**ARIZONA REVISED STATUTES ON TRUSTS: 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. [Note that this does not include a nominee like MERS. There is a reason for that. The legislature intended to create certainty in contracts and actions on contracts. Using a nominee immediately creates the question of agency. The question of agency immediately raises the question of "who is the principal?" As long as that question exists, this statute is violated. If this statue is violated the deed of trust is void.]**

**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. [Note that such credit bids are the rule rather than the exception and that the person making the credit bid is almost never the named the beneficiary. hence the sale is void]. [Note also that without an accounting for third party payments to the creditor in the securitization chain who has succeeded to the position of beneficiary BECAUSE THE SUCCESSION IS SHOWN IN THE COUNTY RECORDS, is voidable because the amount is incorrect, which is a question of fact that must be judicially resolved, which is why NO NON-JUDICIAL sale of securitized property is appropriate.] 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. (e.s.)**

**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.**

***DON'T TAKE ANYTHING FOR GRANTED. Just because the NAME WELLS FARGO APPEARS … IT MIGHT NOT BE QUALIFIED. If the entity named is a Wells Fargo subsidiary or other entity that is NOT a bank or other institution described here, then they can't be a trustee. If they can't be a Trustee, the Trust deed is probably no better than a nominee beneficiary which would be void or voidable.***

***Note SECTION B also --- that the trustee cannot have a conflict of interest with the beneficiary. If they show up in court in one case claiming rights as a beneficiary in a similar transaction involving the same pool, they are creating a question of fact that can only be resolved in a judicial foreclosure. And in the case of a substitution of trustee who facially or factually does not qualify, the substitution of trustee may be void or voidable.***

**33-803. Trustee of trust deed; qualifications**

**A. Except as provided in subsection B, the trustee of a trust deed shall be:**

1. **An association or corporation doing business under the laws of this state as a bank, trust company, savings and loan association, credit union, insurance company, escrow agent or consumer lender.**

**[Question: What if they ARE a bank but not qualified under State law to conduct business as a bank in this particular state? Or to be more esoteric, what if they are qualified to do business as a bank but they are not acting as a bank in this transaction?]**

**2. A person who is a member of the state bar of Arizona.**

**3. A person who is a licensed real estate broker under the laws of this state.**

**4. A person who is a licensed insurance producer under the laws of this state.**

**5. An association or corporation that is licensed, chartered or regulated by the federal deposit insurance corporation, the comptroller of the currency, the federal home loan bank, the national credit union administration, the farm credit administration, the federal reserve board or any successors.**

**6. The parent corporation of any association or corporation referred to in this subsection or any corporation all the stock of which is owned by or held solely for the benefit of any such association or corporation referred to in this subsection.**

B. **An individual trustee of a trust deed who qualifies under subsection A shall not be the beneficiary of the trust, but such restriction shall not preclude a corporate or association trustee that qualifies under subsection A and while acting in good faith from being the beneficiary, or after appointment from acquiring the interest of the beneficiary by succession, conveyance, grant, descent or devise.**

**C. A trustee of a trust deed who qualifies under subsection A shall not lend or delegate the trustee's name or corporate capacity to any individual or entity that does not qualify as a trustee of a trust deed. An individual, company, association or corporation shall not circumvent the requirements of subsection A by acting in concert with a nonqualifying trustee.**

***The statute says that******the trustee mails the notice to all affected parties at least three months before the sale date. In a non-judicial sale, then, ALL parties having a potential stake in the outcome must be notified. This is the only way the statute can be constitutional. It's not up to the Trustee to adjudicate the rights of the parties if he wants to keep his exemption from liability, but if he knowingly fails to notify other parties whom he knows to exist, then it is obvious he is taking an interest in the litigation.***

***The attack on the trustee sale would simply be a certified letter followed by a lawsuit if necessary directed at the trustee. The letter would be an objection to the sale because the trustee has failed to notify the creditors, has not made adequate inquiry into the identity of all parties, and damages for slander of title. The objection, an early draft of which is contained in the forms on this blog,  would also state that the obligation has been satisfied in whole or in part by third party payments from credit default swaps, insurance, guarantees, buy-backs, federal bailouts etc.***

