Senate Engrossed House Bill

FILED
JANICE K. BREWER
SECRETARY OF STATE

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CHAPTER 189

HOUSE BILL 2250

AN ACT

AMENDING SECTIONS 33-801 AND 33-803, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 6.1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-803.01; AMENDING SECTIONS 33-807, 33-808, 33-809, 33-810, 33-811, 33-812 AND 33-813, ARIZONA REVISED STATUTES; RELATING TO DEEDS OF TRUST.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 33-801, Arizona Revised Statutes, is amended to read:

33-801. Definitions

In this chapter, unless the context otherwise requires:

1. "Beneficiary" means the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or the person's successor in interest.

2. "BUSINESS DAY" MEANS ANY DAY OTHER THAN A SATURDAY OR A LEGAL HOLIDAY.

~~2.~~ 3. "Cash" means United States currency.

~~3.~~ 4. "Contract" means a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty, including but not limited to a note, A promissory note or provisions of any trust deed.

~~4.~~ 5. "Credit bid" means a bid made by the beneficiary in full or partial satisfaction of the contract or contracts which are secured by the trust deed. Such credit bid may only include an amount up to the full amount of the contract or contracts secured by the trust deed, less any amount owing on liens or encumbrances with interest which are superior in priority to the trust deed and which the beneficiary is obligated to pay under the contract or contracts or under the trust deed, together with the amount of other obligations provided in or secured by the trust deed and the costs and expenses of exercising the power of sale and the sale, including the trustee's fees and reasonable attorney fees actually incurred.

6. "FORCE MAJEURE" MEANS AN ACT OF GOD OR OF NATURE, A SUPERIOR OR OVERPOWERING FORCE OR AN EVENT OR EFFECT THAT CANNOT REASONABLY BE ANTICIPATED OR CONTROLLED AND THAT PREVENTS ACCESS TO THE SALE LOCATION FOR CONDUCT OF A SALE.

~~5.~~ 7. "Parent corporation" means a corporation which owns eighty per cent or more of every class of the issued and outstanding stock of another corporation or, in the case of a savings and loan association, eighty per cent or more of its issued and outstanding guaranty capital.

~~6.~~ 8. "Trust deed" or "deed of trust" means a deed executed in conformity with this chapter and conveying trust property to a trustee or trustees qualified under section 33-803 to secure the performance of a contract or contracts, other than a trust deed which encumbers in whole or in part trust property located in Arizona and in one or more other states.

~~7.~~ 9. "Trust property" means any legal, equitable, leasehold or other interest in real property which is capable of being transferred, whether or not it is subject to any prior mortgages, trust deeds, contracts for conveyance of real property or other liens or encumbrances.

~~8.~~ 10. "Trustee" means an individual, association or corporation qualified pursuant to section 33-803, or the successor in interest thereto, to whom trust property is conveyed by trust deed. The trustee's obligations

to the trustor, beneficiary and other persons are as specified in this chapter, together with any other obligations specified in the trust deed.

~~9.~~ 11. "Trustor" means the person conveying trust property by a trust deed as security for the performance of a contract or contracts, or the successor in interest of such person.

Sec. 2. Section 33-803, Arizona Revised Statutes, is amended to read:

33-803. Trustee of trust deed; qualifications

A. Except as provided in subsection B, the trustee of a trust deed shall be:

1. An association or corporation doing business under the laws of this state as a bank, trust company, savings and loan association, credit union, insurance company, escrow agent or consumer lender.

2. A person who is a member of the state bar of Arizona.

3. A person who is a licensed real estate broker under the laws of this state.

4. A person who is a licensed insurance producer under the laws of this state.

5. An association or corporation ~~which~~ THAT is licensed, chartered or regulated by the federal deposit insurance corporation, the comptroller of the currency, the federal home loan bank, the national credit union administration, the farm credit administration, THE FEDERAL RESERVE BOARD or any successors.

6. The parent corporation of any association or corporation referred to in this subsection or any corporation all the stock of which is owned by or held solely for the benefit of any such association or corporation referred to in this subsection.

B. An individual trustee of a trust deed who qualifies under ~~the provisions of~~ subsection A shall not be the beneficiary of the trust, but such restriction shall not preclude a corporate or association trustee ~~which~~ THAT qualifies under ~~the provisions of~~ subsection A and while acting in good faith from being the beneficiary, or after appointment from acquiring the interest of the beneficiary by succession, conveyance, grant, descent or devise.

C. A TRUSTEE OF A TRUST DEED WHO QUALIFIES UNDER SUBSECTION A SHALL NOT LEND OR DELEGATE THE TRUSTEE'S NAME OR CORPORATE CAPACITY TO ANY INDIVIDUAL OR ENTITY THAT DOES NOT QUALIFY AS A TRUSTEE OF A TRUST DEED. AN INDIVIDUAL, COMPANY, ASSOCIATION OR CORPORATION SHALL NOT CIRCUMVENT THE REQUIREMENTS OF SUBSECTION A BY ACTING IN CONCERT WITH A NONQUALIFYING TRUSTEE.

