



Bulletin No. 257: 2022 Revisions to Homestead Law and Guidelines for Addressing Judgment Liens

ARIZONA ONLY

From	Western Region Underwriting Department
Date	December 21, 2021

HB 2617, effective January 1, 2022,¹ increases the homestead exemption to \$250,000 and recorded money judgments become a lien against the debtor's primary residence. This change affects sales and loan transactions on properties with judgment liens.² Compliance may require additional time for closing. The following are Old Republic Title's ("ORT") guidelines for approaching such transactions. As always, you should consult your escrow/title advisory staff for your company's particular procedures.

NOTE: The new law does not change ORT's underwriting requirement for a satisfaction of judgment for any judgment lien that appears on title that is not excepted from coverage.

Separate guidelines for Sales Transactions and for Refinance, HELOC, Junior & Free and Clear Loans or Modification follow. A sample Acknowledgment of ARS § 33-964 and a Questionnaire to assist with reviewing a homestead are provided.

¹ Effective Date and retroactivity - For sales on or after 1/1/22, all valid judgments recorded before 1/1/22 are enforceable but junior to consensual liens that existed on or before 12/31/21.

² NOTE: Commitments may be based on starters which treated the property as homestead and did not show judgment lien(s). Consider showing these judgment liens if still valid so application of HB 2617 may be considered.

GUIDELINES – SALES TRANSACTIONS

If the debtor claims a homestead exemption to avoid paying a judgment lien, a detailed analysis of the lien and claim of homestead for compliance with HB 2617 must be completed.

1. Categorize the Lien

Confirm Owner is the judgment debtor and the judgment is valid. Civil judgments are valid for 10 years unless renewed.³ State judgment, criminal restitution, child support, and spousal maintenance liens may be valid indefinitely. Where multiple judgment liens exist, lien priority is based on date of recordation.

2. Homestead Exemption

A homestead determination should be confirmed prior to recording a Homestead Affidavit. Examining other evidence of homestead, such as identifying additional residences, is advised.

3. Determining Amount Due to Judgment Debtor and Notice to Judgment Creditor

Judgment Creditor(s) must be paid in full from the sales proceeds after (1) the homestead exemption amount (\$250,000) is paid to the Owner, and (2) after payment of any liens with priority over the judgment lien. If excess proceeds are insufficient to satisfy the Judgment Lien consult escrow/title advisory staff.

HB 2617 requires a determination of whether the Owner's equity is more than 80% of the exemption (\$200,000). This amount is calculated by deducting from the sale proceeds the amount of the consensual liens and reasonable costs of sale. If any consensual lien is uninsured, closing costs are out of the ordinary, or amounts appear unusual please consult your escrow/title advisory staff.

If Owner's equity is less than 80% of the exemption, a Notice of Partial Release of Judgment Creditor ("Partial Release") for the Judgment Lien(s) must be recorded.⁴ A copy of the recorded Partial Release must be mailed to the Judgment Creditor(s) via Certified mail, postage prepaid and return receipt requested.

If the Owner's equity is more than 80% but less than or equal to 100% of the exemption (\$200,001-\$250,000) notice to Judgment Creditor of intent to record a Partial Release must be provided.⁵

The Notice must include:

- Judgment Creditor's name, Property Owner' name, Property's street address, recording reference for the judgment lien, and expected sale date;
- Basis for homestead determination;
- Information used/basis for/date of calculating equity amount;
- Name of every lienholder to be paid at COE and amount paid to each;
- Basis for why prior lienholder should be paid before Judgment Creditor.

The Judgment Creditor has 20 days to object. If objection is received, a Partial Release cannot be recorded and escrow should not close without paying the judgment lien or entry of a Court Order

³ Foreign judgments are handled on a case-by-case basis. Please consult with escrow/title advisory staff.

⁴ Please use ORT-prepared sample Partial Release forms (attached) or ORT approved equivalent.

⁵ Please use ORT-prepared sample Notice forms (attached) or ORT approved equivalent.

releasing the lien. If no objection is received, a Partial Release may be recorded. A copy of the recorded Partial Release must be mailed to the Judgment Creditor(s).

The Notice must be amended and resent if the anticipated payment to Judgment Debtor increases by more than \$10,000. This restarts the 20-day period for objection.