***The demand would be for proof of inquiry --- the "pull-down report" (title report on the property) and all other efforts to identify the parties in what the trustee knows to be a securitized transaction with multiple intermediaries, each of whom appears to claim a stake in the property, and multiple creditors, none of whom have been notified, who have not provided or been asked to provide an accounting for all transactions relating to the their purchase of asset backed securities creating their beneficial ownership in a pool of assets that includes the subject loan, and whether any allocations have been made to account for third party payments.***

***In the alternative, the demand would be that the foreclosure be conducted in accordance with Arizona statutes governing judicial foreclosures that would then put the onus on the beneficiary to allege they are they are the creditor, that the obligation is due and to present allegations and , exhibits, witnesses and proof that they are entitled to a judgment in foreclosure. The non-judicial statutes could not have been intended as a direct confrontation with the 5th and 14th Amendment of the United States Constitution requiring no deprivation of life, liberty or property without due process. If that were otherwise, the statute would be unconstitutional on its face.***

***33-455. Conveyance of absolute title by judicial sale; effect upon rights of persons not parties***

***Every conveyance of real property by a commissioner, sheriff or other officer legally authorized to sell such property by virtue of a decree or judgment of any court within this state, shall be effectual to pass absolute title to the property to the purchaser thereof, but the conveyance shall not affect the right, title or interest of any person other than the parties to the conveyance, decree or judgment, and those claiming under them.***

***33-456. Passage of title to real or personal property by judgment***

***When a judgment directs the conveyance of real property or the delivery of personal property, the judgment shall pass title to such property without any act by the party against whom the judgment is given.***

***33-458. Resale of realty with intent to defraud; classification***

***A person who, after selling, bartering or disposing of, or, after executing a bond or agreement for the sale of land, again knowingly and with intent to defraud previous or subsequent purchasers, sells, barters or disposes of, or executes a bond or agreement to sell, barter or dispose of the same land or any part thereof to any other person for a valuable consideration, is guilty of a class 4 felony.***

***33-705. Purchase money mortgage or deed of trust; priority***

***A mortgage or deed of trust that is given as security for a loan made to purchase the real property that is encumbered by the mortgage or deed of trust has priority over all other liens and encumbrances that are incurred against the purchaser before acquiring title to the real property.***

***33-706. Assignment of mortgage; recording as notice***

***An assignment of a mortgage may be recorded in like manner as a mortgage, and the record is notice to all persons subsequently deriving title to the mortgage from the assignor.***

***33-708. Release by attorney in fact***

***An attorney in fact to whom the money due on a mortgage or deed of trust is paid may execute the release provided for in this article. Such acknowledgment of satisfaction or deed of release, duly acknowledged and recorded, showing the docket and page or recording number, releases the mortgage or deed of trust and revests in the mortgagor or person who executed the deed of trust, or his legal representatives, all title to the property affected by the mortgage or deed of trust.***

***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.***

***33-722. 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.***

***33-741. Definitions***

***In this article, unless the context otherwise requires:***

***1. "Account servicing agent" means a joint agent of seller and purchaser, appointed under the contract or under a separate agreement executed by the seller and the purchaser, to hold documents and collect monies due under the contract, who does business under the laws of this state as a bank, trust company, escrow agent, savings and loan association, insurance company or real estate broker, or who is licensed, chartered or regulated by the federal deposit insurance corporation or the comptroller of the currency, or who is a member of the state bar of Arizona.***

***2. "Contract" means a contract for conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract through which a seller has conveyed to a purchaser equitable title in property and under which the seller is obligated to convey to the purchaser the remainder of the seller's title in the property, whether legal or equitable, on payment in full of all monies due under the contract. This article does not apply to purchase contracts and receipts, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction.***

