A.R.S. § 33-814 (G):

Action to recover balance after sale or foreclosure on property under trust deed

If trust property of two and one-half acres or less which is limited to and utilized for either a single one-family or a single two-family dwelling is sold pursuant to the trustee's power of sale, no action may be maintained to recover any difference between the amount obtained by sale and the amount of the indebtedness and any interest, costs and expenses.

A.R.S. § 33-729:

Purchase money mortgage; limitation on liability

A. Except as provided in subsection B, if a mortgage is given to secure the payment of the balance of the purchase price, or to secure a loan to pay all or part of the purchase price, of a parcel of real property of two and one-half acres or less which is limited to and utilized for either a single one-family or single two-family dwelling, the lien of judgment in an action to foreclose such mortgage shall not extend to any other property of the judgment debtor, nor may general execution be issued against the judgment debtor to enforce such judgment, and if the proceeds of the mortgaged real property sold under special execution are insufficient to satisfy the judgment, the judgment may not otherwise be satisfied out of other property of the judgment debtor, notwithstanding any agreement to the contrary.

B. The balance due on a mortgage foreclosure judgment after sale of the mortgaged property shall constitute a lien against other property of the judgment debtor, general execution may be issued thereon, and the judgment may be otherwise satisfied out of other property of the judgment debtor, if the court determines, after sale upon special execution and upon written application and such notice to the judgment debtor as the court may require, that the sale price was less than the amount of the judgment because of diminution in the value of such real property while such property was in the ownership, possession, or control of the judgment debtor because of voluntary waste committed or permitted by the judgment debtor, not to exceed the amount of diminution in value as determined by such court.

Page 766
770 P.2d 766
160 Ariz. 98, 57 USLW 2399
John P. BAKER and Deborah Mae Baker, husband and wife, Plaintiffs/Appellants,
v.
Gary GARDNER and Margaret Gardner, husband and wife, Defendants/Appellees.
No. CV-88-0104-PR.
Supreme Court of Arizona, In Banc.
Dec. 20, 1988.
Supplemental Opinion on Grant of Reconsideration March 20, 1989.

Page 767

[160 Ariz. 99] Norman Rosenblum, Scottsdale, for plaintiffs/appellants.

Oscar C. Rauch, Phoenix, for defendants/appellees.

Ryley, Carlock & Applewhite, P.A. by George Read Carlock, Abigail Carson Berger, Phoenix, for amici curiae Arizona Bankers' Ass'n and Sav. and Loan League of Arizona, The Arizona Bank, Citibank (Arizona), First Interstate Bank of Arizona, The Valley Nat. Bank.

Norling, Oeser & Williams by Steven H. Williams, Reinhard W. Fischer, Phoenix, for amici curiae Strom.

FELDMAN, Vice Chief Justice.

A promissory note evidencing the deferred balance of the purchase price of residential property was secured by a second deed of trust. We granted review to determine whether the note's holder may waive the security of the deed of trust and bring an action for the entire unpaid balance. We have jurisdiction under Ariz. Const. art. 6, § 5(3) and A.R.S. § 12-120.24.

FACTS

The Bakers sold the Gardners a single-family home for $131,000. Most of the purchase price was financed by an ICA Mortgage Corp. (ICA) loan, secured by a deed of trust. For the balance of the price, the Gardners gave the Bakers a promissory note for $17,500, secured by a second trust deed. The Gardners subsequently defaulted on both loans. ICA noticed a trustee's sale, as A.R.S. §§ 33-807 and 33-808 permit.

Before the sale, the Bakers brought this action to recover the unpaid balance of the promissory note. They did not exercise their rights under the second trust deed. Both the Bakers and the Gardners moved for summary judgment. The trial judge granted the Gardners' motion, holding that A.R.S. § 33-814(E) (the so-called "anti-deficiency" statute) precluded the action on the note.

The court of appeals reversed, reasoning that A.R.S. § 33-722 (providing for a creditor's election of remedies) permitted the action. Baker v. Gardner, No. 2 CA-CV 87-0282 (Ariz.Ct.App. Feb. 2, 1988) (memorandum decision). Consequently, the court held that a trust deed beneficiary/creditor can choose either to exercise his rights under the trust deed or waive the security and file an action for the unpaid balance of the note. Id. at 3. We granted review because the issue is of statewide importance and of first impression. See Rule 21, Ariz.R.Civ.App.P., 17B A.R.S.

ISSUE AND CONTENTIONS

We must decide whether the "anti-deficiency" statute, A.R.S. § 33-814(E), limits the trust deed beneficiary to selling the secured property to satisfy the debt or if A.R.S. § 33-722 allows the beneficiary to waive the security and bring an action for the unpaid balance of the promissory note.

The Bakers argue that A.R.S. § 33-722 allows them to waive the security and sue on the promissory note. The statute provides as follows:

If separate actions are brought on the debt and to foreclose the mortgage given to secure it, the plaintiff shall elect which to prosecute and the other shall be dismissed.

If correct, the Bakers could obtain a judgment against the Gardners for the loan's unpaid balance and collect that judgment by execution against all the Gardners' non-exempt property. See, e.g., A.R.S. § 14-2402.

Page 768

[160 Ariz. 100] The Gardners counter that this interpretation of § 33-722 circumvents A.R.S. § 33-814(E), which specifically applies to trust deeds encumbering certain residential parcels. That statute reads:

E. If trust property of two and one-half acres or less which is limited to and utilized for either a single one-family or a single two-family dwelling is sold pursuant to the trustee's power of sale, no action may be maintained to recover any difference between the amount obtained by sale and the amount of the indebtedness and any interest, costs and expenses. [1]

The Gardners contend that where the property meets the criteria of § 33-814(E), that statute supersedes § 33-722. Any other interpretation, they argue, permits the beneficiary to collect the entire loan balance when § 33-814(E) limits the beneficiary to only the proceeds of the forced sale of the property.

DISCUSSION

A. The Court of Appeals' Decision

At first reading, the statutes conflict: if § 33-722 applies, the Bakers obtain a judgment for the balance of the debt, but if § 33-814(E) applies, the Bakers can only force the sale of the encumbered property and cannot recover any deficiency between the sale proceeds and the balance of the debt. The court of appeals resolved this conflict by relying on its holding in Southwest Savings & Loan Association v. Mason, 155 Ariz. 443, 747 P.2d 604 (Ct.App.1987), vacated, 156 Ariz. 210, 751 P.2d 526 (1988). [2] Baker, memo. decision at 2.

