

Senate Bill No. 665

CHAPTER 74

An act to amend Sections 1058.5, 2924c, 2924d, 2924f, 2924g, 2924(l), and 2941 of the Civil Code, relating to real property.

[Approved by Governor July 14, 1997. Filed with
Secretary of State July 14, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

SB 665, Johnson. Real property.

(1) Existing law provides for the recording of a notice of rescission of the trustee's deed to restore the condition of record title to the real property described in a trustee's deed and the existence and priority of all lienholders to the status quo prior to the recordation of the trustee's deed upon sale.

This bill would provide that the notice of rescission may only be filed by the trustee or beneficiary who caused the trustee's deed to be recorded or a successor in interest.

(2) Existing law regulates the procedures for the foreclosure of a mortgage or deed of trust. Existing law specifies the maximum trustee's or attorney's fees that may be charged, as specified on the basis of the amount of the unpaid principal sum secured. Existing law requires the notice of sale to specify the total amount of the unpaid balance and specified costs.

This bill would provide that, for the purpose of computing trustee's or attorney's fees, the unpaid principal sum secured is calculated on the date the notice of default is recorded. This bill would also make a clarifying change regarding the postponement of the sale of the property pursuant to the above-described procedures and would specify the method of the calculation of time for these procedures.

(3) Existing law provides that, in the event that a trustee under a deed of trust is named in an action or proceeding in which that deed of trust is the subject, and in the event that the trustee maintains a reasonable belief that it has been named in the action or proceeding solely in its capacity as trustee and not arising out of any wrongful acts or omissions in the performance of its duties as trustee, then the trustee may file a declaration of nonmonetary status. In the event that there is no objection, the trustee would not be required to participate in the proceeding, unless a demand to participate is filed and served.

The bill would require the demand to set forth the factual basis for the demand.

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

SECTION 1. Section 1058.5 of the Civil Code is amended to read:

1058.5. (a) A notice of nonacceptance of a recorded deed executed by a holder of a security interest, which notice identifies the security interest, contains a legal description of the property, properly identifies the parties to the deed, the date of recordation of the deed, the county in which the project is located, and the county assessor's parcel number of the real property referenced in the deed, may be recorded in the office of the county recorder where the real property is located.

(b) Where a trustee's deed is invalidated by a pending bankruptcy or otherwise, recordation of a notice of rescission of the trustee's deed, which notice properly identifies the deed of trust, the identification numbers used by the recorder or the books and pages at which the trustee's deed and deed of trust are recorded, the names of all trustors and beneficiaries, the location of the property subject to the deed of trust, and the reason for rescission, shall restore the condition of record title to the real property described in the trustee's deed and the existence and priority of all lienholders to the status quo prior to the recordation of the trustee's deed upon sale. Only the trustee or beneficiary who caused the trustee's deed to be recorded, or his or her successor in interest, may record a notice of rescission.

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

2924c. (a) (1) Whenever all or a portion of the principal sum of any obligation secured by deed of trust or mortgage on real property or an estate for years therein hereafter executed has, prior to the maturity date fixed in that obligation, become due or been declared due by reason of default in payment of interest or of any installment of principal, or by reason of failure of trustor or mortgagor to pay, in accordance with the terms of that obligation or of the deed of trust or mortgage, taxes, assessments, premiums for insurance, or advances made by beneficiary or mortgagee in accordance with the terms of that obligation or of the deed of trust or mortgage, the trustor or mortgagor or his or her successor in interest in the mortgaged or trust property or any part thereof, or any beneficiary under a subordinate deed of trust or any other person having a subordinate lien or encumbrance of record thereon, at any time within the period specified in subdivision (e), if the power of sale therein is to be exercised, or, otherwise at any time prior to entry of the decree of foreclosure, may pay to the beneficiary or the mortgagee or their successors in interest, respectively, the entire amount due, at the time payment is tendered, with respect to (A) all amounts of principal, interest, taxes, assessments, insurance premiums, or advances actually known by the beneficiary to be, and that are, in default and shown in the notice of default, under the terms of the deed of trust or mortgage and the obligation secured thereby, (B) all