***3. "Monies due under the contract" means:***

***(a) Any principal and interest payments which are currently due and payable to the seller.***

***(b) Any principal and interest payments which are currently due and payable to other persons who hold existing liens and encumbrances on the property, the unpaid principal portion of which constitutes a portion of the purchase price, as stated in the contract, if the principal and interest payments were paid by the seller pursuant to the terms of the contract and to protect his interest in the property.***

***(c) Any delinquent taxes and assessments, including interest and penalty, due and payable to any governmental entity authorized to impose liens on the property which are the purchaser's obligations under the contract, if the taxes and assessments were paid by the seller pursuant to the terms of the contract and to protect his interest in the property.***

***(d) Any unpaid premiums for any policy or policies of insurance which are the obligation of the purchaser to maintain under the contract, if the premiums were paid by the seller pursuant to the terms of the contract and to protect his interest in the property.***

***4. "Payoff deed" means the deed that the seller is obligated to deliver to the purchaser on payment in full of all monies due under the contract to convey to the purchaser the remainder of the seller's title in the property, whether legal or equitable, as prescribed by the terms of the contract.***

***5. "Property" means the real property described in the contract and any personal property included under the contract.***

***6. "Purchaser" means the person or any successor in interest to the person who has contracted to purchase the seller's title to the property which is the subject of the contract.***

***7. "Seller" means the person or any successor in interest to the person who has contracted to convey his title to the property which is the subject of the contract.***

***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.***

*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.*

***33-820. Trustee's right to rely; attorney's right to act for trustee and beneficiary***

***A. In carrying out his duties under the provisions of this chapter or any deed of trust, a trustee, shall when acting in good faith, have the absolute right to rely upon any written direction or information furnished to him by the beneficiary.***

***B. An attorney for the beneficiary shall also be qualified to act as attorney for the trustee or to be the trustee.***

**Pre-foreclosure Period**

Court foreclosures begin when the lender files for foreclosure in court and records a notice of the pending lawsuit (Lis Pendens). The court filing includes the debt and default amount. The borrower and any junior lien holders are notified either in person or by publication. If the borrower does not respond to the court action, the court can rule against them and set the amount owed to the lender. The county clerk then directs the county sheriff to conduct a sale of the property to recover the amount owed.

An out-of-court foreclosure sale may occur if a clause in the trust deed permits the lender to sell the property if a borrower defaults. To start the foreclosure, the trustee records a notice of sale, and the sale occurs at least three months after the notice is recorded. Until 5:00 p.m. the day before the sale, the borrower or any junior lien holders may stop the foreclosure by paying the default amount, fees, and costs.

**Notice of Sale / Auction**

For court foreclosures, the sheriff conducts the sheriff’s sale about 45 days after the county clerk directs the sale. It is a public auction, and anyone may bid.  The bid price must be paid to the sheriff by 5:00 p.m. the day after the sheriff's sale. After the sale, a certificate of sale is issued.  If the property is not abandoned, the redemption period is six months from the sale date. If the borrower does not redeem, any secondary lenders may do so within a specified time. To redeem the property, the total amount owed plus fees and costs must be paid. If no one redeems the property, the sheriff transfers ownership to the winning bidder.

**For out-of-court trustee's sales, the notice of sale contains a property description, and the date, time and place of the sale. The notice is recorded, and the trustee mails the notice to all affected parties at least three months before the sale date. The notice appears in a local newspaper once a week for four weeks, with the last notice published no less than 10 days before the sale date. At least 20 days before the sale, the notice is posted on the property and the county courthouse. Starting the day before the sale and up to the sale, the trustee must provide the opening bid of the sale to anyone who asks or the sale may have to be postponed.**

**The trustee or the trustee’s agent conducts the sale at the property, the courthouse, or the trustee’s office.  All bidders must provide a refundable $10,000 deposit in order to bid; the trustee keeps the deposit of the winning bidder. The sale can be postponed up to 90 days by announcement at the originally scheduled sale. The winning bidder has until 5:00 p.m. the next day to pay the full bid price, after which the trustee transfer ownership of the property within seven days. The proceeds of the sale are paid to the primary lender, then to any secondary lenders. There is no right of redemption for the borrower after an out-of-court foreclosure sale.**

