

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

CHAPTER 50
HOUSE BILL 2033

AN ACT

AMENDING SECTIONS 11-1133 AND 33-811, ARIZONA REVISED STATUTES; RELATING TO TRUSTEES' SALES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 11-1133, Arizona Revised Statutes, is amended to
3 read:

4 11-1133. Affidavit of legal value

5 A. Each deed evidencing a transfer of title and any contract relating
6 to the sale of real property shall have appended at the time of recording an
7 affidavit of the seller and the buyer to the transaction, or the agent of
8 either the seller or buyer, or both, in a form approved by the department of
9 revenue, who shall declare and jointly certify the following information:

- 10 1. The name and address of the buyer and seller.
- 11 2. The name and address where a tax statement may be sent.
- 12 3. The complete legal description of the property.
- 13 4. The situs address, if any, of the property.
- 14 5. The date of sale.
- 15 6. The total consideration paid for the property, the amount of cash
16 down payment and whether or not the type of financing included cash, a new
17 third-party loan, a new loan from the seller, an assumption of an existing
18 loan or an exchange or trade of property.
- 19 7. Whether or not the estimated market value of personal property
20 received by the buyer equals five per cent or more of the total
21 consideration.
- 22 8. The assessor's parcel number or numbers assigned to the real
23 property by the county assessor or, in the case of a new parcel or parcels
24 not yet assigned a parcel number, the parcel number or numbers of the
25 previous parcel or parcels from which the new parcel or parcels are created.
- 26 9. The conditions of the transaction, including the relationship, if
27 any, of the parties.
- 28 10. The use and description of the property and, in the case of a
29 residential dwelling, whether the property is to be owner-occupied or rented.
- 30 11. The name and address of the person to contact regarding information
31 contained on the affidavit.

32 B. IF A BENEFICIARY OF A FORECLOSED TRUSTEE'S DEED RECEIVES PAYMENT
33 BASED ON PRIVATE MORTGAGE INSURANCE COVERING THE SALE THAT IS IN ADDITION TO
34 THE PROCEEDS OF THE SALE, THE BENEFICIARY SHALL SUBMIT, IN A FORM APPROVED BY
35 THE DEPARTMENT OF REVENUE, TO THE COUNTY RECORDER IN THE COUNTY WHERE THE
36 PROPERTY IS LOCATED WITHIN FOUR MONTHS AFTER THE DATE OF THE TRUSTEE'S SALE A
37 BENEFICIARY'S DECLARATION OF ADDITIONAL FUNDS RECEIVED THAT CONTAINS THE
38 FOLLOWING:

- 39 1. THE COUNTY ASSESSOR'S PARCEL NUMBER OR NUMBERS ASSIGNED AS OF THE
40 DATE OF THE TRUSTEE'S SALE.
- 41 2. THE NAME AND ADDRESS OF THE BENEFICIARY SUBMITTING THE DECLARATION.
- 42 3. THE DATE OF THE TRUSTEE'S SALE.
- 43 4. THE HIGHEST BID AMOUNT RECEIVED BY THE TRUSTEE AT THE TRUSTEE'S
44 SALE.
- 45 5. THE RECORDING NUMBER OF THE TRUSTEE'S DEED UPON SALE.

1 6. THE AMOUNT OF ANY ADDITIONAL COMPENSATION RECEIVED BY THE
2 BENEFICIARY WITHIN SIX MONTHS AFTER THE DATE OF THE TRUSTEE'S SALE.

3 ~~B.~~ C. The county recorder shall refuse to record any deed and any
4 contract relating to the sale of real property if a complete affidavit of
5 legal value is not appended unless the instrument bears a notation indicating
6 an exemption pursuant to section 11-1134.

7 ~~C.~~ D. An affidavit is complete for purposes of this section if all of
8 the required information is stated on the affidavit form or is indicated on
9 the form as "not applicable".