amounts in default on recurring obligations not shown in the notice of default, and (C) all reasonable costs and expenses, subject to subdivision (c), which are actually incurred in enforcing the terms of the obligation, deed of trust, or mortgage, and trustee's or attorney's fees, subject to subdivision (d), other than the portion of principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued and the obligation and deed of trust or mortgage shall be reinstated and shall be and remain in force and effect, the same as if the acceleration had not occurred. This section does not apply to bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations or made by a public utility subject to the Public Utilities Code. For the purposes of this subdivision, the term "recurring obligation" means all amounts of principal and interest on the loan, or rents, subject to the deed of trust or mortgage in default due after the notice of default is recorded; all amounts of principal and interest or rents advanced on senior liens or leaseholds which are advanced after the recordation of the notice of default; and payments of taxes, assessments, and hazard insurance advanced after recordation of the notice of default. Where the beneficiary or mortgagee has made no advances on defaults which would constitute recurring obligations, the beneficiary or mortgagee may require the trustor or mortgagor to provide reliable written evidence that the amounts have been paid prior to reinstatement.

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

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

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

"IMPORTANT NOTICE [14-point boldface type if printed or in capital letters if typed]

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD



WITHOUT ANY COURT ACTION, [14-point boldface type if printed or in capital letters if typed] and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is _____ as of _____
(Date)

and will increase until your account becomes current.

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

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the end of the three-month period stated above) to, among other things, 1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

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

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



(Name of beneficiary or mortgagee)

(Mailing address)

(Telephone)

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

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

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

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

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

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

(c) Costs and expenses which may be charged pursuant to Sections 2924 to 2924i, inclusive, shall be limited to the costs incurred for recording, mailing, publishing, and posting notices required by Sections 2924 to 2924i, inclusive, postponement pursuant to Section



2924g made to either the beneficiary or trustee not to exceed fifty dollars (\$50) per postponement and a fee for a trustee's sale guarantee or, in the event of judicial foreclosure, a litigation guarantee. For purposes of this subdivision, a trustee or beneficiary may purchase a trustee's sale guarantee at a rate meeting the standards contained in Sections 12401.1 and 12401.3 of the Insurance Code.

(d) Trustee's or attorney's fees which may be charged pursuant to subdivision (a), or until the notice of sale is deposited in the mail to the trustor as provided in Section 2924b, if the sale is by power of sale contained in the deed of trust or mortgage, or, otherwise at any time prior to the decree of foreclosure, are hereby authorized to be in an amount which does not exceed two hundred forty dollars (\$240) with respect to any portion of the unpaid principal sum secured which is fifty thousand dollars (\$50,000) or less, plus one-half of 1 percent of the unpaid principal sum secured exceeding fifty thousand dollars (\$50,000) up to and including one hundred fifty thousand dollars (\$150,000), plus one-quarter of 1 percent of any portion of the unpaid principal sum secured exceeding one hundred fifty thousand dollars (\$150,000) up to and including five hundred thousand dollars (\$500,000), plus one-eighth of 1 percent of any portion of the unpaid principal sum secured exceeding five hundred thousand dollars (\$500,000). Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where the charge does not exceed the amounts authorized herein. For purposes of this subdivision, the unpaid principal sum secured shall be determined as of the date the notice of default is recorded.

(e) Reinstatement of a monetary default under the terms of an obligation secured by a deed of trust, or mortgage may be made at any time within the period commencing with the date of recordation of the notice of default until five business days prior to the date of sale set forth in the initial recorded notice of sale.

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

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



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

Pursuant to the terms of this subdivision, no beneficiary, trustee, mortgagee, or their agents or successors shall be liable in any manner to a trustor, mortgagor, their agents or successors for the failure to allow a reinstatement of the obligation secured by a deed of trust or mortgage during the period of five business days prior to the sale of the security property, and no such right of reinstatement during this period is created by this section. Any right of reinstatement created by this section is terminated five business days prior to the date of sale set forth in the initial date of sale, and is revived only as prescribed herein and only as of the date set forth herein.

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

SEC. 3. Section 2924d of the Civil Code is amended to read:

2924d. (a) Commencing with the date that the notice of sale is deposited in the mail, as provided in Section 2924b, and until the property is sold pursuant to the power of sale contained in the mortgage or deed of trust, a beneficiary, trustee, mortgagee, or his or her agent or successor in interest, may demand and receive from a trustor, mortgagor, or his or her agent or successor in interest, or any beneficiary under a subordinate deed of trust, or any other person having a subordinate lien or encumbrance of record those reasonable costs and expenses, to the extent allowed by subdivision (c) of Section 2924c, which are actually incurred in enforcing the terms of the obligation and trustee’s or attorney’s fees which are hereby authorized to be in an amount which does not exceed three hundred fifty dollars (\$350) with respect to any portion of the unpaid principal sum secured which is fifty thousand dollars (\$50,000) or less, plus 1 percent of any portion of the unpaid principal sum secured exceeding fifty thousand dollars (\$50,000) up to and including one hundred fifty thousand dollars (\$150,000), plus one-half of 1 percent of any portion of the unpaid principal sum secured exceeding one hundred fifty thousand dollars (\$150,000) up to and including five hundred thousand dollars (\$500,000), plus one-quarter of 1 percent of any portion of the unpaid principal sum secured exceeding five hundred thousand dollars (\$500,000). For purposes of this subdivision, the unpaid principal sum secured shall be determined as of the date the notice of default is recorded. Any charge for trustee’s or attorney’s fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where that charge does not exceed the amounts authorized herein. Any charge for trustee’s or attorney’s fees made pursuant to this subdivision shall be in lieu of and not in addition to those charges authorized by subdivision (d) of Section 2924c.



(b) Upon the sale of property pursuant to a power of sale, a trustee, or his or her agent or successor in interest, may demand and receive from a beneficiary, or his or her agent or successor in interest, or may deduct from the proceeds of the sale, those reasonable costs and expenses, to the extent allowed by subdivision (c) of Section 2924c, which are actually incurred in enforcing the terms of the obligation and trustee's or attorney's fees which are hereby authorized to be in an amount which does not exceed three hundred fifty dollars (\$350) or one percent of the unpaid principal sum secured, whichever is greater. For purposes of this subdivision, the unpaid principal sum secured shall be determined as of the date the notice of default is recorded. Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where that charge does not exceed the amount authorized herein. Any charges for trustee's or attorney's fees made pursuant to this subdivision shall be in lieu of and not in addition to those charges authorized by subdivision (a) of this section and subdivision (d) of Section 2924c.

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

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

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

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

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

SEC. 4. Section 2924f of the Civil Code is amended to read:

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



(b) (1) Except as provided in subdivision (c), before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, or any resale resulting from a rescission for a failure of consideration pursuant to subdivision (c) of Section 2924h, notice of the sale thereof shall be given by posting a written notice of the time of sale and of the street address and the specific place at the street address where the sale will be held, and describing the property to be sold, at least 20 days before the date of sale in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the judicial district in which the property is to be sold, and publishing a copy once a week for three consecutive calendar weeks, the first publication to be at least 20 days before the date of sale, in a newspaper of general circulation published in the city in which the property or some part thereof is situated, if any part thereof is situated in a city, if not, then in a newspaper of general circulation published in the judicial district in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district, as the case may be, in a newspaper of general circulation published in the county in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district or county, as the case may be, in a newspaper of general circulation published in the county in this state that (A) is contiguous to the county in which the property or some part thereof is situated and (B) has, by comparison with all similarly contiguous counties, the highest population based upon total county population as determined by the most recent federal decennial census published by the Bureau of the Census. A copy of the notice of sale shall also be posted in a conspicuous place on the property to be sold at least 20 days before the date of sale, where possible and where not restricted for any reason. If the property is a single-family residence the posting shall be on a door of the residence, but, if not possible or restricted, then the notice shall be posted in a conspicuous place on the property; however, if access is denied because a common entrance to the property is restricted by a guard gate or similar impediment, the property may be posted at that guard gate or similar impediment to any development community. Additionally, the notice of sale shall conform to the minimum requirements of Section 6043 of the Government Code and be recorded with the county recorder of the county in which the property or some part thereof is situated at least 14 days prior to the date of sale. The notice of sale shall contain the name, street address, and telephone number of the trustee or other person conducting the sale, and the name of the original trustor, and also shall contain the statement required by paragraph (3) of subdivision (c). In addition to any other description of the property, the notice shall describe the property by giving its street address, if



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

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

(2) If the sale of the property is to be a unified sale as provided in subparagraph (ii) of paragraph (a) of subdivision (4) of Section 9501 of the Commercial Code, the notice of sale shall also contain a description of the personal property or fixtures to be sold. In the case where it is contemplated that all of the personal property or fixtures are to be sold, the description in the notice of the personal property or fixtures shall be sufficient if it is the same as the description of the personal property or fixtures contained in the agreement creating the security interest in or encumbrance on the personal property or fixtures or the filed financing statement relating to the personal property or fixtures. In all other cases, the description in the notice shall be sufficient if it would be a sufficient description of the personal



property or fixtures under Section 9110 of the Commercial Code. Inclusion of a reference to or a description of personal property or fixtures in a notice of sale hereunder shall not constitute an election by the secured party to conduct a unified sale pursuant to subparagraph (ii) of paragraph (a) of subdivision (4) of Section 9501 of the Commercial Code, shall not obligate the secured party to conduct a unified sale pursuant to subparagraph (ii) of paragraph (a) of subdivision (4) of Section 9501 of the Commercial Code, and in no way shall render defective or noncomplying either that notice or a sale pursuant to that notice by reason of the fact that the sale includes none or less than all of the personal property or fixtures referred to or described in the notice. This paragraph shall not otherwise affect the obligations or duties of a secured party under the Commercial Code.

