

REFERENCE TITLE: residential foreclosure prevention assistance

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HB 2634

Introduced by
Representatives McCune Davis: Alston

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, 33-807.03, 33-807.04 AND 33-807.05; AMENDING SECTION 33-1331, ARIZONA REVISED STATUTES; RELATING TO FORECLOSURE OF 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 position, a power of sale is conferred ~~upon~~ ON the
7 trustee of a trust deed under which the trust property may be sold, in the
8 manner provided in this chapter, after a breach or default in performance of
9 the contract or contracts, for which the trust property is conveyed as
10 security, or a breach or default of the trust deed. At the option of the
11 beneficiary, a trust deed may be foreclosed in the manner provided by law for
12 the foreclosure of mortgages on real property in which event chapter 6 of
13 this title governs the proceedings. The beneficiary or trustee shall
14 constitute the proper and complete party plaintiff in any action to foreclose
15 a deed of trust. The TRUSTEE MAY EXERCISE THE power of sale ~~may be exercised~~
16 ~~by 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 A FIRST LIEN AGAINST OWNER-OCCUPIED RESIDENTIAL
27 PROPERTY, the power of sale of trust property conferred ~~upon~~ ON the trustee
28 shall not be exercised before the ninety-first day after the date of the
29 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 A FIRST LIEN AGAINST OWNER-OCCUPIED RESIDENTIAL PROPERTY, THE
33 POWER OF SALE OF TRUST PROPERTY CONFERRED ON THE TRUSTEE SHALL NOT BE
34 EXERCISED BEFORE COMPLIANCE WITH THE FORECLOSURE PREVENTION PROGRAM
35 ESTABLISHED BY SECTIONS 33-807.02, 33-807.03, 33-807.04 AND 33-807.05.
36 ~~E-~~ F. The trustee need only be joined as a party in legal actions
37 pertaining to a breach of the trustee's obligation under this chapter or
38 under the deed of trust. Any order of the court entered against the
39 beneficiary is binding ~~upon~~ ON the trustee with respect to any actions that
40 the trustee is authorized to take by the trust deed or by this chapter. If
41 the trustee is joined as a party in any other action, the trustee is entitled
42 to be immediately dismissed and to recover costs and reasonable attorney fees
43 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, 33-807.03, 33-807.04 and 33-807.05, to
3 read:

4 33-807.02. Foreclosure prevention program; applicability;
5 definition

6 A. FOR A FIRST LIEN ON AN OWNER-OCCUPIED RESIDENCE, ON OCCURRENCE OF A
7 DEFAULT IN PAYMENT ON A DEED OF TRUST, THIS SECTION AND SECTIONS 33-807.03,
8 33-807.04 AND 33-807.05 APPLY AND THE BENEFICIARY SHALL PROVIDE THE TRUSTOR
9 WITH A NOTICE OF DEFAULT THAT INCLUDES THE FOLLOWING:

10 1. A STATEMENT OF THE BENEFICIARY'S RIGHT TO FORECLOSE.

11 2. A STATEMENT THAT THE BENEFICIARY HAS POSSESSION OF THE DEED OF
12 TRUST, THE PROMISSORY NOTE AND ANY ASSIGNMENTS, ENDORSEMENTS OR OTHER
13 DOCUMENTS ESTABLISHING FULL DOCUMENTATION OF THE RIGHT OF THE BENEFICIARY TO
14 FORECLOSE ON THE PROPERTY.

15 3. NOTICE THAT THE TRUSTOR MAY REQUEST AND SHALL RECEIVE THE TRUSTOR'S
16 PAYMENT HISTORY DATING BACK TO THE TRUSTOR BEING SIXTY DAYS DELINQUENT IN
17 PAYMENTS, COPIES OF THE DEED OF TRUST, A PROMISSORY NOTE AND ANY ASSIGNMENTS
18 AND ENDORSEMENTS SUFFICIENT TO EVIDENCE THE BENEFICIARY'S RIGHT TO FORECLOSE,
19 AND THE NAME OF THE INVESTOR IN THE DEED OF TRUST.

20 4. A STATEMENT OF POSSIBLE ELIGIBILITY FOR PROTECTION UNDER THE
21 FEDERAL SERVICEMEMBERS CIVIL RELIEF ACT.

22 5. A DESCRIPTION OF ANY LOSS MITIGATION EFFORTS THAT HAVE BEEN
23 UNDERTAKEN BY THE BENEFICIARY REGARDING THE DEED OF TRUST, AND IF NONE, A
24 STATEMENT AS TO WHY.

25 6. A STATEMENT THAT THE BORROWER MAY BE ELIGIBLE FOR A LOAN
26 MODIFICATION.

