

California Statutes

33-808. Notice of trustee's sale

A. The trustee shall give written notice of the time and place of sale legally describing the trust property to be sold by each of the following methods:

1. Recording a notice in the office of the recorder of each county where the trust property is situated.
2. Giving notice as provided in section 33-809 to the extent applicable.
3. Posting a copy of the notice of sale, at least twenty days before the date of sale in some conspicuous place on the trust property to be sold, if posting can be accomplished without a breach of the peace. If access to the trust property is denied because a common entrance to the property is restricted by a limited access gate or similar impediment, the property shall be posted by posting notice at that gate or impediment. Notice shall also be posted at one of the places provided for posting public notices at any building that serves as a location of the superior court in the county where the trust property is to be sold. Posting is deemed completed on the date the trust property is posted. The posting of notice at the superior court location is deemed a ministerial act.
4. Publication of the notice of sale in a newspaper of general circulation in each county in which the trust property to be sold is situated. The notice of sale shall be published at least once a week for four consecutive weeks. The last date of publication shall not be less than ten days prior to the date of sale. Publication is deemed completed on the date of the first of the four publications of the notice of sale pursuant to this paragraph.

B. The sale shall be held at the time and place designated in the notice of sale on a day other than a Saturday or legal holiday between 9:00 a.m. and 5:00 p.m. mountain standard time at a specified place on the trust property, at a specified place at any building that serves as a location of the superior court or at a specified place at a place of business of the trustee, in any county in which part of the trust property to be sold is situated.

C. The notice of sale shall contain:

1. The date, time and place of the sale. The date, time and place shall be set pursuant to section 33-807, subsection D. The date shall be no sooner than the ninety-first day after the date that the notice of sale was recorded.
2. The street address, if any, or identifiable location as well as the legal description of the trust property.
3. The county assessor's tax parcel number for the trust property or the tax parcel number of a larger parcel of which the trust property is a part.

4. The original principal balance as shown on the deed of trust. If the amount is not shown on the deed of trust, it shall be listed as "unspecified".

5. The names and addresses, as of the date the notice of sale is recorded, of the beneficiary and the trustee, the name and address of the original trustor as stated in the deed of trust, the signature of the trustee and the basis for the trustee's qualification pursuant to section 33-803, subsection A, including an express statement of the paragraph under subsection A on which the qualification is based. The address of the beneficiary shall not be in care of the trustee.

6. The telephone number of the trustee.

7. The name of the state or federal licensing or regulatory body or controlling agency of the trustee as prescribed by section 33-803, subsection A.

D. The notice of sale shall be sufficient if made in substantially the following form:

Notice of Trustee's Sale

The following legally described trust property will be sold, pursuant to the power of sale under that certain trust deed recorded in docket or book _____ at page _____ records of _____ county, Arizona, at public auction to the highest bidder at (specific place of sale as permitted by law) _____, in _____ county, in or near _____, Arizona, on _____, _____, at _____ o'clock ____m. of said day:

(street address, if any, or identifiable

location of trust property)

(legal description of trust property)

Tax parcel number _____

Original principal balance \$_____

Name and address of beneficiary _____

Name and address of original trustor _____

Name, address and telephone number of trustee _____

Signature of trustee _____

Manner of trustee qualification _____

Name of trustee's regulator _____

Dated this _____ day of _____, ____.

(Acknowledgement)

E. Any error or omission in the information required by subsection C or D of this section, other than an error in the legal description of the trust property or an error in the date, time or place of sale, shall not invalidate a trustee's sale. Any error in the legal description of the trust property shall not invalidate a trustee's sale if considered as a whole the information provided is sufficient to identify the trust property being sold. If there is an error or omission in the legal description so that the trust property cannot be identified, or if there is an error in the date, time or place of sale, the trustee shall record a cancellation of notice of sale. The trustee or any person furnishing information to the trustee shall not be subject to liability for any error or omission in the information required by subsection C of this section except for the wilful and intentional failure to provide such information. This subsection does not apply to claims made by an insured under any policy of title insurance.

F. The notice of trustee sale may not be rerecorded for any reason. This subsection does not prohibit the recording of a new or subsequent notice of sale regarding the same property.[33-721. Foreclosure of mortgage by court action](#)

Mortgages of real property and deeds of trust of a type not included in the definition of deed of trust provided in section 33-801, notwithstanding any other provision in the mortgage or deed, shall be foreclosed by action in a court.