Southwest Savings dealt with the conflict between A.R.S. §§ 33-722 and 33-729(A). Section 33-729(A) prohibits a deficiency judgment on foreclosure of purchase money mortgages encumbering property of two and one-half acres or less utilized for one-family or two-family residences. The court of appeals concluded that it should read the anti-deficiency and election statutes in pari materia

to give meaning to each.... Both sections can be given meaning by allowing an election but also by holding that once the mortgagee elects to bring an action on the note, he cannot thereafter attempt to attach the [mortgaged] property in order to satisfy that judgment on the note.

155 Ariz. at 445, 747 P.2d at 606. The appellate court's construction, in other words, effectively amends A.R.S. § 33-722 to read as follows:

If separate actions are brought on the debt and to foreclose the mortgage given to secure it, the plaintiff shall elect which to prosecute and the other shall be dismissed, however should the plaintiff elect to waive the mortgage, he shall not be allowed to later attach the property formerly subject to the mortgage in order to evade the provisions of A.R.S. § 33-729(A).

Id. (Howard, J., dissenting) (emphasis added). The majority provided no support for this construction, [3] but had to use it because otherwise the majority's reconciliation of the conflicting statutes would not only have circumvented the anti-deficiency statute, it would have repealed it.

In the present case, the majority of the court of appeals reasoned that Southwest Savings was "dispositive," so that the beneficiary of the trust deed, like the "mortgagee [in Southwest Savings] could proceed at law to collect the debt, but could not look to the property given as trust deed security...." Baker, memo. decision at 3. Judge Howard, dissenting in both cases, believed that "A.R.S. § 33-722 is a general statute governing mortgages, but that

Page 769

[160 Ariz. 101] A.R.S. § 33-729(A) is a specific statute governing [a special] type of mortgage." Southwest Savings, 155 Ariz. at 446, 747 P.2d at 607 (Howard, J., dissenting). Consequently, the "remedy provided by the [anti-deficiency] statute is exclusive." Id.; see also Baker, memo. decision at 3 (Howard, J., dissenting from court's analysis of § 33-814(E) on the same grounds). We agree with Judge Howard.

B. General Principles

Courts construe seemingly conflicting statutes in harmony when possible. State v. Perkins, 144 Ariz. 591, 594, 699 P.2d 364, 367 (1985), overruled on other grounds, State v. Noble, 152 Ariz. 284, 731 P.2d 1228 (1987). However, when two statutes truly conflict, either the more recent or more specific controls. E.g., Pima County v. Heinfeld, 134 Ariz. 133, 136, 654 P.2d 281, 284 (1982); State v. Davis, 119 Ariz. 529, 534, 582 P.2d 175, 180 (1978).

Under both principles, the anti-deficiency statute would prevail. The legislature adopted it in 1971, while the statute permitting the plaintiff to elect between separate actions comes from territorial days. See Civil Code § 3274 (1901). Further, the anti-deficiency statutes

apply to a particular, limited group of mortgages and trust deeds--those encumbering parcels of two and one-half acres or less and used for single-family or two-family dwellings. Thus, they are more specific.

C. Legislative Objectives

Such general principles, however, help courts decide questions of statutory conflict only when legislative intent or objectives are unknown. Here, therefore, dealing with conflicting and ambiguous statutes, we must try to determine legislative intent or, at least, objectives and construe the statutes to further those objectives. See State v. Tramble, 144 Ariz. 48, 51, 695 P.2d 737, 740 (1985).

The legislature enacted both anti-deficiency statutes in 1971 with several other consumer-oriented laws. [4] 1971 Ariz.Sess. Laws ch. 182, § 3 and ch. 136, § 7. See generally Boyd & Balentine, Arizona's Consumer Legislation: Winning the Battle but ..., 14 ARIZ.L.REV. 627, 654 (1972). These statutes were to preclude "artificial deficiencies resulting from forced sales." Id.; see also A.R.S. § 33-814(A). More importantly, the statutes created the "direct benefit of ... the elimination of hardships resulting to consumers who, when purchasing a home, fail to realize the extent to which they are subjecting assets besides the home to legal process." Id.

The legislative history of A.R.S. § 33-729(A), which applies to mortgages, demonstrates the legislature's objective of protecting consumers from financial ruin. Section 33-729(A) was part of H.B. 330, enacted in 1971 "to protect the homeowners from deficiency judgments." Minutes of Meeting, Committee on Ways and Means, March 31, 1971, at 2 (emphasis added). We must assume the same purpose accounts for the contemporaneous statute applying to trust deeds that encumber similar residential property. Therefore, we read both anti-deficiency statutes--ss 33-729(A) and 33-814(E)--as evincing the legislature's desire to protect certain homeowners from the financial disaster of losing their homes to foreclosure plus all their other nonexempt property on execution of a judgment for the balance of the purchase price.

The court of appeals' construction here obviously conflicts with the legislature's objective. The Gardners presumably lost whatever equity they had in the house on the non-judicial sale noticed by ICA under the first trust deed. Under the court of appeals' opinion, the Gardners would have faced sale of their other assets on execution of the judgment on the note secured by the Bakers' second deed of trust. In our view, the legislature would not have

Page 770

[160 Ariz. 102] protected homeowners from deficiency judgments but still permitted the holder of a mortgage or deed of trust to obtain essentially the same result by waiving the security and bringing action on the note. This statutory construction seems inconsistent with the patent legislative objective.

D. Authority on Legislative Intent

Authority supports our conclusion that the legislative objective in adopting anti-deficiency statutes such as ours is inconsistent with permitting the creditor to waive the security and bring an action on the note. Cases from California "are of particular interest as Arizona has adopted much of its redemption and mortgage statutes" from that state. Skousen v. L.J. Development Co., Inc., 134 Ariz. 289, 292 n. 5, 655 P.2d 1341, 1344 n. 5 (Ct.App.1982).

Our anti-deficiency statutes are similar to Cal.Code Civ.Proc. § 580b [5] California adopted § 580b in 1933 in response to the Great Depression. See Winklemen v. Sides, 31 Cal.App.2d 387, 408, 88 P.2d 147, 158 (1939). The history of the legislation is described in Cornelison v. Kornbluth, 15 Cal.3d 590, 542 P.2d 981, 988-90, 125 Cal.Rptr. 557, 564-66 (1975), which notes that California's single-action statute preceded 1900, while the anti-deficiency statutes, like Arizona's, were adopted much later. See also Barbieri v. Ramelli, 84 Cal. 154, 23 P. 1086 (1890).