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

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

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

YOU ARE IN DEFAULT UNDER A

(Deed of trust or mortgage)

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

(4) All sales of real property pursuant to a power of sale contained in any deed of trust or mortgage described in paragraph (1) shall be held in the county where the residence is located and shall be made to the person making the highest offer. The trustee may receive offers during the 10-day period immediately prior to the date of sale and if any offer is accepted in writing by both the trustor or



mortgagor and the beneficiary or mortgagee prior to the time set for sale, the sale shall be postponed to a date certain and prior to which the property may be conveyed by the trustor to the person making the offer according to its terms. The offer is revocable until accepted. The performance of the offer, following acceptance, according to its terms, by a conveyance of the property to the offeror, shall operate to terminate any further proceeding under the notice of sale and it shall be deemed revoked.

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

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

SEC. 5. Section 2924g of the Civil Code is amended to read:

2924g. (a) All sales of property under the power of sale contained in any deed of trust or mortgage shall be held in the county where the property or some part thereof is situated, and shall be made at auction, to the highest bidder, between the hours of 9 a.m. and 5 p.m. on any business day, Monday through Friday.

The sale shall commence at the time and location specified in the notice of sale. Any postponement shall be announced at the time and location specified in the notice of sale for commencement of the sale or pursuant to paragraph (1) of subdivision (c).

If the sale of more than one parcel of real property has been scheduled for the same time and location by the same trustee, (1) any postponement of any of the sales shall be announced at the time published in the notice of sale, (2) the first sale shall commence at the time published in the notice of sale or immediately after the announcement of any postponement, and (3) each subsequent sale shall take place as soon as possible after the preceding sale has been completed.

(b) When the property consists of several known lots or parcels they shall be sold separately unless the deed of trust or mortgage provides otherwise. When a portion of the property is claimed by a third person, who requires it to be sold separately, the portion subject to the claim may be thus sold. The trustor, if present at the sale, may also, unless the deed of trust or mortgage otherwise provides, direct the order in which property shall be sold, when the property consists of several known lots or parcels which may be sold to advantage separately, and the trustee shall follow that direction. After sufficient property has been sold to satisfy the indebtedness no more can be sold.

If the property under power of sale is in two or more counties the public auction sale of all of the property under the power of sale may take place in any one of the counties where the property or a portion thereof is located.



(c) (1) There may be a postponement of the sale proceedings at any time prior to the completion of the sale at the discretion of the trustee, or upon instruction by the beneficiary to the trustee that the sale proceedings be postponed.

There may be a maximum of three postponements of the sale proceedings pursuant to this subdivision. In the event that the sale proceedings are postponed more than three times, the scheduling of any further sale proceedings shall be preceded by the giving of a new notice of sale in the manner prescribed by Section 2924f.

(2) The trustee shall postpone the sale upon the order of any court of competent jurisdiction, or where stayed by operation of law, or by the mutual agreement, whether oral or in writing, of any trustor and any beneficiary or any mortgagor and any mortgagee. Any postponement pursuant to this paragraph shall not be a postponement for purposes of determining the maximum number of postponements permitted pursuant to this subdivision nor shall a postponement resulting from the prohibition upon a sale within seven days from the expiration of an injunction, restraining order, or stay as provided in subdivision (d) be deemed a postponement for purposes of this subdivision. In addition, one postponement by the trustee based upon a reasonable belief that a petition for bankruptcy has been filed shall not be a postponement for purposes of determining the maximum number of postponements permitted pursuant to this subdivision.

