

ASSEMBLY BILL

No. 2624

Introduced by Assembly Member Houston

February 24, 2006

An act to amend Sections 882.020, 1367.1, 1367.4, 2924a, and 2924h of, the Civil Code, and to amend Sections 729.020, 729.035, 729.040, 729.050, 729.060, 729.070, and 729.080 of, the Code of Civil Procedure, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2624, as introduced, Houston. Common interest developments: nonjudicial foreclosure.

(1) The Davis-Stirling Common Interest Development Act defines and regulates common interest developments and authorizes the association that manages the development to levy assessments to fulfill its obligations. The act provides that a regular or special assessment of the association, late charges, reasonable costs of collection, attorney's fees, and interest, as specified, are a debt of the owner of the separate interest at the time the assessment or other sums are levied, and are a lien on the owner's separate interest when the association records a notice of delinquent assessment and follows a specified process. The act permits the association to enforce the lien in any manner permitted by law including a sale by a trustee, also known as nonjudicial foreclosure, however prohibits the fees of a trustee from exceeding amounts set forth in specified provisions.

This bill would revise the above language to authorize fees and costs reasonably incurred in the exercise of rights relating to the administration of the right of redemption.

(2) The Davis-Stirling Common Interest Development Act requires in cases of a default that a notice of default be served by the

association on the owner of the separate interest's legal representative in accordance with specified provisions.

This bill would provide that the owner's legal representative shall be the person whose name is shown as the owner of a separate interest in the association's records, unless another person has been previously designated by the owner as his or her legal representative in writing and mailed to the association, as specified.

(3) Existing law provides that a nonjudicial foreclosure by an association of a common interest development to collect upon a debt for delinquent assessments is subject to a right of redemption. The redemption period within which the separate interest may be redeemed from a foreclosure sale ends 90 days after the sale.

This bill would revise that provision to also require a notice of sale in connection with an association's foreclosure of a separate interest in a common interest development to include a statement that the property is being sold subject to the right of redemption. The bill would also grant a nonjudicial foreclosure trustee, in any nonjudicial foreclosure sale conducted by the association of a common interest development, the powers and capacities of a levying officer and would provide that the homeowner is entitled to the rights of a judgment debtor, as specified. The bill would further authorize the nonjudicial foreclosure trustee to reasonable compensation and costs equivalent to that paid to a levying officer in that jurisdiction for the performance of duties in the administration of the right of redemption. The bill would make other conforming changes.

(4) Existing law provides that if the terms of a trust or deed of trust confer a power of sale upon the trustee, the attorney for the trustee may conduct the sale and act in the sale as the auctioneer for the trustee.

This bill would also authorize a duly authorized agent to conduct the sale and act in the sale as the auctioneer for the trustee. The bill would revise and recast other provisions relating to nonjudicial foreclosure sales and the right of redemption of a separate interest within a common interest development.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 882.020 of the Civil Code is amended
2 to read:

3 882.020. (a) Unless the lien of a mortgage, deed of trust, or
4 other instrument that creates a security interest of record in real
5 property to secure a debt or other obligation has earlier expired
6 pursuant to Section 2911, the lien expires at, and is not
7 enforceable by action for foreclosure commenced, power of sale
8 exercised, or any other means asserted after, the later of the
9 following times:

10 (1) If the final maturity date or the last date fixed for payment
11 of the debt or performance of the obligation is ascertainable from
12 the ~~record~~ *recorded evidence of indebtedness*, 10 years after that
13 date.

14 (2) If the final maturity date or the last date fixed for payment
15 of the debt or performance of the obligation is not ascertainable
16 from the ~~record~~ *recorded evidence of indebtedness*, or if there is
17 no final maturity date or last date fixed for payment of the debt or
18 performance of the obligation, 60 years after the date the
19 instrument that created the security interest was recorded.

20 (3) If a notice of intent to preserve the security interest is
21 recorded within the time prescribed in paragraph (1) or (2), 10
22 years after the date the notice is recorded.

23 (b) For the purpose of this section, a power of sale is deemed
24 to be exercised upon recordation of the deed executed pursuant to
25 the power of sale.

26 (c) The times prescribed in this section may be extended in the
27 same manner and to the same extent as a waiver made pursuant
28 to Section 360.5 of the Code of Civil Procedure, except that an
29 instrument is effective to extend the prescribed times only if it is
30 recorded before expiration of the prescribed times.

