

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 983

Introduced by Senator Morrell

February 10, 2016

An act to amend Sections ~~2923.3 and 2924f~~ 2923.3, 2924, 2924c, 2924d, 2924f, and 2934a of, and to amend and repeal Section 2924.11 of, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 983, as amended, Morrell. Mortgages and deeds of trust.

Existing law imposes various requirements to be satisfied prior to exercising a power of sale under a mortgage or deed of trust. Existing law, with respect to residential real property containing up to 4 dwelling units, requires a mortgagee, trustee, beneficiary, or authorized agent to provide to the mortgagor or trustor a copy of the recorded notice of default and a copy of the recorded notice of sale.

This bill would instead require the mortgagee, trustee, beneficiary, or authorized agent to provide the mortgagor or trustor with a copy of the notice of default indicating the recording date and a copy of the notice of sale indicating the recording date.

~~Existing law, before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, requires notice of the sale to be given. 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. Existing law, on and after April 1, 2012, also requires the notice of sale to contain language notifying potential bidders of specified risks involved in bidding on property at a trustee's sale.~~

~~This bill would revise the language notifying potential bidders of specified risks involved in bidding at a trustee's sale.~~

Existing law requires a legal owner to maintain vacant residential property purchased at a foreclosure sale or acquired by the owner through foreclosure under a mortgage or deed of trust and authorizes a governmental entity to impose a civil fine, as specified, for a violation. Existing law requires a governmental entity, prior to imposing a fine or penalty for failure to maintain a vacant property, as specified, to provide the owner of that property with a notice of the violation and an opportunity to correct that violation.

This bill would provide that a trustee under a deed of trust or a trustee named in a recorded substitution of trustee is not a legal owner or owner, as applicable, for purposes of the provisions described above. This bill would also provide that a trustee under a deed of trust is not responsible for any obligation or failure to maintain or register a property subject to foreclosure.

Existing law requires a mortgagee, beneficiary, or authorized agent to record a rescission of a notice of default or cancel a pending trustee sale, if applicable, upon the borrower executing a permanent foreclosure prevention alternative. Existing law, in the case of a short sale, requires the rescission or cancellation of the pending trustee's sale to occur when the short sale has been approved and proof of funds or financing has been provided, as specified.

This bill would make a clarifying change by eliminating the reference to rescission in the case of a pending trustee's sale.

Existing law limits the amount of trustee's or attorney's fees that may be charged in connection with the enforcement of certain terms of obligation upon default in payment under a mortgage or deed of trust prior to reinstatement of a monetary default, or until the notice of sale is deposited in the mail, or otherwise at any time prior to the decree of foreclosure, to a base amount not to exceed \$300 for an unpaid principal balance sum of \$150,000 or less, or \$250 plus specified additional percentages of unpaid principal sums, if the unpaid principal balance exceeds \$150,000. Existing law, in lieu of an authorized charge, limits the amount of trustee's or attorney's fees after the notice of sale is deposited in the mail and until the property is sold by power of sale, to a base amount not to exceed \$425 for an unpaid principal balance sum of \$150,000 or less, or \$360 plus specified additional percentages of unpaid principal sums, if the unpaid principal balance exceeds \$150,000.

This bill would increase the base limitations on the amount of those trustee's or attorney's fees by \$50.

Existing law, before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, requires notice of the sale to be given. 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. Existing law, on and after April 1, 2012, also requires the notice of sale to contain language notifying potential bidders of specified risks involved in bidding on property at a trustee's sale.

This bill would revise the language notifying potential bidders of specified risks involved in bidding at a trustee's sale.

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 notice of default indicating the recording date with an
7 attached separate summary document of the notice of default in
8 English and the languages described in Section 1632, as set forth
9 in subdivision (c), and a copy of the notice of sale indicating the
10 recording date with an attached separate summary document of
11 the information required to be contained in the notice of sale in
12 English and the languages described in Section 1632, as set forth
13 in subdivision (d). These summaries are not required to be recorded
14 or published. This subdivision shall become operative on April 1,
15 2013, or 90 days following the issuance of the translations by the
16 Department of Business Oversight pursuant to subdivision (b),
17 whichever is later.
18 (b) (1) The Department of Business Oversight shall provide a
19 standard translation of the statement in paragraph (1) of subdivision
20 (c), and of the summary of the notice of default, as set forth in
21 paragraph (2) of subdivision (c) in the languages described in
22 Section 1632.

1 (2) The Department of Business Oversight shall provide a
2 standard translation of the statement in paragraph (1) of subdivision
3 (d), and of the summary of the notice of sale, as set forth in
4 paragraph (2) of subdivision (d).

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

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

12
13 NOTE: THERE IS A SUMMARY OF THE INFORMATION
14 IN THIS DOCUMENT ATTACHED.

15
16 (2) The following summary of key information shall be attached
17 to the copy of the notice of default provided to the mortgagor or
18 trustor:

19
20 SUMMARY OF KEY INFORMATION

21 The attached notice of default was sent to [name of the trustor],
22 in relation to [description of the property that secures the mortgage
23 or deed of trust in default]. This property may be sold to satisfy
24 your obligation and any other obligation secured by the deed of
25 trust or mortgage that is in default. [Trustor] has, as described in
26 the notice of default, breached the mortgage or deed of trust on
27 the property described above.

28 IMPORTANT NOTICE: IF YOUR PROPERTY IS IN
29 FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR
30 PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT
31 ACTION, and you may have the legal right to bring your account
32 in good standing by paying all of your past due payments plus
33 permitted costs and expenses within the time permitted by law for
34 reinstatement of your account, which is normally five business
35 days prior to the date set for the sale of your property. No sale date
36 may be set until approximately 90 days from the date the attached
37 notice of default may be recorded (which date of recordation
38 appears on the notice).

39 This amount is _____ as of ___(date)_____ and
40 will increase until your account becomes current.

1 While your property is in foreclosure, you still must pay other
 2 obligations (such as insurance and taxes) required by your note
 3 and deed of trust or mortgage. If you fail to make future payments
 4 on the loan, pay taxes on the property, provide insurance on the
 5 property, or pay other obligations as required in the note and deed
 6 of trust or mortgage, the beneficiary or mortgagee may insist that
 7 you do so in order to reinstate your account in good standing. In
 8 addition, the beneficiary or mortgagee may require as a condition
 9 to reinstatement that you provide reliable written evidence that
 10 you paid all senior liens, property taxes, and hazard insurance
 11 premiums.

12 Upon your written request, the beneficiary or mortgagee will
 13 give you a written itemization of the entire amount you must pay.
 14 You may not have to pay the entire unpaid portion of your account,
 15 even though full payment was demanded, but you must pay all
 16 amounts in default at the time payment is made. However, you
 17 and your beneficiary or mortgagee may mutually agree in writing
 18 prior to the time the notice of sale is posted (which may not be
 19 earlier than three months after this notice of default is recorded)
 20 to, among other things, (1) provide additional time in which to
 21 cure the default by transfer of the property or otherwise; or (2)
 22 establish a schedule of payments in order to cure your default; or
 23 both (1) and (2).

