

AMENDED IN ASSEMBLY JANUARY 4, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1321**

---

---

**Introduced by Assembly Member Wieckowski**

February 18, 2011

---

---

*An act to amend Section 2934 of, and to add Sections 1214.5 and 2923.7 to, the Civil Code, and to amend Section 27280 of the Government Code, relating to mortgages and deeds of trust. An act to amend Section 706.105 of the Code of Civil Procedure, relating to money judgments.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1321, as amended, Wieckowski. ~~Mortgages and deeds of trust: recordation.~~ *Money judgments: earnings withholdings.*

*Under existing law, an employer is required to withhold the amounts provided by an earnings withholding order from all earnings of the employee payable for any pay period that ends during the withholding period. Existing law permits a judgment debtor to claim an exemption from earnings withholding if no prior hearing has been held concerning the earnings withholding order, or if there has been a material change in circumstances since the last hearing concerning the earnings withholding order. A creditor is entitled to a hearing on a judgment debtor's claim of exemption from earnings withholding to satisfy a money judgment if the creditor files a notice of opposition to the claim of exemption.*

*This bill would require, after a judgment debtor files the claim of exemption and financial statement with the levying officer, the levying officer to serve the judgment debtor's employer with a copy of the original earnings withholding order, a copy of the claim of exemption,*

*and a signed instruction ordering the employer to adjust the amount of earnings withheld to reflect the amount of additional earnings that the judgment debtor asserts are exempt. If the judgment debtor's claim of exemption asserts that all of his or her earnings are exempt, the instruction would order the employer to reduce the amount of earnings withheld to zero. The bill would further require the employer to comply with the provisions of the signed instruction. Under this bill, if the judgment debtor does not file a timely notice of opposition to the claim of exemption, the levying officer would be required to serve notice upon the employer to continue withholding earnings in compliance with the claim of exemption. This bill would also provide that if, after a hearing, the court denies the judgment debtor's claim in whole or in part, the clerk is required to transmit a certified copy of the court's order to the levying officer, who must promptly serve a notice to the judgment debtor's employer detailing the court's order concerning the earnings withholdings.*

*By increasing the duties of local ministerial officers relating to the service of process and notice, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

~~Existing law authorizes the recording of an instrument affecting the title to or possession of real property, as well as the recording of an assignment of a mortgage or a deed of trust. Under existing law, the recordation of an interest in real property provides notice of that interest to subsequent purchasers and mortgagees. Existing law provides that an unrecorded conveyance of real property is void against a duly recorded interest by a subsequent purchaser or mortgagee, if he or she acted in good faith and paid valuable consideration.~~

~~This bill would instead require that mortgages and deeds of trust as well as assignments of a mortgage or a deed of trust be recorded within 30 days of the execution of the deed or other document creating a security interest in the real property or within 30 days of execution of the assignment. The bill would further require that either the promissory~~

note or a specified certificate affirming the existence of the promissory note be attached at the time of recordation.

Existing law, upon a breach of the obligation of a mortgage or transfer of an interest in property, authorizes the mortgagee, trustee, or beneficiary to record a notice of default in the office of the county recorder where the mortgaged or trust property is situated.

This bill would prohibit the mortgagee, trustee, or beneficiary from recording a notice of default until 45 days after it has recorded the mortgage or deed of trust and any assignment of the mortgage and deed of trust.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

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

1     SECTION 1. Section 706.105 of the Code of Civil Procedure  
2     is amended to read:

3     706.105. (a) A judgment debtor may claim an exemption under  
4     Section 706.051 under either of the following circumstances:

5     (1) No prior hearing has been held with respect to the earnings  
6     withholding order.

7     (2) There has been a material change in circumstances since the  
8     time of the last prior hearing on the earnings withholding order.

9     (b) A claim of exemption shall be made by filing with the  
10    levying officer an original and one copy of (1) the judgment  
11    debtor’s claim of exemption and (2) the judgment debtor’s financial  
12    statement.

13    (c) Promptly after the judgment debtor files the claim of  
14    exemption and financial statement with the levying officer, the  
15    levying officer shall serve on the employer all of the following:

16    (1) A copy of the original earnings withholding order.

