

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1036

Introduced by Assembly Member Blumenfield

February 22, 2013

An act to amend ~~Section 20919.2~~ *Sections 2924.19, 2950, and 3509* of the ~~Public Contract Civil Code~~, relating to ~~public contracts mortgages~~.

LEGISLATIVE COUNSEL'S DIGEST

AB 1036, as amended, Blumenfield. ~~Public contracts: job order contracting. Mortgages.~~

Existing law allows the Los Angeles Unified School District to utilize job order contracting as an alternative to any contracting procedures otherwise authorized or required by law.

Existing law imposes various preconditions for exercising a power of sale under a mortgage or deed of trust, including, among other things, recording a notice of default and a notice of sale. Existing law authorizes a borrower to seek an injunction and damages for violations of certain of the requirements described above, except as specified. Existing law authorizes the greater of treble actual damages or \$50,000 in statutory damages if a violation of certain requirements is found to be intentional or reckless or resulted from willful misconduct, as specified. Existing law authorizes the awarding of attorney's fees for prevailing borrowers, as specified.

Existing law provides that a grant of real property that is intended to be voidable on the performance of certain conditions is not voided as to the grantee or other specified persons having actual notice, unless a instrument of defeasance is recorded with the county recorder.

Existing law provides that the maxims of jurisprudence set forth in the provisions of the California Civil Code do not qualify that code’s provisions, but are instead intended to aid in their application.

This bill would make technical, nonsubstantive changes to those provisions.

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 2924.19 of the Civil Code, as added by
2 Section 22 of Chapter 86 of the Statutes of 2012, is amended to
3 read:

4 2924.19. (a) (1) If a trustee’s deed upon sale has not been
5 recorded, a borrower may bring an action for injunctive relief to
6 enjoin a material violation of Section 2923.5, 2924.17, or 2924.18.

7 (2) ~~Any~~ An injunction shall remain in place and any trustee’s
8 sale shall be enjoined until the court determines that the mortgage
9 servicer, mortgagee, beneficiary, or authorized agent has corrected
10 and remedied the violation or violations giving rise to the action
11 for injunctive relief. An enjoined entity may move to dissolve an
12 injunction based on a showing that the material violation has been
13 corrected and remedied.

14 (b) After a trustee’s deed upon sale has been recorded, a
15 mortgage servicer, mortgagee, beneficiary, or authorized agent
16 shall be liable to a borrower for actual economic damages pursuant
17 to Section 3281, resulting from a material violation of Section
18 2923.5, 2924.17, or 2924.18 by that mortgage servicer, mortgagee,
19 beneficiary, or authorized agent where the violation was not
20 corrected and remedied prior to the recordation of the trustee’s
21 deed upon sale. If the court finds that the material violation was
22 intentional or reckless, or resulted from willful misconduct by a
23 mortgage servicer, mortgagee, beneficiary, or authorized agent,
24 the court may award the borrower the greater of treble actual
25 damages or statutory damages of fifty thousand dollars (\$50,000).

26 (c) A mortgage servicer, mortgagee, beneficiary, or authorized
27 agent shall not be liable for any violation that it has corrected and
28 remedied prior to the recordation of the trustee’s deed upon sale,
29 or that has been corrected and remedied by third parties working

1 on its behalf prior to the recordation of the trustee’s deed upon
2 sale.

3 (d) A violation of Section 2923.5, 2924.17, or ~~2917.18~~ 2924.18
4 by a person licensed by the Department of Corporations, the
5 Department of Financial Institutions, or the Department of Real
6 Estate shall be deemed to be a violation of that person’s licensing
7 law.

8 (e) ~~No~~A violation of this article shall *not* affect the validity of
9 a sale in favor of a bona fide purchaser and any of its
10 encumbrancers for value without notice.

11 (f) A third-party encumbrancer shall not be relieved of liability
12 resulting from violations of Section 2923.5, 2924.17 or 2924.18,
13 committed by that third-party encumbrancer, that occurred prior
14 to the sale of the subject property to the bona fide purchaser.

15 (g) The rights, remedies, and procedures provided by this section
16 are in addition to and independent of any other rights, remedies,
17 or procedures under any other law. Nothing in this section shall
18 be construed to alter, limit, or negate any other rights, remedies,
19 or procedures provided by law.

20 (h) A court may award a prevailing borrower reasonable
21 attorney’s fees and costs in an action brought pursuant to this
22 section. A borrower shall be deemed to have prevailed for purposes
23 of this subdivision if the borrower obtained injunctive relief or
24 damages pursuant to this section.

25 (i) This section shall apply only to entities described in
26 subdivision (b) of Section 2924.18.

