

Introduced by Senator HarmanFebruary 16, 2011

An act to amend Section 2924c, 2924g, and 2934a of the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 435, as introduced, Harman. Mortgages and deeds of trust.

(1) Existing state and federal law regulate the terms and conditions of mortgages and deeds of trust. Upon the failure to satisfy specified terms of these obligations, existing state law requires that a notice of default be sent to a mortgagor or trustor indicating the property securing the loans may be foreclosed upon and that he or she has the right to cure the default and bring the account into good standing. Existing law requires this notice to include a statement indicating the name, address, and telephone number of the beneficiary or mortgagee for the purpose of finding out the amount that is due.

This bill would also permit the notice to reference the authorized agent of the beneficiary or mortgagee on the notice described above.

(2) Existing law regulates the sales of property pursuant to a power of sale in a mortgage or deed of trust, including prescribing the times and locations of these sales. Existing law permits these sales to be postponed, as specified, at any time prior to the completion of the sale, for any period of time not to exceed a total of 365 days from the date set forth in the notice of sale, after which time a new notice of sale must be given, as prescribed.

This bill would permit these sales to be postponed, as described above, for any period of time not to exceed one year from the date set forth in the notice of sale.

(3) Existing law permits a trustee under a trust deed whose duties are exclusively related to the power of sale contained in the deed to be substituted if certain conditions are met. If the substitution occurs after a notice of default has been recorded but prior to the recording of the notice of sale, existing law requires that the beneficiary or his or her authorized agent give notice of this, as specified.

This bill would condition the requirement that the notice of trustee substitution be sent on the notice of default not having been rescinded.

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 2924c of the Civil Code is amended to
 2 read:
 3 2924c. (a) (1) Whenever all or a portion of the principal sum
 4 of any obligation secured by deed of trust or mortgage on real
 5 property or an estate for years therein hereafter executed has, prior
 6 to the maturity date fixed in that obligation, become due or been
 7 declared due by reason of default in payment of interest or of any
 8 installment of principal, or by reason of failure of trustor or
 9 mortgagor to pay, in accordance with the terms of that obligation
 10 or of the deed of trust or mortgage, taxes, assessments, premiums
 11 for insurance, or advances made by beneficiary or mortgagee in
 12 accordance with the terms of that obligation or of the deed of trust
 13 or mortgage, the trustor or mortgagor or his or her successor in
 14 interest in the mortgaged or trust property or any part thereof, or
 15 any beneficiary under a subordinate deed of trust or any other
 16 person having a subordinate lien or encumbrance of record thereon,
 17 at any time within the period specified in subdivision (e), if the
 18 power of sale therein is to be exercised, or, otherwise at any time
 19 prior to entry of the decree of foreclosure, may pay to the
 20 beneficiary or the mortgagee or their successors in interest,
 21 respectively, the entire amount due, at the time payment is
 22 tendered, with respect to (A) all amounts of principal, interest,
 23 taxes, assessments, insurance premiums, or advances actually
 24 known by the beneficiary to be, and that are, in default and shown
 25 in the notice of default, under the terms of the deed of trust or
 26 mortgage and the obligation secured thereby, (B) all amounts in
 27 default on recurring obligations not shown in the notice of default,

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

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

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

39 (b) (1) The notice, of any default described in this section,
40 recorded pursuant to Section 2924, and mailed to any person

1 pursuant to Section 2924b, shall begin with the following
2 statement, printed or typed thereon:

3
4 “IMPORTANT NOTICE [14-point boldface type if printed or
5 in capital letters if typed]
6

7 IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE
8 YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD
9 WITHOUT ANY COURT ACTION, [14-point boldface type if
10 printed or in capital letters if typed] and you may have the legal
11 right to bring your account in good standing by paying all of your
12 past due payments plus permitted costs and expenses within the
13 time permitted by law for reinstatement of your account, which is
14 normally five business days prior to the date set for the sale of
15 your property. No sale date may be set until approximately 90 days
16 from the date this notice of default may be recorded (which date
17 of recordation appears on this notice).

18
19 This amount is _____ as of _____
20 (Date)

21
22 and will increase until your account becomes current.

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

34 Upon your written request, the beneficiary or mortgagee will
35 give you a written itemization of the entire amount you must pay.
36 You may not have to pay the entire unpaid portion of your account,
37 even though full payment was demanded, but you must pay all
38 amounts in default at the time payment is made. However, you
39 and your beneficiary or mortgagee may mutually agree in writing
40 prior to the time the notice of sale is posted (which may not be

1 earlier than three months after this notice of default is recorded)
 2 to, among other things, (1) provide additional time in which to
 3 cure the default by transfer of the property or otherwise; or (2)
 4 establish a schedule of payments in order to cure your default; or
 5 both (1) and (2).

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

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

15
 16 _____
 17 (Name of beneficiary or, mortgagee, or his or her
 18 authorized agent)

19 _____
 20 (Mailing address)

21 _____
 22 (Telephone)

23
 24 If you have any questions, you should contact a lawyer or the
 25 governmental agency which may have insured your loan.