24 Following the expiration of the time period referred to in the
 25 first paragraph of this notice, unless the obligation being foreclosed
 26 upon or a separate written agreement between you and your creditor
 27 permits a longer period, you have only the legal right to stop the
 28 sale of your property by paying the entire amount demanded by
 29 your creditor.

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

33 _____

34 (Name of beneficiary or mortgagee)

35 _____

36 (Mailing address)

37 _____

38 (Telephone)

39 If you have any questions, you should contact a lawyer or the
 40 governmental agency ~~which~~ that may have insured your loan.

1 Notwithstanding the fact that your property is in foreclosure,
2 you may offer your property for sale, provided the sale is concluded
3 prior to the conclusion of the foreclosure.

4 Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO
5 NOT TAKE PROMPT ACTION.

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

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

10

11 NOTE: THERE IS A SUMMARY OF THE INFORMATION
12 IN THIS DOCUMENT ATTACHED.

13

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

17

18 SUMMARY OF KEY INFORMATION

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

22 YOU ARE IN DEFAULT UNDER A (Deed of trust or
23 mortgage) DATED _____. UNLESS YOU TAKE ACTION TO
24 PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A
25 PUBLIC SALE.

26 IF YOU NEED AN EXPLANATION OF THE NATURE OF
27 THE PROCEEDING AGAINST YOU, YOU SHOULD
28 CONTACT A LAWYER.

29 The total amount due in the notice of sale is _____.

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

32 However, the sale date shown on the attached notice of sale may
33 be postponed one or more times by the mortgagee, beneficiary,
34 trustee, or a court, pursuant to Section 2924g of the California
35 Civil Code. The law requires that information about trustee sale
36 postponements be made available to you and to the public, as a
37 courtesy to those not present at the sale. If you wish to learn
38 whether your sale date has been postponed, and, if applicable, the
39 rescheduled time and date for the sale of this property, you may
40 call [telephone number for information regarding the trustee’s sale]

1 or visit this Internet Web site [Internet Web site address for
2 information regarding the sale of this property], using the file
3 number assigned to this case [case file number]. Information about
4 postponements that are very short in duration or that occur close
5 in time to the scheduled sale may not immediately be reflected in
6 the telephone information or on the Internet Web site. The best
7 way to verify postponement information is to attend the scheduled
8 sale.

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

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

14 (f) This section sets forth a requirement for translation in
15 languages other than English, and a document complying with the
16 provisions of this section may be recorded pursuant to subdivision
17 (b) of Section 27293 of the Government Code. A document that
18 complies with this section shall not be rejected for recordation on
19 the ground that some part of the document is in a language other
20 than English.

21
22 ~~SEC. 2. Section 2924f of the Civil Code is amended to read:~~

23 ~~2924f. (a) As used in this section and Sections 2924g and~~
24 ~~2924h, “property” means real property or a leasehold estate therein,~~
25 ~~and “calendar week” means Monday through Saturday, inclusive.~~

26 ~~(b) (1) Except as provided in subdivision (c), before any sale~~
27 ~~of property can be made under the power of sale contained in any~~
28 ~~deed of trust or mortgage, or any resale resulting from a rescission~~
29 ~~for a failure of consideration pursuant to subdivision (c) of Section~~
30 ~~2924h, notice of the sale thereof shall be given by posting a written~~
31 ~~notice of the time of sale and of the street address and the specific~~
32 ~~place at the street address where the sale will be held, and~~
33 ~~describing the property to be sold, at least 20 days before the date~~
34 ~~of sale in one public place in the city where the property is to be~~
35 ~~sold, if the property is to be sold in a city, or, if not, then in one~~
36 ~~public place in the judicial district in which the property is to be~~
37 ~~sold, and publishing a copy once a week for three consecutive~~
38 ~~calendar weeks.~~

39 ~~(2) The first publication to be at least 20 days before the date~~
40 ~~of sale, in a newspaper of general circulation published in the city~~

1 in which the property or some part thereof is situated, if any part
2 thereof is situated in a city, if not, then in a newspaper of general
3 circulation published in the judicial district in which the property
4 or some part thereof is situated, or in case no newspaper of general
5 circulation is published in the city or judicial district, as the case
6 may be, in a newspaper of general circulation published in the
7 county in which the property or some part thereof is situated, or
8 in case no newspaper of general circulation is published in the city
9 or judicial district or county, as the case may be, in a newspaper
10 of general circulation published in the county in this state that is
11 contiguous to the county in which the property or some part thereof
12 is situated and has, by comparison with all similarly contiguous
13 counties, the highest population based upon total county population
14 as determined by the most recent federal decennial census
15 published by the Bureau of the Census.

16 (3) A copy of the notice of sale shall also be posted in a
17 conspicuous place on the property to be sold at least 20 days before
18 the date of sale, where possible and where not restricted for any
19 reason. If the property is a single-family residence the posting shall
20 be on a door of the residence, but, if not possible or restricted, then
21 the notice shall be posted in a conspicuous place on the property;
22 however, if access is denied because a common entrance to the
23 property is restricted by a guard gate or similar impediment, the
24 property may be posted at that guard gate or similar impediment
25 to any development community.

26 (4) The notice of sale shall conform to the minimum
27 requirements of Section 6043 of the Government Code and be
28 recorded with the county recorder of the county in which the
29 property or some part thereof is situated at least 20 days prior to
30 the date of sale.

31 (5) The notice of sale shall contain the name, street address in
32 this state, which may reflect an agent of the trustee, and either a
33 toll-free telephone number or telephone number in this state of the
34 trustee, and the name of the original trustor, and also shall contain
35 the statement required by paragraph (3) of subdivision (c). In
36 addition to any other description of the property, the notice shall
37 describe the property by giving its street address, if any, or other
38 common designation, if any, and a county assessor's parcel
39 number; but if the property has no street address or other common
40 designation, the notice shall contain a legal description of the

1 property, the name and address of the beneficiary at whose request
2 the sale is to be conducted, and a statement that directions may be
3 obtained pursuant to a written request submitted to the beneficiary
4 within 10 days from the first publication of the notice. Directions
5 shall be deemed reasonably sufficient to locate the property if
6 information as to the location of the property is given by reference
7 to the direction and approximate distance from the nearest
8 crossroads, frontage road, or access road. If a legal description or
9 a county assessor's parcel number and either a street address or
10 another common designation of the property is given, the validity
11 of the notice and the validity of the sale shall not be affected by
12 the fact that the street address, other common designation, name
13 and address of the beneficiary, or the directions obtained therefrom
14 are erroneous or that the street address, other common designation,
15 name and address of the beneficiary, or directions obtained
16 therefrom are omitted.

