

Introduced by Senator Calderon

February 18, 2010

An act to amend Sections 2924 and 2924c of the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1221, as introduced, Calderon. Mortgages: notice of sale.

Existing law requires that, upon a breach of the obligation of a mortgage or transfer of an interest in property, the trustee, mortgagee, or beneficiary record a notice of default in the office of the county recorder where the mortgaged or trust property is situated and mail the notice of default to the mortgagor or trustor. After the lapse of not less than 3 months from the filing of the notice of default, the mortgagee, trustee, or other person authorized to take the sale is required to give notice of sale, stating the time and place, as specified.

This bill would instead require those persons to give notice of sale after the lapse of not less than 85 days, rather than 3 months, from the filing of the notice of default. The bill would make a conforming change.

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 2924 of the Civil Code, as added by
- 2 Section 8 of Chapter 4 of the Second Extraordinary Session of the
- 3 Statutes of 2009, is amended to read:
- 4 2924. (a) Every transfer of an interest in property, other than
- 5 in trust, made only as a security for the performance of another
- 6 act, is to be deemed a mortgage, except when in the case of

1 personal property it is accompanied by actual change of possession,
2 in which case it is to be deemed a pledge. ~~Where~~ *When*, by a
3 mortgage created after July 27, 1917, of any estate in real property,
4 other than an estate at will or for years, less than two, or in any
5 transfer in trust made after July 27, 1917, of a like estate to secure
6 the performance of an obligation, a power of sale is conferred upon
7 the mortgagee, trustee, or any other person, to be exercised after
8 a breach of the obligation for which that mortgage or transfer is a
9 security, the power shall not be exercised except where the
10 mortgage or transfer is made pursuant to an order, judgment, or
11 decree of a court of record, or to secure the payment of bonds or
12 other evidences of indebtedness authorized or permitted to be
13 issued by the Commissioner of Corporations, or is made by a public
14 utility subject to the provisions of the Public Utilities Act, until
15 all of the following apply:

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

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

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

28 (C) A statement setting forth the nature of each breach actually
29 known to the beneficiary and of his or her election to sell or cause
30 to be sold the property to satisfy that obligation and any other
31 obligation secured by the deed of trust or mortgage that is in
32 default.

33 (D) If the default is curable pursuant to Section 2924c, the
34 statement specified in paragraph (1) of subdivision (b) of Section
35 2924c.

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

38 (3) After the lapse of ~~the three months described in paragraph~~
39 ~~(2)~~ *not less than 85 days from the filing of the notice of default*,
40 the mortgagee, trustee, or other person authorized to take the sale

1 shall give notice of sale, stating the time and place thereof, in the
2 manner and for a time not less than that set forth in Section 2924f.

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

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

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

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

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

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

28 (e) There is a rebuttable presumption that the beneficiary
29 actually knew of all unpaid loan payments on the obligation owed
30 to the beneficiary and secured by the deed of trust or mortgage
31 subject to the notice of default. However, the failure to include an
32 actually known default shall not invalidate the notice of sale and
33 the beneficiary shall not be precluded from asserting a claim to
34 this omitted default or defaults in a separate notice of default.

35 (f) This section shall become operative on January 1, 2011.

36 SEC. 2. Section 2924 of the Civil Code, as added by Section
37 8 of Chapter 5 of the Second Extraordinary Session of the Statutes
38 of 2009, is amended to read:

39 2924. (a) Every transfer of an interest in property, other than
40 in trust, made only as a security for the performance of another

1 act, is to be deemed a mortgage, except when in the case of
2 personal property it is accompanied by actual change of possession,
3 in which case it is to be deemed a pledge. ~~Where~~ *When*, by a
4 mortgage created after July 27, 1917, of any estate in real property,
5 other than an estate at will or for years, less than two, or in any
6 transfer in trust made after July 27, 1917, of a like estate to secure
7 the performance of an obligation, a power of sale is conferred upon
8 the mortgagee, trustee, or any other person, to be exercised after
9 a breach of the obligation for which that mortgage or transfer is a
10 security, the power shall not be exercised except where the
11 mortgage or transfer is made pursuant to an order, judgment, or
12 decree of a court of record, or to secure the payment of bonds or
13 other evidences of indebtedness authorized or permitted to be
14 issued by the Commissioner of Corporations, or is made by a public
15 utility subject to the provisions of the Public Utilities Act, until
16 all of the following apply:

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

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

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

29 (C) A statement setting forth the nature of each breach actually
30 known to the beneficiary and of his or her election to sell or cause
31 to be sold the property to satisfy that obligation and any other
32 obligation secured by the deed of trust or mortgage that is in
33 default.

