

**Senate Bill No. 1504**

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Passed the Senate August 26, 2002

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*Secretary of the Senate*

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Passed the Assembly August 21, 2002

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day of  
\_\_\_\_\_, 2002, at \_\_\_\_\_ o'clock \_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*



## CHAPTER \_\_\_\_\_

An act to amend Sections 2924b and 2941 of the Civil Code, and to amend Section 5501 of the Probate Code, relating to instruments.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1504, Ackerman. Instruments.

(1) Existing law requires a person recording a notice of default of a mortgage or deed of trust to perform specified actions, one of which is to provide a copy of a notice of sale to the Internal Revenue Service if a “Notice of Federal Tax Lien” has been recorded against the real property to which the notice of sale applies.

This bill would provide that the failure to provide the Internal Revenue Service the notice of sale is sufficient cause to rescind the trustee’s sale and invalidate the trustee’s deed, at the option of either the successful bidder at the trustee’s sale or the trustee, and in either case with the consent of the beneficiary. The bill would permit the rescission of the trustee’s deed to be recorded, as specified.

(2) Existing law provides that when an obligation secured by a deed of trust has been satisfied, the beneficiary, or its assignee, shall execute and deliver to the trustee the original note, deed of trust, request for a full reconveyance, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust. Existing law requires that the trustee deliver a copy of the reconveyance to the beneficiary if known, and requires that the reconveyance instrument to specify the trustor as the person to whom the recorder will deliver the recorded instrument.

This bill would permit the reconveyance instrument to alternatively specify that the recorder shall deliver the recorded instrument to the trustee’s address or the address of the trustor or successor in interest, but specify that the recorder has no duty to validate those addresses. The bill would require that, if the trustee’s address is specified for delivery, the trustee mail the recorded instrument to the trustor or the successor in interest at the last known address for that party. The bill would also permit the reconveyance instrument to specify the successor in interest of the



trustor as the person to whom the recorder will deliver the recorded instrument, as provided.

(3) Existing law, the Uniform TOD Security Registration Act, provides for the transfer of the ownership or proceeds of a security, as defined, upon the death of the owner, without probate or estate administration, and defines a security account for these purposes.

This bill would add the term cash equivalents, as defined, and an investment management or custody account with a trust company or a trust department of a bank with trust powers, as specified, to the definition of security account for purposes described above.

*The people of the State of California do enact as follows:*

SECTION 1. Section 2924b of the Civil Code is amended to read:

2924b. (a) Any person desiring a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale upon real property or an estate for years therein, as to which deed of trust or mortgage the power of sale cannot be exercised until these notices are given for the time and in the manner provided in Section 2924 may, at any time subsequent to recordation of the deed of trust or mortgage and prior to recordation of notice of default thereunder, cause to be filed for record in the office of the recorder of any county in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of the notice of default and of sale. This request shall be signed and acknowledged by the person making the request, specifying the name and address of the person to whom the notice is to be mailed, shall identify the deed of trust or mortgage by stating the names of the parties thereto, the date of recordation thereof, and the book and page where the deed of trust or mortgage is recorded or the recorder's number, and shall be in substantially the following form:



“In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust (or mortgage) recorded \_\_\_\_\_, 19\_\_\_\_, in Book \_\_\_\_\_ page \_\_\_\_\_ records of \_\_\_\_\_ County, (or filed for record with recorder’s serial number \_\_\_\_\_, \_\_\_\_\_ County) California, executed by \_\_\_\_\_ as trustor (or mortgagor) in which \_\_\_\_\_ is named as beneficiary (or mortgagee) and \_\_\_\_\_ as trustee be mailed to \_\_\_\_\_ at \_\_\_\_\_.

Name Address

NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.

Signature \_\_\_\_\_”

Upon the filing for record of the request, the recorder shall index in the general index of grantors the names of the trustors (or mortgagor) recited therein and the names of persons requesting copies.