We considered the California anti-deficiency statute in Catchpole v. Narramore, 102 Ariz. 248, 428 P.2d 105 (1967). In Catchpole, the holder of a note given for the deferred balance of the purchase price of California residential property brought a debt action in Arizona against the note's maker. The case arose before passage of A.R.S. §§ 33-729(A) and 33-814(E), when Arizona law permitted "a deficiency judgment where the security is not sufficient to satisfy the debt." 102 Ariz. at 250, 428 P.2d at 107. However, the Arizona maker claimed that Cal.Code Civ.Proc. § 580b precluded such an action. The words of the California statute, like the subsequently enacted Arizona statutes, only prohibited a deficiency judgment after forced sale of property.

The note holder in Catchpole advanced essentially the same arguments as the majority of our court of appeals here. The holder contended that the California statute was procedural, directed only to the holder's remedy after sale, and therefore did not prohibit waiving the security and maintaining an action for the debt. We held, however, that California's statute was substantive and designed to destroy the creditor's right to a money judgment. The creditor/seller could not "recoup the balance due on the purchase price of real property. The statute does not simply govern applicable procedures; it obliterates the debtor's [personal] liability." Id. at 250-51, 428 P.2d at 107-08 (emphasis added). Our interpretation of the California law's objective conforms with later California cases. See, e.g., Spangler v. Memel, 7 Cal.3d 603, 498 P.2d 1055, 102 Cal.Rptr. 807 (1972).

Dealing with a similar statute, the North Carolina Supreme Court reached the same conclusion regarding the objective of its legislature. See Ross Realty v. First Citizens Bank & Trust, 296 N.C. 366, 370, 250 S.E.2d 271, 273 (1979). [6] We believe that

Page 771

[160 Ariz. 103] these cases from California and North Carolina, interpreting statutes like ours, provide clear insight to the objective of Arizona's statute. We have neither found, nor have the parties cited us to, authority supporting a different conclusion on legislative intent or objective.

E. Authority Interpreting Anti-Deficiency Statutes

We turn now to cases from the states that have interpreted statutes similar to our anti-deficiency statutes. Acknowledging that California does not permit a creditor to waive the security and bring an action on the note, the majority of our court of appeals here and in Southwest Savings found California cases inapposite because California has a single-action statute (Cal.Code Civ.Proc. § 726) that requires a creditor first to exhaust the security before bringing an action on the debt, while A.R.S. § 33-722 permits an election. See Baker, memo. decision at 3; Southwest Savings, 155 Ariz. at 445 n. 2, 747 P.2d at 606 n. 2; see also Dudley v. Peterson, 42 Ariz. 282, 287, 25 P.2d 276, 277 (1933). We believe the California cases cannot be so distinguished.

Long before California passed its anti-deficiency statute, California courts had held that its single-action statute did not apply when the security was destroyed. The doctrine apparently arose in Hibernia Savings & Loan Society v. Thornton, 109 Cal. 427, 42 P. 447, 448 (1895), where the California Supreme Court stated that if the security had "become extinguished" by foreclosure of a prior lien or had "been destroyed or [had] ceased to exist," then it "may be" that the lienholder "need not go through the idle form of bringing an action for foreclosure before he can have a judgment on the note." Quoted in Dudley, 42 Ariz. at 287, 25 P.2d at 277; cf. Barbieri, 84 Cal. at ----, 23 P. at 1087 (earlier case holding single-action statute applied even though market conditions and prior liens rendered mortgage valueless).

What "may be" became law when the California Supreme Court held that the single-action "rule of section 726 does not apply to a sold-out junior lienor...." Roseleaf Corp. v. Chierighino, 59 Cal.2d 35, 39, 378 P.2d 97, 99, 27 Cal.Rptr. 873, 875 (1963), relying on Brown v. Jensen, 41 Cal.2d 193, 259 P.2d 425 (1953), cert. denied, 347 U.S. 905, 74 S.Ct. 430, 98 L.Ed. 1064 (1954). Thus, unless prevented by the anti-deficiency statute, such a lienholder could bring an action on the note. Roseleaf Corp., 59 Cal.2d at 39, 378 P.2d at 99, 27 Cal.Rptr. at 875.

Notwithstanding the inapplicability of the single-action statute, California held that the later-enacted anti-deficiency statute prohibits waiving the security and suing on the note. See, e.g., Spangler, 7 Cal.3d at 610, 498 P.2d at 1059, 102 Cal.Rptr. at 811; Bargioni v. Hill, 59 Cal.2d 121, 122, 378 P.2d 593, 594, 28 Cal.Rptr. 321, 322 (1963); Brown, 41 Cal.2d at 195, 259 P.2d at 426. Like the case before us today, each of these cases involved sold-out junior lienholders who, despite the single-action statute, attempted to bring an action on the debt. Spangler is illustrative. The California Supreme Court held that even though Cal.Code Civ.Proc. § 726 did not prohibit it, a sold-out junior lienholder could not maintain an action on the note. In reaching this conclusion, the court indicated that the purpose of the anti-deficiency statute was to "discourage land sales that are unsound because the land is overvalued and, in the event of a depression in land values, to prevent the aggravation of the downturn that would result if defaulting purchasers lost the land and were [also] burdened with personal liability." 7 Cal.3d at 612, 498 P.2d at 1060, 102 Cal.Rptr. at 812. The statute prevents such evils by "placing the risk of inadequate security on the ... mortgagee." Id. We read our statute as having a similar purpose and endeavor to effect that purpose here.

Again we note the result the North Carolina Supreme Court reached in Ross Realty v. First Citizens Bank & Trust, 296 N.C. at 370, 250 S.E.2d at 273.

Without prior foreclosure or sale, the creditor in Ross attempted to waive the security and

Page 772

[160 Ariz. 104] sue on the note. The court noted the inherent ambiguity in a statute that explicitly prohibited only deficiency judgments without any prohibition against election. Nevertheless the court concluded that the statute prohibited an election to waive the security. The court stated that due to the purpose for which [the statute] was adopted, the perceived problem which the statute seeks to remedy, and the effect which a literal construction of the statute produces, we are compelled to construe the statute more broadly and to conclude that the Legislature intended to take away from creditors the option of suing upon the note in [the specified type of] transaction. This construction of the statute not only prevents its evasion, but also gives effect to the Legislature's intent.

