

TRANSFERRING OWNERSHIP
AND
PERFECTING SECURITY INTERESTS

BY
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PREFERENCES

The purpose of the Bankruptcy laws is to distribute the debtor's estate to creditors by a fair and equitable method. All creditors of a certain class are ideally given an equal pro rata share of the property available for distribution to the class. While most creditors have to settle for some percentage of their original claim, some creditors may try to collect their claims from a financially troubled debtor before he ends up in bankruptcy. This leads to a situation where a few creditors may recover a large portion of their original claim, which forces the debtor into bankruptcy and leaves very little for the remaining creditors:

Section 547 of the Bankruptcy Code seeks to eliminate this problem by allowing a trustee to avoid a prepetition transfer that is a preference.

The Code specifically defines a preference in Section 547(b) as:

- any transfer of an interest of the debtor in property;
- to or for the benefit of a creditor;
- for or on account of an antecedent debt owed by the debtor before such transfer was made;
- made while the debtor was insolvent;
- made on or within 90 days before the date of the filing of the petition, or within one year of the filing if the creditor is an insider;
- that enables the creditor to receive more than she would receive in a Chapter 7 distribution of the bankruptcy estate had the transfer not been made.

The principal purpose of avoiding preferences is to discourage creditors from racing to the courthouse to dismember the debtor during his descent into bankruptcy in order to uphold the primary policy of equality among creditors. Note that the subjective innocence of the creditor is no defense, all that is required for an avoidable preference is the actual transfer made within the preferential period that satisfies all of the elements of 547(b). Again, every element of 547(b) must be satisfied; preferential effect is only one of the elements.

For example, suppose that the amount of A's debts greatly exceeded the value of his property. He paid his last \$1500 in cash to X to satisfy a one year old, unsecured trade debt in the same amount. A filed for bankruptcy the next week. The estate is poor; if A's assets are liquidated, his general creditors will receive no more than ten percent of the amounts owed them.

This transfer between A and X is a voidable Section 547(b) preference; all the elements of a preference are satisfied. The debtor's \$1500 payment was a transfer of the debtor's property, and the money was transferred to a creditor, X. The transfer was made within 90 days before A's bankruptcy petition and when A was insolvent. Finally, the transfer had a preferential effect, as it enabled X to receive more than he would

have been given in a Chapter 7 case. The \$1500 payment was a full satisfaction of X's claim, where all other debtors would have received only ten percent of their claims.

Not all transactions which resemble preferences are necessarily voidable; Section 547(c) provides the functional equivalent of affirmative defenses to a preference claim. These defenses serve to legitimize transactions which occur in the normal course of business, and are not invalidated by a bankruptcy filing.

The first affirmative defense is that the transfer is intended to be a contemporaneous transfer for new value and is in fact a substantially contemporaneous exchange. The key to this exception is that there must be new consideration present from both parties. Additionally, the exchange must take place in the normal course of business.

The second affirmative defense concerns the payment of accounts payable on a regular basis. If a creditor can show that the debt was incurred in the ordinary course of the debtor's and creditor's financial affairs and was paid in the ordinary course of the debtor's and creditor's financial affairs according to ordinary business terms, then the transfer will not constitute an avoidable preference.

Third, if bankruptcy is filed during a nonbankruptcy grace period

(such as a ten day grace period for perfection of a security interest in proceeds of collateral), the perfection will not constitute an avoidable preference, so long as the security interest secures new value.

Fourth, a transfer will not be avoidable as a preference if, after the transfer, the creditor gives new value to the debtor that is unsecured. While this exception is normally limited to business debtors, it is important to remember that a payment in advance will not be an avoidable preference.

The fifth affirmative defense concerns a floating lien, which is a line of credit from a financial institution which is secured by the inventory, equipment, or proceeds of the debtor's business. Generally, a floating lien will not constitute a preference to the extent that the creditor does not "improve its position" in the 90 days prior to a bankruptcy filing. To determine whether a creditor has improved its position, the amount of the debt and the value of the collateral as of a date ninety days prior to the bankruptcy filing are compared with the amount of the debt and the value of the collateral on the date of the bankruptcy filing.

Sixth, a statutory lien that the trustee cannot avoid under Section 545 is also not avoidable as a preference.

The final affirmative defense to an avoidable preference concerns consumer debtors. An individual consumer debtor may make aggregate transfers of less than \$600 and the transfers will not constitute avoidable preferences.

TRANSFER OF ASSETS BY DECREE

Following a marital dissolution, an effective property settlement is crucial to a successful domestic relations attorney. Often the parties will need the court to effect the transfer of assets between spouses. This is accomplished via an Application for Order and Judgment Pursuant to Rule 70 of the Arizona Rules of Civil Procedure. Rule 70 reads in part:

1. If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party.
2. If real or personal property is within the state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law.