(b) The mortgagee, trustee, or other person authorized to record the notice of default shall do each of the following:

(1) Within 10 business days following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(2) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.



(3) As used in paragraphs (1) and (2), the “last known address” of each trustor or mortgagor means the last business or residence address actually known by the mortgagee, beneficiary, trustee, or other person authorized to record the notice of default. The beneficiary shall inform the trustee of the trustor’s last address actually known by the beneficiary. However, the trustee shall incur no liability for failing to send any notice to the last address unless the trustee has actual knowledge of it.

(c) The mortgagee, trustee, or other person authorized to record the notice of default shall do the following:

(1) Within one month following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person set forth in paragraph (2), provided that the estate or interest of any person entitled to receive notice under this subdivision is acquired by an instrument sufficient to impart constructive notice of the estate or interest in the land or portion thereof which is subject to the deed of trust or mortgage being foreclosed, and provided the instrument is recorded in the office of the county recorder so as to impart that constructive notice prior to the recording date of the notice of default and provided the instrument as so recorded sets forth a mailing address which the county recorder shall use, as instructed within the instrument, for the return of the instrument after recording, and which address shall be the address used for the purposes of mailing notices herein.

(2) The persons to whom notice shall be mailed under this subdivision are:

(A) The successor in interest, as of the recording date of the notice of default, of the estate or interest or any portion thereof of the trustor or mortgagor of the deed of trust or mortgage being foreclosed.

(B) The beneficiary or mortgagee of any deed of trust or mortgage recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or a recorded statement of subordination to the deed of trust or mortgage being foreclosed.



(C) The assignee of any interest of the beneficiary or mortgagee described in subparagraph (B), as of the recording date of the notice of default.

(D) The vendee of any contract of sale, or the lessee of any lease, of the estate or interest being foreclosed which is recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or statement of subordination to the deed of trust or mortgage being foreclosed.

(E) The successor in interest to the vendee or lessee described in subparagraph (D), as of the recording date of the notice of default.

(F) The Office of the Controller, Sacramento, California, where, as of the recording date of the notice of default, a “Notice of Lien for Postponed Property Taxes” has been recorded against the real property to which the notice of default applies.

(3) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale addressed to each person to whom a copy of the notice of default is to be mailed as provided in paragraphs (1) and (2), and addressed to the office of any state taxing agency, Sacramento, California, which has recorded, subsequent to the deed of trust or mortgage being foreclosed, a notice of tax lien prior to the recording date of the notice of default against the real property to which the notice of default applies.

(4) Provide a copy of the notice of sale to the Internal Revenue Service, in accordance with Section 7425 of the Internal Revenue Code and any applicable federal regulation, if a “Notice of Federal Tax Lien under Internal Revenue Laws” has been recorded, subsequent to the deed of trust or mortgage being foreclosed, against the real property to which the notice of sale applies. The failure to provide the Internal Revenue Service with a copy of the notice of sale pursuant to this paragraph shall be sufficient cause to rescind the trustee’s sale and invalidate the trustee’s deed, at the option of either the successful bidder at the trustee’s sale or the trustee, and in either case with the consent of the beneficiary. Any option to rescind the trustee’s sale pursuant to this paragraph shall be exercised prior to any transfer of the property by the successful bidder to a bona fide purchaser for value. A rescission of the trustee’s



sale pursuant to this paragraph may be recorded in a notice of recision pursuant to Section 1058.5.

(5) The mailing of notices in the manner set forth in paragraph (1) shall not impose upon any licensed attorney, agent, or employee of any person entitled to receive notices as herein set forth any duty to communicate the notice to the entitled person from the fact that the mailing address used by the county recorder is the address of the attorney, agent, or employee.