17 (6) ~~The term "newspaper of general circulation," as used in this~~
18 ~~section, has the same meaning as defined in Article 1 (commencing~~
19 ~~with Section 6000) of Chapter 1 of Division 7 of Title 1 of the~~
20 ~~Government Code.~~

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

34 (8) (A) ~~On and after April 1, 2012, if the deed of trust or~~
35 ~~mortgage containing a power of sale is secured by real property~~
36 ~~containing from one to four single-family residences, the notice~~
37 ~~of sale shall contain substantially the following language, in~~
38 ~~addition to the language required pursuant to paragraphs (1) to (7),~~
39 ~~inclusive:~~

40

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

16
17 ~~NOTICE TO PROPERTY OWNER: The sale date shown on~~
18 ~~this notice of sale may be postponed one or more times by the~~
19 ~~mortgagee, beneficiary, trustee, or a court, pursuant to Section~~
20 ~~2924g of the California Civil Code. The law requires that~~
21 ~~information about trustee sale postponements be made available~~
22 ~~to you and to the public, as a courtesy to those not present at the~~
23 ~~sale. If you wish to learn whether your sale date has been~~
24 ~~postponed, and, if applicable, the rescheduled time and date for~~
25 ~~the sale of this property, you may call [telephone number for~~
26 ~~information regarding the trustee's sale] or visit this Internet Web~~
27 ~~site [Internet Web site address for information regarding the sale~~
28 ~~of this property], using the file number assigned to this case [case~~
29 ~~file number]. Information about postponements that are very short~~
30 ~~in duration or that occur close in time to the scheduled sale may~~
31 ~~not immediately be reflected in the telephone information or on~~
32 ~~the Internet Web site. The best way to verify postponement~~
33 ~~information is to attend the scheduled sale.~~

34
35 ~~(B) A mortgagee, beneficiary, trustee, or authorized agent shall~~
36 ~~make a good faith effort to provide up-to-date information~~
37 ~~regarding sale dates and postponements to persons who wish this~~
38 ~~information. This information shall be made available free of~~
39 ~~charge. It may be made available via an Internet Web site, a~~
40 ~~telephone recording that is accessible 24 hours a day, seven days~~

1 a week, or through any other means that allows 24 hours a day,
2 seven days a week, no-cost access to updated information. A
3 disruption of any of these methods of providing sale date and
4 postponement information to allow for reasonable maintenance or
5 due to a service outage shall not be deemed to be a violation of
6 the good faith standard.

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

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

16 (9) If the sale of the property is to be a unified sale as provided
17 in subparagraph (B) of paragraph (1) of subdivision (a) of Section
18 9604 of the Commercial Code, the notice of sale shall also contain
19 a description of the personal property or fixtures to be sold. In the
20 case where it is contemplated that all of the personal property or
21 fixtures are to be sold, the description in the notice of the personal
22 property or fixtures shall be sufficient if it is the same as the
23 description of the personal property or fixtures contained in the
24 agreement creating the security interest in or encumbrance on the
25 personal property or fixtures or the filed financing statement
26 relating to the personal property or fixtures. In all other cases, the
27 description in the notice shall be sufficient if it would be a
28 sufficient description of the personal property or fixtures under
29 Section 9108 of the Commercial Code. Inclusion of a reference to
30 or a description of personal property or fixtures in a notice of sale
31 hereunder shall not constitute an election by the secured party to
32 conduct a unified sale pursuant to subparagraph (B) of paragraph
33 (1) of subdivision (a) of Section 9604 of the Commercial Code,
34 shall not obligate the secured party to conduct a unified sale
35 pursuant to subparagraph (B) of paragraph (1) of subdivision (a)
36 of Section 9604 of the Commercial Code, and in no way shall
37 render defective or noncomplying either that notice or a sale
38 pursuant to that notice by reason of the fact that the sale includes
39 none or less than all of the personal property or fixtures referred
40 to or described in the notice. This paragraph shall not otherwise

1 affect the obligations or duties of a secured party under the
2 Commercial Code.

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

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

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

19
20 YOU ARE IN DEFAULT UNDER A
21 _____,
22 _____,
23 (Deed of trust or mortgage)
24 DATED _____. UNLESS YOU TAKE ACTION TO PROTECT
25 YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF
26 YOU NEED AN EXPLANATION OF THE NATURE OF THE
27 PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A
28 LAWYER.

29 (4) All sales of real property pursuant to a power of sale
30 contained in any deed of trust or mortgage described in paragraph
31 (1) shall be held in the county where the residence is located and
32 shall be made to the person making the highest offer. The trustee
33 may receive offers during the 10-day period immediately prior to
34 the date of sale and if any offer is accepted in writing by both the
35 trustor or mortgagor and the beneficiary or mortgagee prior to the
36 time set for sale, the sale shall be postponed to a date certain and
37 prior to which the property may be conveyed by the trustor to the
38 person making the offer according to its terms. The offer is
39 revocable until accepted. The performance of the offer, following
40 acceptance, according to its terms, by a conveyance of the property

1 to the offeror, shall operate to terminate any further proceeding
2 under the notice of sale and it shall be deemed revoked.

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

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

10 ~~(d) With respect to residential real property containing no more~~
11 ~~than four dwelling units, a separate document containing a~~
12 ~~summary of the notice of sale information in English and the~~
13 ~~languages described in Section 1632 shall be attached to the notice~~
14 ~~of sale provided to the mortgagor or trustor pursuant to Section~~
15 ~~2923.3.~~

16 *SEC. 2. Section 2924 of the Civil Code is amended to read:*

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

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

1 (A) A statement identifying the mortgage or deed of trust by
2 stating the name or names of the trustor or trustors and giving the
3 book and page, or instrument number, if applicable, where the
4 mortgage or deed of trust is recorded or a description of the
5 mortgaged or trust property.

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

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

13 (D) If the default is curable pursuant to Section 2924c, the
14 statement specified in paragraph (1) of subdivision (b) of Section
15 2924c.

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

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

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

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

39 (6) No entity shall record or cause a notice of default to be
40 recorded or otherwise initiate the foreclosure process unless it is

1 the holder of the beneficial interest under the mortgage or deed of
2 trust, the original trustee or the substituted trustee under the deed
3 of trust, or the designated agent of the holder of the beneficial
4 interest. No agent of the holder of the beneficial interest under the
5 mortgage or deed of trust, original trustee or substituted trustee
6 under the deed of trust may record a notice of default or otherwise
7 commence the foreclosure process except when acting within the
8 scope of authority designated by the holder of the beneficial
9 interest.

10 (b) (1) In performing acts required by this article, ~~the both of~~
11 *the following shall apply:*

12 (A) *The trustee shall incur no liability for any good faith error*
13 *resulting from reliance on information provided in good faith by*
14 *the beneficiary regarding the nature and the amount of the default*
15 *under the secured obligation, deed of trust, or mortgage. ~~In~~*
16 *performing the acts required by this article, a*

17 (B) *A trustee shall not be subject to Title 1.6c (commencing*
18 *with Section 1788) of Part 4.*

19 (2) *A trustee under a deed of trust shall not be a legal owner*
20 *or owner, as applicable, for purposes of Section 2929.3 or 2929.4.*

21 (3) *A trustee under a deed of trust shall not be responsible for*
22 *any obligation or failure to maintain or register a property subject*
23 *to foreclosure.*

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

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

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

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

38 (3) Performance of the functions and procedures set forth in
39 this article if those functions and procedures are necessary to carry

1 out the duties described in Sections 729.040, 729.050, and 729.080
2 of the Code of Civil Procedure.

3 (e) There is a rebuttable presumption that the beneficiary
4 actually knew of all unpaid loan payments on the obligation owed
5 to the beneficiary and secured by the deed of trust or mortgage
6 subject to the notice of default. However, the failure to include an
7 actually known default shall not invalidate the notice of sale and
8 the beneficiary shall not be precluded from asserting a claim to
9 this omitted default or defaults in a separate notice of default.

