

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

HOUSE BILL 2618

AN ACT

AMENDING SECTIONS 33-707 AND 33-750, ARIZONA REVISED STATUTES; RELATING TO MORTGAGES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 33-707, Arizona Revised Statutes, is amended to
3 read:

4 33-707. Acknowledgment of satisfaction; recording

5 A. If a mortgagee, trustee or person entitled to payment receives full
6 satisfaction of a mortgage or deed of trust, he shall acknowledge
7 satisfaction of the mortgage or deed of trust by delivering to the person
8 making satisfaction or by recording a sufficient release or satisfaction of
9 mortgage or deed of release and reconveyance of the deed of trust, which
10 release, satisfaction of mortgage or deed of release and reconveyance shall
11 contain the docket and page number or recording number of the mortgage or
12 deed of trust. IF A MORTGAGEE, TRUSTEE OR PERSON ENTITLED TO PAYMENT
13 RECEIVES AN AMOUNT LESS THAN FULL SATISFACTION OF A MORTGAGE OR DEED OF
14 TRUST, BUT HAS AGREED IN WRITING TO RELEASE THE MORTGAGE OR DEED OF TRUST,
15 THE MORTGAGEE, TRUSTEE OR PERSON SHALL ACKNOWLEDGE RELEASE OF THE MORTGAGE OR
16 DEED OF TRUST BY DELIVERING TO THE PERSON MAKING PAYMENT OF THE AGREED AMOUNT
17 THAT IS LESS THAN FULL SATISFACTION OR BY RECORDING A SUFFICIENT RELEASE OF
18 THE MORTGAGE OR RELEASE AND RECONVEYANCE OF THE DEED OF TRUST, WHICH RELEASE
19 OR RELEASE AND RECONVEYANCE SHALL CONTAIN THE DOCKET AND PAGE NUMBER OR
20 RECORDING NUMBER OF THE MORTGAGE OR DEED OF TRUST. It shall not be necessary
21 for the trustee to join in the acknowledgment or satisfaction, or in the
22 release, satisfaction of mortgage or deed of release and reconveyance. The
23 recorded release or satisfaction of mortgage or deed of release and
24 reconveyance constitutes conclusive evidence of full or partial satisfaction
25 and release of the mortgage or deed of trust in favor of purchasers and
26 encumbrancers for value and without actual notice.

27 B. When a mortgage or deed of trust is satisfied by a release or
28 satisfaction of mortgage or deed of release and reconveyance, except where
29 the record of such deed of trust or mortgage has been destroyed or reduced to
30 microfilm, the recorder shall record the release or satisfaction of the deed
31 of trust or mortgage showing the book and page or recording number where the
32 deed of trust or mortgage is recorded.

33 C. If the record of such mortgage or deed of trust has been destroyed
34 and the record thereof reduced to microfilm, it shall be sufficient evidence
35 of satisfaction of any such mortgage or deed of trust for the release or
36 satisfaction of mortgage or deed of release and reconveyance to be recorded
37 and indexed as such. The instrument shall sufficiently identify the mortgage
38 or deed of trust by parties and by book and page or recording number of the
39 official records. Such instrument shall be treated as a release or
40 satisfaction of mortgage or deed of release and reconveyance and recorded.

41 D. If the note secured by a mortgage or deed of trust has been lost or
42 destroyed, the assignee, mortgagee or beneficiary shall, before acknowledging
43 satisfaction, make an affidavit that he is the lawful owner of the note and
44 that it has been paid, but cannot be produced for the reason that it has been
45 lost or destroyed, and the affidavit shall be recorded. If the record of

1 such mortgage or deed of trust has been destroyed and the record thereof
2 reduced to microfilm, such affidavit shall be recorded and indexed as
3 releases, satisfactions of mortgage and deeds of release and reconveyance are
4 recorded and indexed and shall have the same force and effect as a release or
5 satisfaction of a mortgage or deed of release and reconveyance as provided in
6 subsection A of this section.

