

THE IMPORTANCE OF A TRUSTEE'S DEED

When buying a property at trustee's sale, it is important that the buyer timely obtain the trustee's deed upon sale. While it would seem to be common sense that you need the deed, it is especially important that the deed be *obtained* and *recorded* within fifteen (15) business days after the date of the sale. The recording of the trustee's deed by this date can be determinative of whether the sale was valid, whether you have clear title and whether you can prevail in an eviction action. Therefore, it is important that you follow up with the trustees quickly.

A.R.S. § 33-810(c) says that the trustee's sale is void, if it is done in violation of a bankruptcy; however, the statute doesn't state when the bankruptcy has to be filed. Most people incorrectly assume that this means that a sale is valid as long as the auction is completed before the bankruptcy is filed. Bankruptcy court cases have analyzed the effect the former owner's filing bankruptcy had on the validity of the sale. *In re: Steiner*, 251 B.R. 137 (Bkrcty.D.Ariz. 2000); Also, Order, *In re: Robert Allen Dickey Jr.* 2:10-bk-17999, United States Bankruptcy Court, District of Arizona. In both of these cases, the bankruptcy court was analyzing whether a trustee's sale is void because of a subsequent bankruptcy filing by the former owner. The courts looked to the language of A.R.S. § 33-810 which provides that "if the trustee's deed is recorded ... within fifteen business dates after the date of the sale, the trustee's sale is deemed perfected at the appointed date and time of the trustee's sale."

On June 27, 2011, in *In re Dickey*, the Bankruptcy Court was faced with a situation where the bankruptcy was filed 7 days after the full purchase price had been paid, and 8 days after the sale. However, the trustee's deed was not recorded until 18 business days after the sale. Therefore, because the deed was not recorded within the 15 business days, it didn't get the retro-application provided by statute, and the bankruptcy therefore invalidated the sale. In such a case, the purchaser obtained no interest in the property and would have to seek potential damages from the trustee for failing to follow the statutes. The Bankruptcy Court cited other cases for the proposition that if the deed had been timely recorded, the bankruptcy wouldn't have invalidated the sale.

The recorded trustee's deed is also important for the purposes of an eviction and defending a quiet title action. A.R.S. § 33-811(B) states that a trustee's deed constitutes conclusive evidence of the validity of the sale to a good faith purchaser. Additionally, anyone who received a notice of trustee's sale, waived objections to the sale, unless they obtained a court order stopping the sale. See, A.R.S. § 33-811(C). In an eviction action, the plaintiff needs to demonstrate their title to the property to obtain possession. A recorded, certified trustee's deed is proof of such ownership and can be admitted to the court. Therefore, if there is a dispute in the eviction action regarding title, the trustee's deed should deem such arguments irrelevant.

Finally, the trustee's deed can be used to defend lawsuits by former owners seeking to invalidate sales and obtain title to the home. Based upon the language in A.R.S. § 33-811, the purchaser can defend such an action if they have the deed and if the former owner didn't obtain an injunction before the sale. As the purchaser almost never has any knowledge whether the trustee followed the proper sale procedure, this statute provides an innocent purchaser with certain legal protections. As long as the purchaser has the deed, and the former borrower didn't obtain the necessary court order prior to the sale, the former owner likely waived their claim to the property.

Therefore, when purchasing properties at auction, remember to contact the trustees to ensure that you get the trustee's deed and that it is recorded within 15 business days after the sale.