34 (D) If the default is curable pursuant to Section 2924c, the
35 statement specified in paragraph (1) of subdivision (b) of Section
36 2924c.

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

39 (3) After the lapse of ~~the three months described in paragraph~~
40 *(2) not less than 85 days from the filing of the notice of default,*

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

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

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

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

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

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

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

29 (e) There is a rebuttable presumption that the beneficiary
30 actually knew of all unpaid loan payments on the obligation owed
31 to the beneficiary and secured by the deed of trust or mortgage
32 subject to the notice of default. However, the failure to include an
33 actually known default shall not invalidate the notice of sale and
34 the beneficiary shall not be precluded from asserting a claim to
35 this omitted default or defaults in a separate notice of default.

36 (f) This section shall become operative on January 1, 2011.

37 SEC. 3. Section 2924c of the Civil Code is amended to read:

38 2924c. (a) (1) Whenever all or a portion of the principal sum
39 of any obligation secured by deed of trust or mortgage on real
40 property or an estate for years therein hereafter executed has, prior

1 to the maturity date fixed in that obligation, become due or been
2 declared due by reason of default in payment of interest or of any
3 installment of principal, or by reason of failure of trustor or
4 mortgagor to pay, in accordance with the terms of that obligation
5 or of the deed of trust or mortgage, taxes, assessments, premiums
6 for insurance, or advances made by beneficiary or mortgagee in
7 accordance with the terms of that obligation or of the deed of trust
8 or mortgage, the trustor or mortgagor or his or her successor in
9 interest in the mortgaged or trust property or any part thereof, or
10 any beneficiary under a subordinate deed of trust or any other
11 person having a subordinate lien or encumbrance of record thereon,
12 at any time within the period specified in subdivision (e), if the
13 power of sale therein is to be exercised, or, otherwise at any time
14 prior to entry of the decree of foreclosure, may pay to the
15 beneficiary or the mortgagee or their successors in interest,
16 respectively, the entire amount due, at the time payment is
17 tendered, with respect to (A) all amounts of principal, interest,
18 taxes, assessments, insurance premiums, or advances actually
19 known by the beneficiary to be, and that are, in default and shown
20 in the notice of default, under the terms of the deed of trust or
21 mortgage and the obligation secured thereby, (B) all amounts in
22 default on recurring obligations not shown in the notice of default,
23 and (C) all reasonable costs and expenses, subject to subdivision
24 (c), which are actually incurred in enforcing the terms of the
25 obligation, deed of trust, or mortgage, and trustee's or attorney's
26 fees, subject to subdivision (d), other than the portion of principal
27 as would not then be due had no default occurred, and thereby cure
28 the default theretofore existing, and thereupon, all proceedings
29 theretofore had or instituted shall be dismissed or discontinued
30 and the obligation and deed of trust or mortgage shall be reinstated
31 and shall be and remain in force and effect, the same as if the
32 acceleration had not occurred. This section does not apply to bonds
33 or other evidences of indebtedness authorized or permitted to be
34 issued by the Commissioner of Corporations or made by a public
35 utility subject to the Public Utilities Code. For the purposes of this
36 subdivision, the term "recurring obligation" means all amounts of
37 principal and interest on the loan, or rents, subject to the deed of
38 trust or mortgage in default due after the notice of default is
39 recorded; all amounts of principal and interest or rents advanced
40 on senior liens or leaseholds which are advanced after the

1 recordation of the notice of default; and payments of taxes,
2 assessments, and hazard insurance advanced after recordation of
3 the notice of default. ~~Where~~ *If* the beneficiary or mortgagee has
4 made no advances on defaults which would constitute recurring
5 obligations, the beneficiary or mortgagee may require the trustor
6 or mortgagor to provide reliable written evidence that the amounts
7 have been paid prior to reinstatement.

8 (2) If the trustor, mortgagor, or other person authorized to cure
9 the default pursuant to this subdivision does cure the default, the
10 beneficiary or mortgagee or the agent for the beneficiary or
11 mortgagee shall, within 21 days following the reinstatement,
12 execute and deliver to the trustee a notice of rescission which
13 rescinds the declaration of default and demand for sale and advises
14 the trustee of the date of reinstatement. The trustee shall cause the
15 notice of rescission to be recorded within 30 days of receipt of the
16 notice of rescission and of all allowable fees and costs.