7 E. If a full release or satisfaction of mortgage or deed of release
8 and reconveyance of deed of trust that, according to its terms, recites that
9 it secures an obligation having a stated indebtedness not greater than ~~five~~
10 ~~hundred thousand~~ ONE MILLION dollars exclusive of interest, or a partial
11 release or satisfaction of mortgage or partial deed of release and
12 reconveyance of deed of trust that, according to its terms, recites that the
13 payment required for the partial satisfaction or release does not exceed ~~five~~
14 ~~hundred thousand~~ ONE MILLION dollars exclusive of interest, OR A RELEASE OF
15 MORTGAGE OR DEED OF RELEASE AND RECONVEYANCE OF DEED OF TRUST BY A MORTGAGEE,
16 TRUSTEE OR PERSON WHO HAS AGREED IN WRITING TO RELEASE THE MORTGAGE OR DEED
17 OF TRUST IN EXCHANGE FOR RECEIPT OF AN AMOUNT LESS THAN FULL SATISFACTION OF
18 THE MORTGAGE OR DEED OF TRUST AND THAT, ACCORDING TO ITS TERMS, RECITES THAT
19 IT SECURES AN OBLIGATION HAVING A STATED INDEBTEDNESS NOT GREATER THAN ONE
20 MILLION DOLLARS EXCLUSIVE OF INTEREST, has not been executed and recorded
21 pursuant to subsection A or C of this section within sixty days of full or
22 partial satisfaction of the obligation secured by such mortgage or deed of
23 trust, OR WITHIN SIXTY DAYS OF THE RECEIPT BY THE MORTGAGEE, TRUSTEE OR OTHER
24 PERSON OF AN AMOUNT LESS THAN FULL SATISFACTION IF AGREED IN WRITING, a title
25 insurer as defined in section 20-1562 may prepare, execute and record a full
26 or partial release or satisfaction of mortgage or deed of full or partial
27 release and reconveyance of deed of trust. No earlier than sixty days after
28 full or partial satisfaction and at least thirty days prior to the issuance
29 and recording of any such release or satisfaction of mortgage or deed of
30 release and reconveyance pursuant to this subsection, the title insurer shall
31 mail by certified mail with postage prepaid, return receipt requested, to the
32 mortgagee of record or to the trustee and beneficiary of record and their
33 respective successors in interest of record at their last known address shown
34 of record and to any persons who according to the records of the title
35 insurer received payment of the obligation at the address shown in such
36 records, a notice of its intention to release the mortgage or deed of trust
37 accompanied by a copy of the release or satisfaction of mortgage or deed of
38 release and reconveyance to be recorded which shall set forth:

39 1. The name of the beneficiary or mortgagee or any successors in
40 interest of record of such mortgagee or beneficiary and, if known, the name
41 of any servicing agent.

42 2. The name of the original mortgagor or trustor.

43 3. The name of the current record owner of the property and if the
44 release or satisfaction of mortgage or deed of release and reconveyance is a
45 partial release, the name of the current record owner of the parcel described

1 in the partial release or satisfaction of mortgage or deed of partial release
2 and reconveyance of deed of trust.

3 4. The recording reference to the deed of trust or mortgage.

4 5. The date and amount of payment, if known.

5 6. A statement that the title insurer has actual knowledge that the
6 obligation secured by the mortgage or deed of trust has been paid in full, or
7 if the release or satisfaction of mortgage or deed of release and
8 reconveyance of deed of trust is a partial release, a statement that the
9 title insurer has actual knowledge that the partial payment required for the
10 release of the parcel described in the partial release or satisfaction has
11 been paid OR, IF THE RELEASE OF MORTGAGE OR DEED OR RELEASE AND RECONVEYANCE
12 OF DEED OF TRUST RESULTS FROM A MORTGAGEE'S, TRUSTEE'S OF OTHER PERSON'S
13 WRITTEN AGREEMENT TO ACCEPT AN AMOUNT LESS THAN FULL SATISFACTION OF THE
14 OBLIGATION, A STATEMENT THAT THE TITLE INSURER HAS ACTUAL KNOWLEDGE THAT THE
15 AGREED UPON PAYMENT HAS BEEN MADE IN FULL.

16 F. The release or satisfaction of mortgage or release and reconveyance
17 of deed of trust may be executed by a duly appointed attorney-in-fact of the
18 title insurer, but such delegation shall not relieve the title insurer from
19 any liability pursuant to this section.

20 G. A full or partial release or satisfaction of mortgage or deed of
21 full or partial release and reconveyance of deed of trust issued pursuant to
22 subsection E of this section shall be entitled to recordation and, when
23 recorded, shall constitute a full or partial release or satisfaction of
24 mortgage or deed of release and reconveyance of deed of trust issued pursuant
25 to subsection A or C of this section.

26 H. Where an obligation secured by a deed of trust or mortgage was paid
27 in full prior to September 21, 1991, and no release or satisfaction of
28 mortgage or deed of release and reconveyance of deed of trust was issued and
29 recorded by November 20, 1991, a release or satisfaction of mortgage or deed
30 of release and reconveyance of deed of trust as provided for in subsection E
31 of this section may be prepared and recorded without the notice prescribed by
32 subsection E of this section.

