

REFERENCE TITLE: deficiency judgments; commercial property; limitations

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

HB 2173

Introduced by
Representative Fillmore

AN ACT

AMENDING SECTIONS 33-727 AND 33-814, ARIZONA REVISED STATUTES; RELATING TO
MORTGAGES AND 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 33-727, Arizona Revised Statutes, is amended to
3 read:

4 33-727. Sale under execution; deficiency; order of liens; writ
5 of possession

6 A. Except as provided in sections 33-729 and 33-730, if the mortgaged
7 property does not sell for an amount sufficient to satisfy the judgment, an
8 execution may be issued for the balance against the mortgagor where there has
9 been personal service, or the defendant has appeared in the action, EXCEPT
10 THAT IF THE MORTGAGE WAS FORECLOSED BY A PERSON WHO IS AN ASSIGNEE OR IS
11 OTHERWISE NOT THE ORIGINAL MORTGAGEE ON THE MORTGAGE, THE AMOUNT OF ANY
12 DEFICIENCY THAT MAY BE RECOVERED FROM THE MORTGAGOR IS LIMITED TO THE AMOUNT
13 PAID BY THE ASSIGNEE FOR THE MORTGAGE ASSIGNMENT, LESS THE FAIR MARKET VALUE
14 OF THE PROPERTY ON THE DATE OF THE SALE AS DETERMINED BY THE COURT OR THE
15 SALE PRICE AT THE FORECLOSURE SALE, WHICHEVER IS HIGHER.

16 B. If there are other liens on the property sold, or other payments
17 secured by the same mortgage, they shall be paid in their order, and if the
18 money secured by any such lien is not yet due, a rebate of interest, to be
19 ascertained by the court, shall be made by the holder, or his lien on such
20 property will be postponed to those of a junior date, and if there are no
21 other liens the balance shall be paid to the mortgagor. If redemption is not
22 made and the mortgagor or his assigns refuse, after expiration of the time
23 for redemption, to deliver possession of the foreclosed property, the court
24 shall order a writ of possession issued placing the purchaser or his assigns
25 in possession. All executions upon judgments for foreclosure of a mortgage
26 or deed of trust upon real property shall comply with section 12-1566. Any
27 sale of real property to satisfy a judgment under section 33-725 or 33-814
28 shall be a credit on the judgment in the amount of either the fair market
29 value of the real property or the sale price of the real property at
30 sheriff's sale, whichever is greater, in accordance with section 12-1566.

31 Sec. 2. Section 33-814, Arizona Revised Statutes, is amended to read:

32 33-814. Action to recover balance after sale or foreclosure on
33 property under trust deed

34 A. Except as provided in subsections F and G of this section, within
35 ninety days after the date of sale of trust property under a trust deed
36 pursuant to section 33-807, an action may be maintained to recover a
37 deficiency judgment against any person directly, indirectly or contingently
38 liable on the contract for which the trust deed was given as security
39 including any guarantor of or surety for the contract and any partner of a
40 trustor or other obligor which is a partnership. In any such action against
41 such a person, the deficiency judgment shall be for an amount equal to the
42 sum of the total amount owed the beneficiary as of the date of the sale, as
43 determined by the court less the fair market value of the trust property on
44 the date of the sale as determined by the court or the sale price at the
45 trustee's sale, whichever is higher, EXCEPT THAT IF THE TRUSTEE'S SALE WAS

1 COMPLETED BY A PERSON WHO IS AN ASSIGNEE OR IS OTHERWISE NOT THE ORIGINAL
2 BENEFICIARY ON THE DEED OF TRUST, THE AMOUNT OF ANY DEFICIENCY THAT MAY BE
3 RECOVERED FROM THE TRUSTOR IS LIMITED TO THE AMOUNT PAID BY THE ASSIGNEE FOR
4 THE ASSIGNMENT OF THE DEED OF TRUST, LESS THE FAIR MARKET VALUE OF THE
5 PROPERTY ON THE DATE OF THE SALE AS DETERMINED BY THE COURT OR THE SALE PRICE
6 AT THE TRUSTEE'S SALE, WHICHEVER IS HIGHER. A written application for
7 determination of the fair market value of the real property may be filed by a
8 judgment debtor with the court in the action for a deficiency judgment or in
9 any other action on the contract which has been maintained. Notice of the
10 filing of an application and the hearing shall be given to all parties to the
11 action. The fair market value shall be determined by the court at a priority
12 hearing upon such evidence as the court may allow. The court shall issue an
13 order crediting the amount due on the judgment with the greater of the sales
14 price or the fair market value of the real property. For the purposes of
15 this subsection, "fair market value" means the most probable price, as of the
16 date of the execution sale, in cash, or in terms equivalent to cash, or in
17 other precisely revealed terms, after deduction of prior liens and
18 encumbrances with interest to the date of sale, for which the real property
19 or interest therein would sell after reasonable exposure in the market under
20 conditions requisite to fair sale, with the buyer and seller each acting
21 prudently, knowledgeably and for self-interest, and assuming that neither is
22 under duress. Any deficiency judgment recovered shall include interest on
23 the amount of the deficiency from the date of the sale at the rate provided
24 in the deed of trust or in any of the contracts evidencing the debt, together
25 with any costs and disbursements of the action.

26 B. If a trustee's sale is a sale of less than all of the trust
27 property or is a sale pursuant to one of two or more trust deeds securing the
28 same obligation, the ninety day time limitations of subsection A of this
29 section shall begin on either the date of the trustee's sale of the last of
30 the trust property to be sold or the date of sale under the last trust deed
31 securing the obligation, whichever occurs last.

32 C. The obligation of a person who is not a trustor to pay, satisfy or
33 purchase all or a part of the balance due on a contract secured by a trust
34 deed may be enforced, if the person has so agreed, in an action regardless of
35 whether a trustee's sale is held. If, however, a trustee's sale is held, the
36 liability of a person who is not a trustor for the deficiency is determined
37 pursuant to subsection A of this section and any judgment for the deficiency
38 against the person shall be reduced in accordance with subsection A of this
39 section. If any such action is commenced after a trustee's sale has been
40 held, it is subject, in addition, to the ninety day time limitations of
41 subsections A and B of this section.

42 D. If no action is maintained for a deficiency judgment within the
43 time period prescribed in subsections A and B of this section, the proceeds
44 of the sale, regardless of amount, shall be deemed to be in full satisfaction

1 of the obligation and no right to recover a deficiency in any action shall
2 exist.

3 E. Except as provided in subsection F of this section, the provisions
4 of this chapter do not preclude a beneficiary from foreclosing a deed of
5 trust in the same manner as a real property mortgage. In an action for the
6 foreclosure of a deed of trust as a real property mortgage the provisions of
7 chapter 6, article 2 of this title are applicable.

8 F. A deed of trust may, by express language, validly prohibit the
9 recovery of any balance due after trust property is sold pursuant to the
10 trustee's power of sale, or the trust deed is foreclosed in the manner
11 provided by law for the foreclosure of mortgages on real property.

12 G. If trust property of two and one-half acres or less which is
13 limited to and utilized for either a single one-family or a single two-family
14 dwelling is sold pursuant to the trustee's power of sale, no action may be
15 maintained to recover any difference between the amount obtained by sale and
16 the amount of the indebtedness and any interest, costs and expenses.