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1996

FILED

**Jane Dee Hull
Secretary of State**

CHAPTER 289

SENATE BILL 1300

AN ACT

AMENDING SECTIONS 11-480, 12-1191 AND 33-431, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-705; AMENDING SECTIONS 33-961 AND 33-963, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 7, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 33-967 AND 33-968; AMENDING SECTIONS 33-998 AND 42-1614, ARIZONA REVISED STATUTES; PROVIDING FOR THE DELAYED REPEAL OF SECTION 11-480, ARIZONA REVISED STATUTES; RELATING TO REAL PROPERTY TRANSACTIONS.

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

2 Section 1. Section 11-480, Arizona Revised Statutes, is amended to
3 read:

4 11-480. Requirements for form of instruments

5 A. Only an instrument which upon presentation to a county recorder for
6 recordation fails to meet any of the following conditions may be rejected for
7 recordation at the time of presentation for recordation:

8 1. Each instrument shall have a caption briefly stating the nature of
9 the instrument, such as warranty deed, release of mortgage, notice of bulk
10 sale and like captions. The county recorder shall have no obligation to
11 index any instrument under any subject index category maintained by the
12 county recorder unless that category is included in the caption to the
13 instrument.

14 2. Each instrument shall be an original or a copy of the original and
15 shall be sufficiently legible for the recorder to make certified copies from
16 the photographic or micrographic record.

17 3. Each instrument shall have original signatures or carbon copies of
3 such signatures, except when otherwise provided by law.

1 4. Each instrument dated and executed on or after January 1, 1991,
2 shall be no larger than eight and one-half inches in width and no longer than
3 fourteen inches and shall have a print size no smaller than ten point type.

4 B. Each instrument dated and executed on or after January 1, 1991,
5 shall have at least a one-half inch margin across the top, bottom and the
6 left and right sides from the top to the bottom. Any markings, entries or
7 text which are within the one-half inch margin shall be deemed not to impart
8 the notice otherwise imparted by recordation unless such markings, entries
9 or text appear in the reproduction produced under the direction and control
10 of the county recorder. Failure to meet the one-half inch margin requirement
11 of this subsection may affect notice imparted by the document but shall not
12 constitute grounds for rejection for recordation pursuant to subsection A.

13 C. The first page shall have a top margin of at least two inches which
14 shall be reserved for recording information. The left three and one-half
15 inches of the top margin of the first page or sheet may be used by the public
16 to show the name of the person requesting recording and the name and address
17 to which the document is to be returned following recording. IF THE FIRST
18 PAGE OF THE INSTRUMENT DOES NOT COMPLY WITH THE TOP MARGIN REQUIREMENTS, A
19 SEPARATE SHEET THAT MEETS THE REQUIREMENT AND THAT REFLECTS THE TITLE OF THE
20 DOCUMENT AS REQUIRED BY SUBSECTION A, PARAGRAPH 1 SHALL BE ATTACHED TO THE
21 FRONT OF THE DOCUMENT BY THE PARTY REQUESTING RECORDING.

2 D. Any instrument presented to a county recorder for recordation which
23 modifies in any way the provisions of a previously recorded document must
24 state the date of recordation and the docket and page of the document being
25 modified.

26 E. Any instrument accepted for recordation is not subject to a later
27 claim of invalidity for failure to comply with the requirements of this
28 section.

29 Sec. 2. Section 12-1191, Arizona Revised Statutes, is amended to read:
30 12-1191. Notice of pendency of action affecting title to real
31 property; filing; constructive notice to purchaser
32 or encumbrancer; release of notice of pendency of
33 action; failure to issue release; liability

34 A. In an action affecting title to real property, the plaintiff at the
35 time of filing the complaint, or thereafter, and the defendant at the time
36 of filing his pleading when affirmative relief is claimed in such pleading,
37 or thereafter, may file in the office of the recorder of the county in which
38 the property is situated a notice of the pendency of the action or defense.
39 IN ANY ACTION TO FORECLOSE A MECHANICS' OR MATERIALMEN'S LIEN PURSUANT TO
40 TITLE 33, CHAPTER 7, ARTICLE 6, THE LIEN CLAIMANT SHALL FILE A NOTICE OF
41 PENDENCY OF ACTION AS PRESCRIBED BY SECTION 33-998 WITHIN FIVE DAYS OF FILING
42 THE ACTION OR RAISING THE DEFENSE. The notice shall contain the names of the
43 parties, the object of the action or affirmative defense, the relief demanded
44 and a description of the property affected.

