

## Senate Bill No. 4

### CHAPTER 229

An act to amend Section 2924f of the Civil Code, relating to mortgages.

[Approved by Governor September 6, 2011. Filed with  
Secretary of State September 6, 2011.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 4, Calderon. Mortgages.

Existing law requires a lender to file a notice of default in the case of nonjudicial foreclosure prior to enforcing a power of sale as a result of a default on an obligation secured by real property, as specified. Existing law also requires that a notice of sale be given before the power of sale may be exercised. Existing law requires the notice of sale to contain specified information regarding the property and the sale, and to be recorded with the county recorder, as specified.

This bill would additionally require, beginning April 1, 2012, that the notice of sale, given pursuant to a deed of trust or mortgage secured by real property containing from one to 4 single-family residences, contain language notifying potential bidders of specified risks involved in bidding on property at a trustee's sale, and a notice to the property owner informing the owner about how to obtain information regarding any postponement of the sale. The bill would require a good faith effort to be made to provide current information regarding sale dates and postponements and that the information be available free of charge. The bill would permit the information to be provided by any means that provides continuous access, as specified.

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

SECTION 1. Section 2924f of the Civil Code, as amended by Section 1 of Chapter 597 of the Statutes of 2010, is amended to read:

2924f. (a) As used in this section and Sections 2924g and 2924h, "property" means real property or a leasehold estate therein, and "calendar week" means Monday through Saturday, inclusive.

(b) (1) Except as provided in subdivision (c), before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, or any resale resulting from a rescission for a failure of consideration pursuant to subdivision (c) of Section 2924h, notice of the sale thereof shall be given by posting a written notice of the time of sale and of the street address and the specific place at the street address where the sale will be held, and describing the property to be sold, at least 20 days before the date of sale in one public place in the city where the property is

to be sold, if the property is to be sold in a city, or, if not, then in one public place in the judicial district in which the property is to be sold, and publishing a copy once a week for three consecutive calendar weeks, the first publication to be at least 20 days before the date of sale, in a newspaper of general circulation published in the city in which the property or some part thereof is situated, if any part thereof is situated in a city, if not, then in a newspaper of general circulation published in the judicial district in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district, as the case may be, in a newspaper of general circulation published in the county in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district or county, as the case may be, in a newspaper of general circulation published in the county in this state that (A) is contiguous to the county in which the property or some part thereof is situated and (B) has, by comparison with all similarly contiguous counties, the highest population based upon total county population as determined by the most recent federal decennial census published by the Bureau of the Census. A copy of the notice of sale shall also be posted in a conspicuous place on the property to be sold at least 20 days before the date of sale, where possible and where not restricted for any reason. If the property is a single-family residence the posting shall be on a door of the residence, but, if not possible or restricted, then the notice shall be posted in a conspicuous place on the property; however, if access is denied because a common entrance to the property is restricted by a guard gate or similar impediment, the property may be posted at that guard gate or similar impediment to any development community. Additionally, the notice of sale shall conform to the minimum requirements of Section 6043 of the Government Code and be recorded with the county recorder of the county in which the property or some part thereof is situated at least 20 days prior to the date of sale. The notice of sale shall contain the name, street address in this state, which may reflect an agent of the trustee, and either a toll-free telephone number or telephone number in this state of the trustee, and the name of the original trustor, and also shall contain the statement required by paragraph (3) of subdivision (c). In addition to any other description of the property, the notice shall describe the property by giving its street address, if any, or other common designation, if any, and a county assessor's parcel number; but if the property has no street address or other common designation, the notice shall contain a legal description of the property, the name and address of the beneficiary at whose request the sale is to be conducted, and a statement that directions may be obtained pursuant to a written request submitted to the beneficiary within 10 days from the first publication of the notice. Directions shall be deemed reasonably sufficient to locate the property if information as to the location of the property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road. If a legal description or a county assessor's parcel number and either a street address or another common designation of the property is given, the validity of the

notice and the validity of the sale shall not be affected by the fact that the street address, other common designation, name and address of the beneficiary, or the directions obtained therefrom are erroneous or that the street address, other common designation, name and address of the beneficiary, or directions obtained therefrom are omitted. The term “newspaper of general circulation,” as used in this section, has the same meaning as defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code.

