

Senate Bill No. 784

CHAPTER 244

An act to amend Section 2941.7 of the Civil Code, relating to deeds of trust.

[Approved by Governor August 1, 1995. Filed with Secretary of State August 1, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

SB 784, Calderon. Deeds of trust: substitution.

Under existing law, whenever an obligation secured by a mortgage or deed of trust has been satisfied and the mortgagee or beneficiary of record cannot be located after diligent search or refuses to execute and deliver a certificate of discharge or request for reconveyance, or whenever a specified balance remains due and the mortgagee or beneficiary cannot be located after diligent search, the lien of the mortgage or deed of trust shall be released when a bond acceptable to the trustee is recorded, as specified, and, in the case of a deed of trust, the trustee executes and records a reconveyance, as specified.

This bill would authorize, for purposes of these provisions, the substitution of a trustee by the trustor or the trustor's successor in interest, if specified requirements are met, including the requirement that the new trustee is a title insurance company.

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

SECTION 1. Section 2941.7 of the Civil Code is amended to read:

2941.7. Whenever the obligation secured by a mortgage or deed of trust has been fully satisfied and the present mortgagee or beneficiary of record cannot be located after diligent search, or refuses to execute and deliver a proper certificate of discharge or request for reconveyance, or whenever a specified balance, including principal and interest, remains due and the mortgagor or trustor or the mortgagor's or trustor's successor in interest cannot, after diligent search, locate the then mortgagee or beneficiary of record, the lien of any mortgage or deed of trust shall be released when the mortgagor or trustor or the mortgagor's or trustor's successor in interest records or causes to be recorded, in the office of the county recorder of the county in which the encumbered property is located, a corporate bond accompanied by a declaration, as specified in subdivision (b), and with respect to a deed of trust, a reconveyance as hereinafter provided.

(a) The bond shall be acceptable to the trustee and shall be issued by a corporation lawfully authorized to issue surety bonds in the State



of California in a sum equal to the greater of either (1) two times the amount of the original obligation secured by the mortgage or deed of trust and any additional principal amounts, including advances, shown in any recorded amendment thereto, or (2) one-half of the total amount computed pursuant to (1) and any accrued interest on such amount, and shall be conditioned for payment of any sum which the mortgagee or beneficiary may recover in an action on the obligation secured by the mortgage or deed of trust, with costs of suit and reasonable attorneys' fees. The obligees under the bond shall be the mortgagee or mortgagee's successor in interest or the trustee who executes a reconveyance under this section and the beneficiary or beneficiary's successor in interest.

The bond recorded by the mortgagor or trustor or mortgagor's or trustor's successor in interest shall contain the following information describing the mortgage or deed of trust:

(1) Recording date and instrument number or book and page number of the recorded instrument.

(2) Names of original mortgagor and mortgagee or trustor and beneficiary.

(3) Amount shown as original principal sum secured thereby.

(4) The recording information and new principal amount shown in any recorded amendment thereto.

(b) The declaration accompanying the corporate bond recorded by the mortgagor or trustor or the mortgagor's or trustor's successor in interest shall state:

(1) That it is recorded pursuant to this section.

(2) The name of the original mortgagor or trustor and mortgagee or beneficiary.

(3) The name and address of the person making the declaration.

(4) That either the obligation secured by the mortgage or deed of trust has been fully satisfied and the present mortgagee or beneficiary of record cannot be located after diligent search, or refuses to execute and deliver a proper certificate of discharge or request for reconveyance as required under Section 2941; or that a specified balance, including principal and interest, remains due and the mortgagor or trustor or mortgagor's or trustor's successor in interest cannot, after diligent search, locate the then mortgagee or beneficiary.

(5) That the declarant has mailed by certified mail, return receipt requested, to the last address of the person to whom payments under the mortgage or deed of trust were made and to the last mortgagee or beneficiary of record at the address for such mortgagee or beneficiary shown on the instrument creating, assigning, or conveying the interest, a notice of recording a declaration and bond under this section and informing the recipient of the name and address of the mortgagor or trustee, if any, and of the right to record a written objection with respect to the release of the lien of the



mortgage or, with respect to a deed of trust, notify the trustee in writing of any objection to the reconveyance of the deed of trust. The declaration shall state the date any notices were mailed pursuant to this section and the names and addresses of all persons to whom mailed.