[33-702. Mortgage defined; admissibility of proof that transfer is a mortgage](#)

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

B. A mortgage or trust deed may provide for an assignment to the mortgagee or beneficiary of the interest of the mortgagor or trustor in leases, rents, issues, profits or income from the property covered thereby, whether effective before, upon or after a default under such mortgage or trust deed or any contract secured thereby, and such assignment may be enforced without regard to the

adequacy of the security or the solvency of the mortgagor or trustor by any one or more of the following methods:

1. The appointment of a receiver.
2. The mortgagee or beneficiary taking possession of the property, or without the mortgagee or beneficiary taking possession of the property.
3. Collecting such monies directly from the parties obligated for payment.
4. Injunction.-

33-703. Effect of mortgage as lien; right to possession of mortgaged property; rights of mortgagee in property acquired by mortgagor after execution of mortgage

A. A mortgage is a lien upon everything that would pass by a grant of the property, but does not entitle the mortgagee to possession of the property unless authorized by the express terms of the mortgage. After execution of the mortgage, the mortgagor may agree to a change of possession without a new consideration.

B. Title acquired by the mortgagor subsequent to the execution of the mortgage inures to the mortgagee as security as if acquired before the execution.

33-722. Election between action on debt or to foreclose

If separate actions are brought on the debt and to foreclose the mortgage given to secure it, the plaintiff shall elect which to prosecute and the other shall be dismissed.

33-801. Definitions

In this chapter, unless the context otherwise requires:

1. "Beneficiary" means the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or the person's successor in interest.
2. "Business day" means any day other than a Saturday or a legal holiday.
3. "Cash" means United States currency.
4. "Contract" means a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty, including but not limited to a note, A promissory note or provisions of any trust deed.
5. "Credit bid" means a bid made by the beneficiary in full or partial satisfaction of the contract or contracts which are secured by the trust deed. Such credit bid may only include an amount up to the full amount of the contract or contracts secured by the trust deed, less any amount owing on liens or encumbrances with interest which are superior in priority to the trust deed and which the beneficiary is obligated to pay under the contract or contracts or under the trust deed, together

with the amount of other obligations provided in or secured by the trust deed and the costs and expenses of exercising the power of sale and the sale, including the trustee's fees and reasonable attorney fees actually incurred.

6. "Force majeure" means an act of God or of nature, a superior or overpowering force or an event or effect that cannot reasonably be anticipated or controlled and that prevents access to the sale location for conduct of a sale.

7. "Parent corporation" means a corporation which owns eighty per cent or more of every class of the issued and outstanding stock of another corporation or, in the case of a savings and loan association, eighty per cent or more of its issued and outstanding guaranty capital.

8. "Trust deed" or "deed of trust" means a deed executed in conformity with this chapter and conveying trust property to a trustee or trustees qualified under section 33-803 to secure the performance of a contract or contracts, other than a trust deed which encumbers in whole or in part trust property located in Arizona and in one or more other states.

9. "Trust property" means any legal, equitable, leasehold or other interest in real property which is capable of being transferred, whether or not it is subject to any prior mortgages, trust deeds, contracts for conveyance of real property or other liens or encumbrances.

10. "Trustee" means an individual, association or corporation qualified pursuant to section 33-803, or the successor in interest thereto, to whom trust property is conveyed by trust deed. The trustee's obligations to the trustor, beneficiary and other persons are as specified in this chapter, together with any other obligations specified in the trust deed.

11. "Trustor" means the person conveying trust property by a trust deed as security for the performance of a contract or contracts, or the successor in interest of such person. ~~806.01.~~
Trustor's right to transfer; transfer fee limit; interest rate increase limit

A. Nothing in this article shall be construed to prevent or limit the right of a trustor to transfer his interest in the trust property, or authorize a beneficiary or trustee to arbitrarily withhold his consent to a transfer by the trustor of his interest in the trust property.

B. When a trustor transfers his interest in the trust property, no beneficiary or trustee shall charge a fee on the transfer of more than one hundred dollars or one per cent of the balance due on the obligation secured by the trust deed, whichever is greater.

C. When a trustor transfers his interest in the trust property, no beneficiary or trustee shall increase the interest rate on the obligation secured by such trust deed unless the transferring trustor is released from all liability thereon and in no event shall the amount of such increase exceed one-half of one percent per annum more than the interest rate paid by the transferring trustor.

D. This section shall be applicable only to trust property of two and one-half acres or less which is not used for commercial purposes and which is limited to and utilized for dwelling units, not to exceed four single-family units.

