

Assembly Bill No. 2624

Passed the Assembly August 30, 2006

Chief Clerk of the Assembly

Passed the Senate August 29, 2006

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL’S DIGEST

AB 2624, 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 it prohibits the fees of a trustee from exceeding amounts set forth in specified provisions.

This bill would revise the above language to also authorize the trustee to receive as part of those fees the cost of service of either a notice of default or the decision by the board of a common interest development to foreclose upon the separate interest of an owner, as specified.

(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 make other conforming changes.

(4) Existing law provides for the use of a mortgage or a deed of trust as security in a transfer of real property, provides for a power of sale upon breach of the obligation that a mortgage or deed of trust secures, and establishes specified procedures that a mortgage or trustee is required to follow when exercising a power of sale. Under existing law, the mailing, publication, and delivery of a notice and the performance of procedures that are required when exercising a power of sale constitute privileged communications.

This bill would additionally provide that performing the functions or procedures necessary to carry out the duties regarding a sale of a separate interest in a common interest development constitute privileged communications.

(5) 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.

(6) Existing law requires, if a person purchases an interest in real property subject to a right of redemption and pays the amount due on that real property, the levying officer to execute and deliver a certificate of sale. Existing law requires that certificate of sale to include specified information.

This bill would revise and recast those provisions to require certain information for judicial foreclosures and nonjudicial foreclosures on the certificate of sale.

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

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

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

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

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

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

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

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

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

1367.1. (a) A regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney's fees, if any, and interest, if any, as determined in accordance with Section 1366, shall be a debt of the owner of the

separate interest at the time the assessment or other sums are levied. At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a debt that is past due under this subdivision, the association shall notify the owner of record in writing by certified mail of the following:

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

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

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

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

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

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

(b) Any payments made by the owner of a separate interest toward the debt set forth, as required in subdivision (a), shall first be applied to the assessments owed, and, only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney’s fees, late charges, or

interest. When an owner makes a payment, the owner may request a receipt and the association shall provide it. The receipt shall indicate the date of payment and the person who received it. The association shall provide a mailing address for overnight payment of assessments.

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

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

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

(3) An owner, other than an owner of any interest that is described in Section 11212 of the Business and Professions Code that is not otherwise exempt from this section pursuant to subdivision (a) of Section 11211.7, may submit a written request to meet with the board to discuss a payment plan for the debt noticed pursuant to subdivision (a). The association shall provide the owners the standards for payment plans, if any exist. The board shall meet with the owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the notice, unless there is no regularly scheduled board meeting within that period, in which case the board may designate a committee of one or

more members to meet with the owner. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede an association's ability to record a lien on the owner's separate interest to secure payment of delinquent assessments. Additional late fees shall not accrue during the payment plan period if the owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan.

(d) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, shall be a lien on the owner's separate interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Section 1366, a legal description of the owner's separate interest in the common interest development against which the assessment and other sums are levied, and the name of the record owner of the separate interest in the common interest development against which the lien is imposed. The itemized statement of the charges owed by the owner described in paragraph (2) of subdivision (a) shall be recorded together with the notice of delinquent assessment. In order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (g), the notice of delinquent assessment shall state the name and address of the trustee authorized by the association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association. A copy of the recorded notice of delinquent assessment shall be mailed by certified mail to every person whose name is shown as an owner of the separate interest in the association's records, and the notice shall be mailed no later than 10 calendar days after recordation. Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the association shall record or cause to be recorded in the office of the county recorder in which the notice of

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

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

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

(g) An association may not voluntarily assign or pledge the association's right to collect payments or assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the association; however, the foregoing provision may not restrict the right or ability of an association to assign any unpaid obligations of a former member to a third party for purposes of collection. Subject to the limitations of this subdivision, after the expiration of 30 days following the recording of a lien created pursuant to subdivision (d), the lien

may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trust. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d, plus

the cost of service for either of the following:

(1) The notice of default pursuant to subdivision (j) of Section 1367.1.

