

Senate Engrossed

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

State of Arizona  
Senate  
Forty-ninth Legislature  
Fourth Special Session  
2009

CHAPTER 4

# **SENATE BILL 1004**

AN ACT

REPEALING SECTION 33-814, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2009, CHAPTER 68, SECTION 1; REPEALING SECTION 33-814, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2009, THIRD SPECIAL SESSION, CHAPTER 7, SECTION 17; AMENDING TITLE 33, CHAPTER 6.1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 33-814; RELATING TO DEEDS OF TRUST.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Repeal

3 A. Section 33-814, Arizona Revised Statutes, as amended by Laws 2009,  
4 chapter 68, section 1, is repealed.

5 B. Section 33-814, Arizona Revised Statutes, as amended by Laws 2009,  
6 third special session, chapter 7, section 17, is repealed.

7 Sec. 2. Title 33, chapter 6.1, article 1, Arizona Revised Statutes, is  
8 amended by adding a new section 33-814, to read:

9 33-814. Action to recover balance after sale or foreclosure on  
10 property under trust deed

11 A. EXCEPT AS PROVIDED IN SUBSECTIONS F AND G OF THIS SECTION, WITHIN  
12 NINETY DAYS AFTER THE DATE OF SALE OF TRUST PROPERTY UNDER A TRUST DEED  
13 PURSUANT TO SECTION 33-807, AN ACTION MAY BE MAINTAINED TO RECOVER A  
14 DEFICIENCY JUDGMENT AGAINST ANY PERSON DIRECTLY, INDIRECTLY OR CONTINGENTLY  
15 LIABLE ON THE CONTRACT FOR WHICH THE TRUST DEED WAS GIVEN AS SECURITY  
16 INCLUDING ANY GUARANTOR OF OR SURETY FOR THE CONTRACT AND ANY PARTNER OF A  
17 TRUSTOR OR OTHER OBLIGOR WHICH IS A PARTNERSHIP. IN ANY SUCH ACTION AGAINST  
18 SUCH A PERSON, THE DEFICIENCY JUDGMENT SHALL BE FOR AN AMOUNT EQUAL TO THE  
19 SUM OF THE TOTAL AMOUNT OWED THE BENEFICIARY AS OF THE DATE OF THE SALE, AS  
20 DETERMINED BY THE COURT LESS THE FAIR MARKET VALUE OF THE TRUST PROPERTY ON  
21 THE DATE OF THE SALE AS DETERMINED BY THE COURT OR THE SALE PRICE AT THE  
22 TRUSTEE'S SALE, WHICHEVER IS HIGHER. A WRITTEN APPLICATION FOR DETERMINATION  
23 OF THE FAIR MARKET VALUE OF THE REAL PROPERTY MAY BE FILED BY A JUDGMENT  
24 DEBTOR WITH THE COURT IN THE ACTION FOR A DEFICIENCY JUDGMENT OR IN ANY OTHER  
25 ACTION ON THE CONTRACT WHICH HAS BEEN MAINTAINED. NOTICE OF THE FILING OF AN  
26 APPLICATION AND THE HEARING SHALL BE GIVEN TO ALL PARTIES TO THE ACTION. THE  
27 FAIR MARKET VALUE SHALL BE DETERMINED BY THE COURT AT A PRIORITY HEARING UPON  
28 SUCH EVIDENCE AS THE COURT MAY ALLOW. THE COURT SHALL ISSUE AN ORDER  
29 CREDITING THE AMOUNT DUE ON THE JUDGMENT WITH THE GREATER OF THE SALES PRICE  
30 OR THE FAIR MARKET VALUE OF THE REAL PROPERTY. FOR THE PURPOSES OF THIS  
31 SUBSECTION, "FAIR MARKET VALUE" MEANS THE MOST PROBABLE PRICE, AS OF THE DATE  
32 OF THE EXECUTION SALE, IN CASH, OR IN TERMS EQUIVALENT TO CASH, OR IN OTHER  
33 PRECISELY REVEALED TERMS, AFTER DEDUCTION OF PRIOR LIENS AND ENCUMBRANCES  
34 WITH INTEREST TO THE DATE OF SALE, FOR WHICH THE REAL PROPERTY OR INTEREST  
35 THEREIN WOULD SELL AFTER REASONABLE EXPOSURE IN THE MARKET UNDER CONDITIONS  
36 REQUISITE TO FAIR SALE, WITH THE BUYER AND SELLER EACH ACTING PRUDENTLY,  
37 KNOWLEDGEABLY AND FOR SELF-INTEREST, AND ASSUMING THAT NEITHER IS UNDER  
38 DURESS. ANY DEFICIENCY JUDGMENT RECOVERED SHALL INCLUDE INTEREST ON THE  
39 AMOUNT OF THE DEFICIENCY FROM THE DATE OF THE SALE AT THE RATE PROVIDED IN  
40 THE DEED OF TRUST OR IN ANY OF THE CONTRACTS EVIDENCING THE DEBT, TOGETHER  
41 WITH ANY COSTS AND DISBURSEMENTS OF THE ACTION.

