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The search for this California Code was inspired by Karen Michele Rozier's case...  
Karen Michele Rozier v. US Bank [9th\_circuit] California NonJudicial Foreclosure  
Statutes Alters Common Law Note & Mortgage Requirement\_(volo.abi.org).pdf

## V. DISCUSSION

The bankruptcy court did not abuse its discretion when it entered the Stay Relief Order.

The only order appealed, and relevant matter before us, is the Stay Relief Order.<sup>7</sup> Rozier contends that the bankruptcy court erred in entering the Stay Relief Order because U.S. Bank did not establish that it was the real party in interest to seek relief from stay against the Property. Specifically, she contends that U.S. Bank failed to establish standing because it did not file a proof of claim in her case, or show that it had any interest in the 2006 note.

Secured creditors such as U.S. Bank are not required to file proofs of claim in chapter 7 cases in order to preserve their security interests or liens; such interests pass through the bankruptcy unaffected despite the absence of a proof of claim. § 501(a); Rule 3002(a); Dewsnp v. Timm, 502 U.S. 410, 418 (1992); Long v. Bullard, 117 U.S. 617, 620-21 (1886); Brawders v. Cnty. of Ventura (In re Brawders), 503 F.3d 856, 872 (9th Cir. 2007). Rozier's attempt to turn U.S. Bank's secured lien into an unsecured one by scheduling it as unsecured and "disputed" in her Schedule F was ineffective.

As for her standing argument, it too lacks merit. Motions for relief from stay are contested matters under Rule 9014. Rule 9014(c) provides that Rule 7017, which in turn incorporates

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7 Rozier has not yet received a discharge, her chapter 7 case is still open, and the Property has not been sold. Therefore, this appeal is not moot

Civil Rule 17(a), is applicable to contested matters. Civil Rule 17(a)(1) provides that "[a]n action must be prosecuted in the name of the real party in interest . . ." Thus, to satisfy the requirements of prudential standing and Civil Rule 17(a)(1), "the action must be brought by the person who, according to the governing substantive law, is entitled to enforce the right." 6A Wright, Miller, Kane & Marcus, FED. PRAC. & CIV. PROC. ¶ 1543 (3d ed. 2011); In re Veal, 450 B.R. at 908.8 Simply put, the party moving for relief from the automatic stay must be the "real party in interest."

Under § 362(d), a "party in interest" can request relief from the automatic stay. Section 362(d)(1) authorizes relief from stay "for cause, including the lack of adequate protection of an interest in property of such party in interest." Whether a moving party is a "party in interest" under § 362(d) is determined on a case-by-case basis, taking into account both the claimed interest and how that interest is affected by the automatic stay. In re Veal, 450 B.R. at 913; Kronemyer v. Am. Contractors Indem. Co. (In re Kronemyer), 405 B.R. 915, 919 (9th Cir. BAP 2009). A "party in interest" can include any party that has a pecuniary interest in the matter, that has a practical stake in the resolution of the matter,

or that is impacted by the automatic stay. *Brown v. Sobczak (In re Sobczak)*, 369 B.R. 512, 517-18 (9th Cir. BAP 2007).

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8 Constitutional standing is satisfied because U.S. Bank established the minimum requirements of injury in fact, causation, and redressability. The automatic stay's prohibition on U.S. Bank's right to exercise its alleged nonbankruptcy rights could be redressed by obtaining relief from stay. See *In re Veal*, 450 B.R. at 906

"A proceeding to determine eligibility for relief from a stay only determines whether a creditor should be released from the stay in order to argue the merits in a separate proceeding." *Arkison v. Griffin (In re Griffin)*, 719 F.3d 1126, 1128 (9th Cir. 2013).

"Given the limited nature of . . . this proceeding and because final adjudication on the parties' rights and liabilities is yet to occur, a party . . . need only establish . . . a colorable claim to the property . . ." *Id.* See *In re Veal*, 450 B.R. at 913 (holding same and citing *First Fed. Bank of Cal. v. Robbins (In re Robbins)*, 310 B.R. 626, 631 (9th Cir. BAP 2004)); and *Biggs v. Stovin (In re Lux Int'l, Ltd.)*, 219 B.R. 837, 842 (9th Cir. BAP 1998) (an adjudication of the claims, defenses or counterclaims is not involved; only a determination of a colorable claim is made).

*Veal* recognized that a movant has a colorable claim under § 362 if it either: (1) owns or has another form of property interest in a note secured by the debtor's (or the estate's) property; or (2) is a "person entitled to enforce such a note under applicable state law." 450 B.R. at 910. In *Veal*, the Panel determined that the mortgagee had failed to establish its standing to obtain relief from stay because it could not show that it possessed the note, or that it had an interest in the note. *Id.* at 918. *Veal*, however, is distinguishable from the instant case because *Veal* was applying Illinois law, which follows the common law rule under the Uniform Commercial Code ("UCC") that a mortgagee must hold the note to foreclose. *Id.* at 916. Likewise, under the common law rule, an assignment of a mortgage without the

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note is a nullity. *Id.* In this case, California law applies,<sup>9</sup> which has altered the common law rule by statute.

California has enacted nonjudicial foreclosure statutes that have changed the common law rule. *Id.* at 916-17 & n.34. California's nonjudicial foreclosure statutes are governed by **CAL. CIV. CODE ("CCC") §§ 2924 through 2924k**, which are exhaustive.

California law does **not** require that the party **initiating foreclosure be in possession of the note**. *Debrunner v. Deutsche Bank Nat'l Trust Co.*, 204 Cal.App.4th 433, 440 (2012)(collecting cases); *Lane v. Vitek Real Estate Indus. Grp.*, 713 F.Supp.2d 1092, 1099 (E.D. Cal. 2010) ("There is **no** stated requirement in **California's non-judicial foreclosure scheme** that requires a **beneficial interest in the Note** to foreclose. Rather, **[CCC § 2924(a)(1)] broadly allows** a trustee, mortgagee, beneficiary, **or any of their agents to initiate non-judicial foreclosure**. Accordingly, the statute does **not** require a

beneficial interest in both the Note and the Deed of Trust to commence a non-judicial foreclosure sale.").

Therefore, in California, a party with a nonbankruptcy right to commence foreclosure proceedings may have **prudential standing - i.e., a colorable claim** to the property - to prosecute a motion for relief from stay. By establishing **its interest** in **the DOT**, U.S. Bank did **not have to show that it held the original note or**

9 The DOT, the security instrument at issue, contains a choice of law provision, which states that it shall be governed by federal law "and the law of the jurisdiction in which the Property is located." Here, that would be California. As the Panel held in Veal, the forum state's choice of law rules determine which state's substantive law applies. 450 B.R. at 916 n.32. In California, generally deeds of trust as opposed to mortgages are used as the security instrument for the note

the 2006 note, or an interest in either of those notes, or to produce the actual note(s) to establish its standing to prosecute the Stay Relief Motion. Given that U.S. Bank could commence foreclosure of the Property without either of the notes, it certainly would not need to possess or show any interest in them in the lesser action of establishing a colorable claim entitling it to relief from stay. We conclude, on this record, that U.S. Bank demonstrated that it had a colorable claim to the Property. In support of the Stay Relief Motion, U.S. Bank offered the Lyons declaration. Lyons stated that GMAC was the authorized loan servicing agent for U.S. Bank and that the DOT had been assigned to U.S. Bank. Attached was a copy of the original note, the DOT, and two recorded assignments - the assignment of WMC's beneficial interest in the DOT to Bank of America, and the assignment of the DOT from Bank of America to U.S. Bank. As the beneficiary under the DOT, U.S. Bank may initiate the foreclosure process against the Property. See CCC § 2924(a)(1); Debrunner, 204 Cal.App.4th at 440.

Accordingly, these foreclosure rights give U.S. Bank a colorable claim in the Property, and therefore it has standing to prosecute the Stay Relief Motion. While Rozier's arguments on appeal do not appear to extend beyond challenging U.S. Bank's standing, the bankruptcy court found that "cause" existed under § 362(d)(1) to grant relief from stay. "Cause" has no clear definition and is determined on a case-by-case basis. Mac Donald v. Mac Donald (In re Mac Donald), 755 F.2d 715, 717 (9th Cir. 1985); In re Kronemyer, 405 B.R. at 921. Once a party seeking relief establishes a prima facie case

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that cause exists for relief under § 362(d)(1), the burden shifts to the debtor to show that relief from the stay is not warranted. USA v. Gould (In re Gould), 401 B.R. 415, 426 (9th Cir. BAP 2009). The record supports the bankruptcy court's finding that "cause" existed to terminate the automatic stay and allow U.S. Bank to exercise its foreclosure remedies against the Property. U.S. Bank established its standing and a colorable claim to the Property. It further established that Rozier had failed to tender

**fifty-four payments owing on the Loan**, a fact she did **not** seem to **dispute** at the hearing, and that its debt was unsecured by \$200,000. A chapter 7 debtor's failure to make monthly payments to a secured creditor can constitute "cause" for granting relief from the automatic stay. In re Bushee, 319 B.R. 542, 552 (Bankr. E.D. Tenn. 2004) (citing Price v. Del. State Police Fed. Credit Union (In re Price), 370 F.3d 362, 373 (3d Cir. 2004) ("A persistent failure to make monthly payments under loan documents can constitute cause for granting relief from the automatic stay.")). See also In re Vicente, 446 B.R. 26, 32 (Bankr. D. Mass. 2011) (chapter 7 debtor's failure to make thirty-five mortgage payments constituted cause to terminate the automatic stay under § 362(d)(1)). Rozier also conceded that she had not paid taxes on the Property since 2008. Finally, the issues Rozier would like to resolve against U.S. Bank with respect to the Loan, which are strictly state law issues, are pending in state court. For these reasons, Rozier did not meet her burden to show that relief from stay was not warranted. Accordingly, the bankruptcy court did not abuse its discretion in entering the Stay Relief Order, and we AFFIRM.

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Because the record establishes that U.S. Bank was entitled to relief for "cause" under § 362(d)(1), we need not review the bankruptcy court's decision to also grant relief under § 362(d)(2).

## VI. CONCLUSION

We AFFIRM.

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See the **California Civil Code** in the following pages below for the California **NonJudicial Foreclosure Statutes** cited in the **Karen Michele Rozier Bankruptcy Case** regarding an alleged Creditor's **STANDING** to FORECLOSE....

<http://leginfo.legislature.ca.gov/faces/codes.xhtml>

**Civil Code - CIV**

[TITLE OF THE ACT](#)

[THE CIVIL CODE OF THE STATE OF CALIFORNIA](#)

[PRELIMINARY PROVISIONS](#)

[DEFINITIONS AND SOURCES OF LAW](#)

[EFFECT OF THE 1872 CODES](#)

[DIVISION 1. PERSONS \[38 - 86\]](#)

[DIVISION 2. PROPERTY \[654 - 1422\]](#)

[DIVISION 3. OBLIGATIONS \[1427 - 3272.9\]](#)

[DIVISION 4. GENERAL PROVISIONS \[3274 - 9566\]](#)

<http://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml>

**CIVIL CODE - CIV**

**TITLE OF THE ACT**

*(Heading enacted 1872.)*

**1.**

This Act shall be known as **The Civil Code of the State of California**, and is in Four Divisions, as follows:

I.—THE FIRST RELATING TO PERSONS.

II.—THE SECOND TO PROPERTY.

III.—THE THIRD TO OBLIGATIONS.

IV.—THE FOURTH CONTAINS GENERAL PROVISIONS RELATING TO THE THREE PRECEDING DIVISIONS.

*(Enacted 1872.)*

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[TITLE 14. LIEN](#)

[2872-3081](#)

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[CHAPTER 1. Liens in General](#)

[2872-2914](#)

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[ARTICLE 1. Definition of Liens](#)

[2872-2877](#)

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[ARTICLE 2. Creation of Liens](#)

[2881-2885](#)

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[ARTICLE 3. Effect of Liens](#)  
[2888-2892](#)

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[ARTICLE 4. Priority of Liens](#)  
[2897-2899](#)

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[ARTICLE 5. Redemption From Lien](#)  
[2903-2906](#)

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[ARTICLE 6. Extinction of Liens](#)  
[2909-2914](#)

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[CHAPTER 2. Mortgage](#)  
[2920-2967](#)

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[ARTICLE 1. Mortgages in General](#)  
[2920-2944.7](#)

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[ARTICLE 1.5. Mortgage Foreclosure Consultants](#)  
[2945-2945.11](#)

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[ARTICLE 2. Mortgage of Real Property](#)  
[2947-2955.5](#)

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ARTICLE 3. Disclosures on Purchase Money Liens on Residential Property  
2956-2967

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CHAPTER 2a. Home Equity Loan Disclosure Act  
2970-2971

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CHAPTER 2b. Automobile Sales Finance Act  
2981-2984.6

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CHAPTER 2c. Real Property Sales Contracts  
2985-2985.6

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CHAPTER 2d. Vehicle Leasing Act  
2985.7-2993

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CHAPTER 2e. Controlled Escrows  
2995

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CHAPTER 3.5. Health Care Liens  
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CHAPTER 4. Hospital Liens  
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CHAPTER 6. Other Liens  
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[CHAPTER 6.5. Liens on Vehicles](#)  
[3067-3074](#)

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[CHAPTER 6.7. Livestock Service Lien](#)  
[3080-3080.22](#)

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[CHAPTER 7. Stoppage in Transit](#)  
[3081](#)

TITLE 16. GENERAL PROVISIONS  
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**CIVIL CODE - CIV**

**DIVISION 3. OBLIGATIONS [1427 - 3272.9]**

*(Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.)*

**PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS**

**[1738 - 3272.9]**

*(Part 4 enacted 1872.)*

**TITLE 14. LIEN [2872 - 3081]**

*(Title 14 enacted 1872.)*

**CHAPTER 2. Mortgage [2920 - 2967]**

*(Chapter 2 enacted 1872.)*

**ARTICLE 1. Mortgages in General [2920 - 2944.7]**

*(Article 1 enacted 1872.)*

**2920.**

(a) **A mortgage is a contract** by which specific property, **including an estate for years in real property**, is hypothecated for the performance of an act, **without the necessity of a change of possession**.

(b) **For purposes of Sections 2924 to 2924h**, inclusive, **"mortgage"** **also means any security device or instrument, other than a deed of trust, that confers a power of sale affecting real property or an estate for years therein**, to be exercised after breach of **the obligation so secured**, **including a real property sales contract**, as defined in **Section 2985**, which contains such a provision.

(Amended by Stats. 1989, Ch. 698, Sec. 4.)

**2920.5.**

For purposes of this article, the following definitions apply:

(a) "Mortgage servicer" means a person or entity who directly services a loan, or who is responsible for interacting with the borrower, managing the loan account on a daily basis including collecting and crediting periodic loan payments, managing any escrow account, or enforcing the note and security instrument, either as the current owner of the promissory note or as the current owner's authorized agent. "Mortgage servicer" also means a subservicing agent to a master servicer by contract. "Mortgage servicer" shall not include a trustee, or a trustee's authorized agent, acting under a power of sale pursuant to a deed of trust.

(b) "Foreclosure prevention alternative" means a first lien loan modification or another available loss mitigation option.

(c) (1) Unless otherwise provided and for purposes of Sections 2923.4, 2923.5, 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, 2924.18, and 2924.19, "borrower" means any natural person who is a mortgagor or trustor and who is potentially eligible for any federal, state, or proprietary foreclosure prevention alternative program offered by, or through, his or her mortgage servicer.

(2) For purposes of the sections listed in paragraph (1), "borrower" shall not include any of the following:

(A) An individual who has surrendered the secured property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the mortgagee, trustee, beneficiary, or authorized agent.

(B) An individual who has contracted with an organization, person, or entity whose primary business is advising people who have decided to leave their homes on how to extend the foreclosure process and avoid their contractual obligations to mortgagees or beneficiaries.

(C) An individual who has filed a case under Chapter 7, 11, 12, or 13 of Title 11 of the United States Code and the bankruptcy court has not entered an order closing or dismissing the bankruptcy case, or granting relief from a stay of foreclosure.

(d) "First lien" means the most senior mortgage or deed of trust on the property that is the subject of the notice of default or notice of sale.

(Added by Stats. 2012, Ch. 86, Sec. 2. Effective January 1, 2013. See identical section added by Stats. 2012, Ch. 87.)

**2920.5.**

For purposes of this article, the following definitions apply:

(a) "Mortgage servicer" means a person or entity who directly services a loan, or who is responsible for interacting with the borrower, managing the loan account on a daily basis including collecting and crediting periodic loan payments, managing any escrow account, or enforcing the note and security

instrument, either as the current owner of the promissory note or as the current owner's authorized agent. "Mortgage servicer" also means a subservicing agent to a master servicer by contract. "Mortgage servicer" shall not include a trustee, or a trustee's authorized agent, acting under a power of sale pursuant to a deed of trust.

(b) "Foreclosure prevention alternative" means a first lien loan modification or another available loss mitigation option.

(c) (1) Unless otherwise provided and for purposes of Sections 2923.4, 2923.5, 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, 2924.18, and 2924.19, "borrower" means any natural person who is a mortgagor or trustor and who is potentially eligible for any federal, state, or proprietary foreclosure prevention alternative program offered by, or through, his or her mortgage servicer.

(2) For purposes of the sections listed in paragraph (1), "borrower" shall not include any of the following:

(A) An individual who has surrendered the secured property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the mortgagee, trustee, beneficiary, or authorized agent.

(B) An individual who has contracted with an organization, person, or entity whose primary business is advising people who have decided to leave their homes on how to extend the foreclosure process and avoid their contractual obligations to mortgagees or beneficiaries.

(C) An individual who has filed a case under Chapter 7, 11, 12, or 13 of Title 11 of the United States Code and the bankruptcy court has not entered an order closing or dismissing the bankruptcy case, or granting relief from a stay of foreclosure.

(d) "First lien" means the most senior mortgage or deed of trust on the property that is the subject of the notice of default or notice of sale.

*(Added by Stats. 2012, Ch. 87, Sec. 2. Effective January 1, 2013. See identical section added by Stats. 2012, Ch. 86.)*

## **2921.**

A mortgage may be created upon property held adversely to the mortgagor.  
*(Enacted 1872.)*

## **2922.**

A mortgage can be created, renewed, or extended, only by writing, executed with the formalities required in the case of a grant of real property.  
*(Enacted 1872.)*

## **2923.**

The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

(Enacted 1872.)

**2923.1.**

A mortgage broker providing mortgage brokerage services to a borrower is the fiduciary of the borrower, and any violation of the broker's fiduciary duties shall be a violation of the mortgage broker's license law. This fiduciary duty includes a requirement that the mortgage broker place the economic interest of the borrower ahead of his or her own economic interest. A mortgage broker who provides mortgage brokerage services to the borrower owes this fiduciary duty to the borrower (a) regardless of whether the mortgage broker is acting as an agent for any other party in connection with the residential mortgage loan transaction.

(b) For purposes of this section, the following definitions apply:

(1) "Licensed person" means a real estate broker licensed under the Real Estate Law (Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code), a finance lender or broker licensed under the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code), a residential mortgage lender licensed under the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000) of the Financial Code), a commercial or industrial bank organized under the Banking Law (Division 1 (commencing with Section 99) of the Financial Code), a savings association organized under the Savings Association Law (Division 2 (commencing with Section 5000) of the Financial Code), and a credit union organized under the California Credit Union Law (Division 5 (commencing with Section 14000) of the Financial Code).

(2) "Mortgage broker" means a licensed person who provides mortgage brokerage services. For purposes of this section, a licensed person who makes a residential mortgage loan is a "mortgage broker," and subject to the requirements of this section applicable to mortgage brokers, only with respect to transactions in which the licensed person provides mortgage brokerage services.

(3) "Mortgage brokerage services" means arranging or attempting to arrange, as exclusive agent for the borrower or as dual agent for the borrower and lender, for compensation or in expectation of compensation, paid directly or indirectly, a residential mortgage loan made by an unaffiliated third party.

(4) "Residential mortgage loan" means a consumer credit transaction that is secured by residential real property that is improved by four or fewer residential units.

(c) The duties set forth in this section shall not be construed to limit or narrow any other fiduciary duty of a mortgage broker.

(Added by Stats. 2009, Ch. 629, Sec. 2. Effective January 1, 2010.)

**2923.3.**

(a) With respect to residential real property containing no more than four dwelling units, a mortgagee, trustee, beneficiary, or authorized agent shall provide to the mortgagor or trustor a copy of the recorded notice of default with an attached separate summary document of the notice of default in English and the languages described in Section 1632, as set forth in subdivision (c), and a copy of the recorded notice of sale with an attached separate summary document of the information required to be contained in the notice of sale in English and the languages described in Section 1632, as set forth in subdivision (d). These summaries are not required to be recorded or published. This subdivision shall become operative on April 1, 2013, or 90 days following the issuance of the translations by the Department of Corporations, pursuant to subdivision (b), whichever is later.

(b) (1) The Department of Corporations shall provide a standard translation of the statement in paragraph (1) of subdivision (c), and of the summary of the notice of default, as set forth in paragraph (2) of subdivision (c) in the languages described in Section 1632.

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

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

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

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

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

#### SUMMARY OF KEY INFORMATION

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

**IMPORTANT NOTICE: IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION**, 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 approximately 90 days from the date

the attached notice of default may be recorded (which date of recordation appears on the 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 three months after this notice of default is recorded) 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:

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(Name of beneficiary or mortgagee)

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(Mailing address)

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(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.

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

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

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

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

**SUMMARY OF KEY INFORMATION**

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

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.

The total amount due in the notice of sale is \_\_\_\_.

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

However, the sale date shown on the attached notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call [telephone number for information regarding the trustee's sale] or visit this Internet Web site [Internet Web site address for information regarding the sale of this property], using the file number assigned to this case [case file number]. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale.

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

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

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

*(Added by Stats. 2012, Ch. 556, Sec. 1. Effective January 1, 2013.)*

**2923.4.**

(a) The purpose of the act that added this section is to ensure that, as part of the nonjudicial foreclosure process, borrowers are considered for, and have a meaningful opportunity to obtain, available loss mitigation options, if any, offered by or through the borrower's mortgage servicer, such as loan modifications or other alternatives to foreclosure. Nothing in the act that added this section, however, shall be interpreted to require a particular result of that process.

(b) Nothing in this article obviates or supersedes the obligations of the signatories to the consent judgment entered in the case entitled United States of America et al. v. Bank of America Corporation et al., filed in the United States District Court for the District of Columbia, case number 1:12-cv-00361 RMC.

*(Added by Stats. 2012, Ch. 86, Sec. 3. Effective January 1, 2013. See identical section added by Stats. 2012, Ch. 87.)*

**2923.4.**

(a) The purpose of the act that added this section is to ensure that, as part of the nonjudicial foreclosure process, borrowers are considered for, and have a meaningful opportunity to obtain, available loss mitigation options, if any, offered by or through the borrower's mortgage servicer, such as loan modifications or other alternatives to foreclosure. Nothing in the act that added this section, however, shall be interpreted to require a particular result of that process.

(b) Nothing in this article obviates or supersedes the obligations of the signatories to the consent judgment entered in the case entitled United States of America et al. v. Bank of America Corporation et al., filed in the United States District Court for the District of Columbia, case number 1:12-cv-00361 RMC.

*(Added by Stats. 2012, Ch. 87, Sec. 3. Effective January 1, 2013. See identical section added by Stats. 2012, Ch. 86.)*

**2923.5.**

(a) (1) A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default pursuant to Section 2924 until both of the following:

(A) Either 30 days after initial contact is made as required by paragraph (2) or 30 days after satisfying the due diligence requirements as described in subdivision (e).

(B) The mortgage servicer complies with paragraph (1) of subdivision (a) of Section 2924.18, if the borrower has provided a complete application as defined in subdivision (d) of Section 2924.18.

(2) A mortgage servicer shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for

the borrower to avoid foreclosure. During the initial contact, the mortgage servicer shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgage servicer shall schedule the meeting to occur within 14 days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. Any meeting may occur telephonically.

(b) A notice of default recorded pursuant to Section 2924 shall include a declaration that the mortgage servicer has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required because the individual did not meet the definition of "borrower" pursuant to subdivision (c) of Section 2920.5.

(c) A mortgage servicer's loss mitigation personnel may participate by telephone during any contact required by this section.

(d) A borrower may designate, with consent given in writing, a HUD-certified housing counseling agency, attorney, or other advisor to discuss with the mortgage servicer, on the borrower's behalf, the borrower's financial situation and options for the borrower to avoid foreclosure. That contact made at the direction of the borrower shall satisfy the contact requirements of paragraph (2) of subdivision (a). Any loan modification or workout plan offered at the meeting by the mortgage servicer is subject to approval by the borrower.

(e) A notice of default may be recorded pursuant to Section 2924 when a mortgage servicer has not contacted a borrower as required by paragraph (2) of subdivision (a) provided that the failure to contact the borrower occurred despite the due diligence of the mortgage servicer. For purposes of this section, "due diligence" shall require and mean all of the following:

(1) A mortgage servicer shall first attempt to contact a borrower by sending a first-class letter that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(2) (A) After the letter has been sent, the mortgage servicer shall attempt to contact the borrower by telephone at least three times at different hours and on different days. Telephone calls shall be made to the primary telephone number on file.

(B) A mortgage servicer may attempt to contact a borrower using an automated system to dial borrowers, provided that, if the telephone call is answered, the call is connected to a live representative of the mortgage servicer.

(C) A mortgage servicer satisfies the telephone contact requirements of this paragraph if it determines, after attempting contact pursuant to this paragraph, that the borrower's primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected.

(3) If the borrower does not respond within two weeks after the telephone call requirements of paragraph (2) have been satisfied, the mortgage servicer shall then send a certified letter, with return receipt requested.

(4) The mortgage servicer shall provide a means for the borrower to contact it in a timely manner, including a toll-free telephone number that will provide access to a live representative during business hours.

(5) The mortgage servicer has posted a prominent link on the homepage of its Internet Web site, if any, to the following information:

(A) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers advising them on steps to take to explore those options.

(B) A list of financial documents borrowers should collect and be prepared to present to the mortgage servicer when discussing options for avoiding foreclosure.

(C) A toll-free telephone number for borrowers who wish to discuss options for avoiding foreclosure with their mortgage servicer.

(D) The toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

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

(g) This section shall apply only to entities described in subdivision (b) of Section 2924.18.

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

*(Amended by Stats. 2012, Ch. 87, Sec. 4. Effective January 1, 2013. Repealed as of January 1, 2018, by its own provisions. See later operative versions added by Ch. 86 and Ch. 87.)*

### **2923.5.**

(a) (1) A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default pursuant to Section 2924 until both of the following:

(A) Either 30 days after initial contact is made as required by paragraph (2) or 30 days after satisfying the due diligence requirements as described in subdivision (e).

(B) The mortgage servicer complies with subdivision (a) of Section 2924.11, if the borrower has provided a complete application as defined in subdivision (f) of Section 2924.11.

(2) A mortgage servicer shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, the mortgage servicer shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgage servicer shall schedule the meeting to occur within 14 days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the United States Department of Housing and Urban

Development (HUD) to find a HUD-certified housing counseling agency. Any meeting may occur telephonically.

(b) A notice of default recorded pursuant to Section 2924 shall include a declaration that the mortgage servicer has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required because the individual did not meet the definition of "borrower" pursuant to subdivision (c) of Section 2920.5.

(c) A mortgage servicer's loss mitigation personnel may participate by telephone during any contact required by this section.

(d) A borrower may designate, with consent given in writing, a HUD-certified housing counseling agency, attorney, or other adviser to discuss with the mortgage servicer, on the borrower's behalf, the borrower's financial situation and options for the borrower to avoid foreclosure. That contact made at the direction of the borrower shall satisfy the contact requirements of paragraph (2) of subdivision (a). Any loan modification or workout plan offered at the meeting by the mortgage servicer is subject to approval by the borrower.

(e) A notice of default may be recorded pursuant to Section 2924 when a mortgage servicer has not contacted a borrower as required by paragraph (2) of subdivision (a) provided that the failure to contact the borrower occurred despite the due diligence of the mortgage servicer. For purposes of this section, "due diligence" shall require and mean all of the following:

(1) A mortgage servicer shall first attempt to contact a borrower by sending a first-class letter that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(2) (A) After the letter has been sent, the mortgage servicer shall attempt to contact the borrower by telephone at least three times at different hours and on different days. Telephone calls shall be made to the primary telephone number on file.

(B) A mortgage servicer may attempt to contact a borrower using an automated system to dial borrowers, provided that, if the telephone call is answered, the call is connected to a live representative of the mortgage servicer.

(C) A mortgage servicer satisfies the telephone contact requirements of this paragraph if it determines, after attempting contact pursuant to this paragraph, that the borrower's primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected.

(3) If the borrower does not respond within two weeks after the telephone call requirements of paragraph (2) have been satisfied, the mortgage servicer shall then send a certified letter, with return receipt requested.

(4) The mortgage servicer shall provide a means for the borrower to contact it in a timely manner, including a toll-free telephone number that will provide access to a live representative during business hours.

(5) The mortgage servicer has posted a prominent link on the homepage of its Internet Web site, if any, to the following information:

(A) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers advising them on steps to take to explore those options.

(B) A list of financial documents borrowers should collect and be prepared to present to the mortgage servicer when discussing options for avoiding foreclosure.

(C) A toll-free telephone number for borrowers who wish to discuss options for avoiding foreclosure with their mortgage servicer.

(D) The toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

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

(g) This section shall become operative on January 1, 2018.

*(Added by Stats. 2012, Ch. 86, Sec. 5. Effective January 1, 2013. Section operative January 1, 2018, by its own provisions. See identical section added by Stats. 2012, Ch. 87.)*

### **2923.5.**

(a) (1) A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default pursuant to Section 2924 until both of the following:

(A) Either 30 days after initial contact is made as required by paragraph (2) or 30 days after satisfying the due diligence requirements as described in subdivision (e).

(B) The mortgage servicer complies with subdivision (a) of Section 2924.11, if the borrower has provided a complete application as defined in subdivision (f) of Section 2924.11.

(2) A mortgage servicer shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, the mortgage servicer shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgage servicer shall schedule the meeting to occur within 14 days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. Any meeting may occur telephonically.

(b) A notice of default recorded pursuant to Section 2924 shall include a declaration that the mortgage servicer has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required because the individual did not meet the definition of "borrower" pursuant to subdivision (c) of Section 2920.5.

(c) A mortgage servicer's loss mitigation personnel may participate by telephone during any contact required by this section.

(d) A borrower may designate, with consent given in writing, a HUD-certified housing counseling agency, attorney, or other advisor to discuss with the mortgage servicer, on the borrower's behalf, the borrower's financial situation and options for the borrower to avoid foreclosure. That contact

made at the direction of the borrower shall satisfy the contact requirements of paragraph (2) of subdivision (a). Any loan modification or workout plan offered at the meeting by the mortgage servicer is subject to approval by the borrower.

(e) A notice of default may be recorded pursuant to Section 2924 when a mortgage servicer has not contacted a borrower as required by paragraph (2) of subdivision (a) provided that the failure to contact the borrower occurred despite the due diligence of the mortgage servicer. For purposes of this section, "due diligence" shall require and mean all of the following:

- (1) A mortgage servicer shall first attempt to contact a borrower by sending a first-class letter that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.
- (2) (A) After the letter has been sent, the mortgage servicer shall attempt to contact the borrower by telephone at least three times at different hours and on different days. Telephone calls shall be made to the primary telephone number on file.

(B) A mortgage servicer may attempt to contact a borrower using an automated system to dial borrowers, provided that, if the telephone call is answered, the call is connected to a live representative of the mortgage servicer.

(C) A mortgage servicer satisfies the telephone contact requirements of this paragraph if it determines, after attempting contact pursuant to this paragraph, that the borrower's primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected.

(3) If the borrower does not respond within two weeks after the telephone call requirements of paragraph (2) have been satisfied, the mortgage servicer shall then send a certified letter, with return receipt requested.

(4) The mortgage servicer shall provide a means for the borrower to contact it in a timely manner, including a toll-free telephone number that will provide access to a live representative during business hours.

(5) The mortgage servicer has posted a prominent link on the homepage of its Internet Web site, if any, to the following information:

(A) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers advising them on steps to take to explore those options.

(B) A list of financial documents borrowers should collect and be prepared to present to the mortgage servicer when discussing options for avoiding foreclosure.

(C) A toll-free telephone number for borrowers who wish to discuss options for avoiding foreclosure with their mortgage servicer.

(D) The toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

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

(g) This section shall become operative on January 1, 2018.

*(Repealed (in Sec. 4) and added by Stats. 2012, Ch. 87, Sec. 5. Effective January 1, 2013. Section operative January 1, 2018, by its own provisions. See identical section added by Stats. 2012, Ch. 86.)*

**2923.55.**

(a) A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default pursuant to Section 2924 until all of the following:

- (1) The mortgage servicer has satisfied the requirements of paragraph (1) of subdivision (b).
- (2) Either 30 days after initial contact is made as required by paragraph (2) of subdivision (b) or 30 days after satisfying the due diligence requirements as described in subdivision (f).
- (3) The mortgage servicer complies with subdivision (c) of Section 2923.6, if the borrower has provided a complete application as defined in subdivision (h) of Section 2923.6.