31 SEC. 2. Section 1367.1 of the Civil Code is amended to read:

32 1367.1. (a) A regular or special assessment and any late
33 charges, reasonable fees and costs of collection, reasonable
34 attorney's fees, if any, and interest, if any, as determined in
35 accordance with Section 1366, shall be a debt of the owner of the
36 separate interest at the time the assessment or other sums are
37 levied. At least 30 days prior to recording a lien upon the
38 separate interest of the owner of record to collect a debt that is

1 past due under this subdivision, the association shall notify the
2 owner of record in writing by certified mail of the following:

3 (1) A general description of the collection and lien
4 enforcement procedures of the association and the method of
5 calculation of the amount, a statement that the owner of the
6 separate interest has the right to inspect the association records,
7 pursuant to Section 8333 of the Corporations Code, and the
8 following statement in 14-point boldface type, if printed, or in
9 capital letters, if typed: “IMPORTANT NOTICE: IF YOUR
10 SEPARATE INTEREST IS PLACED IN FORECLOSURE
11 BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT
12 MAY BE SOLD WITHOUT COURT ACTION.”

13 (2) An itemized statement of the charges owed by the owner,
14 including items on the statement which indicate the amount of
15 any delinquent assessments, the fees and reasonable costs of
16 collection, reasonable attorney’s fees, any late charges, and
17 interest, if any.

18 (3) A statement that the owner shall not be liable to pay the
19 charges, interest, and costs of collection, if it is determined the
20 assessment was paid on time to the association.

21 (4) The right to request a meeting with the board as provided
22 by paragraph (3) of subdivision (c).

23 (5) The right to dispute the assessment debt by submitting a
24 written request for dispute resolution to the association pursuant
25 to the association’s “meet and confer” program required in
26 Article 5 (commencing with Section 1363.810) of Chapter 4.

27 (6) The right to request alternative dispute resolution with a
28 neutral third party pursuant to Article 2 (commencing with
29 Section 1369.510) of Chapter 7 before the association may
30 initiate foreclosure against the owner’s separate interest, except
31 that binding arbitration shall not be available if the association
32 intends to initiate a judicial foreclosure.

33 (b) Any payments made by the owner of a separate interest
34 toward the debt set forth, as required in subdivision (a), shall first
35 be applied to the assessments owed, and, only after the
36 assessments owed are paid in full shall the payments be applied
37 to the fees and costs of collection, attorney’s fees, late charges, or
38 interest. When an owner makes a payment, the owner may
39 request a receipt and the association shall provide it. The receipt
40 shall indicate the date of payment and the person who received it.

1 The association shall provide a mailing address for overnight
2 payment of assessments.

3 (c) (1) (A) Prior to recording a lien for delinquent
4 assessments, an association shall offer the owner and, if so
5 requested by the owner, participate in dispute resolution pursuant
6 to the association's "meet and confer" program required in
7 Article 5 (commencing with Section 1363.810) of Chapter 4.

8 (B) Prior to initiating a foreclosure for delinquent assessments,
9 an association shall offer the owner and, if so requested by the
10 owner, shall participate in dispute resolution pursuant to the
11 association's "meet and confer" program required in Article 5
12 (commencing with Section 1363.810) of Chapter 4 or alternative
13 dispute resolution with a neutral third party pursuant to Article 2
14 (commencing with Section 1369.510) of Chapter 7. The decision
15 to pursue dispute resolution or a particular type of alternative
16 dispute resolution shall be the choice of the owner, except that
17 binding arbitration shall not be available if the association
18 intends to initiate a judicial foreclosure.

19 (2) For liens recorded on or after January 1, 2006, the decision
20 to record a lien for delinquent assessments shall be made only by
21 the board of directors of the association and may not be delegated
22 to an agent of the association. The board shall approve the
23 decision by a majority vote of the board members in an open
24 meeting. The board shall record the vote in the minutes of that
25 meeting.

26 (3) An owner, other than an owner of any interest that is
27 described in Section 11212 of the Business and Professions Code
28 that is not otherwise exempt from this section pursuant to
29 subdivision (a) of Section 11211.7, may submit a written request
30 to meet with the board to discuss a payment plan for the debt
31 noticed pursuant to subdivision (a). The association shall provide
32 the owners the standards for payment plans, if any exist. The
33 board shall meet with the owner in executive session within 45
34 days of the postmark of the request, if the request is mailed
35 within 15 days of the date of the postmark of the notice, unless
36 there is no regularly scheduled board meeting within that period,
37 in which case the board may designate a committee of one or
38 more members to meet with the owner. Payment plans may
39 incorporate any assessments that accrue during the payment plan
40 period. Payment plans shall not impede an association's ability to

1 record a lien on the owner’s separate interest to secure payment
2 of delinquent assessments. Additional late fees shall not accrue
3 during the payment plan period if the owner is in compliance
4 with the terms of the payment plan. In the event of a default on
5 any payment plan, the association may resume its efforts to
6 collect the delinquent assessments from the time prior to entering
7 into the payment plan.