Sec. 3. Title 33, chapter 6.1, article 1, Arizona Revised Statutes, is amended by adding section 33-803.01, to read:

33-803.01. Trustee of trust deed; delegation of duties

A. A TRUSTEE SHALL NOT DELEGATE THE FOLLOWING DUTIES:

1. THE PREPARATION AND EXECUTION OF ANY OF THE FOLLOWING:

(a) THE NOTICE OF TRUSTEE SALE.

(b) THE CANCELLATION OF NOTICE OF SALE.

(c) THE TRUSTEE'S DEED UPON SALE.

2. THE RECEIPT AND RESPONSE TO REQUESTS FOR REINSTATEMENT OR PAYOFF AMOUNTS.

B. THIS SECTION DOES NOT PROHIBIT THE TRUSTEE FROM USING CLERICAL OR OFFICE STAFF EMPLOYED BY THE TRUSTEE AND UNDER THE TRUSTEE'S DIRECT AND IMMEDIATE SUPERVISION TO ASSIST IN THE DUTIES PRESCRIBED BY SUBSECTION A.

Sec. 4. Section 33-807, Arizona Revised Statutes, is amended to read:

33-807. Sale of trust property; power of trustee; foreclosure of trust deed

A. By virtue of his position, a power of sale is conferred upon the trustee of a trust deed under which the trust property may be sold, in the manner provided in this chapter, after a breach or default in performance of the contract or contracts, for which the trust property is conveyed as security, or a breach or default of the trust deed. At the option of the beneficiary, a trust deed may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property in which event ~~the provisions of~~ chapter 6 of this title ~~govern~~ GOVERNS the proceedings. The beneficiary or trustee shall constitute the proper and complete party plaintiff in any action to foreclose a deed of trust. The power of sale may be exercised by the trustee without express provision therefor in the trust deed.

B. The trustee or beneficiary may file and maintain an action to foreclose a deed of trust at any time before the trust property has been sold under the power of sale. A sale of trust property under the power of sale shall not be held after an action to foreclose the deed of trust has been filed unless the foreclosure action has been dismissed.

C. The trustee or beneficiary may file an action for the appointment of a receiver according to sections 12-1241 and 33-702. The right to appointment of a receiver shall be independent of and may precede the exercise of any other right or remedy.

D. The power of sale of trust property conferred upon the trustee shall not be exercised before the ~~expiration of ninety days from~~ NINETY-FIRST DAY AFTER the DATE OF THE recording of the notice of the sale. THE SALE SHALL NOT BE SET FOR A SATURDAY OR LEGAL HOLIDAY. THE TRUSTEE MAY SCHEDULE MORE THAN ONE SALE FOR THE SAME DATE, TIME AND PLACE.

E. The trustee need only be joined as a party in legal actions pertaining to a breach of the trustee's obligation under this chapter or under the deed of trust. Any order of the court entered against the beneficiary is binding upon the trustee with respect to any actions ~~which~~ THAT the trustee is authorized to take by the trust deed or by this chapter. If the trustee is joined as a party in any other action, the trustee is entitled to be immediately dismissed and to recover costs and reasonable attorney fees from the person joining the trustee.

Sec. 5. Section 33-808, Arizona Revised Statutes, is amended to read:

33-808. Notice of trustee's sale

A. The trustee shall give written notice of the time and place of sale legally describing the trust property to be sold by each of the following methods:

1. Recording a notice in the office of the recorder of each county where the trust property is situated.

2. Giving notice as provided in section 33-809 to the extent applicable.

3. Posting a COPY OF THE notice OF SALE, at least twenty days before the date of sale in some conspicuous place on the trust property to be sold, if posting can be accomplished without a breach of the peace. If access to the trust property is denied because a common entrance to the property is restricted by a limited access gate or similar impediment, the property shall be posted by posting notice at that gate or impediment. Notice shall also be posted at one of the places provided for posting public notices at any building that serves as a location of the superior court in the county where the trust property is to be sold. Posting is deemed completed on the date the ~~first notice~~ TRUST PROPERTY is posted. THE POSTING OF NOTICE AT THE SUPERIOR COURT LOCATION IS DEEMED A MINISTERIAL ACT.

4. Publication of THE NOTICE OF sale ~~notice~~ in a newspaper of general circulation in each county in which THE trust property to be sold is situated. THE NOTICE OF sale ~~notice~~ shall be published at least once a week for four consecutive weeks. The last date of publication shall not be less than ten days prior to the date of sale. Publication is deemed completed on the date of the first ~~publication~~ of THE FOUR PUBLICATIONS OF THE notice OF SALE pursuant to this paragraph.

B. The sale shall be held at the time and place designated in the notice of sale on a day other than a Saturday or legal holiday between 9:00 a.m. and 5:00 p.m. MOUNTAIN STANDARD TIME at a specified place on the trust 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 trustee, in any county in which part of the trust property to be sold is situated.