(b) (1) As specified in subdivision (a), a mortgage servicer shall send the following information in writing to the borrower:

- (A) A statement that if the borrower is a servicemember or a dependent of a servicemember, he or she may be entitled to certain protections under the federal Servicemembers Civil Relief Act (50 U.S.C. Appen. Sec. 501 et seq.) regarding the servicemember's interest rate and the risk of foreclosure, and counseling for covered servicemembers that is available at agencies such as Military OneSource and Armed Forces Legal Assistance.
- (B) A statement that the borrower may request the following:

- (i) A copy of the borrower's promissory note or other evidence of indebtedness.
- (ii) A copy of the borrower's deed of trust or mortgage.
- (iii) A copy of any assignment, if applicable, of the borrower's mortgage or deed of trust required to demonstrate the right of the mortgage servicer to foreclose.
- (iv) A copy of the borrower's payment history since the borrower was last less than 60 days past due.

(2) A mortgage servicer shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, the mortgage servicer shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgage servicer shall schedule the meeting to occur within 14 days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. Any meeting may occur telephonically.

(c) A notice of default recorded pursuant to Section 2924 shall include a declaration that the mortgage servicer has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required because the individual did not meet the definition of "borrower" pursuant to subdivision (c) of Section 2920.5.

- (d) A mortgage servicer's loss mitigation personnel may participate by telephone during any contact required by this section.
- (e) A borrower may designate, with consent given in writing, a HUD-certified housing counseling agency, attorney, or other adviser to discuss with the mortgage servicer, on the borrower's behalf, the borrower's financial situation and options for the borrower to avoid foreclosure. That contact made at the direction of the borrower shall satisfy the contact requirements of paragraph (2) of subdivision (b). Any foreclosure prevention alternative offered at the meeting by the mortgage servicer is subject to approval by the borrower.
- (f) A notice of default may be recorded pursuant to Section 2924 when a mortgage servicer has not contacted a borrower as required by paragraph (2) of subdivision (b), provided that the failure to contact the borrower occurred despite the due diligence of the mortgage servicer. For purposes of this section, "due diligence" shall require and mean all of the following:
  - (1) A mortgage servicer shall first attempt to contact a borrower by sending a first-class letter that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency. After the letter has been sent, the mortgage servicer shall attempt to contact the borrower by telephone at least three times at different hours and on different days. Telephone calls shall be made to the primary telephone number on (2) (A) file.
  - (B) A mortgage servicer may attempt to contact a borrower using an automated system to dial borrowers, provided that, if the telephone call is answered, the call is connected to a live representative of the mortgage servicer.
  - (C) A mortgage servicer satisfies the telephone contact requirements of this paragraph if it determines, after attempting contact pursuant to this paragraph, that the borrower's primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected.
  - (3) If the borrower does not respond within two weeks after the telephone call requirements of paragraph (2) have been satisfied, the mortgage servicer shall then send a certified letter, with return receipt requested, that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.
  - (4) The mortgage servicer shall provide a means for the borrower to contact it in a timely manner, including a toll-free telephone number that will provide access to a live representative during business hours.
  - (5) The mortgage servicer has posted a prominent link on the homepage of its Internet Web site, if any, to the following information:
    - (A) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers advising them on steps to take to explore those options.
    - (B) A list of financial documents borrowers should collect and be prepared to present to the mortgage servicer when discussing options for avoiding foreclosure.
    - (C) A toll-free telephone number for borrowers who wish to discuss options for avoiding foreclosure with their mortgage servicer.

- (D) The toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.
- (g) This section shall not apply to entities described in subdivision (b) of Section 2924.18.
- (h) This section shall apply only to mortgages or deeds of trust described in Section 2924.15.
- (i) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

*(Amended (as added by Stats. 2012, Ch. 86, Sec. 6) by Stats. 2013, Ch. 76, Sec. 14. Effective January 1, 2014. Repealed as of January 1, 2018, by its own provisions.)*

**2923.55.**

- (a) A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default pursuant to Section 2924 until all of the following:
  - (1) The mortgage servicer has satisfied the requirements of paragraph (1) of subdivision (b).
  - (2) Either 30 days after initial contact is made as required by paragraph (2) of subdivision (b) or 30 days after satisfying the due diligence requirements as described in subdivision (f).
  - (3) The mortgage servicer complies with subdivision (c) of Section 2923.6, if the borrower has provided a complete application as defined in subdivision (h) of Section 2923.6.
- (b) (1) As specified in subdivision (a), a mortgage servicer shall send the following information in writing to the borrower:
  - (A) A statement that if the borrower is a servicemember or a dependent of a servicemember, he or she may be entitled to certain protections under the federal Servicemembers Civil Relief Act (50 U.S.C. Appen. Sec. 501 et seq.) regarding the servicemember's interest rate and the risk of foreclosure, and counseling for covered servicemembers that is available at agencies such as Military OneSource and Armed Forces Legal Assistance.
  - (B) A statement that the borrower may request the following:
    - (i) A copy of the borrower's promissory note or other evidence of indebtedness.
    - (ii) A copy of the borrower's deed of trust or mortgage.
    - (iii) A copy of any assignment, if applicable, of the borrower's mortgage or deed of trust required to demonstrate the right of the mortgage servicer to foreclose.
    - (iv) A copy of the borrower's payment history since the borrower was last less than 60 days past due.
  - (2) A mortgage servicer shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, the mortgage servicer shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgage servicer shall schedule

the meeting to occur within 14 days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. Any meeting may occur telephonically.

(c) A notice of default recorded pursuant to Section 2924 shall include a declaration that the mortgage servicer has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required because the individual did not meet the definition of "borrower" pursuant to subdivision (c) of Section 2920.5.

(d) A mortgage servicer's loss mitigation personnel may participate by telephone during any contact required by this section.

(e) A borrower may designate, with consent given in writing, a HUD-certified housing counseling agency, attorney, or other adviser to discuss with the mortgage servicer, on the borrower's behalf, the borrower's financial situation and options for the borrower to avoid foreclosure. That contact made at the direction of the borrower shall satisfy the contact requirements of paragraph (2) of subdivision (b). Any foreclosure prevention alternative offered at the meeting by the mortgage servicer is subject to approval by the borrower.

(f) A notice of default may be recorded pursuant to Section 2924 when a mortgage servicer has not contacted a borrower as required by paragraph (2) of subdivision (b), provided that the failure to contact the borrower occurred despite the due diligence of the mortgage servicer. For purposes of this section, "due diligence" shall require and mean all of the following:

(1) A mortgage servicer shall first attempt to contact a borrower by sending a first-class letter that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency. After the letter has been sent, the mortgage servicer shall attempt to contact the borrower by telephone at least three times at different hours and on different days. Telephone calls shall be made to the primary telephone number on file. (2) (A)

(B) A mortgage servicer may attempt to contact a borrower using an automated system to dial borrowers, provided that, if the telephone call is answered, the call is connected to a live representative of the mortgage servicer.

(C) A mortgage servicer satisfies the telephone contact requirements of this paragraph if it determines, after attempting contact pursuant to this paragraph, that the borrower's primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected.

(3) If the borrower does not respond within two weeks after the telephone call requirements of paragraph (2) have been satisfied, the mortgage servicer shall then send a certified letter, with return receipt requested, that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(4) The mortgage servicer shall provide a means for the borrower to contact it in a timely manner, including a toll-free telephone number that will provide access to a live representative during business hours.

(5) The mortgage servicer has posted a prominent link on the homepage of its Internet Web site, if any, to the following information:

(A) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers advising them on steps to take to explore those options.

(B) A list of financial documents borrowers should collect and be prepared to present to the mortgage servicer when discussing options for avoiding foreclosure.

(C) A toll-free telephone number for borrowers who wish to discuss options for avoiding foreclosure with their mortgage servicer.

(D) The toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

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

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

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

*(Amended (as added by Stats. 2012, Ch. 87) by Stats. 2013, Ch. 76, Sec. 15. Effective January 1, 2014. Repealed as of January 1, 2018, by its own provisions. See identical section (added by Stats. 2012, Ch. 86), as amended by Stats. 2013, Ch. 76, Sec. 14.)*

## **2923.6.**

(a) The Legislature finds and declares that any duty that mortgage servicers may have to maximize net present value under their pooling and servicing agreements is owed to all parties in a loan pool, or to all investors under a pooling and servicing agreement, not to any particular party in the loan pool or investor under a pooling and servicing agreement, and that a mortgage servicer acts in the best interests of all parties to the loan pool or investors in the pooling and servicing agreement if it agrees to or implements a loan modification or workout plan for which both of the following apply:

(1) The loan is in payment default, or payment default is reasonably foreseeable.

(2) Anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis.

(b) It is the intent of the Legislature that the mortgage servicer offer the borrower a loan modification or workout plan if such a modification or plan is consistent with its contractual or other authority.

(c) If a borrower submits a complete application for a first lien loan modification offered by, or through, the borrower's mortgage servicer, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default or notice of sale, or conduct a trustee's sale,

while the complete first lien loan modification application is pending. A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default or notice of sale or conduct a trustee's sale until any of the following occurs:

- (1) The mortgage servicer makes a written determination that the borrower is not eligible for a first lien loan modification, and any appeal period pursuant to subdivision (d) has expired.
- (2) The borrower does not accept an offered first lien loan modification within 14 days of the offer.
- (3) The borrower accepts a written first lien loan modification, but defaults on, or otherwise breaches the borrower's obligations under, the first lien loan modification.
- (d) If the borrower's application for a first lien loan modification is denied, the borrower shall have at least 30 days from the date of the written denial to appeal the denial and to provide evidence that the mortgage servicer's determination was in error.
- (e) If the borrower's application for a first lien loan modification is denied, the mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default or, if a notice of default has already been recorded, record a notice of sale or conduct a trustee's sale until the later of:
  - (1) Thirty-one days after the borrower is notified in writing of the denial.
  - (2) If the borrower appeals the denial pursuant to subdivision (d), the later of 15 days after the denial of the appeal or 14 days after a first lien loan modification is offered after appeal but declined by the borrower, or, if a first lien loan modification is offered and accepted after appeal, the date on which the borrower fails to timely submit the first payment or otherwise breaches the terms of the offer.
- (f) Following the denial of a first lien loan modification application, the mortgage servicer shall send a written notice to the borrower identifying the reasons for denial, including the following:
  - (1) The amount of time from the date of the denial letter in which the borrower may request an appeal of the denial of the first lien loan modification and instructions regarding how to appeal the denial.
  - (2) If the denial was based on investor disallowance, the specific reasons for the investor disallowance.
  - (3) If the denial is the result of a net present value calculation, the monthly gross income and property value used to calculate the net present value and a statement that the borrower may obtain all of the inputs used in the net present value calculation upon written request to the mortgage servicer.
  - (4) If applicable, a finding that the borrower was previously offered a first lien loan modification and failed to successfully make payments under the terms of the modified loan.
  - (5) If applicable, a description of other foreclosure prevention alternatives for which the borrower may be eligible, and a list of the steps the borrower must take in order to be considered for those options. If the mortgage servicer has already approved the borrower for another foreclosure prevention alternative, information necessary to complete the foreclosure prevention alternative.

(g) In order to minimize the risk of borrowers submitting multiple applications for first lien loan modifications for the purpose of delay, the mortgage servicer shall not be obligated to evaluate applications from borrowers who have already been evaluated or afforded a fair opportunity to be evaluated for a first lien loan modification prior to January 1, 2013, or who have been evaluated or afforded a fair opportunity to be evaluated consistent with the requirements of this section, unless there has been a material change in the borrower's financial circumstances since the date of the borrower's previous application and that change is documented by the borrower and submitted to the mortgage servicer.

(h) For purposes of this section, an application shall be deemed "complete" when a borrower has supplied the mortgage servicer with all documents required by the mortgage servicer within the reasonable timeframes specified by the mortgage servicer.

(i) Subdivisions (c) to (h), inclusive, shall not apply to entities described in subdivision (b) of Section 2924.18.

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

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

*(Amended by Stats. 2012, Ch. 87, Sec. 7. Effective January 1, 2013. Repealed as of January 1, 2018, by its own provisions. See later operative versions added by Ch. 86 and Ch. 87.)*

## **2923.6.**

(a) The Legislature finds and declares that any duty mortgage servicers may have to maximize net present value under their pooling and servicing agreements is owed to all parties in a loan pool, or to all investors under a pooling and servicing agreement, not to any particular party in the loan pool or investor under a pooling and servicing agreement, and that a mortgage servicer acts in the best interests of all parties to the loan pool or investors in the pooling and servicing agreement if it agrees to or implements a loan modification or workout plan for which both of the following apply:

(1) The loan is in payment default, or payment default is reasonably foreseeable.

(2) Anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis.

(b) It is the intent of the Legislature that the mortgage servicer offer the borrower a loan modification or workout plan if such a modification or plan is consistent with its contractual or other authority.

(c) This section shall become operative on January 1, 2018.

*(Added by Stats. 2012, Ch. 86, Sec. 8. Effective January 1, 2013. Section operative January 1, 2018, by its own provisions. See identical section added by Stats. 2012, Ch. 87.)*

## **2923.6.**

(a) The Legislature finds and declares that any duty mortgage servicers may have to maximize net present value under their pooling and servicing agreements is owed to all parties in a loan pool, or to all investors under a pooling and servicing agreement, not to any particular party in the loan pool or investor under a pooling and servicing agreement, and that a mortgage servicer acts in the best interests of all parties to the loan pool or investors in the pooling and servicing agreement if it agrees to or implements a loan modification or workout plan for which both of the following apply:

(1) The loan is in payment default, or payment default is reasonably foreseeable.

(2) Anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis.

(b) It is the intent of the Legislature that the mortgage servicer offer the borrower a loan modification or workout plan if such a modification or plan is consistent with its contractual or other authority.

(c) This section shall become operative on January 1, 2018.

*(Repealed (in Sec. 7) and added by Stats. 2012, Ch. 87, Sec. 8. Effective January 1, 2013. Section operative January 1, 2018, by its own provisions. See identical section added by Stats. 2012, Ch. 86.)*

## **2923.7.**

(a) Upon request from a borrower who requests a foreclosure prevention alternative, the mortgage servicer shall promptly establish a single point of contact and provide to the borrower one or more direct means of communication with the single point of contact.

(b) The single point of contact shall be responsible for doing all of the following:

(1) Communicating the process by which a borrower may apply for an available foreclosure prevention alternative and the deadline for any required submissions to be considered for these options.

(2) Coordinating receipt of all documents associated with available foreclosure prevention alternatives and notifying the borrower of any missing documents necessary to complete the application.

(3) Having access to current information and personnel sufficient to timely, accurately, and adequately inform the borrower of the current status of the foreclosure prevention alternative.

(4) Ensuring that a borrower is considered for all foreclosure prevention alternatives offered by, or through, the mortgage servicer, if any.

(5) Having access to individuals with the ability and authority to stop foreclosure proceedings when necessary.

(c) The single point of contact shall remain assigned to the borrower's account until the mortgage servicer determines that all loss mitigation options offered by, or through, the mortgage servicer have been exhausted or the borrower's account becomes current.

(d) The mortgage servicer shall ensure that a single point of contact refers and transfers a borrower to an appropriate supervisor upon request of the borrower, if the single point of contact has a supervisor.

(e) For purposes of this section, "single point of contact" means an individual or team of personnel each of whom has the ability and authority to perform the responsibilities described in subdivisions (b) to (d), inclusive. The mortgage servicer shall ensure that each member of the team is knowledgeable about the borrower's situation and current status in the alternatives to foreclosure process.

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

(g) (1) This section shall not apply to a depository institution chartered under state or federal law, a person licensed pursuant to Division 9 (commencing with Section 22000) or Division 20 (commencing with Section 50000) of the Financial Code, or a person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code, that, during its immediately preceding annual reporting period, as established with its primary regulator, foreclosed on 175 or fewer residential real properties, containing no more than four dwelling units, that are located in California.

(2) Within three months after the close of any calendar year or annual reporting period as established with its primary regulator during which an entity or person described in paragraph (1) exceeds the threshold of 175 specified in paragraph (1), that entity shall notify its primary regulator, in a manner acceptable to its primary regulator, and any mortgagor or trustor who is delinquent on a residential mortgage loan serviced by that entity of the date on which that entity will be subject to this section, which date shall be the first day of the first month that is six months after the close of the calendar year or annual reporting period during which that entity exceeded the threshold.

*(Added by Stats. 2012, Ch. 86, Sec. 9. Effective January 1, 2013. See identical section added by Stats. 2012, Ch. 87.)*

### **2923.7.**

(a) Upon request from a borrower who requests a foreclosure prevention alternative, the mortgage servicer shall promptly establish a single point of contact and provide to the borrower one or more direct means of communication with the single point of contact.

(b) The single point of contact shall be responsible for doing all of the following:

(1) Communicating the process by which a borrower may apply for an available foreclosure prevention alternative and the deadline for any required submissions to be considered for these options.

(2) Coordinating receipt of all documents associated with available foreclosure prevention alternatives and notifying the borrower of any missing documents necessary to complete the application.

- (3) Having access to current information and personnel sufficient to timely, accurately, and adequately inform the borrower of the current status of the foreclosure prevention alternative.
- (4) Ensuring that a borrower is considered for all foreclosure prevention alternatives offered by, or through, the mortgage servicer, if any.
- (5) Having access to individuals with the ability and authority to stop foreclosure proceedings when necessary.
- (c) The single point of contact shall remain assigned to the borrower's account until the mortgage servicer determines that all loss mitigation options offered by, or through, the mortgage servicer have been exhausted or the borrower's account becomes current.
- (d) The mortgage servicer shall ensure that a single point of contact refers and transfers a borrower to an appropriate supervisor upon request of the borrower, if the single point of contact has a supervisor.
- (e) For purposes of this section, "single point of contact" means an individual or team of personnel each of whom has the ability and authority to perform the responsibilities described in subdivisions (b) to (d), inclusive. The mortgage servicer shall ensure that each member of the team is knowledgeable about the borrower's situation and current status in the alternatives to foreclosure process.
- (f) This section shall apply only to mortgages or deeds of trust described in Section 2924.15.
- (g) (1) This section shall not apply to a depository institution chartered under state or federal law, a person licensed pursuant to Division 9 (commencing with Section 22000) or Division 20 (commencing with Section 50000) of the Financial Code, or a person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code, that, during its immediately preceding annual reporting period, as established with its primary regulator, foreclosed on 175 or fewer residential real properties, containing no more than four dwelling units, that are located in California.
- (2) Within three months after the close of any calendar year or annual reporting period as established with its primary regulator during which an entity or person described in paragraph (1) exceeds the threshold of 175 specified in paragraph (1), that entity shall notify its primary regulator, in a manner acceptable to its primary regulator, and any mortgagor or trustor who is delinquent on a residential mortgage loan serviced by that entity of the date on which that entity will be subject to this section, which date shall be the first day of the first month that is six months after the close of the calendar year or annual reporting period during which that entity exceeded the threshold.

*(Added by Stats. 2012, Ch. 87, Sec. 9. Effective January 1, 2013. See identical section added by Stats. 2012, Ch. 86.)*

**2924.**

- (a) Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by

actual change of possession, in which case it is to be deemed a pledge. Where, by a mortgage created after July 27, 1917, of any estate in real property, other than an estate at will or for years, less than two, or in any transfer in trust made after July 27, 1917, of a like estate to secure the performance of an obligation, a power of sale is conferred upon the mortgagee, trustee, or any other person, to be exercised after a breach of the obligation for which that mortgage or transfer is a security, the power shall not be exercised except where the mortgage or transfer is made pursuant to an order, judgment, or decree of a court of record, or to secure the payment of bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations, or is made by a public utility subject to the provisions of the Public Utilities Act, until all of the following apply:

- (1) The trustee, mortgagee, or beneficiary, or any of their authorized agents shall first file for record, in the office of the recorder of each county wherein the mortgaged or trust property or some part or parcel thereof is situated, a notice of default. That notice of default shall include all of the following:
  - (A) A statement identifying the mortgage or deed of trust by stating the name or names of the trustor or trustors and giving the book and page, or instrument number, if applicable, where the mortgage or deed of trust is recorded or a description of the mortgaged or trust property.
  - (B) A statement that a breach of the obligation for which the mortgage or transfer in trust is security has occurred.
  - (C) A statement setting forth the nature of each breach actually known to the beneficiary and of his or her election to sell or cause to be sold the property to satisfy that obligation and any other obligation secured by the deed of trust or mortgage that is in default.
  - (D) If the default is curable pursuant to Section 2924c, the statement specified in paragraph (1) of subdivision (b) of Section 2924c.
- (2) Not less than three months shall elapse from the filing of the notice of default.
- (3) Except as provided in paragraph (4), after the lapse of the three months described in paragraph (2), the mortgagee, trustee, or other person authorized to take the sale shall give notice of sale, stating the time and place thereof, in the manner and for a time not less than that set forth in Section 2924f.
- (4) Notwithstanding paragraph (3), the mortgagee, trustee, or other person authorized to take sale may record a notice of sale pursuant to Section 2924f up to five days before the lapse of the three-month period described in paragraph (2), provided that the date of sale is no earlier than three months and 20 days after the recording of the notice of default.
- (5) Until January 1, 2018, whenever a sale is postponed for a period of at least 10 business days pursuant to Section 2924g, a mortgagee, beneficiary, or authorized agent shall provide written notice to a borrower regarding the new sale date and time, within five business days following the postponement. Information provided pursuant to this paragraph shall not constitute the public declaration required by subdivision (d) of Section 2924g. Failure to comply with this paragraph shall not invalidate any sale

that would otherwise be valid under Section 2924f. This paragraph shall be inoperative on January 1, 2018.

(6) No entity shall record or cause a notice of default to be recorded or otherwise initiate the foreclosure process unless it is the holder of the beneficial interest under the mortgage or deed of trust, the original trustee or the substituted trustee under the deed of trust, or the designated agent of the holder of the beneficial interest. No agent of the holder of the beneficial interest under the mortgage or deed of trust, original trustee or substituted trustee under the deed of trust may record a notice of default or otherwise commence the foreclosure process except when acting within the scope of authority designated by the holder of the beneficial interest.

(b) In performing acts required by this article, the trustee shall incur no liability for any good faith error resulting from reliance on information provided in good faith by the beneficiary regarding the nature and the amount of the default under the secured obligation, deed of trust, or mortgage. In performing the acts required by this article, a trustee shall not be subject to Title 1.6c (commencing with Section 1788) of Part 4.

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

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

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

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

(3) Performance of the functions and procedures set forth in this article if those functions and procedures are necessary to carry out the duties described in Sections 729.040, 729.050, and 729.080 of the Code of Civil Procedure.

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

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

*(Amended (as amended by Stats. 2010, Ch. 180, Sec. 1) by Stats. 2012, Ch. 556, Sec. 2.5. Effective January 1, 2013.)*

**2924.1.**

(a) Notwithstanding any other law, the transfer, following the sale, of property in a common interest development, as defined by Section 1351, executed under the power of sale contained in any deed of trust or mortgage, shall be recorded within 30 days after the date of sale in the office of the county recorder where the property or a portion of the property is located.

(b) Any failure to comply with the provisions of this section shall not affect the validity of a trustee's sale or a sale in favor of a bona fide purchaser.

*(Added by Stats. 2012, Ch. 255, Sec. 1. Effective January 1, 2013.)*

**2924.3.**

(a) Except as provided in subdivisions (b) and (c), a person who has undertaken as an agent of a mortgagee, beneficiary, or owner of a promissory note secured directly or collaterally by a mortgage or deed of trust on real property or an estate for years therein, to make collections of payments from an obligor under the note, shall mail the following notices, postage prepaid, to each mortgagee, beneficiary or owner for whom the agent has agreed to make collections from the obligor under the note:

(1) A copy of the notice of default filed in the office of the county recorder pursuant to Section 2924 on account of a breach of obligation under the promissory note on which the agent has agreed to make collections of payments, within 15 days after recordation.

(2) Notice that a notice of default has been recorded pursuant to Section 2924 on account of a breach of an obligation secured by a mortgage or deed of trust against the same property or estate for years therein having priority over the mortgage or deed of trust securing the obligation described in paragraph (1), within 15 days after recordation or within three business days after the agent receives the information, whichever is later.

(3) Notice of the time and place scheduled for the sale of the real property or estate for years therein pursuant to Section 2924f under a power of sale in a mortgage or deed of trust securing an obligation described in paragraphs (1) or (2), not less than 15 days before the scheduled date of the sale or not later than the next business day after the agent receives the information, whichever is later.

(b) An agent who has undertaken to make collections on behalf of mortgagees, beneficiaries or owners of promissory notes secured by mortgages or deeds of trust on real property or an estate for years therein shall not be required to comply with the provisions of subdivision (a) with respect to a mortgagee, beneficiary or owner who is entitled to receive notice pursuant to subdivision (c) of Section 2924b or for whom a request for notice has been recorded pursuant to subdivision (b) of Section 2924b if the agent reasonably believes that the address of the mortgagee, beneficiary, or owner described in Section 2924b is the current business or residence address of that person.

(c) An agent who has undertaken to make collections on behalf of mortgagees, beneficiaries or owners of promissory notes secured by mortgages or deeds of trust on real property or an estate for years therein shall not be required to comply with the provisions of paragraph (1) or (2) of subdivision (a) if the agent knows or reasonably believes that the default has already been cured by or on behalf of the obligor.

(d) Any failure to comply with the provisions of this section 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.

*(Amended by Stats. 1998, Ch. 932, Sec. 10. Effective January 1, 1999.)*

**2924.5.**

No clause in any deed of trust or mortgage on property containing four or fewer residential units or on which four or fewer residential units are to be constructed or in any obligation secured by any deed of trust or mortgage on property containing four or fewer residential units or on which four or fewer residential units are to be constructed that provides for the acceleration of the due date of the obligation upon the sale, conveyance, alienation, lease, succession, assignment or other transfer of the property subject to the deed of trust or mortgage shall be valid unless the clause is set forth, in its entirety in both the body of the deed of trust or mortgage and the promissory note or other document evidencing the secured obligation. This section shall apply to all such deeds of trust, mortgages, and obligations secured thereby executed on or after July 1, 1972.

*(Amended by Stats. 1972, Ch. 216.)*

**2924.6.**

(a) An obligee may not accelerate the maturity date of the principal and accrued interest on any loan secured by a mortgage or deed of trust on residential real property solely by reason of any one or more of the following transfers in the title to the real property:

- (1) A transfer resulting from the death of an obligor where the transfer is to the spouse who is also an obligor.
- (2) A transfer by an obligor where the spouse becomes a coowner of the property.
- (3) A transfer resulting from a decree of dissolution of the marriage or legal separation or from a property settlement agreement incidental to such a decree which requires the obligor to continue to make the loan payments by which a spouse who is an obligor becomes the sole owner of the property.
- (4) A transfer by an obligor or obligors into an inter vivos trust in which the obligor or obligors are beneficiaries.
- (5) Such real property or any portion thereof is made subject to a junior encumbrance or lien.

(b) Any waiver of the provisions of this section by an obligor is void and unenforceable and is contrary to public policy.

(c) For the purposes of this section, "residential real property" means any real property which contains at least one but not more than four housing units.

(d) This act applies only to loans executed or refinanced on or after January 1, 1976.

(Added by Stats. 1975, Ch. 850.)

**2924.7.**

(a) The provisions of any deed of trust or mortgage on real property which authorize any beneficiary, trustee, mortgagee, or his or her agent or successor in interest, to accelerate the maturity date of the principal and interest on any loan secured thereby or to exercise any power of sale or other remedy contained therein upon the failure of the trustor or mortgagor to pay, at the times provided for under the terms of the deed of trust or mortgage, any taxes, rents, assessments, or insurance premiums with respect to the property or the loan, or any advances made by the beneficiary, mortgagee, or his or her agent or successor in interest shall be enforceable whether or not impairment of the security interest in the property has resulted from the failure of the trustor or mortgagor to pay the taxes, rents, assessments, insurance premiums, or advances.

(b) The provisions of any deed of trust or mortgage on real property which authorize any beneficiary, trustee, mortgagee, or his or her agent or successor in interest, to receive and control the disbursement of the proceeds of any policy of fire, flood, or other hazard insurance respecting the property shall be enforceable whether or not impairment of the security interest in the property has resulted from the event that caused the proceeds of the insurance policy to become payable.

(Added by Stats. 1988, Ch. 179, Sec. 2.)

**2924.8.**

(a) (1) Upon posting a notice of sale pursuant to Section 2924f, a trustee or authorized agent shall also post the following notice, in the manner required for posting the notice of sale on the property to be sold, and a mortgagee, trustee, beneficiary, or authorized agent, concurrently with the mailing of the notice of sale pursuant to Section 2924b, shall send by first-class mail in an envelope addressed to the "Resident of property subject to foreclosure sale" the following notice in English and the languages described in Section 1632:

Foreclosure process has begun on this property, which may affect your right to continue to live in this property. Twenty days or more after the date of this notice, this property may be sold at foreclosure. If you are renting this property, the new property owner may either give you a new lease or rental agreement or provide you with a 90-day eviction notice. You may have a right to stay in your home for longer than 90 days. If you have a fixed-term

lease, the new owner must honor the lease unless the new owner will occupy the property as a primary residence or in other limited circumstances. Also, in some cases and in some cities with a "just cause for eviction" law, you may not have to move at all. All rights and obligations under your lease or tenancy, including your obligation to pay rent, will continue after the foreclosure sale. You may wish to contact a lawyer or your local legal aid office or housing counseling agency to discuss any rights you may have.

- (2) The amendments to the notice in this subdivision made by the act that added this paragraph shall become operative on March 1, 2013, or 60 days following posting of a dated notice incorporating those amendments on the Department of Consumer Affairs Internet Web site, whichever date is later.
- (b) It is an infraction to tear down the notice described in subdivision (a) within 72 hours of posting. Violators shall be subject to a fine of one hundred dollars (\$100).
- (c) The Department of Consumer Affairs shall make available translations of the notice described in subdivision (a) which may be used by a mortgagee, trustee, beneficiary, or authorized agent to satisfy the requirements of this section.
- (d) This section shall only apply to loans secured by residential real property, and if the billing address for the mortgage note is different than the property address.
- (e) This section shall remain in effect only until December 31, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before December 31, 2019, deletes or extends that date.

*(Amended by Stats. 2013, Ch. 76, Sec. 16. Effective January 1, 2014. Repealed as of December 31, 2019, by its own provisions.)*

#### **2924.85.**

- (a) Every landlord who offers for rent a single-family dwelling, or a multifamily dwelling not exceeding four units, and who has received a notice of default that has not been rescinded with respect to a mortgage or deed of trust secured by that property shall disclose the notice of default in writing to any prospective tenant prior to executing a lease agreement for the property subject to the notice.
- (b) A violation of subdivision (a) shall void the lease at the election of the tenant and shall entitle the tenant to recovery of one month's rent or twice the actual damages, whichever is greater, and all prepaid rent from the landlord who received the notice of default, in addition to any other remedy that the law may provide.
- (c) In lieu of the remedies in subdivision (b), if the tenant elects not to terminate the lease and the foreclosure sale has not occurred, the tenant may elect to deduct a total amount equal to one month's rent from future rent obligations owed the landlord who received the notice of default.
- (d) The written disclosure notice required by subdivision (a) shall be provided in English and the languages described in Section 1632 substantially in the following form:

The foreclosure process has begun on this property, and this property may be sold at foreclosure. If you rent this property, and a foreclosure sale occurs, the sale may affect your right to continue to live in this property in the future. Your tenancy may continue after the sale. The new owner must honor the lease unless the new owner will occupy the property as a primary residence, or in other limited circumstances. Also, in some cases and in some cities with a "just cause for eviction" law, you may not have to move at all. In order for the new owner to evict you, the new owner must provide you with at least 90 days' written eviction notice in most cases.

(e) A property manager shall not be liable under this section for failure to provide the written disclosure notice in subdivision (d) unless the landlord has notified the property manager of the notice of default and directed him or her in writing to deliver the written disclosure, in which case the property manager shall be liable to the extent specified in subdivision (b). This subdivision shall not preclude a landlord from being held liable when a tenant does not receive the written disclosure notice in subdivision (d).

(f) The rights and remedies provided by this section are in addition to and independent of any other rights and remedies under any other law. Nothing in this section shall be construed to alter, limit, or negate any other rights and remedies.

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

*(Added by Stats. 2012, Ch. 566, Sec. 1. Effective January 1, 2013. Repealed as of January 1, 2018, by its own provisions.)*

#### **2924.9.**

(a) Unless a borrower has previously exhausted the first lien loan modification process offered by, or through, his or her mortgage servicer described in Section 2923.6, within five business days after recording a notice of default pursuant to Section 2924, a mortgage servicer that offers one or more foreclosure prevention alternatives shall send a written communication to the borrower that includes all of the following information:

- (1) That the borrower may be evaluated for a foreclosure prevention alternative or, if applicable, foreclosure prevention alternatives.
- (2) Whether an application is required to be submitted by the borrower in order to be considered for a foreclosure prevention alternative.
- (3) The means and process by which a borrower may obtain an application for a foreclosure prevention alternative.

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

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

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

*(Added by Stats. 2012, Ch. 86, Sec. 12. Effective January 1, 2013. See identical section added by Stats. 2012, Ch. 87.)*

**2924.9.**

(a) Unless a borrower has previously exhausted the first lien loan modification process offered by, or through, his or her mortgage servicer described in Section 2923.6, within five business days after recording a notice of default pursuant to Section 2924, a mortgage servicer that offers one or more foreclosure prevention alternatives shall send a written communication to the borrower that includes all of the following information:

(1) That the borrower may be evaluated for a foreclosure prevention alternative or, if applicable, foreclosure prevention alternatives.

(2) Whether an application is required to be submitted by the borrower in order to be considered for a foreclosure prevention alternative.

(3) The means and process by which a borrower may obtain an application for a foreclosure prevention alternative.