8 (d) The amount of the assessment, plus any costs of collection,
9 late charges, and interest assessed in accordance with Section
10 1366, shall be a lien on the owner’s separate interest in the
11 common interest development from and after the time the
12 association causes to be recorded with the county recorder of the
13 county in which the separate interest is located, a notice of
14 delinquent assessment, which shall state the amount of the
15 assessment and other sums imposed in accordance with Section
16 1366, a legal description of the owner’s separate interest in the
17 common interest development against which the assessment and
18 other sums are levied, and the name of the record owner of the
19 separate interest in the common interest development against
20 which the lien is imposed. The itemized statement of the charges
21 owed by the owner described in paragraph (2) of subdivision (a)
22 shall be recorded together with the notice of delinquent
23 assessment. In order for the lien to be enforced by nonjudicial
24 foreclosure as provided in subdivision (g), the notice of
25 delinquent assessment shall state the name and address of the
26 trustee authorized by the association to enforce the lien by sale.
27 The notice of delinquent assessment shall be signed by the
28 person designated in the declaration or by the association for that
29 purpose, or if no one is designated, by the president of the
30 association. A copy of the recorded notice of delinquent
31 assessment shall be mailed by certified mail to every person
32 whose name is shown as an owner of the separate interest in the
33 association’s records, and the notice shall be mailed no later than
34 10 calendar days after recordation. Within 21 days of the
35 payment of the sums specified in the notice of delinquent
36 assessment, the association shall record or cause to be recorded
37 in the office of the county recorder in which the notice of
38 delinquent assessment is recorded a lien release or notice of
39 rescission and provide the owner of the separate interest a copy
40 of the lien release or notice that the delinquent assessment has

1 been satisfied. A monetary charge imposed by the association as
2 a means of reimbursing the association for costs incurred by the
3 association in the repair of damage to common areas and
4 facilities for which the member or the member's guests or tenants
5 were responsible may become a lien against the member's
6 separate interest enforceable by the sale of the interest under
7 Sections 2924, 2924b, and 2924c, provided the authority to
8 impose a lien is set forth in the governing documents. It is the
9 intent of the Legislature not to contravene Section 2792.26 of
10 Title 10 of the California Code of Regulations, as that section
11 appeared on January 1, 1996, for associations of subdivisions that
12 are being sold under authority of a subdivision public report,
13 pursuant to Part 2 (commencing with Section 11000) of Division
14 4 of the Business and Professions Code.

15 (e) Except as indicated in subdivision (d), a monetary penalty
16 imposed by the association as a disciplinary measure for failure
17 of a member to comply with the governing instruments, except
18 for the late payments, may not be characterized nor treated in the
19 governing instruments as an assessment that may become a lien
20 against the member's subdivision separate interest enforceable by
21 the sale of the interest under Sections 2924, 2924b, and 2924c.

22 (f) A lien created pursuant to subdivision (d) shall be prior to
23 all other liens recorded subsequent to the notice of assessment,
24 except that the declaration may provide for the subordination
25 thereof to any other liens and encumbrances.

26 (g) An association may not voluntarily assign or pledge the
27 association's right to collect payments or assessments, or to
28 enforce or foreclose a lien to a third party, except when the
29 assignment or pledge is made to a financial institution or lender
30 chartered or licensed under federal or state law, when acting
31 within the scope of that charter or license, as security for a loan
32 obtained by the association; however, the foregoing provision
33 may not restrict the right or ability of an association to assign any
34 unpaid obligations of a former member to a third party for
35 purposes of collection. Subject to the limitations of this
36 subdivision, after the expiration of 30 days following the
37 recording of a lien created pursuant to subdivision (d), the lien
38 may be enforced in any manner permitted by law, including sale
39 by the court, sale by the trustee designated in the notice of
40 delinquent assessment, or sale by a trustee substituted pursuant to

1 Section 2934a. Any sale by the trustee shall be conducted in
2 accordance with Sections 2924, 2924b, and 2924c applicable to
3 the exercise of powers of sale in mortgages and deeds of trust.
4 The fees of a trustee may not exceed the amounts prescribed in
5 Sections 2924c and 2924d, *plus any fees and costs reasonably*
6 *incurred in the exercise of the rights and duties created pursuant*
7 *to Section 729.035 of the Code of Civil Procedure relating to the*
8 *administration of the right of redemption.*

9 (h) Nothing in this section or in subdivision (a) of Section 726
10 of the Code of Civil Procedure prohibits actions against the
11 owner of a separate interest to recover sums for which a lien is
12 created pursuant to this section or prohibits an association from
13 taking a deed in lieu of foreclosure.

