

NEW ARIZONA LAW REQUIRES THAT WRITTEN CORRESPONDENCE BE SENT TO BORROWERS TO EXPLORE OPTIONS TO AVOID FORECLOSURE: EFFECTIVE JULY 29, 2010.

(WITH THANKS TO CHRIS PERRY FOR ALLOWING SOME PLAGERISM OF HIS SUMMARY)

House Bill 2626, Chapter 325. Arizona joined the list of states which require lenders to give advance notice to their borrowers of the right to explore foreclosure avoidance options. Specifically, lenders have to make a written “attempt to contact a borrower to explore options to avoid foreclosure”. The new law only applies to borrowers who occupy the property as their principal residence. It applies only to first deeds of trust recorded on or after January 1, 2003 through December 31, 2008. Most importantly, as the new law applies to trustees, the written notice must be given 30 days before a notice of trustee’s sale can be recorded.

HB 2626 does not proscribe specific terms for the written notice and does not provide how the written communication must be mailed (certified, regular first class or both). It specifically does not require a written declaration of compliance (as an earlier draft of the bill did), and merely provides that a copy of the notice “shall be maintained in the credit file” of the lender. It specifically provides that the act does not require a lender to provide a loan modification or cause a servicer to violate investor-owned loan rules for loan workouts that they are contractually obligated to follow.

HB 2626 does contain exceptions to certain lenders and servicers, so they do not have to give the state required notice. It does not apply to lender/servicers who are participating HAMP servicers. A current list of participating servicers can be found on the makinghomesaffordable.gov website. Be aware that an investor may instruct a HAMP participating servicer that it has elected to “opt out” of HAMP compliance, in which case, a special notice must be sent. Most institutional mortgage servicers send out loss mitigation or loan workout letters, even those who are not HAMP participating servicers (which may serve to comply with the requirements of the new law as long as the written communication was sent out thirty days before the recording of the notice of sale). It does not apply to loans made, purchased or serviced by state or local housing agencies or authorities. Finally, it does not apply to small private lenders who make fewer than 5 loans a year and therefore are not required to obtain a mortgage bankers or broker’s license.

There is some uncertainty about the immediate impact of the new law. The Act becomes effective on July 29, 2010. For trustee’s sales that are commenced by the recording of a notice of trustee’s sale on or after July 29, 2010, a notice of sale can be recorded without complying with the prior 30-day notice requirement if the lender is exempt (e.g., a HAMP servicer or other exempt lender). However, if the lender is not exempt and an Arizona specific 30 day notice is required, the written notice must be sent by the lender on or before June 29, 2010 to avoid a delay in the trustee’s right to record the notice of trustee’s sale on or after July 29th.

In light of the requirements of the Act, trustees should consider what they should do to verify whether their beneficiary or servicer is exempt from the thirty day notice requirement or has complied with the notice requirement.