

AMENDED IN SENATE APRIL 19, 2010

SENATE BILL

No. 1427

Introduced by Senator Price

February 19, 2010

An act to amend ~~Sections 2924 and 2929.3 of~~ *Section 2929.3 of*, and to add *Sections 2929.4 and 2929.45 to*, the Civil Code, relating to foreclosures.

LEGISLATIVE COUNSEL'S DIGEST

SB 1427, as amended, Price. Foreclosures: property maintenance.

~~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. Existing law requires the notice of default to include specified information, including the identification of the trustors and a description of the property.~~

This bill would require a notice of default to include a statement that identifies the name, address, telephone, and e-mail address of any person or entity that is designated to be responsible for the maintenance of the property for which the deed of trust is recorded.

Existing law, until January 1, 2013, requires a legal owner to maintain vacant residential property purchased at a foreclosure sale, or acquired by that owner through foreclosure under a mortgage or deed of trust. Existing law authorizes a governmental entity to impose civil fines and penalties for failure to maintain that property of up to \$1,000 per day for a violation. Existing law provides that these statutory provisions do not preempt any local ordinances and prohibits a governmental entity

from imposing fines on a legal owner under both these provisions and a local ordinance.

This bill would provide that these statutory provisions preempt any local ordinance and would further provide that ~~any fines or penalties imposed for failure to maintain a property~~ *the costs of nuisance abatement measures taken by a governmental entity authorized under these provisions*, are the obligation of the legal owner and that these fines would be treated as a tax lien against the property in a foreclosure sale. *The bill would provide that the costs of nuisance abatement shall not exceed the actual and reasonable costs of nuisance abatement and would require a governmental entity to adopt a schedule of the costs of nuisance abatement prior to the collection of those costs. This bill would further provide that any fines or penalties imposed by a local ordinance for failure to maintain property, subject to a notice of default, that has not been purchased at a foreclosure sale or acquired through foreclosure under a mortgage or deed of trust, are the obligation of the owner of record at the time of the violation and that any lien imposed against that property shall attach to the parcel upon recordation of that lien.*

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~~
7 ~~personal property it is accompanied by actual change of possession,~~
8 ~~in which case it is to be deemed a pledge. Where, by a mortgage~~
9 ~~created after July 27, 1917, of any estate in real property, other~~
10 ~~than an estate at will or for years, less than two, or in any transfer~~
11 ~~in trust made after July 27, 1917, of a like estate to secure the~~
12 ~~performance of an obligation, a power of sale is conferred upon~~
13 ~~the mortgagee, trustee, or any other person, to be exercised after~~
14 ~~a breach of the obligation for which that mortgage or transfer is a~~
15 ~~security, the power shall not be exercised except where the~~
16 ~~mortgage or transfer is made pursuant to an order, judgment, or~~

1 ~~decree of a court of record, or to secure the payment of bonds or~~
2 ~~other evidences of indebtedness authorized or permitted to be~~
3 ~~issued by the Commissioner of Corporations, or is made by a public~~
4 ~~utility subject to the provisions of the Public Utilities Act, until~~
5 ~~all of the following apply:~~

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

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

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

18 ~~(C) A statement setting forth the nature of each breach actually~~
19 ~~known to the beneficiary and of his or her election to sell or cause~~
20 ~~to be sold the property to satisfy that obligation and any other~~
21 ~~obligation secured by the deed of trust or mortgage that is in~~
22 ~~default.~~

23 ~~(D) If the default is curable pursuant to Section 2924c, the~~
24 ~~statement specified in paragraph (1) of subdivision (b) of Section~~
25 ~~2924c.~~

26 ~~(E) A statement that identifies the name, address, telephone~~
27 ~~number, and electronic mail address, if available, of the person or~~
28 ~~entity, if any, that the beneficiary or mortgagee has designated to~~
29 ~~be primarily responsible for the maintenance of the property.~~

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

32 ~~(3) After the lapse of the three months described in paragraph~~
33 ~~(2), the mortgagee, trustee, or other person authorized to take the~~
34 ~~sale shall give notice of sale, stating the time and place thereof, in~~
35 ~~the manner and for a time not less than that set forth in Section~~
36 ~~2924f.~~

37 ~~(b) In performing acts required by this article, the trustee shall~~
38 ~~incur no liability for any good faith error resulting from reliance~~
39 ~~on information provided in good faith by the beneficiary regarding~~
40 ~~the nature and the amount of the default under the secured~~

1 obligation, deed of trust, or mortgage. In performing the acts
2 required by this article, a trustee shall not be subject to Title 1.6c
3 (commencing with Section 1788) of Part 4.

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

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

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

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

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

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

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

30 ~~SEC. 2. Section 2924 of the Civil Code, as added by Section
31 8 of Chapter 5 of the Second Extraordinary Session of the Statutes
32 of 2009, is amended to read:~~

33 ~~2924. (a) Every transfer of an interest in property, other than
34 in trust, made only as a security for the performance of another
35 act, is to be deemed a mortgage, except when in the case of
36 personal property it is accompanied by actual change of possession,
37 in which case it is to be deemed a pledge. Where, by a mortgage
38 created after July 27, 1917, of any estate in real property, other
39 than an estate at will or for years, less than two, or in any transfer
40 in trust made after July 27, 1917, of a like estate to secure the~~

1 performance of an obligation, a power of sale is conferred upon
2 the mortgagee, trustee, or any other person, to be exercised after
3 a breach of the obligation for which that mortgage or transfer is a
4 security, the power shall not be exercised except where the
5 mortgage or transfer is made pursuant to an order, judgment, or
6 decree of a court of record, or to secure the payment of bonds or
7 other evidences of indebtedness authorized or permitted to be
8 issued by the Commissioner of Corporations, or is made by a public
9 utility subject to the provisions of the Public Utilities Act, until
10 all of the following apply:

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

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

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

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

28 (D) If the default is curable pursuant to Section 2924c, the
29 statement specified in paragraph (1) of subdivision (b) of Section
30 2924c.

