Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

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Forty-ninth Legislature
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2010

CHAPTER 324

HOUSE BILL 2618

AN ACT

AMENDING SECTIONS 33-707 AND 33-750, ARIZONA REVISED STATUTES; RELATING TO MORTGAGES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 33-707, Arizona Revised Statutes, is amended to read:

33-707. Acknowledgment of satisfaction; recording

A. If a mortgagee, trustee or person entitled to payment receives full satisfaction of a mortgage or deed of trust, he shall acknowledge satisfaction of the mortgage or deed of trust by delivering to the person making satisfaction or by recording a sufficient release or satisfaction of mortgage or deed of release and reconveyance of the deed of trust, which release, satisfaction of mortgage or deed of release and reconveyance shall contain the docket and page number or recording number of the mortgage or deed of trust. IF A MORTGAGEE, TRUSTEE OR PERSON ENTITLED TO PAYMENT RECEIVES AN AMOUNT LESS THAN FULL SATISFACTION OF A MORTGAGE OR DEED OF TRUST, BUT HAS AGREED IN WRITING TO RELEASE THE MORTGAGE OR DEED OF TRUST, THE MORTGAGEE, TRUSTEE OR PERSON SHALL ACKNOWLEDGE RELEASE OF THE MORTGAGE OR DEED OF TRUST BY DELIVERING TO THE PERSON MAKING PAYMENT OF THE AGREED AMOUNT THAT IS LESS THAN FULL SATISFACTION OR BY RECORDING A SUFFICIENT RELEASE OF THE MORTGAGE OR RELEASE AND RECONVEYANCE OF THE DEED OF TRUST, WHICH RELEASE OR RELEASE AND RECONVEYANCE SHALL CONTAIN THE DOCKET AND PAGE NUMBER OR RECORDING NUMBER OF THE MORTGAGE OR DEED OF TRUST. It shall not be necessary for the trustee to join in the acknowledgment or satisfaction, or in the release, satisfaction of mortgage or deed of release and reconveyance. The recorded release or satisfaction of mortgage or deed of release and reconveyance constitutes conclusive evidence of full or partial satisfaction and release of the mortgage or deed of trust in favor of purchasers and encumbrancers for value and without actual notice.

B. When a mortgage or deed of trust is satisfied by a release or satisfaction of mortgage or deed of release and reconveyance, except where the record of such deed of trust or mortgage has been destroyed or reduced to microfilm, the recorder shall record the release or satisfaction of the deed of trust or mortgage showing the book and page or recording number where the deed of trust or mortgage is recorded.

C. If the record of such mortgage or deed of trust has been destroyed and the record thereof reduced to microfilm, it shall be sufficient evidence of satisfaction of any such mortgage or deed of trust for the release or satisfaction of mortgage or deed of release and reconveyance to be recorded and indexed as such. The instrument shall sufficiently identify the mortgage or deed of trust by parties and by book and page or recording number of the official records. Such instrument shall be treated as a release or satisfaction of mortgage or deed of release and reconveyance and recorded.

D. If the note secured by a mortgage or deed of trust has been lost or destroyed, the assignee, mortgagee or beneficiary shall, before acknowledging satisfaction, make an affidavit that he is the lawful owner of the note and that it has been paid, but cannot be produced for the reason that it has been lost or destroyed, and the affidavit shall be recorded. If the record of

such mortgage or deed of trust has been destroyed and the record thereof reduced to microfilm, such affidavit shall be recorded and indexed as releases, satisfactions of mortgage and deeds of release and reconveyance are recorded and indexed and shall have the same force and effect as a release or satisfaction of a mortgage or deed of release and reconveyance as provided in subsection A of this section.