1 B. The recorder shall file the notice and record and index it in the
2 names of the parties to the action, and thereafter a purchaser or
3 ~~incumbrancer~~ ENCUMBRANCER of the property affected shall be held to have
4 constructive notice of the pendency of the action and the claims therein
5 made.

6 C. If a notice of pendency of action has been recorded pursuant to
7 this section and the action is dismissed without prejudice for lack of
8 prosecution, the plaintiff or plaintiffs of the action shall, within thirty
9 days after such dismissal, issue to the defendant of the action a release of
10 the notice of pendency of action. Such release shall be in the form of a
11 recordable document. Failure to grant such release shall subject the person
12 filing the notice of action or defense to liability in the amount of one
13 thousand dollars and also to liability for actual damages.

14 Sec. 3. Section 33-431, Arizona Revised Statutes, is amended to read:

15 33-431. Grants and devises to two or more persons; estates in
16 common; community property with right of survivorship

17 A. Except as otherwise provided in this section, all grants and
18 devises of real property made to two or more persons create estates in common
19 and not in joint tenancy, except grants or devises in trust, or to executors,
20 or to husband and wife.

21 B. A grant or devise to two or more persons may, ~~however,~~ by express
22 words vest the estate in the survivor upon the death of a grantee or devisee
23 when expressly declared in the grant, transfer or devise to be a joint
24 tenancy with right of survivorship. AN ESTATE IN JOINT TENANCY WITH RIGHT
25 OF SURVIVORSHIP MAY ALSO BE CREATED BY GRANT OR TRANSFER FROM A SOLE OWNER
26 TO HIMSELF AND OTHERS, OR FROM TWO OR MORE OWNERS TO THEMSELVES OR TO ONE OR
27 MORE OF THEM AND OTHERS.

28 C. A grant or devise to a husband and wife may by express words vest
29 the estate in the surviving spouse on the death of one of the spouses when
30 expressly declared in the grant, transfer or devise to be an estate in
31 community property with right of survivorship. An estate in community
32 property with right of survivorship may also be created by grant or transfer
33 from a husband and wife, when holding title as community property or
34 otherwise, to themselves or from either husband or wife to both husband and
35 wife.

36 D. In the case of real property owned by a husband and wife as
37 community property with right of survivorship, the right of survivorship is
38 extinguished as provided in section 14-2804 or on the recordation in the
39 office of the recorder of the county or counties where the real property is
40 located an affidavit entitled "affidavit terminating right of survivorship"
41 executed by either spouse under oath which sets forth a stated intent by the
42 spouse to terminate the survivorship right, a description of the instrument
43 by which the right of survivorship was created including the date the
44 instrument was recorded and the county recorder's book and page or instrument

1 reference number and the legal description of the real property affected by
2 the affidavit. The recordation shall not extinguish the community interest
3 of either spouse.

4 Sec. 4. Title 33, chapter 6, article 1, Arizona Revised Statutes, is
5 amended by adding section 33-705, to read:

6 33-705. Purchase money mortgage or deed of trust; priority

7 A MORTGAGE OR DEED OF TRUST THAT IS GIVEN AS SECURITY FOR A LOAN MADE
8 TO PURCHASE THE REAL PROPERTY THAT IS ENCUMBERED BY THE MORTGAGE OR DEED OF
9 TRUST HAS PRIORITY OVER ALL OTHER LIENS AND ENCUMBRANCES THAT ARE INCURRED
10 AGAINST THE PURCHASER BEFORE ACQUIRING TITLE TO THE REAL PROPERTY.

11 Sec. 5. Section 33-961, Arizona Revised Statutes, is amended to read:

12 33-961. Filing judgments for payment of money; certified copy
13 of judgment; recording copy to perfect lien against
14 real property; information statement

15 A. A copy of the judgment of a court, certified by the clerk, shall
16 be filed and recorded in the office of the county recorder in each county
17 where the judgment creditor desires the judgment to become a lien upon the
18 real property of the judgment debtor before the judgment shall become a lien
19 upon or in any manner affect or encumber the real property of the judgment
20 debtor, or any part of the real property of the judgment debtor. The
21 certified copy of the judgment shall set forth the:

- 2 1. Title of the court and the action and number of the action.
- 23 2. Date of entry of the judgment and the docket record thereof.
- 24 3. Names of the judgment debtor and judgment creditor.
- 25 4. Amount of the judgment.
- 26 5. Attorney of record for the judgment creditor.

