

**ASSEMBLY BILL**

**No. 1091**

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**Introduced by Assembly Member Skinner**

February 22, 2013

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An act to amend Sections 2923.3 and 2924 of the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1091, as introduced, Skinner. Mortgages: notice of default.

Existing law requires that, upon a breach of the obligation of a mortgage or transfer of an interest in property, the mortgagee, trustee, 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 specifies other requirements and procedures for completion of a foreclosure sale, including recording a notice of sale prior to exercising a power of sale. Existing law requires, under a notice of default, that a summary of mortgage terms be provided to the mortgagor or trustor, as specified.

This bill would require a notice of default and the summary of mortgage terms provided to a mortgagor or trustor to include a statement that includes the telephone number of the Homeowners Home Ownership and Opportunity for People Everywhere (HOPE) program or a similar mortgage payment assistance program of the United States Department of Treasury or Housing and Urban Development.

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 2923.3 of the Civil Code is amended to  
2 read:

3 2923.3. (a) With respect to residential real property containing  
4 no more than four dwelling units, a mortgagee, trustee, beneficiary,  
5 or authorized agent shall provide to the mortgagor or trustor a copy  
6 of the recorded notice of default with an attached separate summary  
7 document of the notice of default in English and the languages  
8 described in Section 1632, as set forth in subdivision (c), and a  
9 copy of the recorded notice of sale with an attached separate  
10 summary document of the information required to be contained  
11 in the notice of sale in English and the languages described in  
12 Section 1632, as set forth in subdivision (d). These summaries are  
13 not required to be recorded or published. This subdivision shall  
14 become operative on April 1, 2013, or 90 days following the  
15 issuance of the translations by the Department of Corporations,  
16 pursuant to subdivision (b), whichever is later.

17 (b) (1) The Department of Corporations shall provide a standard  
18 translation of the statement in paragraph (1) of subdivision (c),  
19 and of the summary of the notice of default, as set forth in  
20 paragraph (2) of subdivision (c) in the languages described in  
21 Section 1632.

22 (2) The Department of Corporations shall provide a standard  
23 translation of the statement in paragraph (1) of subdivision (d),  
24 and of the summary of the notice of sale, as set forth in paragraph  
25 (2) of subdivision (d).

26 (3) The department shall make the translations described in  
27 paragraphs (1) and (2) available without charge on its Internet Web  
28 site. Any mortgagee, trustee, beneficiary, or authorized agent who  
29 provides the department’s translations in the manner prescribed  
30 by this section shall be in compliance with this section.

31 (c) (1) The following statement shall appear in the languages  
32 described in Section 1632 at the beginning of the notice of default:

33  
34 NOTE: THERE IS A SUMMARY OF THE INFORMATION  
35 IN THIS DOCUMENT ATTACHED.  
36

1 (2) The following summary of key information shall be attached  
2 to the copy of the notice of default provided to the mortgagor or  
3 trustor:

4  
5 **SUMMARY OF KEY INFORMATION**

6 The attached notice of default was sent to [name of the trustor],  
7 in relation to [description of the property that secures the mortgage  
8 or deed of trust in default]. This property may be sold to satisfy  
9 your obligation and any other obligation secured by the deed of  
10 trust or mortgage that is in default. [Trustor] has, as described in  
11 the notice of default, breached the mortgage or deed of trust on  
12 the property described above.

13 **IMPORTANT NOTICE: IF YOUR PROPERTY IS IN**  
14 **FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR**  
15 **PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT**  
16 **ACTION, and you may have the legal right to bring your account**  
17 **in good standing by paying all of your past due payments plus**  
18 **permitted costs and expenses within the time permitted by law for**  
19 **reinstatement of your account, which is normally five business**  
20 **days prior to the date set for the sale of your property. No sale date**  
21 **may be set until approximately 90 days from the date the attached**  
22 **notice of default may be recorded (which date of recordation**  
23 **appears on the notice).**

24 This amount is \_\_\_\_\_ as of \_\_\_\_ (date) \_\_\_\_\_ and  
25 will increase until your account becomes current.

26 While your property is in foreclosure, you still must pay other  
27 obligations (such as insurance and taxes) required by your note  
28 and deed of trust or mortgage. If you fail to make future payments  
29 on the loan, pay taxes on the property, provide insurance on the  
30 property, or pay other obligations as required in the note and deed  
31 of trust or mortgage, the beneficiary or mortgagee may insist that  
32 you do so in order to reinstate your account in good standing. In  
33 addition, the beneficiary or mortgagee may require as a condition  
34 to reinstatement that you provide reliable written evidence that  
35 you paid all senior liens, property taxes, and hazard insurance  
36 premiums.

37 Upon your written request, the beneficiary or mortgagee will  
38 give you a written itemization of the entire amount you must pay.  
39 You may not have to pay the entire unpaid portion of your account,  
40 even though full payment was demanded, but you must pay all

1 amounts in default at the time payment is made. However, you  
 2 and your beneficiary or mortgagee may mutually agree in writing  
 3 prior to the time the notice of sale is posted (which may not be  
 4 earlier than three months after this notice of default is recorded)  
 5 to, among other things, (1) provide additional time in which to  
 6 cure the default by transfer of the property or otherwise; or (2)  
 7 establish a schedule of payments in order to cure your default; or  
 8 both (1) and (2).