E. If a full release or satisfaction of mortgage or deed of release and reconveyance of deed of trust that, according to its terms, recites that it secures an obligation having a stated indebtedness not greater than ~~five hundred thousand~~ ONE MILLION dollars exclusive of interest, or a partial release or satisfaction of mortgage or partial deed of release and reconveyance of deed of trust that, according to its terms, recites that the payment required for the partial satisfaction or release does not exceed ~~five hundred thousand~~ ONE MILLION dollars exclusive of interest, OR A RELEASE OF MORTGAGE OR DEED OF RELEASE AND RECONVEYANCE OF DEED OF TRUST BY A MORTGAGEE, TRUSTEE OR PERSON WHO HAS AGREED IN WRITING TO RELEASE THE MORTGAGE OR DEED OF TRUST IN EXCHANGE FOR RECEIPT OF AN AMOUNT LESS THAN FULL SATISFACTION OF THE MORTGAGE OR DEED OF TRUST AND THAT, ACCORDING TO ITS TERMS, RECITES THAT IT SECURES AN OBLIGATION HAVING A STATED INDEBTEDNESS NOT GREATER THAN ONE MILLION DOLLARS EXCLUSIVE OF INTEREST, has not been executed and recorded pursuant to subsection A or C of this section within sixty days of full or partial satisfaction of the obligation secured by such mortgage or deed of trust, OR WITHIN SIXTY DAYS OF THE RECEIPT BY THE MORTGAGEE, TRUSTEE OR OTHER PERSON OF AN AMOUNT LESS THAN FULL SATISFACTION IF AGREED IN WRITING, a title insurer as defined in section 20-1562 may prepare, execute and record a full or partial release or satisfaction of mortgage or deed of full or partial release and reconveyance of deed of trust. No earlier than sixty days after full or partial satisfaction and at least thirty days prior to the issuance and recording of any such release or satisfaction of mortgage or deed of release and reconveyance pursuant to this subsection, the title insurer shall mail by certified mail with postage prepaid, return receipt requested, to the mortgagee of record or to the trustee and beneficiary of record and their respective successors in interest of record at their last known address shown of record and to any persons who according to the records of the title insurer received payment of the obligation at the address shown in such records, a notice of its intention to release the mortgage or deed of trust accompanied by a copy of the release or satisfaction of mortgage or deed of release and reconveyance to be recorded which shall set forth:

1. The name of the beneficiary or mortgagee or any successors in interest of record of such mortgagee or beneficiary and, if known, the name of any servicing agent.

2. The name of the original mortgagor or trustor.

3. The name of the current record owner of the property and if the release or satisfaction of mortgage or deed of release and reconveyance is a partial release, the name of the current record owner of the parcel described

in the partial release or satisfaction of mortgage or deed of partial release and reconveyance of deed of trust.

4. The recording reference to the deed of trust or mortgage.

5. The date and amount of payment, if known.

6. A statement that the title insurer has actual knowledge that the obligation secured by the mortgage or deed of trust has been paid in full, or if the release or satisfaction of mortgage or deed of release and reconveyance of deed of trust is a partial release, a statement that the title insurer has actual knowledge that the partial payment required for the release of the parcel described in the partial release or satisfaction has been paid OR, IF THE RELEASE OF MORTGAGE OR DEED OR RELEASE AND RECONVEYANCE OF DEED OF TRUST RESULTS FROM A MORTGAGEE'S, TRUSTEE'S OF OTHER PERSON'S WRITTEN AGREEMENT TO ACCEPT AN AMOUNT LESS THAN FULL SATISFACTION OF THE OBLIGATION, A STATEMENT THAT THE TITLE INSURER HAS ACTUAL KNOWLEDGE THAT THE AGREED UPON PAYMENT HAS BEEN MADE IN FULL.

F. The release or satisfaction of mortgage or release and reconveyance of deed of trust may be executed by a duly appointed attorney-in-fact of the title insurer, but such delegation shall not relieve the title insurer from any liability pursuant to this section.

G. A full or partial release or satisfaction of mortgage or deed of full or partial release and reconveyance of deed of trust issued pursuant to subsection E of this section shall be entitled to recordation and, when recorded, shall constitute a full or partial release or satisfaction of mortgage or deed of release and reconveyance of deed of trust issued pursuant to subsection A or C of this section.

H. Where an obligation secured by a deed of trust or mortgage was paid in full prior to September 21, 1991, and no release or satisfaction of mortgage or deed of release and reconveyance of deed of trust was issued and recorded by November 20, 1991, a release or satisfaction of mortgage or deed of release and reconveyance of deed of trust as provided for in subsection E of this section may be prepared and recorded without the notice prescribed by subsection E of this section.