C. The notice of sale shall contain:

1. The date, time and place of the sale. THE DATE, TIME AND PLACE SHALL BE SET PURSUANT TO SECTION 33-807, SUBSECTION D. ~~This~~ THE date shall be ~~at least ninety days~~ NO SOONER THAN THE NINETY-FIRST DAY after the date that the notice of sale was recorded.

2. The street address, if any, or identifiable location as well as the legal description of the trust property.

3. The county assessor's tax parcel number for the trust property or the tax parcel number of a larger parcel of which the trust property is a part.

4. The original principal balance as shown on the deed of trust. If the amount is not shown on the deed of trust, it shall be listed as "unspecified".

5. The names and addresses, as of the date the notice of sale is recorded, of the beneficiary and the trustee, the name and address of the original trustor as stated in the deed of trust, the signature of the trustee and the basis for the trustee's qualification pursuant to section 33-803, subsection A, INCLUDING AN EXPRESS STATEMENT OF THE PARAGRAPH UNDER SUBSECTION A ON WHICH THE QUALIFICATION IS BASED. The address of the beneficiary shall not be in care of the trustee ~~or trustee's agent~~.

6. The telephone number of the trustee.

D. The notice of sale shall be sufficient if made in substantially the following form:

Notice of Trustee's Sale

The following legally described trust property will be sold, pursuant to the power of sale under that certain trust deed recorded in docket or book _____ at page _____ records of _____ county, Arizona, at public auction to the highest bidder at (specific place of sale as permitted by law) _____, in _____ county, in or near _____, Arizona, on _____, ____, at _____ o'clock ___m. of said day:

(street address, if any, or identifiable location of trust property)

(legal description of trust property)

Tax parcel number _____

Original principal balance $_____

Name and address of beneficiary _____

_____

_____

Name and address of original trustor _____

_____

_____

Name, ~~and~~ address AND TELEPHONE NUMBER of trustee _____

_____

_____

Signature of trustee _____

Manner of trustee qualification _____

NAME OF TRUSTEE'S REGULATOR _____

Dated this _____ day of _____, ____.

(Acknowledgement)

E. Any error or omission in the information required by subsection C or D of this section, other than an error in the legal description of the trust property or an error in the date, time or place of sale, shall not invalidate a trustee's sale. Any error in the legal description of the trust

property shall not invalidate a trustee's sale if considered as a whole the information provided is sufficient to identify the trust property being sold. IF THERE IS AN ERROR OR OMISSION IN THE LEGAL DESCRIPTION SO THAT THE TRUST PROPERTY CANNOT BE IDENTIFIED, OR IF THERE IS AN ERROR IN THE DATE, TIME OR PLACE OF SALE, THE TRUSTEE SHALL RECORD A CANCELLATION OF NOTICE OF SALE. The trustee or any person furnishing information to the trustee shall not be subject to liability for any error or omission in the information required by subsection C of this section except for the wilful and intentional failure to provide such information. This subsection does not apply to claims made by an insured under any policy of title insurance.

F. THE NOTICE OF TRUSTEE SALE MAY NOT BE RERECORDED FOR ANY REASON. THIS SUBSECTION DOES NOT PROHIBIT THE RECORDING OF A NEW OR SUBSEQUENT NOTICE OF SALE REGARDING THE SAME PROPERTY.

Sec. 6. Section 33-809, Arizona Revised Statutes, is amended to read:

33-809. <u>Request for copies of notice of sale; mailing by trustee; disclosure of information regarding trustee sale</u>

A. A person desiring a copy of a notice of sale under a trust deed, at any time subsequent to the recording of the trust deed and prior to the recording of a notice of sale pursuant thereto, shall record in the office of the county recorder in any county in which part of the trust property is situated a duly acknowledged request for a copy of any such notice of sale. The request shall set forth the name and address of the person or persons requesting a copy of such notice and shall identify the trust deed by setting forth the county, docket or book and page of the recording data thereof and by stating the names of the original parties to such deed, the date the deed was recorded and the legal description of the entire trust property and shall be in substantially the following form:

Request for Notice

Request is hereby made that a copy of any notice of sale under the trust deed recorded in docket or book _____ at page _____, records of _____ county, Arizona, _____, ____,

(legal description of trust property)

Executed by _____ as trustor, in which _____ is named as beneficiary and _____ as trustee, be mailed to _____ at _____.

Dated this _____ day of _____, ____.

_____

Signature

(Acknowledgement)

B. Not later than thirty days after recording the notice of sale, the trustee ~~or beneficiary~~ shall mail by certified or registered mail, with postage prepaid, a copy of the NOTICE OF sale ~~notice which~~ THAT reflects the

recording date together with any notice required to be given by subsection C of this section, addressed as follows:

1. To each person whose name and address are set forth in a request for notice, which has been recorded prior to the recording of the notice of sale, directed to the address designated in such request.