The notice of sale shall contain a statement of the total amount of the unpaid balance of the obligation secured by the property to be sold and reasonably estimated costs, expenses, advances at the time of the initial publication of the notice of sale, and, if republished pursuant to a cancellation of a cash equivalent pursuant to subdivision (d) of Section 2924h, a reference of that fact; provided, that the trustee shall incur no liability for any good faith error in stating the proper amount, including any amount provided in good faith by or on behalf of the beneficiary. An inaccurate statement of this amount shall not affect the validity of any sale to a bona fide purchaser for value, nor shall the failure to post the notice of sale on a door as provided by this subdivision affect the validity of any sale to a bona fide purchaser for value.

(2) (A) On and after April 1, 2012, if the deed of trust or mortgage containing a power of sale is secured by real property containing from one to four single-family residences, the notice of sale shall contain substantially the following language, in addition to the language required pursuant to paragraph (1):

**NOTICE TO POTENTIAL BIDDERS:** If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder’s office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on the property.

**NOTICE TO PROPERTY OWNER:** The sale date shown on this notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and,

if applicable, the rescheduled time and date for the sale of this property, you may call [telephone number for information regarding the trustee's sale] or visit this Internet Web site [Internet Web site address for information regarding the sale of this property], using the file number assigned to this case [case file number]. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale.

(B) A mortgagee, beneficiary, trustee, or authorized agent shall make a good faith effort to provide up-to-date information regarding sale dates and postponements to persons who wish this information. This information shall be made available free of charge. It may be made available via an Internet Web site, a telephone recording that is accessible 24 hours a day, seven days a week, or through any other means that allows 24 hours a day, seven days a week, no-cost access to updated information. A disruption of any of these methods of providing sale date and postponement information to allow for reasonable maintenance or due to a service outage shall not be deemed to be a violation of the good faith standard.

(C) Except as provided in subparagraph (B), nothing in the wording of the notices required by subparagraph (A) is intended to modify or create any substantive rights or obligations for any person providing, or specified in, either of the required notices. Failure to comply with subparagraph (A) or (B) shall not invalidate any sale that would otherwise be valid under Section 2924f.

(D) Information provided pursuant to subparagraph (A) does not constitute the public declaration required by subdivision (d) of Section 2924g.

(3) If the sale of the property is to be a unified sale as provided in subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, the notice of sale shall also contain a description of the personal property or fixtures to be sold. In the case where it is contemplated that all of the personal property or fixtures are to be sold, the description in the notice of the personal property or fixtures shall be sufficient if it is the same as the description of the personal property or fixtures contained in the agreement creating the security interest in or encumbrance on the personal property or fixtures or the filed financing statement relating to the personal property or fixtures. In all other cases, the description in the notice shall be sufficient if it would be a sufficient description of the personal property or fixtures under Section 9108 of the Commercial Code. Inclusion of a reference to or a description of personal property or fixtures in a notice of sale hereunder shall not constitute an election by the secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, shall not obligate the secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, and in no

way shall render defective or noncomplying either that notice or a sale pursuant to that notice by reason of the fact that the sale includes none or less than all of the personal property or fixtures referred to or described in the notice. This paragraph shall not otherwise affect the obligations or duties of a secured party under the Commercial Code.

(c) (1) This subdivision applies only to deeds of trust or mortgages which contain a power of sale and which are secured by real property containing a single-family, owner-occupied residence, where the obligation secured by the deed of trust or mortgage is contained in a contract for goods or services subject to the provisions of the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3).

(2) Except as otherwise expressly set forth in this subdivision, all other provisions of law relating to the exercise of a power of sale shall govern the exercise of a power of sale contained in a deed of trust or mortgage described in paragraph (1).