(d) Any deed of trust or mortgage with power of sale hereafter executed upon real property or an estate for years therein may contain a request that a copy of any notice of default and a copy of any notice of sale thereunder shall be mailed to any person or party thereto at the address of the person given therein, and a copy of any notice of default and of any notice of sale shall be mailed to each of these at the same time and in the same manner required as though a separate request therefor had been filed by each of these persons as herein authorized. If any deed of trust or mortgage with power of sale executed after September 19, 1939, except a deed of trust or mortgage of any of the classes excepted from the provisions of Section 2924, does not contain a request of the trustor or mortgagor for special notice at the address of the person given therein or does contain that request but no address of the person is given therein and if no request for special notice by the trustor or mortgagor in substantially the form set forth in this section has subsequently been recorded, a copy of the notice of default shall be published once a week for at least four weeks in a newspaper of general circulation in the county in which the property is situated, the publication to commence within 10 business days after the filing of the notice of default. In lieu of publication, a copy of the notice of default may be delivered personally to the trustor or mortgagor within the 10 business days or at any time before publication is completed, or by posting the notice of default in a conspicuous place on the property and mailing the notice to the last known address of the trustor.

(e) Any person required to mail a copy of a notice of default or notice of sale to each trustor or mortgagor pursuant to subdivision (b) or (c) by registered or certified mail shall simultaneously cause to be deposited in the United States mail, with postage prepaid and mailed by first-class mail, an envelope containing an additional copy of the required notice addressed to each trustor or mortgagor



at the same address to which the notice is sent by registered or certified mail pursuant to subdivision (b) or (c). The person shall execute and retain an affidavit identifying the notice mailed, showing the name and residence or business address of that person, that he or she is over the age of 18 years, the date of deposit in the mail, the name and address of the trustor or mortgagor to whom sent, and that the envelope was sealed and deposited in the mail with postage fully prepaid. In the absence of fraud, the affidavit required by this subdivision shall establish a conclusive presumption of mailing.

(f) No request for a copy of any notice filed for record pursuant to this section, no statement or allegation in the request, and no record thereof shall affect the title to real property or be deemed notice to any person that any person requesting copies of notice has or claims any right, title, or interest in, or lien or charge upon the property described in the deed of trust or mortgage referred to therein.

(g) “Business day,” as used in this section, has the meaning specified in Section 9.

SEC. 2. Section 2941 of the Civil Code is amended to read:

2941. (a) Within 30 days after any mortgage has been satisfied, the mortgagee or the assignee of the mortgagee shall execute a certificate of the discharge thereof, as provided in Section 2939, and shall record or cause to be recorded in the office of the county recorder in which the mortgage is recorded. The mortgagee shall then deliver, upon the written request of the mortgagor or the mortgagor’s heirs, successors, or assignees, as the case may be, the original note and mortgage to the person making the request.

(b) (1) Within 30 calendar days after the obligation secured by any deed of trust has been satisfied, the beneficiary or the assignee of the beneficiary shall execute and deliver to the trustee the original note, deed of trust, request for a full reconveyance, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.

(A) The trustee shall execute the full reconveyance and shall record or cause it to be recorded in the office of the county recorder in which the deed of trust is recorded within 21 calendar days after receipt by the trustee of the original note, deed of trust, request for a full reconveyance, the fee that may be charged pursuant to



subdivision (e), recorder's fees, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.

(B) The trustee shall deliver a copy of the reconveyance to the beneficiary, its successor in interest, or its servicing agent, if known. The reconveyance instrument shall specify one of the following options for delivery of the instrument, the addresses of which the recorder has no duty to validate:

(i) The trustor or successor in interest, and that person's last known address, as the person to whom the recorder will deliver the recorded instrument pursuant to Section 27321 of the Government Code.

(ii) That the recorder shall deliver the recorded instrument to the trustee's address. If the trustee's address is specified for delivery, the trustee shall mail the recorded instrument to the trustor or the successor in interest to the last known address for that party.

(C) Following execution and recordation of the full reconveyance, upon receipt of a written request by the trustor or the trustor's heirs, successors, or assignees, the trustee shall then deliver, or caused to be delivered, the original note and deed of trust to the person making that request.

