

AMENDED IN SENATE AUGUST 7, 2000
AMENDED IN SENATE JUNE 15, 2000
AMENDED IN ASSEMBLY MAY 22, 2000
AMENDED IN ASSEMBLY MAY 10, 2000
AMENDED IN ASSEMBLY MAY 2, 2000
AMENDED IN ASSEMBLY APRIL 24, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1893

Introduced by Assembly Member Dutra
(Coauthor: Senator Alarcon)

February 10, 2000

~~An act to amend Sections 10131, 10153.2, and 10170.5 of, and to add Part 4 (commencing with Section 11500) to Division 4 of, the Business and Professions Code, relating to common interest development managers.—An act to amend Section 2941 of the Civil Code, relating to mortgages.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1893, as amended, Dutra. ~~Common—Interest Development Manager Certification Act—Mortgages.~~

Existing law requires a beneficiary or assignee of the beneficiary of an obligation secured by any deed of trust to execute and deliver, when the obligation has been satisfied, to the trustee specified documents, including the original note, deed of trust, and request for a full reconveyance.

This bill would require the reconveyance to be made within 60 calendar days after satisfaction of the obligation. The bill would authorize a title company to charge a fee to the beneficiary of up to \$25 to track the timing of the reconveyance. The bill would require that a fee paid to the trustor, mortgagor, or owner of the land for services rendered in connection with the reconveyance may only be charged if the fee is set forth in the deed of trust or mortgage.

~~Existing law, the Davis-Stirling Common Interest Development Act, establishes a scheme for the regulation of common interest developments.~~

~~This bill would establish a scheme for the regulation and issuance of a certificate to managers of common interest developments under the direction of the Director of the Department of Consumer Affairs.~~

~~Existing law regulates the activities and educational requirements of real estate brokers.~~

~~This bill would permit real estate brokers to provide management or financial services to common interest developments. This bill would also add educational requirements for real estate brokers regarding common interest developments.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 ~~SECTION 1. Section 10131 of the Business and~~
2 ~~SECTION 1. Section 2941 of the Civil Code is~~
3 ~~amended to read:~~
4 2941. (a) Within 30 days after any mortgage has been
5 satisfied, the mortgagee or the assignee of the mortgagee
6 shall execute a certificate of the discharge thereof, as
7 provided in Section 2939, and shall record or cause to be
8 recorded, except as provided in subdivision (c), in the
9 office of the county recorder in which the mortgage is
10 recorded. The mortgagee shall then deliver, upon the
11 written request of the mortgagor or the mortgagor's
12 heirs, successors, or assignees, as the case may be, the



1 original note and mortgage to the person making the
2 request.

3 (b) (1) ~~When~~ *Within 39 days of* the obligation secured
4 by any deed of trust ~~has been~~ *being* satisfied, the
5 beneficiary or the assignee of the beneficiary shall
6 execute and deliver to the trustee the original note, deed
7 of trust, request for a full reconveyance, and other
8 documents as may be necessary to reconvey, or cause to
9 be reconveyed, the deed of trust *within 60 calendar days*
10 *after satisfaction of the obligation.*

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

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

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

28 (D) *If the beneficiary substitutes itself pursuant to*
29 *Section 2934a in order to execute a full reconveyance, the*
30 *following shall apply:*

31 (i) *That substitution does not relieve the beneficiary*
32 *of the requirement to fulfill the duty of execution within*
33 *60 calendar days after satisfaction of the obligation*
34 *pursuant to this paragraph.*

35 (ii) *That substitution does not entitle the beneficiary*
36 *to the benefit of 21 calendar days as a trustee pursuant to*
37 *subparagraph (A) if it extends the period for execution*
38 *of a full reconveyance beyond 60 days after satisfaction of*
39 *the obligation.*



1 (iii) That substitution shall not in any way reduce the
2 beneficiary's statutory period for execution of a full
3 reconveyance to less than 60 days after satisfaction of the
4 obligation.