10 (f) With respect to residential real property containing no more
11 than four dwelling units, a separate document containing a
12 summary of the notice of default information in English and the
13 languages described in Section 1632 shall be attached to the notice
14 of default provided to the mortgagor or trustor pursuant to Section
15 2923.3.

16 SEC. 3. Section 2924.11 of the Civil Code, as added by Section
17 14 of Chapter 86 of the Statutes of 2012, is amended to read:

18 2924.11. (a) If a foreclosure prevention alternative is approved
19 in writing prior to the recordation of a notice of default, a mortgage
20 servicer, mortgagee, trustee, beneficiary, or authorized agent shall
21 not record a notice of default under either of the following
22 circumstances:

23 (1) The borrower is in compliance with the terms of a written
24 trial or permanent loan modification, forbearance, or repayment
25 plan.

26 (2) A foreclosure prevention alternative has been approved in
27 writing by all parties, including, for example, the first lien investor,
28 junior lienholder, and mortgage insurer, as applicable, and proof
29 of funds or financing has been provided to the servicer.

30 (b) If a foreclosure prevention alternative is approved in writing
31 after the recordation of a notice of default, a mortgage servicer,
32 mortgagee, trustee, beneficiary, or authorized agent shall not record
33 a notice of sale or conduct a trustee's sale under either of the
34 following circumstances:

35 (1) The borrower is in compliance with the terms of a written
36 trial or permanent loan modification, forbearance, or repayment
37 plan.

38 (2) A foreclosure prevention alternative has been approved in
39 writing by all parties, including, for example, the first lien investor,

1 junior lienholder, and mortgage insurer, as applicable, and proof
2 of funds or financing has been provided to the servicer.

3 (c) When a borrower accepts an offered first lien loan
4 modification or other foreclosure prevention alternative, the
5 mortgage servicer shall provide the borrower with a copy of the
6 fully executed loan modification agreement or agreement
7 evidencing the foreclosure prevention alternative following receipt
8 of the executed copy from the borrower.

9 (d) A mortgagee, beneficiary, or authorized agent shall record
10 a rescission of a notice of default or cancel a pending trustee's
11 sale, if applicable, upon the borrower executing a permanent
12 foreclosure prevention alternative. In the case of a short sale, the
13 cancellation of the pending trustee's sale shall occur when the
14 short sale has been approved by all parties and proof of funds or
15 financing has been provided to the mortgagee, beneficiary, or
16 authorized agent.

17 (e) The mortgage servicer shall not charge any application,
18 processing, or other fee for a first lien loan modification or other
19 foreclosure prevention alternative.

20 (f) The mortgage servicer shall not collect any late fees for
21 periods during which a complete first lien loan modification
22 application is under consideration or a denial is being appealed,
23 the borrower is making timely modification payments, or a
24 foreclosure prevention alternative is being evaluated or exercised.

25 (g) If a borrower has been approved in writing for a first lien
26 loan modification or other foreclosure prevention alternative, and
27 the servicing of that borrower's loan is transferred or sold to
28 another mortgage servicer, the subsequent mortgage servicer shall
29 continue to honor any previously approved first lien loan
30 modification or other foreclosure prevention alternative, in
31 accordance with the provisions of the act that added this section.

32 (h) This section shall apply only to mortgages or deeds of trust
33 described in Section 2924.15.

34 (i) This section shall not apply to entities described in
35 subdivision (b) of Section 2924.18.

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

39 SEC. 4. Section 2924.11 of the Civil Code, as added by Section
40 14 of Chapter 87 of the Statutes of 2012, is repealed.

1 *SEC. 5. Section 2924c of the Civil Code is amended to read:*

2 2924c. (a) (1) Whenever all or a portion of the principal sum
3 of any obligation secured by deed of trust or mortgage on real
4 property or an estate for years therein hereafter executed has, prior
5 to the maturity date fixed in that obligation, become due or been
6 declared due by reason of default in payment of interest or of any
7 installment of principal, or by reason of failure of trustor or
8 mortgagor to pay, in accordance with the terms of that obligation
9 or of the deed of trust or mortgage, taxes, assessments, premiums
10 for insurance, or advances made by beneficiary or mortgagee in
11 accordance with the terms of that obligation or of the deed of trust
12 or mortgage, the trustor or mortgagor or his or her successor in
13 interest in the mortgaged or trust property or any part thereof, or
14 any beneficiary under a subordinate deed of trust or any other
15 person having a subordinate lien or encumbrance of record thereon,
16 at any time within the period specified in subdivision (e), if the
17 power of sale therein is to be exercised, or, otherwise at any time
18 prior to entry of the decree of foreclosure, may pay to the
19 beneficiary or the mortgagee or their successors in interest,
20 respectively, the entire amount due, at the time payment is
21 tendered, with respect to (A) all amounts of principal, interest,
22 taxes, assessments, insurance premiums, or advances actually
23 known by the beneficiary to be, and that are, in default and shown
24 in the notice of default, under the terms of the deed of trust or
25 mortgage and the obligation secured thereby, (B) all amounts in
26 default on recurring obligations not shown in the notice of default,
27 and (C) all reasonable costs and expenses, subject to subdivision
28 (c), ~~which~~ *that* are actually incurred in enforcing the terms of the
29 obligation, deed of trust, or mortgage, and trustee's or attorney's
30 fees, subject to subdivision (d), other than the portion of principal
31 as would not then be due had no default occurred, and thereby cure
32 the default theretofore existing, and thereupon, all proceedings
33 theretofore had or instituted shall be dismissed or discontinued
34 and the obligation and deed of trust or mortgage shall be reinstated
35 and shall be and remain in force and effect, the same as if the
36 acceleration had not occurred. This section does not apply to bonds
37 or other evidences of indebtedness authorized or permitted to be
38 issued by the ~~Commissioner of Corporations~~ *Department of*
39 *Business Oversight* or made by a public utility subject to the Public
40 Utilities Code. For the purposes of this subdivision, the term

1 “recurring obligation” means all amounts of principal and interest
2 on the loan, or rents, subject to the deed of trust or mortgage in
3 default due after the notice of default is recorded; all amounts of
4 principal and interest or rents advanced on senior liens or
5 leaseholds ~~which~~ *that* are advanced after the recordation of the
6 notice of default; and payments of taxes, assessments, and hazard
7 insurance advanced after recordation of the notice of default. If
8 the beneficiary or mortgagee has made no advances on defaults
9 ~~which~~ *that* would constitute recurring obligations, the beneficiary
10 or mortgagee may require the trustor or mortgagor to provide
11 reliable written evidence that the amounts have been paid prior to
12 reinstatement.

13 (2) If the trustor, mortgagor, or other person authorized to cure
14 the default pursuant to this subdivision does cure the default, the
15 beneficiary or mortgagee or the agent for the beneficiary or
16 mortgagee shall, within 21 days following the reinstatement,
17 execute and deliver to the trustee a notice of rescission ~~which~~ *that*
18 rescinds the declaration of default and demand for sale and advises
19 the trustee of the date of reinstatement. The trustee shall cause the
20 notice of rescission to be recorded within 30 days of receipt of the
21 notice of rescission and of all allowable fees and costs.