NOTE: ORT recommends providing Notice if the calculated equity amount is within \$20,000 of the 80% amount (\$180,000).

GUIDELINES – REFINANCE, HELOC, JUNIOR & FREE AND CLEAR LOANS, OR MODIFICATION

No Cash out Loans – Pure Refinance

For refinance transactions on Homestead Property subject to Judgment Lien(s) where loan funds are used solely to pay off an existing loan, borrower receives no cash-out, and the judgment lien is not being paid, a Subordination of Judgment Lien⁶ should be recorded along with a Homestead Affidavit.

Cash out Loans – Refinance, HELOC, Junior Loans, Free and Clear Loans and Loan Modifications

If the loan provides for cash to the borrower or payment to a third party (e.g., credit cards, auto loans, consumer loans etc.), **the Judgment Lien(s) must be satisfied at close of escrow**. In other words, Judgment Creditor(s) are paid before any proceeds are paid the Judgment Debtor. This change will likely limit the use of HELOC, junior loans or loan modifications which increase the loan amounts secured by properties with existing judgment liens.

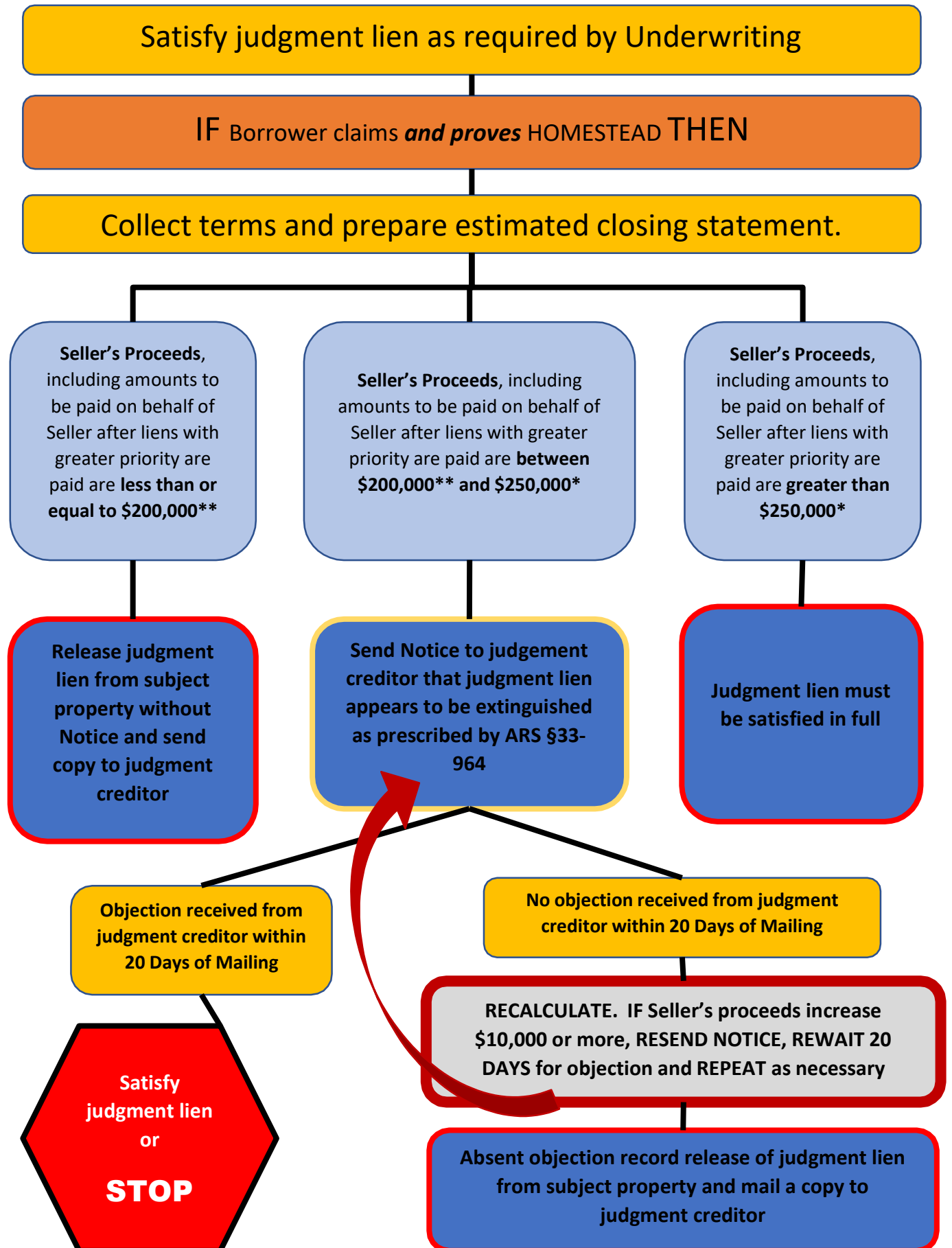
FEES - Title companies may charge a reasonable fee for the above work. The charge shall be 20% of Basic Rate. See Rule H of the Rate Manual (Insuring over known risk).

