

REFERENCE TITLE: foreclosures; right to rent

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

## **HB 2326**

Introduced by  
Representatives Tovar, Alston, Hobbs, Miranda C, Miranda R: Arredondo,  
Campbell, Pancrazi

AN ACT

AMENDING SECTION 33-807, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 6.1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 33-807.02 AND 33-807.03; 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. Section 33-807, Arizona Revised Statutes, is amended to  
3 read:  
4 33-807. Sale of trust property; power of trustee; foreclosure  
5 of trust deed  
6 A. By virtue of ~~his~~ THE TRUSTEE'S position, a power of sale is  
7 conferred upon the trustee of a trust deed under which the trust property may  
8 be sold, in the manner provided in this chapter, after a breach or default in  
9 performance of the contract or contracts, for which the trust property is  
10 conveyed as security, or a breach or default of the trust deed. At the  
11 option of the beneficiary, a trust deed may be foreclosed in the manner  
12 provided by law for the foreclosure of mortgages on real property in which  
13 event chapter 6 of this title governs the proceedings. The beneficiary or  
14 trustee shall constitute the proper and complete party plaintiff in any  
15 action to foreclose a deed of trust. The power of sale may be exercised by  
16 the trustee without express provision therefor in the trust deed.  
17 B. The trustee or beneficiary may file and maintain an action to  
18 foreclose a deed of trust at any time before the trust property has been sold  
19 under the power of sale. A sale of trust property under the power of sale  
20 shall not be held after an action to foreclose the deed of trust has been  
21 filed unless the foreclosure action has been dismissed.  
22 C. The trustee or beneficiary may file an action for the appointment  
23 of a receiver according to sections 12-1241 and 33-702. The right to  
24 appointment of a receiver shall be independent of and may precede the  
25 exercise of any other right or remedy.  
26 D. EXCEPT FOR CERTAIN OWNER-OCCUPIED RESIDENTIAL PROPERTY AS PROVIDED  
27 IN SECTION 33-807.02, the power of sale of trust property conferred upon the  
28 trustee shall not be exercised before the ninety-first day after the date of  
29 the recording of the notice of the sale. The sale shall not be set for a  
30 Saturday or legal holiday. The trustee may schedule more than one sale for  
31 the same date, time and place.  
32 E. FOR CERTAIN OWNER-OCCUPIED RESIDENTIAL PROPERTY, THE POWER OF SALE  
33 OF TRUST PROPERTY CONFERRED ON THE TRUSTEE SHALL NOT BE EXERCISED UNTIL AFTER  
34 COMPLIANCE WITH SECTIONS 33-807.02 AND 33-807.03.  
35 ~~E.~~ F. The trustee need only be joined as a party in legal actions  
36 pertaining to a breach of the trustee's obligation under this chapter or  
37 under the deed of trust. Any order of the court entered against the  
38 beneficiary is binding upon the trustee with respect to any actions that the  
39 trustee is authorized to take by the trust deed or by this chapter. If the  
40 trustee is joined as a party in any other action, the trustee is entitled to  
41 be immediately dismissed and to recover costs and reasonable attorney fees  
42 from the person joining the trustee.

1 Sec. 2. Title 33, chapter 6.1, article 1, Arizona Revised Statutes, is  
2 amended by adding sections 33-807.02 and 33-807.03, to read:

3 33-807.02. Limits on foreclosure; right to rent foreclosure  
4 property; applicability

5 A. A BENEFICIARY OR TRUSTEE UNDER A TRUST DEED SHALL NOT EXERCISE THE  
6 POWER OF SALE UNTIL AFTER THE BENEFICIARY HAS PROVIDED NOTICE IN  
7 SUBSTANTIALLY THE FOLLOWING FORM TO THE TRUSTOR WHO IS IN DEFAULT:

8 OFFICIAL NOTICE TO TRUSTOR (BORROWER)

9 YOU ARE IN DEFAULT ON YOUR MORTGAGE OR DEED OF TRUST, AND  
10 FORECLOSURE MAY BEGIN AGAINST YOUR PROPERTY. STATE LAW GIVES  
11 YOU THE RIGHT TO CONTINUE TO OCCUPY THE PROPERTY AS A RENTER  
12 UNTIL \_\_\_\_\_ (DATE) IF YOU DO ALL OF THE FOLLOWING:

- 13 1. NOTIFY THE LENDER-BENEFICIARY BEFORE \_\_\_\_\_ (DATE)
- 14 THAT YOU INTEND TO EXERCISE YOUR RIGHT TO RENT.
- 15 2. MAKE TIMELY MONTHLY RENTAL PAYMENTS IN AN AMOUNT
- 16 DETERMINED BY THE JUSTICE OF THE PEACE COURT LISTED BELOW.
- 17 3. CONTINUE TO USE THE PROPERTY AS YOUR PRIMARY
- 18 RESIDENCE.