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

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

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

34 If the obligation secured by the deed of trust or mortgage is a
 35 contract or agreement described in paragraph (1) or (4) of
 36 subdivision (a) of Section 1632, the notice required herein shall
 37 be in Spanish if the trustor requested a Spanish language translation
 38 of the contract or agreement pursuant to Section 1632. If the
 39 obligation secured by the deed of trust or mortgage is contained
 40 in a home improvement contract, as defined in Sections 7151.2

1 and 7159 of the Business and Professions Code, which is subject
2 to Title 2 (commencing with Section 1801), the seller shall specify
3 on the contract whether or not the contract was principally
4 negotiated in Spanish and if the contract was principally negotiated
5 in Spanish, the notice required herein shall be in Spanish. No
6 assignee of the contract or person authorized to record the notice
7 of default shall incur any obligation or liability for failing to mail
8 a notice in Spanish unless Spanish is specified in the contract or
9 the assignee or person has actual knowledge that the secured
10 obligation was principally negotiated in Spanish. Unless specified
11 in writing to the contrary, a copy of the notice required by
12 subdivision (c) of Section 2924b shall be in English.

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

17 (c) Costs and expenses which may be charged pursuant to
18 Sections 2924 to 2924i, inclusive, shall be limited to the costs
19 incurred for recording, mailing, including certified and express
20 mail charges, publishing, and posting notices required by Sections
21 2924 to 2924i, inclusive, postponement pursuant to Section 2924g
22 not to exceed fifty dollars (\$50) per postponement and a fee for a
23 trustee's sale guarantee or, in the event of judicial foreclosure, a
24 litigation guarantee. For purposes of this subdivision, a trustee or
25 beneficiary may purchase a trustee's sale guarantee at a rate
26 meeting the standards contained in Sections 12401.1 and 12401.3
27 of the Insurance Code.

28 (d) Trustee's or attorney's fees which may be charged pursuant
29 to subdivision (a), or until the notice of sale is deposited in the
30 mail to the trustor as provided in Section 2924b, if the sale is by
31 power of sale contained in the deed of trust or mortgage, or,
32 otherwise at any time prior to the decree of foreclosure, are hereby
33 authorized to be in a base amount that does not exceed three
34 hundred dollars (\$300) if the unpaid principal sum secured is one
35 hundred fifty thousand dollars (\$150,000) or less, or two hundred
36 fifty dollars (\$250) if the unpaid principal sum secured exceeds
37 one hundred fifty thousand dollars (\$150,000), plus one-half of 1
38 percent of the unpaid principal sum secured exceeding fifty
39 thousand dollars (\$50,000) up to and including one hundred fifty
40 thousand dollars (\$150,000), plus one-quarter of 1 percent of any

1 portion of the unpaid principal sum secured exceeding one hundred
2 fifty thousand dollars (\$150,000) up to and including five hundred
3 thousand dollars (\$500,000), plus one-eighth of 1 percent of any
4 portion of the unpaid principal sum secured exceeding five hundred
5 thousand dollars (\$500,000). Any charge for trustee's or attorney's
6 fees authorized by this subdivision shall be conclusively presumed
7 to be lawful and valid where the charge does not exceed the
8 amounts authorized herein. For purposes of this subdivision, the
9 unpaid principal sum secured shall be determined as of the date
10 the notice of default is recorded.

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

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

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

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

36 Pursuant to the terms of this subdivision, no beneficiary, trustee,
37 mortgagee, or their agents or successors shall be liable in any
38 manner to a trustor, mortgagor, their agents or successors or any
39 beneficiary under a subordinate deed of trust or mortgage or any
40 other person having a subordinate lien or encumbrance of record

1 thereon for the failure to allow a reinstatement of the obligation
2 secured by a deed of trust or mortgage during the period of five
3 business days prior to the sale of the security property, and no such
4 right of reinstatement during this period is created by this section.
5 Any right of reinstatement created by this section is terminated
6 five business days prior to the date of sale set forth in the initial
7 date of sale, and is revived only as prescribed herein and only as
8 of the date set forth herein.

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

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

12 2924g. (a) All sales of property under the power of sale
13 contained in any deed of trust or mortgage shall be held in the
14 county where the property or some part thereof is situated, and
15 shall be made at auction, to the highest bidder, between the hours
16 of 9 a.m. and 5 p.m. on any business day, Monday through Friday.

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

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

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

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

5 (c) (1) There may be a postponement or postponements of the
6 sale proceedings, including a postponement upon instruction by
7 the beneficiary to the trustee that the sale proceedings be
8 postponed, at any time prior to the completion of the sale for any
9 period of time not to exceed a total of ~~365 days~~ *one year* from the
10 date set forth in the notice of sale. The trustee shall postpone the
11 sale in accordance with any of the following:

- 12 (A) Upon the order of any court of competent jurisdiction.
- 13 (B) If stayed by operation of law.
- 14 (C) By mutual agreement, whether oral or in writing, of any
15 trustor and any beneficiary or any mortgagor and any mortgagee.
- 16 (D) At the discretion of the trustee.

