

Arizona Supreme Court Rules Recording a Notice of Sale Does Not Trigger Final Statute of Limitations Period to Collect Debt

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The Arizona Supreme Court just issued a significant and favorable foreclosure statute of limitations decision in *Bridges v. Nationstar Mortgage LLC*, — P.3d —, 2022 WL 3905320. It held that recording a notice of trustee's sale does not evidence a debt's acceleration. The opinion is significant because borrowers in Arizona routinely argue that recording a notice of sale confirms the lender accelerated the loan, which triggers the final statute of limitations period to collect the debt.

Arizona enacted a six-year statute of limitations for lenders or loan servicers to collect debts secured by deeds of trust. A.R.S. § 12-548(A)(1). The final six-year period to collect any portion of the loan through foreclosure or a lawsuit commences when the loan is accelerated. To accelerate a loan with an optional acceleration provision, the lender must "undertake some affirmative act to make *clear to the debtor* it has accelerated the obligation." *Andra R. Miller Designs LLC v. US Bank NA*, 418 P.3d 1038, 1043 (Ariz. App. 2018) (emphasis in original).

The borrower in *Bridges v. Nationstar Mortgage LLC* argued that the lender affirmatively made clear that it invoked the deed of trust's optional acceleration provision by merely recording the notice of trustee's sale. The lower court agreed, granting summary judgment for Mr. Bridges and barring Nationstar's ability to enforce the debt in its entirety because more than six years lapsed since the prior servicer recorded the notice of sale.

However, Troutman Pepper attorneys Justin Balser and Erin Edwards argued to the Arizona Court of Appeals that simply recording a notice of trustee's sale cannot accelerate a debt. Among other reasons, Arizona Revised Statute Section 33-813(A) permits the borrower to reinstate the loan for only the amount then due, which may be only a "portion of the principal sum," up until the day before the foreclosure sale. This is true despite the earlier recording of the notice of sale. Because the borrower can reinstate for only a portion of the principal balance 24 hours before the sale occurs, the statute makes clear that a notice of sale cannot automatically accelerate a loan.

The Arizona Court of Appeals agreed, holding "absent an express statement of acceleration in the notice of trustee's sale, or other evidence of intent to accelerate, recording a notice of trustee's sale, by itself, does not accelerate a debt." *Bridges v. Nationstar Mortgage LLC*, 481 P.3d 701 (Ariz. App. 2021). It reversed summary judgment for Mr. Bridges and remanded for the superior court to enter judgment in Nationstar's favor.

Mr. Bridges then petitioned the Arizona Supreme Court for review. The Supreme Court also agreed with the argument that Arizona Revised Statute Section 33-813(A)'s plain language permits reinstatement for only a portion of the full debt despite the earlier recording of the notice of sale. Therefore, the mere recording of a notice

of sale does not evidence the lender's intent to accelerate the loan and trigger the final statute of limitations period. The Arizona Supreme Court remanded for entry of summary judgment in Nationstar's favor.

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