

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HOUSE BILL 2018

AN ACT

AMENDING SECTIONS 33-729 AND 33-814, ARIZONA REVISED STATUTES; RELATING TO
PROPERTY DEFICIENCY ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-729, Arizona Revised Statutes, is amended to
3 read:

4 33-729. Purchase money mortgage; limitation on liability

5 A. Except as provided in ~~subsection~~ SUBSECTIONS B AND C OF THIS
6 SECTION, if a mortgage is given to secure the payment of the balance of the
7 purchase price, or to secure a loan to pay all or part of the purchase price,
8 of a parcel of real property of two and one-half acres or less which is
9 limited to and utilized for either a single one-family or single two-family
10 dwelling, the lien of judgment in an action to foreclose such mortgage shall
11 not extend to any other property of the judgment debtor, nor may general
12 execution be issued against the judgment debtor to enforce such judgment, and
13 if the proceeds of the mortgaged real property sold under special execution
14 are insufficient to satisfy the judgment, the judgment may not otherwise be
15 satisfied out of other property of the judgment debtor, notwithstanding any
16 agreement to the contrary.

17 B. The balance due on a mortgage foreclosure judgment after sale of
18 the mortgaged property shall constitute a lien against other property of the
19 judgment debtor, general execution may be issued thereon, and the judgment
20 may be otherwise satisfied out of other property of the judgment debtor, if
21 the court determines, after sale upon special execution and upon written
22 application and such notice to the judgment debtor as the court may require,
23 that the sale price was less than the amount of the judgment because of
24 diminution in the value of such real property while such property was in the
25 ownership, possession, or control of the judgment debtor because of voluntary
26 waste committed or permitted by the judgment debtor, not to exceed the amount
27 of diminution in value as determined by such court.

28 C. FOR MORTGAGES THAT ARE ORIGINATED AFTER DECEMBER 31, 2014,
29 SUBSECTION A OF THIS SECTION DOES NOT APPLY TO REAL PROPERTY AS FOLLOWS:

30 1. REAL PROPERTY OWNED BY A PERSON WHO IS ENGAGED IN THE BUSINESS OF
31 CONSTRUCTING AND SELLING DWELLINGS THAT WAS ACQUIRED BY THE PERSON IN THE
32 COURSE OF THAT BUSINESS AND THAT IS SUBJECT TO A MORTGAGE GIVEN TO SECURE
33 PAYMENT OF A LOAN FOR CONSTRUCTION OF A DWELLING ON THE PROPERTY FOR SALE TO
34 ANOTHER PERSON.

35 2. REAL PROPERTY THAT CONTAINS A DWELLING THAT WAS NEVER SUBSTANTIALLY
36 COMPLETED.

37 3. REAL PROPERTY THAT CONTAINS A DWELLING THAT IS INTENDED TO BE
38 UTILIZED AS A DWELLING BUT THAT IS NEVER ACTUALLY UTILIZED AS A DWELLING.

39 D. FOR THE PURPOSES OF THIS SECTION, A DWELLING IS SUBSTANTIALLY
40 COMPLETED IF EITHER OF THE FOLLOWING OCCURS:

41 1. FINAL INSPECTION IS COMPLETED, IF REQUIRED BY THE GOVERNMENTAL BODY
42 THAT ISSUED THE BUILDING PERMIT FOR THE DWELLING.

43 2. IF A FINAL INSPECTION IS NOT REQUIRED BY THE GOVERNMENTAL BODY THAT
44 ISSUED THE BUILDING PERMIT, THE DWELLING HAS BEEN COMPLETED IN ALL MATERIAL

1 RESPECTS AS PRESCRIBED IN THE APPLICABLE ORDINANCES AND REGULATIONS OF THE
2 GOVERNMENTAL BODY THAT ISSUED THE BUILDING PERMIT FOR THE DWELLING.

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

4 33-814. Action to recover balance after sale or foreclosure on
5 property under trust deed

