



RE: AMENDMENT TO ARIZONA DEFICIENCY STATUTES

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Effective September 30, 2009, a significant amendment to one of Arizona's anti-deficiency statutes will go into effect. On July 10, 2009, Jan Brewer, the Governor of Arizona, signed into law Senate Bill 1271 and amended Arizona Revised Statutes Section 33-814(G), thereby decreasing the level of protection afforded to Arizona homeowners from personal deficiency judgments after a trustee's sale.

Anti-deficiency statutes were designed to protect homeowners from being sued personally for any unpaid loan balance resulting after a foreclosure or a trustee's sale of their home. The only qualifications of a homeowner to avail him or herself of protections of the anti-deficiency statute was that the property be of two and one half acres or less and utilized for either a single one-family or a single two-family dwelling. Historically, Arizona courts have interpreted that vacation homes rented out by investors may be construed as "utilized" as a dwelling for purposes of protection from deficiency judgments.

The amendment to the anti-deficient statute now requires that homes be "utilized for either a one-family or a single two-family dwelling by the trustor [borrower] under the deed of trust for at least six consecutive months and for which a certificate of occupancy has been issued..." Therefore, two new requirements have been imposed in order to qualify for protection under the anti-deficiency statute: (1) a certificate of occupancy has been issued, and (2) that the trustor [borrower] utilize the home for a period of a least six consecutive months prior to the date that foreclosure was commenced.

Additionally, the amendment now shifts the burden of proof, or affirmatively requires that the borrower demonstrate that he/she qualifies for anti-deficiency protection by proving that both the certificate of occupancy has been issued and that the property was utilized by the trustor for six consecutive months as a single one-family or a single two-family dwelling.

The amendment to ARS § 33-814(G) will bear significantly upon those homeowners who had secured a mortgage for the purpose of constructing a home for either owner occupancy or resale and (i) which had not been completed and for which the certificate of occupancy had not yet been issued prior to the commencement of foreclosure and/or (ii) who had not had the residence occupied for six consecutive months prior to a trustee's sale.

It is important to note that the new amended anti-deficiency provisions apply only to those trustee's sales completed after September 30, 2009.

For further information about the amendments to ARS § 33-814(G), please contact the Mortgage Mediation Group. A copy of the new amendment can be found at [www.mortgagemediationgroup.com](http://www.mortgagemediationgroup.com).