2. To each person who, at the time of recording of the notice of sale, appears on the records of the county recorder in the county in which any part of the trust property is situated to have an interest in any of the trust property. The copy of the notice sent pursuant to this paragraph shall be addressed to the person whose interest appears of record at the address set forth in the document. If no address for the person is set forth in the document, the copy of the notice may be addressed in care of the person to whom the recorded document evidencing such interest was directed to be mailed at the time of its recording or to any other address of the person known or ascertained by the trustee. If the interest ~~which~~ THAT appears on the records of the county recorder is a deed of trust, a copy of the notice only needs to be mailed to the beneficiary under the deed of trust. If any person having an interest of record or the trustor, or any person who has recorded a request for notice, desires to change the address to which notice shall be mailed, the change shall be accomplished by a request as provided under this section.

C. The trustee ~~or beneficiary~~, within five business days after the recordation of a notice of sale, shall mail by certified or registered mail, with postage prepaid, a copy of ~~any~~ THE notice of sale to each of the persons who were parties to the trust deed except the trustee. The copy of the notice mailed to the parties need not show the recording date of the notice. The notice sent pursuant to this subsection shall be addressed to the mailing address specified in the trust deed. In addition, notice to each party shall contain a statement that a breach or nonperformance of the trust deed or the contract or contracts secured by the trust deed, or both, has occurred, and setting forth the nature of such breach or nonperformance and of the beneficiary's election to sell or cause to be sold the trust property under the trust deed and the additional notice shall be signed by the beneficiary or the beneficiary's agent. A copy of the additional notice shall also be sent with the notice provided for in subsection B, paragraph 2 of this section to all persons whose interest in the trust property is subordinate in priority to that of the deed of trust along with a written statement that the interest may be subject to being terminated by the trustee's sale. The written statement may be contained in the statement of breach or nonperformance.

D. No request for a copy of a notice recorded pursuant to this section, nor any statement or allegation in any request, nor any record of request, shall affect the title to the trust property or be deemed notice to any person that a person requesting a copy of notice of sale has or claims any interest in, or claim upon, the trust property.

E. At any time that the trust deed is subject to reinstatement pursuant to section 33-813, but not sooner than thirty days after recordation of the notice of trustee's sale, the trustee shall upon receipt of a written request, provide, if actually known to the trustee, the following information relating to the trustee's sale and the trust property:

1. The unpaid principal balance of the note or other obligation which is secured by the deed of trust.

2. The name and address of record of the owner of the trust property as of the date of recordation of the notice of trustee's sale.

3. A list of the liens and encumbrances upon the trust property as of the date of recordation of the notice of trustee's sale, excluding those matters set forth in section 33-438, subsection A.

If the trustee elects to charge a fee for providing the information requested, the fee shall not exceed ~~one-twentieth~~ FIVE PER CENT of the amount the trustee may charge pursuant to section 33-813, subsection B, paragraph 4, except that the trustee shall not CHARGE A FEE THAT IS MORE THAN ONE HUNDRED DOLLARS OR be required to accept a fee THAT IS less than ~~twenty~~ THIRTY dollars but may accept a lesser fee at the trustee's discretion. The trustee, or any other person furnishing information pursuant to this subsection to the trustee, shall not be subject to liability for any error or omission in providing the information requested, except for the wilful and intentional failure to provide information in the trustee's actual possession.

F. Beginning at 9:00 a.m. and continuing until 5:00 p.m. MOUNTAIN STANDARD TIME on the last business day preceding the day of sale and beginning at 9:00 a.m. MOUNTAIN STANDARD TIME and continuing until the time of sale on the day of the sale, the trustee shall ~~provide to any person who requests it~~ MAKE AVAILABLE the actual bid or A GOOD FAITH ESTIMATE OF THE credit bid the beneficiary is entitled to make at the sale. If the ~~trustee is unable to provide the credit bid~~ ACTUAL BID OR GOOD FAITH ESTIMATE IS NOT AVAILABLE during the prescribed time period, the trustee shall postpone the sale until the trustee is able to comply with this subsection.

G. In providing information pursuant to subsections E and F of this section, the trustee ~~may~~, without obligation or liability for the accuracy or completeness of the information, MAY respond to oral requests, respond orally or in writing or provide additional information not required by such subsections. With respect to property ~~which~~ THAT is the subject of a trustee's sale, the beneficiary of such deed of trust or the holder of any prior lien may, but shall not be required to, provide information concerning such deed of trust or any prior lien ~~which~~ THAT is not required by subsection E or F of this section and may charge a reasonable fee for providing the information. The providing of such information by any beneficiary or holder of a prior lien shall be without obligation or liability for the accuracy or completeness of the information.

