House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 135

HOUSE BILL 2059

AN ACT

AMENDING SECTIONS 33-812, 44-302 AND 44-307, ARIZONA REVISED STATUTES; RELATING TO ABANDONED PROPERTY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 33-812, Arizona Revised Statutes, is amended to read:

33-812. Disposition of proceeds of sale

A. The trustee shall apply the proceeds of the trustee's sale in the following order of priority:

1. To the costs and expenses of exercising the power of sale and the sale, including the payment of the trustee's fees and reasonable attorney's fees actually incurred.

2. To the payment of the contract or contracts secured by the trust deed.

3. To the payment of all other obligations provided in or secured by the trust deed and actually paid by the beneficiary before the trustee's sale.

4. To the junior lienholders or encumbrancers in order of their priority as they existed at the time of the sale. After payment in full to all junior lienholders and encumbrancers payment shall be made to the trustor, except that if the trustor has sold or transferred the property to another owner before the trustee's sale, payment shall be made to the person who is the owner of record at the time of the trustee's sale.

B. ~~The trustee may,~~ In the trustee's discretion~~,~~ AND instead of any one or more of the applications specified in subsection A of this section, THE TRUSTEE MAY elect to deposit the balance of the proceeds with the county treasurer in the county in which the sale took place pending an order of the superior court in the county. On deposit of the balance of the monies and after complying with subsection C of this section, the trustee shall be discharged from all responsibility for acts performed in good faith according to this chapter. The county treasurer shall reject any deposit that does not comply with subsection C of this section.

C. If the trustee elects to deposit the balance of the sale proceeds as prescribed by subsection B of this section, the trustee as plaintiff shall commence a civil action in the superior court in the county in which the sale occurred. The action shall name the applicable county treasurer as the defendant. The trustee shall mail by certified or registered mail, with postage prepaid, a conformed copy of the complaint that displays the filing stamp of the court clerk to all persons, other than the beneficiary, who are entitled to notice pursuant to section 33-809 and to any other person known by the trustee to have an interest of record in the property at the time of the sale. The trustee shall incorporate in or attach to the complaint:

1. A copy of any one of the following:

(a) The trustee sale guarantee.

(b) The title search used by the trustee in connection with the trustee's sale of the subject property.

(c) A detailed description of the liens and encumbrances used by the trustee in connection with the trustee's sale of the property.

2. A copy of the list of the persons and each of the addresses to which the complaint will be mailed.

3. A detailed description of any disbursements made by the trustee pursuant to this section.

The trustee may withhold from the proceeds of the sale a reasonable trustee's fee, a reasonable attorney's fee actually incurred and the costs of filing the complaint, depositing the proceeds and mailing the notices.

D. Upon filing the complaint, the trustee as plaintiff is discharged without prejudice from the proceedings.

E. Any person with a recorded or other legal interest in the property at the time of the sale may apply for the release of the proceeds by filing an application for distribution in the civil action that was filed by the trustee pursuant to subsection C of this section. The applicant shall mail postage prepaid by any form of mail that requires a signed and returned receipt a copy of the application to THE COUNTY TREASURER AND all persons at each of the addresses named on the list of persons that is incorporated in or attached to the complaint. On return of the signed receipt or the undelivered or unclaimed original envelope, the applicant shall file with the court an affidavit that states that the application was mailed to the person and that the application was either:

1. Received, as evidenced by the receipt. The applicant shall attach to the affidavit a copy of the receipt.

2. Not received, as evidenced by the original returned envelope. The applicant shall attach to the affidavit the original unopened and undelivered or unclaimed returned envelope.

F. Any person who receives the application or who claims a right to the proceeds may file a response to the application within thirty days of the mailing of the application. The person filing a response shall mail a copy of the response to each applicant. Within ten calendar days from the date the response is mailed, an applicant may file with the clerk and mail to each respondent a reply to the response. On expiration of the time for filing a reply, an applicant shall provide the court with postage prepaid business envelopes that are addressed to all persons who are entitled to receive copies of the complaint pursuant to subsection C of this section.