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

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

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

*(Added by Stats. 2012, Ch. 87, Sec. 12. Effective January 1, 2013. Repealed as of January 1, 2018, by its own provisions. See identical section added by Stats. 2012, Ch. 86.)*

**2924.10.**

(a) When a borrower submits a complete first lien modification application or any document in connection with a first lien modification application, the mortgage servicer shall provide written acknowledgment of the receipt of the documentation within five business days of receipt. In its initial acknowledgment of receipt of the loan modification application, the mortgage servicer shall include the following information:

(1) A description of the loan modification process, including an estimate of when a decision on the loan modification will be made after a complete application has been submitted by the borrower and the length of time the borrower will have to consider an offer of a loan modification or other foreclosure prevention alternative.

(2) Any deadlines, including deadlines to submit missing documentation, that would affect the processing of a first lien loan modification application.

(3) Any expiration dates for submitted documents.

- (4) Any deficiency in the borrower's first lien loan modification application.
- (b) For purposes of this section, a borrower's first lien loan modification application shall be deemed to be "complete" when a borrower has supplied the mortgage servicer with all documents required by the mortgage servicer within the reasonable timeframes specified by the mortgage servicer.
- (c) This section shall not apply to entities described in subdivision (b) of Section 2924.18.
- (d) This section shall apply only to mortgages or deeds of trust described in Section 2924.15.
- (e) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

*(Added by Stats. 2012, Ch. 86, Sec. 13. Effective January 1, 2013. Repealed as of January 1, 2018, by its own provisions. See identical section added by Stats. 2012, Ch. 87.)*

#### **2924.10.**

- (a) When a borrower submits a complete first lien modification application or any document in connection with a first lien modification application, the mortgage servicer shall provide written acknowledgment of the receipt of the documentation within five business days of receipt. In its initial acknowledgment of receipt of the loan modification application, the mortgage servicer shall include the following information:
  - (1) A description of the loan modification process, including an estimate of when a decision on the loan modification will be made after a complete application has been submitted by the borrower and the length of time the borrower will have to consider an offer of a loan modification or other foreclosure prevention alternative.
  - (2) Any deadlines, including deadlines to submit missing documentation, that would affect the processing of a first lien loan modification application.
  - (3) Any expiration dates for submitted documents.
- (4) Any deficiency in the borrower's first lien loan modification application.
- (b) For purposes of this section, a borrower's first lien loan modification application shall be deemed to be "complete" when a borrower has supplied the mortgage servicer with all documents required by the mortgage servicer within the reasonable timeframes specified by the mortgage servicer.
- (c) This section shall not apply to entities described in subdivision (b) of Section 2924.18.
- (d) This section shall apply only to mortgages or deeds of trust described in Section 2924.15.
- (e) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

*(Added by Stats. 2012, Ch. 87, Sec. 13. Effective January 1, 2013. Repealed as of January 1, 2018, by its own provisions. See identical section added by Stats. 2012, Ch. 86.)*

**2924.11.**

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

- (1) The borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance, or repayment plan.
- (2) A foreclosure prevention alternative has been approved in writing by all parties, including, for example, the first lien investor, junior lienholder, and mortgage insurer, as applicable, and proof of funds or financing has been provided to the servicer.

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

- (1) The borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance, or repayment plan.
- (2) A foreclosure prevention alternative has been approved in writing by all parties, including, for example, the first lien investor, junior lienholder, and mortgage insurer, as applicable, and proof of funds or financing has been provided to the servicer.

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

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

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

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

(g) If a borrower has been approved in writing for a first lien loan modification or other foreclosure prevention alternative, and the servicing of that borrower's loan is transferred or sold to another mortgage servicer, the subsequent mortgage servicer shall continue to honor any previously approved first lien loan modification or other foreclosure prevention

alternative, in accordance with the provisions of the act that added this section.

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

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

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

*(Added by Stats. 2012, Ch. 86, Sec. 14. Effective January 1, 2013. Repealed as of January 1, 2018, by its own provisions. See identical section added by Stats. 2012, Ch. 87, Sec. 14. See later operative sections added by Ch. 86 and Ch. 87.)*

#### **2924.11.**

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

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

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

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

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

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

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

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

- (e) The mortgage servicer shall not charge any application, processing, or other fee for a first lien loan modification or other foreclosure prevention alternative.
- (f) The mortgage servicer shall not collect any late fees for periods during which a complete first lien loan modification application is under consideration or a denial is being appealed, the borrower is making timely modification payments, or a foreclosure prevention alternative is being evaluated or exercised.
- (g) If a borrower has been approved in writing for a first lien loan modification or other foreclosure prevention alternative, and the servicing of that borrower's loan is transferred or sold to another mortgage servicer, the subsequent mortgage servicer shall continue to honor any previously approved first lien loan modification or other foreclosure prevention alternative, in accordance with the provisions of the act that added this section.
- (h) This section shall apply only to mortgages or deeds of trust described in Section 2924.15.
- (i) This section shall not apply to entities described in subdivision (b) of Section 2924.18.
- (j) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

*(Added by Stats. 2012, Ch. 87, Sec. 14. Effective January 1, 2013. Repealed as of January 1, 2018, by its own provisions. See identical section added by Stats. 2012, Ch. 86, Sec. 14. See later operative sections added by Ch. 86 and Ch. 87.)*

#### **2924.11.**

- (a) If a borrower submits a complete application for a foreclosure prevention alternative offered by, or through, the borrower's mortgage servicer, a mortgage servicer, trustee, mortgagee, beneficiary, or authorized agent shall not record a notice of sale or conduct a trustee's sale while the complete foreclosure prevention alternative application is pending, and until the borrower has been provided with a written determination by the mortgage servicer regarding that borrower's eligibility for the requested foreclosure prevention alternative.
- (b) Following the denial of a first lien loan modification application, the mortgage servicer shall send a written notice to the borrower identifying with specificity the reasons for the denial and shall include a statement that the borrower may obtain additional documentation supporting the denial decision upon written request to the mortgage servicer.
- (c) If a foreclosure prevention alternative is approved in writing prior to the recordation of a notice of default, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default under either of the following circumstances:
  - (1) The borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance, or repayment plan.

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

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

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

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

(e) This section applies only to mortgages or deeds of trust as described in Section 2924.15.

(f) For purposes of this section, an application shall be deemed "complete" when a borrower has supplied the mortgage servicer with all documents required by the mortgage servicer within the reasonable timeframes specified by the mortgage servicer.

(g) This section shall become operative on January 1, 2018.

*(Repealed (in Sec. 14) and added by Stats. 2012, Ch. 86, Sec. 15. Effective January 1, 2013. Section operative January 1, 2018, by its own provisions. See identical section added by Stats. 2012, Ch. 87, Sec. 15.)*

#### **2924.11.**

(a) If a borrower submits a complete application for a foreclosure prevention alternative offered by, or through, the borrower's mortgage servicer, a mortgage servicer, trustee, mortgagee, beneficiary, or authorized agent shall not record a notice of sale or conduct a trustee's sale while the complete foreclosure prevention alternative application is pending, and until the borrower has been provided with a written determination by the mortgage servicer regarding that borrower's eligibility for the requested foreclosure prevention alternative.

(b) Following the denial of a first lien loan modification application, the mortgage servicer shall send a written notice to the borrower identifying with specificity the reasons for the denial and shall include a statement that the borrower may obtain additional documentation supporting the denial decision upon written request to the mortgage servicer.

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

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

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

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

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

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

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

(e) This section applies only to mortgages or deeds of trust as described in Section 2924.15.

(f) For purposes of this section, an application shall be deemed "complete" when a borrower has supplied the mortgage servicer with all documents required by the mortgage servicer within the reasonable timeframes specified by the mortgage servicer.

(g) This section shall become operative on January 1, 2018.

*(Repealed (in Sec. 14) and added by Stats. 2012, Ch. 87, Sec. 15. Effective January 1, 2013. Section operative January 1, 2018, by its own provisions. See identical section added by Stats. 2012, Ch. 86, Sec. 15.)*

## **2924.12.**

(a) (1) If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17.

(2) Any injunction shall remain in place and any trustee's sale shall be enjoined until the court determines that the mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent has corrected and remedied the violation or violations giving rise to the action for injunctive relief. An enjoined entity may move to dissolve an injunction based on a showing that the material violation has been corrected and remedied.

(b) After a trustee's deed upon sale has been recorded, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall be liable to a borrower for actual economic damages pursuant to Section 3281, resulting from a material violation of Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17 by that mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent where the violation was not corrected and remedied prior to the recordation of the trustee's deed upon sale. If the court finds that the material violation was intentional or reckless, or resulted from willful misconduct by a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent, the court may award the borrower the greater of treble actual damages or statutory damages of fifty thousand dollars (\$50,000).

(c) A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not be liable for any violation that it has corrected and remedied prior to

the recordation of a trustee's deed upon sale, or that has been corrected and remedied by third parties working on its behalf prior to the recordation of a trustee's deed upon sale.

- (d) A violation of Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17 by a person licensed by the Department of Corporations, Department of Financial Institutions, or Department of Real Estate shall be deemed to be a violation of that person's licensing law.
- (e) No violation of this article shall affect the validity of a sale in favor of a bona fide purchaser and any of its encumbrancers for value without notice.
- (f) A third-party encumbrancer shall not be relieved of liability resulting from violations of Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17 committed by that third-party encumbrancer, that occurred prior to the sale of the subject property to the bona fide purchaser.
- (g) A signatory to a consent judgment entered in the case entitled United States of America et al. v. Bank of America Corporation et al., filed in the United States District Court for the District of Columbia, case number 1:12-cv-00361 RMC, that is in compliance with the relevant terms of the Settlement Term Sheet of that consent judgment with respect to the borrower who brought an action pursuant to this section while the consent judgment is in effect shall have no liability for a violation of Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17.
- (h) The rights, remedies, and procedures provided by this section are in addition to and independent of any other rights, remedies, or procedures under any other law. Nothing in this section shall be construed to alter, limit, or negate any other rights, remedies, or procedures provided by law.
- (i) A court may award a prevailing borrower reasonable attorney's fees and costs in an action brought pursuant to this section. A borrower shall be deemed to have prevailed for purposes of this subdivision if the borrower obtained injunctive relief or was awarded damages pursuant to this section.
- (j) This section shall not apply to entities described in subdivision (b) of Section 2924.18.
- (k) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

*(Added by Stats. 2012, Ch. 86, Sec. 16. Effective January 1, 2013. Repealed as of January 1, 2018, by its own provisions. See identical section added by Stats. 2012, Ch. 87, Sec. 16. See later operative sections added by Ch. 86 and Ch. 87.)*

#### **2924.12.**

- (a) (1) If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17.
- (2) Any injunction shall remain in place and any trustee's sale shall be enjoined until the court determines that the mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent has corrected and remedied the violation or violations giving rise to the action for injunctive relief. An

enjoined entity may move to dissolve an injunction based on a showing that the material violation has been corrected and remedied.

(b) After a trustee's deed upon sale has been recorded, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall be liable to a borrower for actual economic damages pursuant to Section 3281, resulting from a material violation of Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17 by that mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent where the violation was not corrected and remedied prior to the recordation of the trustee's deed upon sale. If the court finds that the material violation was intentional or reckless, or resulted from willful misconduct by a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent, the court may award the borrower the greater of treble actual damages or statutory damages of fifty thousand dollars (\$50,000).

(c) A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not be liable for any violation that it has corrected and remedied prior to the recordation of a trustee's deed upon sale, or that has been corrected and remedied by third parties working on its behalf prior to the recordation of a trustee's deed upon sale.

(d) A violation of Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17 by a person licensed by the Department of Corporations, Department of Financial Institutions, or Department of Real Estate shall be deemed to be a violation of that person's licensing law.

(e) No violation of this article shall affect the validity of a sale in favor of a bona fide purchaser and any of its encumbrancers for value without notice.

(f) A third-party encumbrancer shall not be relieved of liability resulting from violations of Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17 committed by that third-party encumbrancer, that occurred prior to the sale of the subject property to the bona fide purchaser.

(g) A signatory to a consent judgment entered in the case entitled United States of America et al. v. Bank of America Corporation et al., filed in the United States District Court for the District of Columbia, case number 1:12-cv-00361 RMC, that is in compliance with the relevant terms of the Settlement Term Sheet of that consent judgment with respect to the borrower who brought an action pursuant to this section while the consent judgment is in effect shall have no liability for a violation of Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17.

(h) The rights, remedies, and procedures provided by this section are in addition to and independent of any other rights, remedies, or procedures under any other law. Nothing in this section shall be construed to alter, limit, or negate any other rights, remedies, or procedures provided by law.

(i) A court may award a prevailing borrower reasonable attorney's fees and costs in an action brought pursuant to this section. A borrower shall be deemed to have prevailed for purposes of this subdivision if the borrower obtained injunctive relief or was awarded damages pursuant to this section.

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

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

*(Added by Stats. 2012, Ch. 87, Sec. 16. Effective January 1, 2013. Repealed as of January 1, 2018, by its own provisions. See identical section added by Stats. 2012, Ch. 86, Sec. 16. See later operative sections added by Ch. 86 and Ch. 87.)*

**2924.12.**

(a) (1) If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of Section 2923.5, 2923.7, 2924.11, or 2924.17.

(2) Any injunction shall remain in place and any trustee's sale shall be enjoined until the court determines that the mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent has corrected and remedied the violation or violations giving rise to the action for injunctive relief. An enjoined entity may move to dissolve an injunction based on a showing that the material violation has been corrected and remedied.

(b) After a trustee's deed upon sale has been recorded, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall be liable to a borrower for actual economic damages pursuant to Section 3281, resulting from a material violation of Section 2923.5, 2923.7, 2924.11, or 2924.17 by that mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent where the violation was not corrected and remedied prior to the recordation of the trustee's deed upon sale. If the court finds that the material violation was intentional or reckless, or resulted from willful misconduct by a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent, the court may award the borrower the greater of treble actual damages or statutory damages of fifty thousand dollars (\$50,000).

(c) A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not be liable for any violation that it has corrected and remedied prior to the recordation of the trustee's deed upon sale, or that has been corrected and remedied by third parties working on its behalf prior to the recordation of the trustee's deed upon sale.

(d) A violation of Section 2923.5, 2923.7, 2924.11, or 2924.17 by a person licensed by the Department of Corporations, Department of Financial Institutions, or Department of Real Estate shall be deemed to be a violation of that person's licensing law.

(e) No violation of this article shall affect the validity of a sale in favor of a bona fide purchaser and any of its encumbrancers for value without notice.

(f) A third-party encumbrancer shall not be relieved of liability resulting from violations of Section 2923.5, 2923.7, 2924.11, or 2924.17 committed by that third-party encumbrancer, that occurred prior to the sale of the subject property to the bona fide purchaser.

(g) The rights, remedies, and procedures provided by this section are in addition to and independent of any other rights, remedies, or procedures under any other law. Nothing in this section shall be construed to alter, limit, or negate any other rights, remedies, or procedures provided by law.

(h) A court may award a prevailing borrower reasonable attorney's fees and costs in an action brought pursuant to this section. A borrower shall be deemed to have prevailed for purposes of this subdivision if the borrower obtained injunctive relief or was awarded damages pursuant to this section.

(i) This section shall become operative on January 1, 2018.

*(Repealed (in Sec. 16) and added by Stats. 2012, Ch. 86, Sec. 17. Effective January 1, 2013. Section operative January 1, 2018, by its own provisions. See identical section added by Stats. 2012, Ch. 87, Sec. 17.)*

## **2924.12.**

(a) (1) If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of Section 2923.5, 2923.7, 2924.11, or 2924.17.

(2) Any injunction shall remain in place and any trustee's sale shall be enjoined until the court determines that the mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent has corrected and remedied the violation or violations giving rise to the action for injunctive relief. An enjoined entity may move to dissolve an injunction based on a showing that the material violation has been corrected and remedied.

(b) After a trustee's deed upon sale has been recorded, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall be liable to a borrower for actual economic damages pursuant to Section 3281, resulting from a material violation of Section 2923.5, 2923.7, 2924.11, or 2924.17 by that mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent where the violation was not corrected and remedied prior to the recordation of the trustee's deed upon sale. If the court finds that the material violation was intentional or reckless, or resulted from willful misconduct by a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent, the court may award the borrower the greater of treble actual damages or statutory damages of fifty thousand dollars (\$50,000).

(c) A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not be liable for any violation that it has corrected and remedied prior to the recordation of the trustee's deed upon sale, or that has been corrected and remedied by third parties working on its behalf prior to the recordation of the trustee's deed upon sale.

(d) A violation of Section 2923.5, 2923.7, 2924.11, or 2924.17 by a person licensed by the Department of Corporations, Department of Financial Institutions, or Department of Real Estate shall be deemed to be a violation of that person's licensing law.

(e) No violation of this article shall affect the validity of a sale in favor of a bona fide purchaser and any of its encumbrancers for value without notice.

(f) A third-party encumbrancer shall not be relieved of liability resulting from violations of Section 2923.5, 2923.7, 2924.11, or 2924.17 committed by that third-party encumbrancer, that occurred prior to the sale of the subject property to the bona fide purchaser.

(g) The rights, remedies, and procedures provided by this section are in addition to and independent of any other rights, remedies, or procedures

under any other law. Nothing in this section shall be construed to alter, limit, or negate any other rights, remedies, or procedures provided by law.

(h) A court may award a prevailing borrower reasonable attorney's fees and costs in an action brought pursuant to this section. A borrower shall be deemed to have prevailed for purposes of this subdivision if the borrower obtained injunctive relief or was awarded damages pursuant to this section.

(i) This section shall become operative on January 1, 2018.

*(Repealed (in Sec. 16) and added by Stats. 2012, Ch. 87, Sec. 17. Effective January 1, 2013. Section operative January 1, 2018, by its own provisions. See identical section added by Stats. 2012, Ch. 86, Sec. 17.)*

**2924.15.**

(a) Unless otherwise provided, paragraph (5) of subdivision (a) of Section 2924, and Sections 2923.5, 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, and 2924.18 shall apply only to first lien mortgages or deeds of trust that are secured by owner-occupied residential real property containing no more than four dwelling units. For these purposes, "owner-occupied" means that the property is the principal residence of the borrower and is security for a loan made for personal, family, or household purposes.

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

*(Added by Stats. 2012, Ch. 86, Sec. 18. Effective January 1, 2013. Repealed as of January 1, 2018, by its own provisions. See identical section added by Stats. 2012, Ch. 87, Sec. 18. See later operative sections added by Ch. 86 and Ch. 87.)*

**2924.15.**

(a) Unless otherwise provided, paragraph (5) of subdivision (a) of Section 2924, and Sections 2923.5, 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, and 2924.18 shall apply only to first lien mortgages or deeds of trust that are secured by owner-occupied residential real property containing no more than four dwelling units. For these purposes, "owner-occupied" means that the property is the principal residence of the borrower and is security for a loan made for personal, family, or household purposes.

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

*(Added by Stats. 2012, Ch. 87, Sec. 18. Effective January 1, 2013. Repealed as of January 1, 2018, by its own provisions. See identical section added by Stats. 2012, Ch. 86, Sec. 18. See later operative sections added by Ch. 86 and Ch. 87.)*

**2924.15.**

(a) Unless otherwise provided, Sections 2923.5, 2923.7, and 2924.11 shall apply only to first lien mortgages or deeds of trust that are secured by

owner-occupied residential real property containing no more than four dwelling units. For these purposes, "owner-occupied" means that the property is the principal residence of the borrower and is security for a loan made for personal, family, or household purposes.

(b) This section shall become operative on January 1, 2018.  
*(Repealed (in Sec. 18) and added by Stats. 2012, Ch. 86, Sec. 19. Effective January 1, 2013. Section operative January 1, 2018, by its own provisions. See identical section added by Stats. 2012, Ch. 87, Sec. 19.)*

**2924.15.**

(a) Unless otherwise provided, Sections 2923.5, 2923.7, and 2924.11 shall apply only to first lien mortgages or deeds of trust that are secured by owner-occupied residential real property containing no more than four dwelling units. For these purposes, "owner-occupied" means that the property is the principal residence of the borrower and is security for a loan made for personal, family, or household purposes.

(b) This section shall become operative on January 1, 2018.  
*(Repealed (in Sec. 18) and added by Stats. 2012, Ch. 87, Sec. 19. Effective January 1, 2013. Section operative January 1, 2018, by its own provisions. See identical section added by Stats. 2012, Ch. 86, Sec. 19.)*

**2924.17.**

(a) A declaration recorded pursuant to Section 2923.5 or, until January 1, 2018, pursuant to Section 2923.55, a notice of default, notice of sale, assignment of a deed of trust, or substitution of trustee recorded by or on behalf of a mortgage servicer in connection with a foreclosure subject to the requirements of Section 2924, or a declaration or affidavit filed in any court relative to a foreclosure proceeding shall be accurate and complete and supported by competent and reliable evidence.

(b) Before recording or filing any of the documents described in subdivision (a), a mortgage servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information.

(c) Until January 1, 2018, any mortgage servicer that engages in multiple and repeated uncorrected violations of subdivision (b) in recording documents or filing documents in any court relative to a foreclosure proceeding shall be liable for a civil penalty of up to seven thousand five hundred dollars (\$7,500) per mortgage or deed of trust in an action brought by a government entity identified in Section 17204 of the Business and Professions Code, or in an administrative proceeding brought by the Department of Corporations, the Department of Real Estate, or the Department of Financial Institutions against a respective licensee, in addition to any other remedies available to these entities. This subdivision shall be inoperative on January 1, 2018.

*(Added by Stats. 2012, Ch. 86, Sec. 20. Effective January 1, 2013. See identical section added by Stats. 2012, Ch. 87.)*

**2924.17.**

- (a) A declaration recorded pursuant to Section 2923.5 or, until January 1, 2018, pursuant to Section 2923.55, a notice of default, notice of sale, assignment of a deed of trust, or substitution of trustee recorded by or on behalf of a mortgage servicer in connection with a foreclosure subject to the requirements of Section 2924, or a declaration or affidavit filed in any court relative to a foreclosure proceeding shall be accurate and complete and supported by competent and reliable evidence.
- (b) Before recording or filing any of the documents described in subdivision (a), a mortgage servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information.
- (c) Until January 1, 2018, any mortgage servicer that engages in multiple and repeated uncorrected violations of subdivision (b) in recording documents or filing documents in any court relative to a foreclosure proceeding shall be liable for a civil penalty of up to seven thousand five hundred dollars (\$7,500) per mortgage or deed of trust in an action brought by a government entity identified in Section 17204 of the Business and Professions Code, or in an administrative proceeding brought by the Department of Corporations, the Department of Real Estate, or the Department of Financial Institutions against a respective licensee, in addition to any other remedies available to these entities. This subdivision shall be inoperative on January 1, 2018.

*(Added by Stats. 2012, Ch. 87, Sec. 20. Effective January 1, 2013. See identical section added by Stats. 2012, Ch. 86.)*

**2924.18.**

- (a) (1) If a borrower submits a complete application for a first lien loan modification offered by, or through, the borrower's mortgage servicer, a mortgage servicer, trustee, mortgagee, beneficiary, or authorized agent shall not record a notice of default, notice of sale, or conduct a trustee's sale while the complete first lien loan modification application is pending, and until the borrower has been provided with a written determination by the mortgage servicer regarding that borrower's eligibility for the requested loan modification.
- (2) If a foreclosure prevention alternative has been approved in writing prior to the recordation of a notice of default, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default under either of the following circumstances:
  - (A) The borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance, or repayment plan.

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

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

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

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

(b) This section shall apply only to a depository institution chartered under state or federal law, a person licensed pursuant to Division 9 (commencing with Section 22000) or Division 20 (commencing with Section 50000) of the Financial Code, or a person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code, that, during its immediately preceding annual reporting period, as established with its primary regulator, foreclosed on 175 or fewer residential real properties, containing no more than four dwelling units, that are located in California.

(c) Within three months after the close of any calendar year or annual reporting period as established with its primary regulator during which an entity or person described in subdivision (b) exceeds the threshold of 175 specified in subdivision (b), that entity shall notify its primary regulator, in a manner acceptable to its primary regulator, and any mortgagor or trustor who is delinquent on a residential mortgage loan serviced by that entity of the date on which that entity will be subject to Sections 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, and 2924.12, which date shall be the first day of the first month that is six months after the close of the calendar year or annual reporting period during which that entity exceeded the threshold.

(d) For purposes of this section, an application shall be deemed "complete" when a borrower has supplied the mortgage servicer with all documents required by the mortgage servicer within the reasonable timeframes specified by the mortgage servicer.

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

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

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

*(Added by Stats. 2012, Ch. 86, Sec. 21. Effective January 1, 2013. Repealed as of January 1, 2018, by its own provisions. See identical section added by Stats. 2012, Ch. 87.)*

**2924.18.**

(a) (1) If a borrower submits a complete application for a first lien loan modification offered by, or through, the borrower's mortgage servicer, a mortgage servicer, trustee, mortgagee, beneficiary, or authorized agent shall not record a notice of default, notice of sale, or conduct a trustee's sale while the complete first lien loan modification application is pending, and until the borrower has been provided with a written determination by the mortgage servicer regarding that borrower's eligibility for the requested loan modification.

(2) If a foreclosure prevention alternative has been approved in writing prior to the recordation of a notice of default, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default under either of the following circumstances:

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

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

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

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

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

(b) This section shall apply only to a depository institution chartered under state or federal law, a person licensed pursuant to Division 9 (commencing with Section 22000) or Division 20 (commencing with Section 50000) of the Financial Code, or a person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code, that, during its immediately preceding annual reporting period, as established with its primary regulator, foreclosed on 175 or fewer residential real properties, containing no more than four dwelling units, that are located in California.

(c) Within three months after the close of any calendar year or annual reporting period as established with its primary regulator during which an entity or person described in subdivision (b) exceeds the threshold of 175

specified in subdivision (b), that entity shall notify its primary regulator, in a manner acceptable to its primary regulator, and any mortgagor or trustor who is delinquent on a residential mortgage loan serviced by that entity of the date on which that entity will be subject to Sections 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, and 2924.12, which date shall be the first day of the first month that is six months after the close of the calendar year or annual reporting period during which that entity exceeded the threshold.

(d) For purposes of this section, an application shall be deemed "complete" when a borrower has supplied the mortgage servicer with all documents required by the mortgage servicer within the reasonable timeframes specified by the mortgage servicer.

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

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

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

*(Added by Stats. 2012, Ch. 87, Sec. 21. Effective January 1, 2013. Repealed as of January 1, 2018, by its own provisions. See identical section added by Stats. 2012, Ch. 86.)*

## **2924.19.**

(a) (1) If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of Section 2923.5, 2924.17, or 2924.18.

(2) An injunction shall remain in place and any trustee's sale shall be enjoined until the court determines that the mortgage servicer, mortgagee, beneficiary, or authorized agent has corrected and remedied the violation or violations giving rise to the action for injunctive relief. An enjoined entity may move to dissolve an injunction based on a showing that the material violation has been corrected and remedied.

(b) After a trustee's deed upon sale has been recorded, a mortgage servicer, mortgagee, beneficiary, or authorized agent shall be liable to a borrower for actual economic damages pursuant to Section 3281, resulting from a material violation of Section 2923.5, 2924.17, or 2924.18 by that mortgage servicer, mortgagee, beneficiary, or authorized agent where the violation was not corrected and remedied prior to the recordation of the trustee's deed upon sale. If the court finds that the material violation was intentional or reckless, or resulted from willful misconduct by a mortgage servicer, mortgagee, beneficiary, or authorized agent, the court may award the

borrower the greater of treble actual damages or statutory damages of fifty thousand dollars (\$50,000).

(c) A mortgage servicer, mortgagee, beneficiary, or authorized agent shall not be liable for any violation that it has corrected and remedied prior to the recordation of the trustee's deed upon sale, or that has been corrected and remedied by third parties working on its behalf prior to the recordation of the trustee's deed upon sale.

(d) A violation of Section 2923.5, 2924.17, or 2924.18 by a person licensed by the Department of Corporations, the Department of Financial Institutions, or the Department of Real Estate shall be deemed to be a violation of that person's licensing law.

(e) A violation of this article shall not affect the validity of a sale in favor of a bona fide purchaser and any of its encumbrancers for value without notice.

(f) A third-party encumbrancer shall not be relieved of liability resulting from violations of Section 2923.5, 2924.17, or 2924.18, committed by that third-party encumbrancer, that occurred prior to the sale of the subject property to the bona fide purchaser.

(g) The rights, remedies, and procedures provided by this section are in addition to and independent of any other rights, remedies, or procedures under any other law. Nothing in this section shall be construed to alter, limit, or negate any other rights, remedies, or procedures provided by law.

(h) A court may award a prevailing borrower reasonable attorney's fees and costs in an action brought pursuant to this section. A borrower shall be deemed to have prevailed for purposes of this subdivision if the borrower obtained injunctive relief or damages pursuant to this section.

(i) This section shall apply only to entities described in subdivision (b) of Section 2924.18.

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

*(Amended (as added by Stats. 2012, Ch. 86) by Stats. 2013, Ch. 76, Sec. 17.*

*Effective January 1, 2014. Repealed as of January 1, 2018, by its own provisions.*

*See identical section (added by Stats. 2012, Ch. 87), as amended by Stats. 2013, Ch. 76, Sec. 18.)*

## **2924.19.**

(a) (1) If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of Section 2923.5, 2924.17, or 2924.18.

(2) An injunction shall remain in place and any trustee's sale shall be enjoined until the court determines that the mortgage servicer, mortgagee, beneficiary, or authorized agent has corrected and remedied the violation or violations giving rise to the action for injunctive relief. An enjoined entity may move to dissolve an injunction based on a showing that the material violation has been corrected and remedied.

(b) After a trustee's deed upon sale has been recorded, a mortgage servicer, mortgagee, beneficiary, or authorized agent shall be liable to a borrower for

actual economic damages pursuant to Section 3281, resulting from a material violation of Section 2923.5, 2924.17, or 2924.18 by that mortgage servicer, mortgagee, beneficiary, or authorized agent where the violation was not corrected and remedied prior to the recordation of the trustee's deed upon sale. If the court finds that the material violation was intentional or reckless, or resulted from willful misconduct by a mortgage servicer, mortgagee, beneficiary, or authorized agent, the court may award the borrower the greater of treble actual damages or statutory damages of fifty thousand dollars (\$50,000).

(c) A mortgage servicer, mortgagee, beneficiary, or authorized agent shall not be liable for any violation that it has corrected and remedied prior to the recordation of the trustee's deed upon sale, or that has been corrected and remedied by third parties working on its behalf prior to the recordation of the trustee's deed upon sale.

(d) A violation of Section 2923.5, 2924.17, or 2924.18 by a person licensed by the Department of Corporations, the Department of Financial Institutions, or the Department of Real Estate shall be deemed to be a violation of that person's licensing law.

(e) A violation of this article shall not affect the validity of a sale in favor of a bona fide purchaser and any of its encumbrancers for value without notice.

(f) A third-party encumbrancer shall not be relieved of liability resulting from violations of Section 2923.5, 2924.17, or 2924.18, committed by that third-party encumbrancer, that occurred prior to the sale of the subject property to the bona fide purchaser.

(g) The rights, remedies, and procedures provided by this section are in addition to and independent of any other rights, remedies, or procedures under any other law. Nothing in this section shall be construed to alter, limit, or negate any other rights, remedies, or procedures provided by law.

(h) A court may award a prevailing borrower reasonable attorney's fees and costs in an action brought pursuant to this section. A borrower shall be deemed to have prevailed for purposes of this subdivision if the borrower obtained injunctive relief or damages pursuant to this section.

(i) This section shall apply only to entities described in subdivision (b) of Section 2924.18.

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

*(Amended (as added by Stats. 2012, Ch. 87, Sec. 22) by Stats. 2013, Ch. 76, Sec. 18. Effective January 1, 2014. Repealed as of January 1, 2018, by its own provisions. See identical section (added by Stats. 2012, Ch. 86), as amended by Stats. 2013, Ch. 76, Sec. 17.)*

## **2924.20.**

Consistent with their general regulatory authority, and notwithstanding subdivisions (b) and (c) of Section 2924.18, the Department of Corporations, the Department of Financial Institutions, and the Department of Real Estate may adopt regulations applicable to any entity or person under their

respective jurisdictions that are necessary to carry out the purposes of the act that added this section. A violation of the regulations adopted pursuant to this section shall only be enforceable by the regulatory agency.

*(Added by Stats. 2012, Ch. 86, Sec. 23. Effective January 1, 2013. See identical section added by Stats. 2012, Ch. 87.)*

**2924.20.**

Consistent with their general regulatory authority, and notwithstanding subdivisions (b) and (c) of Section 2924.18, the Department of Corporations, the Department of Financial Institutions, and the Department of Real Estate may adopt regulations applicable to any entity or person under their respective jurisdictions that are necessary to carry out the purposes of the act that added this section. A violation of the regulations adopted pursuant to this section shall only be enforceable by the regulatory agency.

*(Added by Stats. 2012, Ch. 87, Sec. 23. Effective January 1, 2013. See identical section added by Stats. 2012, Ch. 86.)*

**2924.25.**

(a) Unless acting in the capacity of a trustee, a licensed title company or underwritten title company shall not be liable for a violation of Section 2923.5, 2923.55, 2923.6, 2924.11, 2924.18, or 2924.19 if it records or causes to record a notice of default or notice of sale at the request of a trustee, substitute trustee, or beneficiary, in good faith and in the normal course of its business activities.

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

*(Added by Stats. 2013, Ch. 251, Sec. 1. Effective January 1, 2014. Repealed as of January 1, 2018, by its own provisions.)*

**2924.26.**

(a) Unless acting in the capacity of a trustee, a licensed title company or underwritten title company shall not be liable for a violation of Section 2923.5 or 2924.11 if it records or causes to record a notice of default or notice of sale at the request of a trustee, substitute trustee, or beneficiary, in good faith and in the normal course of its business activities.

