

## ARIZONA 2021 LEGISLATIVE SERVICE

First Regular Session of the Fifty-Fifth Legislature

Additions are indicated by **Text**; deletions by ~~Text~~.

Vetoed material is indicated by ~~Text~~;

stricken material by ~~Text~~.

### CHAPTER 368 H.B. 2617

#### AN ACT AMENDING SECTIONS 12-1551, 33-964, 33-1101 AND 33-1103, ARIZONA REVISED STATUTES; RELATING TO CIVIL JUDGMENTS.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 12-1551, Arizona Revised Statutes, is amended to read:

<< AZ ST § 12-1551 >>

#### **§ 12-1551. Issuance of writ of execution; limitation; renewal; death of judgment debtor; applicability**

**A.** The party in whose favor a judgment is given, at any time within ten years after entry of the judgment and within ten years after any renewal of the judgment either by affidavit or by an action brought on it, may have a writ of execution or other process issued for its enforcement.

**B.** An execution or other process shall not be issued on a judgment after the expiration of ten years from the date of its entry unless the judgment is renewed by affidavit or process pursuant to section 12-1612 or an action is brought on it within ten years ~~from~~ **after** the date of the entry of the judgment or of its renewal.

**C.** The court shall not issue a writ of execution after the death of the judgment debtor unless it is for the recovery of real or personal property or enforcement of a lien.

**D.** This section applies to:

1. All judgments **that were** entered on or after August 3, 2013.

2. All judgments **that were** entered on or before August 2, 2013 and that were renewed on or before August 2, 2018, except that a writ of execution or other process may not be issued for a judgment entered on or before August 2, 2013 that was not renewed on or before August 2, 2018.

**E.** This section does not apply to:

1. Criminal restitution orders entered pursuant to section 13-805.

2. Written judgments and orders for child support and spousal maintenance and to associated costs and attorney fees.

3. Judgments for supervision fees or expenses associated with the care of a juvenile pursuant to section 8–241 or 8–243 and to associated costs and attorney fees.

4. Civil judgments obtained by this state **that are either of the following:**

**(a) Entered on or after September 13, 2013.**

**(b) Entered before September 13, 2013 and that were current and collectable under the laws applicable on September 13, 2013.**

Sec. 2. Section 33–964, Arizona Revised Statutes, is amended to read:

<< AZ ST § 33–964 >>

**§ 33–964. Lien of judgment; duration; homestead; partial release of judgment lien; acknowledgment of satisfaction by judgment creditor; applicability; definition**

**A.** Except as provided in sections 33–729 and 33–730, from and after the time of recording as provided in section 33–961, a judgment shall become a lien for a period of ten years ~~from~~ **after** the date it is given, on all real property of the judgment debtor ~~except real property exempt from execution, including homestead property,~~ in the county in which the judgment is recorded, whether the property is then owned by the judgment debtor or is later acquired. A civil judgment lien obtained by this state and a judgment lien for support, as defined in section 25–500, remain in effect until satisfied or lifted.

~~**B.** Except as provided in section 33–1103, a recorded judgment shall not become a lien on any homestead property. Any person entitled to a homestead on real property as provided by law holds the homestead property free and clear of the judgment lien.~~

**B.** **On the sale of homestead property that is subject to a judgment lien, the judgment creditor shall be paid from the proceeds of the sale after the homestead exemption amount is paid to the judgment debtor as prescribed in section 33–1101 and after payment of any liens on the property that have priority over the judgment lien. After deducting from the proceeds of the sale the amount of any consensual liens and the reasonable costs of sale, if the anticipated payment to the judgment debtor is less than eighty percent of the amount of the homestead exemption prescribed by section 33–1101, a title insurer or its duly appointed attorney in fact may record a notice of partial release of judgment without prior notice to judgment creditors. If the anticipated payment to the judgment debtor is eighty percent of the amount of the homestead exemption prescribed by section 33–1101, the judgment creditor’s lien on the homestead property is extinguished on compliance with the following:**

**1.** **At least twenty days before the sale is final, a title insurer mails to the judgment creditor by certified mail, postage prepaid, return receipt requested, a notice that the judgment lien appears reasonably likely to be extinguished as prescribed by this subsection. The notice**

**must contain all of the following:**

**(a) The judgment creditor's name.**

**(b) The name of the current record owner of the real property.**

**(c) The street address for the property.**

**(d) The recording reference for the judgment.**

**(e) The expected sale date on which title to the real property will transfer to the buyer.**

**(f) The title insurer's basis for determining that the homestead exemption prescribed by section 33–1101 applies to the property being sold.**