42 B. IF A TRUSTEE'S SALE IS A SALE OF LESS THAN ALL OF THE TRUST  
43 PROPERTY OR IS A SALE PURSUANT TO ONE OF TWO OR MORE TRUST DEEDS SECURING THE  
44 SAME OBLIGATION, THE NINETY DAY TIME LIMITATIONS OF SUBSECTION A OF THIS  
45 SECTION SHALL BEGIN ON EITHER THE DATE OF THE TRUSTEE'S SALE OF THE LAST OF

1 THE TRUST PROPERTY TO BE SOLD OR THE DATE OF SALE UNDER THE LAST TRUST DEED  
2 SECURING THE OBLIGATION, WHICHEVER OCCURS LAST.

3 C. THE OBLIGATION OF A PERSON WHO IS NOT A TRUSTOR TO PAY, SATISFY OR  
4 PURCHASE ALL OR A PART OF THE BALANCE DUE ON A CONTRACT SECURED BY A TRUST  
5 DEED MAY BE ENFORCED, IF THE PERSON HAS SO AGREED, IN AN ACTION REGARDLESS OF  
6 WHETHER A TRUSTEE'S SALE IS HELD. IF, HOWEVER, A TRUSTEE'S SALE IS HELD, THE  
7 LIABILITY OF A PERSON WHO IS NOT A TRUSTOR FOR THE DEFICIENCY IS DETERMINED  
8 PURSUANT TO SUBSECTION A OF THIS SECTION AND ANY JUDGMENT FOR THE DEFICIENCY  
9 AGAINST THE PERSON SHALL BE REDUCED IN ACCORDANCE WITH SUBSECTION A OF THIS  
10 SECTION. IF ANY SUCH ACTION IS COMMENCED AFTER A TRUSTEE'S SALE HAS BEEN  
11 HELD, IT IS SUBJECT, IN ADDITION, TO THE NINETY DAY TIME LIMITATIONS OF  
12 SUBSECTIONS A AND B OF THIS SECTION.

13 D. IF NO ACTION IS MAINTAINED FOR A DEFICIENCY JUDGMENT WITHIN THE  
14 TIME PERIOD PRESCRIBED IN SUBSECTIONS A AND B OF THIS SECTION, THE PROCEEDS  
15 OF THE SALE, REGARDLESS OF AMOUNT, SHALL BE DEEMED TO BE IN FULL SATISFACTION  
16 OF THE OBLIGATION AND NO RIGHT TO RECOVER A DEFICIENCY IN ANY ACTION SHALL  
17 EXIST.

18 E. EXCEPT AS PROVIDED IN SUBSECTION F OF THIS SECTION, THE PROVISIONS  
19 OF THIS CHAPTER DO NOT PRECLUDE A BENEFICIARY FROM FORECLOSING A DEED OF  
20 TRUST IN THE SAME MANNER AS A REAL PROPERTY MORTGAGE. IN AN ACTION FOR THE  
21 FORECLOSURE OF A DEED OF TRUST AS A REAL PROPERTY MORTGAGE THE PROVISIONS OF  
22 CHAPTER 6, ARTICLE 2 OF THIS TITLE ARE APPLICABLE.

23 F. A DEED OF TRUST MAY, BY EXPRESS LANGUAGE, VALIDLY PROHIBIT THE  
24 RECOVERY OF ANY BALANCE DUE AFTER TRUST PROPERTY IS SOLD PURSUANT TO THE  
25 TRUSTEE'S POWER OF SALE, OR THE TRUST DEED IS FORECLOSED IN THE MANNER  
26 PROVIDED BY LAW FOR THE FORECLOSURE OF MORTGAGES ON REAL PROPERTY.

27 G. IF TRUST PROPERTY OF TWO AND ONE-HALF ACRES OR LESS WHICH IS  
28 LIMITED TO AND UTILIZED FOR EITHER A SINGLE ONE-FAMILY OR A SINGLE TWO-FAMILY  
29 DWELLING IS SOLD PURSUANT TO THE TRUSTEE'S POWER OF SALE, NO ACTION MAY BE  
30 MAINTAINED TO RECOVER ANY DIFFERENCE BETWEEN THE AMOUNT OBTAINED BY SALE AND  
31 THE AMOUNT OF THE INDEBTEDNESS AND ANY INTEREST, COSTS AND EXPENSES.

32 Sec. 3. Legislative intent; antideficiency protection unchanged

33 It is the intent of the legislature by this act to do all of the  
34 following:

35 1. Repeal the modifications to the antideficiency statutes enacted in  
36 Laws 2009, chapter 68 (S.B. 1271).

37 2. Correct any defects that may have occurred in the enactment of Laws  
38 2009, third special session, chapter 7 (H.B. 2008).

39 3. Ensure that the antideficiency statutes remain in place with the  
40 level of protection for property owners that had been established by  
41 statutory enactment and case law before the enactment of Laws 2009, chapter  
42 68 and that that level of protection be unchanged after the enactment of Laws  
43 2009, chapter 68 and remain in place going forward as a result of this act.

1           Sec. 4. Retroactivity

2           Sections 1 and 2 of this act are effective retroactively to September  
3 30, 2009.

4           Sec. 5. Emergency

5           This act is an emergency measure that is necessary to preserve the  
6 public peace, health or safety and is operative immediately as provided by  
7 law.

APPROVED BY THE GOVERNOR NOVEMBER 23, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE NOVEMBER 23, 2009.