27 7. A BRIEF DESCRIPTION OF AVAILABLE FORMS OF FORECLOSURE PREVENTION,
28 INCLUDING LOAN MODIFICATIONS, FORBEARANCE, REPAYMENT PLAN, SHORT SALE AND
29 DEED IN LIEU OF FORECLOSURE AND WHETHER A WRITTEN APPLICATION FOR LOAN
30 MODIFICATION OR OTHER METHOD OF FORECLOSURE PREVENTION ASSISTANCE IS
31 REQUIRED.

32 8. A STATEMENT ON HOW TO APPLY FOR A LOAN MODIFICATION OR OTHER
33 FORECLOSURE PREVENTION ASSISTANCE FROM THE BENEFICIARY, AND NOTICE OF WHEN
34 ANY APPLICATION FOR ASSISTANCE IS DUE.

35 B. IF THE TRUSTOR SUBMITS A COMPLETE APPLICATION FOR FORECLOSURE
36 PREVENTION ASSISTANCE WITHIN ONE HUNDRED TWENTY DAYS AFTER RECEIVING NOTICE
37 OF DEFAULT FROM THE BENEFICIARY, THE BENEFICIARY SHALL DO THE FOLLOWING:

38 1. ACKNOWLEDGE RECEIPT OF THE TRUSTOR'S APPLICATION WITHIN THREE
39 BUSINESS DAYS AFTER RECEIPT.

40 2. INFORM THE TRUSTOR IN WRITING OF THE PROCESS USED IN EVALUATING A
41 REQUEST FOR LOAN MODIFICATION OR OTHER FORECLOSURE PREVENTION ASSISTANCE, AND
42 INFORM THE TRUSTOR REGARDING THE EXPIRATION DATES FOR SUBMITTED DOCUMENTS.

43 3. NOTIFY THE TRUSTOR OF ANY DEFICIENCIES IN THE SUBMITTED DOCUMENTS
44 WITHIN FIVE BUSINESS DAYS AFTER RECEIPT.

1 4. CONSIDER THE TRUSTOR'S APPLICATION AND DETERMINE WHETHER A LOAN
2 MODIFICATION OR OTHER ASSISTANCE IS APPROPRIATE.

3 C. FOR THE PURPOSES OF THIS SECTION AND SECTIONS 33-807.03, 33-807.04
4 AND 33-807.05, "BENEFICIARY" INCLUDES A SERVICING AGENT OR ANY OTHER AGENT
5 WITH AUTHORITY TO ACT ON THE DEED OF TRUST OR PROMISSORY NOTE ON BEHALF OF
6 THE BENEFICIARY. FOR ANY ACTIONS TAKEN BY OR DUTIES IMPOSED ON A BENEFICIARY
7 PURSUANT TO THESE SECTIONS, A SERVICING AGENT OR ANY OTHER AGENT ACTING ON
8 BEHALF OF THE BENEFICIARY IS SUBJECT TO COMPLIANCE WITH THESE SECTIONS AND
9 THE BENEFICIARY IS LEGALLY RESPONSIBLE FOR THE ACTIONS OF ANY AGENT. ANY
10 ENFORCEMENT ACTION AVAILABLE AS A RESULT OF THE ACTIONS OF A SERVICING AGENT
11 OR OTHER AGENT IS FULLY ENFORCEABLE AGAINST THE BENEFICIARY.

12 33-807.03. Single point of contact; no foreclosure action

13 A. ON COMPLIANCE WITH SECTION 33-807.02 AND RECEIPT OF A TRUSTOR'S
14 APPLICATION FOR LOAN MODIFICATION OR OTHER FORECLOSURE PREVENTION ASSISTANCE,
15 THE BENEFICIARY SHALL ESTABLISH A SINGLE POINT OF CONTACT FOR THE TRUSTOR
16 REGARDING THE TRUSTOR'S APPLICATION PROCESS. THE BENEFICIARY SHALL IDENTIFY
17 THE SINGLE POINT OF CONTACT AND PROVIDE CONTACT INFORMATION TO THE TRUSTOR
18 WITHIN TEN BUSINESS DAYS AFTER RECEIPT OF THE APPLICATION, AND SHALL PROVIDE
19 THE TRUSTOR WITH ANY REVISIONS IN THE POINT OF CONTACT INFORMATION WITHIN
20 FIVE BUSINESS DAYS AFTER THE CHANGE.