**IF THE PRETENDER LENDER DOES NOT HAVE THE POWER, AUTHORITY, RIGHT TITLE OR INTEREST TO EXECUTE A SATISFACTION OF MORTGAGE, THEN THEY HAVE NO RIGHT TO FORECLOSE IT. HERE IS ARIZONA'S STATUTE ON SATISFACTION OF MORTGAGES:** **NOTE THE REFERENCES TO LOST NOTES VERSUS LOST MORTGAGES.**

33-707. Acknowledgment of satisfaction; recording

A. If a mortgagee, trustee or person entitled to payment receives full satisfaction of a mortgage or deed of trust, he shall acknowledge satisfaction of the mortgage or deed of trust by delivering to the person making satisfaction or by recording a sufficient release or satisfaction of mortgage or deed of release and reconveyance of the deed of trust, which release, satisfaction of mortgage or deed of release and reconveyance shall contain the docket and page number or recording number of the mortgage or deed of trust. **It shall not be necessary for the trustee to join in the acknowledgment or satisfaction, or in the release, satisfaction of mortgage or deed of release and reconveyance**. The recorded release or satisfaction of mortgage or deed of release and reconveyance constitutes conclusive evidence of full or partial satisfaction and release of the mortgage or deed of trust in favor of purchasers and encumbrancers for value and without actual notice.

B. When a mortgage or deed of trust is satisfied by a release or satisfaction of mortgage or deed of release and reconveyance, except where the record of such deed of trust or mortgage has been destroyed or reduced to microfilm, the recorder shall record the release or satisfaction of the deed of trust or mortgage showing the book and page or recording number where the deed of trust or mortgage is recorded.

C. If the record of such mortgage or deed of trust has been destroyed and the record thereof reduced to microfilm, it shall be sufficient evidence of satisfaction of any such mortgage or deed of trust for the release or satisfaction of mortgage or deed of release and reconveyance to be recorded and indexed as such. The instrument shall sufficiently identify the mortgage or deed of trust by parties and by book and page or recording number of the official records. Such instrument shall be treated as a release or satisfaction of mortgage or deed of release and reconveyance and recorded.

D. **If the note secured by a mortgage or deed of trust has been lost or destroyed, the assignee, mortgagee or beneficiary shall, before acknowledging satisfaction, make an affidavit that he is the lawful owner of the note and that it has been paid, but cannot be produced for the reason that it has been lost or destroyed, and the affidavit shall be recorded. If the record of such mortgage or deed of trust has been destroyed and the record thereof reduced to microfilm, such affidavit shall be recorded and indexed as releases, satisfactions of mortgage and deeds of release and reconveyance are recorded and indexed and shall have the same force and effect as a release or satisfaction of a mortgage or deed of release and reconveyance as provided in subsection A of this section.**

E. If a full release or satisfaction of mortgage or deed of release and reconveyance of deed of trust that, according to its terms, recites that it secures an obligation having a stated indebtedness not greater than five hundred thousand dollars exclusive of interest, or a partial release or satisfaction of mortgage or partial deed of release and reconveyance of deed of trust that, according to its terms, recites that the payment required for the partial satisfaction or release does not exceed five hundred thousand dollars exclusive of interest, has not been executed and recorded pursuant to subsection A or C of this section within sixty days of full or partial satisfaction of the obligation secured by such mortgage or deed of trust, **a title insurer as defined in section 20-1562 may prepare, execute and record a full or partial release or satisfaction of mortgage or deed of full or partial release and reconveyance of deed of trust. No earlier than sixty days after full or partial satisfaction and at least thirty days prior to the issuance and recording of any such release or satisfaction of mortgage or deed of release and reconveyance pursuant to this subsection, the title insurer shall mail by certified mail with postage prepaid, return receipt requested, to the mortgagee of record or to the trustee and beneficiary of record and their respective successors in interest of record at their last known address shown of record and to any persons who according to the records of the title insurer received payment of the obligation at the address shown in such records, a notice of its intention to release the mortgage or deed of trust accompanied by a copy of the release or satisfaction of mortgage or deed of release and reconveyance to be recorded which shall set forth:**

1. The **name of the beneficiary or mortgagee or any successors in interest of record of such mortgagee or beneficiary and, if known, the name of any servicing agent**.