17    (2) A copy of the claim of exemption filed by the judgment  
18    debtor.

19    (3) An instruction, signed by the levying officer, that the  
20    employer must, until further notice, immediately reduce the amount  
21    of earnings to be withheld under the original earnings withholding  
22    order to reflect the amount of additional earnings claimed to be  
23    exempt in the judgment debtor’s claim of exemption, and that the  
24    amount to be withheld shall be reduced to zero if the judgment

1 *debtor's claim of exemption asserts that all of the judgment*  
2 *debtor's earnings are exempt.*

3 (d) *An employer who is served by the levying officer with the*  
4 *documents identified in subdivision (c) shall, until further notice,*  
5 *immediately reduce the amount of additional earnings claimed to*  
6 *be exempt in the judgment debtor's claim of exemption. If the*  
7 *judgment debtor's claim of exemption asserts that all of the*  
8 *judgment debtor's earnings are exempt, the employer shall, until*  
9 *further notice, immediately cease withholding any earnings*  
10 *whatsoever.*

11 (e)

12 (e) Upon filing of the claim of exemption, the levying officer  
13 shall promptly send to the judgment creditor, at the address stated  
14 in the application for the earnings withholding order, by first-class  
15 mail, postage prepaid, all of the following:

16 (1) A copy of the claim of exemption.

17 (2) A copy of the financial statement.

18 (3) A notice of claim of exemption. The notice shall state that  
19 the claim of exemption has been filed and that the earnings  
20 withholding order will be terminated, or modified to reflect the  
21 amount of earnings claimed to be exempt in the claim of  
22 exemption, unless a notice of opposition to the claim of exemption  
23 is filed with the levying officer by the judgment creditor within  
24 10 days after the date of the mailing of the notice of claim of  
25 exemption.

26 (d)

27 (f) A judgment creditor who desires to contest a claim of  
28 exemption shall, within 10 days after the date of the mailing of  
29 the notice of claim of exemption, file with the levying officer a  
30 notice of opposition to the claim of exemption.

31 (e)

32 (g) If a notice of opposition to the claim of exemption is filed  
33 with the levying officer within the 10-day period, the judgment  
34 creditor is entitled to a hearing on the claim of exemption. If the  
35 judgment creditor desires a hearing on the claim of exemption, the  
36 judgment creditor shall file a notice of motion for an order  
37 determining the claim of exemption with the court within 10 days  
38 after the date the levying officer mailed the notice of claim of  
39 exemption. If the notice of motion is so filed, the hearing on the  
40 motion shall be held not later than 30 days from the date the notice

1 of motion was filed unless continued by the court for good cause.  
2 At the time prescribed by subdivision (b) of Section 1005, the  
3 judgment creditor shall give written notice of the hearing to the  
4 levying officer and shall serve a notice of the hearing and a copy  
5 of the notice of opposition to the claim of exemption on the  
6 judgment debtor and, if the claim of exemption so requested, on  
7 the attorney for the judgment debtor. Service is deemed made when  
8 the notice of the hearing and a copy of the notice of opposition to  
9 the claim of exemption are deposited in the mail, postage prepaid,  
10 addressed to the judgment debtor at the address stated in the claim  
11 of exemption and, if service on the attorney for the judgment debtor  
12 was requested in the claim of exemption, to the attorney at the  
13 address stated in the claim of exemption. The judgment creditor  
14 shall file proof of the service with the court. After receiving the  
15 notice of the hearing and before the date set for the hearing, the  
16 levying officer shall file the claim of exemption and the notice of  
17 opposition to the claim of exemption with the court.