I. A release or satisfaction of mortgage or a release and reconveyance of deed of trust by a title insurer under the provisions of subsection E of this section shall not constitute a defense nor release any person from compliance with subsections A through D of this section or from liability under section 33-712.

J. In addition to any other remedy provided by law, a title insurer preparing or recording the release and satisfaction of mortgage or the release and reconveyance of deed of trust pursuant to subsection E of this section shall be liable to any party for actual damage, including attorney fees, which any person may sustain by reason of the issuance and recording of the release and satisfaction of mortgage or release and reconveyance of deed of trust.

K. The title insurer shall not record a release and satisfaction of mortgage or release and reconveyance of deed of trust if, prior to the expiration of the thirty day period specified in subsection E of this section, the title insurer receives a notice from the mortgagee, trustee, beneficiary, holder or servicing agent which states that the mortgage or deed of trust continues to secure an obligation, or in the case of a partial release or satisfaction of mortgage or deed of partial release and reconveyance of deed of trust, a notice that states that the partial payment required to release the parcel described in the partial release or satisfaction has not been paid.

L. The title insurer may charge a reasonable fee to the owner of the land or other person requesting a release and satisfaction of mortgage or release and reconveyance of deed of trust for services, including but not limited to search of title, document preparation and mailing services rendered, and may in addition collect official fees.

Sec. 2. Section 33-750, Arizona Revised Statutes, is amended to read:

33-750. Conveyance by seller; payment in full; payoff deed

A. A seller who is entitled to payment and who receives full payment of all monies due under the contract shall deliver to the person who made full payment a payoff deed that conveys to the purchaser the real property described in the contract. The deed shall be entitled "payoff deed", shall state that it is being delivered to consummate a contract and shall include the docket and page number or recording number of the contract.

B. For a contract that provides for a purchase price obligation of ~~five hundred thousand~~ ONE MILLION dollars or less exclusive of interest, if a seller does not deliver a payoff deed pursuant to subsection A within sixty days of payment in full of all monies due under the contract, a title insurer as defined in section 20-1562 may prepare, execute and record a payoff deed. At least thirty days before issuing and recording a payoff deed pursuant to this subsection, the title insurer shall mail notice of its intention to record the payoff deed and a copy of the payoff deed by certified mail with postage prepaid and return receipt requested to all of the following:

1. The seller of record and the seller's respective successors in interest of record at their last known addresses shown of record.

2. The account servicing agent if known.

3. Any person who received payment in full of the monies due under the contract according to the records of the title insurer at the address shown in the title insurer's records.

C. The payoff deed prescribed by subsection B of this section shall set forth all of the following:

1. The name of the original seller and the seller's successors in interest of record.

2. The name of the original account servicing agent and the successors in interest of the account servicing agent if of record or if known to the title insurer.

3. The name of the original purchaser and any successors in interest of record of that purchaser.

4. The date of recording and docket and page number or recording number of the contract.

5. The date and amount of payment.

6. A statement that the title insurer has actual knowledge that the monies due under the contract have been paid in full.

D. The title insurer or a duly appointed attorney-in-fact of the title insurer shall execute the payoff deed. Any delegation pursuant to this subsection does not relieve the title insurer from any liability pursuant to this section.

E. A payoff deed issued pursuant to subsection B of this section is entitled to recordation and, when recorded, constitutes a payoff deed issued pursuant to subsection A of this section.

F. In addition to any other remedy provided by law, a title insurer preparing or recording the payoff deed pursuant to subsection B of this section is liable to any party for actual damage, including attorney fees, that any person may sustain by reason of the issuance and recording of the payoff deed.

G. The title insurer shall not record a payoff deed if the title insurer receives notice before the expiration of the thirty day period prescribed by subsection B of this section from the seller or account servicing agent that the monies due under the contract have not been paid in full.

H. The title insurer may charge a reasonable fee to the owner of the land or any other person who requests a payoff deed including a fee for performing a title search, document preparation and mailing services and in addition may collect recording or other official fees.

APPROVED BY THE GOVERNOR MAY 11, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2010.