(D) If the note or deed of trust, or any copy of the note or deed of trust, is electronic, upon satisfaction of an obligation secured by a deed of trust, any electronic original, or electronic copy which has not been previously marked solely for use as a copy, of the note and deed of trust, shall be altered to indicate that the obligation is paid in full.

(2) If the trustee has failed to execute and record, or cause to be recorded, the full reconveyance within 60 calendar days of satisfaction of the obligation, the beneficiary, upon receipt of a written request by the trustor or trustor's heirs, successor in interest, agent, or assignee, shall execute and acknowledge a document pursuant to Section 2934a substituting itself or another as trustee and issue a full reconveyance.

(3) If a full reconveyance has not been executed and recorded pursuant to either paragraph (1) or paragraph (2) within 75 calendar days of satisfaction of the obligation, then a title insurance company may prepare and record a release of the obligation. However, at least 10 days prior to the issuance and recording of a full release pursuant to this paragraph, the title



insurance company shall mail by first-class mail with postage prepaid, the intention to release the obligation to the trustee, trustor, and beneficiary of record, or their successor in interest of record, at the last known address.

(A) The release shall set forth:

(i) The name of the beneficiary.

(ii) The name of the trustor.

(iii) The recording reference to the deed of trust.

(iv) A recital that the obligation secured by the deed of trust has been paid in full.

(v) The date and amount of payment.

(B) The release issued pursuant to this subdivision shall be entitled to recordation and, when recorded, shall be deemed to be the equivalent of a reconveyance of a deed of trust.

(4) Where an obligation secured by a deed of trust was paid in full prior to July 1, 1989, and no reconveyance has been issued and recorded by October 1, 1989, then a release of obligation as provided for in paragraph (3) may be issued.

(5) Paragraphs (2) and (3) do not excuse the beneficiary or the trustee from compliance with paragraph (1). Paragraph (3) does not excuse the beneficiary from compliance with paragraph (2).

(6) In addition to any other remedy provided by law, a title insurance company preparing or recording the release of the obligation shall be liable to any party for damages, including attorneys' fees, which any person may sustain by reason of the issuance and recording of the release, pursuant to paragraphs (3) and (4).

(7) A beneficiary may, at its discretion, in accordance with the requirements and procedures of Section 2934a, substitute the title company conducting the escrow through which the obligation is satisfied for the trustee of record, in which case the title company assumes the obligation of a trustee under this subdivision, and may collect the fee authorized by subdivision (e).

(8) In lieu of delivering the original note and deed of trust to the trustee within 30 days of loan satisfaction, as required by paragraph (1) of subdivision (b), a beneficiary who executes and delivers to the trustee a request for a full reconveyance within 30 days of loan satisfaction may, within 120 days of loan satisfaction, deliver the original note and deed of trust to either the trustee or trustor. If the note and deed of trust are delivered as provided in this



paragraph, upon satisfaction of the note and deed of trust, the note and deed of trust shall be altered to indicate that the obligation is paid in full. Nothing in this paragraph alters the requirements and obligations set forth in paragraphs (2) and (3).

(c) For the purposes of this section, the phrases “cause to be recorded” and “cause it to be recorded” include, but are not limited to, sending by certified mail with the United States Postal Service or by an independent courier service using its tracking service that provides documentation of receipt and delivery, including the signature of the recipient, the full reconveyance or certificate of discharge in a recordable form, together with payment for all required fees, in an envelope addressed to the county recorder’s office of the county in which the deed of trust or mortgage is recorded. Within two business days from the day of receipt, if received in recordable form together with all required fees, the county recorder shall stamp and record the full reconveyance or certificate of discharge. Compliance with this subdivision shall entitle the trustee to the benefit of the presumption found in Section 641 of the Evidence Code.

(d) The violation of this section shall make the violator liable to the person affected by the violation for all damages which that person may sustain by reason of the violation, and shall require that the violator forfeit to that person the sum of five hundred dollars (\$500).