18 (f)

19 (h) If the levying officer does not receive a notice of opposition  
20 to the claim of exemption within the 10-day period after the date  
21 of mailing of the notice of claim of exemption and a notice of the  
22 hearing not later than 10 days after the filing of the notice of  
23 opposition to the claim of exemption, the levying officer shall  
24 serve ~~on upon~~ the employer ~~one of the following~~: *a notice that the*  
25 *employer shall continue withholding earnings only to the extent,*  
26 *if any, that the employer has been withholding earnings pursuant*  
27 *to subdivision (d).*

28 ~~(1) A notice that the earnings withholding order has been~~  
29 ~~terminated if all of the judgment debtor's earnings were claimed~~  
30 ~~to be exempt.~~

31 ~~(2) A modified earnings withholding order that reflects the~~  
32 ~~amount of earnings claimed to be exempt in the claim of exemption~~  
33 ~~if only a portion of the judgment debtor's earnings was claimed~~  
34 ~~to be exempt.~~

35 (g)

36 (i) If, after hearing, the court orders that the earnings withholding  
37 order be modified or terminated, the clerk shall promptly transmit  
38 a certified copy of the order to the levying officer who shall  
39 promptly serve on the employer of the judgment debtor (1) a copy  
40 of the modified earnings withholding order or (2) a notice that the

1 earnings withholding order has been terminated. The court may  
2 order that the earnings withholding order be terminated as of a  
3 date that precedes the date of hearing. If the court determines that  
4 any amount withheld pursuant to the earnings withholding order  
5 shall be paid to the judgment debtor, the court shall make an order  
6 directing the person who holds that amount to pay it promptly to  
7 the judgment debtor.

8 *(j) If, after hearing, the court denies the judgment debtor's claim*  
9 *of exemption in whole or in part, the clerk shall promptly transmit*  
10 *a certified copy of the court's order to the levying officer, who*  
11 *shall promptly serve on the employer a notice that the employer*  
12 *shall withhold earnings pursuant to the court's order.*

13 ~~(h)~~

14 *(k) If the earnings withholding order is terminated by the court,*  
15 *unless the court otherwise orders or unless there is a material*  
16 *change of circumstances since the time of the last prior hearing*  
17 *on the earnings withholding order, the judgment creditor may not*  
18 *apply for another earnings withholding order directed to the same*  
19 *employer with respect to the same judgment debtor for a period*  
20 *of 100 days following the date of service of the earnings*  
21 *withholding order or 60 days after the date of the termination of*  
22 *the order, whichever is later.*

23 ~~(i)~~

24 *(l) If an employer has withheld and paid over amounts pursuant*  
25 *to an earnings withholding order after the date of termination of*  
26 *the order but prior to the receipt of notice of its termination, the*  
27 *judgment debtor may recover those amounts only from the levying*  
28 *officer if the levying officer still holds those amounts or, if those*  
29 *amounts have been paid over to the judgment creditor, from the*  
30 *judgment creditor. If the employer has withheld amounts pursuant*  
31 *to an earnings withholding order after termination of the order but*  
32 *has not paid over those amounts to the levying officer, the employer*  
33 *shall promptly pay those amounts to the judgment debtor.*

34 ~~(j)~~

35 *(m) An appeal lies from any court order under this section*  
36 *denying a claim of exemption or modifying or terminating an*  
37 *earnings withholding order. An appeal by the judgment creditor*  
38 *from an order modifying or terminating the earnings withholding*  
39 *order does not stay the order from which the appeal is taken.*  
40 *Notwithstanding the appeal, until the order modifying or*

1 terminating the earnings withholding order is set aside or modified,  
2 the order allowing the claim of exemption in whole or in part shall  
3 be given the same effect as if the appeal had not been taken.

4 ~~(k)~~

5 (n) This section does not apply to a withholding order for  
6 support or a withholding order for taxes.

7 *SEC. 2. If the Commission on State Mandates determines that*  
8 *this act contains costs mandated by the state, reimbursement to*  
9 *local agencies and school districts for those costs shall be made*  
10 *pursuant to Part 7 (commencing with Section 17500) of Division*  
11 *4 of Title 2 of the Government Code.*

12 ~~SECTION 1. Section 1214.5 is added to the Civil Code, to~~  
13 ~~read:~~

14 ~~1214.5. Every mortgage or deed of trust of real property shall~~  
15 ~~be recorded within 30 days of the execution of the deed or other~~  
16 ~~document creating a security interest in the real property. The~~  
17 ~~mortgage or deed of trust shall be recorded in the office of the~~  
18 ~~recorder of each county where the mortgaged or trust property or~~  
19 ~~some part or parcel thereof is situated, with either of the following~~  
20 ~~documents attached:~~

