

COMMITTEE ON COMMERCE

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

1 (Acknowledgement)

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

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

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

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

28 C. The trustee, within five business days after the recordation of a
29 notice of sale, shall mail by certified or registered mail, with postage
30 prepaid, a copy of the notice of sale to each of the persons who were parties
31 to the trust deed except the trustee. The copy of the notice mailed to the
32 parties need not show the recording date of the notice. The notice sent

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

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

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

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

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

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

31 If the trustee elects to charge a fee for providing the information
32 requested, the fee shall not exceed five per cent of the amount the trustee

1 may charge pursuant to section 33-813, subsection B, paragraph 4, except that
2 the trustee shall not charge a fee that is more than one hundred dollars or
3 be required to accept a fee that is less than thirty dollars but may accept a
4 lesser fee at the trustee's discretion. The trustee, or any other person
5 furnishing information pursuant to this subsection to the trustee, shall not
6 be subject to liability for any error or omission in providing the
7 information requested, except for the wilful and intentional failure to
8 provide information in the trustee's actual possession.

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

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

29 Sec. 2. Section 33-1321, Arizona Revised Statutes, is amended to read:
30 33-1321. Security deposits; notice of foreclosure

31 A. A landlord shall not demand or receive security, however
32 denominated, including, but not limited to, prepaid rent in an amount or

1 value in excess of one and one-half month's rent. This subsection does not
2 prohibit a tenant from voluntarily paying more than one and one-half month's
3 rent in advance.

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

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

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

30 E. ON RECEIVING NOTICE OF FORECLOSURE, THE TENANT MAY DIRECT THE
31 LANDLORD TO APPLY PREPAID RENT AND SECURITY TO THE TENANT'S RENTAL OBLIGATION
32 AND IF THE TENANT SO DIRECTS, THE TENANT IS IN COMPLIANCE WITH THE TENANT'S

1 RENTAL PAYMENT OBLIGATION FOR ONE MONTH'S RENT OR IF THE AMOUNTS HELD
2 CONSTITUTE MORE THAN ONE MONTH'S RENT, THE TENANT'S RENTAL PAYMENT OBLIGATION
3 IS PROPORTIONATELY REDUCED. ON CONVEYANCE OF TITLE TO THE RENTAL PROPERTY BY
4 WAY OF FORECLOSURE, THE TENANCY IS DEEMED TERMINATED, POSSESSION OF THE
5 RENTAL PROPERTY IS DEEMED DELIVERED TO THE FORMER OWNER AND THE TENANT IS
6 DEEMED TO HAVE DEMANDED RETURN OF ANY PROPERTY OR MONEY HELD BY THE LANDLORD
7 AS PREPAID RENT AND SECURITY.

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

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

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

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

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

23 33-1331. Notice of foreclosure; effect on lease

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

29 THIS PROPERTY IS UNDERGOING FORECLOSURE. FOR MORE INFORMATION ON THIS
30 ACTION, YOU SHOULD CONTACT THE CLERK OF THE SUPERIOR COURT OF _____
31 COUNTY (YOUR COUNTY), _____ (ADDRESS), AT _____ (PHONE NUMBER).

1 A SALE AT AUCTION MAY OR MAY NOT OCCUR AS A RESULT OF THIS FORECLOSURE.
2 CURRENTLY, THE SALE OF THIS PROPERTY HAS BEEN SET FOR _____ (TIME, DATE
3 AND PLACE) OR NO DATE FOR SALE OF THIS PROPERTY HAS BEEN ESTABLISHED. YOU
4 WILL RECEIVE WRITTEN NOTICE OF THE SALE AT LEAST SIXTY DAYS BEFORE IT TAKES
5 PLACE.

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

14 Sec. 4. Applicability

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

19 Sec. 5. Emergency

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

23 Amend title to conform

and, as so amended, it do pass

MICHELE REAGAN
Chairman

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