

REFERENCE TITLE: **timeshares; trustee's sales; foreclosures**

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1258

Introduced by
Senator Gray C

AN ACT

AMENDING TITLE 33, CHAPTER 20, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-2211; RELATING TO THE TIMESHARE OWNER'S ASSOCIATION AND MANAGEMENT ACT.

(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 20, article 1, Arizona Revised Statutes,
3 is amended by adding section 33-2211, to read:

4 33-2211. Trustee's sale of timeshare estates; notice; cure;
5 notice to prevent sale; definitions

6 A. THE ASSOCIATION OR OTHER MANAGING ENTITY MAY CAUSE A TRUSTEE'S SALE
7 OF THE TIMESHARE ESTATE OF AN OWNER WHO IS DELINQUENT IN THE PAYMENT OF
8 ASSESSMENTS FOR THAT TIMESHARE ESTATE TO THAT ASSOCIATION OR MANAGING ENTITY
9 UNDER A TIMESHARE INSTRUMENT PURSUANT TO THIS SECTION.

10 B. AN ASSOCIATION OR OTHER MANAGING ENTITY THAT DESIRES TO USE A
11 TRUSTEE'S SALE SHALL PREPARE, EXECUTE AND ACKNOWLEDGE A NOTICE OF DELINQUENCY
12 IDENTIFYING THE OWNER OF THE TIMESHARE ESTATE, THE NATURE AND AMOUNT OF THE
13 OWNER'S CURRENT DELINQUENCY IN PAYMENT OF ASSESSMENTS, THE LEGAL DESCRIPTION
14 OF THE OWNER'S TIMESHARE ESTATE, THE NAME AND ADDRESS OF THE ASSOCIATION OR
15 OTHER MANAGING ENTITY AND THE NAME AND ADDRESS OF THE TRUSTEE DESIGNATED BY
16 THE ASSOCIATION OR MANAGING ENTITY TO CONDUCT THE TRUSTEE'S SALE.

17 C. A NOTICE OF DELINQUENCY MAY APPLY TO MULTIPLE TIMESHARE ESTATES
18 OWNED BY AN OWNER IF THE OWNER IS DELINQUENT IN PAYMENT OF ASSESSMENTS FOR
19 ALL OF THE TIMESHARE ESTATES INCLUDED IN THE NOTICE OF DELINQUENCY AND THE
20 NOTICE OF DELINQUENCY STATES SEPARATELY THE DELINQUENT ASSESSMENTS FOR EACH
21 TIMESHARE ESTATE. A NOTICE OF DELINQUENCY MAY APPLY TO MULTIPLE DELINQUENT
22 OWNERS IF EACH OWNER'S DELINQUENCY OR DELINQUENCIES ARE LISTED SEPARATELY AND
23 THE NOTICE INCLUDES THE INFORMATION REQUIRED BY SUBSECTION B OF THIS SECTION
24 FOR EACH OWNER.

25 D. THE ASSOCIATION OR MANAGING ENTITY SHALL RECORD THE NOTICE OF
26 DELINQUENCY WITH THE COUNTY RECORDER OF THE COUNTY IN WHICH THE TIMESHARE
27 PROPERTY RELATING TO THE TIMESHARE ESTATE OR ESTATES IS LOCATED AND SHALL
28 MAIL BY CERTIFIED OR REGISTERED MAIL, WITH POSTAGE PREPAID, A COPY OF THE
29 NOTICE OF DELINQUENCY TO THE OWNER OR OWNERS LISTED IN THE NOTICE AT THE LAST
30 ADDRESS FOR EACH DELINQUENT OWNER ACCORDING TO THE RECORDS OF THE ASSOCIATION
31 OR MANAGING ENTITY.

32 E. A TRUSTEE APPOINTED IN A NOTICE OF DELINQUENCY AND ANY PROPERLY
33 APPOINTED SUBSTITUTE TRUSTEE MAY CONDUCT A TRUSTEE'S SALE OF A TIMESHARE
34 ESTATE UNDER THIS SECTION. THE RECORDING OF A NOTICE OF DELINQUENCY SHALL
35 SATISFY ALL REQUIREMENTS FOR THE TRUSTEE, OR ANY PROPERLY APPOINTED
36 SUBSTITUTE TRUSTEE, TO APPEAR IN THE CHAIN OF TITLE FOR THE TIMESHARE ESTATE
37 IN ORDER FOR THE TRUSTEE TO BE ENTITLED TO ISSUE A TRUSTEE'S DEED ON
38 COMPLETION OF A TRUSTEE'S SALE FOR THE TIMESHARE ESTATE.