(d) The notice of each postponement and the reason therefor shall be given by public declaration by the trustee at the time and place last appointed for sale. A public declaration of postponement shall also set forth the new date, time, and place of sale and the place of sale shall be the same place as originally fixed by the trustee for the sale. No other notice of postponement need be given. However, the sale shall be conducted no sooner than on the seventh day after the earlier of (1) dismissal of the action or (2) expiration or termination of the injunction, restraining order, or stay (which required postponement of the sale), whether by entry of an order by a court of competent jurisdiction, operation of law, or otherwise, unless the injunction, restraining order, or subsequent order expressly directs the conduct of the sale within that seven-day period. For purposes of this subdivision, the seven-day period shall not include the day on which the action is dismissed, or the day on which the injunction, restraining order, or stay expires or is terminated. If the sale had been scheduled to occur, but this subdivision precludes its conduct during that seven-day period, a new notice of postponement shall be given if the sale had been scheduled to occur during that seven-day period. The trustee shall maintain records of each postponement and the reason therefor.

SEC. 6. Section 2924f of the Civil Code is amended to read:



2924l. (a) In the event that a trustee under a deed of trust is named in an action or proceeding in which that deed of trust is the subject, and in the event that the trustee maintains a reasonable belief that it has been named in the action or proceeding solely in its capacity as trustee, and not arising out of any wrongful acts or omissions on its part in the performance of its duties as trustee, then, at any time, the trustee may file a declaration of nonmonetary status. The declaration shall be served on the parties in the manner set forth in Chapter 5 (commencing with Section 1010) of Title 14 of the Code of Civil Procedure.

(b) The declaration of nonmonetary status shall set forth the status of the trustee as trustee under the deed of trust that is the subject of the action or proceeding, that the trustee knows or maintains a reasonable belief that it has been named as a defendant in the proceeding solely in its capacity as a trustee under the deed of trust, its reasonable belief that it has not been named as a defendant due to any acts or omissions on its part in the performance of its duties as trustee, the basis for that knowledge or reasonable belief, and that it agrees to be bound by whatever order or judgment is issued by the court regarding the subject deed of trust.

(c) The parties who have appeared in the action or proceeding shall have 15 days from the service of the declaration by the trustee in which to object to the nonmonetary judgment status of the trustee. Any objection shall set forth the factual basis on which the objection is based and shall be served on the trustee.

(d) In the event that no objection is served within the 15-day objection period, then the trustee shall not be required to participate any further in the action or proceeding, shall not be subject to any monetary awards as and for damages, attorneys fees or costs, shall be required to respond to any discovery requests as a nonparty, and shall be bound by any court order relating to the subject deed of trust that is the subject of the action or proceeding.

(e) In the event of a timely objection to the declaration of nonmonetary status, the trustee shall thereafter be required to participate in the action or proceeding.

Additionally, in the event that the parties elect not to, or fail to, timely object to the declaration of nonmonetary status, but later through discovery, or otherwise, determine that the trustee should participate in the action because of the performance of its duties as a trustee, the parties may file and serve on the trustee a demand to participate in the action that specifies the factual basis for the demand. Upon the filing and service of the demand, the trustee shall thereafter be required to participate in the action or proceeding.

(f) Upon the filing of the declaration of nonmonetary status, the time within which the trustee is required to file an answer or other responsive pleading shall be tolled for the period of time within which the opposing parties may respond to the declaration. Upon the



timely service of an objection to the declaration on nonmonetary status, the trustee shall have 30 days from the date of service within which to file an answer or other responsive pleading to the complaint or cross-complaint.

SEC. 7. Section 2941 of the Civil Code is amended to read:

2941. (a) Within 30 days after any mortgage has been satisfied, the mortgagee or the assignee of the mortgagee shall execute a certificate of the discharge thereof, as provided in Section 2939, and shall record or cause to be recorded, except as provided in subdivision (c), in the office of the county recorder in which the mortgage is recorded. The mortgagee shall then deliver, upon the written request of the mortgagor or the mortgagor's heirs, successors, or assignees, as the case may be, the original note and mortgage to the person making the request.

(b) (1) When the obligation secured by any deed of trust has been satisfied, the beneficiary or the assignee of the beneficiary shall execute and deliver to the trustee the original note, deed of trust, request for a full reconveyance, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.

(A) The trustee shall execute the full reconveyance and shall record or cause it to be recorded, except as provided in subdivision (c), in the office of the county recorder in which the deed of trust is recorded within 21 calendar days after receipt by the trustee of the original note, deed of trust, request for a full reconveyance, the fee that may be charged pursuant to subdivision (e), recorder's fees, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.

(B) The trustee shall deliver a copy of the reconveyance to the beneficiary, its successor in interest, or its servicing agent, if known.