The Application for Order and Judgment should be filed with an Order

and Judgment which directs the court to make the requested disposition of property, i.e. transfer possession, execute a quitclaim deed, etc. If the property to be transferred is the marital residence, most title companies will need specific documentation in order to record the property.

Commonly, a title company will need a decree containing the legal description of the property and a statement that "the property is the sole and separate property of (the spouse) and he/she shall be solely responsible for any and all encumbrances, maintenance, repair, upkeep, taxes and insurance due thereon." Further, many title companies require an Effect of Decree from the court which states that the dissolution decree "shall be deemed a sufficient deed, conveyance, assignment, transfer and or/bill of sale of any and all right, title, interest, claim and demand of every nature covered by this Decree. It is further ordered that this document may be filed and/or recorded as a valid instrument."

PERFECTING LIEN BY DECREE

In a domestic relations action where the court grants a lien against a spouse in a dissolution, the other spouse may record the decree in the County Recorder's office. This decree will then attach itself to any real property owned by the party granting the lien.

In order to perfect an automobile lien, the old title certificate must be filled out on the back indicating the lien. Further, a new application for an Arizona Certificate of Title must be completed and sent to the Department of Motor Vehicles.

NECESSITY OF RECORDATION

A bankruptcy trustee may avoid certain prepetition transfers that are not timely recorded or perfected. State law requires recordation or other public notice of a number of transfers. For example, real estate recording statutes require the recording of deeds and real property mortgages. Article 6 of the UCC requires that creditors be notified in advance of any bulk transfer. The UCC also requires public notice of sales on consignment, and Article 9 requires public notice (i.e. perfection) of security interests.

The Bankruptcy Code does not have its own public notice requirements. However, the Code does make use of the notoriety requirements of state laws in the following invalidation provisions: Sections 544 and 547.

A. Section 544

Section 544(b) allows the bankruptcy trustee to invalidate any transfer that under non-bankruptcy law is voidable as to any actual creditor of the debtor with an unsecured, allowable (per Section 502) claim. In applying this section, it is necessary to determine: (i) whether non-bankruptcy law public notice requirements have been timely satisfied; (ii) which persons are protected by the non-bankruptcy requirement of public notice; (iii) if any actual creditor of the debtor with an unsecured allowable claim comes within the class of persons protected by state law. Note that the use of Section 544(b) to invalidate prepetition transfers that were not timely recorded is severely limited. Section 544(b) gives the trustee the invalidation powers of any actual unsecured creditors. Most recording statutes protect lien creditors or bona fide purchasers, but not unsecured creditors.

Whereas Section 544(b) looks at the rights of actual creditors of the debtor, Section 544(a) discusses the rights of hypothetical lien creditors and bona fide purchasers of real property. Section 544(a) allows the bankruptcy trustee to invalidate any transfer that under non-bankruptcy law is voidable as to a creditor who extended credit and obtained a lien on the date of the filing of the bankruptcy petition or is voidable as to a bona

bona fide purchaser of real property whether or not such a creditor or purchaser actually exists. In applying this section, it is necessary to determine: (i) whether non-bankruptcy law public notice requirements have been timely satisfied; (ii) whether a creditor who extended credit and obtained a lien on the date that the bankruptcy petition was filed or a bona fide purchaser of real property on the date of the bankruptcy petition comes within the class of persons protected by state law.

There are three general rules for the use of Section 544(a) in invalidating transfers. First, if the transfer has been recorded or otherwise perfected prior to the date that the bankruptcy petition was filed, the trustee will not be able to invalidate the transfer under Section 544(a). Second, except as noted in the third rule, if the transfer was not recorded or otherwise perfected by the date that the bankruptcy petition was filed, the bankruptcy trustee will be able to invalidate the transfer under Section 544(a). Third, the bankruptcy trustee will not be able to invalidate a purchase money security interest perfected within ten days after the delivery of the collateral to the debtor even if the debtor files a bankruptcy petition in the gap between the creation of the security interest and perfection.

B. Section 547

As mentioned above, Section 547 deals with preferences, one requirement of which is that the transfer was made on account of an antecedent debt. Section 547(e) provides for a ten day grace period for perfection, and describes three situations where perfection occurs before, after, and during the ten day period.

First, Section 547(e)(2)(A) deals with transfers perfected within ten days. This transfer will be deemed made at the time of transfer, and as such is not vulnerable to attack by the bankruptcy trustee under Section 547 because it is not considered to be a transfer for an antecedent debt.

Second, Section 547(e)(2)(B) deals with transfers not perfected within ten days. This transfer will be deemed made at the time of perfection, and as such is vulnerable to attack by the bankruptcy trustee under Section 547 because it is considered to be a transfer for an antecedent debt.

Third, Section 547(e)(2)(C) deals with the filing of a bankruptcy petition during the ten day grace period. This transfer will be deemed made at the time of the transfer if it is perfected within ten days of the transfer or will be deemed made at the time of the filing of the

bankruptcy petition if it is not perfected within ten days.