22 No charge, except for the recording fee, shall be made against
23 the trustor or mortgagor for the execution and recordation of the
24 notice which rescinds the declaration of default and demand for
25 sale.

26 (b) (1) The notice, of any default described in this section,
27 recorded pursuant to Section 2924, and mailed to any person
28 pursuant to Section 2924b, shall begin with the following
29 statement, printed or typed thereon:

30
31 “IMPORTANT NOTICE [14-point boldface type if printed or
32 in capital letters if typed]
33

34 IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE
35 YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD
36 WITHOUT ANY COURT ACTION, [14-point boldface type if
37 printed or in capital letters if typed] and you may have the legal
38 right to bring your account in good standing by paying all of your
39 past due payments plus permitted costs and expenses within the
40 time permitted by law for reinstatement of your account, which is

1 normally five business days prior to the date set for the sale of
2 your property. No sale date may be set until approximately 90 days
3 from the date this notice of default may be recorded (which date
4 of recordation appears on this notice).

5
6 This amount is _____ as of _____
7 (Date)

8
9 and will increase until your account becomes current.

10 While your property is in foreclosure, you still must pay other
11 obligations (such as insurance and taxes) required by your note
12 and deed of trust or mortgage. If you fail to make future payments
13 on the loan, pay taxes on the property, provide insurance on the
14 property, or pay other obligations as required in the note and deed
15 of trust or mortgage, the beneficiary or mortgagee may insist that
16 you do so in order to reinstate your account in good standing. In
17 addition, the beneficiary or mortgagee may require as a condition
18 to reinstatement that you provide reliable written evidence that
19 you paid all senior liens, property taxes, and hazard insurance
20 premiums.

21 Upon your written request, the beneficiary or mortgagee will
22 give you a written itemization of the entire amount you must pay.
23 You may not have to pay the entire unpaid portion of your account,
24 even though full payment was demanded, but you must pay all
25 amounts in default at the time payment is made. However, you
26 and your beneficiary or mortgagee may mutually agree in writing
27 prior to the time the notice of sale is posted (which may not be
28 earlier than three months after this notice of default is recorded)
29 to, among other things, (1) provide additional time in which to
30 cure the default by transfer of the property or otherwise; or (2)
31 establish a schedule of payments in order to cure your default; or
32 both (1) and (2).

33 Following the expiration of the time period referred to in the
34 first paragraph of this notice, unless the obligation being foreclosed
35 upon or a separate written agreement between you and your creditor
36 permits a longer period, you have only the legal right to stop the
37 sale of your property by paying the entire amount demanded by
38 your creditor.

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

4
5 _____
6 (Name of beneficiary or mortgagee)

7 _____
8 (Mailing address)

9 _____
10 (Telephone)

11
12 If you have any questions, you should contact a lawyer or the
13 governmental agency ~~which~~ *that* may have insured your loan.

14 Notwithstanding the fact that your property is in foreclosure,
15 you may offer your property for sale, provided the sale is concluded
16 prior to the conclusion of the foreclosure.

17 Remember, **YOU MAY LOSE LEGAL RIGHTS IF YOU DO**
18 **NOT TAKE PROMPT ACTION.** [14-point boldface type if printed
19 or in capital letters if typed]”

20 Unless otherwise specified, the notice, if printed, shall appear
21 in at least 12-point boldface type.

22 If the obligation secured by the deed of trust or mortgage is a
23 contract or agreement described in paragraph (1) or (4) of
24 subdivision (a) of Section 1632, the notice required herein shall
25 be in Spanish if the trustor requested a Spanish language translation
26 of the contract or agreement pursuant to Section 1632. If the
27 obligation secured by the deed of trust or mortgage is contained
28 in a home improvement contract, as defined in Sections 7151.2
29 and 7159 of the Business and Professions Code, which is subject
30 to Title 2 (commencing with Section 1801), the seller shall specify
31 on the contract whether or not the contract was principally
32 negotiated in Spanish and if the contract was principally negotiated
33 in Spanish, the notice required herein shall be in Spanish. No
34 assignee of the contract or person authorized to record the notice
35 of default shall incur any obligation or liability for failing to mail
36 a notice in Spanish unless Spanish is specified in the contract or
37 the assignee or person has actual knowledge that the secured
38 obligation was principally negotiated in Spanish. Unless specified
39 in writing to the contrary, a copy of the notice required by
40 subdivision (c) of Section 2924b shall be in English.

1 (2) Any failure to comply with the provisions of this subdivision
2 shall not affect the validity of a sale in favor of a bona fide
3 purchaser or the rights of an encumbrancer for value and without
4 notice.

5 (c) Costs and expenses ~~which~~ *that* may be charged pursuant to
6 Sections 2924 to 2924i, inclusive, shall be limited to the costs
7 incurred for recording, mailing, including certified and express
8 mail charges, publishing, and posting notices required by Sections
9 2924 to 2924i, inclusive, postponement pursuant to Section 2924g
10 not to exceed fifty dollars (\$50) per postponement and a fee for a
11 trustee's sale guarantee or, in the event of judicial foreclosure, a
12 litigation guarantee. For purposes of this subdivision, a trustee or
13 beneficiary may purchase a trustee's sale guarantee at a rate
14 meeting the standards contained in Sections 12401.1 and 12401.3
15 of the Insurance Code.

16 (d) Trustee's or attorney's fees ~~which~~ *that* may be charged
17 pursuant to subdivision (a), or until the notice of sale is deposited
18 in the mail to the trustor as provided in Section 2924b, if the sale
19 is by power of sale contained in the deed of trust or mortgage, or,
20 otherwise at any time prior to the decree of foreclosure, are hereby
21 authorized to be in a base amount that does not exceed three
22 hundred *fifty* dollars ~~(\$300)~~ *(\$350)* if the unpaid principal sum
23 secured is one hundred fifty thousand dollars (\$150,000) or less,
24 or ~~two three~~ *three* hundred ~~fifty~~ dollars ~~(\$250)~~ *(\$300)* if the unpaid
25 principal sum secured exceeds one hundred fifty thousand dollars
26 (\$150,000), plus one-half of 1 percent of the unpaid principal sum
27 secured exceeding fifty thousand dollars (\$50,000) up to and
28 including one hundred fifty thousand dollars (\$150,000), plus
29 one-quarter of 1 percent of any portion of the unpaid principal sum
30 secured exceeding one hundred fifty thousand dollars (\$150,000)
31 up to and including five hundred thousand dollars (\$500,000), plus
32 one-eighth of 1 percent of any portion of the unpaid principal sum
33 secured exceeding five hundred thousand dollars (\$500,000). Any
34 charge for trustee's or attorney's fees authorized by this subdivision
35 shall be conclusively presumed to be lawful and valid where the
36 charge does not exceed the amounts authorized herein. For
37 purposes of this subdivision, the unpaid principal sum secured
38 shall be determined as of the date the notice of default is recorded.

39 (e) Reinstatement of a monetary default under the terms of an
40 obligation secured by a deed of trust, or mortgage may be made

1 at any time within the period commencing with the date of
2 recordation of the notice of default until five business days prior
3 to the date of sale set forth in the initial recorded notice of sale.