**(g) The information used in, the basis for and the date of calculating the amount of equity in the real property.**

**(h) The name of every lienholder to be paid at the sale of the real property.**

**(i) The amount paid to each lienholder at the sale of the real property.**

**(j) The title insurer's basis for determining that the prior lienholder should be paid before the judgment creditor.**

**2. The title insurer shall amend the notice prescribed by paragraph 1 of this subsection if the anticipated payment to the judgment debtor increases by more than \$10,000.**

**3. If the judgment creditor has good cause to believe that the judgment lien should not be extinguished, the judgment creditor may object to the title insurer's notice within twenty days after the date the notice is mailed. If the title insurer receives an objection from the judgment creditor within the twenty-day period stating that the judgment lien should not be extinguished, the title insurer may not record the partial release of the judgment lien. If a court later determines that the judgment creditor's objection is without good cause, the prevailing party in that action is entitled to a court order extinguishing the judgment lien on the homestead property and an award of actual damages, court costs and attorney fees and any other remedy provided by law.**

**4. If the title insurer does not receive an objection from the judgment creditor before the twenty-day period expires, the title insurer may prepare, sign and record a notice of partial release of the judgment lien. The notice of partial release of the judgment lien must specify the real property that is no longer subject to the judgment lien and cite this subsection of statute. The person signing the notice of partial release of the judgment lien must be the title insurer's authorized agent.**

**5. The title insurer may charge a reasonable fee to the owner of the real property or any**

**other person who requests a notice of partial release of the judgment lien under this subsection for services rendered, including title search, document preparation, official fees and mailing costs.**

**6. A recorded notice of partial release of the judgment lien is conclusive evidence that the judgment lien on the specified property is extinguished in favor of purchasers and encumbrancers for value. The notice of partial release of the judgment lien does not affect a judgment lien on any other real property.**

**7. Compliance with this subsection is not presumed, excused, released or altered by a recorded notice of partial release of a judgment lien.**

**8. In addition to any other remedy provided by law, a title insurer that prepares or records the notice of partial release of the judgment lien under this subsection is liable to any party for the actual damages, including attorney fees and court costs, that are caused by wrongfully recording the notice of partial release of the judgment lien.**

**9. A judgment creditor may waive the notice requirement prescribed in paragraph 1 of this subsection if the waiver is in writing and signed by the judgment creditor's authorized agent.**

**C. If the judgment debtor receives cash proceeds from refinancing the homestead property that is subject to a judgment lien, the judgment creditor must be paid in full from those proceeds before the judgment debtor or other person receives any proceeds, except that monies used to pay direct costs associated with the refinance or to satisfy liens with priority over a judgment lien on a homestead property do not constitute cash proceeds. In subsequent refinance transactions on the homestead property that is subject to a judgment lien, the judgment lien is subordinated by operation of law to the new lender's interest in the homestead property. A notice of subordination may be recorded by any person who is a party to that refinance.**

**D. Any person who records a notice, including a notice of release of a judgment lien as prescribed by this section, shall mail a copy of the recorded notice to the judgment creditor whose judgment lien is affected by that recorded document.**

**~~C.~~E. A judgment of the justice court, municipal court, superior court or United States court that has become a lien under this article, immediately on the payment or satisfaction of the judgment, shall be discharged of record by the judgment creditor or the judgment creditor's attorney by recording a satisfaction of judgment with the county recorder of the county in which the judgment is recorded. The judgment creditor or the judgment creditor's attorney shall enter a notation of satisfaction on the docket of the clerk of the superior court of each county in which the judgment has been entered or docketed, and in a like manner enter a notation of satisfaction on the docket of the clerk of the United States district court.**

**~~D.~~F. In a title IV-D case, if the title IV-D agency or its agent is listed as the holder of the lien and the judgment has been satisfied but the obligee is unwilling to sign the release of the lien or, after reasonable efforts, cannot be located to sign the release of the lien, the title IV-D agency or its**

agent may sign the satisfaction of judgment and release of lien without the signature of the obligee. The title IV–D agency or its agent shall send a copy by first class mail to the last known address of the obligee.

