

REFERENCE TITLE: judicial foreclosure; excess proceeds sale

State of Arizona
House of Representatives
Fifty-seventh Legislature
First Regular Session
2025

HB 2878

Introduced by
Representative Liguori

AN ACT

AMENDING SECTIONS 42-18201, 42-18204, 42-18233, 42-18234, 42-18235 AND
42-18236, ARIZONA REVISED STATUTES; RELATING TO JUDICIAL FORECLOSURE OF
RIGHT OF REDEMPTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 42-18201, Arizona Revised Statutes, is amended
3 to read:

4 42-18201. Action to foreclose right to redeem; subsequent
5 certificates of purchase by assignment

6 A. Except as provided in subsection B of this section, at any time
7 beginning three years after the sale of a tax lien but not later than ten
8 years after the last day of the month in which the lien was acquired
9 pursuant to section 42-18114, if the lien is not redeemed, the purchaser
10 or the purchaser's heirs or assigns, or the state if it is the assignee,
11 may bring an action to foreclose the right to redeem. The action to
12 foreclose the right to redeem shall be filed in the superior court in the
13 county in which the real property is located and shall name the county
14 treasurer as a party to the action AND MAY INCLUDE THE REQUEST TO
15 DETERMINE IF THE SALE OF THE PROPERTY TO RECOVER EXCESS PROCEEDS IS
16 REASONABLE PURSUANT TO SECTION 42-18204, SUBSECTION B. If any applicable
17 law or court order prohibits bringing an action to foreclose the right to
18 redeem, the limitation provided herein shall be extended twelve months
19 following the termination of such prohibition.

20 B. For a subsequent year certificate of purchase by assignment
21 issued under section 42-18121, subsection B, at any time beginning three
22 years after the date the subsequent year certificate of purchase was
23 assigned but not later than ten years after the last day of the month in
24 which the tax lien was assigned under section 42-18121, if the lien is not
25 redeemed, the purchaser or the purchaser's heirs or assigns, or the state
26 if it is the assignee, may bring an action to foreclose the right to
27 redeem the lien represented by certificates of purchase acquired by
28 assignment and held by the party that filed the action to foreclose. All
29 certificates of purchase held by other parties remain in place. The
30 action to foreclose the right to redeem shall be filed in the superior
31 court in the county in which the real property is located and shall name
32 the county treasurer as a party to the action. If any applicable law or
33 court order prohibits bringing an action to foreclose the right to redeem,
34 the limitation provided in this subsection shall be extended twelve months
35 following the termination of the prohibition.

36 Sec. 2. Section 42-18204, Arizona Revised Statutes, is amended to
37 read:

38 42-18204. Judgment foreclosing right to redeem; effect

39 A. In an action to foreclose the right to redeem:

40 1. If the court finds that the tax lien sale is valid, the tax lien
41 has not been redeemed and the defendant's request for an excess proceeds
42 sale is unreasonable or the defendant did not request an excess proceeds
43 sale, the court shall enter judgment:

44 (a) Foreclosing the right of the defendant to redeem.

(b) Directing the county treasurer to expeditiously execute and deliver to the party in whose favor judgment is entered, including the state, a deed conveying the property described in the certificate of purchase.

2. If the court finds that the tax lien sale is valid, the tax lien has not been redeemed and the defendant's request for an excess proceeds sale is reasonable, the court shall enter judgment:

(a) Foreclosing the right of the defendant to redeem.

(b) Directing the sale of the property pursuant to article 6 of this chapter.

(c) Setting the opening bid for the property as the total of the amounts described in subsection B, paragraph 1, subdivisions (a), (b), (c) and (e) of this section and any other reasonable fees as determined by the court.

B. A property owner whose right to redeem is being foreclosed OR A CERTIFICATE OF PURCHASE HOLDER may request the court to determine if the sale of the property to recover excess proceeds is reasonable AT ANY TIME BEFORE THE COURT'S JUDGMENT IS EFFECTIVE PURSUANT TO COURT RULES. The court shall determine that the sale of the property for excess proceeds is reasonable if the sale price of the property is likely to be more than \$2,500 above the total of the amounts described in paragraph 1 of this subsection. If a request is made for an excess proceeds sale, the following information shall be provided to the court for the purposes of determining if an excess proceeds sale is reasonable:

1. The certificate of purchase holder shall provide all of the following:

(a) The costs related to filing the claim to foreclose the right to redeem, including estimated attorney fees and costs to be incurred through the date of the excess proceeds sale, if ordered.