33 I. A release or satisfaction of mortgage or a release and reconveyance
34 of deed of trust by a title insurer under the provisions of subsection E of
35 this section shall not constitute a defense nor release any person from
36 compliance with subsections A through D of this section or from liability
37 under section 33-712.

38 J. In addition to any other remedy provided by law, a title insurer
39 preparing or recording the release and satisfaction of mortgage or the
40 release and reconveyance of deed of trust pursuant to subsection E of this
41 section shall be liable to any party for actual damage, including attorney
42 fees, which any person may sustain by reason of the issuance and recording of
43 the release and satisfaction of mortgage or release and reconveyance of deed
44 of trust.

1 K. The title insurer shall not record a release and satisfaction of
2 mortgage or release and reconveyance of deed of trust if, prior to the
3 expiration of the thirty day period specified in subsection E of this
4 section, the title insurer receives a notice from the mortgagee, trustee,
5 beneficiary, holder or servicing agent which states that the mortgage or deed
6 of trust continues to secure an obligation, or in the case of a partial
7 release or satisfaction of mortgage or deed of partial release and
8 reconveyance of deed of trust, a notice that states that the partial payment
9 required to release the parcel described in the partial release or
10 satisfaction has not been paid.

11 L. The title insurer may charge a reasonable fee to the owner of the
12 land or other person requesting a release and satisfaction of mortgage or
13 release and reconveyance of deed of trust for services, including but not
14 limited to search of title, document preparation and mailing services
15 rendered, and may in addition collect official fees.

16 Sec. 2. Section 33-750, Arizona Revised Statutes, is amended to read:
17 33-750. Conveyance by seller; payment in full; payoff deed

18 A. A seller who is entitled to payment and who receives full payment
19 of all monies due under the contract shall deliver to the person who made
20 full payment a payoff deed that conveys to the purchaser the real property
21 described in the contract. The deed shall be entitled "payoff deed", shall
22 state that it is being delivered to consummate a contract and shall include
23 the docket and page number or recording number of the contract.

24 B. For a contract that provides for a purchase price obligation of
25 ~~five hundred thousand~~ ONE MILLION dollars or less exclusive of interest, if a
26 seller does not deliver a payoff deed pursuant to subsection A within sixty
27 days of payment in full of all monies due under the contract, a title insurer
28 as defined in section 20-1562 may prepare, execute and record a payoff deed.
29 At least thirty days before issuing and recording a payoff deed pursuant to
30 this subsection, the title insurer shall mail notice of its intention to
31 record the payoff deed and a copy of the payoff deed by certified mail with
32 postage prepaid and return receipt requested to all of the following:

33 1. The seller of record and the seller's respective successors in
34 interest of record at their last known addresses shown of record.

35 2. The account servicing agent if known.

36 3. Any person who received payment in full of the monies due under the
37 contract according to the records of the title insurer at the address shown
38 in the title insurer's records.

39 C. The payoff deed prescribed by subsection B of this section shall
40 set forth all of the following:

41 1. The name of the original seller and the seller's successors in
42 interest of record.

43 2. The name of the original account servicing agent and the successors
44 in interest of the account servicing agent if of record or if known to the
45 title insurer.

- 1 3. The name of the original purchaser and any successors in interest
2 of record of that purchaser.
- 3 4. The date of recording and docket and page number or recording
4 number of the contract.
- 5 5. The date and amount of payment.
- 6 6. A statement that the title insurer has actual knowledge that the
7 monies due under the contract have been paid in full.
- 8 D. The title insurer or a duly appointed attorney-in-fact of the title
9 insurer shall execute the payoff deed. Any delegation pursuant to this
10 subsection does not relieve the title insurer from any liability pursuant to
11 this section.
- 12 E. A payoff deed issued pursuant to subsection B of this section is
13 entitled to recordation and, when recorded, constitutes a payoff deed issued
14 pursuant to subsection A of this section.
- 15 F. In addition to any other remedy provided by law, a title insurer
16 preparing or recording the payoff deed pursuant to subsection B of this
17 section is liable to any party for actual damage, including attorney fees,
18 that any person may sustain by reason of the issuance and recording of the
19 payoff deed.
- 20 G. The title insurer shall not record a payoff deed if the title
21 insurer receives notice before the expiration of the thirty day period
22 prescribed by subsection B of this section from the seller or account
23 servicing agent that the monies due under the contract have not been paid in
24 full.
- 25 H. The title insurer may charge a reasonable fee to the owner of the
26 land or any other person who requests a payoff deed including a fee for
27 performing a title search, document preparation and mailing services and in
28 addition may collect recording or other official fees.