10 Sec. 2. Section 33-811, Arizona Revised Statutes, is amended to read:

11 33-811. Payment of bid; trustee's deed

12 A. The highest bidder at the sale, other than the beneficiary to the
13 extent of the credit bid, shall pay the price bid by no later than 5:00 p.m.
14 mountain standard time of the following day, other than a Saturday or legal
15 holiday. If the highest bidder fails to pay the amount bid for the property
16 struck off to the bidder at the sale, the trustee, in the trustee's sole
17 discretion, shall either continue the sale to reopen bidding or immediately
18 offer the trust property to the second highest bidder who may purchase the
19 trust property at that bidder's bid price. The deposit of the highest bidder
20 who fails to pay the amount bid shall be forfeited and shall be treated as
21 additional sale proceeds to be applied in accordance with section 33-812,
22 subsection A. If the second highest bidder does not pay that bidder's bid
23 price by 5:00 p.m. mountain standard time of the next day excluding Saturdays
24 and legal holidays after the property has been offered to that bidder by the
25 trustee, the trustee shall either continue the sale to reopen bidding or
26 offer the trust property to each of the prior bidders on successive days
27 excluding Saturdays and legal holidays in order of their highest bid, until a
28 bid price is paid, or if there is no other bidder, the sale shall be deemed
29 to be continued to a time and place designated by the trustee, or if not
30 designated, the sale shall be continued to the same place and at the same
31 time twenty-eight days after the last scheduled sale date. If the
32 twenty-eighth day is a Saturday or legal holiday, the sale shall be continued
33 to the next business day. If the sale is continued, the trustee shall
34 provide notice of the continuation of the sale by registered or certified
35 mail, with postage prepaid, to all bidders who provide their names, addresses
36 and telephone numbers in writing to the party conducting the sale. In
37 addition to the forfeit of deposit, a highest bidder who fails to pay the
38 amount bid by that bidder is liable to any person who suffers loss or
39 expenses as a result, including attorney fees. In any subsequent sale of
40 trust property, the trustee may refuse to accept any bid of that person. In
41 any sale that is continued pursuant to this subsection, the trustee shall
42 reject the bid from any previous bidder who elected not to pay that bidder's
43 bid price.

44 B. The price bid shall be paid at the office of the trustee or the
45 trustee's agent, or any other reasonable place designated by the trustee.
46 The payment of the bid price may be made at a later time if agreed upon in

1 writing by the trustee. ~~The trustee shall execute and deliver the trustee's~~
2 ~~deed to the purchaser within seven business days after receipt of payment by~~
3 ~~the trustee or the trustee's agent made in a form that is satisfactory to the~~
4 ~~trustee~~ WITHIN SEVEN BUSINESS DAYS AFTER RECEIPT OF PAYMENT BY THE TRUSTEE OR
5 THE TRUSTEE'S AGENT, MADE IN A FORM THAT IS SATISFACTORY TO THE TRUSTEE, THE
6 TRUSTEE SHALL EXECUTE AND SUBMIT THE TRUSTEE'S DEED TO THE COUNTY RECORDER
7 FOR RECORDING AND SHALL, UPON REQUEST, PROVIDE AN UNRECORDED COPY OF THE
8 SIGNED TRUSTEE'S DEED TO THE PURCHASER. The recording of the trustee's deed
9 upon sale ~~may also~~ SHALL constitute delivery of the deed to the purchaser.
10 The trustee is not liable for any damages resulting from the failure to
11 record the trustee's deed upon sale after physical delivery of the deed to
12 the purchaser. The trustee's deed shall raise the presumption of compliance
13 with the requirements of the deed of trust and this chapter relating to the
14 exercise of the power of sale and the sale of the trust property, including
15 recording, mailing, publishing and posting of notice of sale and the conduct
16 of the sale. A trustee's deed shall constitute conclusive evidence of the
17 meeting of those requirements in favor of purchasers or encumbrancers for
18 value and without actual notice. Knowledge of the trustee shall not be
19 imputed to the beneficiary.

20 C. The trustor, its successors or assigns, and all persons to whom the
21 trustee mails a notice of a sale under a trust deed pursuant to section
22 33-809 shall waive all defenses and objections to the sale not raised in an
23 action that results in the issuance of a court order granting relief pursuant
24 to rule 65, Arizona rules of civil procedure, entered before 5:00 p.m.
25 mountain standard time on the last business day before the scheduled date of
26 the sale. A copy of the order, the application for the order and the
27 complaint shall be delivered to the trustee within twenty-four hours after
28 entering the order.

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

42 E. The trustee's deed shall operate to convey to the purchaser the
43 title, interest and claim of the trustee, the trustor, the beneficiary, their
44 respective successors in interest and all persons claiming the trust property
45 sold by or through them, including all interest or claim in the trust
46 property acquired subsequent to the recording of the deed of trust and prior

1 to delivery of the trustee's deed. That conveyance shall be absolute without
2 right of redemption and clear of all liens, claims or interests that have a
3 priority subordinate to the deed of trust and shall be subject to all liens,
4 claims or interests that have a priority senior to the deed of trust.

5 F. ON COMPLETION OF THE SALE AND CONVEYANCE OF THE TRUSTEE'S DEED TO
6 THE PURCHASER, THE TRUSTEE SHALL NOTIFY THE BENEFICIARY OF THE BENEFICIARY'S
7 OBLIGATIONS AS PRESCRIBED BY SECTION 11-1133. THE TRUSTEE SHALL PROVIDE
8 NOTICE TO THE BENEFICIARY ON OR BEFORE THE DATE OF THE TRUSTEE'S SALE.

APPROVED BY THE GOVERNOR APRIL 5, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 5, 2013.