14 (i) If it is determined that a lien previously recorded against
15 the separate interest was recorded in error, the party who
16 recorded the lien shall, within 21 calendar days, record or cause
17 to be recorded in the office of the county recorder in which the
18 notice of delinquent assessment is recorded a lien release or
19 notice of rescission and provide the owner of the separate interest
20 with a declaration that the lien filing or recording was in error
21 and a copy of the lien release or notice of rescission.

22 (j) In addition to the requirements of Section 2924, a notice of
23 default shall be served by the association on the owner's legal
24 representative in accordance with the manner of service of
25 summons in Article 3 (commencing with Section 415.10) of
26 Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. *The*
27 *owner's legal representative shall be the person whose name is*
28 *shown as the owner of a separate interest in the association's*
29 *records, unless another person has been previously designated*
30 *by the owner as his or her legal representative in writing and*
31 *mailed to the association in a manner that indicates that the*
32 *association has received it.*

33 (k) Upon receipt of a written request by an owner identifying a
34 secondary address for purposes of collection notices, the
35 association shall send additional copies of any notices required
36 by this section to the secondary address provided. The
37 association shall notify owners of their right to submit secondary
38 addresses to the association, at the time the association issues the
39 pro forma operating budget pursuant to Section 1365. The
40 owner's request shall be in writing and shall be mailed to the

1 association in a manner that shall indicate the association has
2 received it. The owner may identify or change a secondary
3 address at any time, provided that, if a secondary address is
4 identified or changed during the collection process, the
5 association shall only be required to send notices to the indicated
6 secondary address from the point the association receives the
7 request.

8 (l) (1) An association that fails to comply with the procedures
9 set forth in this section shall, prior to recording a lien,
10 recommence the required notice process.

11 (2) Any costs associated with recommencing the notice
12 process shall be borne by the association and not by the owner of
13 a separate interest.

14 (m) This section only applies to liens recorded on or after
15 January 1, 2003.

16 (n) This section is subordinate to, and shall be interpreted in
17 conformity with, Section 1367.4.

18 SEC. 3. Section 1367.4 of the Civil Code is amended to read:

19 1367.4. (a) Notwithstanding any law or any provisions of the
20 governing documents to the contrary, this section shall apply to
21 debts for assessments that arise on and after January 1, 2006.

22 (b) An association that seeks to collect delinquent regular or
23 special assessments of an amount less than one thousand eight
24 hundred dollars (\$1,800), not including any accelerated
25 assessments, late charges, fees and costs of collection, attorney's
26 fees, or interest, may not collect that debt through judicial or
27 nonjudicial foreclosure, but may attempt to collect or secure that
28 debt in any of the following ways:

29 (1) By a civil action in small claims court, pursuant to Chapter
30 5.5 (commencing with Section 116.110) of Title 1 of the Code of
31 Civil Procedure. An association that chooses to proceed by an
32 action in small claims court, and prevails, may enforce the
33 judgment as permitted under Article 8 (commencing with Section
34 116.810) of Title 1 of the Code of Civil Procedure. The amount
35 that may be recovered in small claims court to collect upon a
36 debt for delinquent assessments may not exceed the jurisdictional
37 limits of the small claims court and shall be the sum of the
38 following:

39 (A) The amount owed as of the date of filing the complaint in
40 the small claims court proceeding.

1 (B) In the discretion of the court, an additional amount to that
2 described in subparagraph (A) equal to the amount owed for the
3 period from the date the complaint is filed until satisfaction of the
4 judgment, which total amount may include accruing unpaid
5 assessments and any reasonable late charges, fees and costs of
6 collection, attorney’s fees, and interest, up to the jurisdictional
7 limits of the small claims court.

8 (2) By recording a lien on the owner’s separate interest upon
9 which the association may not foreclose until the amount of the
10 delinquent assessments secured by the lien, exclusive of any
11 accelerated assessments, late charges, fees and costs of
12 collection, attorney’s fees, or interest, equals or exceeds one
13 thousand eight hundred dollars (\$1,800) or the assessments are
14 more than 12 months delinquent. An association that chooses to
15 record a lien under these provisions, prior to recording the lien,
16 shall offer the owner and, if so requested by the owner,
17 participate in dispute resolution as set forth in Article 5
18 (commencing with Section 1368.810) of Chapter 4.

19 (3) Any other manner provided by law, except for judicial or
20 nonjudicial foreclosure.