G. EXCEPT AS PROVIDED IN SUBSECTION J OF THIS SECTION, the court shall issue an order to the county treasurer to release the proceeds deposited with the county treasurer to the party entitled to receive them after applying the priorities prescribed by subsection A of this section. On notice to all persons who have received a copy of the complaint or who have filed a responsive pleading, the court may, and if there are competing claims to the proceeds, the court shall, hold a hearing to determine entitlement to the proceeds. If the court finds that a person other than an applicant or respondent has a superior right to receive the proceeds, the court shall not issue an order on the proceeds until one hundred eighty days from the date the complaint was filed. At any time before the expiration of the one

hundred eighty day period, an applicant or respondent may move for a hearing to determine whether the claimed superior right is valid or enforceable and whether the claim is entitled to receive priority over the claim of the applicant or respondent. The motion shall set forth the specific facts and evidence that support the applicant's or respondent's position and shall be mailed to all persons who have received a copy of the complaint or filed a responsive pleading. If a response is not filed within the one hundred eighty day period by the person found by the court to have a superior right to receive the proceeds, the court shall enter an order in favor of any applicant or respondent entitled to the proceeds. On release of the proceeds, the county treasurer may assess and deduct from the proceeds a reasonable fee not to exceed one hundred dollars for the treasurer's costs associated with the civil action.

H. Within ninety days after completion of the sale, the trustee shall apply the proceeds of the sale pursuant to subsection A of this section or shall deposit the proceeds with the treasurer pursuant to subsection B of this section.

I. EXCESS PROCEEDS DEPOSITED WITH THE COUNTY TREASURER PURSUANT TO SUBSECTION B OF THIS SECTION ARE PRESUMED ABANDONED IF THE MONIES REMAIN WITH THE TREASURER FOR AT LEAST THREE YEARS FROM THE DATE OF DEPOSIT AND THERE IS NO PENDING APPLICATION FOR DISTRIBUTION.

J. EXCESS PROCEEDS THAT ARE FIFTY DOLLARS OR LESS AND THAT ARE PRESUMED ABANDONED UNDER THIS SECTION SHALL BE TRANSFERRED TO THE COUNTY GENERAL FUND. NO FURTHER APPLICATION FOR DISTRIBUTION BY ANY APPLICANT OR CLAIM BY THE DEPARTMENT OF REVENUE MAY BE MADE ON THESE MONIES.

K. FOR ALL EXCESS PROCEEDS THAT ARE GREATER THAN FIFTY DOLLARS AND THAT ARE PRESUMED ABANDONED UNDER THIS SECTION, THE COUNTY TREASURER SHALL SUBMIT A REPORT TO THE DEPARTMENT OF REVENUE PURSUANT TO SECTION 44-307. THE COUNTY TREASURER MAY ASSESS AND DEDUCT FROM THE PROCEEDS A REASONABLE FEE OF NOT MORE THAN FIFTY DOLLARS FOR THE TREASURER'S COSTS ASSOCIATED WITH REPORTING EACH DEPOSIT.

L. THE COUNTY TREASURER SHALL BE DISCHARGED FROM ALL CLAIMS AND RESPONSIBILITY FOR ACTS PERFORMED IN GOOD FAITH PURSUANT TO THIS CHAPTER AFTER REMITTING THE PRESUMED ABANDONED EXCESS PROCEEDS TO THE DEPARTMENT OF REVENUE PURSUANT TO SECTION 44-308.

Sec. 2. Section 44-302, Arizona Revised Statutes, is amended to read:

44-302. <u>Presumptions of abandonment</u>

A. Property is presumed abandoned if it is unclaimed by the apparent owner according to the following schedule:

1. A traveler's check is presumed abandoned fifteen years after issuance.

2. A money order or similar written instrument, other than a third party bank check, is presumed abandoned seven years after issuance.

3. Any stock or other equity interest in a business association or financial organization, including a security entitlement under title 47,

chapter 8, is presumed abandoned three years after any of the following, whichever occurs first:

(a) The date of the most recent dividend, stock split or other distribution that is unclaimed by the apparent owner.

(b) The date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable.

(c) The date the holder discontinued mailings, notifications or communications to the apparent owner.

4. The principal on debt, other than a bearer bond or an original issue discount bond, of a business association or financial organization is presumed abandoned five years after the maturity date and the interest on the debt is presumed abandoned five years after the payment date.

5. A demand, savings or time deposit, including a deposit that is automatically renewable, and any interest or dividends are presumed abandoned five years after maturity or the date of the last indication by the owner of interest in the property, whichever occurs first. For the purposes of this paragraph, a deposit that is automatically renewable is deemed matured on its initial date of maturity, unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by any memorandum or other record on file with the holder.

6. Credits owed to a customer as a result of a retail business transaction are presumed abandoned five years after the obligation accrued.