(b) This section shall become operative on January 1, 2018.

*(Added by Stats. 2013, Ch. 251, Sec. 2. Effective January 1, 2014. Section operative January 1, 2018, by its own provisions.)*

**2924a.**

If, by the terms of any trust or deed of trust a power of sale is conferred upon the trustee, the attorney for the trustee, or any duly authorized agent, may conduct the sale and act in the sale as the auctioneer for the trustee. (Amended by Stats. 2006, Ch. 575, Sec. 5. Effective January 1, 2007.)

**2924b.**

(a) Any person desiring a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale upon real property or an estate for years therein, as to which deed of trust or mortgage the power of sale cannot be exercised until these notices are given for the time and in the manner provided in Section 2924 may, at any time subsequent to recordation of the deed of trust or mortgage and prior to recordation of notice of default thereunder, cause to be filed for record in the office of the recorder of any county in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of the notice of default and of sale. This request shall be signed and acknowledged by the person making the request, specifying the name and address of the person to whom the notice is to be mailed, shall identify the deed of trust or mortgage by stating the names of the parties thereto, the date of recordation thereof, and the book and page where the deed of trust or mortgage is recorded or the recorder's number, and shall be in substantially the following form:

"In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust (or mortgage) recorded \_\_\_\_\_, \_\_\_\_\_, in Book \_\_\_\_\_ page \_\_\_\_\_ records of \_\_\_\_\_ County, (or filed for record with recorder's serial number \_\_\_\_\_, \_\_\_\_\_ County) California, executed by \_\_\_\_\_ as trustor (or mortgagor) in which \_\_\_\_\_ is named as beneficiary (or mortgagee) and \_\_\_\_\_ as trustee be mailed to

at	.
Name	Address

NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.

_____	Signature "
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Upon the filing for record of the request, the recorder shall index in the general index of grantors the names of the trustors (or mortgagors) recited therein and the names of persons requesting copies.

(b) The mortgagee, trustee, or other person authorized to record the notice of default or the notice of sale shall do each of the following:

(1) Within 10 business days following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person

whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(2) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(3) As used in paragraphs (1) and (2), the "last known address" of each trustor or mortgagor means the last business or residence physical address actually known by the mortgagee, beneficiary, trustee, or other person authorized to record the notice of default. For the purposes of this subdivision, an address is "actually known" if it is contained in the original deed of trust or mortgage, or in any subsequent written notification of a change of physical address from the trustor or mortgagor pursuant to the deed of trust or mortgage. For the purposes of this subdivision, "physical address" does not include an email or any form of electronic address for a trustor or mortgagor. The beneficiary shall inform the trustee of the trustor's last address actually known by the beneficiary. However, the trustee shall incur no liability for failing to send any notice to the last address unless the trustee has actual knowledge of it.

(4) A "person authorized to record the notice of default or the notice of sale" shall include an agent for the mortgagee or beneficiary, an agent of the named trustee, any person designated in an executed substitution of trustee, or an agent of that substituted trustee.

(c) The mortgagee, trustee, or other person authorized to record the notice of default or the notice of sale shall do the following:

(1) Within one month following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person set forth in paragraph (2), provided that the estate or interest of any person entitled to receive notice under this subdivision is acquired by an instrument sufficient to impart constructive notice of the estate or interest in the land or portion thereof that is subject to the deed of trust or mortgage being foreclosed, and provided the instrument is recorded in the office of the county recorder so as to impart that constructive notice prior to the recording date of the notice of default and provided the instrument as so recorded sets forth a mailing address that the county recorder shall use, as instructed within the instrument, for the return of the instrument after recording, and which address shall be the address used for the purposes of mailing notices herein.

(2) The persons to whom notice shall be mailed under this subdivision are:

- (A) The successor in interest, as of the recording date of the notice of default, of the estate or interest or any portion thereof of the trustor or mortgagor of the deed of trust or mortgage being foreclosed.
- (B) The beneficiary or mortgagee of any deed of trust or mortgage recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or a recorded statement of subordination to the deed of trust or mortgage being foreclosed.
- (C) The assignee of any interest of the beneficiary or mortgagee described in subparagraph (B), as of the recording date of the notice of default.
- (D) The vendee of any contract of sale, or the lessee of any lease, of the estate or interest being foreclosed that is recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or statement of subordination to the deed of trust or mortgage being foreclosed.
- (E) The successor in interest to the vendee or lessee described in subparagraph (D), as of the recording date of the notice of default.
- (F) The office of the Controller, Sacramento, California, where, as of the recording date of the notice of default, a "Notice of Lien for Postponed Property Taxes" has been recorded against the real property to which the notice of default applies.

(3) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale addressed to each person to whom a copy of the notice of default is to be mailed as provided in paragraphs (1) and (2), and addressed to the office of any state taxing agency, Sacramento, California, that has recorded, subsequent to the deed of trust or mortgage being foreclosed, a notice of tax lien prior to the recording date of the notice of default against the real property to which the notice of default applies.

(4) Provide a copy of the notice of sale to the Internal Revenue Service, in accordance with Section 7425 of the Internal Revenue Code and any applicable federal regulation, if a "Notice of Federal Tax Lien under Internal Revenue Laws" has been recorded, subsequent to the deed of trust or mortgage being foreclosed, against the real property to which the notice of sale applies. The failure to provide the Internal Revenue Service with a copy of the notice of sale pursuant to this paragraph shall be sufficient cause to rescind the trustee's sale and invalidate the trustee's deed, at the option of either the successful bidder at the trustee's sale or the trustee, and in either case with the consent of the beneficiary. Any option to rescind the trustee's sale pursuant to this paragraph shall be exercised prior to any transfer of the property by the successful bidder to a bona fide purchaser for value. A rescission of the trustee's sale pursuant to this paragraph may be recorded in a notice of rescission pursuant to Section 1058.5.

(5) The mailing of notices in the manner set forth in paragraph (1) shall not impose upon any licensed attorney, agent, or employee of any person entitled to receive notices as herein set forth any duty to communicate the

notice to the entitled person from the fact that the mailing address used by the county recorder is the address of the attorney, agent, or employee.

(d) Any deed of trust or mortgage with power of sale hereafter executed upon real property or an estate for years therein may contain a request that a copy of any notice of default and a copy of any notice of sale thereunder shall be mailed to any person or party thereto at the address of the person given therein, and a copy of any notice of default and of any notice of sale shall be mailed to each of these at the same time and in the same manner required as though a separate request therefor had been filed by each of these persons as herein authorized. If any deed of trust or mortgage with power of sale executed after September 19, 1939, except a deed of trust or mortgage of any of the classes excepted from the provisions of Section 2924, does not contain a mailing address of the trustor or mortgagor therein named, and if no request for special notice by the trustor or mortgagor in substantially the form set forth in this section has subsequently been recorded, a copy of the notice of default shall be published once a week for at least four weeks in a newspaper of general circulation in the county in which the property is situated, the publication to commence within 10 business days after the filing of the notice of default. In lieu of publication, a copy of the notice of default may be delivered personally to the trustor or mortgagor within the 10 business days or at any time before publication is completed, or by posting the notice of default in a conspicuous place on the property and mailing the notice to the last known address of the trustor or mortgagor.

(e) Any person required to mail a copy of a notice of default or notice of sale to each trustor or mortgagor pursuant to subdivision (b) or (c) by registered or certified mail shall simultaneously cause to be deposited in the United States mail, with postage prepaid and mailed by first-class mail, an envelope containing an additional copy of the required notice addressed to each trustor or mortgagor at the same address to which the notice is sent by registered or certified mail pursuant to subdivision (b) or (c). The person shall execute and retain an affidavit identifying the notice mailed, showing the name and residence or business address of that person, that he or she is over 18 years of age, the date of deposit in the mail, the name and address of the trustor or mortgagor to whom sent, and that the envelope was sealed and deposited in the mail with postage fully prepaid. In the absence of fraud, the affidavit required by this subdivision shall establish a conclusive presumption of mailing.

(f) (1) Notwithstanding subdivision (a), with respect to separate interests governed by an association, as defined in Section 4080 or 6528, the association may cause to be filed in the office of the recorder in the county in which the separate interests are situated a request that a mortgagee, trustee, or other person authorized to record a notice of default regarding any of those separate interests mail to the association a copy of any trustee's deed upon sale concerning a separate interest. The request shall include a legal description or the assessor's parcel number of all the separate interests. A request recorded pursuant to this subdivision shall include the name and address of the association and a statement that it is an association as defined

in Section 4080 or 6528. Subsequent requests of an association shall supersede prior requests. A request pursuant to this subdivision shall be recorded before the filing of a notice of default. The mortgagee, trustee, or other authorized person shall mail the requested information to the association within 15 business days following the date of the trustee's sale. Failure to mail the request, pursuant to this subdivision, shall not affect the title to real property.

(2) A request filed pursuant to paragraph (1) does not, for purposes of Section 27288.1 of the Government Code, constitute a document that either effects or evidences a transfer or encumbrance of an interest in real property or that releases or terminates any interest, right, or encumbrance of an interest in real property.

(g) No request for a copy of any notice filed for record pursuant to this section, no statement or allegation in the request, and no record thereof shall affect the title to real property or be deemed notice to any person that any person requesting copies of notice has or claims any right, title, or interest in, or lien or charge upon the property described in the deed of trust or mortgage referred to therein.

(h) "Business day," as used in this section, has the meaning specified in Section 9.

*(Amended by Stats. 2013, Ch. 605, Sec. 17. Effective January 1, 2014.)*

**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. If 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 approximately 90 days from the date this notice of default may be  
recorded (which date of recordation appears on this notice).

This amount is as of

_____	(Date)
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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 three months after this notice of default is recorded) 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, including certified and express mail charges, publishing, and posting notices required by Sections 2924 to 2924i, inclusive, postponement pursuant to Section 2924g 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 a base amount that does not exceed three hundred dollars (\$300) if the unpaid principal sum secured is one hundred fifty thousand dollars (\$150,000) or less, or two hundred fifty dollars (\$250) if the unpaid principal sum secured exceeds one hundred fifty thousand dollars (\$150,000), 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 or any beneficiary under a subordinate deed of trust or mortgage or any other person having a subordinate lien or encumbrance of record thereon 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.

*(Amended by Stats. 2010, Ch. 180, Sec. 3. Effective January 1, 2011.)*

**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 a base amount which does not exceed four hundred twenty-five dollars (\$425) if the unpaid principal sum secured is one hundred fifty thousand dollars (\$150,000) or less, or three hundred sixty dollars (\$360) if the unpaid principal sum secured exceeds one hundred fifty thousand dollars (\$150,000), 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 four hundred twenty-five dollars (\$425) 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.

*(Amended by Stats. 2001, Ch. 438, Sec. 4. Effective October 2, 2001. Operative January 1, 2002, by Sec. 7 of Ch. 438.)*

**2924e.**

(a) The beneficiary or mortgagee of any deed of trust or mortgage on real property either containing one to four residential units or given to secure an original obligation not to exceed three hundred thousand dollars (\$300,000) may, with the written consent of the trustor or mortgagor that is either effected through a signed and dated agreement which shall be separate from other loan and security documents or disclosed to the trustor or mortgagor in at least 10-point type, submit a written request by certified mail to the beneficiary or mortgagee of any lien which is senior to the lien of the requester, for written notice of any or all delinquencies of four months or more, in payments of principal or interest on any obligation secured by that senior lien notwithstanding that the loan secured by the lien of the requester is not then in default as to payments of principal or interest.

The request shall be sent to the beneficiary or mortgagee, or agent which it might designate for the purpose of receiving loan payments, at the address specified for the receipt of these payments, if known, or, if not known, at the address shown on the recorded deed of trust or mortgage.

(b) The request for notice shall identify the ownership or security interest of the requester, the date on which the interest of the requester will terminate as evidenced by the maturity date of the note of the trustor or mortgagor in favor of the requester, the name of the trustor or mortgagor and the name of the current owner of the security property if different from the trustor or mortgagor, the street address or other description of the security property, the loan number (if available to the requester) of the loan secured by the senior lien, the name and address to which notice is to be sent, and shall include or be accompanied by the signed written consent of the trustor or mortgagor, and a fee of forty dollars (\$40). For obligations secured by residential properties, the request shall remain valid until withdrawn in writing and shall be applicable to all delinquencies as provided in this section, which occur prior to the date on which the interest of the requester will

terminate as specified in the request or the expiration date, as appropriate. For obligations secured by nonresidential properties, the request shall remain valid until withdrawn in writing and shall be applicable to all delinquencies as provided in this section, which occur prior to the date on which the interest of the requester will terminate as specified in the request or the expiration date, as appropriate. The beneficiary or mortgagee of obligations secured by nonresidential properties that have sent five or more notices prior to the expiration of the effective period of the request may charge a fee up to fifteen dollars (\$15) for each subsequent notice. A request for notice shall be effective for five years from the mailing of the request or the recording of that request, whichever occurs later, and may be renewed within six months prior to its expiration date by sending the beneficiary or mortgagee, or agent, as the case may be, at the address to which original requests for notice are to be sent, a copy of the earlier request for notice together with a signed statement that the request is renewed and a renewal fee of fifteen dollars (\$15). Upon timely submittal of a renewal request for notice, the effectiveness of the original request is continued for five years from the time when it would otherwise have lapsed. Succeeding renewal requests may be submitted in the same manner. The request for notice and renewals thereof shall be recorded in the office of the county recorder of the county in which the security real property is situated. The rights and obligations specified in this section shall inure to the benefit of, or pass to, as the case may be, successors in interest of parties specified in this section. Any successor in interest of a party entitled to notice under this section shall file a request for that notice with any beneficiary or mortgagee of the senior lien and shall pay a processing fee of fifteen dollars (\$15). No new written consent shall be required from the trustor or mortgagor.

(c) Unless the delinquency has been cured, within 15 days following the end of four months from any delinquency in payments of principal or interest on any obligation secured by the senior lien which delinquency exists or occurs on or after 10 days from the mailing of the request for notice or the recording of that request, whichever occurs later, the beneficiary or mortgagee shall give written notice to the requester of the fact of any delinquency and the amount thereof.

The notice shall be given by personal service, or by deposit in the mail, first-class postage paid. Following the recording of any notice of default pursuant to Section 2924 with respect to the same delinquency, no notice or further notice shall be required pursuant to this section.

(d) If the beneficiary or mortgagee of any such senior lien fails to give notice to the requester as required in subdivision (c), and a subsequent foreclosure or trustee's sale of the security property occurs, the beneficiary or mortgagee shall be liable to the requester for any monetary damage due to the failure to provide notice within the time period specified in subdivision (c) which the requester has sustained from the date on which notice should have been given to the earlier of the date on which the notice is given or the date of the recording of the notice of default under Section 2924, and shall also forfeit to the requester the sum of three hundred dollars (\$300). A showing by the beneficiary or mortgagee by a preponderance of the evidence that the failure

to provide timely notice as required by subdivision (c) resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error shall be a defense to any liability for that failure.

(e) If any beneficiary or mortgagee, or agent which it had designated for the purpose of receiving loan payments, has been succeeded in interest by any other person, any request for notice received pursuant to this section shall be transmitted promptly to that person.

(f) Any failure to comply with the provisions of this section 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.

(g) Upon satisfaction of an obligation secured by a junior lien with respect to which a notice request was made pursuant to this section, the beneficiary or mortgagee that made the request shall communicate that fact in writing to the senior lienholder to whom the request was made. The communication shall specify that provision of notice pursuant to the prior request under this section is no longer required.

(Amended by Stats. 1990, Ch. 788, Sec. 1.)

**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.

(2) 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 is contiguous to the county in which the property or some part thereof is situated and 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.

(3) 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.

(4) 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 20 days prior to the date of sale.

(5) The notice of sale shall contain the name, street address in this state, which may reflect an agent of the trustee, and either a toll-free telephone number or telephone number in this state of the trustee, 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.

(6) 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.

(7) 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.

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

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

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

(B) A mortgagee, beneficiary, trustee, or authorized agent shall make a good faith effort to provide up-to-date information regarding sale dates and postponements to persons who wish this information. This information shall be made available free of charge. It may be made available via an Internet

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

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

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

(9) If the sale of the property is to be a unified sale as provided in subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 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 9108 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 (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, shall not obligate the secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 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.

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

*(Amended (as amended by Stats. 2011, Ch. 229, Sec. 2) by Stats. 2012, Ch. 556, Sec. 4. Effective January 1, 2013.)*

#### 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 or postponements of the sale proceedings, including a postponement upon instruction by the beneficiary to the trustee that the sale proceedings be postponed, 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. The trustee shall postpone the sale in accordance with any of the following:

(A) Upon the order of any court of competent jurisdiction.

(B) If stayed by operation of law.

(C) By mutual agreement, whether oral or in writing, of any trustor and any beneficiary or any mortgagor and any mortgagee.

(D) At the discretion of the trustee.

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

(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 that 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.

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

*(Amended by Stats. 2005, Ch. 224, Sec. 2. Effective January 1, 2006.)*

**2924h.**

(a) Each and every bid made by a bidder at a trustee's sale under a power of sale contained in a deed of trust or mortgage shall be deemed to be an irrevocable offer by that bidder to purchase the property being sold by the trustee under the power of sale for the amount of the bid. Any second or subsequent bid by the same bidder or any other bidder for a higher amount shall be a cancellation of the prior bid.

(b) At the trustee's sale the trustee shall have the right (1) to require every bidder to show evidence of the bidder's ability to deposit with the trustee the full amount of his or her final bid in cash, a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee prior to, and as a condition to, the recognizing of the bid, and to conditionally accept and hold these amounts for the duration of the sale, and (2) to require the last and highest bidder to deposit, if not deposited previously, the full amount of the bidder's final bid in cash, a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee, immediately prior to the completion of the

sale, the completion of the sale being so announced by the fall of the hammer or in another customary manner. The present beneficiary of the deed of trust under foreclosure shall have the right to offset his or her bid or bids only to the extent of the total amount due the beneficiary including the trustee's fees and expenses.

(c) In the event the trustee accepts a check drawn by a credit union or a savings and loan association pursuant to this subdivision or a cash equivalent designated in the notice of sale, the trustee may withhold the issuance of the trustee's deed to the successful bidder submitting the check drawn by a state or federal credit union or savings and loan association or the cash equivalent until funds become available to the payee or endorsee as a matter of right. For the purposes of this subdivision, the trustee's sale shall be deemed final upon the acceptance of the last and highest bid, and shall be deemed perfected as of 8 a.m. on the actual date of sale if the trustee's deed is recorded within 15 calendar days after the sale, or the next business day following the 15th day if the county recorder in which the property is located is closed on the 15th day. However, the sale is subject to an automatic rescission for a failure of consideration in the event the funds are not "available for withdrawal" as defined in Section 12413.1 of the Insurance Code. The trustee shall send a notice of rescission for a failure of consideration to the last and highest bidder submitting the check or alternative instrument, if the address of the last and highest bidder is known to the trustee.

If a sale results in an automatic right of rescission for failure of consideration pursuant to this subdivision, the interest of any lienholder shall be reinstated in the same priority as if the previous sale had not occurred.

(d) If the trustee has not required the last and highest bidder to deposit the cash, a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee in the manner set forth in paragraph (2) of subdivision (b), the trustee shall complete the sale. If the last and highest bidder then fails to deliver to the trustee, when demanded, the amount of his or her final bid in cash, a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee, that bidder shall be liable to the trustee for all damages which the trustee may sustain by the refusal to deliver to the trustee the amount of the final bid, including any court costs and reasonable attorneys' fees.

If the last and highest bidder willfully fails to deliver to the trustee the amount of his or her final bid in cash, a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association,

or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee, or if the last and highest bidder cancels a cashiers check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent that has been designated in the notice of sale as acceptable to the trustee, that bidder shall be guilty of a misdemeanor punishable by a fine of not more than two thousand five hundred dollars (\$2,500).

In the event the last and highest bidder cancels an instrument submitted to the trustee as a cash equivalent, the trustee shall provide a new notice of sale in the manner set forth in Section 2924f and shall be entitled to recover the costs of the new notice of sale as provided in Section 2924c.

(e) Any postponement or discontinuance of the sale proceedings shall be a cancellation of the last bid.

(f) In the event that this section conflicts with any other statute, then this section shall prevail.

(g) It shall be unlawful for any person, acting alone or in concert with others, (1) to offer to accept or accept from another, any consideration of any type not to bid, or (2) to fix or restrain bidding in any manner, at a sale of property conducted pursuant to a power of sale in a deed of trust or mortgage. However, it shall not be unlawful for any person, including a trustee, to state that a property subject to a recorded notice of default or subject to a sale conducted pursuant to this chapter is being sold in an "as-is" condition.

In addition to any other remedies, any person committing any act declared unlawful by this subdivision or any act which would operate as a fraud or deceit upon any beneficiary, trustor, or junior lienor shall, upon conviction, be fined not more than ten thousand dollars (\$10,000) or imprisoned in the county jail for not more than one year, or be punished by both that fine and imprisonment.

*(Amended by Stats. 2004, Ch. 177, Sec. 2. Effective January 1, 2005.)*

**2924i.**

(a) This section applies to loans secured by a deed of trust or mortgage on real property containing one to four residential units at least one of which at the time the loan is made is or is to be occupied by the borrower if the loan is for a period in excess of one year and is a balloon payment loan.

(b) This section shall not apply to (1) open end credit as defined in Regulation Z, whether or not the transaction is otherwise subject to Regulation Z, (2) transactions subject to Section 2956, or (3) loans made for the principal purpose of financing the construction of one or more residential units.

(c) At least 90 days but not more than 150 days prior to the due date of the final payment on a loan that is subject to this section, the holder of the loan shall deliver or mail by first-class mail, with a certificate of mailing obtained from the United States Postal Service, to the trustor, or his or her successor in interest, at the last known address of that person, a written notice which shall include all of the following:

- (1) A statement of the name and address of the person to whom the final payment is required to be paid.
- (2) The date on or before which the final payment is required to be paid.
- (3) The amount of the final payment, or if the exact amount is unknown, a good faith estimate of the amount thereof, including unpaid principal, interest and any other charges, such amount to be determined assuming timely payment in full of all scheduled installments coming due between the date the notice is prepared and the date when the final payment is due.
- (4) If the borrower has a contractual right to refinance the final payment, a statement to that effect.

If the due date of the final payment of a loan subject to this section is extended prior to the time notice is otherwise required under this subdivision, this notice requirement shall apply only to the due date as extended (or as subsequently extended).

(d) For purposes of this section:

- (1) A "balloon payment loan" is a loan which provides for a final payment as originally scheduled which is more than twice the amount of any of the immediately preceding six regularly scheduled payments or which contains a call provision; provided, however, that if the call provision is not exercised by the holder of the loan, the existence of the unexercised call provision shall not cause the loan to be deemed to be a balloon payment loan.
- (2) "Call provision" means a loan contract term that provides the holder of the loan with the right to call the loan due and payable either after a specified period has elapsed following closing or after a specified date.
- (3) "Regulation Z" means any rule, regulation, or interpretation promulgated by the Board of Governors of the Federal Reserve System under the Federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.), and any interpretation or approval thereof issued by an official or employee of the Federal Reserve System duly authorized by the board under the Truth in Lending Act, as amended, to issue such interpretations or approvals.

(e) Failure to provide notice as required by subdivision (a) does not extinguish any obligation of payment by the borrower, except that the due date for any balloon payment shall be the date specified in the balloon payment note, or 90 days from the date of delivery or mailing of the notice required by subdivision (a), or the due date specified in the notice required by subdivision (a), whichever date is later. If the operation of this section acts to extend the term of any note, interest shall continue to accrue for the extended term at the contract rate and payments shall continue to be due at any periodic interval and on any payment schedule specified in the note and shall be credited to principal or interest under the terms of the note. Default in any extended periodic payment shall be considered a default under terms of the note or security instrument.

(f) (1) The validity of any credit document or of any security document subject to the provisions of this section shall not be invalidated solely because of the failure of any person to comply with this section. However, any person who willfully violates any provision of this section shall be liable in the amount of actual damages suffered by the debtor as the proximate result of the violation, and, if the debtor prevails in any suit to recover that amount, for reasonable attorney's fees.

(2) No person may be held liable in any action under this section if it is shown by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

(g) The provisions of this section shall apply to any note executed on or after January 1, 1984.

(Amended by Stats. 1986, Ch. 1360, Sec. 1.)

**2924j.**

(a) Unless an interpleader action has been filed, within 30 days of the execution of the trustee's deed resulting from a sale in which there are proceeds remaining after payment of the amounts required by paragraphs (1) and (2) of subdivision (a) of Section 2924k, the trustee shall send written notice to all persons with recorded interests in the real property as of the date immediately prior to the trustee's sale who would be entitled to notice pursuant to subdivisions (b) and (c) of Section 2924b. The notice shall be sent by first-class mail in the manner provided in paragraph (1) of subdivision (c) of Section 2924b and inform each entitled person of each of the following:

(1) That there has been a trustee's sale of the described real property.

(2) That the noticed person may have a claim to all or a portion of the sale proceeds remaining after payment of the amounts required by paragraphs (1) and (2) of subdivision (a) of Section 2924k.

(3) The noticed person may contact the trustee at the address provided in the notice to pursue any potential claim.

(4) That before the trustee can act, the noticed person may be required to present proof that the person holds the beneficial interest in the obligation and the security interest therefor. In the case of a promissory note secured by a deed of trust, proof that the person holds the beneficial interest may include the original promissory note and assignment of beneficial interests related thereto. The noticed person shall also submit a written claim to the trustee, executed under penalty of perjury, stating the following:

(A) The amount of the claim to the date of trustee's sale.

(B) An itemized statement of the principal, interest, and other charges.

(C) That claims must be received by the trustee at the address stated in the notice no later than 30 days after the date the trustee sends notice to the potential claimant.

(b) The trustee shall exercise due diligence to determine the priority of the written claims received by the trustee to the trustee's sale surplus proceeds

from those persons to whom notice was sent pursuant to subdivision (a). In the event there is no dispute as to the priority of the written claims submitted to the trustee, proceeds shall be paid within 30 days after the conclusion of the notice period. If the trustee has failed to determine the priority of written claims within 90 days following the 30-day notice period, then within 10 days thereafter the trustee shall deposit the funds with the clerk of the court pursuant to subdivision (c) or file an interpleader action pursuant to subdivision (e). Nothing in this section shall preclude any person from pursuing other remedies or claims as to surplus proceeds.

(c) If, after due diligence, the trustee is unable to determine the priority of the written claims received by the trustee to the trustee's sale surplus of multiple persons or if the trustee determines there is a conflict between potential claimants, the trustee may file a declaration of the unresolved claims and deposit with the clerk of the superior court of the county in which the sale occurred, that portion of the sales proceeds that cannot be distributed, less any fees charged by the clerk pursuant to this subdivision. The declaration shall specify the date of the trustee's sale, a description of the property, the names and addresses of all persons sent notice pursuant to subdivision (a), a statement that the trustee exercised due diligence pursuant to subdivision (b), that the trustee provided written notice as required by subdivisions (a) and (d) and the amount of the sales proceeds deposited by the trustee with the court. Further, the trustee shall submit a copy of the trustee's sales guarantee and any information relevant to the identity, location, and priority of the potential claimants with the court and shall file proof of service of the notice required by subdivision (d) on all persons described in subdivision (a).

The clerk shall deposit the amount with the county treasurer or, if a bank account has been established for moneys held in trust under paragraph (2) of subdivision (a) of Section 77009 of the Government Code, in that account, subject to order of the court upon the application of any interested party. The clerk may charge a reasonable fee for the performance of activities pursuant to this subdivision equal to the fee for filing an interpleader action pursuant to Chapter 5.8 (commencing with Section 70600) of Title 8 of the Government Code. Upon deposit of that portion of the sale proceeds that cannot be distributed by due diligence, the trustee shall be discharged of further responsibility for the disbursement of sale proceeds. A deposit with the clerk of the court pursuant to this subdivision may be either for the total proceeds of the trustee's sale, less any fees charged by the clerk, if a conflict or conflicts exist with respect to the total proceeds, or that portion that cannot be distributed after due diligence, less any fees charged by the clerk.

(d) Before the trustee deposits the funds with the clerk of the court pursuant to subdivision (c), the trustee shall send written notice by first-class mail, postage prepaid, to all persons described in subdivision (a) informing them that the trustee intends to deposit the funds with the clerk of the court and that a claim for the funds must be filed with the court within 30 days from the date of the notice, providing the address of the court in which the funds were deposited, and a telephone number for obtaining further information.

Within 90 days after deposit with the clerk, the court shall consider all claims filed at least 15 days before the date on which the hearing is scheduled by the court, the clerk shall serve written notice of the hearing by first-class mail on all claimants identified in the trustee's declaration at the addresses specified therein. Where the amount of the deposit is twenty-five thousand dollars (\$25,000) or less, a proceeding pursuant to this section is a limited civil case. The court shall distribute the deposited funds to any and all claimants entitled thereto.

(e) Nothing in this section restricts the ability of a trustee to file an interpleader action in order to resolve a dispute about the proceeds of a trustee's sale. Once an interpleader action has been filed, thereafter the provisions of this section do not apply.

(f) "Due diligence," for the purposes of this section means that the trustee researched the written claims submitted or other evidence of conflicts and determined that a conflict of priorities exists between two or more claimants which the trustee is unable to resolve.

(g) To the extent required by the Unclaimed Property Law, a trustee in possession of surplus proceeds not required to be deposited with the court pursuant to subdivision (b) shall comply with the Unclaimed Property Law (Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure).

(h) The trustee, beneficiary, or counsel to the trustee or beneficiary, is not liable for providing to any person who is entitled to notice pursuant to this section, information set forth in, or a copy of, subdivision (h) of Section 2945.3.

*(Amended by Stats. 2005, Ch. 75, Sec. 15. Effective July 19, 2005. Operative January 1, 2006, by Sec. 156 of Ch. 75.)*

#### **2924k.**

(a) The trustee, or the clerk of the court upon order to the clerk pursuant to subdivision (d) of Section 2924j, shall distribute the proceeds, or a portion of the proceeds, as the case may be, of the trustee's sale conducted pursuant to Section 2924h in the following order of priority:

(1) To the costs and expenses of exercising the power of sale and of sale, including the payment of the trustee's fees and attorney's fees permitted pursuant to subdivision (b) of Section 2924d and subdivision (b) of this section.

(2) To the payment of the obligations secured by the deed of trust or mortgage which is the subject of the trustee's sale.

(3) To satisfy the outstanding balance of obligations secured by any junior liens or encumbrances in the order of their priority.

(4) To the trustor or the trustor's successor in interest. In the event the property is sold or transferred to another, to the vested owner of record at the time of the trustee's sale.

(b) A trustee may charge costs and expenses incurred for such items as mailing and a reasonable fee for services rendered in connection with the distribution of the proceeds from a trustee's sale, including, but not limited

to, the investigation of priority and validity of claims and the disbursement of funds. If the fee charged for services rendered pursuant to this subdivision does not exceed one hundred dollars (\$100), or one hundred twenty-five dollars (\$125) where there are obligations specified in paragraph (3) of subdivision (a), the fee is conclusively presumed to be reasonable.

*(Amended by Stats. 1999, Ch. 974, Sec. 12. Effective January 1, 2000.)*

**29241.**

- (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, 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 all parties and the trustee a motion pursuant to Section 473 of

the Code of Civil Procedure that specifies the factual basis for the demand. Upon the court's granting of the motion, the trustee shall thereafter be required to participate in the action or proceeding, and the court shall provide sufficient time prior to trial for the trustee to be able to respond to the complaint, to conduct discovery, and to bring other pretrial motions in accordance with the Code of Civil Procedure.

(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.

(g) For purposes of this section, "trustee" includes any agent or employee of the trustee who performs some or all of the duties of a trustee under this article, and includes substituted trustees and agents of the beneficiary or trustee.

*(Amended by Stats. 2004, Ch. 177, Sec. 4. Effective January 1, 2005.)*

**2925.**

The fact that a transfer was made subject to defeasance on a condition, may, for the purpose of showing such transfer to be a mortgage, be proved (except as against a subsequent purchaser or incumbrancer for value and without notice), though the fact does not appear by the terms of the instrument.

*(Enacted 1872.)*

**2926.**

A mortgage is a lien upon everything that would pass by a grant of the property.

*(Enacted 1872.)*

**2927.**

A mortgage does not entitle the mortgagee to the possession of the property, unless authorized by the express terms of the mortgage; but after the execution of the mortgage the mortgagor may agree to such change of possession without a new consideration.

*(Enacted 1872.)*

**2928.**

A mortgage does not bind the mortgagor personally to perform the act for the performance of which it is a security, unless there is an express covenant therein to that effect.

*(Enacted 1872.)*

**2929.**

No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the mortgagee's security.

*(Enacted 1872.)*

**2929.3.**

(a) (1) A legal owner shall maintain vacant residential property purchased by that owner at a foreclosure sale, or acquired by that owner through foreclosure under a mortgage or deed of trust. A governmental entity may impose a civil fine of up to one thousand dollars (\$1,000) per day for a violation. If the governmental entity chooses to impose a fine pursuant to this section, it shall give notice of the alleged violation, including a description of the conditions that gave rise to the allegation, and notice of the entity's intent to assess a civil fine if action to correct the violation is not commenced within a period of not less than 14 days and completed within a period of not less than 30 days. The notice shall be mailed to the address provided in the deed or other instrument as specified in subdivision (a) of Section 27321.5 of the Government Code, or, if none, to the return address provided on the deed or other instrument.