(b) The amount for which the real property tax lien was sold, with interest at a rate of sixteen percent per annum from the date of the tax lien sale through the date of the excess proceeds sale, if ordered.

(c) The amount of any statutory fees the certificate of purchase holder paid in connection with the certificate of purchase, except the processing fee imposed by section 42-18116, subsection C, with interest at a rate of sixteen percent per annum from the date of the tax lien sale through the date of the excess proceeds sale, if ordered.

(d) The amount of all other recorded state liens or encumbrances on the state property as indicated on a title report provided by the certificate of purchase holder, including other years in which taxes are delinquent. For the purposes of this subdivision, the certificate of purchase holder does not have to determine the actual balance owed on any lien or encumbrance on the property, except for property taxes owed.

(e) The estimated cost of the sale of property pursuant to article 6 of this chapter.

(f) Any other evidence relating to the value of the property or objecting to the excess proceeds sale that the certificate of purchase holder deems necessary.

2. The property owner whose right to redeem is being foreclosed shall provide a reasonable estimate of the market value of the property.

C. After entering judgment the parties whose rights to redeem the tax lien are thereby foreclosed have no further legal or equitable right, title or interest in the property subject to the right of appeal and stay of execution as in other civil actions.

D. The foreclosure of the right to redeem does not extinguish any of the following:

1. An easement on or appurtenant to the property.

2. A lien for an assessment levied pursuant to title 48, chapter 4, 6, 14 or 18 or section 9-276. For the purposes of this paragraph, assessment does not include an abatement lien imposed under section 9-499.

3. If the court finds that the request for an excess proceeds sale is reasonable, the property owner's interest in the excess proceeds from the sale of the property pursuant to article 6 of this chapter.

Sec. 3. Section 42-18233, Arizona Revised Statutes, is amended to read:

42-18233. Date, time and place of sale

The sale shall be held:

1. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, not later than sixty days after the date of a judgment entered pursuant to section 42-18204, subsection A, paragraph 2.

2. On a day other than a Saturday, Sunday or legal holiday.

3. Between 9:00 a.m. and 5:00 p.m. mountain standard time.

4. At a specified place on the property, at a specified place at any building that serves as a location of the superior court or at a specified place at a place of business of the qualified entity conducting the sale, in any county in which the property to be sold is situated.

Sec. 4. Section 42-18234, Arizona Revised Statutes, is amended to read:

42-18234. Sale by public auction; bidder requirements; postponement of sale

A. On the date and at the time and place designated in the notice of sale, the qualified entity shall offer to sell the property at public auction for cash to the highest bidder. The minimum bid shall be the ~~total of the amounts described in section 42-18204, subsection B, paragraph 1~~ AMOUNT SET PURSUANT TO SECTION 42-18204, SUBSECTION A, PARAGRAPH 2, SUBDIVISION (c). The qualified entity may schedule more than one sale for the same date, time and place.

B. Any person, including the qualified entity or the certificate of purchase holder, may bid at the sale. Only the certificate of purchase holder may make a credit bid in lieu of cash at the sale. The qualified

entity shall require every bidder, except the certificate of purchase holder, to provide a nonrefundable deposit in an amount equal to ten percent of the opening bid or \$2,500, whichever is greater, in any form that is satisfactory to the qualified entity as a condition of entering a bid.

C. The qualified entity or the qualified entity's auctioneer may control the means and manner of the auction, except the opening bid shall be an amount equal to the ~~total of the amounts described in section 42-18204, subsection B, paragraph 1~~ AMOUNT SET PURSUANT TO SECTION 42-18204, SUBSECTION A, PARAGRAPH 2, SUBDIVISION (c). Every bid shall be deemed an irrevocable offer until the sale is completed, except that a subsequent bid by the same bidder for a higher amount shall cancel that bidder's lower bid. The qualified entity shall return deposits to all but the bidder whose bid resulted in the highest bid price. The sale is deemed completed on payment by the purchaser of the price bid in a form satisfactory to the qualified entity.

