEAST SIXTY DAYS BEFORE FILING AN ACTION TO FORECLOSE THE ASSIGNED TAX LIEN BUT NOT MORE THAN ONE HUNDRED EIGHTY DAYS BEFORE THE ACTION IS COMMENCED OR MAY BE COMMENCED UNDER SECTION 42-18253, AN ASSIGNEE SHALL SEND WRITTEN NOTICE BY CERTIFIED MAIL OF THE INTENT TO FILE THE FORECLOSURE ACTION TO:

1. THE PROPERTY OWNER OF RECORD ACCORDING TO THE RECORDS OF THE COUNTY RECORDER IN THE COUNTY WHERE THE PROPERTY IS LOCATED OR TO THE ADDRESSES PRESCRIBED BY SECTION 42-18202, SUBSECTION A, PARAGRAPH 1, SUBDIVISIONS (a) THROUGH (c).

2. ALL CONSENSUAL LIEN HOLDERS OF RECORD ACCORDING TO THE RECORDS OF THE COUNTY RECORDER IN THE COUNTY WHERE THE PROPERTY IS LOCATED.

B. THE NOTICE SHALL PROVIDE THAT THE HOLDER OF ANY LIEN OF SUBORDINATE PRIORITY MAY PAY OFF THE ASSIGNED TAX LIEN. SECTION 33-715 APPLIES TO A LIENHOLDER'S PAYOFF DEMAND AND AN ASSIGNEE'S PAYOFF DEMAND STATEMENT. AN ASSIGNEE MAY NOT RECEIVE A FEE IN CONNECTION WITH A FORECLOSURE ACTION IF THE FEE IS INCURRED WITHIN THIRTY DAYS OF THE DATE OF THE NOTICE REQUIRED BY THIS SECTION. THE NOTICE SHALL INCLUDE:

1. THE PROPERTY OWNER'S NAME.

2. THE REAL PROPERTY TAXPAYER IDENTIFICATION NUMBER.
3. THE LEGAL DESCRIPTION OF THE REAL PROPERTY.
4. THE ASSIGNEE'S NAME AND ADDRESS.
5. THE PROPOSED DATE OF FILING THE ACTION.

C. IF THE ASSIGNEE FAILS TO SEND THE NOTICE REQUIRED BY THIS SECTION, THE ASSIGNEE IS CONSIDERED TO HAVE SUBSTANTIALLY FAILED TO COMPLY WITH THIS SECTION. A COURT SHALL NOT ENTER ANY ACTION TO FORECLOSE THE TAX LIEN UNDER THIS ARTICLE UNTIL THE ASSIGNEE SENDS THE NOTICE REQUIRED BY THIS SECTION.

D. AFTER AN ASSIGNEE COMMENCES A FORECLOSURE ACTION, A HOLDER OF A LIEN AGAINST THE PROPERTY IS ENTITLED TO AN ASSIGNMENT OF THE ASSIGNEE'S INTEREST TO THE EXTENT ALLOWED BY SECTION 33-723 BY PAYING THE ASSIGNEE THE AMOUNT THEN DUE UNDER THE PAYMENT AGREEMENT WITH INTEREST AND COSTS AND THE AMOUNT OF ALL OTHER TAX LIENS ON THE PROPERTY ASSIGNED TO THE ASSIGNEE. THE SUCCESSOR IN INTEREST TO THE ASSIGNEE MAY CONTINUE THE FORECLOSURE ACTION IN THE SUCCESSOR IN INTEREST'S OWN NAME.

E. IF A FORECLOSURE SALE OF THE PROPERTY RESULTS IN PROCEEDS IN EXCESS OF THE AMOUNTS OWING TO AN ASSIGNEE UNDER THE PAYMENT AGREEMENT BETWEEN THE PROPERTY OWNER AND THE ASSIGNEE, THE EXCESS MONIES MUST BE DISTRIBUTED TO EACH PERSON THAT PROVES ITSELF ENTITLED TO THE PROCEEDS, IN ORDER OF PRIORITY AS PRESCRIBED BY SECTION 33-727, AND ANY REMAINING BALANCE PAID TO THE FORMER OWNER. THE ASSIGNEE IS NOT ENTITLED TO RECEIVE ANY PAYMENT IN EXCESS OF AMOUNTS DUE UNDER THE PAYMENT AGREEMENT.

42-18255. Satisfaction; release

A. ON SATISFACTION OF ALL AMOUNTS DUE IN CONNECTION WITH AN ASSIGNED TAX LIEN, THE ASSIGNEE SHALL RELEASE THE TAX LIEN IN THE SAME MANNER PRESCRIBED BY SECTION 33-707 FOR THE ACKNOWLEDGMENT OF SATISFACTION OF MORTGAGE OR DEED OF TRUST. THE ASSIGNEE SHALL PROVIDE WRITTEN NOTICE OF THE RELEASE OF THE TAX LIEN TO THE COUNTY TREASURER.

B. AN ASSIGNEE THAT FAILS TO ACKNOWLEDGE SATISFACTION OR NOTICE RELEASE OF THE ASSIGNED LIEN IS LIABLE UNDER SECTION 33-712.

42-18256. Bond; affidavit

A. FOR AN ASSIGNMENT OF A LIEN UNDER SECTION 42-18252, AN ASSIGNEE SHALL POST AND MAINTAIN A CASH BOND OR SURETY BOND IN THE SUM OF FIVE HUNDRED THOUSAND DOLLARS THAT INCLUDES AN INDEMNIFICATION FOR ANY OWNER OR LIENHOLDER OF REAL PROPERTY IN THIS STATE THAT HAS SUFFERED DAMAGE AS A RESULT OF THE ASSIGNEE'S WRONGFUL FAILURE OR REFUSAL TO PERFORM THE OBLIGATIONS OF AN ASSIGNEE OF A TAX LIEN UNDER THIS ARTICLE OR UNDER AN AGREEMENT PURSUANT TO THIS ARTICLE.

B. THE ASSIGNEE SHALL POST THE BOND BEFORE ENTERING INTO AN AGREEMENT UNDER THIS ARTICLE AND SHALL NOT WITHDRAW THE BOND IN WHOLE OR IN PART WHILE THE ASSIGNEE IS A PARTY TO ANY AGREEMENT THAT WAS ENTERED INTO UNDER THIS ARTICLE AND THAT REMAINS IN EFFECT. NO MORE THAN ONE BOND UNDER THIS SECTION IS REQUIRED TO BE POSTED BY AN ASSIGNEE AT ANY TIME.