

REFERENCE TITLE: mortgages; real property transfers

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SB 1439

Introduced by
Senator McCune Davis; Representatives Ableser, Bradley, Gallardo,
Kirkpatrick, Lujan, Mason, Meza, Prezeliski, Sinema; Senator Garcia;
Representatives Cajero Bedford, Lopes, Schapira

AN ACT

AMENDING SECTION 33-702, 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 33-702, Arizona Revised Statutes, is amended to
3 read:

4 33-702. Mortgage defined; admissibility of proof that transfer
5 is a mortgage

6 A. Every transfer of an interest in real property, other than in
7 trust, or a trust deed THAT IS subject to ~~the provisions of~~ chapter 6.1 of
8 this title, made only as a security for the performance of another act, is a
9 mortgage. The fact that a transfer was made subject to defeasance on a
10 condition ~~may~~, for the purpose of showing that the transfer is a mortgage,
11 MAY be proved except against a subsequent purchaser or encumbrancer for value
12 and without notice, notwithstanding that the fact does not appear by the
13 terms of the instrument.

14 B. A TRUST DEED THAT IS SUBJECT TO CHAPTER 6.1 OF THIS TITLE AND ANY
15 TRANSFER OF AN INTEREST IN RESIDENTIAL REAL PROPERTY THAT IS DESIGNED
16 PRINCIPALLY FOR OCCUPANCY BY ONE TO FOUR FAMILIES, OTHER THAN A TRANSFER IN
17 TRUST, IS A MORTGAGE IF ALL OF THE FOLLOWING APPLY:

18 1. AT LEAST ONE OF THE OWNERS OF THE TRANSFERRED INTEREST IS OCCUPYING
19 THE PROPERTY AT THE TIME OF THE TRANSFER OF INTEREST.

20 2. THE TRANSFER IS MADE IN WHOLE OR IN PART IN EXCHANGE FOR THE
21 PAYMENT OF MONEY TO THE OWNER OR TO A THIRD PARTY TO WHOM THE OWNER IS
22 INDEBTED.

23 3. AT LEAST ONE OF THE OWNERS OF THE TRANSFERRED INTEREST IS PERMITTED
24 BY WRITTEN OR ORAL AGREEMENT TO CONTINUE OCCUPYING THE PROPERTY.

25 4. THE OWNER OF THE TRANSFERRED INTEREST HAS A WRITTEN OR ORAL
26 CONTRACTUAL RIGHT, CONDITIONAL OR UNCONDITIONAL, BY OPTION OR OTHERWISE, TO
27 REACQUIRE THE TRANSFERRED INTEREST.

28 C. IT IS AN UNLAWFUL PRACTICE PURSUANT TO SECTION 44-1522 FOR ANY
29 PERSON TO REPRESENT IN A RECORDED DOCUMENT, A JUDICIAL PROCEEDING OR IN
30 CONNECTION WITH ANY TRANSACTION OR PROCEEDING CONCERNING AN INTEREST THAT IS
31 ACQUIRED AS PRESCRIBED IN SUBSECTION B OF THIS SECTION THAT THE INTEREST THAT
32 IS ACQUIRED IS OTHER THAN THAT OF A MORTGAGEE.

33 ~~B-~~ D. A mortgage or trust deed may provide for an assignment to the
34 mortgagee or beneficiary of the interest of the mortgagor or trustor in
35 leases, rents, issues, profits or income from the property covered ~~thereby~~ BY
36 THE MORTGAGE OR TRUST DEED, whether effective before, ~~upon~~ ON or after a
37 default under ~~such~~ THE mortgage or trust deed or any contract secured ~~thereby~~
38 BY THE MORTGAGE OR TRUST DEED, and such assignment may be enforced without
39 regard to the adequacy of the security or the solvency of the mortgagor or
40 trustor by any one or more of the following methods:

41 1. The appointment of a receiver.

42 2. The mortgagee or beneficiary taking possession of the property, or
43 without the mortgagee or beneficiary taking possession of the property.

44 3. Collecting such monies directly from the parties obligated for
45 payment.

46 4. Injunction.