33-807. Sale of trust property; power of trustee; foreclosure of trust deed

A. By virtue of his position, a power of sale is conferred upon the trustee of a trust deed under which the trust property may be sold, in the manner provided in this chapter, after a breach or default in performance of the contract or contracts, for which the trust property is conveyed as security, or a breach or default of the trust deed. At the option of the beneficiary, a trust deed may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property in which event chapter 6 of this title governs the proceedings. The beneficiary or trustee shall constitute the proper and complete party plaintiff in any action to foreclose a deed of trust. The power of sale may be exercised by the trustee without express provision therefor in the trust deed.

B. The trustee or beneficiary may file and maintain an action to foreclose a deed of trust at any time before the trust property has been sold under the power of sale. A sale of trust property under the power of sale shall not be held after an action to foreclose the deed of trust has been filed unless the foreclosure action has been dismissed.

C. The trustee or beneficiary may file an action for the appointment of a receiver according to sections 12-1241 and 33-702. The right to appointment of a receiver shall be independent of and may precede the exercise of any other right or remedy.

D. The power of sale of trust property conferred upon the trustee shall not be exercised before the ninety-first day after the date of the recording of the notice of the sale. The sale shall not be set for a Saturday or legal holiday. The trustee may schedule more than one sale for the same date, time and place.

E. The trustee need only be joined as a party in legal actions pertaining to a breach of the trustee's obligation under this chapter or under the deed of trust. Any order of the court entered against the beneficiary is binding upon the trustee with respect to any actions that the trustee is authorized to take by the trust deed or by this chapter. If the trustee is joined as a party in any other action, the trustee is entitled to be immediately dismissed and to recover costs and reasonable attorney fees from the person joining the trustee.

-809. Request for copies of notice of sale; mailing by trustee; disclosure of information regarding trustee sale

A. A person desiring a copy of a notice of sale under a trust deed, at any time subsequent to the recording of the trust deed and prior to the recording of a notice of sale pursuant thereto, shall record in the office of the county recorder in any county in which part of the trust property is situated a duly acknowledged request for a copy of any such notice of sale. The request shall set forth the name and address of the person or persons requesting a copy of such notice and shall identify the trust deed by setting forth the county, docket or book and page of the recording data thereof and by stating the names of the original parties to such deed, the date the deed was recorded and the legal description of the entire trust property and shall be in substantially the following form:

Request for Notice

Request is hereby made that a copy of any notice of sale under the trust deed recorded in docket or book _____ at page _____, records of _____ county, Arizona, _____, _____,

(legal description of trust property)

Executed by _____ as trustor, in which _____ is named as beneficiary and _____ as trustee, be mailed to _____ at _____.

Dated this _____ day of _____, _____.

Signature

(Acknowledgement)

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

1. To each person whose name and address are set forth in a request for notice, which has been recorded prior to the recording of the notice of sale, directed to the address designated in such request.
2. To each person who, at the time of recording of the notice of sale, appears on the records of the county recorder in the county in which any part of the trust property is situated to have an interest in any of the trust property. The copy of the notice sent pursuant to this paragraph shall be addressed to the person whose interest appears of record at the address set forth in the document. If no address for the person is set forth in the document, the copy of the notice may be addressed in care of the person to whom the recorded document evidencing such interest was directed to be mailed at the time of its recording or to any other address of the person known or ascertained by the trustee. If the interest that appears on the records of the county recorder is a deed of trust, a copy of the notice only needs to be mailed to the beneficiary under the deed of trust. If any person having an interest of record or the trustor, or any person who has recorded a request for notice, desires to change the address to which notice shall be mailed, the change shall be accomplished by a request as provided under this section.

C. The trustee, within five business days after the recordation of a notice of sale, shall mail by certified or registered mail, with postage prepaid, a copy of the notice of sale to each of the persons who were parties to the trust deed except the trustee. The copy of the notice mailed to the parties need not show the recording date of the notice. The notice sent pursuant to this subsection shall be addressed to the mailing address specified in the trust deed. In addition, notice to each party shall contain a statement that a breach or nonperformance of the trust deed or the contract or contracts secured by the trust deed, or both, has occurred, and setting forth the nature of such

breach or nonperformance and of the beneficiary's election to sell or cause to be sold the trust property under the trust deed and the additional notice shall be signed by the beneficiary or the beneficiary's agent. A copy of the additional notice shall also be sent with the notice provided for in subsection B, paragraph 2 of this section to all persons whose interest in the trust property is subordinate in priority to that of the deed of trust along with a written statement that the interest may be subject to being terminated by the trustee's sale. The written statement may be contained in the statement of breach or nonperformance.

