

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

SENATE BILL 1258

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, BUT ONLY IF THAT OWNER
10 HAS BEEN DELINQUENT IN THE PAYMENT OF ASSESSMENTS FOR THAT TIMESHARE ESTATE
11 FOR A PERIOD OF ONE YEAR.

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

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

27 D. THE ASSOCIATION OR MANAGING ENTITY SHALL RECORD THE NOTICE OF
28 DELINQUENCY WITH THE COUNTY RECORDER OF THE COUNTY IN WHICH THE TIMESHARE
29 PROPERTY RELATING TO THE TIMESHARE ESTATE OR ESTATES IS LOCATED AND SHALL
30 MAIL BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, A COPY OF THE NOTICE OF
31 DELINQUENCY TO THE OWNER OR OWNERS LISTED IN THE NOTICE AT THE LAST ADDRESS
32 FOR EACH DELINQUENT OWNER ACCORDING TO THE RECORDS OF THE ASSOCIATION OR
33 MANAGING ENTITY. THE ASSOCIATION OR OTHER MANAGING ENTITY SHALL POST A
34 SUMMARY OF THE NOTICE OF DELINQUENCY ON AN OWNERS' BULLETIN BOARD OR OTHER
35 OWNER NOTICE BOARD PROVIDED BY THE ASSOCIATION OR OTHER MANAGING ENTITY AT
36 THE TIMESHARE PROPERTY, SUBJECT TO OTHER APPLICABLE LAW.

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

1 F. IF THE DELINQUENCIES IDENTIFIED IN A NOTICE OF DELINQUENCY ARE NOT
2 CURED WITHIN THIRTY DAYS AFTER THE ASSOCIATION OR MANAGING ENTITY MAILES THE
3 NOTICE OF DELINQUENCY TO THE DELINQUENT OWNER UNDER SUBSECTION D OF THIS
4 SECTION, THE ASSOCIATION OR MANAGING ENTITY MAY CAUSE THE TRUSTEE TO CONDUCT
5 A TRUSTEE'S SALE OF THE DELINQUENT OWNER'S TIMESHARE ESTATE PURSUANT TO
6 SECTIONS 33-803.01, 33-804, 33-807, 33-808, 33-809, 33-810, 33-811, 33-812,
7 33-813 AND 33-820, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION. FOR THE
8 PURPOSES OF A TRUSTEE'S SALE OF A DELINQUENT OWNER'S TIMESHARE ESTATE
9 PURSUANT TO CHAPTER 6.1 OF THIS TITLE:

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

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

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

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

21 G. THE POSTING OF THE NOTICE OF THE TIME AND PLACE OF SALE REQUIRED BY
22 SECTION 33-808, SUBSECTION A, PARAGRAPH 3 SHALL OCCUR ON AN OWNERS' BULLETIN
23 BOARD OR OTHER OWNER NOTICE BOARD PROVIDED BY THE ASSOCIATION OR OTHER
24 MANAGING ENTITY AT THE TIMESHARE PROPERTY, ON THE ASSOCIATION'S OR OTHER
25 MANAGING ENTITY'S WEBSITE FOR THE TIMESHARE PROPERTY, IF ANY, AND IN THE
26 ASSOCIATION'S OR OTHER MANAGING ENTITY'S NEXT NEWSLETTER, IF ANY. ANY FORMAT
27 OF NOTICE OF TRUSTEE'S SALE MAY BE USED IF THE REQUIRED INFORMATION STATED IN
28 SECTION 33-808, SUBSECTION C IS PROVIDED. A REQUEST FOR NOTICE UNDER SECTION
29 33-809 MUST IDENTIFY A SPECIFIC TRUSTOR AND TIMESHARE ESTATE AND THE RECORDED
30 TIMESHARE INSTRUMENT, IF ANY. THE MAILING OF THE NOTICE OF THE TIME AND
31 PLACE OF SALE REQUIRED BY SECTION 33-809, SUBSECTION B, SHALL INCLUDE A
32 RETURN RECEIPT REQUESTED. A COPY OF THE NOTICE OF DELINQUENCY UNDER
33 SUBSECTION B OF THIS SECTION CONSTITUTES THE STATEMENT OF BREACH OR
34 NONPERFORMANCE UNDER SECTION 33-809, SUBSECTION C, AND THE TRUSTOR'S ADDRESS
35 FOR MAILING IS THE ADDRESS STATED IN THE NOTICE OF DELINQUENCY. THE BID
36 DEPOSIT UNDER SECTION 33-810, SUBSECTION A IS ONE THOUSAND DOLLARS, AS A
37 SINGLE DEPOSIT FOR ALL TIMESHARE ESTATES INCLUDED IN THE NOTICE OF TRUSTEE'S
38 SALE. ONLY THE BENEFICIARY OR ITS ASSIGNEE MAY MAKE A CREDIT BID IN PLACE OF
39 CASH AT THE SALE. THE PROCEEDS OF A TRUSTEE'S SALE SHALL BE APPLIED AS
40 PROVIDED IN SECTION 33-812, INCLUDING THE PAYMENT OF ALL REMAINING EXCESS
41 PROCEEDS TO THE TRUSTOR UNDER SECTION 33-812, SUBSECTION A. THE TRUSTOR AND
42 JUNIOR LIENHOLDERS MAY REINSTATE BY PAYING ALL AMOUNTS DUE IN ACCORDANCE WITH
43 SECTION 33-813.