D. The subsequent execution, delivery and recording of the qualified entity's deed as prescribed by section 42-18235 are ministerial acts. If the qualified entity's deed is recorded in the county in which the property is located within fifteen business days after the date of the sale, the sale is deemed perfected at the appointed date and time of the sale.

E. The qualified entity may postpone or continue the sale from time to time or change the place of the sale to any other location authorized pursuant to this chapter by giving notice of the new date, time and place by public declaration at the time and place last appointed for the sale. Any new sale date shall be a fixed date within sixty calendar days after the date of the declaration. After a sale has been postponed or continued, the qualified entity, on request, shall make available the date and time of the next scheduled sale and, if the location of the sale has been changed, the new location of the sale until the sale has been conducted or canceled and providing this information shall be without obligation or liability for the accuracy or completeness of the information. Other notice of the postponed, continued or relocated sale is not required.

F. A sale is postponed by operation of law to the next business day at the same scheduled time and place if an act of force majeure prevents access to the sale location for the conduct of the sale.

G. Except for the assessments provided in section 42-18204, subsection D and property tax liens on the property, a sale concluded under this article extinguishes any other liens and encumbrances held by this state on the property, whether satisfied or not from the proceeds of the sale. To the extent not satisfied from the proceeds of the sale, liens and encumbrances held by this state as to the DELINQUENT taxpayer and the DELINQUENT taxpayer's other property are not affected.

1 Sec. 5. Section 42-18235, Arizona Revised Statutes, is amended to
2 read:

3 42-18235. Payment of bid; qualified entity's deed

4 A. The highest bidder at the sale, other than the judgment holder
5 to the extent of the credit bid, shall pay the price bid by ~~not later than~~
6 5:00 p.m. mountain standard time of the day after the sale, other than a
7 Saturday, Sunday or legal holiday. If the highest bidder fails to pay the
8 amount bid for the property struck off to the bidder at the sale, the
9 qualified entity, in the qualified entity's sole discretion, shall either
10 continue the sale to reopen bidding or immediately offer the property to
11 the second highest bidder who may purchase the property at that bidder's
12 bid price. The deposit of the highest bidder who fails to pay the amount
13 bid shall be applied to the costs of facilitating the sale and the
14 balance, if any, ~~and~~ treated as additional sale proceeds to be distributed
15 pursuant to section 42-18236, subsection A. If the second highest bidder
16 does not pay that bidder's bid price by 5:00 p.m. mountain standard time
17 of the next day, excluding Saturdays, Sundays and legal holidays after the
18 qualified entity offers the property to that bidder, the qualified entity
19 shall either continue the sale to reopen bidding or offer the property to
20 each of the prior bidders on successive days excluding Saturdays, Sundays
21 and legal holidays in order of their highest bid, until a bid price is
22 paid, or if there is no other bidder, the sale shall be deemed to be
23 continued to a time and place designated by the qualified entity, or if
24 not designated, the sale shall be continued to the same place and at the
25 same time twenty-eight days after the last scheduled sale date. If the
26 twenty-eighth day is a Saturday, Sunday or legal holiday, the sale shall
27 be continued to the next business day. If the sale is continued, the
28 qualified entity shall provide notice of the continuation of the sale by
29 registered or certified mail, with postage prepaid, to all bidders who
30 provide their names, addresses and telephone numbers in writing to the
31 qualified entity. In addition to the forfeit of deposit, a highest bidder
32 who fails to pay the amount bid by that bidder is liable to any person who
33 suffers loss or expenses as a result, including attorney fees. In any
34 subsequent sale of property, the qualified entity may refuse to accept any
35 bid of that person. In any sale that is continued pursuant to this
36 subsection, the qualified entity shall reject a bid from any previous
37 bidder who elected not to pay that bidder's bid price.