Sec. 7. Section 33-810, Arizona Revised Statutes, is amended to read:

33-810. Sale by public auction; postponement of sale

A. On the date and at the time and place designated in the notice of sale, the trustee shall offer to sell the trust property at public auction for cash to the highest bidder. THE TRUSTEE MAY SCHEDULE MORE THAN ONE SALE FOR THE SAME DATE, TIME AND PLACE. The attorney or agent for the trustee may conduct the sale and act at such sale as the auctioneer for the trustee. Any person, including the trustee or beneficiary, may bid at the sale. Only the beneficiary may make a credit bid in lieu of cash at sale. The trustee shall require every bidder except the beneficiary to provide a one thousand dollar deposit in cash or in any other form that is satisfactory to the trustee as a condition of entering a bid. The trustee shall not refuse cash as a form of payment of the bidder's deposit. THE TRUSTEE OR AUCTIONEER MAY CONTROL THE MEANS AND MANNER OF THE AUCTION. 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. To determine the highest price bid, the trustor or beneficiary present at the sale may recommend the manner in which the known lots, parcels or divisions of the trust property DESCRIBED IN THE NOTICE OF SALE be sold. The trustee shall conditionally sell the trust property under each recommendation, and, in addition, shall conditionally sell the trust property as a whole. The trustee shall determine which conditional sale or sales result in the highest total price bid for all of the trust property. The trustee shall return deposits to all but the bidder or bidders whose bid or bids result in the highest bid price. The sale shall be completed on payment by the purchaser of the price bid in a form satisfactory to the trustee. The subsequent execution, delivery and recordation of the trustee's deed as prescribed by section 33-811 are ministerial acts. If the trustee's deed is recorded in the county in which the trust property is located within fifteen business days after the date of the sale, the trustee's sale is deemed perfected at the appointed date and time of the trustee's sale.

B. The person conducting the sale may~~, for any cause deemed in the interest of the beneficiary or trustor, or both,~~ 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 ninety calendar days of the date of the declaration. AFTER A SALE HAS BEEN POSTPONED OR CONTINUED, THE TRUSTEE, 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 CANCELLED AND PROVIDING THIS INFORMATION SHALL BE WITHOUT OBLIGATION OR LIABILITY FOR THE ACCURACY OR COMPLETENESS OF THE INFORMATION. No other notice of the postponed, continued or relocated sale is required except as provided in subsection C of this section.

C. A sale shall not be complete if the sale as held is contrary to or in violation of any federal statute in effect because of an unknown or undisclosed bankruptcy. A sale so held shall be deemed to be continued to a date, time and place announced by the trustee at the sale and shall comply with subsection B of this section or, if not announced, shall be continued to the same place and at the same time twenty-eight days later, unless the twenty-eighth day falls on a Saturday or legal holiday, in which event it shall be continued to the first business day thereafter. In the event a sale is continued because of an unknown or undisclosed bankruptcy, the trustee shall notify by registered or certified mail, with postage prepaid, all bidders who provide their names, addresses and telephone numbers in writing to the party conducting the sale of the continuation of the sale.

D. 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.

Sec. 8. Section 33-811, Arizona Revised Statutes, is amended to read:

33-811. Payment of bid; trustee's deed

A. The highest bidder at the sale, other than the beneficiary to the extent of the credit bid, shall pay the price bid by no later than 5:00 p.m. MOUNTAIN STANDARD TIME of the following day, other than a Saturday or legal holiday. If the highest bidder fails to pay the amount bid for the property struck off to the bidder at the sale, the trustee, in the trustee's sole discretion, shall either continue the sale to reopen bidding or immediately offer the trust property to the second highest bidder who may purchase the trust property at that bidder's bid price. The deposit of the highest bidder who fails to pay the amount bid shall be forfeited and shall be treated as additional sale proceeds to be applied in accordance with section 33-812, subsection A. If the second highest bidder does not pay that bidder's bid price by 5:00 p.m. MOUNTAIN STANDARD TIME of the next day excluding Saturdays and legal holidays after the property has been offered to that bidder by the trustee, the trustee shall either continue the sale to reopen bidding or offer the trust property to each of the prior bidders on successive days excluding Saturdays and legal holidays in order of their highest bid, until a bid price is paid, or if there is no other bidder, the sale shall be deemed to be continued to a time and place designated by the trustee, or if not designated, the sale shall be continued to the same place and at the same time twenty-eight days after the last scheduled sale date. If the twenty-eighth day is a Saturday or legal holiday, the sale shall be continued to the next business day. If the sale is continued, the trustee shall provide notice of the continuation of the sale by registered or certified mail, with postage prepaid, to all bidders who provide their names, addresses and telephone numbers in writing to the party conducting the sale. In addition to the forfeit of deposit, a highest bidder who fails to pay the amount bid by that bidder is liable to any person who suffers loss or expenses as a result, including attorney fees. In any subsequent sale of

trust property, the trustee may ~~reject~~ REFUSE TO ACCEPT any bid of that person. In any sale that is continued pursuant to this subsection, the trustee shall reject the bid from any previous bidder who elected not to pay that bidder's bid price.