6 A. Except as provided in subsections F ~~and~~, G AND H of this section,
7 within ninety days after the date of sale of trust property under a trust
8 deed pursuant to section 33-807, an action may be maintained to recover a
9 deficiency judgment against any person directly, indirectly or contingently
10 liable on the contract for which the trust deed was given as security
11 including any guarantor of or surety for the contract and any partner of a
12 trustor or other obligor which is a partnership. In any such action against
13 such a person, the deficiency judgment shall be for an amount equal to the
14 sum of the total amount owed the beneficiary as of the date of the sale, as
15 determined by the court less the fair market value of the trust property on
16 the date of the sale as determined by the court or the sale price at the
17 trustee's sale, whichever is higher. A written application for determination
18 of the fair market value of the real property may be filed by a judgment
19 debtor with the court in the action for a deficiency judgment or in any other
20 action on the contract which has been maintained. Notice of the filing of an
21 application and the hearing shall be given to all parties to the action. The
22 fair market value shall be determined by the court at a priority hearing upon
23 such evidence as the court may allow. The court shall issue an order
24 crediting the amount due on the judgment with the greater of the sales price
25 or the fair market value of the real property. For the purposes of this
26 subsection, "fair market value" means the most probable price, as of the date
27 of the execution sale, in cash, or in terms equivalent to cash, or in other
28 precisely revealed terms, after deduction of prior liens and encumbrances
29 with interest to the date of sale, for which the real property or interest
30 therein would sell after reasonable exposure in the market under conditions
31 requisite to fair sale, with the buyer and seller each acting prudently,
32 knowledgeably and for self-interest, and assuming that neither is under
33 duress. Any deficiency judgment recovered shall include interest on the
34 amount of the deficiency from the date of the sale at the rate provided in
35 the deed of trust or in any of the contracts evidencing the debt, together
36 with any costs and disbursements of the action.

37 B. If a trustee's sale is a sale of less than all of the trust
38 property or is a sale pursuant to one of two or more trust deeds securing the
39 same obligation, the ninety day time limitations of subsection A of this
40 section shall begin on either the date of the trustee's sale of the last of
41 the trust property to be sold or the date of sale under the last trust deed
42 securing the obligation, whichever occurs last.

43 C. The obligation of a person who is not a trustor to pay, satisfy or
44 purchase all or a part of the balance due on a contract secured by a trust
45 deed may be enforced, if the person has so agreed, in an action regardless of

1 whether a trustee's sale is held. If, however, a trustee's sale is held, the
2 liability of a person who is not a trustor for the deficiency is determined
3 pursuant to subsection A of this section and any judgment for the deficiency
4 against the person shall be reduced in accordance with subsection A of this
5 section. If any such action is commenced after a trustee's sale has been
6 held, it is subject, in addition, to the ninety day time limitations of
7 subsections A and B of this section.

8 D. If no action is maintained for a deficiency judgment within the
9 time period prescribed in subsections A and B of this section, the proceeds
10 of the sale, regardless of amount, shall be deemed to be in full satisfaction
11 of the obligation and no right to recover a deficiency in any action shall
12 exist.

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

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

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

27 H. FOR DEEDS OF TRUST THAT ARE ORIGINATED AFTER DECEMBER 31, 2014,
28 SUBSECTION G OF THIS SECTION DOES NOT APPLY TO TRUST PROPERTY AS FOLLOWS:

29 1. TRUST PROPERTY OWNED BY A PERSON WHO IS ENGAGED IN THE BUSINESS OF
30 CONSTRUCTING AND SELLING DWELLINGS THAT WAS ACQUIRED BY THE PERSON IN THE
31 COURSE OF THAT BUSINESS AND THAT IS SUBJECT TO A DEED OF TRUST GIVEN TO
32 SECURE PAYMENT OF A LOAN FOR CONSTRUCTION OF A DWELLING ON THE PROPERTY FOR
33 SALE TO ANOTHER PERSON.

34 2. TRUST PROPERTY THAT CONTAINS A DWELLING THAT WAS NEVER
35 SUBSTANTIALLY COMPLETED.

36 3. TRUST PROPERTY THAT CONTAINS A DWELLING THAT IS INTENDED TO BE
37 UTILIZED AS A DWELLING BUT THAT IS NEVER ACTUALLY UTILIZED AS A DWELLING.

38 I. FOR THE PURPOSES OF THIS SECTION, A DWELLING IS SUBSTANTIALLY
39 COMPLETED IF EITHER OF THE FOLLOWING OCCURS:

40 1. FINAL INSPECTION IS COMPLETED, IF REQUIRED BY THE GOVERNMENTAL BODY
41 THAT ISSUED THE BUILDING PERMIT FOR THE DWELLING.

42 2. IF A FINAL INSPECTION IS NOT REQUIRED BY THE GOVERNMENTAL BODY THAT
43 ISSUED THE BUILDING PERMIT, THE DWELLING HAS BEEN COMPLETED IN ALL MATERIAL
44 RESPECTS AS PRESCRIBED IN THE APPLICABLE ORDINANCES AND REGULATIONS OF THE
45 GOVERNMENTAL BODY THAT ISSUED THE BUILDING PERMIT FOR THE DWELLING.