(e) (1) The trustee, beneficiary, or mortgagee may charge a reasonable fee to the trustor or mortgagor, or the owner of the land, as the case may be, for all services involved in the preparation, execution, and recordation of the full reconveyance, including, but not limited to, document preparation and forwarding services rendered to effect the full reconveyance, and, in addition, may collect official fees. This fee may be made payable no earlier than the opening of a bona fide escrow or no more than 60 days prior to the full satisfaction of the obligation secured by the deed of trust or mortgage.

(2) If the fee charged pursuant to this subdivision does not exceed forty-five dollars (\$45), the fee is conclusively presumed to be reasonable.

(3) The fee described in paragraph (1) may not be charged unless demand for the fee was included in the payoff demand statement described in Section 2943.



(f) For purposes of this section, “original” may include an optically imaged reproduction when the following requirements are met:

(1) The trustee receiving the request for reconveyance and executing the reconveyance as provided in subdivision (b) is an affiliate or subsidiary of the beneficiary or an affiliate or subsidiary of the assignee of the beneficiary, respectively.

(2) The optical image storage media used to store the document shall be nonerasable write once, read many (WORM) optical image media that does not allow changes to the stored document.

(3) The optical image reproduction shall be made consistent with the minimum standards of quality approved by either the National Institute of Standards and Technology or the Association for Information and Image Management.

(4) Written authentication identifying the optical image reproduction as an unaltered copy of the note, deed of trust, or mortgage shall be stamped or printed on the optical image reproduction.

(g) No fee or charge may be imposed on the trustor in connection with, or relating to, any act described in this section except as expressly authorized by this section.

(h) The amendments to this section enacted at the 1999–2000 Regular Session shall apply only to a mortgage or an obligation secured by a deed of trust that is satisfied on or after January 1, 2001.

(i) (1) In any action filed before January 1, 2002, that is dismissed as a result of the amendments to this section enacted at the 2001–02 Regular Session, the plaintiff shall not be required to pay the defendant’s costs.

(2) Any claimant, including a claimant in a class action lawsuit, whose claim is dismissed or barred as a result of the amendments to this section enacted at the 2001–02 Regular Session, may, within 6 months of the dismissal or barring of the action or claim, file or refile a claim for actual damages occurring before January 1, 2002, that were proximately caused by a time lapse between loan satisfaction and the completion of the beneficiary’s obligations as required under paragraph (1) of subdivision (b). In any action brought under this section, the defendant may be found liable for actual damages, but may not be found liable for any civil penalty authorized by Section 2941.



(j) Notwithstanding any other penalties, if a beneficiary collects a fee for reconveyance and thereafter has knowledge, or should have knowledge, that no reconveyance has been recorded, the beneficiary shall cause to be recorded the reconveyance, or in the event a release of obligation is earlier and timely recorded, the beneficiary shall refund to the trustor the fee charged to perform the reconveyance. Evidence of knowledge includes, but is not limited to, notice of a release of obligation pursuant to paragraph (3) of subdivision (b).

SEC. 3. Section 5501 of the Probate Code is amended to read:  
5501. For purposes of this part:

(a) “Beneficiary form” means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(b) “Register,” including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(c) “Registering entity” means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(d) “Security” means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(e) (1) “Security account” means any of the following:

(A) A reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner’s death.

(B) An investment management or custody account with a trust company or a trust department of a bank with trust powers, including the securities in the account, the cash balance in the account, and cash equivalents, and interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner’s death.



(C) A cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(2) For the purposes of this subdivision, "cash equivalent" means an investment that is easily converted into cash, including, treasury bills, treasury notes, money market funds, savings bonds, short-term instruments, and short-term obligations.

(f) This section may not be construed to govern cash equivalents in multiple-party accounts that are governed by the California Multiple-Party Accounts Law, Part 2 (commencing with Section 5100).



Approved \_\_\_\_\_, 2002

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*Governor*