7. An amount owed by an insurance company on a life or endowment insurance policy or an annuity that has matured or terminated is presumed abandoned five years after the obligation to pay arose or, in the case of a policy or annuity that is payable on proof of death, the amount is presumed abandoned two years after the insured has attained, or would have attained if the insured were living, the limiting age under the mortality table on which the reserve is based. For the purposes of this paragraph all of the following conditions apply:

(a) If a person other than the insured or annuitant is entitled to the owed amount and the person's address is not known to the company or it is not definite and certain from the records of the company who is entitled to the amount, it is presumed that the last known address of the person who is entitled to the amount is the same as the last known address of the insured or annuitant according to the company's records.

(b) Notwithstanding any law, if the company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer within four months after the death, the company shall take reasonable steps to pay the proceeds to the beneficiary.

(c) Every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this state shall request the following information:

(i) The name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class.

(ii) The address of each beneficiary.

(iii) The relationship of each beneficiary to the insured.

8. A life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the company's records is deemed matured and the proceeds are deemed due and payable and are presumed abandoned after two years if all of the following conditions apply:

(a) The insured has attained, or would have attained if the insured were living, the limiting age under the mortality table on which the reserve is based.

(b) The policy was in force at the time the insured attained or would have attained the limiting age specified in subdivision (a) of this paragraph.

(c) Neither the insured nor any other person who appears to have an interest in the policy within the last two years according to the company's records has assigned, readjusted or paid premiums on the policy or subjected the policy to a loan, corresponded in writing with the company concerning the policy or otherwise indicated an interest as evidenced by a memorandum or any other record on file with and prepared by an employee of the company.

9. Property that is distributable by a business association or financial organization in a course of dissolution is presumed abandoned one year after the property becomes distributable.

10. Property that is received by a court as proceeds of a class action and that is not distributed pursuant to the judgment is presumed abandoned one year after the distribution date.

11. Property that is held by a court, government or governmental subdivision, agency or instrumentality, except for support as defined in section 25-500 or for spousal maintenance, is presumed abandoned ~~one year~~ THREE YEARS after the property becomes distributable. Monies held for the payment of warrants by a state agency that remain unclaimed by the owner at the time of the void date printed on the face of the warrant are presumed abandoned. For purposes of this paragraph, "governmental subdivision" does not include a special taxing district defined in section 48-241.

12. Wages or other compensation for personal services is presumed abandoned one year after the compensation becomes payable.

13. Property in any individual retirement account, defined benefit plan or other account or plan that qualifies for tax deferral under the income tax laws of the United States is presumed abandoned three years after any of the following, whichever occurs first:

(a) The date of the distribution or attempted distribution of the property.

(b) The date of the required distribution as stated in the plan or trust agreement that governs the plan.

(c) If determinable by the holder, the date specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty.

14. Any amount that is payable on a check, draft or similar instrument on which a financial organization or business association is directly liable, including a cashier's check and a certified check, and that has been outstanding for more than five years after the check, draft or similar instrument was payable or after issuance if payable on demand is presumed abandoned unless within five years the owner has communicated in writing with the financial organization or business association concerning the check, draft or similar instrument or otherwise indicated an interest as evidenced by a memorandum or any other record on file and prepared by an employee of the financial organization or business association.

15. All other property is presumed abandoned five years after the owner's rights to demand the property or after the obligation to pay or distribute the property arises, whichever occurs first.

16. EXCESS PROCEEDS DEPOSITED WITH THE COUNTY TREASURER PURSUANT TO SECTION 33-812 ARE PRESUMED ABANDONED IF THE MONIES REMAIN WITH THE TREASURER FOR AT LEAST THREE YEARS FROM THE DATE OF DEPOSIT AND THERE IS NO PENDING APPLICATION FOR DISTRIBUTION.

B. At the time that an interest is presumed abandoned under subsection A OF THIS SECTION, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

C. Property is unclaimed if, for the applicable period prescribed in subsection A of this section, the apparent owner has not communicated in writing with the holder or communicated by other means reflected in a contemporaneous record that is prepared by or on behalf of the holder and that concerns the property or the account or accounts in which the property is held and has not otherwise indicated an interest in the property and if the holder has not communicated in writing with regard to the property that would otherwise be unclaimed. A communication with an owner by a person other than the holder or the holder's representative who has not identified the property in writing to the owner is not an indication of interest in the property by the owner.

D. An indication of an owner's interest in property includes:

1. The presentment of any check or other instrument of payment of any dividend or other distribution that is made with respect to any account, underlying stock or other interest in a business association or financial organization. If the distribution is made by electronic or similar means an indication of an owner's interest includes evidence that the distribution has been received.