Attachments:

- Residential Sale with a Judgment Lien (flowchart)
- Residential Refinance with a Judgment Lien (flowchart)
- Notice of Subordination of Judgment (sample)
- Acknowledgment of Arizona Revised Statutes Regarding Judgment Liens on Homestead Property with attached Arizona Revised Statutes Section 33-964 (sample)
- Notice to Judgment Creditor (sample)
- Partial Release of Judgment (sample)
- Homestead Exemption Request Questionnaire (sample)

⁶ Please use ORT-prepared sample Subordination forms (attached) or ORT approved equivalent.

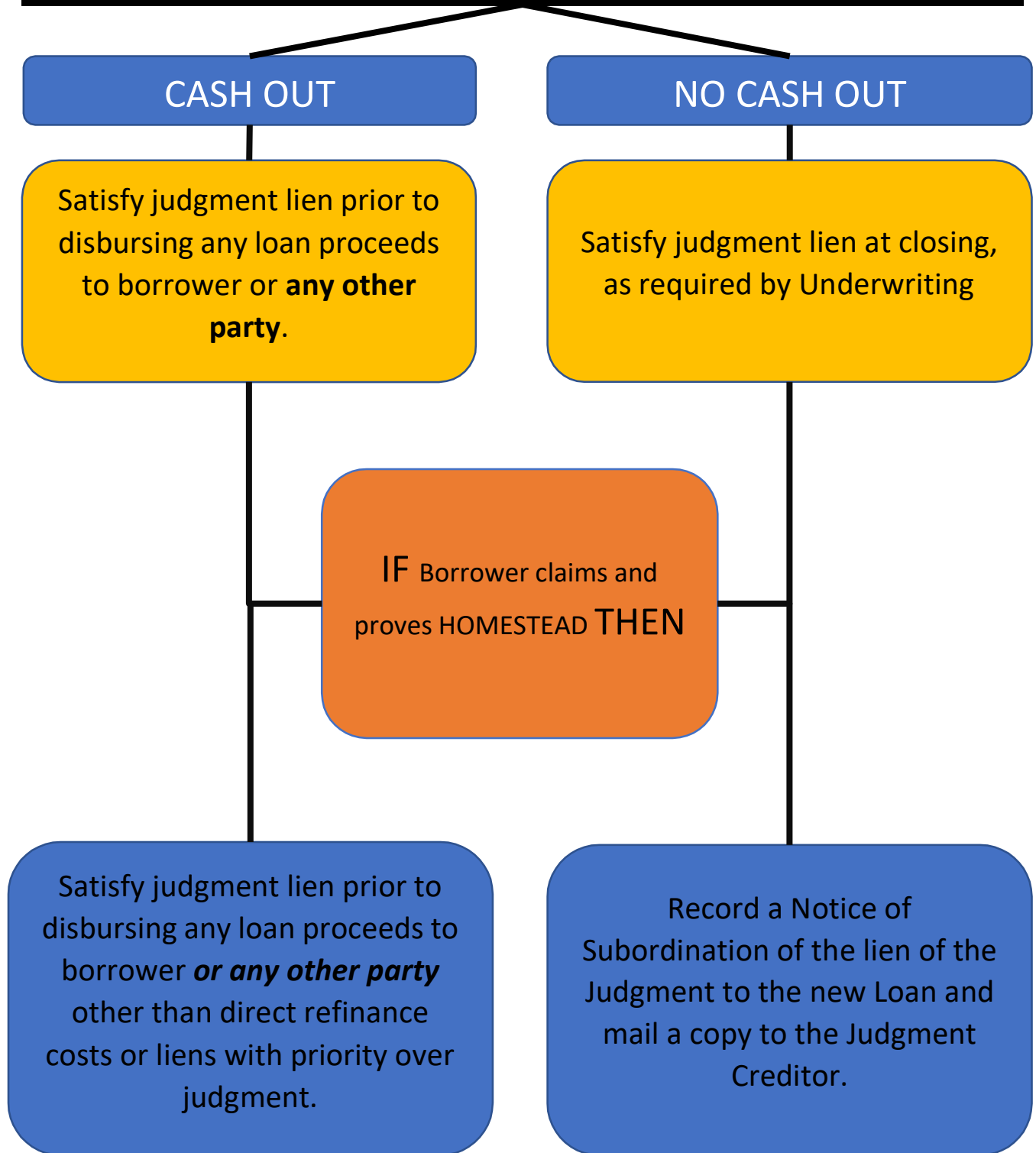
Residential Sale with a Judgment Lien



*Homestead Exemption

** 80% of Homestead Exemption - amounts subject to change by legislature

Residential Refinance with a Judgment Lien



A HELOC or any loan where proceeds will be held for later disbursement also = CASH OUT

RECORDING REQUESTED BY
(name of title company)

ORDER NO.

WHEN RECORDED MAIL TO:
(name and address of ORNTIC Agent)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF SUBORDINATION OF JUDGMENT
Pursuant to Arizona Revised Statutes Section 33-964

Notice is given that certain Abstract of Judgment filed against (fill in name of Debtor), Debtor in the Superior Court of Arizona in (fill in) County under Case No. (fill in) and recorded in the official Records of (fill in) County, State of Arizona on (recording date) as Instrument No. (fill in), in Book -----, Page ,if applicable) is subordinated to that certain Deed of Trust executed by (fill in name of Trustor) dated (fill in date) , in favor of (fill in name of Beneficiary/Lender), in the amount of (fill in), recorded concurrently herewith, affecting the following described property:

(add legal description)

Dated: (fill in)

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, a Florida corporation, as Title Insurer

By their designated Title Agent: (fill in name of Agent),

By _____
(fill in name of Officer of Agent)

State of Arizona
County of (fill in)