Id. at 373, 250 S.E.2d at 275. [7]

The Bakers have not cited to one state with an antideficiency statute that allows a noteholder to waive his security and bring an action for the unpaid debt. We have found only one such state. In Page v. Ford, 65 Or. 450, 131 P. 1013 (1913), the Oregon Supreme Court held that the creditor can maintain an action on the note notwithstanding the statute abolishing deficiency judgments. Id. at 451, 131 P. at 1013. Without analysis, except by noting the title of the statute, the Oregon court concluded that this was "settled beyond the pale of discussion." Id. We do not agree with this conclusion, finding it unsupported by either analysis, authority, or logic. Indeed, North Carolina rejected Page, describing it as having "mechanically construed" the statute while ignoring legislative intent. Ross, 296 N.C. at 372, 250 S.E.2d at 275. The Oregon decision is particularly inapposite here, considering the California cases and Catchpole, which, after detailed analysis, had reached a different conclusion before our legislature passed the anti-deficiency statutes.

F. Holding and Conclusion

We conclude that the legislature's objective in enacting § 33-814(E) was to abolish the personal liability of those who give trust deeds encumbering properties of two and one-half acres or less and used for single-family or two-family dwellings. We can further that objective only by construing the statute to forbid the circumvention the Bakers attempted here. The holder of the note and security device may not, by waiving the security and bringing an action on the note, hold the maker liable for the entire unpaid balance. Thus, with regard to the limited class of mortgages and deeds of trust described in §§ 33-729(A) and 33-814(E), the effect of the anti-deficiency statutes is to change the Arizona rule we described in Catchpole to the law of California as we described it in the same case.

In reaching this conclusion, we do no violence to the text of the statutes. Nor do we leave A.R.S. § 33-722 a meaningless shell. The creditor/beneficiary can still elect to sue on the note in all cases except those involving the particular mortgages and deeds of trust described in the anti-deficiency statutes. See Southwest Savings & Loan Association v. Ludi, 122 Ariz. 226, 228, 594 P.2d 92, 94 (1979).

We therefore vacate the court of appeals' decision and affirm the trial court's judgment. We award the Gardners attorney's fees, subject to proceedings under Rule 21, Ariz.R.Civ.App.P, 17B A.R.S.

GORDON, C.J., and HOLOHAN and MOELLER, JJ., concur.

CAMERON, Justice, dissenting.

I regret that I must dissent. The majority believes A.R.S. § 33-722 conflicts with

Page 773

[160 Ariz. 105] A.R.S. § 33-729(A) and § 33-814(E). I disagree. A.R.S. §§ 33-729(A) and 33-814(E) apply only when the creditor elects to foreclose on the property while A.R.S. § 33-722 allows a creditor to choose whether to sue on the note or on the deed of trust, but prohibits the creditor from proceeding on both. Neither A.R.S. § 33-729(A) nor § 33-814(E) prohibits a mortgagee from electing to proceed at law to collect its debt. These statutes merely prohibit an action to recover any deficiency remaining after a mortgage foreclosure action. See Southwest Savings and Loan Association v. Ludi, 122 Ariz. 226, 228, 594 P.2d 92, 94 (1979) (A.R.S. § 33-729(A) is only applicable to deficiencies remaining after the foreclosure of a mortgage). A.R.S. § 33-729(A) states in part:

[I]f a mortgage is given to secure the payment of the balance of the purchase price, or to secure a loan to pay all or part of the purchase price, of a parcel of real property of two and one-half acres or less which is limited to and utilized for either a single one-family or

single two-family dwelling, the lien of judgment in an action to foreclose such mortgage shall not extend to any other property of the judgment debtor, nor may general execution be issued against the judgment debtor to enforce such judgment, and if the proceeds of the mortgaged real property sold under special execution are insufficient to satisfy the judgment, the judgment may not otherwise be satisfied out of other property of the judgment debtor, notwithstanding any agreement to the contrary.

(Emphasis added).

A.R.S. § 33-814(E) states:

If trust property of two and one-half acres or less which is limited to and utilized for either a single one-family or a single two-family dwelling is sold pursuant to the trustee's power of sale, no action may be maintained to recover any difference between the amount obtained by sale and the amount of the indebtedness and any interest, costs and expenses.

(Emphasis added).

In this case, the Bakers never commenced foreclosure proceedings; thus, A.R.S. §§ 33-814(E) and 33-729(A) do not apply. The Bakers filed a complaint to recover the unpaid balance of the promissory note and never exercised their rights under the second deed of trust. At the time they filed their complaint, the first lienholder (ICA) had not yet foreclosed on the trust property. The fact that ICA did eventually foreclose on the property should not deprive the Bakers of their right to choose whether to sue on the promissory note or proceed with foreclosure. A.R.S. § 33-722 gives creditors this option:

If separate actions are brought on the debt and to foreclose the mortgage given to secure it, the plaintiff shall elect which to prosecute and the other shall be dismissed.

(Emphasis added).

This section establishes that a mortgagee has the right to bring an action on the debt rather than on the mortgage if the mortgagee desires. The statute does not limit this right to apply only when the deed of trust is on property not described in the anti-deficiency statutes, i.e. less than two and one-half acres and a single one or two-family dwelling.

The majority states that they have done no damage to A.R.S. § 33-722. This is a euphemism at best and questionable at least given the fact that they have completely eliminated a creditor's right to elect his or her remedy any time a deed of trust is taken on property described in the anti-deficiency statutes.

Some might consider it good policy to prevent those creditors with a deed of trust on a family home from electing their remedy. However, it is not the function of the courts to amend statutes and deprive certain creditors of their statutory right in order to make good policy. This should be left to the legislature.

SUPPLEMENTAL OPINION

FELDMAN, Vice Chief Justice.

The Bakers and several amici have moved for reconsideration under Rule 22,

Page 774

[160 Ariz. 106] Ariz.R.Civ.App.P., 17B A.R.S. Because the amici's briefs raise serious concerns that there may be some misunderstanding about the scope of Baker, we granted the reconsideration motion to clarify and, hopefully, obviate any confusion in the lending industry. We also consider amici's argument that the opinion should have only prospective application.

DISCUSSION

A. Scope of the Anti-Deficiency Statutes and Baker v. Gardner

The amici argue that even in cases that do not involve purchase money deeds of trust Baker may be read to prohibit creditors from waiving the security and electing to sue on the note as permitted by A.R.S. § 33-722. They contend that our holding should apply only to purchase money deeds of trust securing the type of real property described by the deed of trust antideficiency statute. See A.R.S. § 33-814(E) (now numbered A.R.S. § 33-814(F)). This follows, they argue, because we based the opinion on policy considerations relevant only to purchase money collateral. Thus, when the loan was not made to finance the purchase of residential real estate, the lender should have the option to either waive the security and sue on the note, as § 33-722 allows, or foreclose on the collateral and obtain a judgment for any deficiency.