2. Activity directed by the owner in the account in which the property is held, including a direction by the owner to increase, decrease or change the amount or type of property held in the account.

3. The making of a deposit to or withdrawal from a bank account.

4. The payment of a premium with respect to a property interest in an insurance policy. The application of an automatic premium loan provision or any other nonforfeiture provision in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or if the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

E. Property is payable or distributable notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

Sec. 3. Section 44-307, Arizona Revised Statutes, is amended to read:

44-307. Report of abandoned property

A. A holder of property that is presumed abandoned shall make a report to the department concerning the property.

B. The report shall be verified and shall contain all of the following:

1. A description of the property.

2. Except for a traveler's check or money order, the name, if known, the last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property with a value of at least fifty dollars.

3. An aggregate amount of items with a value of less than fifty dollars each.

4. For an amount of at least fifty dollars held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary.

5. For property held in a safe deposit box or any other safekeeping depository, an indication of the place where it is held and where it may be inspected by the department and any amount owing to the holder.

6. The date, if any, on which the property became payable, demandable or returnable and the date of the last transaction with the apparent owner of the property.

7. Other information that the department by rule deems necessary for the administration of this chapter.

C. If a holder of property that is presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed the holder's name while holding the property, the holder shall file with the report the holder's former names, if any, and the known names and addresses of all previous holders of the property.

D. A life insurance company that is a holder of property that is presumed abandoned shall file the report prescribed by this section before May 1, and the report shall cover the prior calendar year. Any other holder of property that is presumed abandoned shall file the report before November 1 and the report shall cover the last twelve months before July 1 of that

year. A holder may make a onetime election to annually report the property at the same time it reports its income for the purposes of income tax pursuant to title 43.

E. Prior to one hundred twenty days before the holder of property that is presumed abandoned files the report prescribed in this section, the holder shall send a written notice to the apparent owner that states that the holder is in possession of the property subject to this chapter if all of the following apply:

1. The holder has an address in the holder's records for the apparent owner and the records do not indicate that the address is inaccurate.

2. The claim of the apparent owner is not barred by any other law of this state.

3. The value of the property is at least fifty dollars.

F. Before the date for filing the report, the holder of property that is presumed abandoned may request the department to extend the time for filing the report. The department may grant the extension for good cause. On receipt of the extension, the holder may make an interim payment on the amount the holder estimates will ultimately be due and that payment terminates the accrual of additional interest on the amount paid.

G. If the laws of this state or the terms of the life insurance policy require the INSURANCE company to give notice to the insured or owner that any automatic premium loan provision or other nonforfeiture provision has been exercised and the notice given to an insured or owner whose last known address according to the company's records is in this state is undeliverable, the company shall make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.

H. State agencies that hold monies for the payment of void warrants shall report to the department in a format prescribed by the department all warrants voided in the previous month not later than the tenth day of each month.

I. A COUNTY TREASURER HOLDING EXCESS PROCEEDS THAT ARE PRESUMED ABANDONED PURSUANT TO SECTIONS 33-812 AND 44-302 SHALL FILE THE REPORT PRESCRIBED BY THIS SECTION ON OR BEFORE NOVEMBER 1. THE REPORT SHALL COVER THE PRIOR FISCAL YEAR AND INCLUDE A COPY OF ALL DOCUMENTATION FILED WITH THE COUNTY TREASURER.

Sec. 4. Initial reports; abandoned property

As prescribed in section 44-307, Arizona Revised Statutes, the initial report of excess proceeds that are presumed abandoned pursuant to sections 33-812 and 44-302, Arizona Revised Statutes, shall include excess proceeds due without any interest or penalties by November 1, 2004 and shall include all excess proceeds that would have been presumed abandoned within twenty years before July 1,2004.

Sec. 5. Retroactivity

This act is effective retroactively to from and after June 30, 2004.

APPROVED BY THE GOVERNOR APRIL 23, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 23, 2004.

Passed the House February 10, 2004,

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate April 15, 2004,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Ken Bennett
President of the Senate

Thomas B. Bilington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

19th day of April, 2004,

at 2:30 o'clock P. M.

Jennifer Ybarra
Secretary to the Governor

Approved this 23 day of

April, 2004,

at 2:00 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 23 day of April, 2004,

at 3:05 o'clock P. M.

Janice K. Brewer
Secretary of State

H.B. 2059