B. The price bid shall be paid at the office of the trustee or the trustee's agent, or any other reasonable place designated by the trustee. The payment of the bid price may be made at a later time if agreed upon in writing by the trustee. The trustee shall execute and deliver the trustee's deed to the purchaser within seven business days after receipt of payment by the trustee or the trustee's agent made in a form that is satisfactory to the trustee. THE RECORDING OF THE TRUSTEE'S DEED UPON SALE MAY ALSO CONSTITUTE DELIVERY OF THE DEED TO THE PURCHASER. THE TRUSTEE IS NOT LIABLE FOR ANY DAMAGES RESULTING FROM THE FAILURE TO RECORD THE TRUSTEE'S DEED UPON SALE AFTER PHYSICAL DELIVERY OF THE DEED TO THE PURCHASER. The trustee's deed shall raise the presumption of compliance with the requirements of the deed of trust and this chapter relating to the exercise of the power of sale and the sale of the trust property, including recording, mailing, publishing and posting of notice of sale and the conduct of the sale. A trustee's deed shall constitute conclusive evidence of the meeting of those requirements in favor of purchasers or encumbrancers for value and without actual notice. Knowledge of the trustee shall not be imputed to the beneficiary.

C. The trustor, its successors or assigns, and all persons to whom the trustee mails a notice of a sale under a trust deed pursuant to section 33-809 shall waive all defenses and objections to the sale not raised in an action that results in the issuance of a court order granting relief pursuant to rule 65, Arizona rules of civil procedure, entered before 5:00 p.m. MOUNTAIN STANDARD TIME on the last BUSINESS day ~~other than Saturday, Sunday or other legal holiday~~ before the scheduled date of the sale. A copy of the order, the application for the order and the complaint shall be delivered to the trustee within twenty-four hours after entering the order.

D. A sale is not complete if the sale violates subsection C of this section because of an undisclosed order entered by the court within the time provided for in subsection C of this section. A sale held in violation of subsection C of this section shall be continued to a date, time and place announced by the trustee at the sale and shall comply with section 33-810, subsection B. If not announced, the sale shall be continued to the same place and at the same time twenty-eight days later. If the twenty-eighth day falls on a Saturday~~, Sunday~~ or other legal holiday, the sale shall be continued to the next business day. If the sale is continued because of an unknown or undisclosed order as provided in this subsection, the trustee shall notify by registered or certified mail, with postage prepaid, all bidders who provide names, addresses and telephone numbers in writing to the party conducting the sale of the continuation of the sale.

E. The trustee's deed shall operate to convey to the purchaser the title, interest and claim of the trustee, the trustor, the beneficiary, their respective successors in interest and all persons claiming the trust property sold by or through them, including all interest or claim in the trust property acquired subsequent to the recording of the deed of trust and prior to delivery of the trustee's deed. That conveyance shall be absolute without right of redemption and clear of all liens, claims or interests that have a priority subordinate to the deed of trust and shall be subject to all liens, claims or interests that have a priority senior to the deed of trust.

Sec. 9. Section 33-812, Arizona Revised Statutes, is amended to read:

33-812. Disposition of proceeds of sale

A. The trustee shall apply the proceeds of the trustee's sale in the following order of priority:

1. To the costs and expenses of exercising the power of sale and the sale, including the payment of the trustee's fees and reasonable ~~attorney's~~ ATTORNEY fees actually incurred.

2. To the payment of the contract or contracts secured by the trust deed.

3. To the payment of all other obligations provided in or secured by the trust deed and actually paid by the beneficiary before the trustee's sale.

4. To the junior lienholders or encumbrancers in order of their priority as they existed at the time of the sale. After payment in full to all junior lienholders and encumbrancers payment shall be made to the trustor, except that if the trustor has sold or transferred the property to another owner before the trustee's sale, payment shall be made to the person who is the owner of record at the time of the trustee's sale.

B. ~~The trustee may,~~ In the trustee's discretion~~,~~ AND instead of any one or more of the applications specified in subsection A of this section, THE TRUSTEE MAY elect to deposit the balance of the proceeds with the county treasurer in the county in which the sale took place pending an order of the superior court in the county. On deposit of the balance of the monies and after complying with subsection C of this section, the trustee shall be discharged from all responsibility for acts performed in good faith according to this chapter. The county treasurer shall reject any deposit that does not comply with subsection C of this section.

C. If the trustee elects to deposit the balance of the sale proceeds as prescribed by subsection B of this section, the trustee as plaintiff shall commence a civil action in the superior court in the county in which the sale occurred. The action shall name the applicable county treasurer as the defendant, BUT THE COUNTY TREASURER HAS NO OBLIGATION TO RESPOND TO THE COMPLAINT OR APPEAR IN THE ACTION. The trustee shall mail by certified or registered mail, with postage prepaid, a conformed copy of the complaint that displays the filing stamp of the court clerk to THE COUNTY TREASURER AND all persons, other than the beneficiary, who are entitled to notice pursuant to

section 33-809 and to any other person known by the trustee to have an interest of record in the property at the time of the sale. The trustee shall incorporate in or attach to the complaint:

1. A copy of any one of the following:

(a) The trustee sale guarantee.