19 IF YOU WISH TO OCCUPY YOUR PROPERTY AS A RENTER, YOU MUST  
20 GIVE WRITTEN NOTICE TO THE LENDER-BENEFICIARY AND TO THE JUSTICE  
21 OF THE PEACE COURT PRECINCT THAT HAS JURISDICTION OVER YOUR  
22 PROPERTY FOR PURPOSES OF ANY LANDLORD AND TENANT ISSUE. THAT  
23 JUSTICE OF THE PEACE PRECINCT IS \_\_\_\_\_ (NAME),  
24 LOCATED AT \_\_\_\_\_ (ADDRESS AND TELEPHONE NUMBER).

25 B. A BENEFICIARY SHALL INCLUDE ON THE NOTICE THE NAME, ADDRESS AND  
26 TELEPHONE NUMBER OF THE JUSTICE OF THE PEACE PRECINCT THAT WOULD HAVE  
27 JURISDICTION OVER THE TRUST PROPERTY FOR PURPOSES OF ANY RESIDENTIAL LANDLORD  
28 AND TENANT ACTION, AND SHALL SPECIFY THE DUE DATE FOR THE RECEIPT OF NOTICE  
29 FROM THE TRUSTOR, WHICH SHALL BE AT LEAST THIRTY DAYS AFTER THE DATE THE  
30 NOTICE IS MAILED OR POSTED, WHICHEVER OCCURS LATER. THE NOTICE SHALL BE  
31 DELIVERED BY FIRST CLASS MAIL TO THE TRUSTOR AT THE TRUSTOR'S MAILING ADDRESS  
32 AND SHALL ALSO BE POSTED PROMINENTLY ON THE FRONT DOOR OF THE TRUST PROPERTY.

33 C. THE BENEFICIARY AND THE TRUSTEE MAY NOT EXERCISE THE POWER OF SALE  
34 ON THE TRUST PROPERTY FOR AT LEAST ONE YEAR AFTER THE DATE THE TRUSTOR  
35 PROPERLY NOTIFIES THE BENEFICIARY THAT THE TRUSTOR WISHES TO OCCUPY THE  
36 PROPERTY AS A RENTER, AND A MONTH-TO-MONTH PERIODIC TENANCY BETWEEN THE  
37 BENEFICIARY AND TRUSTOR EXISTS IF ALL OF THE FOLLOWING OCCUR:

- 38 1. THE TRUSTOR TIMELY PAYS MONTHLY RENT IN THE AMOUNT DETERMINED BY
- 39 THE JUSTICE COURT PURSUANT TO SECTION 33-807.03.
- 40 2. THE TRUSTOR CONTINUES TO OCCUPY THE PREMISES AS THE TRUSTOR'S
- 41 PRINCIPAL RESIDENCE.
- 42 3. THE TRUSTOR DOES NOT ENGAGE IN A MATERIAL NONCOMPLIANCE WITH THE
- 43 TENANT'S OBLIGATIONS UNDER CHAPTER 10 OF THIS TITLE. THE TRUSTOR MAY
- 44 TERMINATE THE MONTH-TO-MONTH TENANCY BY GIVING ONE MONTH'S NOTICE TO THE
- 45 BENEFICIARY-LANDLORD AS PROVIDED IN CHAPTER 10 OF THIS TITLE.

1 D. ON COMPLETION OF THE ONE-YEAR PERIOD FOR WHICH THE TRUSTOR MAY BE A  
2 RENTER OF THE TRUST PROPERTY, THE BENEFICIARY OR TRUSTEE MAY EXERCISE THE  
3 POWER OF SALE ON THE TRUST PROPERTY AS OTHERWISE PROVIDED BY LAW. IF THE  
4 BENEFICIARY OR TRUSTEE DOES NOT EXERCISE THE POWER OF SALE, THE TRUSTOR MAY  
5 CONTINUE TO RENT AS A MONTH-TO-MONTH TENANT.

