Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

CHAPTER 50

HOUSE BILL 2033

AN ACT

AMENDING SECTIONS 11-1133 AND 33-811, ARIZONA REVISED STATUTES; RELATING TO TRUSTEES' SALES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 11-1133, Arizona Revised Statutes, is amended to read:

11-1133. Affidavit of legal value

A. Each deed evidencing a transfer of title and any contract relating to the sale of real property shall have appended at the time of recording an affidavit of the seller and the buyer to the transaction, or the agent of either the seller or buyer, or both, in a form approved by the department of revenue, who shall declare and jointly certify the following information:

1. The name and address of the buyer and seller.

2. The name and address where a tax statement may be sent.

3. The complete legal description of the property.

4. The situs address, if any, of the property.

5. The date of sale.

6. The total consideration paid for the property, the amount of cash down payment and whether or not the type of financing included cash, a new third-party loan, a new loan from the seller, an assumption of an existing loan or an exchange or trade of property.

7. Whether or not the estimated market value of personal property received by the buyer equals five per cent or more of the total consideration.

8. The assessor's parcel number or numbers assigned to the real property by the county assessor or, in the case of a new parcel or parcels not yet assigned a parcel number, the parcel number or numbers of the previous parcel or parcels from which the new parcel or parcels are created.

9. The conditions of the transaction, including the relationship, if any, of the parties.

10. The use and description of the property and, in the case of a residential dwelling, whether the property is to be owner-occupied or rented.

11. The name and address of the person to contact regarding information contained on the affidavit.

B. IF A BENEFICIARY OF A FORECLOSED TRUSTEE'S DEED RECEIVES PAYMENT BASED ON PRIVATE MORTGAGE INSURANCE COVERING THE SALE THAT IS IN ADDITION TO THE PROCEEDS OF THE SALE, THE BENEFICIARY SHALL SUBMIT, IN A FORM APPROVED BY THE DEPARTMENT OF REVENUE, TO THE COUNTY RECORDER IN THE COUNTY WHERE THE PROPERTY IS LOCATED WITHIN FOUR MONTHS AFTER THE DATE OF THE TRUSTEE'S SALE A BENEFICIARY'S DECLARATION OF ADDITIONAL FUNDS RECEIVED THAT CONTAINS THE FOLLOWING:

1. THE COUNTY ASSESSOR'S PARCEL NUMBER OR NUMBERS ASSIGNED AS OF THE DATE OF THE TRUSTEE'S SALE.

2. THE NAME AND ADDRESS OF THE BENEFICIARY SUBMITTING THE DECLARATION.

3. THE DATE OF THE TRUSTEE'S SALE.

4. THE HIGHEST BID AMOUNT RECEIVED BY THE TRUSTEE AT THE TRUSTEE'S SALE.

5. THE RECORDING NUMBER OF THE TRUSTEE'S DEED UPON SALE.

6. THE AMOUNT OF ANY ADDITIONAL COMPENSATION RECEIVED BY THE BENEFICIARY WITHIN SIX MONTHS AFTER THE DATE OF THE TRUSTEE'S SALE.

~~B.~~ C. The county recorder shall refuse to record any deed and any contract relating to the sale of real property if a complete affidavit of legal value is not appended unless the instrument bears a notation indicating an exemption pursuant to section 11-1134.

~~C.~~ D. An affidavit is complete for purposes of this section if all of the required information is stated on the affidavit form or is indicated on the form as "not applicable".

Sec. 2. Section 33-811, Arizona Revised Statutes, is amended to read:

33-811. Payment of bid; trustee's deed

A. The highest bidder at the sale, other than the beneficiary to the extent of the credit bid, shall pay the price bid by no later than 5:00 p.m. mountain standard time of the following day, other than a Saturday or legal holiday. If the highest bidder fails to pay the amount bid for the property struck off to the bidder at the sale, the trustee, in the trustee's sole discretion, shall either continue the sale to reopen bidding or immediately offer the trust property to the second highest bidder who may purchase the trust property at that bidder's bid price. The deposit of the highest bidder who fails to pay the amount bid shall be forfeited and shall be treated as additional sale proceeds to be applied in accordance with section 33-812, subsection A. If the second highest bidder does not pay that bidder's bid price by 5:00 p.m. mountain standard time of the next day excluding Saturdays and legal holidays after the property has been offered to that bidder by the trustee, the trustee shall either continue the sale to reopen bidding or offer the trust property to each of the prior bidders on successive days excluding Saturdays and legal holidays in order of their highest bid, until a bid price is paid, or if there is no other bidder, the sale shall be deemed to be continued to a time and place designated by the trustee, or if not designated, the sale shall be continued to the same place and at the same time twenty-eight days after the last scheduled sale date. If the twenty-eighth day is a Saturday or legal holiday, the sale shall be continued to the next business day. If the sale is continued, the trustee shall provide notice of the continuation of the sale by registered or certified mail, with postage prepaid, to all bidders who provide their names, addresses and telephone numbers in writing to the party conducting the sale. In addition to the forfeit of deposit, a highest bidder who fails to pay the amount bid by that bidder is liable to any person who suffers loss or expenses as a result, including attorney fees. In any subsequent sale of trust property, the trustee may refuse to accept any bid of that person. In any sale that is continued pursuant to this subsection, the trustee shall reject the bid from any previous bidder who elected not to pay that bidder's bid price.