(2) The governmental entity shall provide a period of not less than 30 days for the legal owner to remedy the violation prior to imposing a civil fine and shall allow for a hearing and opportunity to contest any fine imposed. In determining the amount of the fine, the governmental entity shall take into consideration any timely and good faith efforts by the legal owner to remedy the violation. The maximum civil fine authorized by this section is one thousand dollars (\$1,000) for each day that the owner fails to maintain the property, commencing on the day following the expiration of the period to remedy the violation established by the governmental entity.

(3) Subject to the provisions of this section, a governmental entity may establish different compliance periods for different conditions on the same property in the notice of alleged violation mailed to the legal owner.

(b) For purposes of this section, "failure to maintain" means failure to care for the exterior of the property, including, but not limited to, permitting excessive foliage growth that diminishes the value of surrounding properties, failing to take action to prevent trespassers or squatters from remaining on the property, or failing to take action to prevent mosquito larvae from growing in standing water or other conditions that create a public nuisance.

(c) Notwithstanding subdivisions (a) and (b), a governmental entity may provide less than 30 days' notice to remedy a condition before imposing a civil fine if the entity determines that a specific condition of the property

threatens public health or safety and provided that notice of that determination and time for compliance is given.

(d) Fines and penalties collected pursuant to this section shall be directed to local nuisance abatement programs, including, but not limited to, legal abatement proceedings.

(e) A governmental entity may not impose fines on a legal owner under both this section and a local ordinance.

(f) These provisions shall not preempt any local ordinance.

(g) This section shall only apply to residential real property.

(h) The rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.

(Amended by Stats. 2012, Ch. 201, Sec. 1. Effective January 1, 2013.)

#### **2929.4.**

(a) Prior to imposing a fine or penalty for failure to maintain a vacant property that is subject to a notice of default, that is purchased at a foreclosure sale, or that is acquired through foreclosure under a mortgage or deed of trust, a governmental entity shall provide the owner of that property with a notice of the violation and an opportunity to correct that violation.

(b) This section shall not apply if the governmental entity determines that a specific condition of the property threatens public health or safety.

(Added by Stats. 2010, Ch. 527, Sec. 1. Effective January 1, 2011.)

#### **2929.45.**

(a) An assessment or lien to recover the costs of nuisance abatement measures taken by a governmental entity with regard to property that is subject to a notice of default, that is purchased at a foreclosure sale, or that is acquired through foreclosure under a mortgage or deed of trust, shall not exceed the actual and reasonable costs of nuisance abatement.

(b) A governmental entity shall not impose an assessment or lien unless the costs that constitute the assessment or lien have been adopted by the elected officials of that governmental entity at a public hearing.

(Added by Stats. 2010, Ch. 527, Sec. 2. Effective January 1, 2011.)

#### **2929.5.**

(a) A secured lender may enter and inspect the real property security for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security on either of the following:

(1) Upon reasonable belief of the existence of a past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security not previously disclosed in writing to the secured

lender in conjunction with the making, renewal, or modification of a loan, extension of credit, guaranty, or other obligation involving the borrower.

(2) After the commencement of nonjudicial or judicial foreclosure proceedings against the real property security.

(b) The secured lender shall not abuse the right of entry and inspection or use it to harass the borrower or tenant of the property. Except in case of an emergency, when the borrower or tenant of the property has abandoned the premises, or if it is impracticable to do so, the secured lender shall give the borrower or tenant of the property reasonable notice of the secured lender's intent to enter, and enter only during the borrower's or tenant's normal business hours. Twenty-four hours' notice shall be presumed to be reasonable notice in the absence of evidence to the contrary.

(c) The secured lender shall reimburse the borrower for the cost of repair of any physical injury to the real property security caused by the entry and inspection.

(d) If a secured lender is refused the right of entry and inspection by the borrower or tenant of the property, or is otherwise unable to enter and inspect the property without a breach of the peace, the secured lender may, upon petition, obtain an order from a court of competent jurisdiction to exercise the secured lender's rights under subdivision (a), and that action shall not constitute an action within the meaning of subdivision (a) of Section 726 of the Code of Civil Procedure.

(e) For purposes of this section:

(1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor-in-interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(2) "Hazardous substance" includes all of the following:

(A) Any "hazardous substance" as defined in subdivision (h) of Section 25281 of the Health and Safety Code.

(B) Any "waste" as defined in subdivision (d) of Section 13050 of the Water Code.

(C) Petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(3) "Real property security" means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms "separate interest," "common area," and "common interest development" are defined in Sections 4095, 4100, and 4185, or real property consisting of one acre or less which contains 1 to 15 dwelling units.

(4) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of hazardous substances into, onto, or through soil, surface water, or groundwater.

(5) "Secured lender" means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor-in-interest of the beneficiary or mortgagee to the deed of trust or mortgage.

*(Amended by Stats. 2012, Ch. 181, Sec. 40. Effective January 1, 2013. Operative January 1, 2014, by Sec. 86 of Ch. 181.)*

**[2930.]**

Section Twenty-nine Hundred and Thirty. Title acquired by the mortgagor subsequent to the execution of the mortgage, inures to the mortgagee as security for the debt in like manner as if acquired before the execution.

*(Amended by Code Amendments 1873-74, Ch. 612.)*

**2931.**

A mortgagee may foreclose the right of redemption of the mortgagor in the manner prescribed by the Code of Civil Procedure.

*(Enacted 1872.)*

**2931a.**

In any action brought to determine conflicting claims to real property, or for partition of real property or an estate for years therein, or to foreclose a deed of trust, mortgage, or other lien upon real property, or in all eminent domain proceedings under Section 1250.110 et seq., of the Code of Civil Procedure against real property upon which exists a lien to secure the payment of taxes or other obligations to an agency of the State of California, other than ad valorem taxes upon the real property, the state agency charged with the collection of the tax obligation may be made a party. In such an action, the court shall have jurisdiction to determine the priority and effect of the liens described in the complaint in or upon the real property or estate for years therein, but the jurisdiction of the court in the action shall not include a determination of the validity of the tax giving rise to the lien or claim of lien. The complaint or petition in the action shall contain a description of the lien sufficient to enable the tax or other obligation, payment of which it secures, to be identified with certainty, and shall include the name and address of the person owing the tax or other obligation, the name of the state agency that recorded the lien, and the date and place where the lien was recorded.

Services of process in the action shall be made upon the agency, officer, board, commission, department, division, or other body charged with the collection of the tax or obligation. It shall be the duty of the Attorney General to represent the state agency in the action.

*(Amended by Stats. 1989, Ch. 698, Sec. 8.)*

**2931b.**

In all actions in which the State of California is named a party pursuant to the provisions of Section 2931a and in which real property or an estate for years therein is sought to be sold, the Attorney General may, with the consent of the Department of Finance, bid upon and purchase that real property or estate for years.

*(Amended by Stats. 1989, Ch. 698, Sec. 9.)*

**2931c.**

The Attorney General may bring an action in the courts of this or any other state or of the United States to enforce any lien to secure the payment of taxes or other obligations to the State of California under the Unemployment Insurance Code, the Revenue and Taxation Code, or Chapter 6 (commencing with Section 16180) of Part 1 of Division 4 of Title 2 of the Government Code or to subject to payment of the liability giving rise to the lien any property in which the debtor has any right, title, or interest. In any action brought under this section the court shall have jurisdiction to determine the priority and effect of the lien in or upon the property, but the jurisdiction of the court in such action shall not extend to a determination of the validity of the liability giving rise to the lien.

*(Amended by Stats. 1977, Ch. 1242.)*

**2932.**

A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security.

*(Enacted 1872.)*

**2932.5.**

Where a power to sell real property is given to a mortgagee, or other encumbrancer, in an instrument intended to secure the payment of money, the power is part of the security and vests in any person who by assignment becomes entitled to payment of the money secured by the instrument. The power of sale may be exercised by the assignee if the assignment is duly acknowledged and recorded.

*(Added by Stats. 1986, Ch. 820, Sec. 11. Operative July 1, 1987, by Sec. 43 of Ch. 820.)*

**2932.6.**

(a) Notwithstanding any other provision of law, a financial institution may undertake to repair any property acquired through foreclosure under a mortgage or deed of trust.

(b) As used in this section, the term "financial institution" includes, but is not limited to, banks, savings associations, credit unions, and industrial loan companies.

(c) The rights granted to a financial institution by this section are in addition to, and not in derogation of, the rights of a financial institution which otherwise exist.

*(Amended by Stats. 1988, Ch. 125, Sec. 1.)*

**2933.**

A power of attorney to execute a mortgage must be in writing, subscribed, acknowledged, or proved, certified, and recorded in like manner as powers of attorney for grants of real property.

*(Enacted 1872.)*

**2934.**

Any assignment of a mortgage and any assignment of the beneficial interest under a deed of trust may be recorded, and from the time the same is filed for record operates as constructive notice of the contents thereof to all persons; and any instrument by which any mortgage or deed of trust of, lien upon or interest in real property, (or by which any mortgage of, lien upon or interest in personal property a document evidencing or creating which is required or permitted by law to be recorded), is subordinated or waived as to priority may be recorded, and from the time the same is filed for record operates as constructive notice of the contents thereof, to all persons.

*(Amended by Stats. 1935, Ch. 818.)*

**2934a.**

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

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

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

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

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

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

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

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

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

(b) If the substitution is effected after a notice of default has been recorded but prior to the recording of the notice of sale, the beneficiary or beneficiaries shall cause a copy of the substitution to be mailed, prior to the recording thereof, in the manner provided in Section 2924b, to the trustee then of record and to all persons to whom a copy of the notice of default would be required to be mailed by the provisions of Section 2924b. An

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

(c) Notwithstanding any provision of this section or any provision in any deed of trust, unless a new notice of sale containing the name, street address, and telephone number of the substituted trustee is given pursuant to Section 2924f, any sale conducted by the substituted trustee shall be void.

(d) This section shall remain in effect only until January 1, 1998, and shall have no force or effect after that date, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

*(Amended (as amended by Stats. 1993, Ch. 754, Sec. 1.5) by Stats. 1996, Ch. 839, Sec. 1. Effective January 1, 1997. Inoperative (but not repealed) on January 1, 1998, by its own provisions. See later operative section (added by Stats. 1993, Ch. 754, Sec. 2.5), as amended by Stats. 2004, Ch. 177.)*

**2934a.**

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

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

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

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

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

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

The separate document shall be attached to the substitution and be recorded in the office of the county recorder of each county in which the real property

described in the deed of trust is located. Once the document required by this paragraph is recorded, it shall constitute conclusive evidence of compliance with the requirements of this paragraph in favor of substituted trustees acting pursuant to this section, subsequent assignees of the obligation secured by the deed of trust and subsequent bona fide purchasers or encumbrancers for value of the real property described therein.

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

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

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

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

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

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

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

*(Amended (as amended by Stats. 1999, Ch. 974) by Stats. 2004, Ch. 177, Sec. 5. Effective January 1, 2005.)*

**2934b.**

Sections 15643 and 18102 of the Probate Code apply to trustees under deeds of trust given to secure obligations.

*(Added by Stats. 1986, Ch. 820, Sec. 12. Operative July 1, 1987, by Sec. 43 of Ch. 820.)*

**2935.**

When a mortgage or deed of trust is executed as security for money due or to become due, on a promissory note, bond, or other instrument, designated in the mortgage or deed of trust, the record of the assignment of the mortgage or of the assignment of the beneficial interest under the deed of trust, is not of itself notice to the debtor, his heirs, or personal representatives, so as to invalidate any payment made by them, or any of them, to the person holding such note, bond, or other instrument.

*(Amended by Stats. 1931, Ch. 80.)*

**2936.**

The assignment of a debt secured by mortgage carries with it the security.  
*(Enacted 1872.)*

**2937.**

(a) The Legislature hereby finds and declares that borrowers or subsequent obligors have the right to know when a person holding a promissory note, bond, or other instrument transfers servicing of the indebtedness secured by a mortgage or deed of trust on real property containing one to four residential units located in this state. The Legislature also finds that notification to the borrower or subsequent obligor of the transfer may protect the borrower or subsequent obligor from fraudulent business practices and may ensure timely payments.

It is the intent of the Legislature in enacting this section to mandate that a borrower or subsequent obligor be given written notice when a person transfers the servicing of the indebtedness on notes, bonds, or other

instruments secured by a mortgage or deed of trust on real property containing one to four residential units and located in this state.

(b) Any person transferring the servicing of indebtedness as provided in subdivision (a) to a different servicing agent and any person assuming from another responsibility for servicing the instrument evidencing indebtedness, shall give written notice to the borrower or subsequent obligor before the borrower or subsequent obligor becomes obligated to make payments to a new servicing agent.

(c) In the event a notice of default has been recorded or a judicial foreclosure proceeding has been commenced, the person transferring the servicing of the indebtedness and the person assuming from another the duty of servicing the indebtedness shall give written notice to the trustee or attorney named in the notice of default or judicial foreclosure of the transfer. A notice of default, notice of sale, or judicial foreclosure shall not be invalidated solely because the servicing agent is changed during the foreclosure process.

(d) Any person transferring the servicing of indebtedness as provided in subdivision (a) to a different servicing agent shall provide to the new servicing agent all existing insurance policy information that the person is responsible for maintaining, including, but not limited to, flood and hazard insurance policy information.

(e) The notices required by subdivision (b) shall be sent by first-class mail, postage prepaid, to the borrower's or subsequent obligor's address designated for loan payment billings, or if escrow is pending, as provided in the escrow, and shall contain each of the following:

(1) The name and address of the person to which the transfer of the servicing of the indebtedness is made.

(2) The date the transfer was or will be completed.

(3) The address where all payments pursuant to the transfer are to be made.

(f) Any person assuming from another responsibility for servicing the instrument evidencing indebtedness shall include in the notice required by subdivision (b) a statement of the due date of the next payment.

(g) The borrower or subsequent obligor shall not be liable to the holder of the note, bond, or other instrument or to any servicing agent for payments made to the previous servicing agent or for late charges if these payments were made prior to the borrower or subsequent obligor receiving written notice of the transfer as provided by subdivision (e) and the payments were otherwise on time.

(h) For purposes of this section, the term servicing agent shall not include a trustee exercising a power of sale pursuant to a deed of trust.

*(Amended by Stats. 2002, Ch. 70, Sec. 1. Effective January 1, 2003.)*

## **2937.7.**

In any action affecting the interest of any trustor or beneficiary under a deed of trust or mortgage, service of process to the trustee does not constitute service to the trustor or beneficiary and does not impose any obligation on the trustee to notify the trustor or beneficiary of the action.

*(Added by Stats. 1988, Ch. 530, Sec. 1.)*

**2938.**

(a) A written assignment of an interest in leases, rents, issues, or profits of real property made in connection with an obligation secured by real property, irrespective of whether the assignment is denoted as absolute, absolute conditioned upon default, additional security for an obligation, or otherwise, shall, upon execution and delivery by the assignor, be effective to create a present security interest in existing and future leases, rents, issues, or profits of that real property. As used in this section, "leases, rents, issues, and profits of real property" includes the cash proceeds thereof. "Cash proceeds" means cash, checks, deposit accounts, and the like.

(b) An assignment of an interest in leases, rents, issues, or profits of real property may be recorded in the records of the county recorder in the county in which the underlying real property is located in the same manner as any other conveyance of an interest in real property, whether the assignment is in a separate document or part of a mortgage or deed of trust, and when so duly recorded in accordance with the methods, procedures, and requirements for recordation of conveyances of other interests in real property, (1) the assignment shall be deemed to give constructive notice of the content of the assignment with the same force and effect as any other duly recorded conveyance of an interest in real property and (2) the interest granted by the assignment shall be deemed fully perfected as of the time of recordation with the same force and effect as any other duly recorded conveyance of an interest in real property, notwithstanding a provision of the assignment or a provision of law that would otherwise preclude or defer enforcement of the rights granted the assignee under the assignment until the occurrence of a subsequent event, including, but not limited to, a subsequent default of the assignor, or the assignee's obtaining possession of the real property or the appointment of a receiver.

(c) Upon default of the assignor under the obligation secured by the assignment of leases, rents, issues, and profits, the assignee shall be entitled to enforce the assignment in accordance with this section. On and after the date the assignee takes one or more of the enforcement steps described in this subdivision, the assignee shall be entitled to collect and receive all rents, issues, and profits that have accrued but remain unpaid and uncollected by the assignor or its agent or for the assignor's benefit on that date, and all rents, issues, and profits that accrue on or after the date. The assignment shall be enforced by one or more of the following:

- (1) The appointment of a receiver.
- (2) Obtaining possession of the rents, issues, or profits.
- (3) Delivery to any one or more of the tenants of a written demand for turnover of rents, issues, and profits in the form specified in subdivision (k), a copy of which demand shall also be delivered to the assignor; and a copy of which shall be mailed to all other assignees of record of the leases, rents, issues, and profits of the real property at the address for notices provided in the assignment or, if none, to the address to which the recorded assignment was to be mailed after recording.

(4) Delivery to the assignor of a written demand for the rents, issues, or profits, a copy of which shall be mailed to all other assignees of record of the leases, rents, issues, and profits of the real property at the address for notices provided in the assignment or, if none, to the address to which the recorded assignment was to be mailed after recording.

Moneys received by the assignee pursuant to this subdivision, net of amounts paid pursuant to subdivision (g), if any, shall be applied by the assignee to the debt or otherwise in accordance with the assignment or the promissory note, deed of trust, or other instrument evidencing the obligation, provided, however, that neither the application nor the failure to so apply the rents, issues, or profits shall result in a loss of any lien or security interest that the assignee may have in the underlying real property or any other collateral, render the obligation unenforceable, constitute a violation of Section 726 of the Code of Civil Procedure, or otherwise limit a right available to the assignee with respect to its security.

(d) If an assignee elects to take the action provided for under paragraph (3) of subdivision (c), the demand provided for therein shall be signed under penalty of perjury by the assignee or an authorized agent of the assignee and shall be effective as against the tenant when actually received by the tenant at the address for notices provided under the lease or other contractual agreement under which the tenant occupies the property or, if no address for notices is so provided, at the property. Upon receipt of this demand, the tenant shall be obligated to pay to the assignee all rents, issues, and profits that are past due and payable on the date of receipt of the demand, and all rents, issues, and profits coming due under the lease following the date of receipt of the demand, unless either of the following occurs:

(1) The tenant has previously received a demand that is valid on its face from another assignee of the leases, issues, rents, and profits sent by the other assignee in accordance with this subdivision and subdivision (c).

(2) The tenant, in good faith and in a manner that is not inconsistent with the lease, has previously paid, or within 10 days following receipt of the demand notice pays, the rent to the assignor.

Payment of rent to an assignee following a demand under an assignment of leases, rents, issues, and profits shall satisfy the tenant's obligation to pay the amounts under the lease. If a tenant pays rent to the assignor after receipt of a demand other than under the circumstances described in this subdivision, the tenant shall not be discharged of the obligation to pay rent to the assignee, unless the tenant occupies the property for residential purposes. The obligation of a tenant to pay rent pursuant to this subdivision and subdivision (c) shall continue until receipt by the tenant of a written notice from a court directing the tenant to pay the rent in a different manner or receipt by the tenant of a written notice from the assignee from whom the demand was received canceling the demand, whichever occurs first. This subdivision does not affect the entitlement to rents, issues, or profits as between assignees as set forth in subdivision (h).

(e) An enforcement action of the type authorized by subdivision (c), and a collection, distribution, or application of rents, issues, or profits by the

assignee following an enforcement action of the type authorized by subdivision (c), shall not do any of the following:

- (1) Make the assignee a mortgagee in possession of the property, except if the assignee obtains actual possession of the real property, or an agent of the assignor.
- (2) Constitute an action, render the obligation unenforceable, violate Section 726 of the Code of Civil Procedure, or, other than with respect to marshaling requirements, otherwise limit any rights available to the assignee with respect to its security.
- (3) Be deemed to create a bar to a deficiency judgment pursuant to a provision of law governing or relating to deficiency judgments following the enforcement of any encumbrance, lien, or security interest, notwithstanding that the action, collection, distribution, or application may reduce the indebtedness secured by the assignment or by a deed of trust or other security instrument.

The application of rents, issues, or profits to the secured obligation shall satisfy the secured obligation to the extent of those rents, issues, or profits, and, notwithstanding any provisions of the assignment or other loan documents to the contrary, shall be credited against any amounts necessary to cure any monetary default for purposes of reinstatement under Section 2924c.

(f) If cash proceeds of rents, issues, or profits to which the assignee is entitled following enforcement as set forth in subdivision (c) are received by the assignor or its agent for collection or by another person who has collected such rents, issues, or profits for the assignor's benefit, or for the benefit of a subsequent assignee under the circumstances described in subdivision (h), following the taking by the assignee of either of the enforcement actions authorized in paragraph (3) or (4) of subdivision (c), and the assignee has not authorized the assignor's disposition of the cash proceeds in a writing signed by the assignee, the rights to the cash proceeds and to the recovery of the cash proceeds shall be determined by the following:

(1) The assignee shall be entitled to an immediate turnover of the cash proceeds received by the assignor or its agent for collection or any other person who has collected the rents, issues, or profits for the assignor's benefit, or for the benefit of a subsequent assignee under the circumstances described in subdivision (h), and the assignor or other described party in possession of those cash proceeds shall turn over the full amount of cash proceeds to the assignee, less any amount representing payment of expenses authorized by the assignee in writing. The assignee shall have a right to bring an action for recovery of the cash proceeds, and to recover the cash proceeds, without the necessity of bringing an action to foreclose a security interest that it may have in the real property. This action shall not violate Section 726 of the Code of Civil Procedure or otherwise limit a right available to the assignee with respect to its security.

(2) As between an assignee with an interest in cash proceeds perfected in the manner set forth in subdivision (b) and enforced in accordance with paragraph (3) or (4) of subdivision (c) and another person claiming an

interest in the cash proceeds, other than the assignor or its agent for collection or one collecting rents, issues, and profits for the benefit of the assignor, and subject to subdivision (h), the assignee shall have a continuously perfected security interest in the cash proceeds to the extent that the cash proceeds are identifiable. For purposes hereof, cash proceeds are identifiable if they are either (A) segregated or (B) if commingled with other funds of the assignor or its agent or one acting on its behalf, can be traced using the lowest intermediate balance principle, unless the assignor or other party claiming an interest in proceeds shows that some other method of tracing would better serve the interests of justice and equity under the circumstances of the case. The provisions of this paragraph are subject to any generally applicable law with respect to payments made in the operation of the assignor's business.

(g) (1) If the assignee enforces the assignment under subdivision (c) by means other than the appointment of a receiver and receives rents, issues, or profits pursuant to this enforcement, the assignor or another assignee of the affected real property may make written demand upon the assignee to pay the reasonable costs of protecting and preserving the property, including payment of taxes and insurance and compliance with building and housing codes, if any.

(2) On and after the date of receipt of the demand, the assignee shall pay for the reasonable costs of protecting and preserving the real property to the extent of any rents, issues, or profits actually received by the assignee, provided, however, that no such acts by the assignee shall cause the assignee to become a mortgagee in possession and the assignee's duties under this subdivision, upon receipt of a demand from the assignor or any other assignee of the leases, rents, issues, and profits pursuant to paragraph (1), shall not be construed to require the assignee to operate or manage the property, which obligation shall remain that of the assignor.

(3) The obligation of the assignee hereunder shall continue until the earlier of (A) the date on which the assignee obtains the appointment of a receiver for the real property pursuant to application to a court of competent jurisdiction, or (B) the date on which the assignee ceases to enforce the assignment.

(4) This subdivision does not supersede or diminish the right of the assignee to the appointment of a receiver.

(h) The lien priorities, rights, and interests among creditors concerning rents, issues, or profits collected before the enforcement by the assignee shall be governed by subdivisions (a) and (b). Without limiting the generality of the foregoing, if an assignee who has recorded its interest in leases, rents, issues, and profits prior to the recordation of that interest by a subsequent assignee seeks to enforce its interest in those rents, issues, or profits in accordance with this section after any enforcement action has been taken by a subsequent assignee, the prior assignee shall be entitled only to the rents, issues, and profits that are accrued and unpaid as of the date of its enforcement action and unpaid rents, issues, and profits accruing thereafter. The prior assignee shall have no right to rents, issues, or profits paid prior to the date of the enforcement action, whether in the hands of the assignor or any subsequent assignee. Upon receipt of notice that the prior assignee has

enforced its interest in the rents, issues, and profits, the subsequent assignee shall immediately send a notice to any tenant to whom it has given notice under subdivision (c). The notice shall inform the tenant that the subsequent assignee cancels its demand that the tenant pay rent to the subsequent assignee.

(i) (1) This section shall apply to contracts entered into on or after January 1, 1997.

(2) Sections 2938 and 2938.1, as these sections were in effect prior to January 1, 1997, shall govern contracts entered into prior to January 1, 1997, and shall govern actions and proceedings initiated on the basis of these contracts.

(j) "Real property," as used in this section, means real property or any estate or interest therein.

(k) The demand required by paragraph (3) of subdivision (c) shall be in the following form:

DEMAND TO PAY RENT TO  
PARTY OTHER THAN LANDLORD  
(SECTION 2938 OF THE CIVIL CODE)

Tenant:[Name of Tenant]

Property Occupied by Tenant:[Address]

Landlord:[Name of Landlord]

Secured Party:[Name of Secured Party]

Address:[Address for Payment of Rent to Secured Party and for Further Information]:

The secured party named above is the assignee of leases, rents, issues, and profits under [name of document] dated \_\_\_\_\_, and recorded at [recording information] in the official records of \_\_\_\_\_ County, California. You may request a copy of the assignment from the secured party at \_\_\_\_\_ (address).

THIS NOTICE AFFECTS YOUR LEASE OR RENTAL AGREEMENT RIGHTS AND OBLIGATIONS. YOU ARE THEREFORE ADVISED TO CONSULT AN ATTORNEY CONCERNING THOSE RIGHTS AND OBLIGATIONS IF YOU HAVE ANY QUESTIONS REGARDING YOUR RIGHTS AND OBLIGATIONS UNDER THIS NOTICE.

IN ACCORDANCE WITH SUBDIVISION (C) OF SECTION 2938 OF THE CIVIL CODE, YOU ARE HEREBY DIRECTED TO PAY TO THE SECURED PARTY, \_\_\_\_\_ (NAME OF SECURED PARTY) AT \_\_\_\_\_ (ADDRESS), ALL RENTS UNDER YOUR LEASE OR OTHER RENTAL AGREEMENT WITH THE LANDLORD OR PREDECESSOR IN INTEREST OF LANDLORD, FOR THE OCCUPANCY OF THE PROPERTY AT \_\_\_\_\_ (ADDRESS OF RENTAL PREMISES) WHICH ARE PAST DUE AND PAYABLE ON THE DATE YOU RECEIVE THIS DEMAND, AND ALL RENTS COMING DUE UNDER THE LEASE OR OTHER RENTAL AGREEMENT FOLLOWING THE DATE YOU RECEIVE THIS DEMAND UNLESS YOU HAVE ALREADY PAID THIS RENT TO THE LANDLORD IN GOOD FAITH AND IN A MANNER NOT INCONSISTENT WITH THE AGREEMENT BETWEEN YOU AND THE LANDLORD. IN THIS CASE, THIS DEMAND NOTICE SHALL REQUIRE YOU TO PAY TO THE SECURED PARTY, \_\_\_\_\_ (NAME OF THE SECURED PARTY), ALL RENTS THAT COME DUE FOLLOWING THE DATE OF THE PAYMENT TO THE LANDLORD.

IF YOU PAY THE RENT TO THE UNDERSIGNED SECURED PARTY, \_\_\_\_\_ (NAME OF SECURED PARTY), IN ACCORDANCE WITH THIS NOTICE, YOU DO NOT HAVE TO PAY THE RENT TO THE LANDLORD. YOU WILL NOT BE SUBJECT TO DAMAGES OR OBLIGATED TO PAY RENT TO THE SECURED PARTY IF YOU HAVE PREVIOUSLY RECEIVED A DEMAND OF THIS TYPE FROM A DIFFERENT SECURED PARTY.

[For other than residential tenants] IF YOU PAY RENT TO THE LANDLORD THAT BY THE TERMS OF THIS DEMAND YOU ARE REQUIRED TO PAY TO THE SECURED PARTY, YOU MAY BE SUBJECT TO DAMAGES INCURRED BY THE SECURED PARTY BY REASON OF YOUR FAILURE TO COMPLY WITH THIS DEMAND, AND YOU MAY NOT BE DISCHARGED FROM YOUR OBLIGATION TO PAY THAT RENT TO THE SECURED PARTY. YOU WILL NOT BE SUBJECT TO THOSE DAMAGES OR OBLIGATED TO PAY THAT RENT TO THE SECURED PARTY IF YOU HAVE PREVIOUSLY RECEIVED A DEMAND OF THIS TYPE FROM A DIFFERENT ASSIGNEE.

Your obligation to pay rent under this demand shall continue until you receive either (1) a written notice from a court directing you to pay the rent in a manner provided therein, or (2) a written notice from the secured party named above canceling this demand.

The undersigned hereby certifies, under penalty of perjury, that the undersigned is an authorized officer or agent of the secured party and that the secured party is the assignee, or the current successor to the assignee, under an assignment of leases, rents, issues, or profits executed by the landlord, or a predecessor in interest, that is being enforced pursuant to and in accordance with Section 2938 of the Civil Code.

Executed at _____, California, this _____ day of _____, _____.	
_____	
[Secured Party]	
_____	Name: _____
_____	Title: _____

*(Amended by Stats. 2008, Ch. 179, Sec. 33. Effective January 1, 2009.)*

**2939.**

A recorded mortgage must be discharged by a certificate signed by the mortgagee, his personal representatives or assigns, acknowledged or proved and certified as prescribed by the chapter on "recording transfers," stating that the mortgage has been paid, satisfied, or discharged. Reference shall be made in said certificate to the book and page where the mortgage is recorded.

*(Amended by Stats. 1957, Ch. 1865.)*

**2939.5.**

Foreign executors, administrators and guardians may satisfy mortgages upon the records of any county in this state, upon producing and recording in the office of the county recorder of the county in which such mortgage is recorded, a duly certified and authenticated copy of their letters testamentary, or of administration or of guardianship, and which certificate or authentication shall also recite that said letters have not been revoked. For the purposes of this section, "guardian" includes a foreign conservator, committee, or comparable fiduciary.

*(Added by renumbering Section 2939½ by Stats. 1979, Ch. 730.)*

**2940.**

A certificate of the discharge of a mortgage, and the proof or acknowledgment thereof, must be recorded in the office of the county recorder in which the mortgage is recorded.

*(Amended by Stats. 1957, Ch. 1865.)*

**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 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) Within 30 calendar days after 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 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. The reconveyance instrument shall specify one of the following options for delivery of the instrument, the addresses of which the recorder has no duty to validate:

(i) The trustor or successor in interest, and that person's last known address, as the person to whom the recorder will deliver the recorded instrument pursuant to Section 27321 of the Government Code.

(ii) That the recorder shall deliver the recorded instrument to the trustee's address. If the trustee's address is specified for delivery, the trustee shall mail the recorded instrument to the trustor or the successor in interest to the last known address for that party.

(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, or caused to be delivered, the original note and deed of trust to the person making that request.

(D) If the note or deed of trust, or any copy of the note or deed of trust, is electronic, upon satisfaction of an obligation secured by a deed of trust, any electronic original, or electronic copy which has not been previously marked solely for use as a copy, of the note and deed of trust, shall be altered to indicate that the obligation is paid in full.

(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 attorney's fees, which any person may sustain by reason of the issuance and recording of the release, pursuant to paragraphs (3) and (4).

(7) A beneficiary may, at its discretion, in accordance with the requirements and procedures of Section 2934a, substitute the title company conducting the escrow through which the obligation is satisfied for the trustee of record, in which case the title company assumes the obligation of a trustee under this subdivision, and may collect the fee authorized by subdivision (e).

(8) In lieu of delivering the original note and deed of trust to the trustee within 30 days of loan satisfaction, as required by paragraph (1) of subdivision (b), a beneficiary who executes and delivers to the trustee a request for a full reconveyance within 30 days of loan satisfaction may, within 120 days of loan satisfaction, deliver the original note and deed of trust to either the trustee or trustor. If the note and deed of trust are delivered as provided in this paragraph, upon satisfaction of the note and deed of trust, the note and deed of trust shall be altered to indicate that the obligation is paid in full. Nothing in this paragraph alters the requirements and obligations set forth in paragraphs (2) and (3).

(c) For the purposes of this section, the phrases "cause to be recorded" and "cause it to be recorded" include, but are not limited to, sending by certified mail with the United States Postal Service or by an independent courier service using its tracking service that provides documentation of receipt and delivery, including the signature of the recipient, the full reconveyance or certificate of discharge in a recordable form, together with payment for all required fees, in an envelope addressed to the county recorder's office of the county in which the deed of trust or mortgage is recorded. Within two

business days from the day of receipt, if received in recordable form together with all required fees, the county recorder shall stamp and record the full reconveyance or certificate of discharge. Compliance with this subdivision shall entitle the trustee to the benefit of the presumption found in Section 641 of the Evidence Code.

(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 five hundred dollars (\$500).

(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 forty-five dollars (\$45), the fee is conclusively presumed to be reasonable.

(3) The fee described in paragraph (1) may not be charged unless demand for the fee was included in the payoff demand statement described in Section 2943.

(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.

(g) No fee or charge may be imposed on the trustor in connection with, or relating to, any act described in this section except as expressly authorized by this section.

