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# Arizona Foreclosure Laws

## Arizona Foreclosure is Power of Sale

### Foreclosure of mortgage by court action

Mortgages of real property and deeds of trust shall be foreclosed by action in a court.

### Right of junior lien holder upon foreclosure action by senior lien holder

Any time after an action to foreclose a mortgage or deed of trust is brought, and prior to the sale, a person having a junior lien on the property shall be entitled to an assignment of all the interest of the holder of the mortgage or deed of trust by paying him the amount secured, with interest and costs, together with the amount of any other superior liens of the same holder. The assignee may then continue the action in his name.

### Judgment of foreclosure; contents; sale of property; resale

Arizona foreclosure law states that

- **A.** When a mortgage or deed of trust is foreclosed, the court shall give judgment for the entire amount determined due, and shall direct the mortgaged property, or as much thereof as is necessary to satisfy the judgment, to be sold.
- **B.** Judgments for the foreclosure of mortgages and other liens shall provide that the plaintiff recover his debt, damages and costs, with a foreclosure of the plaintiff's lien on the property subject to the lien, and, except in judgments against executors, administrators and guardians, that a special execution issue to the sheriff or any constable of the county where the property is located, directing him to seize and sell the property as under execution, in satisfaction of the judgment. If the property cannot be found, or if the proceeds of the sale are insufficient to satisfy the judgment, then if so ordered by the court the sheriff shall take the money or any balance thereof remaining unpaid out of any other property of the defendant. Any sale of real property to satisfy a judgment shall be a credit on the judgment in the amount of either the fair market value of the real property or the sale price of the real property at sheriff's sale, whichever is greater.
- **C.** If the debt for which the lien is held is not all due, as soon as enough of the property is sold to pay the amount due, with costs, the sale shall cease, and afterward as often as more becomes due for principal and interest, the court may, on motion, order more property sold. If the property cannot be sold in portions without injury to the parties, the whole may be ordered sold in the first instance and the entire debt and costs paid, allowing a rebate of interest where proper.

## Notice of trustee's sale

Arizona foreclosure law states that

- **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 notice, 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 is posted.
  - **4.** Publication of sale notice in a newspaper of general circulation in each county in which trust property to be sold is situated. 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 notice 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. 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. This date shall be at least ninety days 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. The address of the beneficiary shall not be in care of the trustee or trustee's agent.
- **6.** The telephone number of the trustee.

### **Sale by public auction; postponement of sale**

Arizona foreclosure law states that

- **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 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. 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 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. 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.  
Redemption of property by payment to officer directed under foreclosure judgment to sell the property. If payment is made to the officer directed to sell mortgaged property under a foreclosure judgment, before the foreclosure sale takes place, the officer shall make a certificate of payment and acknowledge it, and the certificate shall be recorded in the office in which the mortgage or deed of trust is recorded.

## **Payment of bid; trustee's deed**

Arizona foreclosure law states that

- **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. 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. If the second highest bidder does not pay that bidder's bid price by 5:00 p.m. 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 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 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. on the last 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.

## **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 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 lien holders or encumbrancers in order of their priority as they existed at the time of the sale. After payment in full to all junior lien holders 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.