27 B. The clerk shall furnish a certified copy of any judgment filed in
28 his office upon request and payment of the fee prescribed by law.

29 C. A JUDGMENT OR DECREE OR ANY RENEWAL THAT REQUIRES PAYMENT OF MONEY
30 SHALL ALSO BE ACCOMPANIED BY AN INFORMATION STATEMENT AS PRESCRIBED BY
31 SECTION 33-967.

32 Sec. 6. Section 33-963, Arizona Revised Statutes, is amended to read:
33 33-963. Procedure for recording judgment of federal court; lien

34 An abstract of a judgment given by any court of record of the United
35 States within this state shall be recorded in the manner provided in section
36 33-961 AND IN COMPLIANCE WITH SECTION 33-967, IF APPLICABLE, before the
37 judgment becomes a lien upon, or in any manner affects or encumbers, the real
38 property of the judgment debtor, or any part thereof.

39 Sec. 7. Title 33, chapter 7, article 5, Arizona Revised Statutes, is
40 amended by adding sections 33-967 and 33-968, to read:

41 33-967. Money judgment; information statement; amendment to
42 recorded judgment

43 A. IN ADDITION TO THE REQUIREMENTS PRESCRIBED BY SECTION 33-961, ANY
44 JUDGMENT OR DECREE OR ANY RENEWAL THAT REQUIRES THE PAYMENT OF MONEY AND THAT

1 IS RECORDED ON OR AFTER JANUARY 1, 1997, SHALL BE ATTACHED TO A SEPARATE
2 INFORMATION STATEMENT OF THE JUDGMENT CREDITOR THAT CONTAINS ALL OF THE
3 FOLLOWING INFORMATION:

4 1. THE CORRECT NAME AND LAST KNOWN ADDRESS OF EACH JUDGMENT DEBTOR AND
5 THE ADDRESS AT WHICH EACH JUDGMENT DEBTOR RECEIVED THE SUMMONS BY PERSONAL
6 SERVICE OR BY MAIL.

7 2. THE NAME AND ADDRESS OF THE JUDGMENT CREDITOR.

8 3. THE AMOUNT OF THE JUDGMENT OR DECREE AS ENTERED OR AS MOST RECENTLY
9 RENEWED.

10 4. IF THE JUDGMENT DEBTOR IS A NATURAL PERSON, THE JUDGMENT DEBTOR'S
11 SOCIAL SECURITY NUMBER, DATE OF BIRTH AND DRIVER LICENSE NUMBER.

12 5. WHETHER A STAY OF ENFORCEMENT HAS BEEN ORDERED BY THE COURT AND THE
13 DATE THE STAY EXPIRES.

14 B. EXCEPT AS PROVIDED IN THIS SUBSECTION, THE SEPARATE STATEMENT SHALL
15 CONTAIN THE INFORMATION PRESCRIBED BY SUBSECTION A OF THIS SECTION IF THE
16 INFORMATION IS KNOWN TO THE JUDGMENT CREDITOR OR AVAILABLE TO THE JUDGMENT
17 CREDITOR FROM ITS RECORDS, ITS ATTORNEY'S RECORDS OR THE COURT RECORDS IN
18 THE ACTION IN WHICH THE JUDGMENT WAS ENTERED. IF ANY OF THE REQUIRED
19 INFORMATION IS NOT KNOWN, THE JUDGMENT CREDITOR SHALL SO STATE. THE JUDGMENT
20 DEBTOR'S SOCIAL SECURITY NUMBER SHALL BE INCLUDED IN THE SEPARATE STATEMENT
21 ONLY IF IT HAS BEEN PROVIDED VOLUNTARILY TO THE JUDGMENT CREDITOR BY THE
2 JUDGMENT DEBTOR.