(h) The amendments to this section enacted at the 1999–2000 Regular Session shall apply only to a mortgage or an obligation secured by a deed of trust that is satisfied on or after January 1, 2001.

(i) (1) In any action filed before January 1, 2002, that is dismissed as a result of the amendments to this section enacted at the 2001–02 Regular Session, the plaintiff shall not be required to pay the defendant's costs.

(2) Any claimant, including a claimant in a class action lawsuit, whose claim is dismissed or barred as a result of the amendments to this section enacted at the 2001-02 Regular Session, may, within 6 months of the dismissal or barring of the action or claim, file or refile a claim for actual damages occurring before January 1, 2002, that were proximately caused by a time lapse between loan satisfaction and the completion of the beneficiary's obligations as required under paragraph (1) of subdivision (b). In any action brought under this section, the defendant may be found liable for actual damages, but may not be found liable for any civil penalty authorized by Section 2941.

(j) Notwithstanding any other penalties, if a beneficiary collects a fee for reconveyance and thereafter has knowledge, or should have knowledge, that no reconveyance has been recorded, the beneficiary shall cause to be recorded the reconveyance, or in the event a release of obligation is earlier and timely recorded, the beneficiary shall refund to the trustor the fee charged to perform the reconveyance. Evidence of knowledge includes, but is not limited to, notice of a release of obligation pursuant to paragraph (3) of subdivision (b).

*(Amended by Stats. 2003, Ch. 62, Sec. 20. Effective January 1, 2004.)*

#### **2941.1.**

Notwithstanding any other provision of law, if no payoff demand statement is issued pursuant to Section 2943, nothing in Section 2941 shall be construed to prohibit the charging of a reconveyance fee.

*(Added by Stats. 2001, Ch. 438, Sec. 6. Effective October 2, 2001. Operative January 1, 2002, by Sec. 7 of Ch. 438.)*

#### **2941.5.**

Every person who willfully violates Section 2941 is guilty of a misdemeanor punishable by fine of not less than fifty dollars (\$50) nor more than four hundred dollars (\$400), or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment.

For purposes of this section, "willfully" means simply a purpose or willingness to commit the act, or make the omission referred to. It does not require an intent to violate the law, to injure another, or to acquire any advantage.

*(Amended by Stats. 1988, Ch. 1006, Sec. 2. Operative July 1, 1989, by Sec. 3 of Ch. 1006.)*

#### **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 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 three 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 or her 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.

*(Amended by Stats. 1996, Ch. 762, Sec. 2. Effective January 1, 1997.)*

**2941.9.**

(a) The purpose of this section is to establish a process through which all of the beneficiaries under a trust deed may agree to be governed by beneficiaries holding more than 50 percent of the record beneficial interest of a series of notes secured by the same real property or of undivided interests

in a note secured by real property equivalent to a series transaction, exclusive of any notes or interests of a licensed real estate broker that is the issuer or servicer of the notes or interests or any affiliate of that licensed real estate broker.

(b) All holders of notes secured by the same real property or a series of undivided interests in notes secured by real property equivalent to a series transaction may agree in writing to be governed by the desires of the holders of more than 50 percent of the record beneficial interest of those notes or interests, exclusive of any notes or interests of a licensed real estate broker that is the issuer or servicer of the notes or interests of any affiliate of the licensed real estate broker, with respect to actions to be taken on behalf of all holders in the event of default or foreclosure for matters that require direction or approval of the holders, including designation of the broker, servicing agent, or other person acting on their behalf, and the sale, encumbrance, or lease of real property owned by the holders resulting from foreclosure or receipt of a deed in lieu of foreclosure.

(c) A description of the agreement authorized in subdivision (b) of this section shall be disclosed pursuant to Section 10232.5 of the Business and Professions Code and shall be included in a recorded document such as the deed of trust or the assignment of interests.

(d) Any action taken pursuant to the authority granted in this section is not effective unless all the parties agreeing to the action sign, under penalty of perjury, a separate written document entitled "Majority Action Affidavit" stating the following:

- (1) The action has been authorized pursuant to this section.
- (2) None of the undersigned is a licensed real estate broker or an affiliate of the broker that is the issuer or servicer of the obligation secured by the deed of trust.
- (3) The undersigned together hold more than 50 percent of the record beneficial interest of a series of notes secured by the same real property or of undivided interests in a note secured by real property equivalent to a series transaction.

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

This document shall be recorded in the office of the county recorder of each county in which the real property described in the deed of trust is located. Once the document in this subdivision is recorded, it shall constitute conclusive evidence of compliance with the requirements of this subdivision in favor of trustees acting pursuant to this section, substituted trustees acting pursuant to Section 2934a, subsequent assignees of the obligation secured by the deed of trust, and subsequent bona fide purchasers or encumbrancers for value of the real property described therein.

(e) For purposes of this section, "affiliate of the licensed real estate broker" includes any person as defined in Section 25013 of the Corporations Code who is controlled by, or is under common control with, or who controls, a licensed real estate broker. "Control" means the possession, direct or

indirect, of the power to direct or cause the direction of management and policies.

*(Added by Stats. 1996, Ch. 839, Sec. 3. Effective January 1, 1997.)*

**2942.**

Contracts of bottomry or respondentia, although in the nature of mortgages, are not affected by any of the provisions of this Chapter.

*(Enacted 1872.)*

**2943.**

(a) As used in this section:

- (1) "Beneficiary" means a mortgagee or beneficiary of a mortgage or deed of trust, or his or her assignees.
- (2) "Beneficiary statement" means a written statement showing:
  - (A) The amount of the unpaid balance of the obligation secured by the mortgage or deed of trust and the interest rate, together with the total amounts, if any, of all overdue installments of either principal or interest, or both.
  - (B) The amounts of periodic payments, if any.
  - (C) The date on which the obligation is due in whole or in part.
  - (D) The date to which real estate taxes and special assessments have been paid to the extent the information is known to the beneficiary.
  - (E) The amount of hazard insurance in effect and the term and premium of that insurance to the extent the information is known to the beneficiary.
  - (F) The amount in an account, if any, maintained for the accumulation of funds with which to pay taxes and insurance premiums.
  - (G) The nature and, if known, the amount of any additional charges, costs, or expenses paid or incurred by the beneficiary which have become a lien on the real property involved.
  - (H) Whether the obligation secured by the mortgage or deed of trust can or may be transferred to a new borrower.
- (3) "Delivery" means depositing or causing to be deposited in the United States mail an envelope with postage prepaid, containing a copy of the document to be delivered, addressed to the person whose name and address is set forth in the demand therefor. The document may also be transmitted by facsimile machine to the person whose name and address is set forth in the demand therefor.
- (4) "Entitled person" means the trustor or mortgagor of, or his or her successor in interest in, the mortgaged or trust property or any part thereof, any beneficiary under a deed of trust, any person having a subordinate lien or encumbrance of record thereon, the escrowholder licensed as an agent pursuant to Division 6 (commencing with Section 17000) of the Financial Code, or the party exempt by virtue of Section 17006 of the Financial Code who is acting as the escrowholder.

(5) "Payoff demand statement" means a written statement, prepared in response to a written demand made by an entitled person or authorized agent, setting forth the amounts required as of the date of preparation by the beneficiary, to fully satisfy all obligations secured by the loan that is the subject of the payoff demand statement. The written statement shall include information reasonably necessary to calculate the payoff amount on a per diem basis for the period of time, not to exceed 30 days, during which the per diem amount is not changed by the terms of the note.

(b) (1) A beneficiary, or his or her authorized agent, shall, within 21 days of the receipt of a written demand by an entitled person or his or her authorized agent, prepare and deliver to the person demanding it a true, correct, and complete copy of the note or other evidence of indebtedness with any modification thereto, and a beneficiary statement.

(2) A request pursuant to this subdivision may be made by an entitled person or his or her authorized agent at any time before, or within two months after, the recording of a notice of default under a mortgage or deed of trust, or may otherwise be made more than 30 days prior to the entry of the decree of foreclosure.

(c) A beneficiary, or his or her authorized agent, shall, on the written demand of an entitled person, or his or her authorized agent, prepare and deliver a payoff demand statement to the person demanding it within 21 days of the receipt of the demand. However, if the loan is subject to a recorded notice of default or a filed complaint commencing a judicial foreclosure, the beneficiary shall have no obligation to prepare and deliver this statement as prescribed unless the written demand is received prior to the first publication of a notice of sale or the notice of the first date of sale established by a court.

(d) (1) A beneficiary statement or payoff demand statement may be relied upon by the entitled person or his or her authorized agent in accordance with its terms, including with respect to the payoff demand statement reliance for the purpose of establishing the amount necessary to pay the obligation in full. If the beneficiary notifies the entitled person or his or her authorized agent of any amendment to the statement, then the amended statement may be relied upon by the entitled person or his or her authorized agent as provided in this subdivision.

(2) If notification of any amendment to the statement is not given in writing, then a written amendment to the statement shall be delivered to the entitled person or his or her authorized agent no later than the next business day after notification.

(3) Upon the dates specified in subparagraphs (A) and (B) any sums that were due and for any reason not included in the statement or amended statement shall continue to be recoverable by the beneficiary as an unsecured obligation of the obligor pursuant to the terms of the note and existing provisions of law.

(A) If the transaction is voluntary, the entitled party or his or her authorized agent may rely upon the statement or amended statement upon the earlier of (i) the close of escrow, (ii) transfer of title, or (iii) recordation of a lien.

(B) If the loan is subject to a recorded notice of default or a filed complaint commencing a judicial foreclosure, the entitled party or his or her authorized agent may rely upon the statement or amended statement upon the acceptance of the last and highest bid at a trustee's sale or a court supervised sale.

(e) The following provisions apply to a demand for either a beneficiary statement or a payoff demand statement:

(1) If an entitled person or his or her authorized agent requests a statement pursuant to this section and does not specify a beneficiary statement or a payoff demand statement the beneficiary shall treat the request as a request for a payoff demand statement.

(2) If the entitled person or the entitled person's authorized agent includes in the written demand a specific request for a copy of the deed of trust or mortgage, it shall be furnished with the written statement at no additional charge.

(3) The beneficiary may, before delivering a statement, require reasonable proof that the person making the demand is, in fact, an entitled person or an authorized agent of an entitled person, in which event the beneficiary shall not be subject to the penalties of this section until 21 days after receipt of the proof herein provided for. A statement in writing signed by the entitled person appointing an authorized agent when delivered personally to the beneficiary or delivered by registered return receipt mail shall constitute reasonable proof as to the identity of an agent. Similar delivery of a policy of title insurance, preliminary report issued by a title company, original or photographic copy of a grant deed or certified copy of letters testamentary, guardianship, or conservatorship shall constitute reasonable proof as to the identity of a successor in interest, provided the person demanding a statement is named as successor in interest in the document.

(4) If a beneficiary for a period of 21 days after receipt of the written demand willfully fails to prepare and deliver the statement, he or she is liable to the entitled person for all damages which he or she may sustain by reason of the refusal and, whether or not actual damages are sustained, he or she shall forfeit to the entitled person the sum of three hundred dollars (\$300). Each failure to prepare and deliver the statement, occurring at a time when, pursuant to this section, the beneficiary is required to prepare and deliver the statement, creates a separate cause of action, but a judgment awarding an entitled person a forfeiture, or damages and forfeiture, for any failure to prepare and deliver a statement bars recovery of damages and forfeiture for any other failure to prepare and deliver a statement, with respect to the same obligation, in compliance with a demand therefor made within six months before or after the demand as to which the award was made. For the purposes of this subdivision, "willfully" means an intentional failure to comply with the requirements of this section without just cause or excuse.

(5) If the beneficiary has more than one branch, office, or other place of business, then the demand shall be made to the branch or office address set forth in the payment billing notice or payment book, and the statement, unless it specifies otherwise, shall be deemed to apply only to the unpaid balance of the single obligation named in the request and secured by the

mortgage or deed of trust which is payable at the branch or office whose address appears on the aforesaid billing notice or payment book.

(6) The beneficiary may make a charge not to exceed thirty dollars (\$30) for furnishing each required statement. The provisions of this paragraph shall not apply to mortgages or deeds of trust insured by the Federal Housing Administrator or guaranteed by the Administrator of Veterans Affairs.

(f) The preparation and delivery of a beneficiary statement or a payoff demand statement pursuant to this section shall not change a date of sale established pursuant to Section 2924g.

(g) This section shall become operative on January 1, 2014.

*(Repealed (in Sec. 5) and added by Stats. 2009, Ch. 43, Sec. 6. Effective January 1, 2010. Section operative January 1, 2014, by its own provisions.)*

#### **2944.**

None of the provisions of this chapter applies to any transaction or security interest governed by the Commercial Code, except to the extent made applicable by reason of an election made by the secured party pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code.

*(Amended by Stats. 1999, Ch. 991, Sec. 7. Effective January 1, 2000. Operative July 1, 2001, by Sec. 75 of Ch. 991.)*

#### **2944.5.**

No lender, mortgagee, or any third party having an interest in real or personal property shall refuse to accept a policy issued by an admitted insurer solely because the policy is issued for a continuous period without a fixed expiration date even though the policy premium is due and payable every six months, provided the lender, mortgagee, or third party is entitled to receive (a) notice of renewal from the insurer within 15 days of receipt of payment on the policy by the insured or (b) notice of cancellation or nonrenewal under the terms and conditions set forth in Sections 678 and 2074.8 of the Insurance Code, whichever is applicable.

*(Added by Stats. 1993, Ch. 522, Sec. 1. Effective January 1, 1994.)*

#### **2944.6.**

(a) Notwithstanding any other provision of law, any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, shall provide the following to the borrower, as a separate statement, in not less than 14-point bold type, prior to entering into any fee agreement with the borrower:

It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms. Nonprofit housing counseling agencies also offer these and other forms of borrower assistance free of charge. A list of nonprofit housing counseling agencies approved by the United States Department of Housing and Urban Development (HUD) is available from your local HUD office or by visiting [www.hud.gov](http://www.hud.gov).

- (b) If loan modification or other mortgage loan forbearance services are offered or negotiated in one of the languages set forth in Section 1632, a translated copy of the statement in subdivision (a) shall be provided to the borrower in that foreign language.
- (c) A violation of this section by a natural person is a public offense punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail for a term not to exceed one year, or by both that fine and imprisonment, or if by a business entity, the violation is punishable by a fine not exceeding fifty thousand dollars (\$50,000). These penalties are cumulative to any other remedies or penalties provided by law.
- (d) This section does not apply to a person, or an agent acting on that person's behalf, offering loan modification or other loan forbearance services for a loan owned or serviced by that person.
- (e) This section shall apply only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units.

*(Added by Stats. 2009, Ch. 630, Sec. 9. Effective October 11, 2009.)*

#### **2944.7.**

- (a) Notwithstanding any other provision of law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:
  - (1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.
  - (2) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation.
  - (3) Take any power of attorney from the borrower for any purpose.
- (b) A violation of this section by a natural person is a public offense punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail for a term not to exceed one year, or by both that fine and imprisonment, or if by a business entity, the violation is punishable by a fine not exceeding fifty thousand dollars (\$50,000). These penalties are cumulative to any other remedies or penalties provided by law.
- (c) Nothing in this section precludes a person, or an agent acting on that person's behalf, who offers loan modification or other loan forbearance

services for a loan owned or serviced by that person, from doing any of the following:

- (1) Collecting principal, interest, or other charges under the terms of a loan, before the loan is modified, including charges to establish a new payment schedule for a nondelinquent loan, after the borrower reduces the unpaid principal balance of that loan for the express purpose of lowering the monthly payment due under the terms of the loan.
- (2) Collecting principal, interest, or other charges under the terms of a loan, after the loan is modified.
- (3) Accepting payment from a federal agency in connection with the federal Making Home Affordable Plan or other federal plan intended to help borrowers refinance or modify their loans or otherwise avoid foreclosures.

(d) This section shall apply only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units.

*(Amended by Stats. 2012, Ch. 569, Sec. 3. Effective January 1, 2013.)*

## **ARTICLE 1.5. Mortgage Foreclosure Consultants [2945 - 2945.11]**

*(Article 1.5 added by Stats. 1979, Ch. 1029.)*

### **2945.**

(a) The Legislature finds and declares that homeowners whose residences are in foreclosure are subject to fraud, deception, harassment, and unfair dealing by foreclosure consultants from the time a Notice of Default is recorded pursuant to Section 2924 until the time surplus funds from any foreclosure sale are distributed to the homeowner or his or her successor. Foreclosure consultants represent that they can assist homeowners who have defaulted on obligations secured by their residences. These foreclosure consultants, however, often charge high fees, the payment of which is often secured by a deed of trust on the residence to be saved, and perform no service or essentially a worthless service. Homeowners, relying on the foreclosure consultants' promises of help, take no other action, are diverted from lawful businesses which could render beneficial services, and often lose their homes, sometimes to the foreclosure consultants who purchase homes at a fraction of their value before the sale. Vulnerable homeowners are increasingly relying on the services of foreclosure consultants who advise the homeowner that the foreclosure consultant can obtain the remaining funds from the foreclosure sale if the homeowner executes an assignment of the surplus, a deed, or a power of attorney in favor of the foreclosure consultant. This results in the homeowner paying an exorbitant fee for a service when the homeowner could have obtained the remaining funds from the trustee's sale from the trustee directly for minimal cost if the homeowner had consulted legal counsel or had sufficient time to receive notices from the trustee pursuant to Section 2924j regarding how and where to make a claim for excess proceeds.

(b) The Legislature further finds and declares that foreclosure consultants have a significant impact on the economy of this state and on the welfare of its citizens.

(c) The intent and purposes of this article are the following:

(1) To require that foreclosure consultant service agreements be expressed in writing; to safeguard the public against deceit and financial hardship; to permit rescission of foreclosure consultation contracts; to prohibit representations that tend to mislead; and to encourage fair dealing in the rendition of foreclosure services.

(2) The provisions of this article shall be liberally construed to effectuate this intent and to achieve these purposes.

*(Amended by Stats. 2004, Ch. 177, Sec. 6. Effective January 1, 2005.)*

#### **2945.1.**

The following definitions apply to this chapter:

(a) "Foreclosure consultant" means any person who makes any solicitation, representation, or offer to any owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will in any manner do any of the following:

(1) Stop or postpone the foreclosure sale.

(2) Obtain any forbearance from any beneficiary or mortgagee.

(3) Assist the owner to exercise the right of reinstatement provided in Section 2924c.

(4) Obtain any extension of the period within which the owner may reinstate his or her obligation.

(5) Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a deed of trust or mortgage on a residence in foreclosure or contained that deed of trust or mortgage.

(6) Assist the owner to obtain a loan or advance of funds.

(7) Avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale.

(8) Save the owner's residence from foreclosure.

(9) Assist the owner in obtaining from the beneficiary, mortgagee, trustee under a power of sale, or counsel for the beneficiary, mortgagee, or trustee, the remaining proceeds from the foreclosure sale of the owner's residence.

(b) A foreclosure consultant does not include any of the following:

(1) A person licensed to practice law in this state when the person renders service in the course of his or her practice as an attorney at law.

(2) A person licensed under Division 3 (commencing with Section 12000) of the Financial Code when the person is acting as a prorater as defined therein.

(3) A person licensed under Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code when the person is acting under the authority of that license, as described in Section 10131 or 10131.1 of the Business and Professions Code.

- (4) A person licensed under Chapter 1 (commencing with Section 5000) of Division 3 of the Business and Professions Code when the person is acting in any capacity for which the person is licensed under those provisions.
- (5) A person or his or her authorized agent acting under the express authority or written approval of the Department of Housing and Urban Development or other department or agency of the United States or this state to provide services.
- (6) A person who holds or is owed an obligation secured by a lien on any residence in foreclosure when the person performs services in connection with this obligation or lien.
- (7) Any person licensed to make loans pursuant to Division 9 (commencing with Section 22000) of the Financial Code when the person is acting under the authority of that license.
- (8) Any person or entity doing business under any law of this state, or of the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, insurance companies, or any person or entity authorized under the laws of this state to conduct a title or escrow business, or a mortgagee which is a United States Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of the above, and any agent or employee of the above while engaged in the business of these persons or entities.
- (9) A person licensed as a residential mortgage lender or servicer pursuant to Division 20 (commencing with Section 50000) of the Financial Code, when acting under the authority of that license.

(c) Notwithstanding subdivision (b), any person who provides services pursuant to paragraph (9) of subdivision (a) is a foreclosure consultant unless he or she is the owner's attorney.

(d) "Person" means any individual, partnership, corporation, limited liability company, association or other group, however organized.

(e) "Service" means and includes, but is not limited to, any of the following:

- (1) Debt, budget, or financial counseling of any type.
- (2) Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure.
- (3) Contacting creditors on behalf of an owner of a residence in foreclosure.
- (4) Arranging or attempting to arrange for an extension of the period within which the owner of a residence in foreclosure may cure his or her default and reinstate his or her obligation pursuant to Section 2924c.
- (5) Arranging or attempting to arrange for any delay or postponement of the time of sale of the residence in foreclosure.
- (6) Advising the filing of any document or assisting in any manner in the preparation of any document for filing with any bankruptcy court.
- (7) Giving any advice, explanation, or instruction to an owner of a residence in foreclosure which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien on the residence in foreclosure, the full satisfaction of that obligation, or the postponement or

avoidance of a sale of a residence in foreclosure pursuant to a power of sale contained in any deed of trust.

(8) Arranging or attempting to arrange for the payment by the beneficiary, mortgagee, trustee under a power of sale, or counsel for the beneficiary, mortgagee, or trustee, of the remaining proceeds to which the owner is entitled from a foreclosure sale of the owner's residence in foreclosure. Arranging or attempting to arrange for the payment shall include any arrangement where the owner transfers or assigns the right to the remaining proceeds of a foreclosure sale to the foreclosure consultant or any person designated by the foreclosure consultant, whether that transfer is effected by agreement, assignment, deed, power of attorney, or assignment of claim.

(9) Arranging or attempting to arrange an audit of any obligation secured by a lien on a residence in foreclosure.

(f) "Residence in foreclosure" means a residence in foreclosure as defined in Section 1695.1.

(g) "Owner" means a property owner as defined in Section 1695.1.

(h) "Contract" means any agreement, or any term thereof, between a foreclosure consultant and an owner for the rendition of any service as defined in subdivision (e).

*(Amended by Stats. 2010, Ch. 596, Sec. 1. Effective January 1, 2011.)*

## **2945.2.**

(a) In addition to any other right under law to rescind a contract, an owner has the right to cancel such a contract until midnight of the fifth business day, as defined in subdivision (e) of Section 1689.5, after the day on which the owner signs a contract that complies with Section 2945.3.

(b) Cancellation occurs when the owner gives written notice of cancellation to the foreclosure consultant by mail at the address specified in the contract, or by facsimile or electronic mail at the number or address identified in the contract.

(c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid. If given by facsimile or electronic mail, notice of cancellation is effective when successfully transmitted.

(d) Notice of cancellation given by the owner need not take the particular form as provided with the contract and, however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

*(Amended by Stats. 2008, Ch. 278, Sec. 2. Effective January 1, 2009. Operative July 1, 2009, by Sec. 7 of Ch. 278.)*

## **2945.3.**

(a) Every contract shall be in writing and shall fully disclose the exact nature of the foreclosure consultant's services and the total amount and terms of compensation.

(b) The following notice, printed in at least 14-point boldface type and completed with the name of the foreclosure consultant, shall be printed immediately above the statement required by subdivision (d):

**"NOTICE REQUIRED BY CALIFORNIA LAW**

or anyone working

(Name)

for him or her CANNOT:

(1) Take any money from you or ask you for money

until has

(Name)

completely finished doing everything he or she said he or she would do; and

(2) Ask you to sign or have you sign any lien, deed of trust, or deed."

(c) The contract shall be written in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract. In addition, the foreclosure consultant shall provide the owner, before the owner signs the contract, with a copy of a completed contract written in any other language used in any communication between the foreclosure consultant and the owner and in any language described in subdivision (b) of Section 1632 and requested by the owner. If English is the language principally used by the foreclosure consultant to describe the foreclosure consultant's services or to negotiate the contract, the foreclosure consultant shall notify the owner orally and in writing before the owner signs the contract that the owner has the right to ask for a completed copy of the contract in a language described in subdivision (b) of Section 1632.

(d) The contract shall be dated and signed by the owner and shall contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in a size equal to at least 10-point boldface type, as follows: "You, the owner, may cancel this transaction at any time prior to midnight of the fifth business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(e) The contract shall contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

(1) The name, mailing address, electronic mail address, and facsimile number of the foreclosure consultant to which the notice of cancellation is to be mailed.

(2) The date the owner signed the contract.

(f) The contract shall be accompanied by a completed form in duplicate, captioned "notice of cancellation," which shall be attached to the contract, shall be easily detachable, and shall contain in type of at least 10-point the following statement written in the same language as used in the contract:

**"NOTICE OF CANCELLATION**

(Enter date of transaction) (Date)

You may cancel this transaction, without any penalty or obligation, within five business days from the above date.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram,

to

(Name of foreclosure consultant)

at

(Address of foreclosure consultant's place of business)

You may also cancel by sending a facsimile (fax) of a signed and dated copy of this cancellation notice, or any other written notice, to the following number:

(Facsimile telephone number of foreclosure consultant's place of business)

You may also cancel by sending an e-mail canceling this transaction to the following e-mail address:

(E-mail address of foreclosure consultant's business)

I hereby cancel this transaction

.

(Date)

"

(Owner's signature)

- (g) The foreclosure consultant shall provide the owner with a copy of the contract and the attached notice of cancellation.
- (h) Until the foreclosure consultant has complied with this section, the owner may cancel the contract.

*(Amended by Stats. 2008, Ch. 278, Sec. 3. Effective January 1, 2009. Operative July 1, 2009, by Sec. 7 of Ch. 278.)*

**2945.4.**

It shall be a violation for a foreclosure consultant to:

- (a) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that he or she would perform.
- (b) Claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason which exceeds 10 percent per annum of the amount of any loan which the foreclosure consultant may make to the owner.
- (c) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation. That security shall be void and unenforceable.
- (d) Receive any consideration from any third party in connection with services rendered to an owner unless that consideration is fully disclosed to the owner.
- (e) Acquire any interest in a residence in foreclosure from an owner with whom the foreclosure consultant has contracted. Any interest acquired in violation of this subdivision shall be voidable, provided that nothing herein shall affect or defeat the title of a bona fide purchaser or encumbrancer for value and without notice of a violation of this article. Knowledge that the property was "residential real property in foreclosure," does not constitute notice of a violation of this article. This subdivision may not be deemed to abrogate any duty of inquiry which exists as to rights or interests of persons in possession of residential real property in foreclosure.
- (f) Take any power of attorney from an owner for any purpose.
- (g) Induce or attempt to induce any owner to enter into a contract which does not comply in all respects with Sections 2945.2 and 2945.3.
- (h) Enter into an agreement at any time to assist the owner in arranging, or arrange for the owner, the release of surplus funds after the trustee's sale is conducted, whether the agreement involves direct payment, assignment, deed, power of attorney, assignment of claim from an owner to the foreclosure consultant or any person designated by the foreclosure consultant, or any other compensation.

*(Amended by Stats. 2008, Ch. 278, Sec. 4. Effective January 1, 2009. Operative July 1, 2009, by Sec. 7 of Ch. 278.)*

**2945.45.**

- (a) Except as provided in subdivision (b) of Section 2945.1, a person shall not take any action specified in subdivision (a) of Section 2945.1 unless the person satisfies the following requirements:

(1) The person registers with, and is issued and maintains a certificate of registration from, the Department of Justice in accordance with the following requirements:

(A) The person shall submit a completed registration form, along with applicable fees, to the department. The registration form shall include the name, address, and telephone number of the foreclosure consultant, all of the names, addresses, telephone numbers, Internet Web sites, and e-mail addresses used or proposed to be used in connection with acting as a foreclosure consultant, a statement that the person has not been convicted of, or pled nolo contendere to, any crime involving fraud, misrepresentation, dishonesty, or a violation of this article, a statement that the person has not been liable under any civil judgment for fraud, misrepresentation, or violations of this article or of Section 17200 or 17500 of the Business and Professions Code, and any additional information required by the department.

(B) The registration form shall be accompanied by a copy of all print or electronic advertising and other promotional material, and scripts of all telephonic or broadcast advertising and other statements used or proposed to be used in connection with acting as a foreclosure consultant.

(C) The registration form shall be accompanied by a copy of the bond required pursuant to paragraph (2).

(D) The person shall file an update of any material change in the information required by subparagraphs (A) and (B) with the department.

(E) The person shall pay any fee set by the department to defray reasonable costs incurred in connection with the department's responsibilities under this article.

(2) The person obtains and maintains in force a surety bond in the amount of one hundred thousand dollars (\$100,000). The bond shall be executed by a corporate surety admitted to do business in this state. The bond shall be made in favor of the State of California for the benefit of homeowners for damages caused by the foreclosure consultant's violation of this article or any other provision of law. A copy of the bond shall be filed with the Secretary of State, with a copy provided to the department pursuant to subparagraph (C) of paragraph (1).

(b) The Foreclosure Consultant Regulation Fund is hereby created in the State Treasury for the deposit of fees submitted to the Department of Justice pursuant to subparagraph (A) of paragraph (1) of subdivision (a) for registration as a foreclosure consultant. Moneys in the fund shall be available, upon appropriation by the Legislature, for the costs of the department incurred in connection with the administration of the registration program.

(c) The Department of Justice may refuse to issue, or may revoke, a certificate of registration because of any misstatement in the registration form, because the foreclosure consultant has been held liable for the violation of any law described in subparagraph (A) of paragraph (1) of subdivision (a), because the foreclosure consultant has failed to maintain the bond required under paragraph (2) of subdivision (a), or because of any violation of this chapter.

(d) A person who violates subdivision (a) shall be punished, for each violation, by a fine of not less than one thousand dollars (\$1,000) and not more than twenty-five thousand dollars (\$25,000), by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. The imposition of a penalty pursuant to this subdivision shall not be affected by the availability of any other relief, remedy, or penalty provided by law, and shall not affect the availability of any such relief, remedy, or penalty.

*(Added by Stats. 2008, Ch. 278, Sec. 5. Effective January 1, 2009. Operative July 1, 2009, by Sec. 7 of Ch. 278.)*

**2945.5.**

Any waiver by an owner of the provisions of this article shall be deemed void and unenforceable as contrary to public policy. Any attempt by a foreclosure consultant to induce an owner to waive his rights shall be deemed a violation of this article.

*(Amended by Stats. 1980, Ch. 676, Sec. 53.)*

**2945.6.**

(a) An owner may bring an action against a foreclosure consultant for any violation of this chapter. Judgment shall be entered for actual damages, reasonable attorneys' fees and costs, and appropriate equitable relief. The court also may, in its discretion, award exemplary damages and shall award exemplary damages equivalent to at least three times the compensation received by the foreclosure consultant in violation of subdivision (a), (b), or (d) of Section 2945.4, and three times the owner's actual damages for any violation of subdivision (c), (e), or (g) of Section 2945.4, in addition to any other award of actual or exemplary damages.

(b) The rights and remedies provided in subdivision (a) are cumulative to, and not a limitation of, any other rights and remedies provided by law. Any action brought pursuant to this section shall be commenced within four years from the date of the alleged violation.

*(Amended by Stats. 1997, Ch. 50, Sec. 5. Effective January 1, 1998.)*

**2945.7.**

Any person who commits any violation described in Section 2945.4 shall be punished by a fine of not more than ten thousand dollars (\$10,000), by imprisonment in the county jail for not more than one year, or pursuant to subdivision (h) of Section 1170 of the Penal Code, or by both that fine and imprisonment for each violation. These penalties are cumulative to any other remedies or penalties provided by law.

*(Amended by Stats. 2011, Ch. 15, Sec. 35. Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)*

**2945.8.**

If any provision of this article or the application thereof to any person or circumstance is held to be unconstitutional, the remainder of the article and the application of such provision to other persons and circumstances shall not be affected thereby.

*(Added by Stats. 1979, Ch. 1029.)*

**2945.9.**

(a) A foreclosure consultant is liable for all damages resulting from any statement made or act committed by the foreclosure consultant's representative in any manner connected with the foreclosure consultant's (1) performance, offer to perform, or contract to perform any of the services described in subdivision (a) of Section 2945.1, (2) receipt of any consideration or property from or on behalf of an owner, or (3) performance of any act prohibited by this article.

(b) "Representative" for the purposes of this section means a person who in any manner solicits, induces, or causes (1) any owner to contract with a foreclosure consultant, (2) any owner to pay any consideration or transfer title to the residence in foreclosure to the foreclosure consultant, or (3) any member of the owner's family or household to induce or cause any owner to pay any consideration or transfer title to the residence in foreclosure to the foreclosure consultant.

*(Amended by Stats. 2006, Ch. 538, Sec. 55. Effective January 1, 2007.)*

**2945.10.**

(a) Any provision in a contract which attempts or purports to limit the liability of the foreclosure consultant under Section 2945.9 shall be void and shall at the option of the owner render the contract void. The foreclosure consultant shall be liable to the owner for all damages proximately caused by that provision. Any provision in a contract which attempts or purports to require arbitration of any dispute arising under this chapter shall be void at the option of the owner only upon grounds as exist for the revocation of any contract.

(b) This section shall apply to any contract entered into on or after January 1, 1991.

*(Added by Stats. 1990, Ch. 1537, Sec. 5.)*

**2945.11.**

(a) Any representative, as defined in subdivision (b) of Section 2945.9, deemed to be the agent or employee or both the agent and the employee of the foreclosure consultant shall be required to provide both of the following:

(1) Written proof to the owner that the representative has a valid current California Real Estate Sales License and that the representative is bonded by an admitted surety insurer in an amount equal to at least twice the fair market value of the real property that is the subject of the contract.