(3) If any default of the obligation secured by a deed of trust or mortgage described in paragraph (1) has not been cured within 30 days after the recordation of the notice of default, the trustee or mortgagee shall mail to the trustor or mortgagor, at his or her last known address, a copy of the following statement:

YOU ARE IN DEFAULT UNDER A

\_\_\_\_\_ ,

(Deed of trust or mortgage)

DATED \_\_\_\_\_. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

(4) All sales of real property pursuant to a power of sale contained in any deed of trust or mortgage described in paragraph (1) shall be held in the county where the residence is located and shall be made to the person making the highest offer. The trustee may receive offers during the 10-day period immediately prior to the date of sale and if any offer is accepted in writing by both the trustor or mortgagor and the beneficiary or mortgagee prior to the time set for sale, the sale shall be postponed to a date certain and prior to which the property may be conveyed by the trustor to the person making the offer according to its terms. The offer is revocable until accepted. The performance of the offer, following acceptance, according to its terms, by a conveyance of the property to the offeror, shall operate to terminate any further proceeding under the notice of sale and it shall be deemed revoked.

(5) In addition to the trustee fee pursuant to Section 2924c, the trustee or mortgagee pursuant to a deed of trust or mortgage subject to this subdivision shall be entitled to charge an additional fee of fifty dollars (\$50).

(6) This subdivision applies only to property on which notices of default were filed on or after the effective date of this subdivision.

(d) Subject to the provisions of subdivision (f), if a property contains five or more multifamily units and a public entity is a party to a regulatory agreement or a recorded deed restriction on the property, the public entity may, by written notice to the trustee, postpone the sale date by no more than 60 days. The written notice shall be provided to the trustee at least 72 hours prior to the scheduled sale date, through certified or registered mail, guaranteed or overnight delivery service, or personal delivery. In its written notice, the public entity shall certify that it has the authority to postpone the sale date pursuant to the authority in this subdivision. The trustee may rely on this representation.

(1) If multiple public entities are parties to a regulatory agreement or a recorded deed restriction on the property pursuant to this subdivision, only one entity may postpone the sale date.

(2) The power to postpone the sale pursuant to this subdivision may be exercised only once.

(e) For purposes of this section, the following terms have the following meanings:

(1) “Public entity” includes a city, county, city and county, redevelopment agency, or any political subdivision thereof.

(2) “Recorded deed restriction” means a deed recorded as an encumbrance against title to the property in the official records of the county in which the property is located, which specifies that all or a portion of the property’s usage is restricted to rental to lower income households and identifies the number of units restricted to use as low-income housing.

(3) “Regulatory agreement” means an enforceable and verifiable agreement with a public entity that has provided government financing for the acquisition, rehabilitation, construction, development, or operation of a low-income housing property that restricts all or a portion of the property’s usage for rental to lower income households. The regulatory agreement shall identify the number of units restricted for use as low-income housing, specify the maximum rent allowed for those units, identify the assessor’s parcel number or provide the legal description of the property, and be recorded in the county in which the property is located.

(f) (1) A public entity may not exercise the authority granted in subdivision (d), if more than 180 days have elapsed since filing of the notice of default.

(2) Any period of postponement, which occurs based on a public entity’s exercise of the authority granted in subdivision (d), shall expire after 180 days have elapsed since the filing of the notice of default.

(3) Nothing in paragraph (1) or (2) shall be deemed to require a mortgagee, beneficiary, trustee, or authorized agent to file a notice of sale after more than 180 days have elapsed since the filing of the notice of default.

(4) The filing of a case by a trustor or mortgagor under Chapter 7, 11, 12, or 13 of Title 11 of the United States Code shall not act to toll the 180-day limitation provided by paragraphs (1) and (2).

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

SEC. 2. Section 2924f of the Civil Code, as added by Section 2 of Chapter 597 of the Statutes of 2010, is amended to read:

2924f. (a) As used in this section and Sections 2924g and 2924h, “property” means real property or a leasehold estate therein, and “calendar week” means Monday through Saturday, inclusive.