6 E. THIS SECTION AND SECTION 33-807.03 APPLY TO REAL PROPERTY THAT  
7 COMPLIES WITH ALL OF THE FOLLOWING:

8 1. THE PROPERTY IS A SINGLE ONE-FAMILY OR TWO-FAMILY DWELLING,  
9 INCLUDING A UNIT IN A CONDOMINIUM AS DEFINED IN CHAPTER 9 OF THIS TITLE AND A  
10 UNIT IN A PLANNED COMMUNITY AS DEFINED IN CHAPTER 16 OF THIS TITLE.

11 2. THE PROPERTY IS USED AS THE PRINCIPAL RESIDENCE OF THE TRUSTOR FOR  
12 AT LEAST TWO YEARS BEFORE DEFAULT.

13 3. THE DEED OF TRUST ON THE PROPERTY SECURES A PURCHASE PRICE THAT IS  
14 LESS THAN THE MEDIAN PURCHASE PRICE FOR RESIDENCES THAT ARE LOCATED IN THE  
15 SAME METROPOLITAN STATISTICAL AREA FOR THAT RESIDENCE, OR IF NOT IN A  
16 METROPOLITAN STATISTICAL AREA, FOR THIS STATE. THE MEDIAN PRICE SHALL BE  
17 DETERMINED BASED ON THE GENERALLY ACCEPTED STATISTICAL MEASURES USED BY THE  
18 REAL ESTATE INDUSTRY FOR THAT AREA OR FOR THIS STATE.

19 4. THE DEED OF TRUST WAS EXECUTED BEFORE JULY 1, 2007.

20 33-807.03. Determination of rent; justice court proceeding;  
21 fair market value

22 A. ON RECEIPT OF WRITTEN NOTICE FROM A TRUSTOR PURSUANT TO SECTION  
23 33-807.02 THAT THE TRUSTOR WISHES TO OCCUPY THE TRUST PROPERTY AS A RENTER,  
24 THE JUSTICE OF THE PEACE COURT FOR THE PRECINCT IN WHICH THE TRUST PROPERTY  
25 IS LOCATED SHALL DEEM THE NOTICE THE INITIATION OF A JUSTICE COURT ACTION FOR  
26 A DETERMINATION OF FAIR MARKET RENTAL VALUE FOR THE TRUST PROPERTY, WITH THE  
27 TRUSTOR AS THE PLAINTIFF AND THE BENEFICIARY AS THE DEFENDANT IN THE ACTION.  
28 WRITTEN NOTICE TO THE BENEFICIARY AS PRESCRIBED IN SECTION 33-807.02  
29 CONSTITUTES SERVICE OF PROCESS FOR PURPOSES OF THE ACTION TO DETERMINE FAIR  
30 MARKET RENTAL VALUE, AND A HEARING SHALL BE SCHEDULED.

31 B. THE JUSTICE COURT SHALL APPOINT A PERSON WHO IS LICENSED IN THIS  
32 STATE AS A RESIDENTIAL REAL ESTATE APPRAISER PURSUANT TO TITLE 32, CHAPTER 36  
33 TO PRESENT EVIDENCE OF THE FAIR MARKET RENTAL VALUE OF THE PROPERTY AT A  
34 HEARING CALLED FOR THAT PURPOSE. ON COMPLETION OF THE HEARING, THE COURT  
35 SHALL DETERMINE THE FAIR MARKET RENTAL VALUE, WHICH CONSTITUTES THE AMOUNT OF  
36 MONTHLY RENT DUE FROM THE TRUSTOR TO THE BENEFICIARY UNDER THE MONTH-TO-MONTH  
37 RENTAL AGREEMENT PRESCRIBED BY SECTION 33-807.02.

38 C. NO EARLIER THAN ONE YEAR AFTER THE ISSUANCE OF THE COURT'S FAIR  
39 MARKET RENTAL VALUE DETERMINATION, THE BENEFICIARY OF THE TRUST PROPERTY OR  
40 THE TRUSTOR OF THE TRUST PROPERTY MAY FILE A REQUEST FOR A REDETERMINATION OF  
41 FAIR MARKET RENTAL TO REFLECT CHANGED MARKET CONDITIONS. THE COURT SHALL  
42 HOLD A HEARING ON FAIR MARKET RENTAL VALUE IF THE PARTY REQUESTING THE  
43 HEARING PAYS THE COSTS FOR THE APPRAISER.