21 B. THE BENEFICIARY SHALL ENSURE THAT THE SINGLE POINT OF CONTACT FOR
22 THE TRUSTOR SHALL HAVE ACCESS TO ALL INFORMATION NECESSARY TO INFORM THE
23 TRUSTOR ON AN ONGOING BASIS AS TO THE STATUS OF THE TRUSTOR'S APPLICATION AND
24 SHALL PROVIDE THAT INFORMATION IN A TIMELY, ACCURATE AND ADEQUATE MANNER.
25 THE SINGLE POINT OF CONTACT MAY BE A SINGLE PERSON OR MAY BE A CLEARLY
26 IDENTIFIED GROUP OF PERSONS.

27 C. THE BENEFICIARY SHALL ALSO ENSURE THAT THE SINGLE POINT OF CONTACT
28 HAS APPROPRIATE PERSONNEL AND OTHER RESOURCES REASONABLY NEEDED TO COMPLY
29 WITH THE BENEFICIARY'S DUTIES.

30 D. WHILE THE TRUSTOR'S APPLICATION FOR LOAN MODIFICATION OR OTHER
31 FORECLOSURE PREVENTION ASSISTANCE IS PENDING WITH THE BENEFICIARY, THE
32 BENEFICIARY SHALL NOT ASSESS OR COLLECT ANY LATE FEES OR OTHER PENALTIES FROM
33 THE TRUSTOR AND SHALL NOT RECORD A NOTICE OF TRUSTEE'S SALE OR TAKE ANY OTHER
34 ACTION TO FORECLOSE ON THE PROPERTY OR TO ENFORCE COLLECTION OF THE AMOUNTS
35 OWED.

36 33-807.04. Loan modification programs; appeal

37 A. WITHIN TEN DAYS AFTER PROVIDING A NOTICE OF DEFAULT TO A TRUSTOR,
38 THE BENEFICIARY SHALL PROVIDE NOTICE TO THE TRUSTOR OF ANY FEDERALLY
39 AUTHORIZED LOAN MODIFICATION PROGRAMS, ANY LOAN MODIFICATION PROGRAMS
40 ESTABLISHED BY THE BENEFICIARY AND ANY LOAN MODIFICATION PROGRAMS THE
41 BENEFICIARY IS OTHERWISE LEGALLY OBLIGATED TO ESTABLISH AND OFFER TO
42 BORROWERS.

43 B. IF THE BENEFICIARY DENIES THE TRUSTOR'S APPLICATION FOR A LOAN
44 MODIFICATION, THE BENEFICIARY SHALL PROVIDE THE TRUSTOR WRITTEN NOTICE OF THE
45 DENIAL, AND SHALL STATE THE REASONS FOR THE DENIAL AND THE FACTS CONSIDERED

1 TO REACH THE DECISION. THE NOTICE SHALL ALSO ADVISE THE TRUSTOR OF THE TIME
2 ALLOWED FOR AN APPEAL OF A DENIAL AND ANY OTHER OPTIONS AVAILABLE TO THE
3 BENEFICIARY.

4 C. A TRUSTOR MAY APPEAL THE BENEFICIARY'S DENIAL OF THE LOAN
5 MODIFICATION WITHIN THIRTY DAYS AFTER RECEIPT OF THE DENIAL. THE BENEFICIARY
6 SHALL PROVIDE FOR AN APPEAL PROCESS FOR DENIALS OF LOAN MODIFICATIONS.

7 D. IF THE BENEFICIARY ACCEPTS THE TRUSTOR'S APPLICATION FOR A LOAN
8 MODIFICATION OR OTHER ASSISTANCE, THE BENEFICIARY AND THE TRUSTOR SHALL
9 EXECUTE A WRITTEN AGREEMENT EVIDENCING THE MODIFICATION OR OTHER ASSISTANCE.

10 E. A BENEFICIARY MAY LAWFULLY EXERCISE THE POWER OF SALE FOR A FIRST
11 LIEN AGAINST AN OWNER-OCCUPIED RESIDENCE AFTER COMPLIANCE WITH SECTIONS
12 33-807.02 AND 33-807.03 AND THIS SECTION IF ANY OF THE FOLLOWING OCCURS:

13 1. THE BENEFICIARY HAS OFFERED A LOAN MODIFICATION OR OTHER
14 FORECLOSURE PREVENTION ASSISTANCE AND THE TRUSTOR HAS DECLINED TO ACCEPT THE
15 OFFER. THE BENEFICIARY MAY RECORD A NOTICE OF TRUSTEE'S SALE NO EARLIER THAN
16 FIFTEEN DAYS AFTER THE TRUSTOR'S REFUSAL.