(b) (1) Except as provided in subdivision (c), before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, or any resale resulting from a rescission for a failure of consideration pursuant to subdivision (c) of Section 2924h, notice of the sale thereof shall be given by posting a written notice of the time of sale and of the street address and the specific place at the street address where the sale will be held, and describing the property to be sold, at least 20 days before the date of sale in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the judicial district in which the property is to be sold, and publishing a copy once a week for three consecutive calendar weeks, the first publication to be at least 20 days before the date of sale, in a newspaper of general circulation published in the city in which the property or some part thereof is situated, if any part thereof is situated in a city, if not, then in a newspaper of general circulation published in the judicial district in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district, as the case may be, in a newspaper of general circulation published in the county in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district or county, as the case may be, in a newspaper of general circulation published in the county in this state that (A) is contiguous to the county in which the property or some part thereof is situated and (B) has, by comparison with all similarly contiguous counties, the highest population based upon total county population as determined by the most recent federal decennial census published by the Bureau of the Census. A copy of the notice of sale shall also be posted in a conspicuous place on the property to be sold at least 20 days before the date of sale, where possible and where not restricted for any reason. If the property is a single-family residence the posting shall be on a door of the residence, but, if not possible or restricted, then the notice shall be posted in a conspicuous place on the property; however, if access is denied because a common entrance to the property is restricted by a guard gate or similar impediment, the property may be posted at that guard gate or similar impediment to any development community. Additionally, the notice of sale shall conform to the minimum requirements of Section 6043 of the Government Code and be recorded with the county recorder of the county in which the property or some part thereof is situated at least 20 days prior to the date of sale. The notice of sale shall contain the name, street address in this state, which may reflect an agent of the trustee, and either a

toll-free telephone number or telephone number in this state of the trustee, and the name of the original trustor, and also shall contain the statement required by paragraph (3) of subdivision (c). In addition to any other description of the property, the notice shall describe the property by giving its street address, if any, or other common designation, if any, and a county assessor's parcel number; but if the property has no street address or other common designation, the notice shall contain a legal description of the property, the name and address of the beneficiary at whose request the sale is to be conducted, and a statement that directions may be obtained pursuant to a written request submitted to the beneficiary within 10 days from the first publication of the notice. Directions shall be deemed reasonably sufficient to locate the property if information as to the location of the property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road. If a legal description or a county assessor's parcel number and either a street address or another common designation of the property is given, the validity of the notice and the validity of the sale shall not be affected by the fact that the street address, other common designation, name and address of the beneficiary, or the directions obtained therefrom are erroneous or that the street address, other common designation, name and address of the beneficiary, or directions obtained therefrom are omitted. The term "newspaper of general circulation," as used in this section, has the same meaning as defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code.

The notice of sale shall contain a statement of the total amount of the unpaid balance of the obligation secured by the property to be sold and reasonably estimated costs, expenses, advances at the time of the initial publication of the notice of sale, and, if republished pursuant to a cancellation of a cash equivalent pursuant to subdivision (d) of Section 2924h, a reference of that fact; provided, that the trustee shall incur no liability for any good faith error in stating the proper amount, including any amount provided in good faith by or on behalf of the beneficiary. An inaccurate statement of this amount shall not affect the validity of any sale to a bona fide purchaser for value, nor shall the failure to post the notice of sale on a door as provided by this subdivision affect the validity of any sale to a bona fide purchaser for value.

(2) (A) On and after April 1, 2012, if the deed of trust or mortgage containing a power of sale is secured by real property containing from one to four single-family residences, the notice of sale shall contain substantially the following language, in addition to the language required pursuant to paragraph (1):

**NOTICE TO POTENTIAL BIDDERS:** If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be



aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder's office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on the property.

**NOTICE TO PROPERTY OWNER:** The sale date shown on this notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call [telephone number for information regarding the trustee's sale] or visit this Internet Web site [Internet Web site address for information regarding the sale of this property], using the file number assigned to this case [case file number]. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale.