4 In the event the sale does not take place on the date set forth in
5 the initial recorded notice of sale or a subsequent recorded notice
6 of sale is required to be given, the right of reinstatement shall be
7 revived as of the date of recordation of the subsequent notice of
8 sale, and shall continue from that date until five business days
9 prior to the date of sale set forth in the subsequently recorded notice
10 of sale.

11 In the event the date of sale is postponed on the date of sale set
12 forth in either an initial or any subsequent notice of sale, or is
13 postponed on the date declared for sale at an immediately preceding
14 postponement of sale, and, the postponement is for a period ~~which~~
15 *that* exceeds five business days from the date set forth in the notice
16 of sale, or declared at the time of postponement, then the right of
17 reinstatement is revived as of the date of postponement and shall
18 continue from that date until five business days prior to the date
19 of sale declared at the time of the postponement.

20 Nothing contained herein shall give rise to a right of
21 reinstatement during the period of five business days prior to the
22 date of sale, whether the date of sale is noticed in a notice of sale
23 or declared at a postponement of sale.

24 Pursuant to the terms of this subdivision, no beneficiary, trustee,
25 mortgagee, or their agents or successors shall be liable in any
26 manner to a trustor, mortgagor, their agents or successors or any
27 beneficiary under a subordinate deed of trust or mortgage or any
28 other person having a subordinate lien or encumbrance of record
29 thereon for the failure to allow a reinstatement of the obligation
30 secured by a deed of trust or mortgage during the period of five
31 business days prior to the sale of the security property, and no such
32 right of reinstatement during this period is created by this section.
33 Any right of reinstatement created by this section is terminated
34 five business days prior to the date of sale set forth in the initial
35 date of sale, and is revived only as prescribed herein and only as
36 of the date set forth herein.

37 As used in this subdivision, the term “business day” has the same
38 meaning as specified in Section 9.

39 *SEC. 6. Section 2924d of the Civil Code is amended to read:*

1 2924d. (a) Commencing with the date that the notice of sale
2 is deposited in the mail, as provided in Section 2924b, and until
3 the property is sold pursuant to the power of sale contained in the
4 mortgage or deed of trust, a beneficiary, trustee, mortgagee, or his
5 or her agent or successor in interest, may demand and receive from
6 a trustor, mortgagor, or his or her agent or successor in interest,
7 or any beneficiary under a subordinate deed of trust, or any other
8 person having a subordinate lien or encumbrance of record those
9 reasonable costs and expenses, to the extent allowed by subdivision
10 (c) of Section 2924c, ~~which that~~ are actually incurred in enforcing
11 the terms of the obligation and trustee's or attorney's fees ~~which~~
12 ~~that~~ are hereby authorized to be in a base amount ~~which that~~ does
13 not exceed four hundred ~~twenty-five~~ *seventy-five* dollars ~~(\$425)~~
14 *(\$475)* if the unpaid principal sum secured is one hundred fifty
15 thousand dollars (\$150,000) or less, or ~~three four~~ *four* hundred ~~sixty~~
16 *ten* dollars ~~(\$360)~~ *(\$410)* if the unpaid principal sum secured
17 exceeds one hundred fifty thousand dollars (\$150,000), plus 1
18 percent of any portion of the unpaid principal sum secured
19 exceeding fifty thousand dollars (\$50,000) up to and including one
20 hundred fifty thousand dollars (\$150,000), plus one-half of 1
21 percent of any portion of the unpaid principal sum secured
22 exceeding one hundred fifty thousand dollars (\$150,000) up to and
23 including five hundred thousand dollars (\$500,000), plus
24 one-quarter of 1 percent of any portion of the unpaid principal sum
25 secured exceeding five hundred thousand dollars (\$500,000). For
26 purposes of this subdivision, the unpaid principal sum secured
27 shall be determined as of the date the notice of default is recorded.
28 Any charge for trustee's or attorney's fees authorized by this
29 subdivision shall be conclusively presumed to be lawful and valid
30 where that charge does not exceed the amounts authorized herein.
31 Any charge for trustee's or attorney's fees made pursuant to this
32 subdivision shall be in lieu of and not in addition to those charges
33 authorized by subdivision (d) of Section 2924c.

34 (b) Upon the sale of property pursuant to a power of sale, a
35 trustee, or his or her agent or successor in interest, may demand
36 and receive from a beneficiary, or his or her agent or successor in
37 interest, or may deduct from the proceeds of the sale, those
38 reasonable costs and expenses, to the extent allowed by subdivision
39 (c) of Section 2924c, ~~which that~~ are actually incurred in enforcing
40 the terms of the obligation and trustee's or attorney's fees ~~which~~

1 *that* are hereby authorized to be in an amount which does not
2 exceed four hundred twenty-five dollars (\$425) or one percent of
3 the unpaid principal sum secured, whichever is greater. For
4 purposes of this subdivision, the unpaid principal sum secured
5 shall be determined as of the date the notice of default is recorded.
6 Any charge for trustee's or attorney's fees authorized by this
7 subdivision shall be conclusively presumed to be lawful and valid
8 where that charge does not exceed the amount authorized herein.
9 Any charges for trustee's or attorney's fees made pursuant to this
10 subdivision shall be in lieu of and not in addition to those charges
11 authorized by subdivision (a) of this section and subdivision (d)
12 of Section 2924c.

13 (c) (1) No person shall pay or offer to pay or collect any rebate
14 or kickback for the referral of business involving the performance
15 of any act required by this article.

16 (2) Any person who violates this subdivision shall be liable to
17 the trustor for three times the amount of any rebate or kickback,
18 plus reasonable attorney's fees and costs, in addition to any other
19 remedies provided by law.

20 (3) No violation of this subdivision shall affect the validity of
21 a sale in favor of a bona fide purchaser or the rights of an
22 encumbrancer for value without notice.

23 (d) It shall not be unlawful for a trustee to pay or offer to pay a
24 fee to an agent or subagent of the trustee for work performed by
25 the agent or subagent in discharging the trustee's obligations under
26 the terms of the deed of trust. Any payment of a fee by a trustee
27 to an agent or subagent of the trustee for work performed by the
28 agent or subagent in discharging the trustee's obligations under
29 the terms of the deed of trust shall be conclusively presumed to
30 be lawful and valid if the fee, when combined with other fees of
31 the trustee, does not exceed in the aggregate the trustee's fee
32 authorized by subdivision (d) of Section 2924c or subdivision (a)
33 or (b) of this section.

34 (e) When a court issues a decree of foreclosure, it shall have
35 discretion to award attorney's fees, costs, and expenses as are
36 reasonable, if provided for in the note, deed of trust, or mortgage,
37 pursuant to Section 580c of the Code of Civil Procedure.

38 *SEC. 7. Section 2924f of the Civil Code is amended to read:*

1 2924f. (a) As used in this section and Sections 2924g and
2 2924h, “property” means real property or a leasehold estate therein,
3 and “calendar week” means Monday through Saturday, inclusive.