17 2. THE TRUSTOR IS NOTIFIED THAT THE TRUSTOR IS NOT ELIGIBLE OR HAS
18 BEEN DENIED A LOAN MODIFICATION OR OTHER FORECLOSURE PREVENTION ASSISTANCE.
19 THE BENEFICIARY MAY RECORD A NOTICE OF TRUSTEE'S SALE NO EARLIER THAN THIRTY
20 DAYS AFTER THE TRUSTOR RECEIVED NOTICE. IF THE TRUSTOR APPEALS THE DENIAL,
21 THE BENEFICIARY MAY RECORD A NOTICE OF TRUSTEE'S SALE NO EARLIER THAN THE
22 LATER OF THE FIFTEEN DAYS AFTER DENIAL OF THE APPEAL OR FIFTEEN DAYS AFTER
23 THE TRUSTOR DECLINES AN OFFER MADE TO THE TRUSTOR AFTER THE APPEAL.

24 3. THE TRUSTOR IS IN DEFAULT ON PAYMENTS UNDER AN EXECUTED LOAN
25 MODIFICATION AGREEMENT. THE BENEFICIARY MAY RECORD A NOTICE OF TRUSTEE'S
26 SALE AS OTHERWISE PROVIDED BY LAW.

27 33-807.05. Enforcement; injunction; damages; attorney general

28 FOR ANY VIOLATION OF SECTIONS 33-807.02, 33-807.03 AND 33-807.04, THE
29 FOLLOWING APPLY:

30 1. A TRUSTEE MAY FILE AN ACTION AGAINST ANY BENEFICIARY WHO COMMITS A
31 MATERIAL VIOLATION AND MAY OBTAIN INJUNCTIVE RELIEF IF A TRUSTEE'S DEED HAS
32 NOT BEEN RECORDED ON THE PROPERTY. IF A TRUSTEE'S DEED HAS BEEN RECORDED,
33 THE TRUSTOR MAY FILE AN ACTION FOR DAMAGES AND IF THE BENEFICIARY'S ACTION
34 WAS INTENTIONAL, MAY BE AWARDED THE GREATER OF TREBLE DAMAGES OR FIFTY
35 THOUSAND DOLLARS.

36 2. THE ATTORNEY GENERAL MAY FILE AN ACTION UNDER TITLE 44, CHAPTER 10,
37 ARTICLE 7, REQUEST THAT A GRAND JURY BE CONVENED TO CONSIDER THE VIOLATIONS
38 OR TAKE ANY OTHER ENFORCEMENT ACTIONS AUTHORIZED BY LAW.

39 Sec. 3. Section 33-1331, Arizona Revised Statutes, is amended to read:

40 33-1331. Notice of foreclosure; effect on lease; damages

41 A. If a rental agreement is entered into after the foreclosure action
42 was initiated, the owner shall include written notice of possible foreclosure
43 with the rental agreement with the tenant. IF THE FORECLOSURE WAS INITIATED
44 AFTER EXECUTION OF A RENTAL AGREEMENT, THE LANDLORD SHALL PROVIDE THE TENANT
45 WITH NOTICE OF THE FORECLOSURE IN THE SAME MANNER AS OTHER NOTICES UNDER THE

1 LEASE. The notice shall include a statement that is substantially in the
2 following form:

3 This property is undergoing foreclosure. For more
4 information on this action, you should contact _____
5 (name, address and phone number of the court where the action is
6 filed or trustee, attorney or other responsible party).

7 A sale at auction may or may not occur as a result of this
8 foreclosure. Currently, the sale of this property has been set
9 for _____ (time, date and place) or no date for sale of this
10 property has been established.

11 ON COMPLETION OF ANY FORECLOSURE SALE, THE NEW LANDLORD IS
12 REQUIRED TO OFFER YOU EITHER A NEW RENTAL AGREEMENT OR PROVIDE
13 YOU WITH NOTICE THAT YOUR LEASE WILL TERMINATE IN NINETY DAYS.

14 B. If the owner fails to provide notice as prescribed in this section
15 the tenant may deliver a written notice pursuant to section 33-1361 and
16 recover damages and obtain injunctive relief. The security deposit shall be
17 returned to the tenant as prescribed in SECTION 33-1321.

18 C. A LANDLORD WHO ACQUIRES TITLE TO THE LEASED PROPERTY AFTER A
19 FORECLOSURE SHALL PROVIDE ANY EXISTING TENANTS WITH A NEW RENTAL AGREEMENT OR
20 SHALL PROVIDE THE TENANT WITH NINETY DAYS' NOTICE OF TERMINATION OF THE
21 TENANT'S RENTAL AGREEMENT.

22 ~~C.~~ D. This section shall not apply to multifamily residential rental
23 units consisting of four or more connected units.