

REFERENCE TITLE: foreclosures; limitation; affidavit

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

## **HB 2300**

Introduced by  
Representatives Patterson: Tovar

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  
33-810.01, 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 SWORN TO AND SIGNED BY AT LEAST ONE OF THE OWNERS OF  
8 THE TRUST PROPERTY AND THE OWNER'S SIGNATURE SHALL BE NOTARIZED. THE  
9 AFFIDAVIT SHALL CONTAIN THE STATEMENT OF THAT OWNER AS FOLLOWS:

10 1. THE OWNER IS A NATURAL PERSON.

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

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

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

18 5. THE OWNER OWNS NO OTHER REAL PROPERTY.

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

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

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

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

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

1 TERMS OF THE LOAN AND DIRECTED THE TRUSTEE TO CANCEL THE SALE, THE TRUSTEE'S  
2 SALE MAY PROCEED AS OTHERWISE PROVIDED BY LAW.

3 Sec. 2. Delayed repeal

4 Section 33-810.01, Arizona Revised Statutes, as added by this act, is  
5 repealed from and after June 30, 2015.

6 Sec. 3. Severability

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

12 Sec. 4. Legislative intent

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