The Gardners disagree, claiming that it would be better policy if lenders holding collateral on homes were limited to foreclosure without being able to execute on the borrower's other assets. The better social policy, however, was not our focus. We attempted, rather, to effect legislative objectives. Supra at 101, 770 P.2d at 769.

In pursuing that objective, we held that permitting the creditor to avoid the anti-deficiency statute by waiving the security and suing on the note would effectively destroy the anti-deficiency legislation. Consequently, the scope of Baker is defined by the scope of the two anti-deficiency statutes: A.R.S. § 33-729(A) (mortgages) and 33-814(E) (deeds of trust). Where the statutes forbid the creditor from obtaining a deficiency judgment, the election statute is inapplicable. Supra at 103, 770 P.2d at 771.

The converse, of course, is that under § 33-722 a creditor can elect to forego foreclosure and sue on the note in all cases except those involving the mortgages and deeds of trust to which the anti-deficiency statutes apply. Supra at 103, 770 P.2d at 771. The mortgage anti-deficiency statute, A.R.S. § 33-729(A), only applies to purchase money mortgages, but the deed of trust anti-deficiency statute is not limited to purchase money collateral. See, A.R.S. § 33-814(E). The conflict, however, is more apparent than real because a deed of trust beneficiary may choose to foreclose the deed of trust "in the manner provided by law for the foreclosure of mortgages on real property." A.R.S. § 33-807(A); see also § 33-814(D). When the beneficiary so chooses, the action is one "for the foreclosure of a deed of trust as a real property mortgage [and] the provisions of title 33, chapter 6, article 2 [which includes the mortgage anti-deficiency statute] are applicable." A.R.S. § 33-814(C).

Thus, subsection (E) of § 33-814 prohibits deficiency judgments on the described residential property only when the property "is sold pursuant to the trustee's power of sale." The creditor who holds a deed of trust on the described type of residential property and who chooses the advantages of non-judicial foreclosure cannot obtain a deficiency judgment even if he is not dealing with purchase money collateral. If, however, that creditor chooses to proceed by judicial foreclosure under § 33-814(D), the governing statute prohibits election to sue on the note only in cases involving purchase money collateral encumbering the residential property described in A.R.S. § 33-729(A).

The essence of Baker was simply that A.R.S. § 33-722 (permitting an election of remedies) did not apply to security covered by the later enacted anti-deficiency statutes. Any other interpretation would have destroyed the policy of consumer protection

Page 775

[160 Ariz. 107] that, in light of cases from California and this court, was our legislature's objective. See supra at 102, 770 P.2d at 770 (citing Catchpole v. Narramore, 102 Ariz. 248, 428 P.2d 105 (1967). That rationale has no application to situations in which the legislature has left the creditor power to obtain a deficiency judgment. In those cases, the election statute applies.

B. Summary and Application

Where the creditor chooses non-judicial foreclosure, he cannot obtain a deficiency judgment if the collateral is within the class protected by the deed of trust anti-deficiency statute. Where, however, the creditor chooses judicial foreclosure, he can obtain a deficiency judgment in all cases except those involving purchase money loans on the type of real property that the mortgage foreclosure statute describes. Therefore, where the creditor can obtain a deficiency judgment he can also elect to waive the security under A.R.S. § 33-722 and sue on the note. By choosing judicial foreclosure, the creditor can obtain a deficiency judgment in all cases except those dealing with purchase money collateral on the residential property described in § 33-729(A). He may, therefore, proceed under § 33-722 in all cases that do not fall within § 33-729(A).

We reject the contention that Baker be given only prospective effect. Unless three conditions are present, an Arizona civil appellate decision will normally have both retroactive and prospective effect. Law v. Superior Court, 157 Ariz. 147, 160, 755 P.2d 1135, 1148 (1988) (supplemental opinion). Law describes those conditions as

1. The opinion establishes a new legal principle by overruling clear and reliable precedent or by deciding an issue whose resolution was not foreshadowed;

2. Retroactive application would adversely affect the purpose behind the new rule; and

3. Retroactive application would produce substantially inequitable results.

Id. We find that these three conditions are not present here.

Baker did not overrule any clear and reliable Arizona precedents, and our holding was foreseeable. See supra at 101, 770 P.2d at 769 (citing Catchpole).

Here, retroactive application of Baker advances the legislature's objective of protecting home purchasers from economic hardships. Supra at 101 - 103, 770 P.2d at 770-771. Thus, retroactive application would not adversely affect the purpose behind the new rule.

Finally, as to any inequities that Baker may visit on some lenders, giving home purchasers the full benefit of legislative protection outweighs the hardships to lenders. Even assuming, arguendo, that this balance may upset some leaders, we believe it preferable to follow the clear legislative objective of protecting home buyers.

GORDON, C.J. and MOELLER, J., concur.

ORDER

The pending motions were considered by the court, Justice Corcoran did not participate.

IT IS ORDERED as follows:

1. The Motion for Reconsideration was granted for the purpose of filing a supplemental opinion. The opinion is ordered filed this date. Justice Cameron does not join in the supplemental opinion and would grant the Motion for Reconsideration for the reasons set forth in his dissent.

2. The Application for Award of Attorneys' Fees and Costs is granted, allowing fees in the amount of $7,500 and costs in the amount of $250.79.

---

1 The legislature has recently amended the statute. 1988 Ariz.Sess.Laws ch. 22, § 1. The amendments are irrelevant to the case before us.

2 We granted review of Southwest Savings on January 19, 1988. Subsequently, counsel informed us they had settled and stipulated to dismissal of the petition for review. We dismissed the petition, exercising our discretion to vacate the court of appeals' opinion. 156 Ariz. at 211, 751 P.2d at 527.

3 See Justice Scalia's poignant comment on the ipse dixit in Morrison v. Olson, 487 U.S. 654, ----, 108 S.Ct. 2597, 2637, 101 L.Ed.2d 569 (1988) (Scalia, J., dissenting).

4 Among them was subsection (A) of A.R.S. § 33-814, which encourages the creditor to make a market value bid for property sold at a non-judicial sale by prohibiting a deficiency judgment after a trustee's sale unless the higher of the fair market value of the property or the credit bid is first deducted from the balance owing.

