

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2545

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 33-809, Arizona Revised Statutes, is amended to  
3 read:

4 33-809. Request for copies of notice of sale; mailing by  
5 trustee; disclosure of information regarding trustee  
6 sale

7 A. A person desiring a copy of a notice of sale under a trust deed, at  
8 any time subsequent to the recording of the trust deed and prior to the  
9 recording of a notice of sale pursuant thereto, shall record in the office of  
10 the county recorder in any county in which part of the trust property is  
11 situated a duly acknowledged request for a copy of any such notice of sale.  
12 The request shall set forth the name and address of the person or persons  
13 requesting a copy of such notice and shall identify the trust deed by setting  
14 forth the county, docket or book and page of the recording data thereof and  
15 by stating the names of the original parties to such deed, the date the deed  
16 was recorded and the legal description of the entire trust property and shall  
17 be in substantially the following form:

18 Request for Notice

19 Request is hereby made that a copy of any notice of sale under  
20 the trust deed recorded in docket or book \_\_\_\_\_ at page \_\_\_\_\_,  
21 records of \_\_\_\_\_ county, Arizona, \_\_\_\_\_, \_\_\_\_\_,

22 (legal description of trust property)

23 Executed by \_\_\_\_\_ as trustor, in which  
24 \_\_\_\_\_ is named as beneficiary and \_\_\_\_\_ as  
25 trustee, be mailed to \_\_\_\_\_ at \_\_\_\_\_.

26 Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

27 \_\_\_\_\_

28 Signature

29 (Acknowledgement)

1           B. Not later than thirty days after recording the notice of sale, the  
2 trustee shall mail by certified or registered mail, with postage prepaid, a  
3 copy of the notice of sale that reflects the recording date together with any  
4 notice required to be given by subsection C of this section, addressed as  
5 follows:

6           1. To each person whose name and address are set forth in a request  
7 for notice, which has been recorded prior to the recording of the notice of  
8 sale, directed to the address designated in such request.

9           2. To each person who, at the time of recording of the notice of sale,  
10 appears on the records of the county recorder in the county in which any part  
11 of the trust property is situated to have an interest in any of the trust  
12 property. The copy of the notice sent pursuant to this paragraph shall be  
13 addressed to the person whose interest appears of record at the address set  
14 forth in the document. If no address for the person is set forth in the  
15 document, the copy of the notice may be addressed in care of the person to  
16 whom the recorded document evidencing such interest was directed to be mailed  
17 at the time of its recording or to any other address of the person known or  
18 ascertained by the trustee. If the interest that appears on the records of  
19 the county recorder is a deed of trust, a copy of the notice only needs to be  
20 mailed to the beneficiary under the deed of trust. If any person having an  
21 interest of record or the trustor, or any person who has recorded a request  
22 for notice, desires to change the address to which notice shall be mailed,  
23 the change shall be accomplished by a request as provided under this section.

24           3. FOR SINGLE FAMILY RESIDENTIAL PROPERTIES ONLY, TO THE PROPERTY  
25 ADDRESS. THE COPY REQUIRED PURSUANT TO THIS PARAGRAPH MAY BE MAILED BY FIRST  
26 CLASS MAIL.

27           C. The trustee, within five business days after the recordation of a  
28 notice of sale, shall mail by certified or registered mail, with postage  
29 prepaid, a copy of the notice of sale to each of the persons who were parties  
30 to the trust deed except the trustee. The copy of the notice mailed to the  
31 parties need not show the recording date of the notice. The notice sent  
32 pursuant to this subsection shall be addressed to the mailing address  
33 specified in the trust deed. In addition, notice to each party shall contain

1 a statement that a breach or nonperformance of the trust deed or the contract  
2 or contracts secured by the trust deed, or both, has occurred, and setting  
3 forth the nature of such breach or nonperformance and of the beneficiary's  
4 election to sell or cause to be sold the trust property under the trust deed  
5 and the additional notice shall be signed by the beneficiary or the  
6 beneficiary's agent. A copy of the additional notice shall also be sent with  
7 the notice provided for in subsection B, paragraph 2 of this section to all  
8 persons whose interest in the trust property is subordinate in priority to  
9 that of the deed of trust along with a written statement that the interest  
10 may be subject to being terminated by the trustee's sale. The written  
11 statement may be contained in the statement of breach or nonperformance.

12 D. No request for a copy of a notice recorded pursuant to this  
13 section, nor any statement or allegation in any request, nor any record of  
14 request, shall affect the title to the trust property or be deemed notice to  
15 any person that a person requesting a copy of notice of sale has or claims  
16 any interest in, or claim upon, the trust property.

17 E. At any time that the trust deed is subject to reinstatement  
18 pursuant to section 33-813, but not sooner than thirty days after recordation  
19 of the notice of trustee's sale, the trustee shall upon receipt of a written  
20 request, provide, if actually known to the trustee, the following information  
21 relating to the trustee's sale and the trust property:

22 1. The unpaid principal balance of the note or other obligation which  
23 is secured by the deed of trust.

