

AMENDED IN ASSEMBLY JANUARY 4, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 407

Introduced by Assembly Member Davis

February 14, 2011

An act to amend Section ~~10242.6~~ of the Business and Professions Code, and to amend Section ~~2954.9~~ 2941 of the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 407, as amended, Davis. Mortgages: ~~prepayment~~ recording certificates of discharge: penalties.

Existing law requires a mortgagee or the assignee of the mortgagee, within 30 days after any mortgage has been satisfied, to execute a certificate of discharge and to record or cause to be recorded that certificate in the office of the county recorder, as specified. Existing law requires the beneficiary or the assignee of the beneficiary, within 30 calendar days after the obligation secured by any deed of trust has been satisfied, to execute and deliver to the trustee the original note, deed of trust, request for a full reconveyance, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust. Existing law requires the trustee to execute the full reconveyance and to record or cause it to be recorded in the office of the county recorder in which the deed of trust is recorded within 21 calendar days after receipt by the trustee of the original note, deed of trust, request for a full reconveyance, and imposes additional requirements on the trustee in connection with delivery of the reconveyance instrument, original note, and deed of trust. Existing law provides that a violation of these provisions shall make the violator liable to the person affected

by the violation for all damages which that person may sustain by reason of the violation, and shall require that the violator forfeit to that person the sum of \$500.

This bill would increase the penalty that the violator is liable to forfeit to \$1,000.

~~Existing law limits the circumstances under which a prepayment charge can be imposed with respect to loans secured by a mortgage or deed of trust on real property improved with one to 4 dwelling units.~~

This bill would, instead, prohibit the imposition of prepayment charges for these loans.

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 2941 of the Civil Code is amended to
2 read:

3 2941. (a) Within 30 days after any mortgage has been satisfied,
4 the mortgagee or the assignee of the mortgagee shall execute a
5 certificate of the discharge thereof, as provided in Section 2939,
6 and shall record or cause to be recorded in the office of the county
7 recorder in which the mortgage is recorded. The mortgagee shall
8 then deliver, upon the written request of the mortgagor or the
9 mortgagor’s heirs, successors, or assignees, as the case may be,
10 the original note and mortgage to the person making the request.

11 (b) (1) Within 30 calendar days after the obligation secured by
12 any deed of trust has been satisfied, the beneficiary or the assignee
13 of the beneficiary shall execute and deliver to the trustee the
14 original note, deed of trust, request for a full reconveyance, and
15 other documents as may be necessary to reconvey, or cause to be
16 reconveyed, the deed of trust.

17 (A) The trustee shall execute the full reconveyance and shall
18 record or cause it to be recorded in the office of the county recorder
19 in which the deed of trust is recorded within 21 calendar days after
20 receipt by the trustee of the original note, deed of trust, request for
21 a full reconveyance, the fee that may be charged pursuant to
22 subdivision (e), recorder’s fees, and other documents as may be
23 necessary to reconvey, or cause to be reconveyed, the deed of trust.

24 (B) The trustee shall deliver a copy of the reconveyance to the
25 beneficiary, its successor in interest, or its servicing agent, if

1 known. The reconveyance instrument shall specify one of the
2 following options for delivery of the instrument, the addresses of
3 which the recorder has no duty to validate:

4 (i) The trustor or successor in interest, and that person's last
5 known address, as the person to whom the recorder will deliver
6 the recorded instrument pursuant to Section 27321 of the
7 Government Code.

8 (ii) That the recorder shall deliver the recorded instrument to
9 the trustee's address. If the trustee's address is specified for
10 delivery, the trustee shall mail the recorded instrument to the trustor
11 or the successor in interest to the last known address for that party.

12 (C) Following execution and recordation of the full
13 reconveyance, upon receipt of a written request by the trustor or
14 the trustor's heirs, successors, or assignees, the trustee shall then
15 deliver, or caused to be delivered, the original note and deed of
16 trust to the person making that request.

17 (D) If the note or deed of trust, or any copy of the note or deed
18 of trust, is electronic, upon satisfaction of an obligation secured
19 by a deed of trust, any electronic original, or electronic copy which
20 has not been previously marked solely for use as a copy, of the
21 note and deed of trust, shall be altered to indicate that the obligation
22 is paid in full.