NECESSITY OF INDEPENDENT STATUTORY DOCUMENTATION TO PERFECT SECURITY INTEREST

This section deals with the methods of perfecting a security interest. Note that the UCC distinguishes between "attachment" and "perfection"; attachment occurs when the security interest is enforceable against the debtor, whereas perfection is necessary to protect the security interest against third parties claiming an interest in the collateral. Once attachment has occurred, perfection takes place when all of the steps required under the UCC have been taken.

Under Article 9 of the UCC, there are three methods for perfection: automatic perfection, possession, or filing. The applicable method of perfection depends on the collateral used to create the security interest.

A. AUTOMATIC PERFECTION

There are six situations where the indicated collateral is automatically permanently perfected upon attachment:

- purchase money security interest in consumer goods (exceptions for motor vehicles and fixtures) - Section 9-302(d)

- beneficial interest in a trust or estate - Section 9-302(1)(c)
- assignment of insignificant accounts - Section 9-302(1)(e)
- security interest of collecting banks - Section 9-302(1)(f)
- security interest in securities - Section 8-321
- assignments for the benefit of creditors - Section 9-302(1)(g)

There are two situations where the indicated collateral is automatically temporarily perfected upon attachment for a brief and specific statutory period:

- instruments and negotiable documents - 21 days - Sections 9-302(1)(b), 9-304(4) and (5)
- proceeds of collateral which require perfectgion in a manner different from the original collateral - 10 days - Sections 9-302(1)(b) and 9-306

B. PERFECTION BY POSSESSION

Under Section 9-305, all types of collateral may be perfected by possession except:

- accounts
- general intangibles

Under Section 9-304(1), possession by the secured party is the only (i.e. mandatory) method of perfection for the following types of collateral:

- money
- instruments other than those subject to the automatic temporary possession above

C. FILING

Filing or possession may be used as the means of perfection for the following types of collateral:

- goods other than goods for which a negotiable document has been issued - Sections 9-302(1), 9-304(3) and (4)
- negotiable documents - Section 9-304(1)
- chattel paper - Section 9-304(1)

Filing is the only (mandatory) method for perfection for the following types of collateral:

- accounts - Sections 9-302(1) and 9-305
- general intangibles - Sections 9-302(1) and 9-313(1)(b)

The next question is: Where to file? UCC Section 9-401 designates the place of filing. In Arizona, filing is CENTRAL (i.e. Secretary of State)

for all types of collateral except:

-for farm products, farm equipment, accounts or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, filing is LOCAL (i.e. County Recorder) in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the recorder in the county where the goods are kept, and in addition when the collateral is crops, filing occurs in the recorder's office in the county where the land is located

-for timber, oil and gas, minerals, accounts subject to subsection 5 of Section 9-103, and fixture filings, filing occurs in the office where a mortgage on the real estate would be filed or recorded

INDEX OF ATTACHMENTS

1. Application for Order and Judgment Pursuant to Rule 70
2. Order and Judgment Pursuant to Rule 70
3. Deed of Trust
4. Notice of Right to Cancel
5. Promissory Note
6. Application for Arizona Certificate of Title
7. Uniform Commercial Code Financing Statement (UCC-1)

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Melvin Sternberg

001310

Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

In re the Marriage of:)

_____)

Petitioner,)

and)

_____)

Respondent.)

No. _____

EX PARTE APPLICATION
FOR ORDER AND JUDGMENT
PURSUANT TO RULE 70 OF
THE ARIZONA RULES OF
CIVIL PROCEDURE

COMES NOW the Petitioner, _____,
hereinafter referred to as "_____", by and through undersigned
counsel, and hereby submits his/her Ex Parte Application for Order
Pursuant to Rule 70 of the Arizona Rules of Civil Procedure. The
basis of this Application is as follows:

1. _____

2. _____

3. _____

Rule 70 of the Arizona Rules of Civil Procedure (ARCP)
provides in pertinent part as follows:

"1. If a judgment directs a party to execute
a conveyance of land, or to deliver deeds, or

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other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party."

Pursuant to the provisions of Rule 70, ARCP, _____ respectfully requests this Honorable Court enter the Order filed simultaneously herewith, directing the Clerk of the Court or a deputy clerk, to execute the quit claim deeds on behalf of _____ for the benefit of _____ in the form attached hereto. _____ further requests that this Court enter judgment in favor of _____ and against _____ for _____'s reasonable attorneys' fees and costs incurred in bringing this request.

RESPECTFULLY SUBMITTED this ___ day of _____, 1994.

STERNBERG & SINGER, LTD.

By _____
Melvin Sternberg
80 East Columbus
Phoenix, Arizona 85012
Attorney for Petitioner



Melvin Sternberg

001310

Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

In re the Marriage of:

_____ ,

Petitioner,

and

_____ ,

Respondent.