24 2. The name and address of record of the owner of the trust property  
25 as of the date of recordation of the notice of trustee's sale.

26 3. A list of the liens and encumbrances upon the trust property as of  
27 the date of recordation of the notice of trustee's sale, excluding those  
28 matters set forth in section 33-438, subsection A.

29 If the trustee elects to charge a fee for providing the information  
30 requested, the fee shall not exceed five per cent of the amount the trustee  
31 may charge pursuant to section 33-813, subsection B, paragraph 4, except that  
32 the trustee shall not charge a fee that is more than one hundred dollars or  
33 be required to accept a fee that is less than thirty dollars but may accept a

1 lesser fee at the trustee's discretion. The trustee, or any other person  
2 furnishing information pursuant to this subsection to the trustee, shall not  
3 be subject to liability for any error or omission in providing the  
4 information requested, except for the wilful and intentional failure to  
5 provide information in the trustee's actual possession.

6 F. Beginning at 9:00 a.m. and continuing until 5:00 p.m. mountain  
7 standard time on the last business day preceding the day of sale and  
8 beginning at 9:00 a.m. mountain standard time and continuing until the time  
9 of sale on the day of the sale, the trustee shall make available the actual  
10 bid or a good faith estimate of the credit bid the beneficiary is entitled to  
11 make at the sale. If the actual bid or good faith estimate is not available  
12 during the prescribed time period, the trustee shall postpone the sale until  
13 the trustee is able to comply with this subsection.

14 G. In providing information pursuant to subsections E and F of this  
15 section, the trustee, without obligation or liability for the accuracy or  
16 completeness of the information, may respond to oral requests, respond orally  
17 or in writing or provide additional information not required by such  
18 subsections. With respect to property that is the subject of a trustee's  
19 sale, the beneficiary of such deed of trust or the holder of any prior lien  
20 may, but shall not be required to, provide information concerning such deed  
21 of trust or any prior lien that is not required by subsection E or F of this  
22 section and may charge a reasonable fee for providing the information. The  
23 providing of such information by any beneficiary or holder of a prior lien  
24 shall be without obligation or liability for the accuracy or completeness of  
25 the information.

26 Sec. 2. Section 33-1321, Arizona Revised Statutes, is amended to read:

27 33-1321. Security deposits: notice of foreclosure

28 A. A landlord shall not demand or receive security, however  
29 denominated, including, but not limited to, prepaid rent in an amount or  
30 value in excess of one and one-half month's rent. This subsection does not  
31 prohibit a tenant from voluntarily paying more than one and one-half month's  
32 rent in advance.

1           B. The purpose of all nonrefundable fees or deposits shall be stated  
2 in writing by the landlord. Any fee or deposit not designated as  
3 nonrefundable shall be refundable.

4           C. With respect to tenants who first occupy the premises or enter into  
5 a new written rental agreement after January 1, 1996, upon move in a landlord  
6 shall furnish the tenant with a signed copy of the lease, a move-in form for  
7 specifying any existing damages to the dwelling unit and written notification  
8 to the tenant that the tenant may be present at the move-out inspection.  
9 Upon request by the tenant, the landlord shall notify the tenant when the  
10 landlord's move-out inspection will occur. If the tenant is being evicted  
11 for a material and irreparable breach and the landlord has reasonable cause  
12 to fear violence or intimidation on the part of the tenant, the landlord has  
13 no obligation to conduct a joint move-out inspection with the tenant.

14           D. Upon termination of the tenancy, property or money held by the  
15 landlord as prepaid rent and security may be applied to the payment of all  
16 rent, and subject to a landlord's duty to mitigate, all charges as specified  
17 in the signed lease agreement, or as provided in this chapter, including the  
18 amount of damages which the landlord has suffered by reason of the tenant's  
19 noncompliance with section 33-1341. Within fourteen days, excluding  
20 Saturdays, Sundays or other legal holidays, after termination of the tenancy  
21 and delivery of possession and demand by the tenant the landlord shall  
22 provide the tenant an itemized list of all deductions together with the  
23 amount due and payable to the tenant, if any. Unless other arrangements are  
24 made in writing by the tenant, the landlord shall mail the itemized list and  
25 any amount due, by first class mail, to the tenant's last known place of  
26 residence.