17 No charge, except for the recording fee, shall be made against
18 the trustor or mortgagor for the execution and recordation of the
19 notice which rescinds the declaration of default and demand for
20 sale.

21 (b) (1) The notice, of any default described in this section,
22 recorded pursuant to Section 2924, and mailed to any person
23 pursuant to Section 2924b, shall begin with the following
24 statement, printed or typed thereon:

25
26 “IMPORTANT NOTICE [14-point boldface type if printed or
27 in capital letters if typed]

28
29 IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE
30 YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD
31 WITHOUT ANY COURT ACTION, [14-point boldface type if
32 printed or in capital letters if typed] and you may have the legal
33 right to bring your account in good standing by paying all of your
34 past due payments plus permitted costs and expenses within the
35 time permitted by law for reinstatement of your account, which is
36 normally five business days prior to the date set for the sale of
37 your property. No sale date may be set until ~~three months~~ *85 days*
38 from the date this notice of default may be recorded (which date
39 of recordation appears on this notice).

1 This amount is _____ as of _____
2 (Date)
3

4 and will increase until your account becomes current.

5 While your property is in foreclosure, you still must pay other
6 obligations (such as insurance and taxes) required by your note
7 and deed of trust or mortgage. If you fail to make future payments
8 on the loan, pay taxes on the property, provide insurance on the
9 property, or pay other obligations as required in the note and deed
10 of trust or mortgage, the beneficiary or mortgagee may insist that
11 you do so in order to reinstate your account in good standing. In
12 addition, the beneficiary or mortgagee may require as a condition
13 to reinstatement that you provide reliable written evidence that
14 you paid all senior liens, property taxes, and hazard insurance
15 premiums.

16 Upon your written request, the beneficiary or mortgagee will
17 give you a written itemization of the entire amount you must pay.
18 You may not have to pay the entire unpaid portion of your account,
19 even though full payment was demanded, but you must pay all
20 amounts in default at the time payment is made. However, you
21 and your beneficiary or mortgagee may mutually agree in writing
22 prior to the time the notice of sale is posted (which may not be
23 earlier than the end of the ~~three-month~~ 85-day period stated above)
24 to, among other things, (1) provide additional time in which to
25 cure the default by transfer of the property or otherwise; or (2)
26 establish a schedule of payments in order to cure your default; or
27 both (1) and (2).

28 Following the expiration of the time period referred to in the
29 first paragraph of this notice, unless the obligation being foreclosed
30 upon or a separate written agreement between you and your creditor
31 permits a longer period, you have only the legal right to stop the
32 sale of your property by paying the entire amount demanded by
33 your creditor.

34 To find out the amount you must pay, or to arrange for payment
35 to stop the foreclosure, or if your property is in foreclosure for any
36 other reason, contact:

37
38 _____
39 (Name of beneficiary or mortgagee)
40 _____

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(Mailing address)



(Telephone)

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan.

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, **YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.** [14-point boldface type if printed or in capital letters if typed]”

Unless otherwise specified, the notice, if printed, shall appear in at least 12-point boldface type.

If the obligation secured by the deed of trust or mortgage is a contract or agreement described in paragraph (1) or (4) of subdivision (a) of Section 1632, the notice required herein shall be in Spanish if the trustor requested a Spanish language translation of the contract or agreement pursuant to Section 1632. If the obligation secured by the deed of trust or mortgage is contained in a home improvement contract, as defined in Sections 7151.2 and 7159 of the Business and Professions Code, which is subject to Title 2 (commencing with Section 1801), the seller shall specify on the contract whether or not the contract was principally negotiated in Spanish and if the contract was principally negotiated in Spanish, the notice required herein shall be in Spanish. No assignee of the contract or person authorized to record the notice of default shall incur any obligation or liability for failing to mail a notice in Spanish unless Spanish is specified in the contract or the assignee or person has actual knowledge that the secured obligation was principally negotiated in Spanish. Unless specified in writing to the contrary, a copy of the notice required by subdivision (c) of Section 2924b shall be in English.

