

ASSEMBLY BILL

No. 2016

Introduced by Assembly Member Torres

February 17, 2010

An act to amend Section 2924b of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2016, as introduced, Torres. Common interest developments: requests for notices of default.

The Davis-Stirling Common Interest Development Act provides for the creation and regulation of common interest developments. Under existing law, a common interest development is managed by an association pursuant to the provisions of the governing documents of the development.

Existing law requires a trustee or mortgagee to record a notice of default and to post and publish a notice of sale prior to selling real property at a foreclosure sale. Existing law allows an association, with respect to separate interests governed by the association, to record a single request that a mortgagee, trustee, or other person authorized to record a notice of default regarding any of those separate interests mail to the association a copy of any trustee's deed upon sale concerning a separate interest, as specified.

This bill would clarify that a request by an association for notification of trustee's deed of sale does not, for purposes of a specified statute, constitute a request for a document that either effects or evidences a transfer or encumbrance of an interest in real property or that releases or terminates any interest, right, or encumbrance of an interest in real property.

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 2924b of the Civil Code is amended to
2 read:

3 2924b. (a) Any person desiring a copy of any notice of default
4 and of any notice of sale under any deed of trust or mortgage with
5 power of sale upon real property or an estate for years therein, as
6 to which deed of trust or mortgage the power of sale cannot be
7 exercised until these notices are given for the time and in the
8 manner provided in Section 2924 may, at any time subsequent to
9 recordation of the deed of trust or mortgage and prior to recordation
10 of notice of default thereunder, cause to be filed for record in the
11 office of the recorder of any county in which any part or parcel of
12 the real property is situated, a duly acknowledged request for a
13 copy of the notice of default and of sale. This request shall be
14 signed and acknowledged by the person making the request,
15 specifying the name and address of the person to whom the notice
16 is to be mailed, shall identify the deed of trust or mortgage by
17 stating the names of the parties thereto, the date of recordation
18 thereof, and the book and page where the deed of trust or mortgage
19 is recorded or the recorder’s number, and shall be in substantially
20 the following form:

21
22 “In accordance with Section 2924b, Civil Code, request is hereby
23 made that a copy of any notice of default and a copy of any notice of sale
24 under the deed of trust (or mortgage) recorded _____, _____, in Book
25 _____ page _____ records of _____ County, (or filed for record with
26 recorder’s serial number _____, _____ County) California, executed
27 by _____ as trustor (or mortgagor) in which _____ is named as
28 beneficiary (or mortgagee) and _____ as trustee be mailed to
29 _____ at _____.

30 Name Address

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

34 Signature _____”

35

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

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

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

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

26 (3) As used in paragraphs (1) and (2), the “last known address”
27 of each trustor or mortgagor means the last business or residence
28 physical address actually known by the mortgagee, beneficiary,
29 trustee, or other person authorized to record the notice of default.
30 For the purposes of this subdivision, an address is “actually known”
31 if it is contained in the original deed of trust or mortgage, or in
32 any subsequent written notification of a change of physical address
33 from the trustor or mortgagor pursuant to the deed of trust or
34 mortgage. For the purposes of this subdivision, “physical address”
35 does not include an e-mail or any form of electronic address for a
36 trustor or mortgagor. The beneficiary shall inform the trustee of
37 the trustor’s last address actually known by the beneficiary.
38 However, the trustee shall incur no liability for failing to send any
39 notice to the last address unless the trustee has actual knowledge
40 of it.

1 (4) A “person authorized to record the notice of default or the
2 notice of sale” shall include an agent for the mortgagee or
3 beneficiary, an agent of the named trustee, any person designated
4 in an executed substitution of trustee, or an agent of that substituted
5 trustee.

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

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

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

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

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

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

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

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

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

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

24 (4) Provide a copy of the notice of sale to the Internal Revenue
25 Service, in accordance with Section 7425 of the Internal Revenue
26 Code and any applicable federal regulation, if a “Notice of Federal
27 Tax Lien under Internal Revenue Laws” has been recorded,
28 subsequent to the deed of trust or mortgage being foreclosed,
29 against the real property to which the notice of sale applies. The
30 failure to provide the Internal Revenue Service with a copy of the
31 notice of sale pursuant to this paragraph shall be sufficient cause
32 to rescind the trustee’s sale and invalidate the trustee’s deed, at
33 the option of either the successful bidder at the trustee’s sale or
34 the trustee, and in either case with the consent of the beneficiary.
35 Any option to rescind the trustee’s sale pursuant to this paragraph
36 shall be exercised prior to any transfer of the property by the
37 successful bidder to a bona fide purchaser for value. A rescision of
38 the trustee’s sale pursuant to this paragraph may be recorded in a
39 notice of rescision pursuant to Section 1058.5.

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

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

31 (e) Any person required to mail a copy of a notice of default or
 32 notice of sale to each trustor or mortgagor pursuant to subdivision
 33 (b) or (c) by registered or certified mail shall simultaneously cause
 34 to be deposited in the United States mail, with postage prepaid and
 35 mailed by first-class mail, an envelope containing an additional
 36 copy of the required notice addressed to each trustor or mortgagor
 37 at the same address to which the notice is sent by registered or
 38 certified mail pursuant to subdivision (b) or (c). The person shall
 39 execute and retain an affidavit identifying the notice mailed,
 40 showing the name and residence or business address of that person,

1 that he or she is over the age of 18 years, the date of deposit in the
2 mail, the name and address of the trustor or mortgagor to whom
3 sent, and that the envelope was sealed and deposited in the mail
4 with postage fully prepaid. In the absence of fraud, the affidavit
5 required by this subdivision shall establish a conclusive
6 presumption of mailing.

7 ~~(f) With~~

8 *(f) (1) Notwithstanding subdivision (a), with respect to separate*
9 *interests governed by an association, as defined in subdivision (a)*
10 *of Section 1351, the association may cause to be filed in the office*
11 *of the recorder in the county in which the separate interests are*
12 *situated a request that a mortgagee, trustee, or other person*
13 *authorized to record a notice of default regarding any of those*
14 *separate interests mail to the association a copy of any trustee's*
15 *deed upon sale concerning a separate interest. The request shall*
16 *include a legal description or the assessor's parcel number of all*
17 *the separate interests. A request recorded pursuant to this*
18 *subdivision shall include the name and address of the association*
19 *and a statement that it is a homeowners' association. Subsequent*
20 *requests of an association shall supersede prior requests. A request*
21 *pursuant to this subdivision shall be recorded before the filing of*
22 *a notice of default. The mortgagee, trustee, or other authorized*
23 *person shall mail the requested information to the association*
24 *within 15 business days following the date the trustee's deed is*
25 *recorded. Failure to mail the request, pursuant to this subdivision,*
26 *shall not affect the title to real property.*

27 *(2) A request filed pursuant to paragraph (1) does not, for*
28 *purposes of Section 27288.1 of the Government Code, constitute*
29 *a request for a document that either effects or evidences a transfer*
30 *or encumbrance of an interest in real property or that releases or*
31 *terminates any interest, right, or encumbrance of an interest in*
32 *real property.*

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

- 1 (h) “Business day,” as used in this section, has the meaning
- 2 specified in Section 9.

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