17 (2) In the event that the sale proceedings are postponed for a
18 period or periods totaling more than 365 days, the scheduling of
19 any further sale proceedings shall be preceded by giving a new
20 notice of sale in the manner prescribed in Section 2924f. New fees
21 incurred for the new notice of sale shall not exceed the amounts
22 specified in Sections 2924c and 2924d, and shall not exceed
23 reasonable costs that are necessary to comply with this paragraph.

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

1 subdivision precludes its conduct during that seven-day period, a
2 new notice of postponement shall be given if the sale had been
3 scheduled to occur during that seven-day period. The trustee shall
4 maintain records of each postponement and the reason therefor.

5 (e) Notwithstanding the time periods established under
6 subdivision (d), if postponement of a sale is based on a stay
7 imposed by Title 11 of the United States Code (bankruptcy), the
8 sale shall be conducted no sooner than the expiration of the stay
9 imposed by that title and the seven-day provision of subdivision
10 (d) shall not apply.

11 SEC. 3. Section 2934a of the Civil Code, as amended by
12 Section 5 of Chapter 177 of the Statutes of 2004, is amended to
13 read:

14 2934a. (a) (1) The trustee under a trust deed upon real property
15 or an estate for years therein given to secure an obligation to pay
16 money and conferring no other duties upon the trustee than those
17 which are incidental to the exercise of the power of sale therein
18 conferred, may be substituted by the recording in the county in
19 which the property is located of a substitution executed and
20 acknowledged by: (A) all of the beneficiaries under the trust deed,
21 or their successors in interest, and the substitution shall be effective
22 notwithstanding any contrary provision in any trust deed executed
23 on or after January 1, 1968; or (B) the holders of more than 50
24 percent of the record beneficial interest of a series of notes secured
25 by the same real property or of undivided interests in a note secured
26 by real property equivalent to a series transaction, exclusive of
27 any notes or interests of a licensed real estate broker that is the
28 issuer or servicer of the notes or interests or of any affiliate of that
29 licensed real estate broker.

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

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

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

39 (C) The undersigned together hold more than 50 percent of the
40 record beneficial interest of a series of notes secured by the same

1 real property or of undivided interests in a note secured by real
2 property equivalent to a series transaction.

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

7 The separate document shall be attached to the substitution and
8 be recorded in the office of the county recorder of each county in
9 which the real property described in the deed of trust is located.
10 Once the document required by this paragraph is recorded, it shall
11 constitute conclusive evidence of compliance with the requirements
12 of this paragraph in favor of substituted trustees acting pursuant
13 to this section, subsequent assignees of the obligation secured by
14 the deed of trust and subsequent bona fide purchasers or
15 encumbrancers for value of the real property described therein.

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

22 (4) The substitution shall contain the date of recordation of the
23 trust deed, the name of the trustor, the book and page or instrument
24 number where the trust deed is recorded, and the name of the new
25 trustee. From the time the substitution is filed for record, the new
26 trustee shall succeed to all the powers, duties, authority, and title
27 granted and delegated to the trustee named in the deed of trust. A
28 substitution may be accomplished, with respect to multiple deeds
29 of trust which are recorded in the same county in which the
30 substitution is being recorded and which all have the same trustee
31 and beneficiary or beneficiaries, by recording a single document,
32 complying with the requirements of this section, substituting
33 trustees for all those deeds of trust.

34 (b) If the substitution is executed, but not recorded, prior to or
35 concurrently with the recording of the notice of default, the
36 beneficiary or beneficiaries or their authorized agents shall cause
37 notice of the substitution to be mailed prior to or concurrently with
38 the recording thereof, in the manner provided in Section 2924b,
39 to all persons to whom a copy of the notice of default would be
40 required to be mailed by the provisions of Section 2924b. An

1 affidavit shall be attached to the substitution that notice has been
2 given to those persons and in the manner required by this
3 subdivision.

4 (c) If the substitution is effected after a notice of default has
5 been recorded but prior to the recording of the notice of sale *and*
6 *the notice of default has not been rescinded*, the beneficiary or
7 beneficiaries or their authorized agents shall cause a copy of the
8 substitution to be mailed, prior to, or concurrently with, the
9 recording thereof, in the manner provided in Section 2924b, to the
10 trustee then of record and to all persons to whom a copy of the
11 notice of default would be required to be mailed by the provisions
12 of Section 2924b. An affidavit shall be attached to the substitution
13 that notice has been given to those persons and in the manner
14 required by this subdivision.

15 (d) A trustee named in a recorded substitution of trustee shall
16 be deemed to be authorized to act as the trustee under the mortgage
17 or deed of trust for all purposes from the date the substitution is
18 executed by the mortgagee, beneficiaries, or by their authorized
19 agents. Nothing herein requires that a trustee under a recorded
20 substitution accept the substitution. Once recorded, the substitution
21 shall constitute conclusive evidence of the authority of the
22 substituted trustee or his or her agents to act pursuant to this
23 section.

24 (e) Notwithstanding any provision of this section or any
25 provision in any deed of trust, unless a new notice of sale
26 containing the name, street address, and telephone number of the
27 substituted trustee is given pursuant to Section 2924f after
28 execution of the substitution, any sale conducted by the substituted
29 trustee shall be void.

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