27 (j) This section shall remain in effect only until January 1, 2018,
28 and as of that date is repealed, unless a later enacted statute, that
29 is enacted before January 1, 2018, deletes or extends that date.

30 *SEC. 2. Section 2924.19 of the Civil Code, as added by Section*
31 *22 of Chapter 87 of the Statutes of 2012, is amended to read:*

32 2924.19. (a) (1) If a trustee’s deed upon sale has not been
33 recorded, a borrower may bring an action for injunctive relief to
34 enjoin a material violation of Section 2923.5, 2924.17, or 2924.18.

35 (2) ~~Any~~An injunction shall remain in place and any trustee’s
36 sale shall be enjoined until the court determines that the mortgage
37 servicer, mortgagee, beneficiary, or authorized agent has corrected
38 and remedied the violation or violations giving rise to the action
39 for injunctive relief. An enjoined entity may move to dissolve an

1 injunction based on a showing that the material violation has been
2 corrected and remedied.

3 (b) After a trustee's deed upon sale has been recorded, a
4 mortgage servicer, mortgagee, beneficiary, or authorized agent
5 shall be liable to a borrower for actual economic damages pursuant
6 to Section 3281, resulting from a material violation of Section
7 2923.5, 2924.17, or 2924.18 by that mortgage servicer, mortgagee,
8 beneficiary, or authorized agent where the violation was not
9 corrected and remedied prior to the recordation of the trustee's
10 deed upon sale. If the court finds that the material violation was
11 intentional or reckless, or resulted from willful misconduct by a
12 mortgage servicer, mortgagee, beneficiary, or authorized agent,
13 the court may award the borrower the greater of treble actual
14 damages or statutory damages of fifty thousand dollars (\$50,000).

15 (c) A mortgage servicer, mortgagee, beneficiary, or authorized
16 agent shall not be liable for any violation that it has corrected and
17 remedied prior to the recordation of the trustee's deed upon sale,
18 or that has been corrected and remedied by third parties working
19 on its behalf prior to the recordation of the trustee's deed upon
20 sale.

21 (d) A violation of Section 2923.5, 2924.17, or ~~2917.18~~ 2924.18
22 by a person licensed by the Department of Corporations, the
23 Department of Financial Institutions, or the Department of Real
24 Estate shall be deemed to be a violation of that person's licensing
25 law.

26 (e) ~~No~~ A violation of this article shall *not* affect the validity of
27 a sale in favor of a bona fide purchaser and any of its
28 encumbrancers for value without notice.

29 (f) A third-party encumbrancer shall not be relieved of liability
30 resulting from violations of Section 2923.5, 2924.17 or 2924.18,
31 committed by that third-party encumbrancer, that occurred prior
32 to the sale of the subject property to the bona fide purchaser.

33 (g) The rights, remedies, and procedures provided by this section
34 are in addition to and independent of any other rights, remedies,
35 or procedures under any other law. Nothing in this section shall
36 be construed to alter, limit, or negate any other rights, remedies,
37 or procedures provided by law.

38 (h) A court may award a prevailing borrower reasonable
39 attorney's fees and costs in an action brought pursuant to this
40 section. A borrower shall be deemed to have prevailed for purposes

1 of this subdivision if the borrower obtained injunctive relief or
2 damages pursuant to this section.

3 (i) This section shall apply only to entities described in
4 subdivision (b) of Section 2924.18.

5 (j) This section shall remain in effect only until January 1, 2018,
6 and as of that date is repealed, unless a later enacted statute, that
7 is enacted before January 1, 2018, deletes or extends that date.

8 *SEC. 3. Section 2950 of the Civil Code is amended to read:*

9 2950. When a grant of real property purports to be an absolute
10 conveyance, but is intended to be ~~defeasable~~ *defeasible* on the
11 performance of certain conditions, such grant is not defeated or
12 affected as against any person other than the grantee or his heirs
13 or devisees, or persons having actual notice, unless an instrument
14 of defeasance, duly executed and acknowledged, shall have been
15 recorded in the office of the County Recorder of the county where
16 the property is situated.

17 *SEC. 4. Section 3509 of the Civil Code is amended to read:*

18 3509. The maxims of jurisprudence hereinafter set forth are
19 intended not to qualify any of the foregoing provisions of this
20 Code, *code*, but to aid in their just application.

21 ~~SECTION 1. Section 20919.2 of the Public Contract Code is~~
22 ~~amended to read:~~

23 ~~20919.2. Nothing in this article or in this code shall prohibit~~
24 ~~the unified school district from utilizing job order contracting as~~
25 ~~an alternative to contracting procedures that the unified school~~
26 ~~district is otherwise authorized or required by law to use.~~