21 (c) An association that seeks to collect delinquent regular or
22 special assessments of an amount of one thousand eight hundred
23 dollars (\$1,800) or more, not including any accelerated
24 assessments, late charges, fees and costs of collection, attorney’s
25 fees, or interest, or any assessments that are more than 12 months
26 delinquent, may use judicial or nonjudicial foreclosure subject to
27 the following conditions:

28 (1) Prior to initiating a foreclosure on an owner’s separate
29 interest, the association shall offer the owner and, if so requested
30 by the owner, participate in dispute resolution pursuant to the
31 association’s “meet and confer” program required in Article 5
32 (commencing with Section 1363.810) of Chapter 4 or alternative
33 dispute resolution as set forth in Article 2 (commencing with
34 Section 1369.510) of Chapter 7. The decision to pursue dispute
35 resolution or a particular type of alternative dispute resolution
36 shall be the choice of the owner, except that binding arbitration
37 shall not be available if the association intends to initiate a
38 judicial foreclosure.

39 (2) The decision to initiate foreclosure of a lien for delinquent
40 assessments that has been validly recorded shall be made only by

1 the board of directors of the association and may not be delegated
2 to an agent of the association. The board shall approve the
3 decision by a majority vote of the board members in an executive
4 session. The board shall record the vote in the minutes of the next
5 meeting of the board open to all members. The board shall
6 maintain the confidentiality of the owner or owners of the
7 separate interest by identifying the matter in the minutes by the
8 parcel number of the property, rather than the name of the owner
9 or owners. A board vote to approve foreclosure of a lien shall
10 take place at least 30 days prior to any public sale.

11 (3) The board shall provide notice by personal service to an
12 owner of a separate interest who occupies the separate interest or
13 to the owner's legal representative, if the board votes to foreclose
14 upon the separate interest. The board shall provide written notice
15 to an owner of a separate interest who does not occupy the
16 separate interest by first-class mail, postage prepaid, at the most
17 current address shown on the books of the association. In the
18 absence of written notification by the owner to the association,
19 the address of the owner's separate interest may be treated as the
20 owner's mailing address.

21 (4) A nonjudicial foreclosure by an association to collect upon
22 a debt for delinquent assessments shall be subject to a right of
23 redemption. The redemption period within which the separate
24 interest may be redeemed from a foreclosure sale under this
25 paragraph ends 90 days after the sale. *In addition to the*
26 *requirements of Section 2924f, a notice of sale in connection with*
27 *an association's foreclosure of a separate interest in a common*
28 *interest development shall include a statement that the property*
29 *is being sold subject to the right of redemption created in this*
30 *paragraph.*

31 (d) The limitation on foreclosure of assessment liens for
32 amounts under the stated minimum in this section does not apply
33 to assessments owed by owners of separate interests in timeshare
34 estates, as defined in subdivision (x) of Section 11112 of the
35 Business and Professions Code, or to assessments owed by
36 developers.

37 SEC. 4. Section 2924a of the Civil Code is amended to read:

38 2924a. ~~Where-If~~, by the terms of any trust or deed of trust a
39 power of sale is conferred upon the trustee, the attorney for ~~such~~

1 *the trustee, or any duly authorized agent,* may conduct the sale
2 and act in ~~such~~ *the* sale as the auctioneer for the trustee.

3 SEC. 5. Section 2924h of the Civil Code is amended to read:

4 2924h. (a) Each ~~and every~~ bid made by a bidder at a trustee's
5 sale under a power of sale contained in a deed of trust or
6 mortgage shall be deemed to be an irrevocable offer by that
7 bidder to purchase the property being sold by the trustee under
8 the power of sale for the amount of the bid. Any ~~second or~~
9 subsequent bid by the same bidder or any other bidder for a
10 higher amount shall be a cancellation of the prior bid.

11 (b) At the trustee's sale the trustee shall have the right (1) to
12 require every bidder to show evidence of the bidder's ability to
13 deposit with the trustee the full amount of his or her final bid in
14 cash, a cashier's check drawn on a state or national bank, a check
15 drawn by a state or federal credit union, or a check drawn by a
16 state or federal savings and loan association, savings association,
17 or savings bank specified in Section 5102 of the Financial Code
18 and authorized to do business in this state, or a cash equivalent
19 which has been designated in the notice of sale as acceptable to
20 the trustee prior to, and as a condition to, the recognizing of the
21 bid, and to conditionally accept and hold these amounts for the
22 duration of the sale, and (2) to require the last and highest bidder
23 to deposit, if not deposited previously, the full amount of the
24 bidder's final bid in cash, a cashier's check drawn on a state or
25 national bank, a check drawn by a state or federal credit union, or
26 a check drawn by a state or federal savings and loan association,
27 savings association, or savings bank specified in Section 5102 of
28 the Financial Code and authorized to do business in this state, or
29 a cash equivalent which has been designated in the notice of sale
30 as acceptable to the trustee, *and payable to the trustee,*
31 immediately prior to the completion of the sale, the completion
32 of the sale being so announced by the fall of the hammer or in
33 another customary manner. The present beneficiary of the deed
34 of trust under foreclosure shall have the right to offset his or her
35 bid or bids only to the extent of the total amount due the
36 beneficiary, including the trustee's fees and expenses.