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

13 ~~(3)~~ If a full reconveyance has not been executed and
14 recorded pursuant to either paragraph (1) or paragraph
15 (2) within ~~75~~ 60 calendar days of satisfaction of the
16 obligation, then a title insurance company may prepare
17 and record a release of the obligation. However, at least
18 10 days prior to the issuance and recording of a full release
19 pursuant to this paragraph, the title insurance company
20 shall mail by first-class mail with postage prepaid, the
21 intention to release the obligation to the trustee, trustor,
22 and beneficiary of record, or their successor in interest of
23 record, at the last known address.

24 (A) The release shall set forth:

25 (i) The name of the beneficiary.

26 (ii) The name of the trustor.

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

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

30 (v) The date and amount of payment.

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

35 ~~(4)~~

36 (C) *No fees may be charged for preparing a release of*
37 *obligation. Official fees for the recordation of the release*
38 *of obligation may not be charged to the trustor or*
39 *mortgagor in connection with a release of obligation.*



1 (3) Where an obligation secured by a deed of trust was
2 paid in full prior to July 1, 1989, and no reconveyance has
3 been issued and recorded by October 1, 1989, then a
4 release of obligation as provided for in paragraph ~~(3)~~ (2)
5 may be issued.

6 ~~(5) Paragraphs~~

7 ~~(4) Paragraph (2) and (3) do~~ does not excuse the
8 beneficiary or the trustee from compliance with
9 paragraph (1). ~~Paragraph (3) does not excuse the~~
10 ~~beneficiary from compliance with paragraph (2).~~

11 ~~(6)~~

12 (5) In addition to any other remedy provided by law,
13 a title insurance company preparing or recording the
14 release of the obligation shall be liable to any party for
15 damages, including attorneys' fees, which any person
16 may sustain by reason of the issuance and recording of the
17 release, pursuant to paragraphs (2), (3), and ~~(4)~~ (6).

18 (6) *A title company may charge a fee to the*
19 *beneficiary not to exceed twenty-five dollars (\$25) for*
20 *tracking whether or not a reconveyance has been*
21 *recorded within the time period set forth in this*
22 *subdivision. If a fee is charged by the title company and*
23 *no reconveyance is recorded within the specified time*
24 *period then the title company shall record a release of*
25 *obligation. The release of obligation shall be recorded no*
26 *earlier than 60 calendar days after satisfaction of the*
27 *obligation pursuant to paragraph (3), and no later than*
28 *120 days after the satisfaction of the obligation.*

29 (7) *In the event that a reconveyance is recorded after*
30 *the expiration of the statutory period but prior to 120 days*
31 *after the satisfaction of the obligation then no release of*
32 *obligation shall be required to be recorded.*

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

36 ~~(4) The~~ *the* mortgagee or trustee has received written
37 instructions to the contrary from the mortgagor or
38 trustor, or the owner of the land, ~~as the case may be, or~~
39 ~~from the owner of the obligation secured by the deed of~~
40 ~~trust or his or her agent, or escrow.~~



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

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

12 (d) The violation of this section shall make the violator
13 liable to the person affected by the violation for all
14 damages which that person may sustain by reason of the
15 violation, and shall require that the violator forfeit to that
16 person the sum of three hundred dollars (\$300).
17 However, a trustee acting in accordance with subdivision
18 (c) shall not be deemed a violator for purposes of this
19 subdivision.

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

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

34 (3) *The fee described in paragraph (1) may not be*
35 *charged unless the fee is both expressly authorized under*
36 *the deed of trust or mortgage and demand for the fee was*
37 *included in the payoff demand statement described in*
38 *Section 2943.*



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

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

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

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

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

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23
24 **All matter omitted in this version of the**
25 **bill appears in the bill as amended in the**
26 **Senate, June 15, 2000 (JR 11)**
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