27           E. ON RECEIVING NOTICE OF FORECLOSURE, THE TENANT MAY DIRECT THE  
28 LANDLORD TO APPLY PREPAID RENT AND SECURITY TO THE TENANT'S RENTAL OBLIGATION  
29 AND IF THE TENANT SO DIRECTS, THE TENANT IS IN COMPLIANCE WITH THE TENANT'S  
30 RENTAL PAYMENT OBLIGATION FOR ONE MONTH'S RENT OR IF THE AMOUNTS HELD  
31 CONSTITUTE MORE THAN ONE MONTH'S RENT, THE TENANT'S RENTAL PAYMENT OBLIGATION  
32 IS PROPORTIONATELY REDUCED. ON CONVEYANCE OF TITLE TO THE RENTAL PROPERTY BY  
33 WAY OF FORECLOSURE, THE TENANCY IS DEEMED TERMINATED, POSSESSION OF THE

1 RENTAL PROPERTY IS DEEMED DELIVERED TO THE FORMER OWNER AND THE TENANT IS  
2 DEEMED TO HAVE DEMANDED RETURN OF ANY PROPERTY OR MONEY HELD BY THE LANDLORD  
3 AS PREPAID RENT AND SECURITY.

4 ~~F.~~ F. If the landlord fails to comply with subsection D of this  
5 section the tenant may recover the property and money due the tenant together  
6 with damages in an amount equal to twice the amount wrongfully withheld.

7 ~~F.~~ G. This section does not preclude the landlord or tenant from  
8 recovering other damages to which the landlord or tenant may be entitled  
9 under this chapter.

10 ~~G.~~ H. During the term of tenancy the landlord may use refundable  
11 security deposits or other refundable deposits in accordance with any  
12 applicable provisions of the property management agreement. At the end of  
13 tenancy, all refundable deposits shall be refunded to the tenant pursuant to  
14 this section.

15 ~~H.~~ I. The holder of the landlord's interest in the premises at the  
16 time of the termination of the tenancy is bound by this section.

17 Section 3. Title 33, chapter 10, article 2, Arizona Revised Statutes,  
18 is amended by adding section 33-1331, to read:

19 33-1331. Notice of foreclosure: effect on lease

20 A. ANY LANDLORD OF A RESIDENTIAL PROPERTY THAT IS THE SUBJECT OF A  
21 FORECLOSURE ACTION SHALL PROVIDE EACH TENANT AT THAT PROPERTY WRITTEN NOTICE  
22 OF THE DATE, TIME AND PLACE OF THE SALE OF THE FORECLOSED PROPERTY AT LEAST  
23 SIXTY DAYS BEFORE THE SALE DATE. THE NOTICE SHALL INCLUDE A STATEMENT THAT  
24 IS SUBSTANTIALLY IN THE FOLLOWING FORM:

25 THIS PROPERTY IS UNDERGOING FORECLOSURE. FOR MORE INFORMATION ON THIS  
26 ACTION, YOU SHOULD CONTACT THE CLERK OF THE SUPERIOR COURT OF \_\_\_\_\_  
27 COUNTY (YOUR COUNTY), \_\_\_\_\_ (ADDRESS), AT \_\_\_\_\_ (PHONE NUMBER).

28 A SALE AT AUCTION MAY OR MAY NOT OCCUR AS A RESULT OF THIS FORECLOSURE.  
29 CURRENTLY, THE SALE OF THIS PROPERTY HAS BEEN SET FOR \_\_\_\_\_ (TIME, DATE  
30 AND PLACE) OR NO DATE FOR SALE OF THIS PROPERTY HAS BEEN ESTABLISHED. YOU  
31 WILL RECEIVE WRITTEN NOTICE OF THE SALE AT LEAST SIXTY DAYS BEFORE IT TAKES  
32 PLACE.

1           B. A LANDLORD OF A RESIDENTIAL PROPERTY THAT IS THE SUBJECT OF A  
2 FORECLOSURE ACTION SHALL ALLOW THE TENANT AT LEAST THIRTY DAYS' NOTICE TO  
3 VACATE THE PROPERTY. A COMPLETED FORECLOSURE TERMINATES THE TENANT'S  
4 OBLIGATIONS UNDER ANY LEASE AGREEMENT WITH THE LANDLORD AND THE TENANT IS NOT  
5 LIABLE FOR ANY RENT, UTILITY OR OTHER OBLIGATIONS FOR THE PERIOD AFTER  
6 COMPLETION OF FORECLOSURE. IF THE RENTAL AGREEMENT WAS ENTERED INTO AFTER  
7 THE FORECLOSURE ACTION WAS INITIATED, THE LANDLORD SHALL INCLUDE THE WRITTEN  
8 NOTICE OF FORECLOSURE IN THE RENTAL AGREEMENT WITH THE TENANT.

9           Sec. 4. Applicability

10           Section 33-809, Arizona Revised Statutes, as amended by this act, and  
11 section 33-1331, Arizona Revised Statutes, as added by this act, apply to any  
12 foreclosure for which a notice of sale is recorded on or after the effective  
13 date of this act.

14           Sec. 5. Emergency

15           This act is an emergency measure that is necessary to preserve the  
16 public peace, health or safety and is operative immediately as provided by  
17 law."

18 Amend title to conform

ROBERT MEZA

2545RM  
3/2/2009  
2:02 PM  
C: myr