

Senate Engrossed House Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

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

CHAPTER 175

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 mortgagee 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.

APPROVED BY THE GOVERNOR APRIL 4, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 4, 2012.

Passed the House March 5, 2012

Passed the Senate March 27, 2012

by the following vote: 58 Ayes,

by the following vote: 29 Ayes,

2 Nays, 0 Not Voting

1 Nays, 0 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill received by the Governor this

_____ day of _____, 20____

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

at _____ o'clock _____ M.

Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill received by the Secretary of State

this _____ day of _____, 20____

at _____ o'clock _____ M.

Secretary of State

H.B. 2323

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 2, 2012

by the following vote: 58 Ayes,

1 Nays, 1 Not Voting



Speaker of the House



Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

2 day of April, 2012,

at 3:20 o'clock P M.

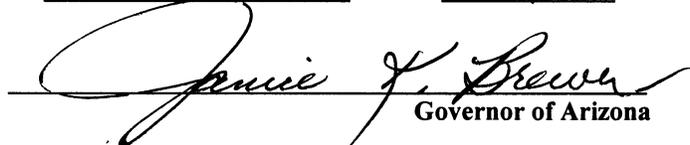


Secretary to the Governor

Approved this 4th day of

April, 2012.

at 1:40 o'clock P M.



Governor of Arizona

H.B. 2323

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 4th day of April, 2012,

at 3:32 o'clock P M.



Secretary of State