No. _____

**ORDER AND JUDGMENT
PURSUANT TO RULE 70 OF
THE ARIZONA RULES OF
CIVIL PROCEDURE**

Based upon the Ex Parte Request for Order and Judgment Pursuant to Rule 70 of the Arizona Rules of Civil Procedure filed by Petitioner, and good cause appearing therefrom,

IT IS HEREBY ORDERED that the Clerk of the Maricopa County Superior Court or a Deputy Clerk, State of Arizona, is hereby directed to execute a quit claim deed on behalf of Respondent and for the benefit of Petitioner relative to the real property located at _____, Phoenix, Arizona.

IT IS FURTHER ORDERED that Petitioner is granted Judgment against Respondent as and for his/her reasonable attorneys' fees and costs incurred in bringing this Request.

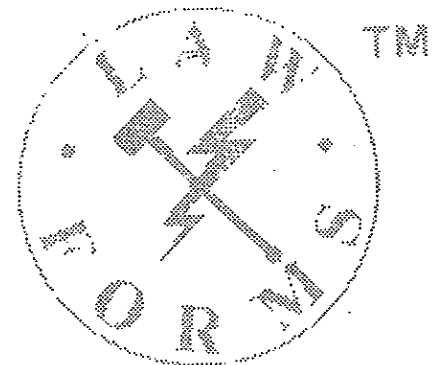
DONE IN OPEN COURT this date: _____.

Commissioner/Judge
Maricopa County Superior Court

Deed of Trust

R-93a LawForms 8-79; 12-90

Effective Date	County and State where Real Property is located			
TRUSTOR (Name, Mailing Address and Zip Code):	BENEFICIARY (Name, Mailing Address and Zip Code):			
TRUSTEE (Name, Mailing Address and Zip Code):	Obligation Secured (Indicate Nature, Date and All Parties): Amount \$ _____			
Subject Real Property (Address or Location):	Legal Description Proofed by Persons Whose Initials Appear to the Right.	1.	2.	3.
Subject Real Property (Legal Description):				



1. **Conveyance.** Trustor irrevocably grants and conveys to Trustee in trust, with power of sale, the Subject Real Property, subject to covenants, conditions, restrictions, rights of way and easements of record, to be held as security for the payment by Trustor of the Obligation Secured and for the performance of other obligations of Trustor as set forth in this Deed of Trust.

2. **Appurtenances.** Trustor grants, together with the Subject Real Property, all buildings and improvements now or hereafter erected thereon and all fixtures attached to or used in connection with the Subject Real Property (including, without limiting the generality of the foregoing, all ventilating, heating, air conditioning, refrigeration, plumbing and lighting fixtures), together with all leases, rents, issues, profits or income therefrom (hereinafter "Property Income"), subject, however, to the right, power and authority hereinafter given to Beneficiary to collect and apply such Property Income.

3. **Taxes, Assessments and Trust Expenses.** Trustor shall pay before delinquent all taxes and assessments affecting the Subject Real Property; all encumbrances, charges and liens, when due, with interest, on Subject Real Property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this trust and all lawful charges, costs and expenses of any reinstatement of this Deed of Trust following a default.

4. **Fire Insurance.** Trustor shall, at Trustor's expense, maintain in force fire and extended coverage insurance in any amount of not less than the full replacement value of any buildings which may exist on the Subject Real Property with loss payable to Beneficiary. Trustor shall provide fire insurance protection on its furniture, fixtures and other personal property on the Subject Real Property in an amount equal to the full insurable value thereof and promises that any insurance coverage in this regard will contain a waiver of the insurer's right of subrogation against Beneficiary.

5. **Liability Insurance.** Trustor shall, at Trustor's expense, maintain in force policies of liability insurance, with Beneficiary as an additional insured thereunder, insuring Trustor against any claims resulting from the injury to or the death of any person or the damage to or the destruction of any property belonging to any person by reason of Beneficiary's interest hereunder or the use and occupancy of Subject Real Property by Trustor. Such insurance shall be in the following amounts:

5a. \$ _____ against any claim resulting from injury to or the death of any one person.

5b. \$ _____ against any claim resulting from injury to or deaths of any number of persons from any one accident.

5c. \$ _____ against any claim resulting from the damage to or destruction of any property belonging to any person.

6. **Processing of Insurance Policies.** Trustor shall promptly deliver to Beneficiary the originals or true and exact copies of all insurance policies required by this Deed of Trust. Trustor shall not do or omit to do any act which will in any way impair or invalidate any insurance policy required by this Deed of Trust. All insurance policies shall contain a written obligation of the insurer to notify Beneficiary in writing at least 10 days prior to any cancellation thereof.

7. **Indemnification of Trustee and Beneficiary.** Trustor shall hold Trustee and Beneficiary harmless from and indemnify them for any and all claims raised by any third party against Trustee or Beneficiary resulting from their interests hereunder or the acts of Trustor. Such indemnification shall include reasonable attorney's fees and costs, including cost of evidence of title.

