

REFERENCE TITLE: trustee sales; notice.

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

# SB 1571

Introduced by  
Senator Leff

AN ACT

AMENDING SECTION 33-809, ARIZONA REVISED STATUTES; RELATING TO DEEDS OF TRUST.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
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  
20 under the trust deed recorded in docket or book \_\_\_\_\_ at  
21 page \_\_\_\_\_, records of \_\_\_\_\_ county, Arizona,  
22 \_\_\_\_\_, \_\_\_\_\_,

23 (legal description of trust property)

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

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

28 \_\_\_\_\_  
29 Signature

30 (Acknowledgement)

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

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

39 2. To each person who, at the time of recording of the notice of sale,  
40 appears on the records of the county recorder in the county in which any part  
41 of the trust property is situated to have an interest in any of the trust  
42 property. The copy of the notice sent pursuant to this paragraph shall be  
43 addressed to the person whose interest appears of record at the address set  
44 forth in the document. If no address for the person is set forth in the  
45 document, the copy of the notice may be addressed in care of the person to

1 whom the recorded document evidencing such interest was directed to be mailed  
2 at the time of its recording or to any other address of the person known or  
3 ascertained by the trustee. If the interest that appears on the records of  
4 the county recorder is a deed of trust, a copy of the notice only needs to be  
5 mailed to the beneficiary under the deed of trust. If any person having an  
6 interest of record or the trustor, or any person who has recorded a request  
7 for notice, desires to change the address to which notice shall be mailed,  
8 the change shall be accomplished by a request as provided under this section.

9 C. The trustee, within five business days after the recordation of a  
10 notice of sale, shall mail by certified or registered mail, with postage  
11 prepaid, a copy of the notice of sale to each of the persons who were parties  
12 to the trust deed except the trustee. The copy of the notice mailed to the  
13 parties need not show the recording date of the notice. The notice sent  
14 pursuant to this subsection shall be addressed to the mailing address  
15 specified in the trust deed. In addition, notice to each party shall contain  
16 a statement that a breach or nonperformance of the trust deed or the contract  
17 or contracts secured by the trust deed, or both, has occurred, and setting  
18 forth the nature of such breach or nonperformance and of the beneficiary's  
19 election to sell or cause to be sold the trust property under the trust deed  
20 and the additional notice shall be signed by the beneficiary or the  
21 beneficiary's agent. A copy of the additional notice shall also be sent with  
22 the notice provided for in subsection B, paragraph 2 of this section to all  
23 persons whose interest in the trust property is subordinate in priority to  
24 that of the deed of trust along with a written statement that the interest  
25 may be subject to being terminated by the trustee's sale. The written  
26 statement may be contained in the statement of breach or nonperformance.

27 D. No request for a copy of a notice recorded pursuant to this  
28 section, nor any statement or allegation in any request, nor any record of  
29 request, shall affect the title to the trust property or be deemed notice to  
30 any person that a person requesting a copy of notice of sale has or claims  
31 any interest in, or claim upon, the trust property.

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

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

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

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

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

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

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