5 Cal.Code Civ.Proc. § 580b provided the following:

No deficiency judgment shall lie in any event after any sale of real property for failure of the purchaser to complete his contract of sale, or under a deed of trust, or mortgage, given to secure payment of the balance of the purchase price of real property.

6 The North Carolina statute, N.C.Gen.Stat. § 45-21.38 provided in pertinent part the following:

Deficiency judgments abolished where mortgage represents part of purchase price.--In all sales of real property by mortgagees and/or trustees under powers of sale contained in any mortgage or deed of trust executed after February 6, 1933, or where judgment or decree is given for the foreclosure of any mortgage executed after February 6, 1933, to secure to the seller the payment of the balance of the purchase price of real property, the mortgagee or trustee or holder of the notes secured by such mortgage or deed of trust shall not be entitled to a deficiency judgment on account of such mortgage, deed of trust or obligation secured by the same: Provided, said evidence of indebtedness shows upon the face that it is for balance of purchase money for real estate ...

7 It may be argued, though the Bakers did not, that the anti-deficiency statute literally applies only if the property "is sold pursuant to the trustee's power of sale" and does not apply where the creditor waives the security and brings an action on the note. California, as well as North Carolina, has rejected this contention. The California court noted that § 580b "speaks of a deficiency judgment after sale," but pointed out that the prohibited deficiency judgment "is still a deficiency judgment even though it may consist of the whole debt because a deficiency is nothing more than the difference between the security and the debt...." Brown, 41 Cal.2d at 197, 259 P.2d at 427.

Page 1021
836 P.2d 1021
172 Ariz. 311

TANQUE VERDE ANESTHESIOLOGISTS, L.T.D. PROFIT SHARING PLAN, Plaintiff/Appellant,

v.

The PROFFER GROUP, INC., an Arizona corporation; James J. Mains, a single man; Austin Patterson and Deborah Patterson, husband and wife; E.L. Cambridge and Margaret Cambridge, husband and wife, Defendants/Appellees.

No. 2 CA-CV 91-0249.
Court of Appeals of Arizona,
Division 2, Department B.
May 12, 1992.
Review Denied Oct. 6, 1992.

Page 1022

[172 Ariz. 312] Slutes, Sakrison, Even, Grant & Pelander, P.C. by Mark Rubin, Tucson, for plaintiff/appellant.

Jeffrey J. Carter, Tucson, for defendants/appellees.

OPINION

FERNANDEZ, Presiding Judge.

This case involves an attempt by a lender to recover the balance due under a promissory note after the deeds of trust securing the note were released. The trial court granted the borrowers summary judgment, holding that A.R.S. § 33-814(G) bars the deficiency action. We agree and affirm.

Appellee The Proffer Group, Inc. borrowed money from InterWest Bank pursuant to various agreements. Appellant Tanque Verde Anesthesiologists L.T.D. Profit Sharing Plan guaranteed the loans. Proffer used the loan proceeds to acquire distressed real estate and delinquent instruments secured by real property and to pay the indebtedness or acquire the properties through foreclosure proceedings, repair the properties, and sell them. Tanque Verde also lent money directly to Proffer for repairs, maintenance, and interest reserves. Appellees Mains, Patterson, and Cambridge guaranteed the loans from Tanque Verde.

After numerous transactions, Proffer was ultimately unable to sell one residence. Tanque Verde lent Proffer $32,800 on that property by satisfying Proffer's loan from InterWest Bank. As a result, Tanque Verde received an assignment of InterWest's beneficial interest in the deed of trust that secured repayment of Proffer's indebtedness to the bank. In addition, Tanque Verde directly lent Proffer money to service the debt to the bank and to repair the residence. In exchange, Proffer signed a promissory note and gave Tanque Verde a second deed of trust on the property.

Proffer ceased making payments on the loan in October 1989. It sold the residence in the fall of 1990 and requested that Tanque Verde release its deeds of trust to effectuate the sale. Tanque Verde agreed to release them in consideration for the payment from escrow of $36,863.09. The

Page 1023

[172 Ariz. 313] deed of release and reconveyance of the second deed of trust contains the following language: "The execution of this Deed of Release and Reconveyance does not constitution [sic] evidence of full satisfaction of the Promissory note for which the Deed of Trust referenced herein provides security." A doctor who participated in the transactions stated in an affidavit that Tanque Verde would not have released the second deed of trust without including that language in the release.

Tanque Verde sued for its unpaid balances of $1,808.56 on the first loan and $6,069.56 on the second loan. The affidavit, however, only stated the total due on the second loan. Both parties moved for summary judgment, and the court granted Proffer's cross-motion.

Tanque Verde contends that the trial court erred in ruling that it cannot obtain a deficiency judgment, arguing that a lender with a non-purchase money note secured by a deed of trust covering property described by A.R.S. § 33-814(G) may release the deed of trust and seek a judgment on the unpaid obligation. Tanque Verde also argues that its release and reconveyance, which included specific disclaimer language, does not constitute a "waiver" of its security as contemplated by

the Arizona Supreme Court in Mid Kansas Federal Savings & Loan Association v. Dynamic Development Corp., 167 Ariz. 122, 804 P.2d 1310 (1991).

Arizona has two anti-deficiency statutes: 1) A.R.S. § 33-729(A), which applies to purchase money mortgages and to purchase money deeds of trust that are judicially foreclosed, Baker v. Gardner, 160 Ariz. 98, 770 P.2d 766 (1989); and 2) A.R.S. § 33-814(G), which applies to all deeds of trust foreclosed by trustee's sale whether or not they secure purchase money obligations. Both sections prohibit the entry of a deficiency judgment after the forced sale of a parcel of "property of two and one-half acres or less which is limited to and utilized for either a single one-family or a single two-family dwelling." A.R.S. §§ 33-729(A) and -814(G). Arizona also has an election of remedies statute that is applicable to mortgages. Under A.R.S. § 33-722, a mortgagee can sue to judicially foreclose its mortgage or can sue on the note and waive the mortgage, but it cannot maintain both actions simultaneously.