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

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

1. The unpaid principal balance of the note or other obligation which is secured by the deed of trust.
2. The name and address of record of the owner of the trust property as of the date of recordation of the notice of trustee's sale.
3. A list of the liens and encumbrances upon the trust property as of the date of recordation of the notice of trustee's sale, excluding those matters set forth in section 33-438, subsection A.

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

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

G. In providing information pursuant to subsections E and F of this section, the trustee, without obligation or liability for the accuracy or completeness of the information, may respond to oral requests, respond orally or in writing or provide additional information not required by such subsections. With respect to property that is the subject of a trustee's sale, the beneficiary of such

deed of trust or the holder of any prior lien may, but shall not be required to, provide information concerning such deed of trust or any prior lien that is not required by subsection E or F of this section and may charge a reasonable fee for providing the information. The providing of such information by any beneficiary or holder of a prior lien shall be without obligation or liability for the accuracy or completeness of the information.

-810. Sale by public auction; postponement of sale

A. On the date and at the time and place designated in the notice of sale, the trustee shall offer to sell the trust property at public auction for cash to the highest bidder. The trustee may schedule more than one sale for the same date, time and place. The attorney or agent for the trustee may conduct the sale and act at such sale as the auctioneer for the trustee. Any person, including the trustee or beneficiary, may bid at the sale. Only the beneficiary may make a credit bid in lieu of cash at sale. The trustee shall require every bidder except the beneficiary to provide a ten thousand dollar deposit in any form that is satisfactory to the trustee as a condition of entering a bid. The trustee or auctioneer may control the means and manner of the auction. Every bid shall be deemed an irrevocable offer until the sale is completed, except that a subsequent bid by the same bidder for a higher amount shall cancel that bidder's lower bid. To determine the highest price bid, the trustor or beneficiary present at the sale may recommend the manner in which the known lots, parcels or divisions of the trust property described in the notice of sale be sold. The trustee shall conditionally sell the trust property under each recommendation, and, in addition, shall conditionally sell the trust property as a whole. The trustee shall determine which conditional sale or sales result in the highest total price bid for all of the trust property. The trustee shall return deposits to all but the bidder or bidders whose bid or bids result in the highest bid price. The sale shall be completed on payment by the purchaser of the price bid in a form satisfactory to the trustee. The subsequent execution, delivery and recordation of the trustee's deed as prescribed by section 33-811 are ministerial acts. If the trustee's deed is recorded in the county in which the trust property is located within fifteen business days after the date of the sale, the trustee's sale is deemed perfected at the appointed date and time of the trustee's sale. If the highest price bid at a completed sale is less than the amount of that bidder's deposit, the amount of the deposit in excess of the bid price shall be refunded by the trustee at the time of delivery of the trustee's deed.

B. The person conducting the sale may postpone or continue the sale from time to time or change the place of the sale to any other location authorized pursuant to this chapter by giving notice of the new date, time and place by public declaration at the time and place last appointed for the sale. Any new sale date shall be a fixed date within ninety calendar days of the date of the declaration. After a sale has been postponed or continued, the trustee, on request, shall make available the date and time of the next scheduled sale and, if the location of the sale has been changed, the new location of the sale until the sale has been conducted or canceled and providing this information shall be without obligation or liability for the accuracy or completeness of the information. No other notice of the postponed, continued or relocated sale is required except as provided in subsection C of this section.

C. A sale shall not be complete if the sale as held is contrary to or in violation of any federal statute in effect because of an unknown or undisclosed bankruptcy. A sale so held shall be

deemed to be continued to a date, time and place announced by the trustee at the sale and shall comply with subsection B of this section or, if not announced, shall be continued to the same place and at the same time twenty-eight days later, unless the twenty-eighth day falls on a Saturday or legal holiday, in which event it shall be continued to the first business day thereafter. In the event a sale is continued because of an unknown or undisclosed bankruptcy, the trustee shall notify by registered or certified mail, with postage prepaid, all bidders who provide their names, addresses and telephone numbers in writing to the party conducting the sale of the continuation of the sale.

D. A sale is postponed by operation of law to the next business day at the same scheduled time and place if an act of force majeure prevents access to the sale location for the conduct of the sale.