The declaration provided for in this section shall be signed by the mortgagor or trustor under penalty of perjury.

(c) With respect to a deed of trust, after the expiration of 30 days following the recording of the corporate bond and accompanying declaration provided in subdivisions (a) and (b), and delivery to the trustee of the usual reconveyance fees plus costs and a demand for reconveyance under this section, the trustee shall execute and record, or otherwise deliver as provided in Section 2941, a reconveyance in the same form as if the beneficiary had delivered to the trustee a proper request for reconveyance, provided that the trustee has not received a written objection to the reconveyance from the beneficiary of record. No trustee shall have any liability to any person by reason of its execution of a reconveyance in reliance upon a trustor's or trustor's successor's in interest substantial compliance with this section. The sole remedy of any person damaged by reason of the reconveyance shall be against the trustor, the affiant, or the bond. With respect to a mortgage, a mortgage shall be satisfied of record when 30 days have expired following recordation of the corporate bond and accompanying declaration, provided no objection to satisfaction has been recorded by the mortgagee within that period. A bona fide purchaser or encumbrancer for value shall take the interest conveyed free of such mortgage, provided there has been compliance with subdivisions (a) and (b) and the deed to the purchaser recites that no objections by the mortgagee have been recorded.

Upon recording of a reconveyance under this section, or, in the case of a mortgage the expiration of 30 days following recordation of the corporate bond and accompanying declaration without objection thereto having been recorded, interest shall no longer accrue as to any balance remaining due to the extent the balance due has been alleged in the declaration recorded under subdivision (b).

The sum of any specified balance, including principal and interest, which remains due and which is remitted to any issuer of a corporate bond in conjunction with the issuance of a bond pursuant to this section shall, if unclaimed, escheat to the state after seven years pursuant to the Unclaimed Property Law. From the date of escheat the issuer of the bond shall be relieved of any liability to pay to the beneficiary or his heirs or other successors in interest the escheated funds and the sole remedy shall be a claim for property paid or delivered to the Controller pursuant to the Unclaimed Property Law.

(d) The term "diligent search," as used in this section, shall mean all of the following:



(1) The mailing of notices as provided in paragraph (5) of subdivision (b), and to any other address that the declarant has used to correspond with or contact the mortgagee or beneficiary.

(2) A check of the telephone directory in the city where the mortgagee or beneficiary maintained the mortgagee's or beneficiary's last known address or place of business.

(3) In the event the mortgagee or beneficiary or the mortgagee's or beneficiary's successor in interest is a corporation, a check of the records of the California Secretary of State and the secretary of state in the state of incorporation, if known.

(4) In the event the mortgagee or beneficiary is a state or national bank or a state or federal savings and loan association, an inquiry of the regulatory authority of such bank or savings and loan association.

(e) This section shall not be deemed to create an exclusive procedure for the issuance of reconveyances and the issuance of bonds and declarations to release the lien of a mortgage and shall not affect any other procedures, whether or not such procedures are set forth in statute, for the issuance of reconveyances and the issuance of bonds and declarations to release the lien of a mortgage.

(f) For purposes of this section, the trustor or trustor's successor in interest may substitute the present trustee of record without conferring any duties upon the trustee other than those that are incidental to the execution of a reconveyance pursuant to this section if all of the following requirements are met:

(1) The present trustee of record and the present mortgagee or beneficiary of record cannot be located after diligent search.

(2) The declaration filed pursuant to subdivision (b) shall state in addition that it is filed pursuant to this subdivision, and shall, in lieu of the provisions of paragraph (4) of subdivision (b), state that the obligation secured by the mortgage or deed of trust has been fully satisfied and the present trustee of record and present mortgagee or beneficiary of record cannot be located after diligent search.

(3) The substitute trustee is a title insurance company that agrees to accept the substitution. This subdivision shall not impose a duty upon a title insurance company to accept the substitution.

(4) The corporate bond required in subdivision (a) is for a period of five or more years.