8. **Right of Beneficiary or Trustee to Pay Obligations of Trustor.** If Trustor fails or refuses to pay any sums due to be paid by it under the provisions of this Deed of Trust, or fails or refuses to take any action as herein provided, then Beneficiary or Trustee shall have the right to pay any such sum due to be paid by Trustor and to perform any act necessary. The amount of such sums paid by Beneficiary or Trustee for the account of Trustor and the cost of any such action, together with interest thereon at the maximum legal contractual rate per annum, from the date of payment until satisfaction, shall be added to the Obligation Secured.

The payment of Beneficiary or Trustee of any such sums or the performance of any such action shall be prima facie evidence of the necessity therefor.

9. **Condemnation.** Any award of damages in connection with any condemnation or injury to any of the Subject Real Property by reason of public use or for damages for private trespass or injury thereto are assigned in full and shall be paid to Beneficiary, who shall apply them to the payment of the principal of the Obligation Secured, the interest thereon, and any other charges and amounts secured hereby in such manner as Beneficiary may elect. Any remaining balance shall be paid to Trustor. Beneficiary may, at Beneficiary's option, appeal from any such award in the name of Trustor.

Unless Trustor and Beneficiary otherwise agree in writing, any application of such proceeds to principal shall not extend or postpone the due dates of any installment payments of the Obligation Secured or change the amount of such payments.

10. Care of Property. Trustor shall take reasonable care of the Subject Real Property and the buildings thereon and shall maintain them in good repair and condition as at the original date of this Deed of Trust, ordinary depreciation excepted. Trustor shall commit or permit no waste and do no act which will unduly impair or depreciate the value of the Subject Real Property as required, then Beneficiary or Trustee, at their option, may make necessary repairs and add the cost thereof to the Obligation Secured.

Trustor shall purchase and use on the Subject Real Property the amount of water to which it is or shall be entitled and shall not abandon any water rights, power rights or any rights of whatever nature which are appurtenant to the Subject Real Property.

11. Right to Inspect Subject Real Property. At all convenient and reasonable times, upon prior notice to Trustor, Beneficiary or Trustee shall have the right and license to go on and into the Subject Real Property to inspect it in order to determine whether the provisions of this Deed of Trust are being kept and performed.

12. Event of Default. Each of the following shall be considered an event of default of this Deed of Trust:

12a. The failure of Trustor to make any payment hereunder or under the Obligation Secured on or before the due date thereof;

12b. The failure of Trustor to perform any duty required by this Deed of Trust;

12c. The sale or attempted sale of the Subject Real Property by Trustor without the consent of Beneficiary;

12d. The removal or attempted removal by Trustor of any property included in the Subject Real Property without the consent of Beneficiary;

12e. Abandonment of the Subject Real Property by Trustor;

12f. The filing, execution or occurrence of:

- (1) A petition in bankruptcy by or against Trustor.
- (2) A petition or answer seeking a reorganization, composition, readjustment, liquidation, dissolution or other relief of the same or different kind under any provision of the Bankruptcy Act.
- (3) Adjudication of Trustor as a bankrupt or insolvent, or insolvency in the bankruptcy equity sense.
- (4) An assignment by Trustor for the benefit of creditors, whether by trust, mortgage or otherwise.
- (5) A petition or other proceedings by or against Trustor for the appointment of a trustee, receiver, guardian, conservator or liquidator of Trustor with respect to all or substantially all its property.
- (6) Trustor's dissolution or liquidation or the taking of possession of Trustor's property by any governmental authority in connection with dissolution or liquidation.

12g. A determination by Beneficiary that the security of the Deed of Trust is inadequate or in danger of being impaired or threatened from any cause whatsoever.

13. Acceleration. In the event of default by Trustor, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice setting forth the nature thereof and of election to cause the Subject Real Property to be sold under this Deed of Trust. Beneficiary shall also deposit with Trustee all documents evidencing the Obligation Secured and any expenditures secured hereby.

14. **Trustee's Sale.** Upon receipt of Beneficiary's notice of election to cause the Subject Real Property to be sold, Trustee shall, in accordance with all provisions of law, give notice of Trustee's Sale and, after the lapse of the required amount of time, sell the Subject Real Property at public auction, at the time and place specified in the Notice of Trustee's Sale, to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Any persons, including Trustor, Trustee or Beneficiary may purchase at the Trustee's Sale.

Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for sale.

Upon sale, Trustee shall deliver to the purchaser a Trustee's Deed conveying the Subject Real Property, but without any covenant or warranty, expressed or implied.

15. **Proceeds of Trustee's Sale.** After deducting all costs, fees and expenses of Trustee and of this trust, including the cost of evidence of title in connection with the sale and reasonable attorney's fees, Trustee shall apply the proceeds of sale to payment of all sums then secured hereby and all other sums due under the terms hereof, with accrued interest, and the remainder, if any, to the persons legally entitled thereto or as provided by ARS§ 33-812.