37 (c) In the event the trustee accepts a check *payable to the*
38 *trustee* drawn by a credit union or a savings and loan association
39 pursuant to this subdivision or a cash equivalent designated in the
40 notice of sale, the trustee may withhold the issuance of the

1 trustee's deed to the successful bidder submitting the check
2 drawn by a state or federal credit union or savings and loan
3 association or the cash equivalent until funds become available to
4 the ~~payee or endorsee~~ trustee as a matter of right.

5 For the purposes of this subdivision, the trustee's sale shall be
6 deemed final upon the acceptance of the last and highest bid, and
7 shall be deemed perfected as of 8 a.m. on the actual date of sale
8 if the trustee's deed is recorded within 15 calendar days after the
9 sale, or the next business day following the 15th day if the county
10 recorder in which the property is located is closed on the 15th
11 day. However, the sale is subject to an automatic rescission for a
12 failure of consideration in the event the funds are not "available
13 for withdrawal" as defined in Section 12413.1 of the Insurance
14 Code. The trustee shall send a notice of rescission for a failure of
15 consideration to the last and highest bidder submitting the check
16 or alternative instrument, if the address of the last and highest
17 bidder is known to the trustee.

18 If a sale results in an automatic right of rescission for failure of
19 consideration pursuant to this subdivision, the interest of any
20 lienholder shall be reinstated in the same priority as if the
21 previous sale had not occurred.

22 (d) If the trustee has not required the last and highest bidder to
23 deposit the cash, a cashier's check drawn on a state or national
24 bank, a check drawn by a state or federal credit union, or a check
25 drawn by a state or federal savings and loan association, savings
26 association, or savings bank specified in Section 5102 of the
27 Financial Code and authorized to do business in this state, or a
28 cash equivalent which has been designated in the notice of sale as
29 acceptable to the trustee in the manner set forth in paragraph (2)
30 of subdivision (b), the trustee shall complete the sale. If the last
31 and highest bidder then fails to deliver to the trustee, when
32 demanded, the amount of his or her final bid in cash, a cashier's
33 check drawn on a state or national bank, a check drawn by a state
34 or federal credit union, or a check drawn by a state or federal
35 savings and loan association, savings association, or savings
36 bank specified in Section 5102 of the Financial Code and
37 authorized to do business in this state, or a cash equivalent which
38 has been designated in the notice of sale as acceptable to the
39 trustee, *and payable to the trustee*, that bidder shall be liable to
40 the trustee for all damages which the trustee may sustain by the

1 refusal to deliver to the trustee the amount of the final bid,
2 including any court costs and reasonable attorneys' fees.

3 If the last and highest bidder willfully fails to deliver to the
4 trustee the amount of his or her final bid in cash, a cashier's
5 check drawn on a state or national bank, a check drawn by a state
6 or federal credit union, or a check drawn by a state or federal
7 savings and loan association, savings association, or savings
8 bank specified in Section 5102 of the Financial Code and
9 authorized to do business in this state, or a cash equivalent which
10 has been designated in the notice of sale as acceptable to the
11 trustee, or if the last and highest bidder cancels a cashiers check
12 drawn on a state or national bank, a check drawn by a state or
13 federal credit union, or a check drawn by a state or federal
14 savings and loan association, savings association, or savings
15 bank specified in Section 5102 of the Financial Code and
16 authorized to do business in this state, or a cash equivalent that
17 has been designated in the notice of sale as acceptable to the
18 trustee, *and payable to the trustee*, that bidder shall be guilty of a
19 misdemeanor punishable by a fine of not more than two thousand
20 five hundred dollars (\$2,500).

21 In the event the last and highest bidder cancels an instrument
22 submitted to the trustee as a cash equivalent, the trustee shall
23 provide a new notice of sale in the manner set forth in Section
24 2924f and shall be entitled to recover the costs of the new notice
25 of sale as provided in Section 2924c.

26 (e) Any postponement or discontinuance of the sale
27 proceedings shall be a cancellation of the last bid.

28 (f) In the event that this section conflicts with any other
29 statute, then this section shall prevail.

30 (g) It shall be unlawful for any person, acting alone or in
31 concert with others, (1) to offer to accept or accept from another,
32 any consideration of any type not to bid, or (2) to fix or restrain
33 bidding in any manner, at a sale of property conducted pursuant
34 to a power of sale in a deed of trust or mortgage. However, it
35 shall not be unlawful for any person, including a trustee, to state
36 that a property subject to a recorded notice of default or subject
37 to a sale conducted pursuant to this chapter is being sold in an
38 "as-is" condition.