In Mid Kansas, supra, a lender that acquired the collateral by foreclosing on a second deed of trust through a non-judicial sale sued for the balance due on its note secured by the first deed of trust. In construing the anti-deficiency statutes, the court observed that when

[r]ead together, therefore, the statutes enact the following scheme: when the holder of a non-purchase money deed of trust of the type described in A.R.S. § 33-814(G) forecloses by non-judicial sale, the statute protects the borrower from a deficiency judgment. The lender therefore may not waive the security and sue on the note. [Citation omitted.] The holder may, however, seek to foreclose the deed of trust as if it were a mortgage, as allowed by § 33-814(E); if he does so, the debtor is allowed redemption rights under §§ 33-726 and 12-1281 through 12-1289 and is thus protected from low credit bids, but the holder may recover a deficiency judgment--the difference between the balance of the debt and the sale price--unless the note is a purchase money obligation. In the latter case, the borrower is protected by the mortgage anti-deficiency statute, A.R.S. § 33-729(A), which applies only to purchase money obligations.

167 Ariz. at 127, 804 P.2d at 1315. The court held that the property involved in that case did not come within the anti-deficiency statutes. In this case, however, there is no question that the property comes within the statutes.

Tanque Verde acknowledges both that it agreed to release the trust deeds in exchange for the receipt of some $36,000 in escrow proceeds and that it received the amount agreed upon. It presented no evidence that the parties agreed that Proffer would pay any deficiency that remained after the trust deeds were released. It also presented no evidence that the parties agreed to insertion of the disclaimer language

Page 1024

[172 Ariz. 314] in the deed of reconveyance. In the affidavit that Tanque Verde filed below, the doctor merely stated that Tanque Verde would not have released the trust deed without the insertion of that language. The deed of reconveyance itself is signed only by Tanque Verde.

Although no trustee's sale occurred in this case, we agree with Proffer that, based on the holdings of Baker, supra, and Mid Kansas, supra, and absent evidence of an agreement to the contrary, when Tanque Verde signed the deed of release and reconveyance, it thereby waived its right to seek a deficiency judgment.

Appellees will be awarded attorney's fees on appeal upon compliance with Rule 21(c), Ariz.R.Civ.App.P., 17B A.R.S.

Affirmed.

HATHAWAY and LIVERMORE, JJ., concur.

Update on Court Decisions and the Anti-Deficiency Statutes

by Christopher A. Combs and Adam D. Martinez

Introduction

Arizona and a small minority of other states have adopted anti-deficiency statutes to prohibit a homeowner's personal liability after losing a home to foreclosure. In the past two years in Arizona there has been both a rapid increase in homeowners who are delinquent on their home loans and a rapid decline in home values. Therefore, the scope of the protection of the anti-deficiency statutes is now of heightened interest to both homeowners and lenders.

Frequent questions are: Can the lender waive the right to foreclose on a home and bring a collection action on the promissory note? Do investors and developers have the protection of the anti-deficiency statutes after foreclosure on a home? Do the anti-deficiency statutes apply to the refinancing by the homeowner of the original purchase money loan, even if a portion of the loan refinancing exceeds the original purchase money loan? This article will attempt to answer those questions.

Background

The Mortgage

A mortgage is a two-party instrument which is basically a pledge of real property given by a borrower (mortgagor) to a lender (mortgagee) to secure a loan. A mortgage is not a debt, rather it is a security for the performance of another act, generally the repayment of a promissory note. Arizona follows the "lien theory" rule, which provides that a mortgage is not a conveyance, rather the mortgage merely creates a lien in favor of the mortgagee. Therefore, neither legal nor equitable title passes to the lender upon the creation of a mortgage.

The Deed of Trust

Since the adoption of the Arizona deed of trust statutes (A.R.S. §33-801 et seq.) in 1971, the deed of trust has replaced the mortgage as the principal real property security interest used in Arizona. There are two reasons that the deed of trust has become more popular: (1) foreclosure without the courts and (2) no redemption period after sale. A deed of trust is a three-party instrument by which the borrower conveys legal title to the property to the trustee. The trustee holds legal title to the property on behalf of the lender, who becomes the beneficiary of the deed of trust. The beneficiary's remedies under the deed of trust include those available to the mortgagee, but also give the trustee a non-judicial private power of sale not available in mortgages.

Enforcement of the Security After Default

Because the mortgage or deed of trust itself is not a debt, the lender may release the security interest under the loan without losing the lender's right to bring an

action on the original indebtedness which is secured by the loan.

If a mortgagee chooses to enforce the security, the mortgage must be foreclosed by judicial sale, in which case the security is sold by court order.

The beneficiary under a deed of trust may enforce the security by either (1) foreclosing upon the property as a mortgage (by judicial sale); or (2) having the trustee exercise its private power of trustee's sale. The power of sale is often preferred by lenders because it provides a quicker and less expensive remedy than judicial foreclosure, and may be completed as soon as ninety days after formal notice of the sale is recorded and sent to the proper parties. A trustee's sale cannot be held after an action to foreclose the deed of trust has been filed unless the foreclosure action has been dismissed.

The Deficiency Judgement

If the proceeds of the foreclosure sale of the property secured by a mortgage or deed of trust are insufficient to pay the full loan balance (after deducting certain expenses and interest), the mortgagee or beneficiary may be entitled to a personal judgment against the debtor for the difference between the debt and the foreclosure sale price or fair market value of the property, whichever is greater. This in personam remedy following the foreclosure sale is called a deficiency judgment and is authorized under A.R.S. §33-725 (mortgages) and A.R.S. §33-814 (deeds of trust).

General Rule: Lender Must Elect Remedy

In Arizona, separate actions on the debt and to foreclose cannot be maintained simultaneously. This rule is embodied in A.R.S.§33-722 which allows the mortgagee to either sue directly on the debt, thereby waiving the mortgage, or foreclose the mortgage. Similarly, the beneficiary under a deed of trust can generally choose to forego judicial foreclosure or the trustee's private power of sale, and bring an in personam action on the debt.

Arizona's Anti-Deficiency Statutes

Although historically the mortgagee has had the right to obtain a deficiency judgment, the Arizona legislature enacted A.R.S. §33-729(A) in 1971 to limit the right of certain purchase money mortgagees to obtain a deficiency judgment if the security does not exceed two and one-half acres and is utilized as either a one-family or single two-family dwelling. For the purposes of A.R.S. §33-729(A), a "purchase money mortgage" is one given concurrently with a conveyance of real estate between the seller and the buyer, or given to secure a loan to pay all or part of the purchase price of the dwelling. When such a purchase money mortgage exists, A.R.S. §33-729(A) provides the following limitation:

> ***...[T]he lien of judgment in an action to foreclose such mortgage shall not extend to any other property of the judgment debtor, nor may general execution be issued against the judgment debtor to enforce such judgment,...***

This anti-deficiency statute expressly limits the purchase money mortgagee who initiates foreclosure to only those proceeds of the foreclosure sale. By its express terms, the statute applies only to actual foreclosure situations; it does not expressly bar the right of a purchase money mortgagee to elect under A.R.S. §33-722 to waive the security and sue on the debt. Even the no "general exec ution" language of the statute literally refers back to those actions taken by the mortgagee in foreclosure, although it is unclear if this language was intended to restrict the mortgagee from general executions arising out of an action on the note itself.