2. The **name of the original mortgagor or trustor**.

3. The name of the current record owner of the property and if the release or satisfaction of mortgage or deed of release and reconveyance is a partial release, the name of the current record owner of the parcel described in the partial release or satisfaction of mortgage or deed of partial release and reconveyance of deed of trust.

4. The recording reference to the deed of trust or mortgage.

5. **The date and amount of payment, if known.**

6. **A statement that the title insurer has actual knowledge that the obligation secured by the mortgage or deed of trust has been paid in full, or if the release or satisfaction of mortgage or deed of release and reconveyance of deed of trust is a partial release, a statement that the title insurer has actual knowledge that the partial payment required for the release of the parcel described in the partial release or satisfaction has been paid**.

F. The release or satisfaction of mortgage or release and reconveyance of deed of trust may be executed by a duly appointed attorney-in-fact of the title insurer, but such delegation shall not relieve the title insurer from any liability pursuant to this section.

G. **A full or partial release or satisfaction of mortgage or deed of full or partial release and reconveyance of deed of trust issued pursuant to subsection E of this section shall be entitled to recordation and, when recorded, shall constitute a full or partial release or satisfaction of mortgage or deed of release and reconveyance of deed of trust issued pursuant to subsection A or C of this section**.

H. Where an obligation secured by a deed of trust or mortgage was paid in full prior to September 21, 1991, and no release or satisfaction of mortgage or deed of release and reconveyance of deed of trust was issued and recorded by November 20, 1991, a release or satisfaction of mortgage or deed of release and reconveyance of deed of trust as provided for in subsection E of this section may be prepared and recorded without the notice prescribed by subsection E of this section.

I. A release or satisfaction of mortgage or a release and reconveyance of deed of trust by a title insurer under the provisions of subsection E of this section shall not constitute a defense nor release any person from compliance with subsections A through D of this section or from liability under section 33-712.

J. In addition to any other remedy provided by law, a title insurer preparing or recording the release and satisfaction of mortgage or the release and reconveyance of deed of trust pursuant to subsection E of this section shall be liable to any party for actual damage, including attorney fees, which any person may sustain by reason of the issuance and recording of the release and satisfaction of mortgage or release and reconveyance of deed of trust.

K. **The title insurer shall not record a release and satisfaction of mortgage or release and reconveyance of deed of trust if, prior to the expiration of the thirty day period specified in subsection E of this section, the title insurer receives a notice from the mortgagee, trustee, beneficiary, holder or servicing agent which states that the mortgage or deed of trust continues to secure an obligation, or in the case of a partial release or satisfaction of mortgage or deed of partial release and reconveyance of deed of trust, a notice that states that the partial payment required to release the parcel described in the partial release or satisfaction has not been paid.**

L. The title insurer may charge a reasonable fee to the owner of the land or other person requesting a release and satisfaction of mortgage or release and reconveyance of deed of trust for services, including but not limited to search of title, document preparation and mailing services rendered, and may in addition collect official fees.

***SO who is the beneficiary? We can't take the word of the Trustee unless he has satisfied his duty to inquire.***

33-810 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.

*Most "Trustees" or Substitute Trustees get a package from some unknown source with everything already prepared and instructions to proceed. That is the exact opposite of the protections intended by the legislature in this statute under Arizona law. Your state is probably the same.*

33-803.01. Trustee of trust deed; delegation of duties

A. A trustee shall not delegate the following duties:

1. The preparation and execution of any of the following:

(a) The notice of trustee sale.

(b) The cancellation of notice of sale.

(c) The trustee's deed upon sale.

2. The receipt and response to requests for reinstatement or payoff amounts.

B. This section does not prohibit the trustee from using clerical or office staff employed by the trustee and under the trustee's direct and immediate supervision to assist in the duties prescribed by subsection A.