39 In addition to any other remedies, any person committing any
40 act declared unlawful by this subdivision or any act which would

1 operate as a fraud or deceit upon any beneficiary, trustor, or
2 junior lienor shall, upon conviction, be fined not more than ten
3 thousand dollars (\$10,000) or imprisoned in the county jail for
4 not more than one year, or be punished by both that fine and
5 imprisonment.

6 SEC. 6. Section 729.020 of the Code of Civil Procedure is
7 amended to read:

8 729.020. Property sold subject to the right of redemption may
9 be redeemed only by the judgment debtor or the judgment
10 debtor's successor in interest *or the homeowner of a separate*
11 *interest in a common interest development pursuant to Section*
12 *729.035. For the purpose of this article, the purchaser of the*
13 *property at the foreclosure sale is not a successor in interest.*

14 SEC. 7. Section 729.035 of the Code of Civil Procedure is
15 amended to read:

16 729.035. (a) Notwithstanding any provision of law to the
17 contrary, the sale of a separate interest in a common interest
18 development is subject to the right of redemption within 90 days
19 after the sale if the sale arises from a foreclosure by the
20 association of a common interest development pursuant to
21 subdivision (g) of Section 1367.1 of the Civil Code, subject to
22 the conditions of Section 1367.4 of the Civil Code.

23 (b) *In any nonjudicial foreclosure sale conducted by the*
24 *association of a common interest development, the nonjudicial*
25 *foreclosure trustee shall have the powers and capacities of the*
26 *levying officer under this chapter, and the homeowner at the time*
27 *of the nonjudicial foreclosure sale is entitled to the rights of a*
28 *judgment debtor under this chapter.*

29 (c) *The nonjudicial foreclosure trustee shall be entitled to*
30 *reasonable compensation and costs equivalent to that paid to a*
31 *levying officer in that jurisdiction for the performance of the*
32 *duties of the levying officer in the administration of the right of*
33 *redemption created in this section.*

34 SEC. 8. Section 729.040 of the Code of Civil Procedure is
35 amended to read:

36 729.040. (a) Notwithstanding Section 701.660, when the
37 purchaser of an interest in real property sold subject to the right
38 of redemption pays the amount due, the levying officer *or trustee*
39 conducting the sale shall execute and deliver a certificate of sale

1 to the purchaser and record a duplicate of the certificate of sale in
2 the office of the county recorder.

3 (b) The certificate of sale shall contain the information
4 required by Section 701.670 and shall also contain the following:

5 (1) The price paid for each distinct lot or parcel of real
6 property sold subject to the right of redemption.

7 (2) The total price paid.

8 (3) A statement that the property is subject to the right of
9 redemption, indicating the applicable redemption period.

10 SEC. 9. Section 729.050 of the Code of Civil Procedure is
11 amended to read:

12 729.050. If property is sold subject to the right of redemption,
13 promptly after the sale the levying officer *or trustee* who
14 conducted the sale shall serve notice of the right of redemption
15 on the judgment debtor *or the homeowner of a separate interest*
16 *in a common interest development, pursuant to Section 729.035.*
17 Service shall be made personally or by mail. The notice of the
18 right of redemption shall indicate the applicable redemption
19 period.

20 SEC. 10. Section 729.060 of the Code of Civil Procedure is
21 amended to read:

22 729.060. (a) A person who seeks to redeem the property shall
23 deposit the redemption price with the levying officer *or trustee*
24 who conducted the sale before the expiration of the redemption
25 period. If a successor in interest to the judgment debtor *or*
26 *homeowner of a separate interest in a common interest*
27 *development pursuant to Section 729.035* seeks to redeem the
28 property, the successor in interest shall, at the time the
29 redemption price is deposited, file with the levying officer *or*
30 *trustee* either (1) a certified copy of a recorded conveyance or (2)
31 a copy of an assignment or any other evidence of the interest
32 verified by an affidavit of the successor in interest or of a
33 subscribing witness thereto.

34 (b) The redemption price is the total of the following amounts,
35 less any offset allowed under subdivision (c).

36 (1) The purchase price at the sale.

37 (2) The amount of any assessments or taxes and reasonable
38 amounts for fire insurance, maintenance, upkeep, and repair of
39 improvements on the property.

1 (3) Any amount paid by the purchaser on a prior obligation
2 secured by the property to the extent that the payment was
3 necessary for the protection of the purchaser's interest.

4 (4) Interest on the amounts described in paragraphs (1), (2),
5 and (3) at the rate of interest on money judgments from the time
6 such amount was paid until the date the deposit is made.