**G. 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 judgment lien is not created on the judgment debtor’s homestead property if either:**

**1. A court of competent jurisdiction, including the United States bankruptcy court, has discharged or enjoined enforcement of the judgment before January 1, 2022.**

**2. There is a bankruptcy petition that is pending before January 1, 2022 for which a discharge is ultimately granted.**

**H. 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. At the time of the sale, transfer or refinance of a homestead property, the following apply to the priority of judgment liens created by this subsection for only the homestead property:**

**1. Judgment liens are junior to all valid and unpaid consensual liens that existed on the property on or before December 31, 2021.**

**2. Priority of judgment liens created by this subsection is determined by the date on which the judgment is recorded as prescribed by section 33–961 and, if applicable, is subject to subsection C of this section.**

**I. For the purposes of this section, “title insurer” has the same meaning prescribed in section 20–1562.**

Sec. 3. Section 33–1101, Arizona Revised Statutes, is amended to read:

<< AZ ST § 33–1101 >>

**§ 33–1101. Homestead exemptions; persons entitled to hold homesteads; equity**

**A.** Any person ~~the age of~~ **eighteen years of age** or over, married or single, who resides within ~~the~~ **this** state may hold as a homestead exempt from ~~attachment,~~ execution and forced sale, not exceeding ~~one hundred fifty thousand dollars~~ **\$250,000** in value, any one of the following:

1. The person’s interest in real property in one compact body ~~upon~~ **on** which exists a dwelling house in which the person resides.

2. The person’s interest in one condominium or cooperative in which the person resides.

3. A mobile home in which the person resides.

4. A mobile home in which the person resides plus the land ~~upon~~ **on** which that mobile home is located.

**B.** Only one homestead exemption may be held by a married couple or a single person under this section. The value as specified in this section refers to the equity of a single person or married couple. If a married couple lived together in a dwelling house, a condominium or cooperative, a mobile home or a mobile home plus land on which the mobile home is located and are then divorced, the total exemption allowed for that residence to either or both persons shall not exceed ~~one hundred fifty thousand dollars~~ **\$250,000** in value.

**C.** The homestead exemption, not exceeding the value provided for in subsection A **of this section**, automatically attaches to the person's interest in identifiable cash proceeds from the voluntary or involuntary sale of the property. The homestead exemption in identifiable cash proceeds continues for eighteen months after the date of the sale of the property or until the person establishes a new homestead with the proceeds, whichever period is shorter. **The homestead exemption does not attach to the person's interest in identifiable cash proceeds from refinancing the homestead property.** Only one homestead exemption at a time may be held by a person under this section.

**D.** **For purposes of determining the amount of equity in a homestead property that is sold or for determining whether the property owner is receiving cash back from refinancing the homestead property, the parties may rely on the valuation of the property in the final closing document disclosure that is used for that transaction.**

Sec. 4. Section 33–1103, Arizona Revised Statutes, is amended to read:

<< AZ ST § 33–1103 >>

**§ 33–1103. Effective date of homestead exemption; extent of exemption; exceptions**

**A. Real property that is subject to the homestead exemption** provided for in section 33–1101, subsection A is exempt from ~~process and from~~ **involuntary** sale under a judgment or lien, except **in connection with:**

1. A consensual lien, including a mortgage or deed of trust, or contract of conveyance.
2. A lien for labor or materials claimed pursuant to section 33–981.
3. A lien for child support arrearages or spousal maintenance arrearages. An award of court ordered support is not a lien for the purposes of this paragraph unless one of the following applies:
  - (a) An arrearage has been reduced to judgment.
  - (b) A lien exists pursuant to section 25–516.
  - (c) The court orders a specific security interest of the property for support.
4. ~~To the extent that A~~ **recorded civil** judgment or other **nonconsensual** lien ~~may be satisfied from the equity of the debtor exceeding~~ **that is not otherwise prescribed in this subsection if the**

**debtor's equity in the real property exceeds** the homestead exemption under section 33–1101.

**B.** A sale as described in subsection A of this section and not excepted by subsection A, paragraph 1, 2, 3 or 4 of this section is invalid and does not convey an interest in the homestead **property**, whether made under a judgment existing before or after the homestead is established.

**C.** In a contempt proceeding brought to enforce payment of any form of child support or spousal maintenance, the court may consider the portion of property claimed as exempt pursuant to section 33–1101, subsection A, as a resource from which an obligor has the ability to pay.

<< Note: AZ ST §§ 12–1551, 33–964, 33–1101, 33–1103 >>

#### **Sec. 5. Effective date**

Sections 12–1551, 33–964, 33–1101 and 33–1103, Arizona Revised Statutes, as amended by this act, are effective from and after December 31, 2021.

Approved by the Governor, May 19, 2021.

Filed in the Office of the Secretary of State, May 19, 2021.