

State of Arizona  
House of Representatives  
Fiftieth Legislature  
Second Regular Session  
2012

# HOUSE BILL 2323

AN ACT

AMENDING TITLE 33, CHAPTER 4, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-420.01; AMENDING SECTION 33-715, ARIZONA REVISED STATUTES; RELATING TO REAL PROPERTY SECURITY INTEREST PAYOFFS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 33, chapter 4, article 2, Arizona Revised Statutes,  
3 is amended by adding section 33-420.01, to read:

4 33-420.01. Suspension of line of credit; payoff demand  
5 statement; definitions

6 A. A SECURED LENDER UNDER A REVOLVING LINE OF CREDIT AGAINST REAL  
7 PROPERTY SHALL SUSPEND THE REVOLVING LINE OF CREDIT FOR A MINIMUM OF  
8 FORTY-FIVE DAYS ON RECEIPT OF A REQUEST FOR A PAYOFF DEMAND STATEMENT AS  
9 DEFINED IN SECTION 33-715 FROM AN ESCROW AGENT WHO IS LICENSED PURSUANT TO  
10 TITLE 6, CHAPTER 7.

11 B. THIS SECTION SHALL NOT BE CONSTRUED TO VALIDATE, INVALIDATE OR  
12 OTHERWISE AFFECT THE FORECLOSURE OF A MORTGAGE, THE EXERCISE OF A TRUSTEE'S  
13 POWER OF SALE OR THE EXERCISE OF A SELLER'S RIGHT TO A FORFEITURE UNDER AN  
14 AGREEMENT FOR SALE OF REAL PROPERTY.

15 C. FOR THE PURPOSES OF THIS SECTION:

16 1. "REVOLVING LINE OF CREDIT" MEANS AN OPEN END REVOLVING LOAN THAT IS  
17 ESTABLISHED PURSUANT TO A WRITTEN AGREEMENT BETWEEN A BORROWER AND A LENDER  
18 IN WHICH THE LENDER AGREES TO LEND THE BORROWER MONEY ON A CONTINUING BASIS  
19 FOR AS LONG AS THE OUTSTANDING PRINCIPAL AMOUNT OWED BY THE BORROWER DOES NOT  
20 EXCEED A SPECIFIED AMOUNT.

21 2. "SECURED LENDER" MEANS ANY ONE OF THE FOLLOWING:

22 (a) A MORTGAGEE ON A MORTGAGE.

23 (b) A BENEFICIARY ON A DEED OF TRUST.

24 (c) A PERSON WHO HOLDS OR RETAINS LEGAL TITLE TO REAL PROPERTY AS  
25 SECURITY FOR FINANCING THE PURCHASE OF THE REAL PROPERTY UNDER AN AGREEMENT  
26 FOR SALE OF REAL PROPERTY.

27 (d) A PERSON WHO HOLDS OR RETAINS A SECURITY INTEREST IN REAL PROPERTY  
28 TO SECURE THE REPAYMENT OF A LOAN.

29 (e) THE AUTHORIZED AGENT OF THOSE LISTED IN THIS PARAGRAPH.

30 3. "SUSPEND" MEANS TO FORBID THE BORROWER FROM INCREASING OR INCURRING  
31 ANY ADDITIONAL DEBT ON THE REVOLVING LINE OF CREDIT.

32 Sec. 2. Section 33-715, Arizona Revised Statutes, is amended to read:

33 33-715. Payoff demands; definitions

34 A. On the written demand of an entitled person or that person's  
35 authorized agent, a ~~beneficiary or the beneficiary's authorized agent~~ SECURED  
36 LENDER shall prepare and deliver a payoff demand statement to the person who  
37 has requested it within fourteen days after receipt of the demand. ANY  
38 WRITTEN DEMAND FOR A PAYOFF DEMAND STATEMENT PRESCRIBED IN SECTION 33-420.01  
39 SHALL INCLUDE A STATEMENT THAT THE ENTITLED PERSON IS ACTING AS AN AGENT OF  
40 THE BORROWER AND THAT THE LINE OF CREDIT IS TO BE SUSPENDED.

41 B. The payoff demand statement shall provide the amounts required as  
42 of the date of preparation, ~~and shall~~ include the information reasonably  
43 necessary to calculate the payoff amount on a per diem basis for ~~the time~~  
44 ~~that the per diem amount remains unchanged as provided in the note but not to~~

1 ~~exceed~~ A PERIOD OF AT LEAST thirty days AND INCLUDE THE FOLLOWING  
2 INFORMATION:

3 1. THE NAME AND ADDRESS OF THE PERSON WHO OR DEPARTMENT THAT IS TO  
4 RECEIVE THE PAYOFF PAYMENT.

5 2. THE NAME AND ADDRESS OF THE PERSON WHO OR DEPARTMENT THAT IS TO  
6 RECEIVE THE REQUEST TO CLOSE THE DEBT, LINE OF CREDIT OR OTHER OBLIGATION TO  
7 PAY.

8 3. THE NAME AND ADDRESS OF THE PERSON WHO OR DEPARTMENT THAT IS TO  
9 RECEIVE THE REQUEST FOR RELEASE OF LIEN.