23 C. A JUDGMENT OR DECREE OR ANY RENEWAL THAT REQUIRES THE PAYMENT OF
24 MONEY THAT IS RECORDED ON OR AFTER JANUARY 1, 1997, AND THAT IS NOT
25 ACCOMPANIED BY THE SEPARATE STATEMENT AS PRESCRIBED BY SUBSECTION A OF THIS
26 SECTION MAY BE AMENDED BY RECORDING A DOCUMENT ENTITLED "AMENDMENT TO
27 RECORDED JUDGMENT" IN COMPLIANCE WITH SUBSECTION A OF THIS SECTION. THE
28 AMENDMENT TO RECORDED JUDGMENT SHALL STATE THE DATE OF RECORDING AND THE
29 INDEXING OR DOCUMENT NUMBER OF THE OFFICIAL RECORDS OF THE COUNTY RECORDER
30 FOR THE ORIGINAL RECORDED JUDGMENT OR DECREE AND ANY RENEWALS.

31 D. A JUDGMENT OR DECREE OR ANY RENEWAL THAT REQUIRES THE PAYMENT OF
32 MONEY RECORDED ON OR AFTER JANUARY 1, 1997, HAS AS ITS PRIORITY THE DATE OF
33 COMPLIANCE WITH SUBSECTION A OF THIS SECTION.

34 E. RECORDING AN AMENDMENT TO RECORDED JUDGMENT DOES NOT AFFECT THE
35 COMPUTATION OF TIME PRESCRIBED BY SECTION 33-964.

36 33-968. Erroneously identified property owner; lien; release

37 A. IF A RECORDED MONEY JUDGMENT OR A CERTIFIED COPY OF A MONEY
38 JUDGMENT APPEARS TO CREATE A JUDGMENT LIEN ON THE REAL PROPERTY OF A PERSON
39 WHO IS NOT THE JUDGMENT DEBTOR BECAUSE THE NAME OF THE PROPERTY OWNER IS THE
40 SAME AS OR SIMILAR TO THAT OF THE JUDGMENT DEBTOR, THE ERRONEOUSLY IDENTIFIED
41 PROPERTY OWNER MAY DELIVER TO THE JUDGMENT CREDITOR A WRITTEN DEMAND FOR A
42 RECORDABLE DOCUMENT THAT RELEASES THE LIEN. THE DEMAND SHALL BE ACCOMPANIED
43 BY REASONABLE PROOF THAT THE PROPERTY OWNER IS NOT THE JUDGMENT DEBTOR AND

1 THAT THE PROPERTY IS NOT SUBJECT TO ENFORCEMENT OF THE JUDGMENT AGAINST THE
2 JUDGMENT DEBTOR.

3 B. WITHIN FIFTEEN DAYS AFTER RECEIPT OF THE PROPERTY OWNER'S DEMAND
4 AND COMPLIANCE WITH SUBSECTION A, THE JUDGMENT CREDITOR SHALL DELIVER TO THE
5 PROPERTY OWNER A RECORDABLE DOCUMENT THAT RELEASES THE LIEN ON THE PROPERTY
6 OF THAT OWNER. IF THE JUDGMENT CREDITOR IMPROPERLY FAILS TO DELIVER A
7 RECORDABLE DOCUMENT WITHIN THAT TIME, THE JUDGMENT CREDITOR IS LIABLE TO THE
8 PROPERTY OWNER FOR ALL DAMAGES INCURRED BY REASON OF THE FAILURE AND IS
9 PRESUMED LIABLE FOR AT LEAST FIVE HUNDRED DOLLARS.

10 C. IF THE JUDGMENT CREDITOR DOES NOT DELIVER A DOCUMENT AS PRESCRIBED
11 BY SUBSECTION B, THE PROPERTY OWNER MAY APPLY TO THE COURT FOR AN ORDER
12 RELEASING THE JUDGMENT LIEN. THE APPLICATION SHALL BE SERVED ON THE JUDGMENT
13 CREDITOR. ON PRESENTATION OF EVIDENCE SATISFACTORY TO THE COURT THAT THE
14 PROPERTY IS NOT SUBJECT TO THE JUDGMENT, THE COURT SHALL ORDER THE JUDGMENT
15 CREDITOR TO PREPARE AND DELIVER A RECORDABLE DOCUMENT THAT RELEASES THE LIEN
16 OR BY ORDER OF THE COURT MAY RELEASE THE JUDGMENT LIEN ON THE PROPERTY. THE
17 ORDER MAY BE RECORDED IN THE OFFICE OF THE COUNTY RECORDER IN THE COUNTY
18 WHERE THE PROPERTY IS LOCATED AND SHALL RELEASE THE JUDGMENT LIEN ON THE
19 PROPERTY.