1 H. THE TRUSTEE'S SALE MAY INCLUDE MULTIPLE TIMESHARE ESTATES OWNED BY
2 AN OWNER IF THE OWNER IS DELINQUENT IN PAYMENT OF ASSESSMENTS FOR ALL OF THE
3 TIMESHARE ESTATES INCLUDED IN THE TRUSTEE'S SALE PROCEEDING. THE TRUSTEE'S
4 SALE MAY INCLUDE TIMESHARE ESTATES OWNED BY MULTIPLE OWNERS IF THE NOTICE OF
5 TRUSTEE'S SALE PROVIDES ALL INFORMATION REQUIRED BY SECTION 33-808,
6 SUBSECTION D FOR EACH OWNER AND TIMESHARE ESTATE AND EACH TIMESHARE ESTATE IS
7 SOLD SEPARATELY.

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

11 1. THE NOTICE OF DELINQUENCY FOR ANY TIMESHARE ESTATE ACQUIRED BY THE
12 OWNER BEFORE JULY 1, 2008 SHALL INCLUDE A STATEMENT INFORMING THE OWNER OF
13 THE OWNER'S RIGHT TO PREVENT A TRUSTEE'S SALE AS TO THAT TIMESHARE ESTATE BY
14 RETURNING THE FORM THAT IS DESCRIBED IN PARAGRAPH 2 OF THIS SUBSECTION AND
15 THAT IS SIGNED BY THE OWNER, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO
16 THE TRUSTEE AND TO THE ASSOCIATION OR OTHER MANAGING ENTITY AT THE ADDRESSES
17 STATED IN THE NOTICE OF DELINQUENCY WITHIN THIRTY DAYS AFTER THE ASSOCIATION
18 OR OTHER MANAGING ENTITY SENDS THE NOTICE OF DELINQUENCY TO THE OWNER.

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

21 NOTICE OF ELECTION TO PREVENT
22 TRUSTEE'S SALE

23 THE UNDERSIGNED, _____ (NAME(S)), IS (ARE) THE
24 OWNER(S) OF TIMESHARE ESTATE NOS. _____ AT _____ (TIMESHARE
25 PLAN NAME)_____. THE UNDERSIGNED HAS RECEIVED A NOTICE OF
26 DELINQUENCY DATED _____, ____ FROM _____ (ASSOCIATION OR
27 OTHER MANAGING ENTITY)_____. THE UNDERSIGNED HEREBY EXERCISES
28 THE UNDERSIGNED'S RIGHT TO PREVENT A TRUSTEE SALE OF THE
29 TIMESHARE ESTATE(S) THAT WAS (WERE) ACQUIRED BY ME (US) BEFORE
30 JANUARY 1, 2009, PURSUANT TO ARIZONA REVISED STATUTES SECTION
31 33-2211, SUBSECTION I.

32 DATED: _____

33 _____
34 OWNER'S SIGNATURE(S)

35 3. IF AN OWNER RETURNS THE SIGNED FORM DESCRIBED IN PARAGRAPH 2 OF
36 THIS SUBSECTION TO THE TRUSTEE AND THE ASSOCIATION OR OTHER MANAGING ENTITY
37 AS REQUIRED BY PARAGRAPH 1 OF THIS SUBSECTION, THE ASSOCIATION OR OTHER
38 MANAGING ENTITY AND THE TRUSTEE SHALL DESIST FROM ANY TRUSTEE'S SALE
39 PROCEEDINGS WITH RESPECT TO THE TIMESHARE ESTATE THAT WAS ACQUIRED BY THE
40 OWNER BEFORE JANUARY 1, 2009 AND DESCRIBED IN THE NOTICE, BUT THE ASSOCIATION
41 OR MANAGING ENTITY MAY CONTINUE TO USE OTHER AVAILABLE REMEDIES TO COLLECT
42 DELINQUENT ASSESSMENTS FOR THE TIMESHARE ESTATE. IF THE OWNER DOES NOT
43 TIMELY RETURN THE SIGNED FORM AS PRESCRIBED BY THIS SUBSECTION, THE OWNER
44 WAIVES ANY RIGHTS UNDER THIS SUBSECTION.

1 J. THE REMEDY PROVIDED BY THIS SECTION DOES NOT EXCLUDE THE USE OF ANY
2 OTHER AVAILABLE REMEDY OF THE ASSOCIATION OR MANAGING ENTITY FOR DELINQUENCY
3 BY A TIMESHARE ESTATE OWNER, UNLESS AN OWNER'S TIMESHARE ESTATE IS SOLD
4 PURSUANT TO A TRUSTEE'S POWER OF SALE, IN WHICH CASE AN ACTION MAY NOT BE
5 MAINTAINED TO RECOVER ANY DIFFERENCE BETWEEN THE AMOUNT OBTAINED BY SALE AND
6 THE AMOUNT OF THE INDEBTEDNESS AND ANY INTEREST, COSTS AND EXPENSES IN
7 CONNECTION WITH THAT TIMESHARE ESTATE. THIS SECTION DOES NOT PROHIBIT AN
8 ASSOCIATION OR OTHER MANAGING ENTITY FROM TAKING A DEED IN LIEU OF
9 FORECLOSURE EXECUTED BY AN OWNER OF A TIMESHARE ESTATE.

10 K. THIS SECTION SHALL NOT APPLY TO ANY TIMESHARE PROPERTY FOR WHICH
11 THE TIMESHARE INSTRUMENT EXPRESSLY MANDATES THAT JUDICIAL FORECLOSURE IS THE
12 SOLE METHOD FOR THE ASSOCIATION OR OTHER MANAGING ENTITY TO FORECLOSE OR
13 REALIZE UPON A LIEN SECURING PAYMENT OF ASSESSMENTS DUE TO THAT ASSOCIATION
14 OR OTHER MANAGING ENTITY.

15 L. FOR THE PURPOSES OF THIS SECTION:

16 1. "BENEFICIARY" MEANS THE ASSOCIATION OR OTHER MANAGING ENTITY
17 ENTITLED TO COLLECT ASSESSMENTS.

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