(C) Following execution and recordation of the full reconveyance, upon receipt of a written request by the trustor or the trustor's heirs, successors, or assignees, the trustee shall then deliver the original note and deed of trust to the person making that request.

(2) If the trustee has failed to execute and record, or cause to be recorded, the full reconveyance within 60 calendar days of satisfaction of the obligation, the beneficiary, upon receipt of a written request by the trustor or trustor's heirs, successor in interest, agent, or assignee, shall execute and acknowledge a document pursuant to Section 2934a substituting itself or another as trustee and issue a full reconveyance.

(3) If a full reconveyance has not been executed and recorded pursuant to either paragraph (1) or paragraph (2) within 75 calendar days of satisfaction of the obligation, then a title insurance company may prepare and record a release of the obligation. However, at least 10 days prior to the issuance and recording of a full release pursuant to this paragraph, the title insurance company shall mail by first-class mail with postage prepaid, the intention to release the obligation to



the trustee, trustor, and beneficiary of record, or their successor in interest of record, at the last known address.

(A) The release shall set forth:

(i) The name of the beneficiary.

(ii) The name of the trustor.

(iii) The recording reference to the deed of trust.

(iv) A recital that the obligation secured by the deed of trust has been paid in full.

(v) The date and amount of payment.

(B) The release issued pursuant to this subdivision shall be entitled to recordation and, when recorded, shall be deemed to be the equivalent of a reconveyance of a deed of trust.

(4) Where an obligation secured by a deed of trust was paid in full prior to July 1, 1989, and no reconveyance has been issued and recorded by October 1, 1989, then a release of obligation as provided for in paragraph (3) may be issued.

(5) Paragraphs (2) and (3) do not excuse the beneficiary or the trustee from compliance with paragraph (1). Paragraph (3) does not excuse the beneficiary from compliance with paragraph (2).

(6) In addition to any other remedy provided by law, a title insurance company preparing or recording the release of the obligation shall be liable to any party for damages, including attorneys' fees, which any person may sustain by reason of the issuance and recording of the release, pursuant to paragraphs (3) and (4).

(c) The mortgagee or trustee shall not record or cause the certificate of discharge or full reconveyance to be recorded when any of the following circumstances exists:

(1) The mortgagee or trustee has received written instructions to the contrary from the mortgagor or trustor, or the owner of the land, as the case may be, or from the owner of the obligation secured by the deed of trust or his or her agent, or escrow.

(2) The certificate of discharge or full reconveyance is to be delivered to the mortgagor or trustor, or the owner of the land, as the case may be, through an escrow to which the mortgagor, trustor, or owner is a party.

(3) When the personal delivery is not for the purpose of causing recordation and when the certificate of discharge or full reconveyance is to be personally delivered with receipt acknowledged by the mortgagor or trustor or owner of the land, as the case may be, or their agent if authorized by mortgagor or trustor or owner of the land.

(d) The violation of this section shall make the violator liable to the person affected by the violation for all damages which that person may sustain by reason of the violation, and shall require that the violator forfeit to that person the sum of three hundred dollars



(\$300). However, a trustee acting in accordance with subdivision (c) shall not be deemed a violator for purposes of this subdivision.

(e) (1) The trustee, beneficiary, or mortgagee may charge a reasonable fee to the trustor or mortgagor, or the owner of the land, as the case may be, for all services involved in the preparation, execution, and recordation of the full reconveyance, including, but not limited to, document preparation and forwarding services rendered to effect the full reconveyance, and, in addition, may collect official fees. This fee may be made payable no earlier than the opening of a bona fide escrow or no more than 60 days prior to the full satisfaction of the obligation secured by the deed of trust or mortgage.

(2) If the fee charged pursuant to this subdivision does not exceed sixty-five dollars (\$65), the fee is conclusively presumed to be reasonable.

(f) For purposes of this section, “original” may include an optically imaged reproduction when the following requirements are met:

(1) The trustee receiving the request for reconveyance and executing the reconveyance as provided in subdivision (b) is an affiliate or subsidiary of the beneficiary or an affiliate or subsidiary of the assignee of the beneficiary, respectively.

(2) The optical image storage media used to store the document shall be nonerasable write once, read many (WORM) optical image media that does not allow changes to the stored document.

(3) The optical image reproduction shall be made consistent with the minimum standards of quality approved by either the National Institute of Standards and Technology or the Association for Information and Image Management.

(4) Written authentication identifying the optical image reproduction as an unaltered copy of the note, deed of trust, or mortgage shall be stamped or printed on the optical image reproduction.