23 (2) If the trustee has failed to execute and record, or cause to
24 be recorded, the full reconveyance within 60 calendar days of
25 satisfaction of the obligation, the beneficiary, upon receipt of a
26 written request by the trustor or trustor's heirs, successor in interest,
27 agent, or assignee, shall execute and acknowledge a document
28 pursuant to Section 2934a substituting itself or another as trustee
29 and issue a full reconveyance.

30 (3) If a full reconveyance has not been executed and recorded
31 pursuant to either paragraph (1) or paragraph (2) within 75 calendar
32 days of satisfaction of the obligation, then a title insurance
33 company may prepare and record a release of the obligation.
34 However, at least 10 days prior to the issuance and recording of a
35 full release pursuant to this paragraph, the title insurance company
36 shall mail by first-class mail with postage prepaid, the intention
37 to release the obligation to the trustee, trustor, and beneficiary of
38 record, or their successor in interest of record, at the last known
39 address.

40 (A) The release shall set forth:

1 (i) The name of the beneficiary.

2 (ii) The name of the trustor.

3 (iii) The recording reference to the deed of trust.

4 (iv) A recital that the obligation secured by the deed of trust has
5 been paid in full.

6 (v) The date and amount of payment.

7 (B) The release issued pursuant to this subdivision shall be
8 entitled to recordation and, when recorded, shall be deemed to be
9 the equivalent of a reconveyance of a deed of trust.

10 (4) Where an obligation secured by a deed of trust was paid in
11 full prior to July 1, 1989, and no reconveyance has been issued
12 and recorded by October 1, 1989, then a release of obligation as
13 provided for in paragraph (3) may be issued.

14 (5) Paragraphs (2) and (3) do not excuse the beneficiary or the
15 trustee from compliance with paragraph (1). Paragraph (3) does
16 not excuse the beneficiary from compliance with paragraph (2).

17 (6) In addition to any other remedy provided by law, a title
18 insurance company preparing or recording the release of the
19 obligation shall be liable to any party for damages, including
20 attorney's fees, which any person may sustain by reason of the
21 issuance and recording of the release, pursuant to paragraphs (3)
22 and (4).

23 (7) A beneficiary may, at its discretion, in accordance with the
24 requirements and procedures of Section 2934a, substitute the title
25 company conducting the escrow through which the obligation is
26 satisfied for the trustee of record, in which case the title company
27 assumes the obligation of a trustee under this subdivision, and may
28 collect the fee authorized by subdivision (e).

29 (8) In lieu of delivering the original note and deed of trust to
30 the trustee within 30 days of loan satisfaction, as required by
31 paragraph (1) of subdivision (b), a beneficiary who executes and
32 delivers to the trustee a request for a full reconveyance within 30
33 days of loan satisfaction may, within 120 days of loan satisfaction,
34 deliver the original note and deed of trust to either the trustee or
35 trustor. If the note and deed of trust are delivered as provided in
36 this paragraph, upon satisfaction of the note and deed of trust, the
37 note and deed of trust shall be altered to indicate that the obligation
38 is paid in full. Nothing in this paragraph alters the requirements
39 and obligations set forth in paragraphs (2) and (3).

1 (c) For the purposes of this section, the phrases “cause to be
2 recorded” and “cause it to be recorded” include, but are not limited
3 to, sending by certified mail with the United States Postal Service
4 or by an independent courier service using its tracking service that
5 provides documentation of receipt and delivery, including the
6 signature of the recipient, the full reconveyance or certificate of
7 discharge in a recordable form, together with payment for all
8 required fees, in an envelope addressed to the county recorder’s
9 office of the county in which the deed of trust or mortgage is
10 recorded. Within two business days from the day of receipt, if
11 received in recordable form together with all required fees, the
12 county recorder shall stamp and record the full reconveyance or
13 certificate of discharge. Compliance with this subdivision shall
14 entitle the trustee to the benefit of the presumption found in Section
15 641 of the Evidence Code.

16 (d) The violation of this section shall make the violator liable
17 to the person affected by the violation for all damages which that
18 person may sustain by reason of the violation, and shall require
19 that the violator forfeit to that person the sum of ~~five hundred~~
20 ~~dollars (\$500)~~ *one thousand dollars (\$1,000)*.