(2) A statement in writing, under penalty of perjury, that the representative has a valid current California Real Estate Sales License, that the representative is bonded by an admitted surety insurer in an amount equal to at least twice the value of the real property that is the subject of the contract and has complied with paragraph (1). The written statement required by this paragraph shall be provided to all parties to the contract prior to the transfer of any interest in the real property that is the subject of the contract.

(b) The failure to comply with subdivision (a) shall, at the option of the owner, render the contract void and the foreclosure consultant shall be liable to the owner for all damages proximately caused by the failure to comply.

*(Amended by Stats. 1996, Ch. 124, Sec. 8. Effective January 1, 1997.)*

## **ARTICLE 2. Mortgage of Real Property [2947 - 2955.5]**

*(Article 2 enacted 1872.)*

### **2947.**

Any interest in real property which is capable of being transferred may be mortgaged.

*(Enacted 1872.)*

### **2948.**

A mortgage of real property may be made in substantially the following form:

This mortgage, made the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, by A B, of \_\_\_\_\_, mortgagor, to C D, of \_\_\_\_\_, mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee [here describe the property], as security for the payment to him of \_\_\_\_\_ dollars, on [or before] the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, with interest thereon [or as security for the payment of an obligation, describing it, etc.]

A B.

*(Enacted 1872.)*

### **2948.5.**

(a) A borrower shall not be required to pay interest on a principal obligation under a promissory note secured by a mortgage or deed of trust on real property improved with between one to four residential dwelling units for any period that meets any of the following requirements:

- (1) Is more than one day prior to the date that the loan proceeds are disbursed from escrow.
- (2) In the event of no escrow, if a request for recording is made in connection with the disbursement, is more than one day prior to the date the loan proceeds are disbursed to the borrower, to a third party on behalf of the borrower, or to the lender to satisfy an existing obligation of the borrower.
- (3) In all other circumstances where there is no escrow and no request for recording, is prior to the date funds are disbursed to the borrower, to a third party on behalf of the borrower, or to the lender to satisfy an existing obligation of the borrower.

(b) Interest may commence to accrue on the business day immediately preceding the day of disbursement, for obligations described in paragraphs (1) and (2) of subdivision (a) if both of the following occur:

- (1) The borrower affirmatively requests, and the lender agrees, that the disbursement will occur on Monday, or a day immediately following a bank holiday.
- (2) The following information is disclosed to the borrower in writing: (A) the amount of additional per diem interest charged to facilitate disbursement on Monday or the day following a holiday, as the case may be, and (B) that it may be possible to avoid the additional per diem interest charge by disbursing the loan proceeds on a day immediately following a business day. This disclosure shall be provided to the borrower and acknowledged by the borrower by signing a copy of the disclosure document prior to placing funds in escrow.

(c) This section does not apply to a loan that is subject to subdivision (c) of Section 10242 of the Business and Professions Code.

*(Amended by Stats. 2003, Ch. 554, Sec. 1. Effective January 1, 2004.)*

**2949.**

- (a) No mortgage or deed of trust on real property containing only a single-family, owner-occupied dwelling may be declared in default, nor may the maturity date of the indebtedness secured thereby be accelerated, solely by reason of the owner further encumbering the real property or any portion thereof, with a junior mortgage or junior deed of trust.
- (b) As used in this section, "single-family, owner-occupied dwelling" means a dwelling which will be owned and occupied by a signatory to the mortgage or deed of trust secured by such dwelling within 90 days of the execution of such mortgage or deed of trust.

*(Added by Stats. 1972, Ch. 698.)*

**2950.**

When a grant of real property purports to be an absolute conveyance, but is intended to be defeasible on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his or her heirs or devisees, or persons having actual notice,

unless an instrument of defeasance, duly executed and acknowledged, shall have been recorded in the office of the county recorder of the county where the property is situated.

*(Amended by Stats. 2013, Ch. 76, Sec. 19. Effective January 1, 2014.)*

**2952.**

Mortgages and deeds of trust of real property may be acknowledged or proved, certified and recorded, in like manner and with like effect, as grants thereof; provided, however, that a mortgage or deed of trust of real property may be recorded and constructive notice of the same and the contents thereof given in the following manner:

Any person may record in the office of the county recorder of any county fictitious mortgages and deeds of trust of real property. Those fictitious mortgages and deeds of trust need not be acknowledged, or proved or certified to be recorded or entitled to record. Those mortgages and deeds of trust shall have noted upon the face thereof that they are fictitious. The county recorder shall index and record fictitious mortgages and deeds of trust in the same manner as other mortgages and deeds of trust are recorded, and shall note on all indices and records of the same that they are fictitious. Thereafter, any of the provisions of any recorded fictitious mortgage or deed of trust may be included for any and all purposes in any mortgage or deed of trust by reference therein to any of those provisions, without setting the same forth in full; provided, the fictitious mortgage or deed of trust is of record in the county in which the mortgage or deed of trust adopting or including by reference any of the provisions thereof is recorded. The reference shall contain a statement, as to each county in which the mortgage or deed of trust containing such a reference is recorded, of the date the fictitious mortgage or deed of trust was recorded, the county recorder's office wherein it is recorded, and the book or volume and the first page of the records in the recorder's office wherein and at which the fictitious mortgage or deed of trust was recorded, and a statement by paragraph numbers or any other method that will definitely identify the same, of the specific provisions of the fictitious mortgage or deed of trust that are being so adopted and included therein. The recording of any mortgage or deed of trust which has included therein any of those provisions by reference as aforesaid shall operate as constructive notice of the whole thereof including the terms, as a part of the written contents of the mortgage or deed of trust, of those provisions so included by reference as though the same were written in full therein. The parties bound or to be bound by provisions so adopted and included by reference shall be bound thereby in the same manner and with like effect for all purposes as though those provisions had been and were set forth in full in any mortgage or deed of trust.

The amendment to this section enacted by the 1957 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

*(Amended by Stats. 2000, Ch. 924, Sec. 1. Effective January 1, 2001.)*

**2953.**

Any express agreement made or entered into by a borrower at the time of or in connection with the making of or renewing of any loan secured by a deed of trust, mortgage or other instrument creating a lien on real property, whereby the borrower agrees to waive the rights, or privileges conferred upon him by Sections 2924, 2924b, 2924c of the Civil Code or by Sections 580a or 726 of the Code of Civil Procedure, shall be void and of no effect. The provisions of this section shall not apply to any deed of trust, mortgage or other liens given to secure the payment of bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations, or is made by a public utility subject to the provisions of the Public Utilities Act.

*(Amended by Stats. 1941, Ch. 599.)*

**2953.1.**

As used in this section:

- (a) "Real property security instrument" shall include any mortgage or trust deed or land contract in or on real property.
- (b) "Subordination clause" shall mean a clause in a real property security instrument whereby the holder of the security interest under such instrument agrees that upon the occurrence of conditions or circumstances specified therein his security interest will become subordinate to or he will execute an agreement subordinating his interest to the lien of another real property security instrument which would otherwise be of lower priority than his lien or security interest.
- (c) "Subordination agreement" shall mean a separate agreement or instrument whereby the holder of the security interest under a real property security instrument agrees that (1) his existing security interest is subordinate to, or (2) upon the occurrence of conditions or circumstances specified in such separate agreement his security interest will become subordinate to, or (3) he will execute an agreement subordinating his interest to, the lien of another real property security instrument which would otherwise be of lower priority than his lien or security interest.

*(Added by Stats. 1963, Ch. 1861.)*

**2953.2.**

Every real property security instrument which contains or has attached a subordination clause shall contain:

- (a) At the top of the real property security instrument there shall appear in at least 10-point bold type, or, if typewritten, in capital letters and underlined, the word "Subordinated" followed by a description of the type of security instrument.
- (b) A notice in at least eight-point bold type, or, if typewritten, in capital letters, shall appear immediately below the legend required by subdivision

(a) of this section reading as follows: "Notice: This (insert description of real property security instrument) contains a subordination clause which may result in your security interest in the property becoming subject to and of lower priority than the lien of some other or later security instrument."

(c) If the terms of the subordination clause allow the obligor on the debt secured by the real property security instrument to obtain a loan, secured by another real property security instrument covering all or any part of the same parcel of real property, the proceeds of which may be used for any purpose or purposes other than defraying the costs for improvement of the land covered by the real property security instrument containing the subordination clause, a notice in at least eight-point bold type, or, if typewritten, in capital letters shall appear directly above the space reserved for the signature of the person whose security interest is to be subordinated, reading as follows: "Notice: This (insert description of real property security instrument) contains a subordination clause which allows the person obligated on your real property security instrument to obtain a loan a portion of which may be expended for other purposes than improvement of the land."

*(Added by Stats. 1963, Ch. 1861.)*

### **2953.3.**

Every subordination agreement shall contain:

(a) At the top of the subordination agreement there shall appear in at least 10-point bold type, or, if typewritten, in capital letters and underlined, the words "Subordination Agreement."

(b) A notice in at least eight-point bold type, or, if typewritten, in capital letters, shall appear immediately below the legend required by subdivision (a) of this section reading as follows:  
"Notice: This subordination agreement ("may result" or "results" as appropriate) in your security interest in the property becoming subject to and of lower priority than the lien of some other or later security instrument."

(c) If the terms of the subordination agreement provide that the obligor on the debt secured by the real property security instrument may either obtain a loan, or obtain an agreement from the holder of the real property security which will allow him to obtain a loan, the proceeds of which may be used for any purpose or purposes other than defraying the actual contract costs for improvement of the land, covered by the real property security instrument which is, or is to become subordinated, a notice in at least eight-point bold type or, if typewritten, in capital letters, shall appear directly above the space reserved for the signature of the person whose security interest is to be subordinated, reading as follows: "Notice: This subordination agreement contains a provision which ("allows" or "may allow" as appropriate) the person obligated on your real property security to obtain a loan a portion of which may be expended for other purposes than improvement of the land."

*(Added by Stats. 1963, Ch. 1861.)*

**2953.4.**

(a) Any subordination clause and any subordination agreement which is executed after the effective date of this act and which does not substantially comply with the provisions of Section 2953.2 or Section 2953.3 shall be voidable upon the election of the person whose security interest is to be subordinated or his successor-in-interest exercised within two years of the date on which the instrument to which his security interest is subordinated is executed; provided that such power of avoidance shall not be exercisable by any person having actual knowledge of the existence and terms of the subordination clause or agreement.

(b) The person whose security interest was to be subordinated or his successor-in-interest shall exercise his election to void the subordination clause or subordination agreement provided by subdivision (a) of this section by recording a notice stating that the provisions of Civil Code Section 2953.2 or Civil Code Section 2953.3 have not been complied with, and that he is the holder of the security instrument which is or was to become subordinated and that he elects to avoid the effect of the subordination clause or subordination agreement.

(c) The provisions of this section may be waived by the subsequent execution and recordation by the holder of the security interest which is or may become subordinated, of a statement that he knows of the existence of the subordination clause or agreement and of its terms and that he waives the provisions of this section and the requirements of Sections 2953.1, 2953.2, and 2953.3.

(Added by Stats. 1963, Ch. 1861.)

**2953.5.**

(a) Sections 2953.1 through 2953.4 shall not apply to any subordination clause or subordination agreement which expressly states that the subordinating loan shall exceed twenty-five thousand dollars (\$25,000).

(b) Sections 2953.1 through 2953.4 shall not apply to any subordination clause or subordination agreement which is executed in connection with a loan which exceeds twenty-five thousand dollars (\$25,000).

(Added by Stats. 1963, Ch. 1861.)

**2954.**

(a) (1) No impound, trust, or other type of account for payment of taxes on the property, insurance premiums, or other purposes relating to the property shall be required as a condition of a real property sale contract or a loan secured by a deed of trust or mortgage on real property containing only a single-family, owner-occupied dwelling, except: (A) where required by a state or federal regulatory authority, (B) where a loan is made, guaranteed, or insured by a state or federal governmental lending or insuring agency, (C) upon a failure of the purchaser or borrower to pay two consecutive tax

installments on the property prior to the delinquency date for such payments, (D) where the original principal amount of such a loan is (i) 90 percent or more of the sale price, if the property involved is sold, or is (ii) 90 percent or more of the appraised value of the property securing the loan, (E) whenever the combined principal amount of all loans secured by the real property exceeds 80 percent of the appraised value of the property securing the loans, (F) where a loan is made in compliance with the requirements for higher priced mortgage loans established in Regulation Z, whether or not the loan is a higher priced mortgage loan, or (G) where a loan is refinanced or modified in connection with a lender's homeownership preservation program or a lender's participation in such a program sponsored by a federal, state, or local government authority or a nonprofit organization. Nothing contained in this section shall preclude establishment of such an account on terms mutually agreeable to the parties to the loan, if, prior to the execution of the loan or sale agreement, the seller or lender has furnished to the purchaser or borrower a statement in writing, which may be set forth in the loan application, to the effect that the establishment of such an account shall not be required as a condition to the execution of the loan or sale agreement, and further, stating whether or not interest will be paid on the funds in such an account.

An impound, trust, or other type of account for the payment of taxes, insurance premiums, or other purposes relating to property established in violation of this subdivision is voidable, at the option of the purchaser or borrower, at any time, but shall not otherwise affect the validity of the loan or sale.

(2) For the purposes of this subdivision, "Regulation Z" means any rule, regulation, or interpretation promulgated by the Board of Governors of the Federal Reserve System and any interpretation or approval issued by an official or employee duly authorized by the board to issue interpretations or approvals dealing with, respectively, consumer leasing or consumer lending, pursuant to the federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.).

(b) Every mortgagee of real property, beneficiary under a deed of trust on real property, or vendor on a real property sale contract upon the written request of the mortgagor, trustor, or vendee shall furnish to the mortgagor, trustor, or vendee for each calendar year within 60 days after the end of the year an itemized accounting of moneys received for interest and principal repayment and received and held in or disbursed from an impound or trust account, if any, for payment of taxes on the property, insurance premiums, or other purposes relating to the property subject to the mortgage, deed of trust, or real property sale contract. The mortgagor, trustor, or vendee shall be entitled to receive one such accounting for each calendar year without charge and shall be entitled to additional similar accountings for one or more months upon written request and on payment in advance of fees as follows:

(1) Fifty cents (\$0.50) per statement when requested in advance on a monthly basis for one or more years.

(2) One dollar (\$1) per statement when requested for only one month.

(3) Five dollars (\$5) if requested for a single cumulative statement giving all the information described above back to the last statement rendered. If the mortgagee, beneficiary, or vendor transmits to the mortgagor, trustor, or vendee a monthly statement or passbook showing moneys received for interest and principal repayment and received and held in and disbursed from an impound or trust account, if any, the mortgagee, beneficiary, or vendor shall be deemed to have complied with this section.

No increase in the monthly rate of payment of a mortgagor, trustor, or vendee on a real property sale contract for impound or trust accounts shall be effective until after the mortgagee, beneficiary, or vendor has furnished the mortgagor, trustor, or vendee with an itemized accounting of the moneys presently held by it in the accounts, and a statement of the new monthly rate of payment, and an explanation of the factors necessitating the increase.

The provisions of this section shall be in addition to the obligations of the parties as stated by Section 2943.

Every person who willfully or repeatedly violates this subdivision shall be subject to punishment by a fine of not less than fifty dollars (\$50) nor more than two hundred dollars (\$200).

(c) As used in this section, "single-family, owner-occupied dwelling" means a dwelling that will be owned and occupied by a signatory to the mortgage or deed of trust secured by that dwelling within 90 days of the execution of the mortgage or deed of trust.

*(Amended by Stats. 2010, Ch. 328, Sec. 30. Effective January 1, 2011.)*

#### **2954.1.**

No lender or person who purchases obligations secured by real property, or any agent of such lender or person, who maintains an impound, trust, or other type of account for the payment of taxes and assessments on real property, insurance premiums, or other purposes relating to such property shall do any of the following:

(a) Require the borrower or vendee to deposit in such account in any month an amount in excess of that which would be permitted in connection with a federally related mortgage loan pursuant to Section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609), as amended.

(b) Require the sums maintained in such account to exceed at any time the amount or amounts reasonably necessary to pay such obligations as they become due. Any sum held in excess of the reasonable amount shall be refunded within 30 days unless the parties mutually agree to the contrary. Such an agreement may be rescinded at any time by any party.

(c) Make payments from the account in a manner so as to cause any policy of insurance to be canceled or so as to cause property taxes or other similar payments to become delinquent.

Nothing contained herein shall prohibit requiring additional amounts to be paid into an impound account in order to recover any deficiency which may exist in the account.

Any person harmed by a violation of this section shall be entitled to sue to recover his or her damages or for injunctive relief; but such violation shall not otherwise affect the validity of the loan or sale. This section applies to all such accounts maintained after the effective date of this act.

*(Amended by Stats. 1983, Ch. 74, Sec. 1.)*

**2954.2.**

(a) Every mortgagee of record of real property containing only a one- to four-family residence, when the mortgage is given to secure payment of the balance of the purchase price of the property or to refinance such a mortgage, shall furnish to the mortgagor within 60 days after the end of each calendar year a written statement showing the amount of moneys received for interest and principal repayment, late charges, moneys received and held in or disbursed from an impound account, if any, for the payment of taxes on the property, insurance premiums, bond assessments, or other purposes relating to the property, and interest credited to the account, if any. The written statement required to be furnished by this section shall be deemed furnished if the mortgagee of record transmits to the mortgagor of record cumulative statements or receipts which, for each calendar year, provide in one of the statements or receipts the information required by this section. The mortgagor, trustor or vendee shall be entitled to receive one such statement for each calendar year without charge and without request. Such statement shall include a notification in 10-point type that additional accountings can be requested by the mortgagor, trustor, or vendee, pursuant to Section 2954.

(b) For the purposes of this section:

(1) "Mortgagee" includes a beneficiary under a deed of trust, a vendor under a real property sale contract, and an organization which services a mortgage or deed of trust by receiving and disbursing payments for the mortgagee or beneficiary.

(2) "Mortgage" includes a first or second mortgage, a first or second deed of trust, and a real property sale contract.

(3) "Impound account" includes a trust or other type of account established for the purposes described in subdivision (a).

(c) The requirements of this section shall be in addition to the requirements of Section 2954.

(d) This section shall become operative on December 31, 1978, and apply to moneys received by a mortgagee on and after January 1, 1978.

*(Added by Stats. 1976, Ch. 774.)*

**2954.4.**

(a) A charge that may be imposed for late payment of an installment due on a loan secured by a mortgage or a deed of trust on real property containing only a single-family, owner-occupied dwelling, shall not exceed either (1) the

equivalent of 6 percent of the installment due that is applicable to payment of principal and interest on the loan, or (2) five dollars (\$5), whichever is greater. A charge may not be imposed more than once for the late payment of the same installment. However, the imposition of a late charge on any late payment does not eliminate or supersede late charges imposed on prior late payments. A payment is not a "late payment" for the purposes of this section until at least 10 days following the due date of the installment.

(b) A late charge may not be imposed on any installment which is paid or tendered in full on or before its due date, or within 10 days thereafter, even though an earlier installment or installments, or any late charge thereon, may not have been paid in full when due. For the purposes of determining whether late charges may be imposed, any payment tendered by the borrower shall be applied by the lender to the most recent installment due.

(c) A late payment charge described in subdivision (a) is valid if it satisfies the requirements of this section and Section 2954.5.

(d) Nothing in this section shall be construed to alter in any way the duty of the borrower to pay any installment then due or to alter the rights of the lender to enforce the payment of the installments.

(e) This section is not applicable to loans made by a credit union subject to Division 5 (commencing with Section 14000) of the Financial Code, by an industrial loan company subject to Division 7 (commencing with Section 18000) of the Financial Code, or by a finance lender subject to Division 9 (commencing with Section 22000) of the Financial Code, and is not applicable to loans made or negotiated by a real estate broker subject to Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code.

(f) As used in this section, "single-family, owner-occupied dwelling" means a dwelling that will be owned and occupied by a signatory to the mortgage or deed of trust secured by the dwelling within 90 days of the execution of the mortgage or deed of trust.

(g) This section applies to loans executed on and after January 1, 1976.  
*(Amended by Stats. 2001, Ch. 159, Sec. 35. Effective January 1, 2002.)*

#### **2954.5.**

(a) Before the first default, delinquency, or late payment charge may be assessed by any lender on a delinquent payment of a loan, other than a loan made pursuant to Division 9 (commencing with Section 22000) of the Financial Code, secured by real property, and before the borrower becomes obligated to pay this charge, the borrower shall either (1) be notified in writing and given at least 10 days from mailing of the notice in which to cure the delinquency, or (2) be informed, by a billing or notice sent for each payment due on the loan, of the date after which this charge will be assessed.

The notice provided in either paragraph (1) or (2) shall contain the amount of the charge or the method by which it is calculated.

(b) If a subsequent payment becomes delinquent the borrower shall be notified in writing, before the late charge is to be imposed, that the charge will be imposed if payment is not received, or the borrower shall be notified at least semiannually of the total amount of late charges imposed during the period covered by the notice.

(c) Notice provided by this section shall be sent to the address specified by the borrower, or, if no address is specified, to the borrower's address as shown in the lender's records.

(d) In case of multiple borrowers obligated on the same loan, a notice mailed to one shall be deemed to comply with this section.

(e) The failure of the lender to comply with the requirements of this section does not excuse or defer the borrower's performance of any obligation incurred in the loan transaction, other than his or her obligation to pay a late payment charge, nor does it impair or defer the right of the lender to enforce any other obligation including the costs and expenses incurred in any enforcement authorized by law.

(f) The provisions of this section as added by Chapter 1430 of the Statutes of 1970 shall only affect loans made on and after January 1, 1971. The amendments to this section made at the 1975-76 Regular Session of the Legislature shall only apply to loans executed on and after January 1, 1976. *(Amended by Stats. 2001, Ch. 159, Sec. 36. Effective January 1, 2002.)*

**2954.6.**

(a) If private mortgage insurance or mortgage guaranty insurance, as defined in subdivision (a) of Section 12640.02 of the Insurance Code, is required as a condition of a loan secured by a deed of trust or mortgage on real property, the lender or person making or arranging the loan shall notify the borrower whether or not the borrower has the right to cancel the insurance. If the borrower has the right to cancel, then the lender or person making or arranging the loan shall notify the borrower in writing of the following:

(1) Any identifying loan or insurance information necessary to permit the borrower to communicate with the insurer or the lender concerning the insurance.

(2) The conditions that are required to be satisfied before the private mortgage insurance or mortgage guaranty insurance may be subject to cancellation, which shall include, but is not limited to, both of the following:

(A) If the condition is a minimum ratio between the remaining principal balance of the loan and the original or current value of the property, that ratio shall be stated.

(B) Information concerning whether or not an appraisal may be necessary.

(3) The procedure the borrower is required to follow to cancel the private mortgage insurance or mortgage guaranty insurance.

(b) The notice required in subdivision (a) shall be given to the borrower no later than 30 days after the close of escrow. The notice shall be set forth in at least 10-point bold type.

(c) With respect to any loan specified in subdivision (a) for which private mortgage insurance or mortgage guaranty insurance is still maintained, the lender or person making, arranging, or servicing the loan shall provide the borrower with a notice containing the same information as specified in subdivision (a) or a clear and conspicuous written statement indicating that (1) the borrower may be able to cancel the private mortgage insurance or mortgage guaranty insurance based upon various factors, including appreciation of the value of the property derived from a current appraisal performed by an appraiser selected by the lender or servicer, and paid for by the borrower, and (2) the borrower may contact the lender or person making, arranging, or servicing the loan at a designated address and telephone number to determine whether the borrower has a right of cancellation and, if so, the conditions and procedure to effect cancellation. The notice or statement required by this subdivision shall be provided in or with each written statement required by Section 2954.2.

(d) The notice required under this section shall be provided without cost to the borrower.

(e) Any person harmed by a violation of this section may obtain injunctive relief and may recover treble damages and reasonable attorney's fees and costs.

(f) This section shall not apply to any mortgage funded with bond proceeds issued under an indenture requiring mortgage insurance for the life of the loan nor to any insurance issued pursuant to Part 4 (commencing with Section 51600) of Division 31 of the Health and Safety Code, or loans insured by the Federal Housing Administration or Veterans Administration.

*(Amended by Stats. 2001, Ch. 137, Sec. 1. Effective January 1, 2002. Operative July 1, 2002, by Sec. 2 of Ch. 137.)*

#### **2954.65.**

Within 30 days after notice of cancellation from the insured, a private mortgage insurer or mortgage guaranty insurer shall, if the policy is cancellable, refund the remaining portion of the unused premium to the person or persons designated by the insured.

*(Added by Stats. 1990, Ch. 1099, Sec. 2.)*

#### **2954.7.**

Except when a statute, regulation, rule, or written guideline promulgated by an institutional third party applicable to notes or evidence of indebtedness secured by a deed of trust or mortgage purchased in whole or in part by an institutional third party specifically prohibits cancellation during the term of the indebtedness, if a borrower so requests and the conditions established by paragraphs (1) to (5), inclusive, of subdivision (a) are met, a borrower may terminate future payments for private mortgage insurance, or mortgage guaranty insurance as defined in subdivision (a) of Section 12640.02 of the Insurance Code, issued as a condition to the extension of credit in the form

of a loan evidenced by a note or other evidence of indebtedness that is secured by a deed of trust or mortgage on the subject real property.

(a) The following conditions shall be satisfied in order for a borrower to be entitled to terminate payments for private mortgage insurance or mortgage guaranty insurance:

(1) The request to terminate future payments for private mortgage insurance or mortgage guaranty insurance shall be in writing.

(2) The origination date of the note or evidence of indebtedness shall be at least two years prior to the date of the request.

(3) The note or evidence of indebtedness shall be for personal, family, household, or purchase money purposes, secured by a deed of trust or mortgage on owner-occupied, one- to four-unit, residential real property.

(4) The unpaid principal balance owed on the secured obligation that is the subject of the private mortgage insurance or mortgage guaranty insurance shall not be more than 75 percent, unless the borrower and lender or servicer of the loan agree in writing upon a higher loan-to-value ratio, of either of the following:

(A) The sale price of the property at the origination date of the note or evidence of indebtedness, provided that the current fair market value of the property is equal to or greater than the original appraised value used at the origination date.

(B) The current fair market value of the property as determined by an appraisal, the cost of which shall be paid for by the borrower. The appraisal shall be ordered and the appraiser shall be selected by the lender or servicer of the loan.

(5) The borrower's monthly installments of principal, interest, and escrow obligations on the encumbrance or encumbrances secured by the real property shall be current at the time the request is made and those installments shall not have been more than 30 days past due over the 24-month period immediately preceding the request, provided further, that no notice of default has been recorded against the security real property pursuant to Section 2924, as a result of a nonmonetary default by the borrower (trustor) during the 24-month period immediately preceding the request.

(b) This section does not apply to any of the following:

(1) A note or evidence of indebtedness secured by a deed of trust or mortgage, or mortgage insurance, executed under the authority of Part 3 (commencing with Section 50900) or Part 4 (commencing with Section 51600) of Division 31 of the Health and Safety Code.

(2) Any note or evidence of indebtedness secured by a deed of trust or mortgage that is funded in whole or in part pursuant to authority granted by statute, regulation, or rule that, as a condition of that funding, prohibits or limits termination of payments for private mortgage insurance or mortgage guaranty insurance during the term of the indebtedness.

(3) Notes or evidence of indebtedness that require private mortgage insurance and were executed prior to January 1, 1991.

(c) If the note secured by the deed of trust or mortgage will be or has been sold in whole or in part to an institutional third party, adherence to the

institutional third party's standards for termination of future payments for private mortgage insurance or mortgage guaranty insurance shall be deemed in compliance with the requirements of this section.

(d) For the purposes of this section, "institutional third party" means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, and other substantially similar institutions, whether public or private, provided the institutions establish and adhere to rules applicable to the right of cancellation of private mortgage insurance or mortgage guaranty insurance, which are the same or substantially the same as those utilized by the above-named institutions.

*(Amended by Stats. 2006, Ch. 538, Sec. 56. Effective January 1, 2007.)*

**2954.8.**

(a) Every financial institution that makes loans upon the security of real property containing only a one- to four-family residence and located in this state or purchases obligations secured by such property and that receives money in advance for payment of taxes and assessments on the property, for insurance, or for other purposes relating to the property, shall pay interest on the amount so held to the borrower. The interest on such amounts shall be at the rate of at least 2 percent simple interest per annum. Such interest shall be credited to the borrower's account annually or upon termination of such account, whichever is earlier.

(b) No financial institution subject to the provisions of this section shall impose any fee or charge in connection with the maintenance or disbursement of money received in advance for the payment of taxes and assessments on real property securing loans made by such financial institution, or for the payment of insurance, or for other purposes relating to such real property, that will result in an interest rate of less than 2 percent per annum being paid on the moneys so received.

(c) For the purposes of this section, "financial institution" means a bank, savings and loan association or credit union chartered under the laws of this state or the United States, or any other person or organization making loans upon the security of real property containing only a one- to four-family residence.

(d) The provisions of this section do not apply to any of the following:

- (1) Loans executed prior to the effective date of this section.
- (2) Moneys which are required by a state or federal regulatory authority to be placed by a financial institution other than a bank in a non-interest-bearing demand trust fund account of a bank.

The amendment of this section made by the 1979-80 Regular Session of the Legislature shall only apply to loans executed on or after January 1, 1980.

*(Amended by Stats. 1979, Ch. 803.)*

**2954.9.**

(a) (1) Except as otherwise provided by statute, where the original principal obligation is a loan for residential property of four units or less, the borrower under any note or evidence of indebtedness secured by a deed of trust or mortgage or any other lien on real property shall be entitled to prepay the whole or any part of the balance due, together with accrued interest, at any time.

(2) Nothing in this subdivision shall prevent a borrower from obligating himself, by an agreement in writing, to pay a prepayment charge.

(3) This subdivision does not apply during any calendar year to a bona fide loan secured by a deed of trust or mortgage given back during such calendar year to the seller by the purchaser on account of the purchase price if the seller does not take back four or more such deeds of trust or mortgages during such calendar year. Nothing in this subdivision shall be construed to prohibit a borrower from making a prepayment by an agreement in writing with the lender.

(b) Except as otherwise provided in Section 10242.6 of the Business and Professions Code, the principal and accrued interest on any loan secured by a mortgage or deed of trust on owner-occupied residential real property containing only four units or less may be prepaid in whole or in part at any time but only a prepayment made within five years of the date of execution of such mortgage or deed of trust may be subject to a prepayment charge and then solely as herein set forth. An amount not exceeding 20 percent of the original principal amount may be prepaid in any 12-month period without penalty. A prepayment charge may be imposed on any amount prepaid in any 12-month period in excess of 20 percent of the original principal amount of the loan which charge shall not exceed an amount equal to the payment of six months' advance interest on the amount prepaid in excess of 20 percent of the original principal amount.

(c) Notwithstanding subdivisions (a) and (b), there shall be no prepayment penalty charged to a borrower under a loan subject to this section if the residential structure securing the loan has been damaged to such an extent by a natural disaster for which a state of emergency is declared by the Governor, pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code, that the residential structure cannot be occupied and the prepayment is causally related thereto.

*(Amended by Stats. 1990, Ch. 663, Sec. 2.)*

#### **2954.10.**

An obligee which accelerates the maturity date of the principal and accrued interest, pursuant to contract, on any loan secured by a mortgage or deed of trust on real property or an estate for years therein, upon the conveyance of any right, title, or interest in that property, may not claim, exact, or collect any charge, fee, or penalty for any prepayment resulting from that acceleration.

The provisions of this section shall not apply to a loan other than a loan secured by residential real property or any interest therein containing four

units or less, in which the obligor has expressly waived, in writing, the right to repay in whole or part without penalty, or has expressly agreed, in writing, to the payment of a penalty for prepayment upon acceleration. For any loan executed on or after January 1, 1984, this waiver or agreement shall be separately signed or initialed by the obligor and its enforcement shall be supported by evidence of a course of conduct by the obligee of individual weight to the consideration in that transaction for the waiver or agreement. *(Amended by Stats. 1989, Ch. 698, Sec. 11.)*

**2954.11.**

(a) As used in this section:

(1) "Open-end credit plan" has the meaning set forth in Regulation Z of the Federal Reserve System (12 C.F.R. 226.2(a)(20)).

(2) "Installment loan" means any loan specified in subdivision (h) extended under an installment loan feature.

(3) "Installment loan feature" means a feature of an open-end credit plan which provides for a separate subaccount of the open-end credit plan pursuant to which the principal of, and interest on, the loan associated with that subaccount are to be repaid in substantially equal installments over a specified period without regard to the amount outstanding under any other feature of the open-end credit plan or the payment schedule with respect to the other feature.

(b) (1) Except as otherwise provided by statute, the borrower under any installment loan shall be entitled to prepay the whole or any part of the installment loan, together with any accrued interest, at any time.

(2) With respect to any installment loan, nothing in this section shall preclude a borrower from becoming obligated, by an agreement in writing, to pay a prepayment charge; but only a prepayment made within five years of the date the installment loan is made may be subject to a prepayment charge and then solely as herein set forth. An amount not exceeding 20 percent of the original principal amount of the installment loan may be prepaid in any one 12-month period without incurring a prepayment charge. A prepayment charge may be imposed on any amount prepaid in any 12-month period in excess of 20 percent of the original principal amount of the installment loan, which charge shall not exceed an amount equal to the payment of six months' advance interest on the amount prepaid in excess of 20 percent of the original principal amount of the installment loan.

