

REFERENCE TITLE: foreclosures; limitation; affidavit

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
First Regular Session  
2009

## **HB 2601**

Introduced by

Representatives Patterson, Garcia M, Heinz, Miranda B, Pancrazi, Sinema,  
Senators Alvarez, Landrum Taylor, Rios: Representatives Bradley, Cajero  
Bedford, Campbell CH, Campbell CL, Lopes, McGuire, Tovar, Senators Garcia,  
Lopez

AN ACT

AMENDING TITLE 33, CHAPTER 6.1, ARTICLE 1, ARIZONA REVISED STATUTES, BY  
ADDING SECTION 33-810.01; PROVIDING FOR THE DELAYED REPEAL OF SECTION  
33-810.10, ARIZONA REVISED STATUTES; RELATING TO 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. Title 33, chapter 6.1, article 1, Arizona Revised Statutes,  
3 is amended by adding section 33-810.01, to read:

4 33-810.01. Stay of trustee's sale; affidavit; one-year period

5 A. ON RECEIPT OF A NOTICE OF SALE, THE OWNER OF THE PROPERTY MAY  
6 DELIVER TO THE TRUSTEE AN AFFIDAVIT FOR TEMPORARY STAY OF TRUSTEE'S SALE.  
7 THE AFFIDAVIT SHALL BE SIGNED BY AT LEAST ONE OF THE OWNERS OF THE TRUST  
8 PROPERTY AND SHALL CONTAIN THE STATEMENT OF THAT OWNER AS FOLLOWS:

9 1. THE OWNER IS A NATURAL PERSON.

10 2. THE LOAN THAT IS SECURED BY THE PROPERTY WAS INCURRED PRIMARILY FOR  
11 PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

12 3. THE LOAN IS SECURED BY A FIRST OR SECOND DEED OF TRUST OR A HOME  
13 EQUITY LOAN ON REAL PROPERTY THAT IS IMPROVED WITH ONE TO FOUR RESIDENTIAL  
14 UNITS.

15 4. THE REAL PROPERTY THAT IS SUBJECT TO FORECLOSURE IS THE PRINCIPAL  
16 RESIDENCE OF THE OWNER.

17 5. THE OWNER OWNS NO OTHER REAL PROPERTY.

18 6. THE REAL PROPERTY IS LOCATED IN THIS STATE.

19 B. THE AFFIDAVIT SHALL ALSO INCLUDE THE OWNER'S TELEPHONE NUMBER,  
20 MAILING ADDRESS AND ANY OTHER CONTACT INFORMATION FOR THE OWNER.

21 C. THE AFFIDAVIT SHALL BE SWORN TO AND SIGNED BY AT LEAST ONE OF THE  
22 OWNERS AND THE OWNER'S SIGNATURE SHALL BE NOTARIZED.

23 D. THE OWNER SHALL MAIL THE AFFIDAVIT TO THE TRUSTEE AT THE ADDRESS  
24 PROVIDED BY THE TRUSTEE IN THE NOTICE OF SALE. ON RECEIPT OF AN AFFIDAVIT  
25 THAT APPEARS ON ITS FACE TO BE COMPLETE, THE TRUSTEE SHALL POSTPONE THE SALE  
26 FOR AT LEAST SIXTY DAYS AND SHALL PROVIDE NOTICE OF THE POSTPONEMENT OF THE  
27 SALE TO ALL PERSONS WHO ARE REQUIRED TO RECEIVE A NOTICE OF SALE.

28 E. DURING THE SIXTY-DAY POSTPONEMENT PERIOD, THE OWNER SHALL HAVE THE  
29 OPPORTUNITY TO NEGOTIATE A REVISED PAYMENT OR OTHER REVISED TERMS OF THE LOAN  
30 AND MAY ACCEPT THE ASSISTANCE OF A REPRESENTATIVE OF A PRIVATE NONPROFIT  
31 ORGANIZATION, A REPRESENTATIVE OF A CITY, TOWN, COUNTY OR STATE GOVERNMENT OR  
32 A REPRESENTATIVE OF A FEDERAL AGENCY TO ASSIST THE OWNER IN MEETING WITH AND  
33 NEGOTIATING A RESOLUTION WITH THE LENDER. THE TRUSTEE SHALL ASSIST IN  
34 PROVIDING INFORMATION, INCLUDING LENDER CONTACT INFORMATION, AND SHALL  
35 COOPERATE WITH ANY MEETINGS AND NEGOTIATIONS THAT OCCUR BETWEEN THE OWNER AND  
36 LENDER.

37 F. DURING THE SIXTY-DAY POSTPONEMENT PERIOD, THE OWNER SHALL MAKE  
38 PAYMENTS ON THE LOAN THAT IS IN FORECLOSURE IN AN AMOUNT THAT THE OWNER AND  
39 LENDER AGREE IS JUST AND EQUITABLE. FAILURE TO MAKE THE PAYMENT AGREED TO  
40 PURSUANT TO THIS SUBSECTION TERMINATES THE STAY OF FORECLOSURE, AND ON NOTICE  
41 FROM THE LENDER OF FAILURE TO MAKE A PAYMENT AFTER THE EXPIRATION OF THE  
42 SIXTY-DAY PERIOD, THE TRUSTEE MAY RESCHEDULE THE TRUSTEE'S SALE. IF THE  
43 OWNER CONTINUES TO MAKE A TIMELY MONTHLY PAYMENT IN THE AMOUNT AGREED TO  
44 PURSUANT TO THIS SUBSECTION, A TRUSTEE'S SALE MAY NOT BE HELD ANY EARLIER  
45 THAN ONE YEAR AFTER THE DATE OF THE ORIGINALLY SCHEDULED TRUSTEE SALE. ON

1 COMPLETION OF THE ONE-YEAR PERIOD, AND UNLESS THE LENDER HAS REVISED THE  
2 TERMS OF THE LOAN AND DIRECTED THE TRUSTEE TO CANCEL THE SALE, THE TRUSTEE'S  
3 SALE MAY PROCEED AS OTHERWISE PROVIDED BY LAW.

4 Sec. 2. Delayed repeal

5 Section 33-810.01, Arizona Revised Statutes, as amended by this act, is  
6 repealed from and after June 30, 2012.

7 Sec. 3. Severability

8 If a provision of this act or its application to any person or  
9 circumstance is held invalid, the invalidity does not affect other provisions  
10 or applications of the act that can be given effect without the invalid  
11 provision or application, and to this end the provisions of this act are  
12 severable.

13 Sec. 4. Legislative intent

14 The legislature declares that a serious public emergency exists with  
15 respect to real estate foreclosures in this state due to widespread and  
16 fundamentally unsound lending practices for mortgage loans, second mortgages  
17 and home equity loans. These lending practices have skewed the real estate  
18 and mortgage market in this state, have caused distress to consumers,  
19 neighborhoods and communities and have adversely affected the economic health  
20 of this state. The legislature declares that it is in the interests of this  
21 state that during this time of serious economic strain, homeowners should be  
22 permitted an opportunity to work with their lenders to reconfigure their  
23 obligations in a manner that preserves neighborhoods and protects both  
24 consumers and lenders.