9 Following the expiration of the time period referred to in the  
 10 first paragraph of this notice, unless the obligation being foreclosed  
 11 upon or a separate written agreement between you and your creditor  
 12 permits a longer period, you have only the legal right to stop the  
 13 sale of your property by paying the entire amount demanded by  
 14 your creditor.

15 To find out the amount you must pay, or to arrange for payment  
 16 to stop the foreclosure, or if your property is in foreclosure for any  
 17 other reason, contact:

18 \_\_\_\_\_  
 19 (Name of beneficiary or mortgagee)  
 20 \_\_\_\_\_  
 21 (Mailing address)  
 22 \_\_\_\_\_  
 23 (Telephone)

24 If you have any questions, you should contact a lawyer or the  
 25 governmental agency which may have insured your loan.

26 Notwithstanding the fact that your property is in foreclosure,  
 27 you may offer your property for sale, provided the sale is concluded  
 28 prior to the conclusion of the foreclosure.

29 Remember, **YOU MAY LOSE LEGAL RIGHTS IF YOU DO**  
 30 **NOT TAKE PROMPT ACTION.**

31 If you would like additional copies of this summary, you may  
 32 obtain them by calling [insert telephone number].

33 (d) (1) The following statement shall appear in the languages  
 34 described in Section 1632 at the beginning of the notice of sale:

35  
 36 **NOTE: THERE IS A SUMMARY OF THE INFORMATION**  
 37 **IN THIS DOCUMENT ATTACHED.**  
 38

1 (2) The following summary of key information shall be attached  
2 to the copy of the notice of sale provided to the mortgagor or  
3 trustor:

4  
5 SUMMARY OF KEY INFORMATION

6 The attached notice of sale was sent to [trustor], in relation to  
7 [description of the property that secures the mortgage or deed of  
8 trust in default].

9 YOU ARE IN DEFAULT UNDER A (Deed of trust or  
10 mortgage) DATED \_\_\_\_\_. UNLESS YOU TAKE ACTION TO  
11 PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A  
12 PUBLIC SALE.

13 IF YOU NEED AN EXPLANATION OF THE NATURE OF  
14 THE PROCEEDING AGAINST YOU, YOU SHOULD  
15 CONTACT A LAWYER.

16 The total amount due in the notice of sale is \_\_\_\_\_.

17 Your property is scheduled to be sold on [insert date and time  
18 of sale] at [insert location of sale].

19 However, the sale date shown on the attached notice of sale may  
20 be postponed one or more times by the mortgagee, beneficiary,  
21 trustee, or a court, pursuant to Section 2924g of the California  
22 Civil Code. The law requires that information about trustee sale  
23 postponements be made available to you and to the public, as a  
24 courtesy to those not present at the sale. If you wish to learn  
25 whether your sale date has been postponed, and, if applicable, the  
26 rescheduled time and date for the sale of this property, you may  
27 call [telephone number for information regarding the trustee's sale]  
28 or visit this Internet Web site [Internet Web site address for  
29 information regarding the sale of this property], using the file  
30 number assigned to this case [case file number]. Information about  
31 postponements that are very short in duration or that occur close  
32 in time to the scheduled sale may not immediately be reflected in  
33 the telephone information or on the Internet Web site. The best  
34 way to verify postponement information is to attend the scheduled  
35 sale.

36 If you would like additional copies of this summary, you may  
37 obtain them by calling [insert telephone number].

38 (e) Failure to provide these summaries to the mortgagor or  
39 trustor shall have the same effect as if the notice of default or notice  
40 of sale were incomplete or not provided.

1 (f) This section sets forth a requirement for translation in  
 2 languages other than English, and a document complying with the  
 3 provisions of this section may be recorded pursuant to subdivision  
 4 (b) of Section 27293 of the Government Code. A document that  
 5 complies with this section shall not be rejected for recordation on  
 6 the ground that some part of the document is in a language other  
 7 than English.

8 (g) *The statement required pursuant to subdivision (c) shall*  
 9 *also include the telephone number of the Homeowners Home*  
 10 *Ownership and Opportunity for People Everywhere (HOPE)*  
 11 *program or a similar mortgage payment assistance program of*  
 12 *the United States Department of Treasury or Housing and Urban*  
 13 *Development.*

14  
 15 SEC. 2. Section 2924 of the Civil Code is amended to read:

16 2924. (a) Every transfer of an interest in property, other than  
 17 in trust, made only as a security for the performance of another  
 18 act, is to be deemed a mortgage, except when in the case of  
 19 personal property it is accompanied by actual change of possession,  
 20 in which case it is to be deemed a pledge. Where, by a mortgage  
 21 created after July 27, 1917, of any estate in real property, other  
 22 than an estate at will or for years, less than two, or in any transfer  
 23 in trust made after July 27, 1917, of a like estate to secure the  
 24 performance of an obligation, a power of sale is conferred upon  
 25 the mortgagee, trustee, or any other person, to be exercised after  
 26 a breach of the obligation for which that mortgage or transfer is a  
 27 security, the power shall not be exercised except where the  
 28 mortgage or transfer is made pursuant to an order, judgment, or  
 29 decree of a court of record, or to secure the payment of bonds or  
 30 other evidences of indebtedness authorized or permitted to be  
 31 issued by the Commissioner of Corporations, or is made by a public  
 32 utility subject to the provisions of the Public Utilities Act, until  
 33 all of the following apply:

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

39 (A) A statement identifying the mortgage or deed of trust by  
 40 stating the name or names of the trustor or trustors and giving the

1 book and page, or instrument number, if applicable, where the  
2 mortgage or deed of trust is recorded or a description of the  
3 mortgaged or trust property.

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

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

11 (D) If the default is curable pursuant to Section 2924c, the  
12 statement specified in paragraph (1) of subdivision (b) of Section  
13 2924c.

14 (E) *A statement that includes the telephone number of the*  
15 *Homeowners Home Ownership and Opportunity for People*  
16 *Everywhere (HOPE) program or a similar mortgage payment*  
17 *assistance program of the United States Department of Treasury*  
18 *or Housing and Urban Development.*

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

21 (3) Except as provided in paragraph (4), after the lapse of the  
22 three months described in paragraph (2), the mortgagee, trustee,  
23 or other person authorized to take the sale shall give notice of sale,  
24 stating the time and place thereof, in the manner and for a time  
25 not less than that set forth in Section 2924f.

26 (4) Notwithstanding paragraph (3), the mortgagee, trustee, or  
27 other person authorized to take sale may record a notice of sale  
28 pursuant to Section 2924f up to five days before the lapse of the  
29 three-month period described in paragraph (2), provided that the  
30 date of sale is no earlier than three months and 20 days after the  
31 recording of the notice of default.

32 (5) Until January 1, 2018, whenever a sale is postponed for a  
33 period of at least 10 business days pursuant to Section 2924g, a  
34 mortgagee, beneficiary, or authorized agent shall provide written  
35 notice to a borrower regarding the new sale date and time, within  
36 five business days following the postponement. Information  
37 provided pursuant to this paragraph shall not constitute the public  
38 declaration required by subdivision (d) of Section 2924g. Failure  
39 to comply with this paragraph shall not invalidate any sale that

1 would otherwise be valid under Section 2924f. This paragraph  
2 shall be inoperative on January 1, 2018.

3 (6) No entity shall record or cause a notice of default to be  
4 recorded or otherwise initiate the foreclosure process unless it is  
5 the holder of the beneficial interest under the mortgage or deed of  
6 trust, the original trustee or the substituted trustee under the deed  
7 of trust, or the designated agent of the holder of the beneficial  
8 interest. No agent of the holder of the beneficial interest under the  
9 mortgage or deed of trust, original trustee or substituted trustee  
10 under the deed of trust may record a notice of default or otherwise  
11 commence the foreclosure process except when acting within the  
12 scope of authority designated by the holder of the beneficial  
13 interest.

14 (b) In performing acts required by this article, the trustee shall  
15 incur no liability for any good faith error resulting from reliance  
16 on information provided in good faith by the beneficiary regarding  
17 the nature and the amount of the default under the secured  
18 obligation, deed of trust, or mortgage. In performing the acts  
19 required by this article, a trustee shall not be subject to Title 1.6c  
20 (commencing with Section 1788) of Part 4.

21 (c) A recital in the deed executed pursuant to the power of sale  
22 of compliance with all requirements of law regarding the mailing  
23 of copies of notices or the publication of a copy of the notice of  
24 default or the personal delivery of the copy of the notice of default  
25 or the posting of copies of the notice of sale or the publication of  
26 a copy thereof shall constitute prima facie evidence of compliance  
27 with these requirements and conclusive evidence thereof in favor  
28 of bona fide purchasers and encumbrancers for value and without  
29 notice.

30 (d) All of the following shall constitute privileged  
31 communications pursuant to Section 47:

32 (1) The mailing, publication, and delivery of notices as required  
33 by this section.

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

35 (3) Performance of the functions and procedures set forth in  
36 this article if those functions and procedures are necessary to carry  
37 out the duties described in Sections 729.040, 729.050, and 729.080  
38 of the Code of Civil Procedure.

39 (e) There is a rebuttable presumption that the beneficiary  
40 actually knew of all unpaid loan payments on the obligation owed



1 to the beneficiary and secured by the deed of trust or mortgage  
2 subject to the notice of default. However, the failure to include an  
3 actually known default shall not invalidate the notice of sale and  
4 the beneficiary shall not be precluded from asserting a claim to  
5 this omitted default or defaults in a separate notice of default.

6 (f) With respect to residential real property containing no more  
7 than four dwelling units, a separate document containing a  
8 summary of the notice of default information in English and the  
9 languages described in Section 1632 shall be attached to the notice  
10 of default provided to the mortgagor or trustor pursuant to Section  
11 2923.3.

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