21 ~~(a) The promissory note.~~

22 ~~(b) A certificate that confirms the existence of the promissory~~  
23 ~~note and contains all of the following information:~~

24 ~~(1) The date of execution of the promissory note.~~

25 ~~(2) The identities of the parties to the promissory note.~~

26 ~~(3) The terms of the debt, including, as applicable, the interest~~  
27 ~~rate, prepayment penalties, and other escrow items.~~

28 ~~SEC. 2. Section 2923.7 is added to the Civil Code, to read:~~

29 ~~2923.7. (a) A mortgagee, trustee, or beneficiary may not file~~  
30 ~~a notice of default until 45 days after it has duly recorded the~~  
31 ~~mortgage or deed of trust and any subsequent assignments of the~~  
32 ~~mortgage or the beneficial interest under the deed of trust. Pursuant~~  
33 ~~to Sections 1214.5 and 2934, the mortgage and deed of trust and~~  
34 ~~any subsequent assignments shall be recorded with the promissory~~  
35 ~~note or certificate attached.~~

36 ~~(b) Nothing in this section shall be construed to require the~~  
37 ~~county recorder to certify that a mortgage, deed of trust, and any~~  
38 ~~assignments of the mortgage or beneficial interest under the deed~~  
39 ~~of trust have been properly recorded prior to recording a notice of~~  
40 ~~default.~~

1 SEC. 3. ~~Section 2934 of the Civil Code is amended to read:~~

2 2934. ~~(a) Any assignment of a mortgage and any assignment~~  
3 ~~of the beneficial interest under a deed of trust shall be recorded,~~  
4 ~~with the promissory note or the certificate described in subdivision~~  
5 ~~(b) of Section 1214.5 attached, within 30 days of execution of the~~  
6 ~~assignment. From the time the assignment is filed for record, it~~  
7 ~~operates as constructive notice of the contents thereof to all~~  
8 ~~persons.~~

9 ~~(b) Any instrument by which any mortgage or deed of trust of,~~  
10 ~~lien upon, or interest in real property, (or by which any mortgage~~  
11 ~~of, lien upon, or interest in personal property a document~~  
12 ~~evidencing or creating which is required or permitted by law to be~~  
13 ~~recorded), is subordinated or waived as to priority may be recorded,~~  
14 ~~and from the time it is filed for record operates as constructive~~  
15 ~~notice of the contents thereof, to all persons.~~

16 SEC. 4. ~~Section 27280 of the Government Code is amended~~  
17 ~~to read:~~

18 27280. ~~(a) Except as provided in subdivision (b), any~~  
19 ~~instrument or judgment affecting the title to or possession of real~~  
20 ~~property may be recorded pursuant to this chapter.~~

21 ~~(b) A mortgage or deed of trust shall be recorded within 30 days~~  
22 ~~of the execution of the deed or other document creating a security~~  
23 ~~interest in the real property pursuant to Section 1214.5 of the Civil~~  
24 ~~Code. An assignment of a mortgage or deed of trust shall be~~  
25 ~~recorded within 30 days of the execution of the assignment~~  
26 ~~pursuant to Section 2934 of the Civil Code.~~

27 ~~(c) Any instrument or document submitted for recordation which~~  
28 ~~effectuates a change in ownership may be accompanied by a change~~  
29 ~~in ownership statement as provided for in Section 480 of the~~  
30 ~~Revenue and Taxation Code. Upon receipt of such change in~~  
31 ~~ownership statement, the recorder shall transmit, as soon as~~  
32 ~~possible, the original statement or true copy thereof to the county~~  
33 ~~assessor along with the recorded document as required by Section~~  
34 ~~255.7 of the Revenue and Taxation Code. The change in ownership~~  
35 ~~statement shall not be recorded nor open and available to public~~  
36 ~~inspection and shall at all times remain confidential, except as~~  
37 ~~provided in Section 408 of the Revenue and Taxation Code.~~

O