31 (E) A statement that identifies the name, address, telephone
32 number, and electronic mail address, if available, of the person or
33 entity, if any, that the beneficiary or mortgagee has designated to
34 be primarily responsible for the maintenance of the property.

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

37 (3) After the lapse of the three months described in paragraph
38 (2), the mortgagee, trustee, or other person authorized to take the
39 sale shall give notice of sale, stating the time and place thereof, in

1 the manner and for a time not less than that set forth in Section
2 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 (e) ~~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. 3.~~

37 *SECTION 1.* Section 2929.3 of the Civil Code is amended to
38 read:

39 2929.3. (a) (1) A legal owner shall maintain vacant residential
40 property purchased by that owner at a foreclosure sale, or acquired

1 by that owner through foreclosure under a mortgage or deed of
2 trust. A governmental entity may impose a civil fine of up to one
3 thousand dollars (\$1,000) per day for a violation. If the
4 governmental entity chooses to impose a fine pursuant to this
5 section, it shall give notice of the alleged violation, including a
6 description of the conditions that gave rise to the allegation, and
7 notice of the entity’s intent to assess a civil fine if action to correct
8 the violation is not commenced within a period of not less than 14
9 days and completed within a period of not less than 30 days. The
10 notice shall be mailed to the address provided in the deed or other
11 instrument as specified in subdivision (a) of Section 27321.5 of
12 the Government Code, or, if none, to the return address provided
13 on the deed or other instrument.

14 (2) The governmental entity shall provide a period of not less
15 than 30 days for the legal owner to remedy the violation prior to
16 imposing a civil fine and shall allow for a hearing and opportunity
17 to contest any fine imposed. In determining the amount of the fine,
18 the governmental entity shall take into consideration any timely
19 and good faith efforts by the legal owner to remedy the violation.
20 The maximum civil fine authorized by this section is one thousand
21 dollars (\$1,000) for each day that the owner fails to maintain the
22 property, commencing on the day following the expiration of the
23 period to remedy the violation established by the governmental
24 entity.

25 (3) Subject to the provisions of this section, a governmental
26 entity may establish different compliance periods for different
27 conditions on the same property in the notice of alleged violation
28 mailed to the legal owner.

29 (b) For purposes of this section, “failure to maintain” means
30 failure to care for the exterior of the property, including, but not
31 limited to, permitting excessive foliage growth that diminishes the
32 value of surrounding properties, failing to take action to prevent
33 trespassers or squatters from remaining on the property, or failing
34 to take action to prevent mosquito larvae from growing in standing
35 water or other conditions that create a public nuisance.

36 (c) Notwithstanding subdivisions (a) and (b), a governmental
37 entity may provide less than 30 days’ notice to remedy a condition
38 before imposing a civil fine if the entity determines that a specific
39 condition of the property threatens public health or safety and

1 provided that notice of that determination and time for compliance
2 is given.

3 (d) Fines and penalties collected pursuant to this section shall
4 be directed to local nuisance abatement programs.

5 (e) A governmental entity may not impose fines on a legal owner
6 under both this section and a local ordinance.

7 ~~(f) Fines or penalties imposed by a local ordinance for failure
8 to maintain a property that is subject to a notice of default are the
9 obligation of the legal owner and shall be treated as a lien against
10 the property in a foreclosure sale.~~

11 ~~(g)~~

12 (f) These provisions shall preempt any local ordinance.

13 ~~(h)~~

14 (g) This section shall only apply to residential real property.

15 ~~(i)~~

16 (h) The rights and remedies provided in this section are
17 cumulative and in addition to any other rights and remedies
18 provided by law.

19 ~~(j)~~

20 (i) This section shall remain in effect only until January 1, 2013,
21 and as of that date is repealed, unless a later enacted statute, that
22 is enacted before January 1, 2013, deletes or extends that date.

23 *SEC. 2. Section 2929.4 is added to the Civil Code, to read:*

24 *2929.4. Fines or penalties imposed by a local ordinance for
25 failure to maintain a property, subject to a notice of default, that
26 has not been purchased at a foreclosure sale or acquired through
27 foreclosure under a mortgage or deed of trust are the obligation
28 of the owner of record at the time of the violation and any lien
29 imposed against that property shall attach to the parcel upon
30 recordation of that lien.*

31 *SEC. 3. Section 2929.45 is added to the Civil Code, to read:*

32 *2929.45. (a) The costs of nuisance abatement measures taken
33 by a governmental entity with regard to property that is subject
34 to a notice of default shall be the obligation of the legal owner of
35 that property and shall be treated as a tax lien against the property
36 in a foreclosure sale.*

37 *(b) (1) The costs of nuisance abatement measures described in
38 subdivision (a) shall not exceed the actual and reasonable costs
39 of nuisance abatement.*

1 (2) *A governmental entity shall adopt a schedule of costs for*
2 *nuisance abatement measures prior to collection of those costs.*

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