16. **Defaults on Prior Encumbrances.** If there are mortgages upon the Subject Real Property or other encumbrances which are prior in time or prior in right, then Trustor promises to comply with the terms of those prior mortgages or encumbrances. If Trustor fails to comply with such terms and defaults on those mortgages or obligations, such default shall also be considered a default of this Deed of Trust, and Trustee or Beneficiary herein may advance the monies necessary to remedy such defaults, and, if it does, such monies shall be added to the Obligation Secured and shall bear the maximum contractual legal rate of interest from the date monies are tendered. Beneficiary may also proceed on this default by exercising the same remedies it has on this Deed of Trust.

17. **Deficiency Judgment.** Unless prohibited by law, Beneficiary shall be entitled to a deficiency judgment against Trustor if the Trustee's Sale yields an amount insufficient to fully satisfy Trustor's obligations hereunder. ARS §33-814.

18. **Foreclosure and Other Remedies.** In lieu of sale pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have all other rights and remedies available hereunder and at law or in equity. All rights and remedies shall be cumulative.

19. **Reinstatement After Default.** Notwithstanding Beneficiary's acceleration of sums secured by this Deed of Trust, Trustor shall have the right to have any proceedings begun by Beneficiary to enforce this Deed of Trust discontinued and to have the Deed of Trust reinstated at any time before the day of the Trustee's Sale or before the filing of a foreclosure action. In order to have the Deed of Trust reinstated after default, the Trustor must:

19a. Pay to Beneficiary the entire amount due under this Deed of Trust and the Obligation Secured, other than such portion of the principal as would not be due had no default occurred;

19b. Cure all defaults or any covenants or agreements of Trustor as contained in this Deed of Trust;

19c. Pay costs and expenses incurred by Beneficiary and Trustee in enforcing the terms of this Deed of Trust and pursuing remedies;

19d. Pay reasonable attorney's fees actually incurred by Beneficiary and Trustee, in an amount not to exceed \$100 or one-half of one per cent of the entire unpaid principal sum secured, whichever is greater;

19e. Pay the recording fee for any cancellation of notice of sale;

19f. Pay the Trustee's fees, in an amount not to exceed \$100 or one-half of one per cent of the entire unpaid principal sum secured, whichever is greater.

Upon reinstatement, this Deed of Trust and the obligation secured hereby shall remain in full force and effect as if no acceleration had occurred.

20. **Assignment of Property Income.** As additional security, Trustor hereby gives Beneficiary the right, power and authority, during the continuance of this Trust, to collect the property income, reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such property income as it becomes due and payable.

Upon any such default, Beneficiary may at any time, without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Subject Real Property or any part thereof; in its own name sue for or otherwise collect such property income, including that past due and unpaid; and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby; and in such order as Beneficiary may determine.

The entering upon and taking possession of the Subject Real Property, the collection of such property income and the application thereof, shall not cure or waive any default or notice of Trustee's Sale hereunder or invalidate any act done pursuant to such notice.

21. **Acts of Trustee Affecting Subject Real Property.** At any time, without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Obligation Secured for endorsement, Trustee may, without liability, release and reconvey all or any part of the Subject Real Property; consent to the making and recording, or either, of any map or plat of all or any part of the Subject Real Property; join in granting any easement thereon; join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof.

Any such action by Trustee may be taken without affecting the personal liability of any person for payment of the indebtedness secured hereby, without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto, and without the necessity that any sum representing the value or any portion thereof of the property affected by Trustee's action be credited on the indebtedness.

22. **Satisfaction of the Obligation.** Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Obligation Secured to Trustee for cancellation, and upon payment of Trustee's fees, Trustee shall release and reconvey, without covenant or warranty, express or implied, the Subject Real Property held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

23. **Notices.** Copies of all notices and communications concerning this Deed of Trust shall be mailed to the parties at the addresses specified in this Deed of Trust. Any change of address shall be communicated to the other parties in writing. Any documents which may adversely affect the rights of any party to this Deed of Trust shall be dispatched by Certified Mail, Return Receipt Requested.

24. **Headings.** The marginal or topical headings of the provisions herein are for convenience only and do not define, limit or construe the contents of these provisions.

25. **Interpretation.** In this Deed of Trust, whenever the context so requires, masculine gender includes the feminine and neuter, and the singular includes the plural and vice versa.

26. **Applicable Law.** This Deed of Trust shall be subject to and governed by the laws of the State of Arizona, in particular the provisions of ARS Title 11, Chapter 6.1, regardless of the fact that one or more parties now is or may become a resident of a different state.

27. **Waiver.** Any waiver by any party of a breach of any provision of this Deed of Trust shall not operate or be construed as a waiver of any subsequent breach hereof.

28. **Succession of Benefits.** The provisions of this Deed of Trust shall inure to the benefit of and be binding upon the parties hereto, their heirs, personal representatives, conservators and permitted assigns.