20 D. THE COURT SHALL AWARD REASONABLE ATTORNEY FEES TO THE PREVAILING
21 PARTY IN ANY ACTION PURSUANT TO THIS SECTION

22 E. THE DAMAGES AND OTHER REMEDIES PROVIDED BY THIS SECTION ARE NOT IN
23 DEROGATION OF ANY OTHER REMEDY THAT A PERSON MAY BE ENTITLED TO BY LAW.

24 Sec. 8. Section 33-998, Arizona Revised Statutes, is amended to read:
25 33-998. Limitation of action to foreclose lien; attorney fees

26 A. A lien granted under the provisions of this article shall not
27 continue for a longer period than six months after it is recorded, unless
28 action is brought within ~~such~~ THAT period to enforce the lien AND A NOTICE
29 OF PENDENCY OF ACTION IS RECORDED PURSUANT TO SECTION 12-1191 IN THE OFFICE
30 OF THE COUNTY RECORDER IN THE COUNTY WHERE THE PROPERTY IS LOCATED. If a
31 lien claimant is made a party defendant to an action brought by another lien
32 claimant, the filing within such period of six months of an answer or
33 cross-claim asserting the lien shall be deemed the commencement of an action
34 within the meaning of this section.

35 B. In any action to enforce a lien granted under this article, the
36 court may award the successful party reasonable attorney fees.

37 Sec. 9. Section 42-1614, Arizona Revised Statutes, is amended to read:
38 42-1614. Exemptions

39 A. The affidavit and fee required by this chapter shall not apply to:

40 1. A deed which represents the payment in full or forfeiture of a
41 recorded contract for the sale of real property.

42 2. Leases or easements on real property, regardless of the length of
43 term.

1 3. A deed, patent or contract for the sale or transfer of real
2 property in which an agency or representative of the United States of
3 America, THE state of Arizona, THE counties of Arizona, THE cities or towns
4 of Arizona, or any political subdivision of the state of Arizona is the named
5 grantor, and authorized seller, or purchaser.

6 4. Quitclaim deeds to quiet title as described in section 12-1103,
7 subsection B.

8 5. A conveyance of real property executed pursuant to court order.

9 6. A deed to an unpatented mining claim.

10 7. A deed of gift.

11 B. The affidavit and fee required by this chapter shall not apply to
12 a transfer of title:

13 1. Solely in order to provide or release security for a debt or
14 obligation, including the trustee's deed pursuant to power of sale under a
15 deed of trust.

16 2. Which confirms or corrects a deed previously recorded.

17 3. Between husband and wife, or parent and child with only nominal
18 actual consideration therefor.

19 4. On sale for delinquent taxes or assessments.

20 5. On partition.

21 6. Pursuant to mergers of corporations.

22 7. By a subsidiary corporation to its parent corporation for no
23 consideration, FOR nominal consideration, or in sole consideration of the
24 cancellation or surrender of the subsidiary's stock.

25 8. From a person to a trustee or from a trustee to a trust beneficiary
26 with only nominal actual consideration therefor.

27 9. To and from an intermediary for the purpose of creating a joint
28 tenancy estate or some other form of ownership.

29 10. From a husband and wife or one of them to both husband and wife to
30 create an estate in community property with right of survivorship.

31 11. FROM TWO OR MORE PERSONS TO THEMSELVES TO CREATE AN ESTATE IN JOINT
32 TENANCY WITH RIGHT OF SURVIVORSHIP.

33 C. Any instrument describing a transaction exempted by this section
34 shall bear a notation thereof on the face of the instrument at the time of
35 recording, indicating the specific exemption claimed.

36 Sec. 10. Retroactivity

37 Section 1 of this act applies retroactively to from and after December
38 31, 1995.

39 Sec. 11. Delayed repeal

40 Section 11-480, Arizona Revised Statutes, as amended by this act, is
41 repealed from and after December 31, 2001.

~~APPROVED BY THE GOVERNOR APRIL 29, 1996~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 30, 1996~~