

Arizona (AZ) Foreclosure Laws

When you develop a definite plan of action with well-timed, well-informed steps, you can stop the foreclosure process and save your home. We have outlined the foreclosure process for the state of Arizona.

Judicial foreclosure available:yes

Non-judicial foreclosure available:yes

Trustee

A trustee may conduct the foreclosure sale out of court under a power of sale clause if the borrower defaults on the loan. Alternatively, a trustee (or the lender) may sue to foreclose. A trustee may also sue the borrower for physical abuse to the property, waste, or other impairment of the security, but only so long as the borrower was in possession or control of the property when the damage was done. The trustee cannot conduct a foreclosure sale under the power of sale clause until a lawsuit to foreclose is dismissed. Under Arizona law, a bank, trust company, Savings and Loan or other institutional lender can be a trustee. Arizona licensed attorneys, real estate brokers, and insurance agents can also be trustees. The lender for any reason may appoint a substitute trustee if they record a Notice of Substitution of Trustee and mail a copy to the borrower. A trustee may resign by recording a Notice of Resignation of Trustee.

Preliminary Notices

Contents

The trustee will give written notice of the time and place of sale including legal description of the property, by each of several methods.

Recording

The trustee must record a notice of the sale in the county recorders office in the county where the property is located.

Advertising

Once a week for four consecutive weeks, the notice must appear in a newspaper in the county where the property is located. The last notice must be published not less than ten days prior to the date of the sale.

Posting

(1) If it can be done without a breach of the peace, the trustee can post the notice at least 20 days prior to the date of the sale, in some conspicuous place on the property to be sold. (2) He or she can post the notice at the courthouse or at a specified place at the place of business of the trustee in the county in which the property is located.

Mailing

The trustee or lender must mail, within five days after recording the notice of sale, by certified mail, a copy of any notice of sale to each of the persons who are parties to the trust deed except the trustee. It must be addressed to the mailing address specified in the trust deed. The notice must set for the nature of the borrowers breach or nonperformance under the trust deed. In addition, any person will be entitled to receive a copy of the trustees foreclosure notice if such a person records a statutory Request for Notice form.

Special Procedure

For a fee up to \$20, the trustee can provide information on the unpaid balance, the name and address of the owner, the date the trustees notice was recorded and a list of encumbrances. A trustee must honor a written request, and may honor an oral request.

Sale Procedures

Time and Place

The time and place of the foreclosure must be designated in the notice of sale.

Manner of Sale

The trustee or the trustees agent must conduct the sale. The sale is for cash to the highest bidder, except that the lender can make a credit bid which means to cancel out some part (or all) of the money the borrower owed the lender on the lien, instead of paying cash. A successful high bidder must pay the bid price by 5p.m. of the day after the bid, other than a Saturday or legal holiday. Every bid is an irrevocable offer until the sale is completed, which happens when the bidder pays the bid price to the trustees satisfaction. If the high bidder fails to make the payment by 5:00 p.m., the day after being notified of the option to buy, then the trustee may postpone the sale.

Postponement

The trustee may postpone the sale to another time, or another place, by giving notice of the new date, time and place by public declaration at the last place and time the property was offered for sale. No other notice is required. A trustee may also, by written agreement, extend the time for a buyer to come up with the payment.

Post-Sale Matters

The sale proceeds will go to the payment of the obligations secured by the trust deed that was foreclosed, then to junior lien holders in order of their priority. The successful bidder gets a trustee's deed, which constitutes conclusive evidence that the trustee conducted the foreclosure sale property.

Deficiency

An Arizona deed of trust permits the real estate that is the collateral for a loan to be sold at a foreclosure sale by a trustee. The proceeds of the sale will be paid to the lender, or the lender can take title to the property and cancel out the debt in exchange for the deed, called a credit bid. Under a new Arizona law, a lender may not bring a subsequent deficiency suit against a person who lost a property that is 2.5 acres or less at a foreclosure, provided the property was a single one-family or a single two-family dwelling. This is so even if the high bid at foreclosure was less than the balance due on the loan. In foreclosures against other types of property, a deficiency is limited to the difference between the balance owed and the fair market value of the property, and then only if the suit is brought within 90 days of the power of sale foreclosure.

Redemption

Arizona does not recognize a subsequent right of redemption on foreclosure sales.