B. The price bid shall be paid at the office of the trustee or the trustee's agent, or any other reasonable place designated by the trustee.

The payment of the bid price may be made at a later time if agreed upon in writing by the trustee. ~~The trustee shall execute and deliver the trustee's deed to the purchaser within seven business days after receipt of payment by the trustee or the trustee's agent made in a form that is satisfactory to the trustee~~ WITHIN SEVEN BUSINESS DAYS AFTER RECEIPT OF PAYMENT BY THE TRUSTEE OR THE TRUSTEE'S AGENT, MADE IN A FORM THAT IS SATISFACTORY TO THE TRUSTEE, THE TRUSTEE SHALL EXECUTE AND SUBMIT THE TRUSTEE'S DEED TO THE COUNTY RECORDER FOR RECORDING AND SHALL, UPON REQUEST, PROVIDE AN UNRECORDED COPY OF THE SIGNED TRUSTEE'S DEED TO THE PURCHASER. The recording of the trustee's deed upon sale ~~may also~~ SHALL constitute delivery of the deed to the purchaser. The trustee is not liable for any damages resulting from the failure to record the trustee's deed upon sale after physical delivery of the deed to the purchaser. The trustee's deed shall raise the presumption of compliance with the requirements of the deed of trust and this chapter relating to the exercise of the power of sale and the sale of the trust property, including recording, mailing, publishing and posting of notice of sale and the conduct of the sale. A trustee's deed shall constitute conclusive evidence of the meeting of those requirements in favor of purchasers or encumbrancers for value and without actual notice. Knowledge of the trustee shall not be imputed to the beneficiary.

C. The trustor, its successors or assigns, and all persons to whom the trustee mails a notice of a sale under a trust deed pursuant to section 33-809 shall waive all defenses and objections to the sale not raised in an action that results in the issuance of a court order granting relief pursuant to rule 65, Arizona rules of civil procedure, entered before 5:00 p.m. mountain standard time on the last business day before the scheduled date of the sale. A copy of the order, the application for the order and the complaint shall be delivered to the trustee within twenty-four hours after entering the order.

D. A sale is not complete if the sale violates subsection C of this section because of an undisclosed order entered by the court within the time provided for in subsection C of this section. A sale held in violation of subsection C of this section shall be continued to a date, time and place announced by the trustee at the sale and shall comply with section 33-810, subsection B. If not announced, the sale shall be continued to the same place and at the same time twenty-eight days later. If the twenty-eighth day falls on a Saturday or ~~other~~ legal holiday, the sale shall be continued to the next business day. If the sale is continued because of an unknown or undisclosed order as provided in this subsection, the trustee shall notify by registered or certified mail, with postage prepaid, all bidders who provide names, addresses and telephone numbers in writing to the party conducting the sale of the continuation of the sale.

E. The trustee's deed shall operate to convey to the purchaser the title, interest and claim of the trustee, the trustor, the beneficiary, their respective successors in interest and all persons claiming the trust property

sold by or through them, including all interest or claim in the trust property acquired subsequent to the recording of the deed of trust and prior to delivery of the trustee's deed. That conveyance shall be absolute without right of redemption and clear of all liens, claims or interests that have a priority subordinate to the deed of trust and shall be subject to all liens, claims or interests that have a priority senior to the deed of trust.

F. ON COMPLETION OF THE SALE AND CONVEYANCE OF THE TRUSTEE'S DEED TO THE PURCHASER, THE TRUSTEE SHALL NOTIFY THE BENEFICIARY OF THE BENEFICIARY'S OBLIGATIONS AS PRESCRIBED BY SECTION 11-1133. THE TRUSTEE SHALL PROVIDE NOTICE TO THE BENEFICIARY ON OR BEFORE THE DATE OF THE TRUSTEE'S SALE.

APPROVED BY THE GOVERNOR APRIL 5, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 5, 2013.

Passed the House February 14, 2013

by the following vote: 52 Ayes,

5 Nays, 3 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate March 25, 2013

by the following vote: 25 Ayes,

0 Nays, 5 Not Voting

President of the Senate

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. 2033

HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE

April 4, 2013,

by the following vote: 59 Ayes,

1 Nays, 0 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

4 day of April, 2013,

at 3:30 o'clock P M.

Mikhaila Howard

Secretary to the Governor

Approved this 5th day of

April, 2013,

at 3:06 o'clock P. M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 5th day of April, 2013,

at 5:00 o'clock P M.

Secretary of State

H.B. 2033