(b) The title search used by the trustee in connection with the trustee's sale of the subject property.

(c) A detailed description of the liens and encumbrances used by the trustee in connection with the trustee's sale of the property.

2. A copy of the list of the persons and each of the addresses to which the complaint will be mailed.

3. A detailed description of any disbursements made by the trustee pursuant to this section.

The trustee may withhold from the proceeds of the sale a reasonable trustee's fee~~, a~~ AND reasonable ~~attorney's fee~~ ATTORNEY FEES actually incurred and the costs of filing the complaint, depositing the proceeds and mailing the notices.

D. Upon filing the complaint, the trustee as plaintiff is discharged without prejudice from the proceedings.

E. Any person with a recorded or other legal interest in the property at the time of the sale may apply for the release of the proceeds by filing an application for distribution in the civil action that was filed by the trustee pursuant to subsection C of this section. The applicant shall mail postage prepaid by any form of mail that requires a signed and returned receipt a copy of the application to all persons at each of the addresses named on the list of persons that is incorporated in or attached to the complaint. On return of the signed receipt or the undelivered or unclaimed original envelope, the applicant shall file with the court an affidavit that states that the application was mailed to the person and that the application was either:

1. Received, as evidenced by the receipt. The applicant shall attach to the affidavit a copy of the receipt.

2. Not received, as evidenced by the original returned envelope. The applicant shall attach to the affidavit the original unopened and undelivered or unclaimed returned envelope.

F. Any person who receives the application or who claims a right to the proceeds may file a response to the application within thirty days of the mailing of the application. The person filing a response shall mail a copy of the response to each applicant. Within ten calendar days from the date the response is mailed, an applicant may file with the clerk and mail to each respondent a reply to the response. On expiration of the time for filing a reply, an applicant shall provide the court with postage prepaid business envelopes that are addressed to all persons who are entitled to receive copies of the complaint pursuant to subsection C of this section.

G. The court shall issue an order to the county treasurer to release the proceeds deposited with the county treasurer to the party entitled to receive them after applying the priorities prescribed by subsection A of this section. On notice to all persons who have received a copy of the complaint or who have filed a responsive pleading, the court may, and if there are competing claims to the proceeds, the court shall, hold a hearing to determine entitlement to the proceeds. If the court finds that a person other than an applicant or respondent has a superior right to receive the proceeds, the court shall not issue an order on the proceeds until one hundred eighty days from the date the complaint was filed. At any time before the expiration of the one hundred eighty day period, an applicant or respondent may move for a hearing to determine whether the claimed superior right is valid or enforceable and whether the claim is entitled to receive priority over the claim of the applicant or respondent. The motion shall set forth the specific facts and evidence that support the applicant's or respondent's position and shall be mailed to all persons who have received a copy of the complaint or filed a responsive pleading. If a response is not filed within the one hundred eighty day period by the person found by the court to have a superior right to receive the proceeds, the court shall enter an order in favor of any applicant or respondent entitled to the proceeds. On release of the proceeds, the county treasurer may assess and deduct from the proceeds a reasonable fee not to exceed one hundred dollars for the treasurer's costs associated with the civil action.

H. Within ninety days after completion of the sale, the trustee shall apply the proceeds of the sale pursuant to subsection A of this section or shall deposit the proceeds with the treasurer pursuant to subsection B of this section. IF THE TRUSTEE FAILS TO COMPLY WITH THIS SUBSECTION, THE TRUSTEE FORFEITS ANY ENTITLEMENT TO THE FEES AND COSTS PRESCRIBED IN SUBSECTION C OF THIS SECTION AND SHALL PAY INTEREST AT THE RATE PROVIDED FOR JUDGMENTS PURSUANT TO SECTION 44-1201 FROM THE DATE OF COMPLETION OF THE SALE UNTIL THE TRUSTEE COMPLIES WITH THIS SUBSECTION. ANY PERSON WITH A RECORDED OR OTHER LEGAL INTEREST IN THE PROPERTY AT THE TIME OF THE SALE MAY COMMENCE A CIVIL ACTION AGAINST THE TRUSTEE FOR THE TRUSTEE'S FAILURE TO COMPLY WITH THIS SUBSECTION. THE COURT MAY AWARD THE PREVAILING PARTY ITS REASONABLE ATTORNEY FEES INCURRED IN THAT CIVIL ACTION.

Sec. 10. Section 33-813, Arizona Revised Statutes, is amended to read:

33-813. <u>Default in performance of contract secured; reinstatement; cancellation of recorded notice of sale</u>

A. If, prior to the maturity date fixed by the contract or contracts, all or a portion of a principal sum or interest of the contract or contracts secured by a trust deed becomes due or is declared due by reason of a breach or default in the performance of the contract or contracts or of the trust deed, the trustor or the trustor's successor in interest, any person having a subordinate lien or encumbrance of record thereon or any beneficiary under

a subordinate trust deed ~~may~~, before 5:00 p.m. MOUNTAIN STANDARD TIME on the last day other than a Saturday or legal holiday before the date of sale or the filing of an action to foreclose the trust deed, MAY reinstate by paying to the beneficiary, the trustee or the trustee's agent in a form acceptable to the beneficiary or the trustee the entire amount then due under the terms of the contract or contracts or trust deed, other than the portion of the principal as would not then be due had no default occurred, by curing all other defaults and by paying the amounts due under subsection B of this section.