39 F. IF THE DELINQUENCIES IDENTIFIED IN A NOTICE OF DELINQUENCY ARE NOT
40 CURED WITHIN THIRTY DAYS AFTER THE ASSOCIATION OR MANAGING ENTITY MAILES THE
41 NOTICE OF DELINQUENCY TO THE DELINQUENT OWNER UNDER SUBSECTION D OF THIS
42 SECTION, THE ASSOCIATION OR MANAGING ENTITY MAY CAUSE THE TRUSTEE TO CONDUCT
43 A TRUSTEE'S SALE OF THE DELINQUENT OWNER'S TIMESHARE ESTATE PURSUANT TO
44 SECTIONS 33-803.01, 33-804, 33-807, 33-808, 33-809, 33-810, 33-811, 33-812,
45 33-813 AND 33-820, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION. FOR THE

1 PURPOSES OF A TRUSTEE'S SALE OF A DELINQUENT OWNER'S TIMESHARE ESTATE
2 PURSUANT TO CHAPTER 6.1 OF THIS TITLE:

3 1. "CONTRACT SECURED BY THE TRUST DEED" MEANS A SPECIFIC OWNER'S
4 OBLIGATION TO PAY DELINQUENT ASSESSMENTS FOR A SPECIFIC TIMESHARE ESTATE.

5 2. "DEED OF TRUST" MEANS A SPECIFIC OWNER'S OBLIGATION FOR PAYMENT OF
6 ASSESSMENTS UNDER THE TIMESHARE INSTRUMENT AND THE LIEN SECURING PAYMENT OF
7 THAT OBLIGATION, HOWEVER DENOMINATED.

8 3. "TRUST PROPERTY" MEANS THE TIMESHARE ESTATE OR ESTATES FOR WHICH A
9 SPECIFIC OWNER IS DELINQUENT IN THE PAYMENT OF ASSESSMENTS.

10 4. "TRUSTEE" MEANS A PERSON WHO IS QUALIFIED TO SERVE AS TRUSTEE AS
11 PRESCRIBED BY SECTION 33-803 AND WHO IS APPOINTED AS TRUSTEE PURSUANT TO THIS
12 SECTION OR ANY SUBSTITUTE TRUSTEE APPOINTED BY THE BENEFICIARY IN ACCORDANCE
13 WITH SECTION 33-804.

14 G. THE POSTING OF THE NOTICE OF THE TIME AND PLACE OF SALE REQUIRED BY
15 SECTION 33-808, SUBSECTION A, PARAGRAPH 3 MAY OCCUR ON AN OWNERS' BULLETIN
16 BOARD OR OTHER OWNER NOTICE BOARD PROVIDED BY THE ASSOCIATION OR OTHER
17 MANAGING ENTITY AT THE TIMESHARE PROPERTY, AND THE ASSOCIATION OR OTHER
18 MANAGING ENTITY MAY ALSO POST THE NOTICE ON A WEBSITE OR BY OTHER MEANS. ANY
19 FORMAT OF NOTICE OF TRUSTEE'S SALE MAY BE USED IF THE REQUIRED INFORMATION
20 STATED IN SECTION 33-808, SUBSECTION C IS PROVIDED. A REQUEST FOR NOTICE
21 UNDER SECTION 33-809 MUST IDENTIFY A SPECIFIC TRUSTOR AND TIMESHARE ESTATE
22 AND THE RECORDED TIMESHARE INSTRUMENT, IF ANY. A COPY OF THE NOTICE OF
23 DELINQUENCY UNDER SUBSECTION B OF THIS SECTION CONSTITUTES THE STATEMENT OF
24 BREACH OR NONPERFORMANCE UNDER SECTION 33-809, SUBSECTION C, AND THE
25 TRUSTOR'S ADDRESS FOR MAILING IS THE ADDRESS STATED IN THE NOTICE OF
26 DELINQUENCY. THE BID DEPOSIT UNDER SECTION 33-810, SUBSECTION A IS ONE
27 THOUSAND DOLLARS, AS A SINGLE DEPOSIT FOR ALL TIMESHARE ESTATES INCLUDED IN
28 THE NOTICE OF TRUSTEE'S SALE. ONLY THE BENEFICIARY OR ITS ASSIGNEE MAY MAKE
29 A CREDIT BID IN PLACE OF CASH AT THE SALE.

30 H. THE TRUSTEE'S SALE MAY INCLUDE MULTIPLE TIMESHARE ESTATES OWNED BY
31 AN OWNER IF THE OWNER IS DELINQUENT IN PAYMENT OF ASSESSMENTS FOR ALL OF THE
32 TIMESHARE ESTATES INCLUDED IN THE TRUSTEE'S SALE PROCEEDING. THE TRUSTEE'S
33 SALE MAY INCLUDE TIMESHARE ESTATES OWNED BY MULTIPLE OWNERS IF THE NOTICE OF
34 TRUSTEE'S SALE PROVIDES ALL INFORMATION REQUIRED BY SECTION 33-808,
35 SUBSECTION D FOR EACH OWNER AND TIMESHARE ESTATE AND EACH TIMESHARE ESTATE IS
36 SOLD SEPARATELY.

