

Homestead Exemption Amendments

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Summary

- Why the change?
- Highlights of amendments
- Scenarios for sales and refinances
- Notice requirements
- Priority issues
- Questions

Why the Change?

Pacific Western Bank v. Castleton, 246 Ariz. 108 (App. 2018)

Facts:

- Recorded \$5.2 million judgment
- Judgment debtor conveyed title to a short sale buyer which conveyed to insured for \$535,000
- Recorded judgment missed
- Judgment creditor started judicial foreclosure

Court:

Any person entitled to a homestead exemption “holds the homestead property free and clear of the judgment lien. A.R.S. § 33-964(B).”

Why the Change?

Historic precedent:

Union Oil Co. of Ariz. v. Norton Morgan Commercial Co.,
23 Ariz. 236, 245, (1922): “no lien shall be permitted to
attach to the real property claimed as a homestead.”

In re Rand, 400 B.R. 749 (Bankr. D. Ariz. 2008) (J. Haines):
“recorded judgment does not constitute a lien on the
debtors' real property claimed as a homestead.”

New world: HB2617

Highlights:

- Attempted in 2020 legislative session, but abandoned
- Pushed by the Attorney General's Office
- Sponsored by the House Majority Leader
- Amends A.R.S. §§ 12-1551, 33-964, 33-1101, 33-1103
- Effective January 1, 2022
- \$250,000 homestead exemption amount
- Recorded judgment is a lien on homestead property

New world: HB2617

What this means for sales:

1. If judgment debtor/seller's proceeds do not exceed 80% of homestead amount (\$200,000), then title company may record a release of property from the lien, similar to A.R.S. § 33-707(E) process.
2. If judgment debtor/seller to receive between \$200,000 and \$250,000 in sale proceeds, notice must be sent to judgment lien holder before a release may be recorded.
3. If judgment debtor/seller to receive over \$250,000 in sale proceeds, judgment lien must be satisfied.

New world: HB2617

What this means for refinances:

1. For a no cash out refinance, title company may record a subordination of judgment lien
2. Judgment debtor may not receive any refinance proceeds until judgment lien is satisfied.

Sale Scenario 1

Proceeds to judgment debtor do not exceed 80% of the homestead allowance (80% of \$250,000 = \$200,000 threshold)

Rule: Title company may record a release of the property from the judgment lien without paying the judgment lien.

Example:

- Home sale price is \$400,000
- Deed of trust with priority over judgment lien is \$200,000
- Total of reasonable closing and real estate agent fees is \$30,000
- Judgment debtor/seller to receive \$170,000

Application of rule:

- Escrow may record a release of the property from the judgment lien without paying judgment and pay the \$170,000 to judgment debtor/seller.

Sale Scenario 2

Proceeds to judgment debtor are between \$200,000 and \$250,000

Rule: Title company must give notice to judgment lien holder to allow 20 days for an objection to the release of the judgment lien.

Example:

- Home sale price is \$400,000
- Deed of trust with priority over judgment lien is \$150,000
- Total of reasonable closing and real estate agent fees is \$30,000
- Judgment debtor/seller to receive \$220,000

Application of rule:

- Notice of sale must be sent to judgment lien holder, which may object to the recording of a release within 20 days after notice.
- If no objection, title company may record release of property from lien.
- If an objection, judgment debtor/seller may file a lawsuit to clear lien.

Sale Scenario 3

Proceeds to judgment debtor exceed the \$250,000 homestead allowance

Rule: Title company may not record a release of the property from the lien.

Example:

- Home sale price is \$400,000
- Lender's deed of trust with priority over judgment lien is \$100,000
- Judgment lien securing \$10,000 judgment
- Total of reasonable closing and real estate agent fees is \$30,000
- Settlement statement will show judgment debtor to receive \$270,000 not including payment of judgment

Application of rule: Typical escrow; judgment lien is paid from escrow in exchange for a release of lien.