Presumably, the lender would prefer to waive the security and sue on the debt any time it appears that the indebtedness would exceed the foreclosure sale price, at least where the debtor has sufficient assets to enable the lender to collect upon the judgment. Thus, the conflict between two statutes arises: A.R.S §33-722 permits an action on the debt, whereas A.R.S. §33-729 (A) demonstrates the legislature's intent that the residential purchase money mortgagor should be exposed to liability only to the extent of the home used as security for the debt.

A similar issue also arises with application of the anti-deficiency statute for residential deeds of trust (A.R.S. §33-814(G)). This statute is similar to A.R.S. §33-729(A) to the extent that by its express terms it prohibits a deficiency judgment after the property is sold. The statute is somewhat broader, however, because it is not limited to "purchase money" loans.

Supreme Court Decision in Baker v. Gardner

In *Baker v. Gardner*, 160 Ariz. 98, 770 P.2d 766 (1988), the Arizona Supreme Court resolved the statutory conflict regarding purchase money loans with respect to mortgages and deeds of trust described in A.R.S. §33-729(A) and 33-814(G). The *Baker* court held that any secured lender may not waive the purchase money security and bring a collection action on the loan. In support of its decision, the Court stated that the legislature's objective in enacting A.R.S. §33-814(G) was to "abolish the personal liability of those who give trust deeds encumbering properties of two and one-half acres or less and used for single family or two-family dwellings." *Baker*, 160 Ariz. at 105, 770 P.2d at 772.

The Supreme Court Decision in Mid Kansas Federal Savings

In *Mid Kansas Federal Savings and Loan Association of Wichita v. Dynamic Development Corporation*, 167 Ariz. 122, 804 P.2d 1310 (1991), the Arizona Supreme Court resolved another conflict arising out of Arizona's anti-deficiency statutes. Specifically, the Court decided what persons and what properties are included within the anti-deficiency statutes.

The anti-deficiency statutes provide that the property securing the debt must be two and one-half acres or less and must be limited to and utilized as either a single one-family dwelling or single two-family dwelling. The Court held that if the subject properties fit within the statutory definition, the identity of the borrower as either a homeowner or developer is irrelevant. While the Court implied that the legislature intended to protect individual homeowners rather than commercial developers, it stated that the language of the anti-deficiency statutes did not exclude any other type of borrower. See also *Northern Arizona Properties v. Pinetop Properties Group*, 151 Ariz. 9, 725 P.2d 501 (App.1986) (investors entitled to protection of anti-deficiency statutes).

In determining whether a subject property fits within the statutory definition, the Court held that residential lots owned by a developer for construction and eventual resale as dwellings are not within the definitions of properties "limited to" and "utilized for" single-family dwellings; a property is not utilized as a dwelling when it is unfinished, has never been lived in, and is being held for sale to its first occupant by an owner who has no intent to ever occupy the property.

The Court of Appeals Beauvais Decision

In *Bank One, Arizona, N.A. v. Beauvais*, 188 Ariz. 245, 934 P.2d 809 (App. 1997) the Court of Appeals extended *Baker*, supra, to hold that the extension, renewal, or refinancing of a purchase money note retains its character as a purchase money note. In support of its holding, the Court of Appeals cited *Baker's* examination of the legislative objectives behind Arizona's anti-deficiency statutes and, in light of those objectives, the Court of Appeals determined that the legislature did not intend that the loan would lose its character as a purchase money obligation when the loan is extended, renewed, or refinanced. The Court of Appeals further stated that to hold otherwise would lead to the very result that the legislature intended to avoid through the anti-deficiency statutes, namely, putting homeowners unable to make mortgage payments "at the peril of facing personal liability as well as the loss of their homes."

Even though in *Beauvais* a portion of the consolidated loan was non-purchase money, Bank One did not argue that the loan could be bifurcated. Therefore, the Court of Appeals considered the entire loan to be a purchase money obligation. As a result, the Court of Appeals declined to further address what exactly constitutes a "purchase money" loan or discuss the extent to which the anti-deficiency statutes protect refinanced purchase money loans.

Thus, *Beauvais* does not resolve the issue of whether a homeowner who refinances a purchase money loan and borrows funds in addition to the remaining balance of the original loan amount will receive protection under the anti-deficiency statutes for the total amount of the new loan, or whether the amount can be bifurcated for the purpose of determining the purchase money and non-purchase money amount.

Conclusion

The Arizona legislature, in adopting our anti-deficiency statutes, undoubtedly intended that a homeowner, who is unable to make payments on a purchase money loan, should lose no more than their home. The Supreme Court of Arizona, in interpreting this intent, has held that a secured lender may not waive its security and sue directly on the note. Additionally, the Supreme Court has held that there is no distinction between a homeowner and an investor/developer seeking protection under the anti-deficiency statutes if the residential property fits within the statutory definition of "two and one-half acres or less" and is "utilized for either a single one-family or a single two-family dwelling." Finally, the Court of Appeals has held that the anti-deficiency statutes protect a homeowner who has renewed, extended, or refinanced the original purchase money loan.

What remains unanswered is whether the Arizona appellate courts will determine that a homeowner, who defaults on a refinanced loan in excess of the original purchase money loan, will have the full protection of the anti-deficiency statutes. In light of the enormous amount of foreclosures now in Arizona, that answer should be forthcoming shortly.

Christopher A. Combs and Adam D. Martinez practice real estate law at Combs Law Group, P.C. Mr. Combs is a Certified Real Estate Specialist with the State Bar of Arizona. He graduated from Arizona State University with a B.S. in Political Science with honors. He received his Juris Doctor, with honors, from the University of Arizona where he was a member of the Law Review. After law school, Chris was a Captain, Judge Advocate Division, U. S. Marine Corps.

Mr. Martinez, a native of Arizona, obtained his Bachelor of Arts in political science from Arizona State University his Juris Doctor from the Sandra Day O'Connor College of Law, where he was president of the J. Reuben Clark Law Society student chapter, and a member of the college's pro bono board. Prior to joining Combs Law Group, he externed at the City of Mesa Attorney's Office, where his work focused on annexation and development agreements.