37 I. IF FEE TITLE TO A TIMESHARE ESTATE WAS ACQUIRED BY AN OWNER BEFORE
38 JULY 1, 2008, THE TRUSTEE SHALL PROCEED AS FOLLOWS AND THE OWNER MAY PREVENT
39 A TRUSTEE'S SALE AS TO THAT TIMESHARE ESTATE AS FOLLOWS:

40 1. THE NOTICE OF DELINQUENCY FOR ANY TIMESHARE ESTATE ACQUIRED BY THE
41 OWNER BEFORE JULY 1, 2008 SHALL INCLUDE A STATEMENT INFORMING THE OWNER OF
42 THE OWNER'S RIGHT TO PREVENT A TRUSTEE'S SALE AS TO THAT TIMESHARE ESTATE BY
43 RETURNING THE FORM THAT IS DESCRIBED IN PARAGRAPH 2 OF THIS SUBSECTION AND
44 THAT IS SIGNED BY THE OWNER, BY CERTIFIED OR REGISTERED MAIL, POSTAGE
45 PREPAID, TO THE TRUSTEE AND TO THE ASSOCIATION OR OTHER MANAGING ENTITY AT

1 THE ADDRESSES STATED IN THE NOTICE OF DELINQUENCY WITHIN THIRTY DAYS AFTER
2 THE ASSOCIATION OR OTHER MANAGING ENTITY SENDS THE NOTICE OF DELINQUENCY TO
3 THE OWNER.

4 2. THE NOTICE OF DELINQUENCY SHALL BE ACCOMPANIED BY A FORM OF NOTICE
5 IN SUBSTANTIALLY THE FOLLOWING FORM:

6 NOTICE OF ELECTION TO PREVENT
7 TRUSTEE'S SALE

8 THE UNDERSIGNED, _____(NAME(S))_____, IS (ARE) THE
9 OWNER(S) OF TIMESHARE ESTATE NOS. _____ AT _____(TIMESHARE
10 PLAN NAME)_____. THE UNDERSIGNED HAS RECEIVED A NOTICE OF
11 DELINQUENCY DATED _____, _____ FROM _____(ASSOCIATION OR
12 OTHER MANAGING ENTITY)_____. THE UNDERSIGNED HEREBY EXERCISES
13 THE UNDERSIGNED'S RIGHT TO PREVENT A TRUSTEE SALE OF THE
14 TIMESHARE ESTATE(S) THAT WAS (WERE) ACQUIRED BY ME (US) BEFORE
15 JULY 1, 2008, PURSUANT TO ARIZONA REVISED STATUTES SECTION
16 33-2211, SUBSECTION I.

17 DATED: _____

18 _____
19 OWNER'S SIGNATURE(S)

20 3. IF AN OWNER RETURNS THE SIGNED FORM DESCRIBED IN PARAGRAPH 2 OF
21 THIS SUBSECTION TO THE TRUSTEE AND THE ASSOCIATION OR OTHER MANAGING ENTITY
22 AS REQUIRED BY PARAGRAPH 1 OF THIS SUBSECTION, THE ASSOCIATION OR OTHER
23 MANAGING ENTITY AND THE TRUSTEE SHALL DESIST FROM ANY TRUSTEE'S SALE
24 PROCEEDINGS WITH RESPECT TO THE TIMESHARE ESTATE THAT WAS ACQUIRED BY THE
25 OWNER BEFORE JULY 1, 2008 AND DESCRIBED IN THE NOTICE, BUT THE ASSOCIATION OR
26 MANAGING ENTITY MAY CONTINUE TO USE OTHER AVAILABLE REMEDIES TO COLLECT
27 DELINQUENT ASSESSMENTS FOR THE TIMESHARE ESTATE. IF THE OWNER DOES NOT
28 TIMELY RETURN THE SIGNED FORM AS PRESCRIBED BY THIS SUBSECTION, THE OWNER
29 WAIVES ANY RIGHTS UNDER THIS SUBSECTION.

30 J. THE REMEDY PROVIDED BY THIS SECTION DOES NOT EXCLUDE THE USE OF ANY
31 OTHER AVAILABLE REMEDY OF THE ASSOCIATION OR MANAGING ENTITY FOR DELINQUENCY
32 BY A TIMESHARE ESTATE OWNER, UNLESS AN OWNER'S TIMESHARE ESTATE IS SOLD
33 PURSUANT TO A TRUSTEE'S POWER OF SALE, IN WHICH CASE AN ACTION MAY NOT BE
34 MAINTAINED TO RECOVER ANY DIFFERENCE BETWEEN THE AMOUNT OBTAINED BY SALE AND
35 THE AMOUNT OF THE INDEBTEDNESS AND ANY INTEREST, COSTS AND EXPENSES IN
36 CONNECTION WITH THAT TIMESHARE ESTATE.

37 K. FOR THE PURPOSES OF THIS SECTION:

38 1. "BENEFICIARY" MEANS THE ASSOCIATION OR OTHER MANAGING ENTITY
39 ENTITLED TO COLLECT ASSESSMENTS.

40 2. "TRUSTOR" MEANS A SPECIFIC OWNER WHO IS DELINQUENT IN PAYMENT OF
41 ASSESSMENTS FOR A TIMESHARE ESTATE OR ESTATES.