4 (b) (1) Except as provided in subdivision (c), before any sale
5 of property can be made under the power of sale contained in any
6 deed of trust or mortgage, or any resale resulting from a rescission
7 for a failure of consideration pursuant to subdivision (c) of Section
8 2924h, notice of the sale thereof shall be given by posting a written
9 notice of the time of sale and of the street address and the specific
10 place at the street address where the sale will be held, and
11 describing the property to be sold, at least 20 days before the date
12 of sale in one public place in the city where the property is to be
13 sold, if the property is to be sold in a city, or, if not, then in one
14 public place in the judicial district in which the property is to be
15 sold, and publishing a copy once a week for three consecutive
16 calendar weeks.

17 (2) The first publication to be at least 20 days before the date
18 of sale, in a newspaper of general circulation published in the city
19 in which the property or some part thereof is situated, if any part
20 thereof is situated in a city, if not, then in a newspaper of general
21 circulation published in the judicial district in which the property
22 or some part thereof is situated, or in case no newspaper of general
23 circulation is published in the city or judicial district, as the case
24 may be, in a newspaper of general circulation published in the
25 county in which the property or some part thereof is situated, or
26 in case no newspaper of general circulation is published in the city
27 or judicial district or county, as the case may be, in a newspaper
28 of general circulation published in the county in this state that is
29 contiguous to the county in which the property or some part thereof
30 is situated and has, by comparison with all similarly contiguous
31 counties, the highest population based upon total county population
32 as determined by the most recent federal decennial census
33 published by the Bureau of the Census.

34 (3) A copy of the notice of sale shall also be posted in a
35 conspicuous place on the property to be sold at least 20 days before
36 the date of sale, where possible and where not restricted for any
37 reason. If the property is a single-family residence the posting shall
38 be on a door of the residence, but, if not possible or restricted, then
39 the notice shall be posted in a conspicuous place on the property;
40 however, if access is denied because a common entrance to the

1 property is restricted by a guard gate or similar impediment, the
2 property may be posted at that guard gate or similar impediment
3 to any development community.

4 (4) The notice of sale shall conform to the minimum
5 requirements of Section 6043 of the Government Code and be
6 recorded with the county recorder of the county in which the
7 property or some part thereof is situated at least 20 days prior to
8 the date of sale.

9 (5) The notice of sale shall contain the name, street address in
10 this state, which may reflect an agent of the trustee, and either a
11 toll-free telephone number or telephone number in this state of the
12 trustee, and the name of the original trustor, and also shall contain
13 the statement required by paragraph (3) of subdivision (c). In
14 addition to any other description of the property, the notice shall
15 describe the property by giving its street address, if any, or other
16 common designation, if any, and a county assessor's parcel
17 number; but if the property has no street address or other common
18 designation, the notice shall contain a legal description of the
19 property, the name and address of the beneficiary at whose request
20 the sale is to be conducted, and a statement that directions may be
21 obtained pursuant to a written request submitted to the beneficiary
22 within 10 days from the first publication of the notice. Directions
23 shall be deemed reasonably sufficient to locate the property if
24 information as to the location of the property is given by reference
25 to the direction and approximate distance from the nearest
26 crossroads, frontage road, or access road. If a legal description or
27 a county assessor's parcel number and either a street address or
28 another common designation of the property is given, the validity
29 of the notice and the validity of the sale shall not be affected by
30 the fact that the street address, other common designation, name
31 and address of the beneficiary, or the directions obtained therefrom
32 are erroneous or that the street address, other common designation,
33 name and address of the beneficiary, or directions obtained
34 therefrom are omitted.

35 (6) The term "newspaper of general circulation," as used in this
36 section, has the same meaning as defined in Article 1 (commencing
37 with Section 6000) of Chapter 1 of Division 7 of Title 1 of the
38 Government Code.

39 (7) The notice of sale shall contain a statement of the total
40 amount of the unpaid balance of the obligation secured by the

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

12 (8) (A) On and after April 1, 2012, if the deed of trust or
13 mortgage containing a power of sale is secured by real property
14 containing from one to four single-family residences, the notice
15 of sale shall contain substantially the following language, in
16 addition to the language required pursuant to paragraphs (1) to (7),
17 inclusive:

18
19 NOTICE TO POTENTIAL BIDDERS: If you are considering
20 bidding on this ~~property lien~~, *property*, you should understand that
21 there are risks involved in bidding at a trustee auction. ~~You will~~
22 ~~be bidding on a lien, not on the property itself.~~ Placing the highest
23 bid at a trustee auction does not automatically entitle you to free
24 and clear ownership of the property. You should also be aware
25 that the lien being ~~auctioned off~~ *foreclosed by this auction* may be
26 a junior lien. If you are the highest bidder at the auction, you are
27 or may be responsible for paying off all liens senior to the lien
28 being ~~auctioned off~~, *foreclosed*, before you can receive clear title
29 to the property. You are encouraged to investigate the existence,
30 priority, and size of outstanding liens that may exist on this
31 property by contacting the county recorder's office or a title
32 insurance company, either of which may charge you a fee for this
33 information. If you consult either of these resources, you should
34 be aware that the same lender may hold more than one mortgage
35 or deed of trust on the property.

36
37 NOTICE TO PROPERTY OWNER: The sale date shown on
38 this notice of sale may be postponed one or more times by the
39 mortgagee, beneficiary, trustee, or a court, pursuant to Section
40 2924g of the California Civil Code. The law requires that

1 information about trustee sale postponements be made available
2 to you and to the public, as a courtesy to those not present at the
3 sale. If you wish to learn whether your sale date has been
4 postponed, and, if applicable, the rescheduled time and date for
5 the sale of this property, you may call [telephone number for
6 information regarding the trustee's sale] or visit this Internet Web
7 site [Internet Web site address for information regarding the sale
8 of this property], using the file number assigned to this case [case
9 file number]. Information about postponements that are very short
10 in duration or that occur close in time to the scheduled sale may
11 not immediately be reflected in the telephone information or on
12 the Internet Web site. The best way to verify postponement
13 information is to attend the scheduled sale.

14
15 (B) A mortgagee, beneficiary, trustee, or authorized agent shall
16 make a good faith effort to provide up-to-date information
17 regarding sale dates and postponements to persons who wish this
18 information. This information shall be made available free of
19 charge. It may be made available via an Internet Web site, a
20 telephone recording that is accessible 24 hours a day, seven days
21 a week, or through any other means that allows 24 hours a day,
22 seven days a week, no-cost access to updated information. A
23 disruption of any of these methods of providing sale date and
24 postponement information to allow for reasonable maintenance or
25 due to a service outage shall not be deemed to be a violation of
26 the good faith standard.