29. **Successor Trustee.** Beneficiary may appoint a Successor Trustee in the manner prescribed by law. A Successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor.

30. **Entire Agreement.** The terms of this Deed of Trust constitute the entire agreement among the parties, and the parties represent that there are no collateral or side agreements not otherwise provided for within the terms of this Deed of Trust.

31. **Time of Essence.** Time is of the essence in this Deed of Trust and every term, condition, covenant and provision hereof.

32. **Modification.** No modification of this Deed of Trust shall be binding unless evidenced by an agreement in writing and signed by all parties.

33. **Partial Invalidity.** If any provision of this Deed of Trust is held to be invalid or unenforceable all the remaining provisions shall nevertheless continue in full force and effect.

Signatures of Trustor

Signatures of Trustee

STATE OF COUNTY OF	ss. Acknowledgement On this date, before me a Notary Public, personally appeared.	ss. Signature of Notary Public
Date of this Acknowledgement	known to me or satisfactorily proven to be the person whose name is subscribed to this instrument and acknowledged that he executed the same. If this person's name is subscribed in a representative capacity, it is for the principal named and in the capacity indicated.	Notary Expiration Date
STATE OF COUNTY OF	ss. Acknowledgement On this date, before me, a Notary Public, personally appeared:	ss. Signature of Notary Public
Date of this Acknowledgement	known to me or satisfactorily proven to be the person whose name is subscribed to this instrument and acknowledged that he executed the same. If this person's name is subscribed in a representative capacity, it is for the principal named and in the capacity indicated.	Notary Expiration Date

NOTICE OF RIGHT TO CANCEL

Trustor's Name: _____
Amount of Deed of Trust: \$10,000 plus
all future advances
Transaction Date:

You are entering into a transaction that will result in a lien on your property. This lien is in the form of a Deed of Trust dated the ____ day of _____, 1994. You have a legal right under Federal Law to cancel this transaction, without cost, within three (3) business days from the date of the transaction, which is the ____ day of _____, 1994.

If you choose to cancel this transaction, within twenty (20) calendar days after we receive your Notice of Right to Cancel, we must take the steps necessary to reflect the fact that the lien on your home has been canceled.

I ACKNOWLEDGE RECEIPT OF TWO (2) COPIES OF THE FOREGOING NOTICE OF RIGHT TO CANCEL, DEED OF TRUST AND PROMISSORY NOTE.

Dated this ____ day of _____, 1994.

How to Cancel:

If you decide to cancel this Deed of Trust, you may do so by notifying us in writing, at:

80 East Columbus
Phoenix, Arizona 85012

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this Notice by dating and signing below. Keep one copy of this Notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the Notice no later than 12:00 o'clock midnight of the _____ day of _____, 1994. If you send or deliver your written Notice to Cancel some other way, it must be delivered to the above address no later than that time.

I Wish to Cancel:

Date

SANDRA L. HOUGH

PROMISSORY NOTE

\$10,000.00 plus future
advances

Phoenix, Arizona
_____, 1993.

FOR VALUE RECEIVED, the undersigned promises to pay STERNBERG & SINGER, LTD., or order, the aggregate amount outstanding for attorneys' fees and costs due Holder as reflected by Holder's monthly statements to Maker pursuant to that certain Retainer Agreement between Maker as Client and Holder as Law Firm dated the ____ day of _____, 1992. Interest shall be computed at the rate of twelve percent (12%) as reflected on the monthly statements as services and costs are rendered. It is expressly agreed that the amount outstanding on this Note at any specific time shall be the total amount billed by Holder to Maker less the amount of principal payments made hereon from time to time by Maker, all in accordance with the Retainer Agreement executed by the undersigned on _____, 1992.

Privilege is given and reserved to prepay, without penalty, all or any part of the principal amount of this Promissory Note at any time or times.

In the event of any default by the undersigned in the timely payment of this Promissory Note, the unpaid principal balance of this Note shall bear interest at the rate of twelve percent (12%) per annum from the date of such default until paid.

Delay in exercising any of the Holder's rights hereof or options hereunder shall not constitute a waiver thereof, or a waiver of any right or option shall not constitute a waiver of the right to exercise the same in the event of a subsequent default. Time is of the essence of this Note and each and every term and provision hereof.

Should this Note be placed in the hands of an attorney for collection, then the maker or endorsers hereof agree to pay in addition to the amount due hereon, a reasonable amount as attorneys' fees, and all costs incurred.

The Maker waives demand, presentment, notice of dishonor or nonpayment and any and all lack of diligence or delays in collection hereof which may occur, and expressly consents and agrees to any and all extensions of payment hereof and waive all notice hereof.

This Note is secured by a Deed of Trust on real property bearing this date, and legally described as:

STAPLE HERE

APPLICATION FOR ARIZONA CERTIFICATE OF TITLE

REGISTRATION
EXPIRES LAST DAY OF

Type or print in BLACK INK.