The foregoing instrument was acknowledged before me this (fill in) day of (fill in), 20_, by (fill in name of Officer of Agent) on behalf of (fill in name of Agent), a corporation, on behalf of the Title Insurer named above.

Notary Public

Escrow No.:
Property Address:

Acknowledgment of Arizona Revised Statutes Regarding Judgment Liens on Homestead Property

Pursuant to Arizona Revised Statutes, 33-964, on the sale of homestead real property that is subject to a judgment lien, a judgment creditor may be required to be paid in part, or in full, depending on the amount of proceeds payable to the seller. On the refinance of homestead real property that is subject to a judgment lien, a judgment creditor may be required to be paid in part, or in full, depending on the amount of proceeds payable to the borrower.

If the anticipated net sale proceeds from the sale are \$250,000.00 or less, a title insurer may be allowed under the revised statute to record a Notice of Partial Release of the judgment lien.

The undersigned acknowledge and agree that Escrow Holder will take the actions necessary to comply with ARS 33-964, a copy of which is attached.

Seller's or Borrower's Signature

Date

Seller's or Borrower's Signature

Date

Arizona Revised Statutes, Section 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 after the date it is given on all real property of the judgment debtor 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. 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.

[Agent Letterhead]

**NOTICE TO JUDGMENT CREDITOR
Section 33-964, Arizona Revised Statutes**

(Date)

(Judgment Creditor)

(Street Address)

(City, State, Zip)

Via Certified Mail, Return Receipt Requested

Re: Escrow No. (fill in)

Property: (fill in address)

Estimated Close of Escrow: (fill in est. COE)

This letter will serve as notice that the following judgment is likely to be extinguished through the above referenced escrow and a Partial Release of the Judgment recorded.