Sale Scenario 3a

Proceeds to judgment debtor exceed the \$250,000 homestead allowance

Rule: Title company may not record a release of the property from the judgment lien.

Example:

- Home sale price is \$400,000
- Lender's deed of trust with priority over judgment lien is \$100,000
- Judgment lien securing ~~\$10,000~~ **\$30,000 judgment**
- Total of reasonable closing and real estate agent fees is \$30,000
- Settlement statement will show judgment debtor to receive \$270,000 not including payment of judgment

Question: Should you release \$250,000 to the judgment debtor and the excess \$20,000 to the judgment lienholder?

NO! Need to pay judgment in full for a release.

Refinance Scenario 1

No cash proceeds to judgment debtor

Rule: Title company may record a subordination of the judgment lien.

Example:

- Home value is \$400,000
- Deed of trust with priority over judgment lien is \$100,000
- Judgment debtor refinances the existing deed of trust
- Reasonable fees and closing costs are charged
- Judgment debtor receives no money from refinance

Application of rule: Title company may record a subordination of the judgment lien to the new deed of trust.

Refinance Scenario 1a

No cash proceeds to judgment debtor

Rule: Title company may record a subordination of the judgment lien.

Example:

- Home value is \$400,000
- Deed of trust with priority over judgment lien is \$100,000
- Judgment debtor refinances the existing deed of trust
- Judgment debtor receives no money from refinance
- **\$50,000 refinance fee paid to lender (judgment debtor's friend?)**

Application of rule:

- Call legal department.
- Title company may not record a subordination of the judgment lien to the new deed of trust because of the unreasonable fee being charged.

Refinance Scenario 2

Cash proceeds to judgment debtor

Rule: Title company may not record a subordination of the judgment lien; judgment lien must be paid before judgment debtor receives any money.

Example:

- Home value is \$400,000
- Deed of trust with priority over judgment lien is \$100,000
- Judgment lien encumbering a \$10,000 judgment
- Judgment debtor refinances the existing deed of trust
- Reasonable fees and closing costs are charged
- Judgment debtor wants \$200,000 from refinance

Application of rule: Judgment lien must be satisfied before debtor gets any money.

Notice Requirements

- Sale scenario 2: proceeds to judgment debtor are between \$200,000 and \$250,000 so title company must give notice to judgment lien holder to allow 20 days for an objection to the release of the judgment lien.
- Mailed to “judgment creditor by certified mail, postage prepaid, return receipt requested.”
- Notice must be amended if anticipated payment to judgment debtor/seller increases by more than \$10,000.
- Title company may charge judgment debtor/seller a fee.
- Judgment creditor may waive notice provision in writing.

Notice Requirements

Notice “must contain all of the following:

- The judgment creditor’s name.
- The name of the current record owner of the real property.
- The street address for the property.
- The recording reference for the judgment.
- The expected sale date on which title to the real property will transfer to the buyer.
- The title insurer’s basis for determining that the homestead exemption prescribed by Section 33-1101 applies to the property being sold.
- The information used in, the basis for and the date of calculating the amount of equity in the real property.
- The name of every lienholder to be paid at the sale of the real property.
- The amount paid to each lien holder at the sale of the real property.
- The title insurer’s basis for determining that the prior lienholder should be paid before the creditor.”

Priority Issues

“For any sale, transfer or refinance of a judgment debtor’s homestead property that is completed before January 1, 2022, a judgment lien does not attach to the homestead property.” A.R.S. § 33-964(G)

“For any sale, transfer or refinance that is completed on or after January 1, 2022, judgments that are recorded before January 1, 2022, and that are still valid attach to the homestead property, are enforceable and create judgment liens as prescribed by this section.” A.R.S. § 33-964(H)

Prediction:

- A deed of trust recorded on or before December 31, 2021, holds priority over a previously recorded judgment.
- A deed recorded on or before December 31, 2021, from a judgment debtor to a buyer is safe from a previously recorded judgment.
- A deed of trust or deed recorded on or after January 1, 2022, is junior to a previously recorded judgment.

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