B. The beneficiary shall notify the trustee in writing of the performance and the name of the person who performed the conditions. The proceedings shall be cancelled and the contract or contracts and trust deed shall be deemed reinstated and in force as if no breach or default had occurred upon performance of those of the following which may be applicable:

1. Payment of the entire amount then due.

2. Payment of costs and expenses incurred in enforcing the terms of such contract or trust deed. THESE COSTS AND EXPENSES MAY INCLUDE THE FOLLOWING:

(a) REASONABLE COSTS FOR MAILING AND PHOTOCOPYING.

(b) ACTUAL EXPENSES INCURRED FOR RECORDING, PUBLICATION, POSTING OF NOTICE OF SALE, AUCTIONEER'S FEE, POSTPONEMENT FEES AND TITLE COSTS.

(c) OTHER REASONABLE COSTS AND EXPENSES.

3. Payment of the recording fee for a cancellation of notice of sale.

4. Payment of the trustee's fees, in an amount not to exceed six hundred dollars or one-half of one per cent of the entire unpaid principal sum secured, whichever is greater.

5. Payment of expenses and reasonable attorney fees that are not otherwise provided for in this section and that are incurred in protecting and preserving the beneficiary's interest in the trust property.

C. ~~Upon~~ ON request~~, the trustee shall provide to the trustor,~~ FROM THE TRUSTOR or any person entitled to notice pursuant to section 33-809, subsection B, at any time that the trust deed is subject to reinstatement, THE TRUSTEE SHALL PROVIDE a good faith estimate of the sums ~~which~~ THAT appear necessary to reinstate the trust deed.

D. ON WRITTEN REQUEST FROM THE TRUSTOR OR ANY PERSON ENTITLED TO NOTICE PURSUANT TO SECTION 33-809, SUBSECTION B THAT IS DELIVERED TO THE TRUSTEE AFTER THE RECORDING OF THE NOTICE OF TRUSTEE'S SALE, THE TRUSTEE SHALL INFORM THE PERSON OF THE EXACT AMOUNT NECESSARY TO REINSTATE THE TRUST DEED, separately specifying costs, fees~~, accrued interest, unpaid principal balance~~ and any other amounts ~~which~~ THAT are required to be paid as a condition to reinstatement of the trust deed. THE TRUSTEE SHALL PROVIDE THAT INFORMATION WITHIN FIVE BUSINESS DAYS AFTER RECEIPT OF THE WRITTEN REQUEST. IF THE WRITTEN REQUEST IS RECEIVED BY THE TRUSTEE DURING THE FIVE BUSINESS DAYS BEFORE THE DAY OF THE SALE, THE TRUSTEE SHALL PROVIDE THE INFORMATION TO THE PERSON AS SOON AS PRACTICABLE. THIS SUBSECTION DOES NOT REQUIRE THE

EXTENSION OF THE PERIOD FOR REINSTATEMENT OF THE TRUST DEED PRESCRIBED IN SUBSECTION A OF THIS SECTION.

~~D.~~ E. If the trust deed is reinstated as provided in subsection B of this section, the trustee shall have a cancellation of the notice of sale recorded in the same county recorder's office where the notice of sale was recorded. A trustee who, for thirty days after reinstatement, fails to have proper notice of the cancellation of the notice of sale recorded is liable to the person who performed the conditions resulting in reinstatement for all actual damages resulting from such failure.

~~E.~~ F. If the trust deed is paid in full or if the sale is not held or is not properly postponed pursuant to this chapter, the trustee shall record a cancellation of the notice of sale. The cancellation of the notice of sale shall be recorded in the office of the county recorder in which the notice of sale was recorded.

~~F.~~ G. An acknowledged recorded cancellation of a recorded notice of sale under a trust deed shall be sufficient if it is in substantially the following form:

Cancellation of Notice of Sale

The undersigned hereby cancels the notice of sale recorded _____, ____, on trust property legally described as:

(legal description of trust property)

which notice of sale refers to a trust deed executed by _____ as trustor, in which _____ is named as beneficiary and _____ as trustee, and recorded _____, _____, in docket or book _____, at page _____, records of _____ county, Arizona.

Dated this _____ day of _____, ____.

_____

Signature of trustee

(Acknowledgement)

Sec. 11. Applicability

This act applies only to trustee's sales for which a notice of sale is recorded pursuant to section 33-807, subsection D, Arizona Revised Statutes, on or after the effective date of this act.

APPROVED BY THE GOVERNOR MAY 4, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 4, 2004.