(2) The decision of the board to foreclose upon the separate interest of an owner as described in paragraph (3) of subdivision (c) of Section 1367.4.

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

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

(j) In addition to the requirements of Section 2924, a notice of default shall be served by the association on the owner's legal representative in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. 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 in a manner that indicates that the association has received it.

(k) Upon receipt of a written request by an owner identifying a secondary address for purposes of collection notices, the

association shall send additional copies of any notices required by this section to the secondary address provided. The association shall notify owners of their right to submit secondary addresses to the association, at the time the association issues the pro forma operating budget pursuant to Section 1365. The owner's request shall be in writing and shall be mailed to the association in a manner that shall indicate the association has received it. The owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the association shall only be required to send notices to the indicated secondary address from the point the association receives the request.

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

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

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

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

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

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

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

(1) By a civil action in small claims court, pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of the Code of Civil Procedure. An association that chooses to proceed by an action in small claims court, and prevails, may enforce the judgment as permitted under Article 8 (commencing with Section 116.810) of Title 1 of the Code of Civil Procedure. The amount

that may be recovered in small claims court to collect upon a debt for delinquent assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

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

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

(2) By recording a lien on the owner's separate interest upon which the association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, equals or exceeds one thousand eight hundred dollars (\$1,800) or the assessments secured by the lien are more than 12 months delinquent. An association that chooses to record a lien under these provisions, prior to recording the lien, shall offer the owner and, if so requested by the owner, participate in dispute resolution as set forth in Article 5 (commencing with Section 1363.810) of Chapter 4.

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

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

(1) Prior to initiating a foreclosure on an owner's separate interest, the association shall offer the owner and, if so requested by the owner, participate in dispute resolution pursuant to the association's "meet and confer" program required in Article 5 (commencing with Section 1363.810) of Chapter 4 or alternative dispute resolution as set forth in Article 2 (commencing with

Section 1369.510) of Chapter 7. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the owner, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

(2) The decision to initiate foreclosure of a lien for delinquent assessments that has been validly recorded shall be made only by the board of directors of the association and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the board members in an executive session. The board shall record the vote in the minutes of the next meeting of the board open to all members. The board shall maintain the confidentiality of the owner or owners of the separate interest by identifying the matter in the minutes by the parcel number of the property, rather than the name of the owner or owners. A board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale.

(3) The board shall provide notice by personal service in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure to an owner of a separate interest who occupies the separate interest or to the owner's legal representative, if the board votes to foreclose upon the separate interest. The board shall provide written notice to an owner of a separate interest who does not occupy the separate interest by first-class mail, postage prepaid, at the most current address shown on the books of the association. In the absence of written notification by the owner to the association, the address of the owner's separate interest may be treated as the owner's mailing address.

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

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

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

2924. (a) Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is to be deemed a pledge. Where, by a mortgage created after July 27, 1917, of any estate in real property, other than an estate at will or for years, less than two, or in any transfer in trust made after July 27, 1917, of a like estate to secure the performance of an obligation, a power of sale is conferred upon the mortgagee, trustee, or any other person, to be exercised after a breach of the obligation for which that mortgage or transfer is a security, the power shall not be exercised except where the mortgage or transfer is made pursuant to an order, judgment, or decree of a court of record, or to secure the payment of bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations, or is made by a public utility subject to the provisions of the Public Utilities Act, until all of the following apply:

(1) The trustee, mortgagee, or beneficiary, or any of their authorized agents shall first file for record, in the office of the recorder of each county wherein the mortgaged or trust property or some part or parcel thereof is situated, a notice of default. That notice of default shall include all of the following:

(A) A statement identifying the mortgage or deed of trust by stating the name or names of the trustor or trustors and giving the book and page, or instrument number, if applicable, where the mortgage or deed of trust is recorded or a description of the mortgaged or trust property.