10 C. The entitled person or that person's authorized agent may rely on a  
11 payoff demand statement for the purpose of establishing the amount necessary  
12 to pay the obligation in full and obtain a release of the mortgage or deed of  
13 trust that secures the obligation through and including the time set forth in  
14 the payoff demand statement ~~as provided in subsection I, paragraph 5~~. THE  
15 ENTITLED PERSON MUST SUBMIT THE PAYOFF FUNDS, INSTRUCTIONS TO CLOSE THE  
16 REVOLVING LINE OF CREDIT AND REQUEST FOR RELEASE OF LIEN TO THE SECURED  
17 LENDER AS DIRECTED BY THE SECURED LENDER ON THE PAYOFF DEMAND STATEMENT  
18 PREPARED IN CONJUNCTION WITH SUBSECTION B OF THIS SECTION.

19 D. The entitled person or that person's authorized agent may rely on  
20 an amended payoff demand statement if the ~~beneficiary~~ SECURED LENDER delivers  
21 that amended payoff demand statement to the entitled person or that person's  
22 authorized agent before the earlier of:

23 1. The transfer of title to the mortgaged or trust property or any  
24 portion of the property.

25 2. The recordation of a mortgage or deed of trust describing the  
26 mortgaged or trust property or any portion of the property.

27 E. For notes created or renegotiated after ~~the effective date of this~~  
28 ~~section~~ AUGUST 22, 2002, any sums that were due the ~~beneficiary~~ SECURED  
29 LENDER and that were not included in the payoff demand statement or in any  
30 amended statement constitute an unsecured obligation of the obligor pursuant  
31 to the terms of the note and are recoverable by the ~~beneficiary~~ SECURED  
32 LENDER pursuant to the terms of the note and as otherwise provided by law.

33 F. A ~~beneficiary~~ SECURED LENDER who willfully fails to prepare and  
34 deliver a payoff demand statement for fourteen or more days after receipt of  
35 a written demand is liable to the entitled person for all damages sustained  
36 for failure to deliver the statement. The ~~beneficiary~~ SECURED LENDER is also  
37 liable to the entitled person for five hundred dollars whether or not actual  
38 damages are sustained. Each failure of the ~~beneficiary~~ SECURED LENDER to  
39 prepare and deliver the payoff demand statement when required to do so  
40 pursuant to this section constitutes a separate cause of action. A judgment  
41 that awards an entitled person a forfeiture or damages, or both, for any  
42 failure to prepare and deliver a payoff demand statement bars recovery of any  
43 other damages or forfeiture for any other failure to prepare and deliver a  
44 statement with respect to the same obligation, if the other demand for the  
45 statement was made within six months before or after the demand was made that

1 resulted in the award. For THE purposes of this subsection, "willfully"  
2 means a failure to comply with this section without just cause or excuse.

3 G. If the ~~beneficiary~~ SECURED LENDER has more than one branch, office  
4 or other place of business, the payoff statement demand shall be made to the  
5 branch or office address provided in the payment billing notice or payment  
6 book. Unless the payoff demand statement provides otherwise, the statement  
7 is deemed to apply only to the unpaid balance of the single obligation that  
8 is named in the demand and that is secured by the mortgage or deed of trust  
9 that is payable at the address that is provided in the payment billing notice  
10 or payment book.

11 H. The demand for and preparation and delivery of a payoff demand  
12 statement pursuant to this section does not change any date or time period  
13 that is prescribed in the note or that is otherwise provided by law.

14 I. The ~~beneficiary of a mortgagee~~ SECURED LENDER may assess a fee of  
15 no more than thirty dollars for furnishing each payoff demand statement.  
16 This is conclusively presumed to be reasonable.

17 J. For the purposes of this section, unless the context otherwise  
18 requires:

19 ~~1. "Beneficiary" means a mortgagee or beneficiary of a mortgage or~~  
20 ~~deed of trust or an assignee of a mortgage or beneficiary.~~

21 ~~2.~~ 1. "Deliver" or "delivery" means depositing or causing to be  
22 deposited into the United States mail an envelope with postage prepaid that  
23 contains a copy of the documents to be delivered and that is addressed to the  
24 person whose name and address are provided in the payoff demand. Delivery  
25 includes transmitting those documents by telefacsimile machine to the person.  
26 Delivery includes transmitting those documents electronically pursuant to  
27 title 44, chapter 26 if the payoff demand specifically requests and  
28 authorizes that the documents be transmitted in electronic form.

29 ~~3.~~ 2. "Entitled person" means the trustor or mortgagor of the  
30 mortgaged or trust property or any part of that property, any successor in  
31 interest to the trustor or mortgagor, any person with a lien or encumbrance  
32 of record on the mortgaged or trust property and an escrow agent that is  
33 licensed pursuant to title 6.

34 ~~4.~~ 3. "Payoff demand" means a written demand for a payoff demand  
35 statement made by an entitled person or that person's authorized agent.

36 ~~5.~~ 4. "Payoff demand statement" means a written statement that is  
37 prepared in response to a written demand made by an entitled person or that  
38 person's authorized agent that sets forth the amounts required by the  
39 ~~beneficiary~~ SECURED LENDER to fully satisfy all of the obligations secured by  
40 the loan that is the subject of the demand.

41 5. "SECURED LENDER" HAS THE SAME MEANING PRESCRIBED IN SECTION  
42 33-420.01.