

Underwriting Bulletin: UNAZ-2021-011

Date: December 6, 2021
To: ARIZONA Agents
From: David Dickard, Western Region Underwriting Counsel
RE: **Changes to Arizona Homestead Statutes / Judgment liens against homestead**

The purpose of this Bulletin is to alert FNTI agents of important changes effective January 1, 2022 pertaining to the Arizona statutory homestead exemption, attachment of judgment liens to the judgment debtor's homestead and procedures for dealing these statutory changes in the law. The practice of "homesteading a judgment" is about to change in significant ways. The three most important changes are:

1. Effective January 1, 2022, the statutory homestead exemption i.e., the amount of equity in a debtor's homestead property that the debtor can protect from the claims of judgment creditors will increase from \$150,000.00 to \$250,000.00.
2. Effective January 1, 2022, the lien of a judgment creditor **does** attach to a judgment debtor's homestead.
3. Effective January 1, 2022, there are new procedures for obtaining releases of judgment liens against homestead property on sales and subordinations of judgment liens against homestead property on refinances provided very specific statutory requirements are followed.

If you have transactions currently pending that will close after December 31, 2021 involving a judgment lien against the property owner's homestead, those transactions will be subject to the new laws that go into effect on January 1, 2022. The new laws apply to unexpired judgment liens recorded on or before December 31, 2021 as well as judgment liens recorded after January 1, 2022.

Following are some very basic transaction examples showing how the new statutes will affect the treatment of judgment liens against a debtor's homestead effective January 1st. These examples are not designed to be all-inclusive as fact scenarios can vary substantially. For the purposes of these examples, net proceeds are the amount due to the owner after payment of all encumbrances recorded prior to the judgment lien plus customary closing costs including real estate commission on sales:

- A. Sale of property where the seller's net proceeds are \$200,000.00 or less. The net proceeds can be paid to the seller and the judgment creditor does not have to be noticed or paid. The title company can record a statutory release of the judgment lien against the property without notifying the judgment creditor.
- B. Sale of property where the seller's net proceeds are between \$200,000.00 and \$250,000.00. The seller is still entitled to be paid up to \$250,000.00 in net proceeds but in this scenario the title company must send a statutory notice to the judgment creditor at least 20 days prior to closing. The notice must contain very specific statutory information and must be approved by FNTI underwriting prior to delivery to the judgment creditor. **This procedure may delay closing as the judgment creditor must be given 20 days from the time notice is sent to object to the release of its judgment lien.** If the judgment creditor does not object within the 20-day period, the judgment does not have to be paid and the title company can record a statutory release of the judgment lien. If the creditor does deliver a written objection with the 20-day period, the judgment will have to be dealt with.

- C. Sale of property where the seller's net proceeds exceed \$250,000.00. The title company must send the 20-day statutory notice to the judgment creditor which must be approved in advance by FNTI underwriting. **Again, this procedure may delay closing as the judgment creditor must be given its 20-day objection period.** As a practical matter this scenario will only arise if the remaining balance of the seller's proceeds are not sufficient to pay the judgment off in full. If the creditor objects within the 20-day period, the judgment will have to be dealt with.
- D. Cash out refinances. After payment of prior encumbrances and customary and reasonable closing costs, judgment creditors must be paid in full before any additional cash proceeds can be paid to the borrower.
- E. No cash out rate and term refinances. If refinancing an existing Deed of Trust that has priority over the judgment lien, payment of customary and reasonable closing costs and no cash to the borrower, the new Deed of Trust will have priority over the judgment lien. There is a statutory procedure for title companies to record a subordination of the judgment lien to the new Deed of Trust.

In all the above scenarios, beware of unusual and excessive fees being added to "closing costs" to bring the transaction below the dollar thresholds to qualify for homestead exemption treatment. In the notice to judgment creditor procedure described above, there is also a statutory procedure for the judgment creditor to waive its right to the 20-day notice which could avert closing delays. In lieu of the procedures outlined above, it is still an option to have a judgment creditor voluntarily release the property from its' judgment lien.

These new statutes and procedures will bring into use new forms that have not been used previously. Your FNTI underwriter will be happy to work with you in developing these new forms.

This Underwriting Bulletin becomes a part of the principles and practices with which you are to comply under the terms of your Underwriting Agreement with First National Title Insurance Company. Should the content of this bulletin address the closing and escrow function, this information should be considered a directive and part of the principles and practices if non-compliance would result in liability to FNTI under either the insured closing service letter or policy of title insurance notwithstanding that the Underwriting Agreement does not include the closing and escrow functions of your agency.