(B) A statement that a breach of the obligation for which the mortgage or transfer in trust is security has occurred.

(C) A statement setting forth the nature of each breach actually known to the beneficiary and of his or her election to sell or

cause to be sold the property to satisfy that obligation and any other obligation secured by the deed of trust or mortgage that is in default.

(D) If the default is curable pursuant to Section 2924c, the statement specified in paragraph (1) of subdivision (b) of Section 2924c.

(2) Not less than three months shall elapse from the filing of the notice of default.

(3) After the lapse of the three months described in paragraph (2), the mortgagee, trustee or other person authorized to take the sale shall give notice of sale, stating the time and place thereof, in the manner and for a time not less than that set forth in Section 2924f.

(b) In performing acts required by this article, the trustee shall incur no liability for any good faith error resulting from reliance on information provided in good faith by the beneficiary regarding the nature and the amount of the default under the secured obligation, deed of trust, or mortgage. In performing the acts required by this article, a trustee shall not be subject to Title 1.6c (commencing with Section 1788) of Part 4.

(c) A recital in the deed executed pursuant to the power of sale of compliance with all requirements of law regarding the mailing of copies of notices or the publication of a copy of the notice of default or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of a copy thereof shall constitute prima facie evidence of compliance with these requirements and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice.

(d) All of the following shall constitute privileged communications pursuant to Section 47:

(1) The mailing, publication, and delivery of notices as required by this section.

(2) Performance of the procedures set forth in this article.

(3) Performance of the functions and procedures set forth in this article if those functions and procedures are necessary to carry out the duties described in Sections 729.040, 729.050, and 729.080 of the Code of Civil Procedure.

(e) There is a rebuttable presumption that the beneficiary actually knew of all unpaid loan payments on the obligation

owed to the beneficiary and secured by the deed of trust or mortgage subject to the notice of default. However, the failure to include an actually known default shall not invalidate the notice of sale and the beneficiary shall not be precluded from asserting a claim to this omitted default or defaults in a separate notice of default.

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

2924a. If, by the terms of any trust or deed of trust a power of sale is conferred upon the trustee, the attorney for the trustee, or any duly authorized agent, may conduct the sale and act in the sale as the auctioneer for the trustee.

SEC. 6. Section 729.040 of the Code of Civil Procedure is amended to read:

729.040. (a) Notwithstanding Section 701.660, when the purchaser of an interest in real property sold subject to the right of redemption pays the amount due, the levying officer conducting the sale shall execute and deliver a certificate of sale to the purchaser and record a duplicate of the certificate of sale in the office of the county recorder.

(b) The certificate of sale shall contain either:

(1) In the case of a judicial foreclosure, the information required by Section 701.670.

(2) In the case of a nonjudicial foreclosure, all of the information required by subdivisions (c), (d), and (e) of Section 701.670.

(c) In addition to the information required by subdivision (b), the certificate of sale shall also contain the following:

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

(2) The total price paid.

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

SEC. 7. Section 729.050 of the Code of Civil Procedure is amended to read:

729.050. If property is sold subject to the right of redemption, promptly after the sale the levying officer or trustee who conducted the sale shall serve notice of the right of redemption on the judgment debtor. Service shall be made personally or by mail. The notice of the right of redemption shall indicate the applicable redemption period.

SEC. 8. Section 729.070 of the Code of Civil Procedure is amended to read:

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

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

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

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

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

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

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

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

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

(g) If an amount in addition to that deposited with the levying officer is required to redeem the property, the person seeking to

redeem shall, within 10 days after the issuance of the order, pay the additional amount to the levying officer.

SEC. 9. Section 729.080 of the Code of Civil Procedure is amended to read:

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

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

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

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

(e) Liens extinguished by the sale, as provided in Section 701.630, do not reattach to the property after redemption, and the property that was subject to the extinguished lien may not be

applied to the satisfaction of the claim or judgment under which the lien was created.

Approved _____, 2006

Governor