

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

SENATE BILL 1271

AN ACT

AMENDING SECTION 33-814, ARIZONA REVISED STATUTES; RELATING TO DEEDS OF TRUST.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 33-814, Arizona Revised Statutes, is amended to
3 read:

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

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

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

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

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

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

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

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

22 G. If trust property of two and one-half acres or less which is
23 limited to and utilized for either a single one-family or a single two-family
24 dwelling **BY THE TRUSTOR UNDER THE DEED OF TRUST FOR AT LEAST SIX CONSECUTIVE**
25 **MONTHS AND FOR WHICH A CERTIFICATE OF OCCUPANCY HAS BEEN ISSUED** is sold
26 pursuant to the trustee's power of sale, no action may be maintained to
27 recover any difference between the amount obtained by sale and the amount of
28 the indebtedness and any interest, costs and expenses. **THE TRUSTOR IS**
29 **RESPONSIBLE FOR DEMONSTRATING THAT THE TRUST PROPERTY WAS USED BY THE TRUSTOR**
30 **AS A ONE-FAMILY OR A SINGLE TWO-FAMILY DWELLING FOR AT LEAST SIX CONSECUTIVE**
31 **MONTHS.**