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

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

37 (9) If the sale of the property is to be a unified sale as provided
38 in subparagraph (B) of paragraph (1) of subdivision (a) of Section
39 9604 of the Commercial Code, the notice of sale shall also contain
40 a description of the personal property or fixtures to be sold. In the

1 case where it is contemplated that all of the personal property or
2 fixtures are to be sold, the description in the notice of the personal
3 property or fixtures shall be sufficient if it is the same as the
4 description of the personal property or fixtures contained in the
5 agreement creating the security interest in or encumbrance on the
6 personal property or fixtures or the filed financing statement
7 relating to the personal property or fixtures. In all other cases, the
8 description in the notice shall be sufficient if it would be a
9 sufficient description of the personal property or fixtures under
10 Section 9108 of the Commercial Code. Inclusion of a reference to
11 or a description of personal property or fixtures in a notice of sale
12 hereunder shall not constitute an election by the secured party to
13 conduct a unified sale pursuant to subparagraph (B) of paragraph
14 (1) of subdivision (a) of Section 9604 of the Commercial Code,
15 shall not obligate the secured party to conduct a unified sale
16 pursuant to subparagraph (B) of paragraph (1) of subdivision (a)
17 of Section 9604 of the Commercial Code, and in no way shall
18 render defective or noncomplying either that notice or a sale
19 pursuant to that notice by reason of the fact that the sale includes
20 none or less than all of the personal property or fixtures referred
21 to or described in the notice. This paragraph shall not otherwise
22 affect the obligations or duties of a secured party under the
23 Commercial Code.

24 (c) (1) This subdivision applies only to deeds of trust or
25 mortgages ~~which~~ *that* contain a power of sale and ~~which~~ *that* are
26 secured by real property containing a single-family,
27 owner-occupied residence, where the obligation secured by the
28 deed of trust or mortgage is contained in a contract for goods or
29 services subject to the provisions of the Unruh Act (Chapter 1
30 (commencing with Section 1801) of Title 2 of Part 4 of Division
31 3).

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

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

1 YOU ARE IN DEFAULT UNDER A
 2 _____,
 3 (Deed of trust or mortgage)
 4 DATED _____. UNLESS YOU TAKE ACTION TO PROTECT
 5 YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF
 6 YOU NEED AN EXPLANATION OF THE NATURE OF THE
 7 PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A
 8 LAWYER.

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

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

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

31 (d) With respect to residential real property containing no more
 32 than four dwelling units, a separate document containing a
 33 summary of the notice of sale information in English and the
 34 languages described in Section 1632 shall be attached to the notice
 35 of sale provided to the mortgagor or trustor pursuant to Section
 36 2923.3.

37 *SEC. 8. Section 2934a of the Civil Code is amended to read:*
 38 2934a. (a) (1) The trustee under a trust deed upon real property
 39 or an estate for years therein given to secure an obligation to pay
 40 money and conferring no other duties upon the trustee than those

1 which are incidental to the exercise of the power of sale therein
2 conferred, may be substituted by the recording in the county in
3 which the property is located of a substitution executed and
4 acknowledged by: (A) all of the beneficiaries under the trust deed,
5 or their successors in interest, and the substitution shall be effective
6 notwithstanding any contrary provision in any trust deed executed
7 on or after January 1, 1968; or (B) the holders of more than 50
8 percent of the record beneficial interest of a series of notes secured
9 by the same real property or of undivided interests in a note secured
10 by real property equivalent to a series transaction, exclusive of
11 any notes or interests of a licensed real estate broker that is the
12 issuer or servicer of the notes or interests or of any affiliate of that
13 licensed real estate broker.

14 (2) A substitution executed pursuant to subparagraph (B) of
15 paragraph (1) is not effective unless all the parties signing the
16 substitution sign, under penalty of perjury, a separate written
17 document stating the following:

18 (A) The substitution has been signed pursuant to subparagraph
19 (B) of paragraph (1).

20 (B) None of the undersigned is a licensed real estate broker or
21 an affiliate of the broker that is the issuer or servicer of the
22 obligation secured by the deed of trust.

23 (C) The undersigned together hold more than 50 percent of the
24 record beneficial interest of a series of notes secured by the same
25 real property or of undivided interests in a note secured by real
26 property equivalent to a series transaction.

27 (D) Notice of the substitution was sent by certified mail, postage
28 prepaid, with return receipt requested to each holder of an interest
29 in the obligation secured by the deed of trust who has not joined
30 in the execution of the substitution or the separate document.

31 The separate document shall be attached to the substitution and
32 be recorded in the office of the county recorder of each county in
33 which the real property described in the deed of trust is located.
34 Once the document required by this paragraph is recorded, it shall
35 constitute conclusive evidence of compliance with the requirements
36 of this paragraph in favor of substituted trustees acting pursuant
37 to this section, subsequent assignees of the obligation secured by
38 the deed of trust and subsequent bona fide purchasers or
39 encumbrancers for value of the real property described therein.

1 (3) For purposes of this section, “affiliate of the licensed real
2 estate broker” includes any person as defined in Section 25013 of
3 the Corporations Code that is controlled by, or is under common
4 control with, or who controls, a licensed real estate broker.
5 “Control” means the possession, direct or indirect, of the power
6 to direct or cause the direction of management and policies.

7 (4) The substitution shall contain the date of recordation of the
8 trust deed, the name of the trustor, the book and page or instrument
9 number where the trust deed is recorded, and the name of the new
10 trustee. From the time the substitution is filed for record, the new
11 trustee shall succeed to all the powers, duties, authority, and title
12 granted and delegated to the trustee named in the deed of trust. A
13 substitution may be accomplished, with respect to multiple deeds
14 of trust which are recorded in the same county in which the
15 substitution is being recorded and which all have the same trustee
16 and beneficiary or beneficiaries, by recording a single document,
17 complying with the requirements of this section, substituting
18 trustees for all those deeds of trust.

19 (b) If the substitution is executed, but not recorded, prior to or
20 concurrently with the recording of the notice of default, the
21 beneficiary or beneficiaries or their authorized agents shall cause
22 notice of the substitution to be mailed prior to or concurrently with
23 the recording thereof, in the manner provided in Section 2924b,
24 to all persons to whom a copy of the notice of default would be
25 required to be mailed by the provisions of Section 2924b. An
26 affidavit shall be attached to the substitution that notice has been
27 given to those persons and in the manner required by this
28 subdivision.

29 (c) If the substitution is effected after a notice of default has
30 been recorded but prior to the recording of the notice of sale, the
31 beneficiary or beneficiaries or their authorized agents shall cause
32 a copy of the substitution to be mailed, prior to, or concurrently
33 with, the recording thereof, in the manner provided in Section
34 2924b, to the trustee then of record and to all persons to whom a
35 copy of the notice of default would be required to be mailed by
36 the provisions of Section 2924b. An affidavit shall be attached to
37 the substitution that notice has been given to those persons and in
38 the manner required by this subdivision.

39 (d) (1) A trustee named in a recorded substitution of trustee
40 shall be deemed to be authorized to act as the trustee under the

1 mortgage or deed of trust for all purposes from the date the
2 substitution is executed by the mortgagee, beneficiaries, or by their
3 authorized agents. Nothing herein requires that a trustee under a
4 recorded substitution accept the substitution. Once recorded, the
5 substitution shall constitute conclusive evidence of the authority
6 of the substituted trustee or his or her agents to act pursuant to this
7 section.

8 (2) *A trustee named in a recorded substitution of trustee shall*
9 *not be a legal owner or owner, as applicable, for purposes of*
10 *Section 2929.3 or 2929.4.*

11 (e) Notwithstanding any provision of this section or any
12 provision in any deed of trust, unless a new notice of sale
13 containing the name, street address, and telephone number of the
14 substituted trustee is given pursuant to Section 2924f after
15 execution of the substitution, any sale conducted by the substituted
16 trustee shall be void.

17 (f) This section shall become operative on January 1, 1998.