21 (e) (1) The trustee, beneficiary, or mortgagee may charge a
22 reasonable fee to the trustor or mortgagor, or the owner of the land,
23 as the case may be, for all services involved in the preparation,
24 execution, and recordation of the full reconveyance, including, but
25 not limited to, document preparation and forwarding services
26 rendered to effect the full reconveyance, and, in addition, may
27 collect official fees. This fee may be made payable no earlier than
28 the opening of a bona fide escrow or no more than 60 days prior
29 to the full satisfaction of the obligation secured by the deed of trust
30 or mortgage.

31 (2) If the fee charged pursuant to this subdivision does not
32 exceed forty-five dollars (\$45), the fee is conclusively presumed
33 to be reasonable.

34 (3) The fee described in paragraph (1) may not be charged unless
35 demand for the fee was included in the payoff demand statement
36 described in Section 2943.

37 (f) For purposes of this section, “original” may include an
38 optically imaged reproduction when the following requirements
39 are met:

1 (1) The trustee receiving the request for reconveyance and
2 executing the reconveyance as provided in subdivision (b) is an
3 affiliate or subsidiary of the beneficiary or an affiliate or subsidiary
4 of the assignee of the beneficiary, respectively.

5 (2) The optical image storage media used to store the document
6 shall be nonerasable write once, read many (WORM) optical image
7 media that does not allow changes to the stored document.

8 (3) The optical image reproduction shall be made consistent
9 with the minimum standards of quality approved by either the
10 National Institute of Standards and Technology or the Association
11 for Information and Image Management.

12 (4) Written authentication identifying the optical image
13 reproduction as an unaltered copy of the note, deed of trust, or
14 mortgage shall be stamped or printed on the optical image
15 reproduction.

16 (g) No fee or charge may be imposed on the trustor in connection
17 with, or relating to, any act described in this section except as
18 expressly authorized by this section.

19 (h) The amendments to this section enacted at the 1999–2000
20 Regular Session shall apply only to a mortgage or an obligation
21 secured by a deed of trust that is satisfied on or after January 1,
22 2001.

23 (i) (1) In any action filed before January 1, 2002, that is
24 dismissed as a result of the amendments to this section enacted at
25 the 2001–02 Regular Session, the plaintiff shall not be required to
26 pay the defendant’s costs.

27 (2) Any claimant, including a claimant in a class action lawsuit,
28 whose claim is dismissed or barred as a result of the amendments
29 to this section enacted at the 2001–02 Regular Session, may, within
30 6 months of the dismissal or barring of the action or claim, file or
31 refile a claim for actual damages occurring before January 1, 2002,
32 that were proximately caused by a time lapse between loan
33 satisfaction and the completion of the beneficiary’s obligations as
34 required under paragraph (1) of subdivision (b). In any action
35 brought under this section, the defendant may be found liable for
36 actual damages, but may not be found liable for any civil penalty
37 authorized by ~~Section 2941~~ *this section*.

38 (j) Notwithstanding any other penalties, if a beneficiary collects
39 a fee for reconveyance and thereafter has knowledge, or should
40 have knowledge, that no reconveyance has been recorded, the

1 beneficiary shall cause to be recorded the reconveyance, or in the
2 event a release of obligation is earlier and timely recorded, the
3 beneficiary shall refund to the trustor the fee charged to perform
4 the reconveyance. Evidence of knowledge includes, but is not
5 limited to, notice of a release of obligation pursuant to paragraph
6 (3) of subdivision (b).

7 ~~SECTION 1. Section 10242.6 of the Business and Professions~~
8 ~~Code is amended to read:~~

9 ~~10242.6. (a) The principal and accrued interest on any loan~~
10 ~~secured by a mortgage or deed of trust on real property containing~~
11 ~~only a single-family, owner-occupied dwelling may be prepaid in~~
12 ~~whole or in part at any time without a prepayment charge.~~

13 ~~(b) As used in this section, "owner-occupied dwelling" means~~
14 ~~a dwelling which will be owned and occupied by a signatory to~~
15 ~~the mortgage or deed of trust secured by the dwelling within 90~~
16 ~~days of the execution of the mortgage or deed of trust.~~

17 ~~SEC. 2. Section 2954.9 of the Civil Code is amended to read:~~

18 ~~2954.9. Where the original principal obligation is a loan for~~
19 ~~residential property of four units or less, the borrower under any~~
20 ~~note or evidence of indebtedness secured by a deed of trust or~~
21 ~~mortgage or any other lien on real property shall be entitled to~~
22 ~~prepay the whole or any part of the balance due, together with~~
23 ~~accrued interest, at any time without a prepayment charge.~~