38 B. The price bid shall be paid at the office of the qualified
39 entity or the qualified entity's agent, or any other reasonable place
40 designated by the qualified entity. The payment of the bid price may be
41 made at a later time if agreed on in writing by the qualified entity.
42 Within seven business days after receipt of payment by the qualified
43 entity or the qualified entity's agent, made in a form that is
44 satisfactory to the qualified entity, the qualified entity shall execute
45 and submit the qualified entity's deed to the county recorder for

1 recording and, on request, shall provide an unrecorded copy of the signed
2 qualified entity's deed to the purchaser. The recording of the qualified
3 entity's deed on sale constitutes delivery of the deed to the purchaser.
4 The qualified entity is not liable for any damages resulting from the
5 failure to record the deed on sale after physical delivery of the deed to
6 the purchaser. The deed shall include the following information:

7 1. The date, court action number and name of the judgment ordering
8 the sale of the property.

9 2. The name of the purchaser.

10 3. The property description.

11 4. The date of the conveyance.

12 5. A formal acknowledgment by the qualified entity.

13 C. All persons to whom the qualified entity mails a notice of a
14 sale pursuant to section 42-18232 shall waive all defenses and objections
15 to the sale not raised in an action that results in an injunction before
16 the scheduled date of the sale. A copy of the injunction shall be
17 delivered to the qualified entity within twenty-four hours after the order
18 is entered.

19 D. A sale is not complete if the sale violates subsection C of this
20 section because of an undisclosed order entered by the court within the
21 time provided for in subsection C of this section. A sale held in
22 violation of subsection C of this section shall be continued to a date,
23 time and place announced by the qualified entity at the sale and shall
24 comply with section 42-18234. If not announced, the sale shall be
25 continued to the same place and at the same time twenty-eight days later.
26 If the twenty-eighth day falls on a Saturday, Sunday or legal holiday, the
27 sale shall be continued to the next business day.

28 E. The deed conveyed pursuant to this section shall operate to
29 convey to the purchaser title of the purchased property. That conveyance
30 shall be absolute without right of redemption and clear of all subordinate
31 liens, claims or interests.

32 Sec. 6. Section 42-18236, Arizona Revised Statutes, is amended to
33 read:

34 42-18236. Disposition of proceeds of sale

35 A. The qualified entity shall distribute the proceeds of the sale
36 as follows:

37 1. To the qualified entity, an amount equal to the cost of
38 facilitating the sale of the property, including the costs of providing
39 the notice required by section 42-18232, subsection A.

40 2. To the certificate of purchase holder, an amount equal to the
41 amounts provided in section 42-18204, subsection B, paragraph 1,
42 subdivisions (a), (b) and (c).

43 3. To the county treasurer to redeem any other property tax liens
44 on the parcel and pay current taxes due, then other state lien and
45 encumbrance holders, an amount equal to their respective lien or

1 encumbrance as indicated on a title report provided by the certificate of
 2 purchase holder and provided to the court pursuant to section 42-18204,
 3 subsection B, paragraph 1, subdivision (d), adjusted by any lien or
 4 encumbrance amount that has been paid or increased due to delinquencies
 5 since the title report was provided to the court.

6 4. To the property owner whose right to redeem was foreclosed, any
 7 remaining proceeds of the sale. The property owner is not required to be
 8 present at the excess proceeds sale in order to receive the property
 9 owner's distribution of proceeds from the sale under this subsection.

10 B. The qualified entity shall distribute the proceeds of the sale
 11 pursuant to subsection A of this section within ninety days after the sale
 12 of the property and notify the court that the distributions have been
 13 made. The qualified entity shall dispose of any monies unclaimed after
 14 ninety days pursuant to title 44, chapter 3. If the qualified entity
 15 fails to comply with this subsection, the qualified entity shall pay
 16 interest at the rate provided for judgments pursuant to section 44-1201
 17 from the date of completion of the sale until the qualified entity
 18 complies with this subsection. Any party in the action to foreclose the
 19 right to redeem relating to the property **THAT IS ENTITLED TO A PORTION OF**
 20 **THE PROCEEDS OF THE SALE UNDER THIS SECTION** may commence a civil action
 21 against the qualified entity for the qualified entity's failure to comply
 22 with this subsection. The court may award the prevailing party its
 23 reasonable attorney fees and costs incurred in that civil action.