(B) A mortgagee, beneficiary, trustee, or authorized agent shall make a good faith effort to provide up-to-date information regarding sale dates and postponements to persons who wish this information. This information shall be made available free of charge. It may be made available via an Internet Web site, a telephone recording that is accessible 24 hours a day, seven days a week, or through any other means that allows 24 hours a day, seven days a week, no-cost access to updated information. A disruption of any of these methods of providing sale date and postponement information to allow for reasonable maintenance or due to a service outage shall not be deemed to be a violation of the good faith standard.

(C) Except as provided in subparagraph (B), nothing in the wording of the notices required by subparagraph (A) is intended to modify or create any substantive rights or obligations for any person providing, or specified in, either of the required notices. Failure to comply with subparagraph (A) or (B) shall not invalidate any sale that would otherwise be valid under Section 2924f.

(D) Information provided pursuant to subparagraph (A) does not constitute the public declaration required by subdivision (d) of Section 2924g.

(3) If the sale of the property is to be a unified sale as provided in subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the

Commercial Code, the notice of sale shall also contain a description of the personal property or fixtures to be sold. In the case where it is contemplated that all of the personal property or fixtures are to be sold, the description in the notice of the personal property or fixtures shall be sufficient if it is the same as the description of the personal property or fixtures contained in the agreement creating the security interest in or encumbrance on the personal property or fixtures or the filed financing statement relating to the personal property or fixtures. In all other cases, the description in the notice shall be sufficient if it would be a sufficient description of the personal property or fixtures under Section 9108 of the Commercial Code. Inclusion of a reference to or a description of personal property or fixtures in a notice of sale hereunder shall not constitute an election by the secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, shall not obligate the secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, and in no way shall render defective or noncomplying either that notice or a sale pursuant to that notice by reason of the fact that the sale includes none or less than all of the personal property or fixtures referred to or described in the notice. This paragraph shall not otherwise affect the obligations or duties of a secured party under the Commercial Code.

(c) (1) This subdivision applies only to deeds of trust or mortgages which contain a power of sale and which are secured by real property containing a single-family, owner-occupied residence, where the obligation secured by the deed of trust or mortgage is contained in a contract for goods or services subject to the provisions of the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3).

(2) Except as otherwise expressly set forth in this subdivision, all other provisions of law relating to the exercise of a power of sale shall govern the exercise of a power of sale contained in a deed of trust or mortgage described in paragraph (1).

(3) If any default of the obligation secured by a deed of trust or mortgage described in paragraph (1) has not been cured within 30 days after the recordation of the notice of default, the trustee or mortgagee shall mail to the trustor or mortgagor, at his or her last known address, a copy of the following statement:

YOU ARE IN DEFAULT UNDER A

\_\_\_\_\_,

(Deed of trust or mortgage)

DATED \_\_\_\_\_. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

(4) All sales of real property pursuant to a power of sale contained in any deed of trust or mortgage described in paragraph (1) shall be held in the county where the residence is located and shall be made to the person making the highest offer. The trustee may receive offers during the 10-day period immediately prior to the date of sale and if any offer is accepted in writing by both the trustor or mortgagor and the beneficiary or mortgagee prior to the time set for sale, the sale shall be postponed to a date certain and prior to which the property may be conveyed by the trustor to the person making the offer according to its terms. The offer is revocable until accepted. The performance of the offer, following acceptance, according to its terms, by a conveyance of the property to the offeror, shall operate to terminate any further proceeding under the notice of sale and it shall be deemed revoked.

(5) In addition to the trustee fee pursuant to Section 2924c, the trustee or mortgagee pursuant to a deed of trust or mortgage subject to this subdivision shall be entitled to charge an additional fee of fifty dollars (\$50).

(6) This subdivision applies only to property on which notices of default were filed on or after the effective date of this subdivision.

(d) This section shall become operative on January 1, 2013.