Judgment Creditor: (fill in)

Judgment Debtor: (fill in)

Current Record Property Owner: (fill in)

Recorded On: (fill in)

Instrument No.: (fill in)

Case or Reference No.: (fill in)

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, as Title Insurer, by their designated Agent (NAME OF AGENT), has determined that the property is a homestead property subject to exemptions under the Homestead Exemption Statutes based on an Affidavit provided by the current record property owner.

The following lienholders are expected to be paid through the escrow.

Name of lienholder estimated payment \$xx,xxx.00.

Name of lienholder estimated payment \$xx,xxx.00.

Name of lienholder estimated payment \$xx,xxx.00.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, as Title Insurer, by their designated Agent (NAME OF AGENT) determined on (insert date) that these lienholders have priority over the judgment creditor because the liens were recorded before the judgment of the Judgment Creditor. The equity in the homestead property was calculated by subtracting the existing consensual liens from the valuation of the property as stated on the final closing document disclosure or the contract price for sale of the property dated (fill in).

If you have good cause to believe this judgment should not be extinguished or a Partial Release recorded, your objection must be received by (Name of Agent) within 20 days of the date of this letter.

Should you have any questions, please contact the undersigned.

Sincerely,

[Insert name]

[Insert Title]

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

SPACE ABOVE THIS LINE FOR RECORDER'S USE

PARTIAL RELEASE OF JUDGMENT
Pursuant to Arizona Revised Statutes Section 33-964

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, a Florida corporation, as Title Insurer, by their designated Agent **(NAME OF AGENT)**, does hereby release the lien created by the Abstract of Judgment issued by the Superior Court of Arizona in **(fill in)** County, wherein **(fill in)** is the Judgment Creditor and **(fill in)** is a Judgment Debtor evidenced by the document dated **(fill in)** and recorded on **(fill in)** as Instrument No. **(fill in)**, in Book -----, Page , records of **(fill in)** County, AZ, as to the following described property:

See "Exhibit A" attached hereto and made a part hereof.

Dated: **(fill in)**

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, a Florida corporation, as Title Insurer
By: **(NAME OF AGENT)**, as their designated Title Agent

By _____
(name of Corporate Officer for Agent)

State of Arizona
County of **(fill in)**

The foregoing instrument was acknowledged before me this ____ day of ____, 202__ by _____, **(officer)** of _____, designated Agent for Old Republic National Title Insurance Company, a Florida corporation, as Title Insurer

Notary Public

HOMESTEAD EXEMPTION Request Questionnaire:

Escrow Number: _____ Escrow Officer _____

Owners Name: _____

Address _____

_____ Does the vested owner reside on the property? Yes ____ No ____
If no, please explain the reason for vacating the property; where they live now (City and State), and when they vacated the property.

_____ Are there recorded judgments against the current owner? Are they for child support?

Yes ____ No ____, explain _____

Are there any judgments that recorded prior to 1996 and continue to be renewed?

Yes ____ No ____, explain _____

_____ Furnish a completed ID Statement.

_____ Do they own other property? Yes ____ No _____. (Have customer service check)

_____ Does the tax sheet or affidavit of value show a different mailing address?

Yes ____ No ____, _____

_____ Have we checked the tax sheet and affidavit of value.

_____ Furnish a Utility bill showing the address of said residence.

_____ Have the owners recently filed bankruptcy? Yes ____ No _____. Case No. _____

Was caption property listed as exempt is Schedule C? Yes ____ No ____.

_____ Furnish an Affidavit of Supporting the Homestead. Said affidavit must be signed and notarized in the county in which the property is located. If not, explain why

_____ Furnish a copy of the HUD Settlement Statement.

_____ Is this a Short sale? Yes _____ No _____

What is the sales price? _____ What is the balance of the loan? _____

If a **Short Sale** has the Lender approved this transaction? Yes _____ No _____

_____ Will the seller receive any proceeds from this sale? Yes _____ No _____

If yes, How much? _____, **If over \$180,000.00 consider
Application of ARS §33-964**

_____ Is this a “Hold Open” transaction.

If approved, you must have a completed, signed and notarized Homestead (which will be recorded) with your recording package.

Approved by: _____ and _____

Subject to: _____

Date: _____