(2) Any failure to comply with the provisions of this subdivision shall not affect the validity of a sale in favor of a bona fide purchaser or the rights of an encumbrancer for value and without notice.

(c) Costs and expenses which may be charged pursuant to Sections 2924 to 2924i, inclusive, shall be limited to the costs incurred for recording, mailing, including certified and express

1 mail charges, publishing, and posting notices required by Sections
2 2924 to 2924i, inclusive, postponement pursuant to Section 2924g
3 not to exceed fifty dollars (\$50) per postponement and a fee for a
4 trustee's sale guarantee or, in the event of judicial foreclosure, a
5 litigation guarantee. For purposes of this subdivision, a trustee or
6 beneficiary may purchase a trustee's sale guarantee at a rate
7 meeting the standards contained in Sections 12401.1 and 12401.3
8 of the Insurance Code.

9 (d) Trustee's or attorney's fees which may be charged pursuant
10 to subdivision (a), or until the notice of sale is deposited in the
11 mail to the trustor as provided in Section 2924b, if the sale is by
12 power of sale contained in the deed of trust or mortgage, or,
13 otherwise at any time prior to the decree of foreclosure, are hereby
14 authorized to be in a base amount that does not exceed three
15 hundred dollars (\$300) if the unpaid principal sum secured is one
16 hundred fifty thousand dollars (\$150,000) or less, or two hundred
17 fifty dollars (\$250) if the unpaid principal sum secured exceeds
18 one hundred fifty thousand dollars (\$150,000), plus one-half of 1
19 percent of the unpaid principal sum secured exceeding fifty
20 thousand dollars (\$50,000) up to and including one hundred fifty
21 thousand dollars (\$150,000), plus one-quarter of 1 percent of any
22 portion of the unpaid principal sum secured exceeding one hundred
23 fifty thousand dollars (\$150,000) up to and including five hundred
24 thousand dollars (\$500,000), plus one-eighth of 1 percent of any
25 portion of the unpaid principal sum secured exceeding five hundred
26 thousand dollars (\$500,000). Any charge for trustee's or attorney's
27 fees authorized by this subdivision shall be conclusively presumed
28 to be lawful and valid where the charge does not exceed the
29 amounts authorized herein. For purposes of this subdivision, the
30 unpaid principal sum secured shall be determined as of the date
31 the notice of default is recorded.

32 (e) Reinstatement of a monetary default under the terms of an
33 obligation secured by a deed of trust, or mortgage may be made
34 at any time within the period commencing with the date of
35 recordation of the notice of default until five business days prior
36 to the date of sale set forth in the initial recorded notice of sale.

37 In the event the sale does not take place on the date set forth in
38 the initial recorded notice of sale or a subsequent recorded notice
39 of sale is required to be given, the right of reinstatement shall be
40 revived as of the date of recordation of the subsequent notice of

1 sale, and shall continue from that date until five business days
2 prior to the date of sale set forth in the subsequently recorded notice
3 of sale.

4 In the event the date of sale is postponed on the date of sale set
5 forth in either an initial or any subsequent notice of sale, or is
6 postponed on the date declared for sale at an immediately preceding
7 postponement of sale, and, the postponement is for a period which
8 exceeds five business days from the date set forth in the notice of
9 sale, or declared at the time of postponement, then the right of
10 reinstatement is revived as of the date of postponement and shall
11 continue from that date until five business days prior to the date
12 of sale declared at the time of the postponement.

13 Nothing contained herein shall give rise to a right of
14 reinstatement during the period of five business days prior to the
15 date of sale, whether the date of sale is noticed in a notice of sale
16 or declared at a postponement of sale.

17 Pursuant to the terms of this subdivision, no beneficiary, trustee,
18 mortgagee, or their agents or successors shall be liable in any
19 manner to a trustor, mortgagor, their agents or successors or any
20 beneficiary under a subordinate deed of trust or mortgage or any
21 other person having a subordinate lien or encumbrance of record
22 thereon for the failure to allow a reinstatement of the obligation
23 secured by a deed of trust or mortgage during the period of five
24 business days prior to the sale of the security property, and no such
25 right of reinstatement during this period is created by this section.
26 Any right of reinstatement created by this section is terminated
27 five business days prior to the date of sale set forth in the initial
28 date of sale, and is revived only as prescribed herein and only as
29 of the date set forth herein.

30 As used in this subdivision, the term “business day” has the same
31 meaning as specified in Section 9.