When validated, THIS IS YOUR REGISTRATION
and must be carried in vehicle at all times.

48-0500 R1091 9

Check the type of application desired:

- DUPLICATE (see below) TITLE ONLY TRANSFER DISMANTLING SALVAGE OTHER
- If duplicate is checked, the original certificate of title must not have been assigned and/or surrendered to anyone. The original certificate has become: (check one)
- LOST DESTROYED MUTILATED ILLEGIBLE (Mutilated or illegible title must be attached)

PLATE NO. TAX NO. VEHICLE ID NO. MAKE BODY STYLE YEAR

MTYR/FR MODEL LIST PRICE EYW/GDW FUEL ODOMETER READING * MOBILE RM LAW

NAME (F/IND/S/LES) Actual B C DATE OF BIRTH * DRIVER LICENSE OR ID NO *

MAILING ADDRESS

CITY/STATE/ZIP CODE

RESIDENCE ADDRESS OF OWNER OR LESSEE (if different from mailing)

CITY STATE

1ST LIENHOLDER NAME AMOUNT DATE

MAILING ADDRESS

2ND LIENHOLDER NAME AMOUNT DATE

MAILING ADDRESS

3RD LIENHOLDER NAME AMOUNT DATE

MAILING ADDRESS

MOBILE HOME MANUFACTURER PHYSICAL LOCATION OF MOBILE HOME

The vehicle was acquired New Used on _____ 19 _____

Are your registration rights under suspension? Yes No

from Name _____

Is the vehicle specially constructed or reconstructed? Yes No

City/State _____

Will the vehicle be rented without a driver? Yes No

The undersigned make application to the Division for registration and a certificate of title. The undersigned warrant said vehicle to be free from all liens and encumbrances except those indicated above, and warrant all information on this application to be true and acknowledge the odometer reading above as qualified by the seller. It is not the responsibility of the Division to determine the accuracy of the odometer statement. The undersigned certify that said vehicle is in compliance with state financial responsibility laws and will remain in compliance during the entire registration period.

ALL APPLICANTS MUST SIGN HERE

1. _____ 2. _____

Additional Applicants

The undersigned having applied for a certificate of title in our names, do hereby state that we hold this property as joint tenants and furthermore empower and authorize each other as attorney in fact to assign the certificate of title by his or her signature alone and thereby transfer, sell, mortgage or otherwise encumber the vehicle in the same manner as though all joint owners had acted and signed.

FOR "OR" LEGAL STATUS, ALL APPLICANTS MUST ALSO SIGN HERE

1. _____ 2. _____

Additional Applicants

BUYER NO. DATE COUNTY BRANCH TAX STATUS PLATE CANCELLED PLATE NO. AGENT

NEW TITLE NO. NEW FILM REFERENCE NO. TYPE

PREVIOUS TITLE NO. STATE PREVIOUS FILM REFERENCE NO. MVO TAX ACCT NO.

FEES

- VLT
- REG.
- CRF
- WGT
- LWT
- EIF
- AOF
- SPL
- COL
- TRN
- LOP
- UTX
- DOR
- SNO
- PST
- PEN
- TTL

TOTAL

VALIDATE HERE

* See Reverse Side

MVD

**UNIFORM
COMMERCIAL CODE
FINANCING STATEMENT**
F-UCC-1 © LawForms 6-72, 9-81, 3-86, 12-90



Effective Date	County and State of Transaction
DEBTOR (Name, Address and Zip Code)	SECURED PARTY (Name, Address and Zip Code)
Assignee of Secured Party (Name, Address and Zip Code)	Record Owner of Real Property, If Not Debtor (Name, Address and Zip Code)
Counties Where Collateral is Located	<input type="checkbox"/> Products of Collateral are also covered. <input type="checkbox"/> Proceeds of Collateral are also covered.

Financing Statement covers the following types or items of property:

If collateral is timber to be cut, crops growing or to be grown, minerals or the like, accounts to be financed at the wellhead or minehead of the well or mine, or goods which are or are to become fixtures, the real property to which these are affixed or concerned is legally described:

This financing statement is to be filed in the office where a mortgage on the real property would be recorded.

This Financing Statement is filed or recorded without Debtor's signature to perfect a security interest in collateral which:

- Is already subject to a security interest in another jurisdiction when it was brought into the state or which Debtor changed location to this State;
- Are proceeds of the original collateral described above in which a security interest was perfected;
- Is no longer effective due to lapse of the original filing;
- Was acquired four months or less after Debtor has changed its name, identity or corporate structure.

<p align="center">.....</p> <p align="center">.....</p> <p align="center">.....</p> <p align="center">Signatures of Debtor or Assignor</p>	<p align="center">.....</p> <p align="center">.....</p> <p align="center">.....</p> <p align="center">Signatures of Secured Party or Assignee</p>
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Copy 1 - Filing

Copy 2 - Debtor

Copy 3 - Secured Party