7 (5) If the purchaser at the sale has any liens subordinate to the
8 lien under which the property was sold, the amount of the
9 purchaser's lien, plus interest at the rate of interest on money
10 judgments from the date of the sale until the date the deposit is
11 made.

12 (c) Rents and profits from the property paid to the purchaser or
13 the value of the use and occupation of the property to the
14 purchaser may be offset against the amounts described in
15 subdivision (b).

16 SEC. 11. Section 729.070 of the Code of Civil Procedure is
17 amended to read:

18 729.070. (a) If the purchaser and the person seeking to
19 redeem the property disagree on the redemption price or as to
20 whether the person is entitled to redeem the property, or if the
21 purchaser refuses the tender of the redemption price pursuant to
22 Section 729.080, the person seeking to redeem may file a petition
23 with the court for an order determining the redemption price or
24 whether the person is entitled to redeem the property. The
25 petition shall be filed before the expiration of the redemption
26 period. At the time the petition is filed, the petitioner shall
27 deposit the undisputed amount of the redemption price with the
28 levying officer *or trustee*, if deposit has not previously been
29 made, and give written notice to the levying officer *or trustee* of
30 the filing of the petition.

31 (b) The petition shall be in writing and shall include the
32 following statements:

33 (1) The amounts demanded to which the person seeking to
34 redeem objects and the reasons for the objection.

35 (2) Any amounts offset to which the purchaser objects and the
36 justification for such offset.

37 (3) The status of the petitioner that qualifies the petitioner to
38 redeem the property. A copy of the papers required by
39 subdivision (a) of Section 729.060 shall be filed with the petition.

1 (c) The hearing on the petition shall be held not later than 20
2 days after the date the petition was filed unless continued by the
3 court for good cause.

4 (d) Not less than 10 days before the hearing, the person
5 seeking to redeem the property shall personally serve on the
6 purchaser a copy of the petition together with a notice of the time
7 and place of the hearing.

8 (e) At the hearing on the petition, the person seeking to
9 redeem the property has the burden of proof.

10 (f) At the conclusion of the hearing, the court shall determine
11 by order the amount required to redeem the property. The
12 determination shall be made upon affidavit or evidence
13 satisfactory to the court.

14 (g) If an amount in addition to that deposited with the levying
15 officer *or trustee* is required to redeem the property, the person
16 seeking to redeem shall, within 10 days after the issuance of the
17 order, pay such additional amount to the levying officer *or*
18 *trustee*.

19 SEC. 12. Section 729.080 of the Code of Civil Procedure is
20 amended to read:

21 729.080. (a) If the redemption price is not deposited pursuant
22 to Section 729.060 before the expiration of the redemption
23 period, or if no additional deposit is made pursuant to subdivision
24 (g) of Section 729.070 before the expiration of the time therein
25 provided, the levying officer who conducted the sale shall
26 promptly execute and deliver to the purchaser a deed of sale that
27 complies with the requirements of Section 701.670, *or the*
28 *nonjudicial foreclosure trustee pursuant to Section 729.035 shall*
29 *deliver an executed trustee's deed and comply with the*
30 *requirements of Section 2924j of the Civil Code.*

31 (b) If the person seeking to redeem the property deposits the
32 redemption price pursuant to Section 729.060 or 729.070 during
33 the redemption period, the levying officer *or trustee* shall tender
34 the deposit to the purchaser. If the purchaser accepts the tender or
35 if the redemption price determined by court order is tendered, the
36 levying officer *or trustee* shall promptly execute and deliver a
37 certificate of redemption to the person seeking to redeem and
38 shall immediately thereafter record a duplicate of the certificate
39 in the office of the recorder of the county where the property is
40 located.

1 (c) Tender of the redemption price determined by court order
2 or agreed upon by the purchaser and the person seeking to
3 redeem the property is equivalent to payment. If the tender is
4 refused, the levying officer *or trustee* shall deposit the amount
5 tendered with the county treasurer of the county where the
6 property is located, payable to the order of the purchaser. If the
7 amount deposited is not claimed by the purchaser, or the legal
8 representative of the purchaser, within five years after the deposit
9 is made, by making application to the treasurer or other official
10 designated by the county, it shall be paid into the general fund of
11 the county.

12 (d) Except as provided in subdivision (e), upon redemption the
13 effect of the sale is terminated and the person who redeemed the
14 property is restored to the estate therein sold at the sale.

15 (e) Liens extinguished by the sale as provided in Section
16 701.630 do not reattach to the property after redemption and the
17 property that was subject to the extinguished lien may not be
18 applied to the satisfaction of the claim or judgment under which
19 the lien was created.