(c) For purposes of subdivision (b):

(1) If the deed of trust or mortgage secures repayment of more than one installment loan, each of the installment loans shall be deemed to have been separately made on the date that the proceeds of the installment loan are advanced.

(2) If the outstanding balance of a loan advanced pursuant to an open-end credit plan thereafter becomes subject to an installment loan feature of the credit plan, the loan shall be deemed to have been made when the loan becomes subject to the installment loan feature, whether the feature was

available at the borrower's option under original terms of the open-end credit plan or the feature thereafter became available upon modification of the original terms of the open-end credit plan.

(d) Notwithstanding subdivision (b), no prepayment charge may be imposed with respect to an installment loan subject to this section if any of the following apply:

(1) The residential structure securing the installment loan has been damaged to such an extent by a natural disaster for which a state of emergency is declared by the Governor, pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code, that the residential structure cannot be occupied and the prepayment is causally related thereto.

(2) The prepayment is made in conjunction with a bona fide sale of the real property securing the installment loan.

(3) The lender does not comply with subdivision (e).

(4) The term of the installment loan is for not more than five years and the original principal amount of the installment loan is less than five thousand dollars (\$5,000).

(e) (1) The lender receiving a borrower's obligation to pay a prepayment charge authorized by subdivision (b) shall furnish the borrower with a written disclosure describing the existence of the prepayment charge obligation, the conditions under which the prepayment charge shall be payable, and the method by which the amount of the prepayment charge shall be determined. If subdivision (f) provides the borrower with a right to rescind the installment loan and the related obligation to pay a prepayment charge, the disclosure required by this subdivision shall also inform the borrower of this right to rescind, how and when to exercise the right, and where to mail or deliver a notice of rescission.

(2) The amount of, or the method for determining the amount of, the prepayment charge for an installment loan shall be set forth in the agreement governing the open-end credit plan.

(f) (1) The disclosure required by paragraph (1) of subdivision (e) shall be furnished when or up to 30 days before the borrower signs the agreement or other documents required by the lender for the installment loan, or no earlier than 30 days before nor later than 10 days following the making of the installment loan, if made without the borrower having to sign an agreement or other documentation, such as may be the case if the installment loan may be made on the basis of telephone or other discussions between the lender and the borrower not taking place in person. If the installment loan is made before the borrower has been furnished with the disclosure required by paragraph (1) of subdivision (e), the borrower shall have the right to rescind the installment loan and the related obligation to pay a prepayment charge by personally delivering or mailing notice to that effect to the lender, by first-class mail with postage prepaid, at the lender's location stated in its disclosure concerning the right to rescind within 10 days following the furnishing of the disclosure.

(2) If the disclosure required by paragraph (1) of subdivision (e) is included in the agreement or other document signed by the borrower for the installment loan, the disclosure shall be deemed given at that time. In other

cases, the disclosure shall be deemed furnished when personally delivered to the borrower or three days after it is mailed to the borrower, first-class mail with postage prepaid, at the address to which billing statements for the open-end credit plan are being sent.

(3) The disclosure required by paragraph (1) of subdivision (e) may be separately furnished or may be included in the agreement or other document for the installment loan, provided that a copy of the disclosure that the borrower may retain is furnished to the borrower.

(4) If there is more than one borrower with respect to the open-end credit plan, a disclosure to any one of them pursuant to subdivision (e) shall satisfy the requirements of that subdivision with respect to all of them.

(g) If after an installment loan is made the lender receives the borrower's timely notice of the rescission of the installment loan in accordance with subdivision (f), the balance of the installment loan shall be transferred to the open-end subaccount of the open-end credit plan and the borrower shall be obligated to repay the amount under the same terms and conditions, and subject to the same fees and other charges, as would be applicable had the loan initially been extended pursuant to the open-end credit plan or had the installment loan never been made.

(h) This section applies to any installment loan secured by a deed of trust or mortgage or any other lien on residential property of four units or less and Section 2954.9 does not apply to such installment loans. This section shall not apply to any loan that is subject to Section 10242.6 of the Business and Professions Code.

*(Added by Stats. 1996, Ch. 32, Sec. 1. Effective January 1, 1997.)*

#### **2954.12.**

(a) Notwithstanding Section 2954.7, and except when a statute, regulation, rule, or written guideline promulgated by an institutional third party applicable to notes or evidence of indebtedness secured by a deed of trust or mortgage purchased in whole or in part by an institutional third party specifically prohibits cancellation during the term of the indebtedness, the lender or servicer of a loan evidenced by a note or other evidence of indebtedness that is secured by a deed of trust or mortgage on the subject property may not charge or collect future payments from a borrower for private mortgage insurance or mortgage guaranty insurance as defined in subdivision (a) of Section 12640.02 of the Insurance Code, if all of the following conditions are satisfied:

(1) The loan is for personal, family, household, or purchase money purposes, the subject property is owner-occupied, one-to-four unit residential real property, and the outstanding principal balance of the note or evidence of indebtedness secured by the senior deed of trust or mortgage on the subject property is equal to or less than 75 percent of the lesser of (A) if the loan was made for purchase of the property, the sales price of the property under such purchase; or (B) the appraised value of the property, as determined by the appraisal conducted in connection with the making of the loan.

(2) The borrower's scheduled payment of monthly installments of principal, interest, and escrow obligations is current at the time the right to cancellation of mortgage insurance accrues.

(3) During the 12 months prior to the date upon which the right to cancellation accrues, the borrower has not been assessed more than one late penalty for any scheduled payment and has not made any scheduled payment more than 30 days late.

(4) The loan evidenced by a note or evidence of indebtedness was made or executed on or after January 1, 1998.

(5) No notice of default has been recorded against the real property pursuant to Section 2924, as a result of a nonmonetary default on the extension of credit by the borrower during the last 12 months prior to the accrual of the borrower's right to cancellation.

(b) This section does not apply to any of the following:

(1) A note or evidence of indebtedness secured by a deed of trust or mortgage, or mortgage insurance, executed under the authority of Part 3 (commencing with Section 50900) or Part 4 (commencing with Section 51600) of Division 31 of the Health and Safety Code.

(2) Any note or evidence of indebtedness secured by a deed of trust or mortgage that is funded in whole or in part pursuant to authority granted by statute, regulation, or rule that, as a condition of that funding, prohibits or limits termination of payments for private mortgage insurance or mortgage guaranty insurance during the term of the indebtedness.

(c) If the note secured by the deed of trust or mortgage will be or has been sold in whole or in part to an institutional third party, adherence to the institutional third party's standards for termination of future payments for private mortgage insurance or mortgage guaranty insurance shall be deemed in compliance with the requirements of this section.

(d) For the purposes of this section, "institutional third party" means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association and other substantially similar institutions, whether public or private, provided the institutions establish and adhere to rules applicable to the right of cancellation of private mortgage insurance or mortgage guaranty insurance, which are the same or substantially the same as those utilized by the above-named institutions.

*(Added by Stats. 1997, Ch. 62, Sec. 1. Effective January 1, 1998.)*

**2955.**

(a) Money held by a mortgagee or a beneficiary of a deed of trust on real property in this state, or held by a vendor on a contract of sale of real property in this state, in an impound account for the payment of taxes and assessments or insurance premiums or other purposes on or relating to the property, shall be retained in this state and, if invested, shall be invested only with residents of this state in the case of individuals, or with

partnerships, corporations, or other persons, or the branches or subsidiaries thereof, which are engaged in business within this state.

(b) Notwithstanding subdivision (a), a mortgagee or beneficiary of a deed of trust, secured by a first lien on real property, may deposit money held for the payment of taxes and assessments or insurance premiums or other purposes in an impound account in an out-of-state depository institution insured by the Federal Deposit Insurance Corporation if the mortgagee or beneficiary is any one of the following:

- (1) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Veteran's Administration.
- (2) A bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, commercial finance lender, personal property broker, consumer finance lender, or insurer doing business under the authority of and in accordance with the laws of this state, any other state, or of the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, commercial finance lenders, personal property brokers, consumer finance lenders, or insurers, as evidenced by a license, certificate, or charter issued by the United States or a state, district, territory, or commonwealth of the United States.
- (3) Trustees of a pension, profit-sharing, or welfare fund, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000).
- (4) A corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934, or a wholly owned subsidiary of that corporation.
- (5) A syndication or other combination of any of the entities specified in paragraphs (1) to (4), inclusive, that is organized to purchase the promissory note.
- (6) The California Housing Finance Agency or a local housing finance agency organized under the Health and Safety Code.
- (7) A licensed real estate broker selling all or part of the loan, note, or contract to a lender or purchaser described in paragraphs (1) to (6), inclusive, of this subdivision.
- (8) A licensed residential mortgage lender or servicer when acting under the authority of that license.

(c) A mortgagee or beneficiary of a deed of trust who deposits funds held in trust in an out-of-state depository institution in accordance with subdivision (b) shall make available, in this state, the books, records, and files pertaining to those trust accounts to the appropriate state regulatory department or agency, or pay the reasonable expenses for travel and lodging incurred by the regulatory department or agency in order to conduct an examination at an out-of-state location.

(d) The Attorney General may bring an action on behalf of the people of California to enjoin a violation of subdivision (a) or subdivision (b).

*(Amended (as amended by Stats. 1992, Ch. 1055, Sec. 3) by Stats. 1995, Ch. 564, Sec. 5. Effective January 1, 1996.)*

**2955.1.**

(a) Any lender originating a loan secured by the borrower's separate interest in a condominium project, as defined in Section 4125 or 6542, which requires earthquake insurance or imposes a fee or any other condition in lieu thereof pursuant to an underwriting requirement imposed by an institutional third-party purchaser shall disclose all of the following to the potential borrower:

(1) That the lender or the institutional third party in question requires earthquake insurance or imposes a fee or any other condition in lieu thereof pursuant to an underwriting requirement imposed by an institutional third-party purchaser.

(2) That not all lenders or institutional third parties require earthquake insurance or impose a fee or any other condition in lieu thereof pursuant to an underwriting requirement imposed by an institutional third-party purchaser.

(3) Earthquake insurance may be required on the entire condominium project.

(4) That lenders or institutional third parties may also require that a condominium project maintain, or demonstrate an ability to maintain, financial reserves in the amount of the earthquake insurance deductible.

(b) For the purposes of this section, "institutional third party" means the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, and other substantially similar institutions, whether public or private.

(c) The disclosure required by this section shall be made in writing by the lender as soon as reasonably practicable.

*(Amended (as amended by Stats. 2012, Ch. 181, Sec. 41) by Stats. 2013, Ch. 605, Sec. 18. Effective January 1, 2014.)*

**2955.5.**

(a) No lender shall require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property.

(b) A lender shall disclose to a borrower, in writing, the contents of subdivision (a), as soon as practicable, but before execution of any note or security documents.

(c) Any person harmed by a violation of this section shall be entitled to obtain injunctive relief and may recover damages and reasonable attorney's fees and costs.

(d) A violation of this section does not affect the validity of the loan, note secured by a deed of trust, mortgage, or deed of trust.

(e) For purposes of this section:

(1) "Hazard insurance coverage" means insurance against losses caused by perils which are commonly covered in policies described as a "Homeowner's Policy," "General Property Form," "Guaranteed Replacement Cost Insurance," "Special Building Form," "Standard Fire," "Standard Fire with Extended Coverage," "Standard Fire with Special Form Endorsement," or comparable insurance coverage to protect the real property against loss or damage from fire and other perils covered within the scope of a standard extended coverage endorsement.

(2) "Improvements" means buildings or structures attached to the real property.

(Amended by Stats. 1999, Ch. 412, Sec. 1. Effective January 1, 2000. Operative July 1, 2000, by Sec. 2 of Ch. 412.)

### **ARTICLE 3. Disclosures on Purchase Money Liens on Residential Property [2956 - 2967]**

(Article 3 added by Stats. 1982, Ch. 968, Sec. 1.)

#### **2956.**

In a transaction for the purchase of a dwelling for not more than four families in which there is an arranger of credit, which purchase includes an extension of credit by the vendor, a written disclosure with respect to that credit transaction shall be made, as required by this article:

(a) To the purchaser, by the arranger of credit and the vendor (with respect to information within the knowledge of the vendor).

(b) To the vendor, by the arranger of credit and the purchaser (with respect to information within the knowledge of the purchaser).

If there is more than one arranger of credit and one of those arrangers has obtained the offer by the purchaser to purchase the property, that arranger shall make the disclosure, unless the parties designate another person in writing.

(Added by Stats. 1982, Ch. 968, Sec. 1. Operative July 1, 1983, by Sec. 2 of Ch. 968.)

#### **2957.**

The following definitions shall apply for the purposes of this article:

(a) "Arranger of credit" means:

(1) A person, other than a party to the credit transaction (except as provided in paragraph (2)), who is involved in developing or negotiating credit terms, participates in the completion of the credit documents, and directly or indirectly receives compensation for arrangement of the credit or from any transaction or transfer of the real property which is facilitated by that extension of credit. As used in this paragraph, "arranger of credit" does not

apply to an attorney who is representing one of the parties to the credit transaction.

(2) A party to the transaction who is either a real estate licensee, licensed under provisions of Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code, or is an attorney licensed under Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code if neither party to the transaction is represented by an agent who is a real estate licensee. In any transaction in which disclosure is required solely by the provisions of this paragraph, the obligations of this article shall apply only to a real estate licensee or attorney who is a party to the transaction, and not to any other party.

(3) An arranger of credit does not include a person acting in the capacity as an escrow in the transaction.

(4) Persons described in paragraph (2) who are acting in the capacity as an escrowholder in the transaction shall nevertheless be deemed arrangers of credit where such persons act on behalf of a party to the transaction or an agent of such party in the development or negotiation of credit terms.

Neither the completion of credit documents in accordance with instructions of a party or his or her agent nor the furnishing of information regarding credit terms to a party or his or her agent shall be considered to be the development or negotiation of credit terms.

(b) "Balloon payment note" means a note which provides for a final payment as originally scheduled which is more than twice the amount of any of the immediately preceding six regularly scheduled payments or which contains a call provision; provided, however, that if the call provision is not exercised by the holder of the note, the existence of the unexercised call provision shall not cause the note to be deemed to be a balloon payment note.

(c) "Call provision" means a note contract term that provides the holder of the note with the right to call the note due and payable either after a specified period has elapsed following closing or after a specified date.

(d) "Credit" means the right granted by a vendor to a purchaser to purchase property and to defer payment therefore.

The credit involved must be subject to a finance charge or payable by written agreement in more than four installments, whether providing for payment of principal and interest, or interest only, not including a downpayment.

(e) "Credit documents" are those documents which contain the binding credit terms, and include a note or a contract of sale if the contract spells out terms upon which a vendor agrees to provide financing for a purchaser.

(f) "Purchase" includes acquisition of equitable title by a real property sales contract as defined in Section 2985, or lease with an option to purchase, where the facts demonstrate intent to transfer equitable title.

(g) "Security documents" include a mortgage, deed of trust, real property sales contract as defined in Section 2985, or lease with an option to purchase, where the facts demonstrate an intent to transfer equitable title.

(h) "All inclusive trust deed" is an instrument which secures indebtedness owed by the trustor to the beneficiary, which indebtedness includes a debt or debts owed by that beneficiary to the beneficiary of another security document secured by the same property which is senior in priority.

(Amended by Stats. 1986, Ch. 1360, Sec. 2.)

**2958.**

A disclosure is not required under this article, to a purchaser when that purchaser is entitled to receive, a disclosure pursuant to the Federal Truth-In-Lending Act (15 U.S. Code 1604, as amended), the Real Estate Settlement Procedures Act (12 U.S. Code 2601, as amended), or Section 10240 of the Business and Professions Code; or to a vendor if the vendor is entitled to receive, a disclosure pursuant to Sections 10232.4 and 10232.5 of the Business and Professions Code, or disclosure pursuant to a qualification under Section 25110 of the Corporations Code or disclosure pursuant to regulations of the Department of Corporations granting an exemption from Section 25110 of the Corporations Code.

(Added by Stats. 1982, Ch. 968, Sec. 1. Operative July 1, 1983, by Sec. 2 of Ch. 968.)

**2959.**

The disclosures required by this article shall be made as soon as practicable, but before execution of any note or security documents. If any disclosure is made after the execution of credit documents by the purchaser, such documents shall be contingent on the purchaser's approval of the disclosures prior to execution of the security documents. The disclosure statement shall be receipted for by the purchaser and the vendor. The disclosure shall be signed by the arranger of credit and a copy shall be delivered respectively to the purchaser and the vendor and the arranger shall retain a true copy of the executed statements for three years.

The provisions of this section do not apply to the disclosures required by Section 2966.

(Added by Stats. 1982, Ch. 968, Sec. 1. Operative July 1, 1983, by Sec. 2 of Ch. 968.)

**2960.**

If information disclosed in accordance with this article is subsequently rendered inaccurate as a result of any act, occurrence, or agreement between the parties to the transaction subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom shall not constitute a violation of this article. If, at the time disclosure is to be made, an item of information required to be disclosed is unknown or not available to the vendor, purchaser, or arranger of credit, and the arranger of credit has made a reasonable effort to ascertain it, the disclosure may employ an approximation of the information, provided the approximation is clearly identified as such, is reasonable, is based on the best information available to

the arranger, and is not used for the purpose of circumventing or evading the provisions of this article.

*(Added by Stats. 1982, Ch. 968, Sec. 1. Operative July 1, 1983, by Sec. 2 of Ch. 968.)*

**2961.**

Every disclosure required by this article and every act which is to be performed in making that disclosure shall be made in good faith. For the purposes of this article, "good faith" means honesty in fact in the conduct of the transaction.

*(Added by Stats. 1982, Ch. 968, Sec. 1. Operative July 1, 1983, by Sec. 2 of Ch. 968.)*

**2962.**

Any disclosure made pursuant to this article may be amended in writing by the person making the disclosure, provided that any amendment shall be subject to the provisions of Section 2959.

*(Added by Stats. 1982, Ch. 968, Sec. 1. Operative July 1, 1983, by Sec. 2 of Ch. 968.)*

**2963.**

The disclosures required to both purchaser and vendor by this article are:

- (a) An identification of the note or other credit documents or security documents and of the property which is the security for the transaction.
- (b) A description of the terms of the promissory note or other credit documents or a copy of the note or other credit documents.
- (c) Insofar as available, the principal terms and conditions of each recorded encumbrance which constitutes a lien upon the property which is or will be senior to the financing being arranged, including the original balance, the current balance, the periodic payment, any balloon payment, the interest rate (and any provisions with respect to variations in the interest rate), the maturity date, and whether or not there is any current default in payment on that encumbrance.
- (d) A warning that, if refinancing would be required as a result of lack of full amortization under the terms of any existing or proposed loans, such refinancing might be difficult or impossible in the conventional mortgage marketplace.
- (e) If negative amortization is possible as a result of any variable or adjustable rate financing being arranged, a clear disclosure of this fact and an explanation of its potential effect.
- (f) In the event that the financing involves an all inclusive trust deed, the disclosure shall indicate whether the credit or security documents specify who is liable for payment or responsible for defense in the case of an attempted acceleration by a lender or other obligee under a prior

encumbrance, and whether or not the credit or security documents specify the responsibilities and rights of the parties in the event of a loan prepayment respecting a prior encumbrance which may result in a requirement for refinancing, a prepayment penalty, or a prepayment discount and, if such specification occurs, a recital of the provisions which apply.

(g) If the financing being arranged or any of the financing represented by a prior encumbrance could result in a balloon payment, or in a right in the lender or other obligee under such financing to require a prepayment of the principal balance at or after a stipulated date, or upon the occurrence of a stipulated event, a disclosure of the date and amount of any balloon payment or the amount which would be due upon the exercise of such right by the lender or obligee, and a statement that there is no assurance that new financing or loan extension will be available at the time of such occurrence.

(h) If the financing being arranged involves an all inclusive trust deed or real property sales contract, a disclosure of the party to whom payments will be made and who will be responsible for remitting these funds to payees under prior encumbrances and vendors under this transaction and a warning that, if that person is not a neutral third party, the parties may wish to agree to have a neutral third party designated for these purposes.

(i) A disclosure on the identity, occupation, employment, income, and credit data about the prospective purchaser, as represented to the arranger by the prospective purchaser; or, specifically, that no representation as to the credit-worthiness of the specific prospective purchaser is made by the arranger. A warning should also be expressed that Section 580b of the Code of Civil Procedure may limit any recovery by the vendor to the net proceeds of the sale of the security property in the event of foreclosure.

(j) A statement that loss payee clauses have been added to property insurance protecting the vendor, or that instructions have been or will be directed to the escrowholder, if any, in the transaction or the appropriate insurance carriers for addition of such loss payee clauses, or a statement that, if such provisions have not been made, that the vendor should consider protecting himself or herself by securing such clauses.

(k) A statement that a request for notice of default under Section 2924b has been recorded, or that, if it has not been recorded, the vendor should consider recording a request for notice of default.

(l) That a policy of title insurance has been obtained or will be obtained and be furnished to the vendor and purchaser, insuring the respective interests of the vendor and purchaser, or that the vendor and purchaser individually should consider obtaining a policy of title insurance.

(m) That a tax service has been arranged to report to the vendor whether property taxes have been paid on the property, and who will be responsible for the continued retention and compensation of tax service; or that the vendor should otherwise assure for himself or herself that the taxes on the property have been paid.

(n) A disclosure whether the security documents on the financing being arranged have been or will be recorded pursuant to Section 27280 of the Government Code, or a statement that the security of the vendor may be

subject to intervening liens or judgments which may occur after the note is executed and before any resort to security occurs if the security documents are not recorded.

- (o) If the purchaser is to receive any cash from the proceeds of the transaction, a statement of that fact, the amount, the source of the funds, and the purpose of the disbursement as represented by the purchaser.
- (p) A statement that a request for notice of delinquency under Section 2924e has been made, or that, if it has not been made, the vendor should consider making a request for a notice of delinquency.

*(Amended (as amended by Stats. 1984, Ch. 1331) by Stats. 1990, Ch. 788, Sec. 2.)*

**2964.**

The specification of items for disclosure in this article does not limit or abridge any obligation for disclosure created by any other provision of law or which may exist in order to avoid fraud, misrepresentation, or deceit in the transaction.

*(Added by Stats. 1982, Ch. 968, Sec. 1. Operative July 1, 1983, by Sec. 2 of Ch. 968.)*

**2965.**

The validity of any credit document or of any security document subject to the provisions of this article shall not be invalidated solely because of the failure of any person to comply with this article. However, any person who willfully violates any provision of this article shall be liable in the amount of actual damages suffered by the vendor or purchaser as the proximate result of the violation.

No person may be held liable in any action under this article if it is shown by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

*(Added by Stats. 1982, Ch. 968, Sec. 1. Operative July 1, 1983, by Sec. 2 of Ch. 968.)*

**2966.**

(a) In a transaction regulated by this article, which includes a balloon payment note when the term for repayment is for a period in excess of one year, the holder of the note shall, not less than 90 nor more than 150 days before the balloon payment is due, deliver or mail by first-class mail, with a certificate of mailing obtained from the United States Postal Service, to the trustor, or his or her successor in interest, at the last known address of such person a written notice, to include:

(1) A statement of the name and address of the person to whom the balloon payment is required to be paid.

(2) The date on or before which the balloon payment was or is required to be paid.

(3) The amount of the balloon payment, or if its exact amount is unknown a good faith estimate of the amount thereof, including unpaid principal, interest, and any other charges (assuming payment in full of all scheduled installments coming due between the date of the notice and the date when the balloon payment is due).

(4) A description of the trustor's right, if any, to refinance the balloon payment, including a summary of the actual terms of the refinancing or an estimate or approximation thereof, to the extent known.

If the due date of the balloon payment of a note subject to this subdivision is extended prior to the time notice is otherwise required under this subdivision, this notice requirement shall apply only to the due date as extended (or as subsequently extended).

(b) Failure to provide notice as required by subdivision (a) does not extinguish any obligation of payment by the trustor, except that the due date for any balloon payment shall be the date specified in the note, or 90 days from the date the delivery or mailing of the notice, or the date specified in the notice, whichever date is later. If the operation of this section acts to extend the term of any such note, interest shall continue to accrue for the extended term at the contract rate and payments shall continue to be due at any periodic interval and on any scheduled payment schedule specified in the note and shall be credited to principal or interest under terms of the note.

Default in any extended periodic payment shall be considered a default under terms of the note or security instrument.

(c) Any failure to comply with the provisions of this section 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.

(d) Every note subject to the provisions of this section shall include the following statement:

"This note is subject to Section 2966 of the Civil Code, which provides that the holder of this note shall give written notice to the trustor, or his successor in interest, of prescribed information at least 90 and not more than 150 days before any balloon payment is due."

Failure to include this notice shall not invalidate the note.

(e) The provisions of this section shall apply to any note executed on or after July 1, 1983.

(Amended by Stats. 1986, Ch. 1360, Sec. 3.)

**2967.**

Any action arising under this article may be brought within two years from the date on which the liability arises, except that where any material disclosure under this article has been materially and willfully misrepresented, the action may be brought within two years of discovery of the misrepresentation.

(Added by Stats. 1982, Ch. 968, Sec. 1. Operative July 1, 1983, by Sec. 2 of Ch. 968.)

[http://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CIV&division=3.&title=14.&part=4.&chapter=2a.&article=](http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CIV&division=3.&title=14.&part=4.&chapter=2a.&article=)

## **CIVIL CODE - CIV**

### **DIVISION 3. OBLIGATIONS [1427 - 3272.9]**

*(Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.)*

### **PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3272.9]**

*(Part 4 enacted 1872.)*

#### **TITLE 14. LIEN [2872 - 3081]**

*(Title 14 enacted 1872.)*

### **CHAPTER 2a. Home Equity Loan Disclosure Act [2970 - 2971]**

*(Chapter 2a added by Stats. 1988, Ch. 1315, Sec. 1.)*

#### **2970.**

For purposes of this chapter "home equity loan" means any open end consumer credit plan in which a consensual security interest is created or retained against the consumer's dwelling.

*(Added by Stats. 1988, Ch. 1315, Sec. 1.)*

#### **2971.**

(a) At the time that a customer makes an initial application to a creditor for a home equity loan in person, or within three business days if the customer applies by mail or telephone, the creditor shall provide the applicant with a disclosure in either of the following forms:

(1) The statement: "This home equity loan that you are applying for will be secured by your home and your failure to repay the loan for any reason could cause you to lose your home!"

(2) A statement to the effect that a home equity loan is secured by a lien against the home of the consumer and in the event of any default the consumer risks the loss of the home.

(b) The disclosure required in subdivision (a) shall be made by either of the following means:

(1) A separate and specific document attached to or accompanying the application.

(2) A clear and conspicuous statement on the application.

(c) If a creditor is required by federal statute or regulation to make a substantially similar disclosure to that required by subdivision (a), and the creditor complies with that federal statute or regulation, the creditor shall be deemed to have complied with the requirements of this chapter.

*(Added by Stats. 1988, Ch. 1315, Sec. 1.)*

[http://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CIV&division=3.&title=14.&part=4.&chapter=2b.&article=](http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CIV&division=3.&title=14.&part=4.&chapter=2b.&article=)

## **CIVIL CODE - CIV**

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#### **PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3272.9]**

*(Part 4 enacted 1872. )*

##### **TITLE 14. LIEN [2872 - 3081]**

*(Title 14 enacted 1872. )*

#### **CHAPTER 2b. Automobile Sales Finance Act [2981 - 2984.6]**

*(Chapter 2b added by Stats. 1961, Ch. 1626. )*

##### **2981.**

As used in this chapter, unless the context otherwise requires:

(a) "Conditional sale contract" means:

(1) A contract for the sale of a motor vehicle between a buyer and a seller, with or without accessories, under which possession is delivered to the buyer and either of the following:

(A) The title vests in the buyer thereafter only upon the payment of all or a part of the price, or the performance of any other condition.

(B) A lien on the property is to vest in the seller as security for the payment of part or all of the price, or for the performance of any other condition.

(2) A contract for the bailment of a motor vehicle between a buyer and a seller, with or without accessories, by which the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the vehicle and its accessories, if any, at the time the contract is executed, and by which it is agreed that the bailee or lessee will become, or for no other or for a nominal consideration has the option of becoming, the owner of the vehicle upon full compliance with the terms of the contract.

(b) "Seller" means a person engaged in the business of selling or leasing motor vehicles under conditional sale contracts.

(c) "Buyer" means the person who buys or hires a motor vehicle under a conditional sale contract.

(d) "Person" includes an individual, company, firm, association, partnership, trust, corporation, limited liability company, or other legal entity.

(e) "Cash price" means the amount for which the seller would sell and transfer to the buyer unqualified title to the motor vehicle described in the conditional sale contract, if the property were sold for cash at the seller's place of business on the date the contract is executed, and shall include taxes to the extent imposed on the cash sale and the cash price of accessories or services related to the sale, including, but not limited to, delivery, installation, alterations, modifications, improvements, document preparation fees, a service contract, a vehicle contract cancellation option

agreement, and payment of a prior credit or lease balance remaining on property being traded in.

(f) "Downpayment" means a payment that the buyer pays or agrees to pay to the seller in cash or property value or money's worth at or prior to delivery by the seller to the buyer of the motor vehicle described in the conditional sale contract. The term shall also include the amount of any portion of the downpayment the payment of which is deferred until not later than the due date of the second otherwise scheduled payment, if the amount of the deferred downpayment is not subject to a finance charge. The term does not include any administrative finance charge charged, received or collected by the seller as provided in this chapter.

(g) "Amount financed" means the amount required to be disclosed pursuant to paragraph (8) of subdivision (a) of Section 2982.

(h) "Unpaid balance" means the difference between subdivision (e) and subdivision (f), plus all insurance premiums (except for credit life or disability insurance when the amount thereof is included in the finance charge), which are included in the contract balance, and the total amount paid or to be paid as follows:

(1) To a public officer in connection with the transaction.

(2) For license, certificate of title, and registration fees imposed by law, and the amount of the state fee for issuance of a certificate of compliance or certificate of waiver pursuant to Section 9889.56 of the Business and Professions Code.

(i) "Finance charge" has the meaning set forth for that term in Section 226.4 of Regulation Z. The term shall not include delinquency charges or collection costs and fees as provided by subdivision (k) of Section 2982, extension or deferral agreement charges as provided by Section 2982.3, or amounts for insurance, repairs to or preservation of the motor vehicle, or preservation of the security interest therein advanced by the holder under the terms of the contract.

(j) "Total of payments" means the amount required to be disclosed pursuant to subdivision (h) of Section 226.18 of Regulation Z. The term includes any portion of the downpayment that is deferred until not later than the second otherwise scheduled payment and that is not subject to a finance charge. The term shall not include amounts for which the buyer may later become obligated under the terms of the contract in connection with insurance, repairs to or preservation of the motor vehicle, preservation of the security interest therein, or otherwise.

(k) "Motor vehicle" means a vehicle required to be registered under the Vehicle Code that is bought for use primarily for personal or family purposes, and does not mean any vehicle that is bought for use primarily for business or commercial purposes or a mobilehome, as defined in Section 18008 of the Health and Safety Code that is sold on or after July 1, 1981. "Motor vehicle" does not include any trailer that is sold in conjunction with a vessel and that comes within the definition of "goods" under Section 1802.1.

(l) "Purchase order" means a sales order, car reservation, statement of transaction or any other such instrument used in the conditional sale of a motor vehicle pending execution of a conditional sale contract. The purchase

order shall conform to the disclosure requirements of subdivision (a) of Section 2982 and Section 2984.1, and subdivision (m) of Section 2982 shall apply.

(m) "Regulation Z" means a rule, regulation or interpretation promulgated by the Board of Governors of the Federal Reserve System ("Board") under the federal Truth in Lending Act, as amended (15 U.S.C. 1601, et seq.), and an interpretation or approval issued by an official or employee of the Federal Reserve System duly authorized by the board under the Truth in Lending Act, as amended, to issue the interpretations or approvals.

(n) "Simple-interest basis" means the determination of a finance charge, other than an administrative finance charge, by applying a constant rate to the unpaid balance as it changes from time to time either:

(1) Calculated on the basis of a 365-day year and actual days elapsed (although the seller may, but need not, adjust its calculations to account for leap years); reference in this chapter to the "365-day basis" shall mean this method of determining the finance charge, or

(2) For contracts entered into prior to January 1, 1988, calculated on the basis of a 360-day year consisting of 12 months of 30 days each and on the assumption that all payments will be received by the seller on their respective due dates; reference in this chapter to the "360-day basis" shall mean this method of determining the finance charge.

(o) "Precomputed basis" means the determination of a finance charge by multiplying the original unpaid balance of the contract by a rate and multiplying that product by the number of payment periods elapsing between the date of the contract and the date of the last scheduled payment.

(p) "Service contract" means "vehicle service contract" as defined in subdivision (c) of Section 12800 of the Insurance Code.

(q) "Surface protection product" means the following products installed by the seller after the motor vehicle is sold:

(1) Undercoating.

(2) Rustproofing.

(3) Chemical or film paint sealant or protectant.

(4) Chemical sealant or stain inhibitor for carpet and fabric.

(r) "Theft deterrent device" means the following devices installed by the seller after the motor vehicle is sold:

(1) A vehicle alarm system.

(2) A window etch product.

(3) A body part marking product.

(4) A steering lock.

(5) A pedal or ignition lock.

(6) A fuel or ignition kill switch.

*(Amended by Stats. 2005, Ch. 128, Sec. 2. Effective January 1, 2006. Operative July 1, 2006, by Sec. 12 of Ch. 128.)*

## **2981.5.**

A contract for the bailment or leasing of a motor vehicle, with or without accessories, which establishes the maximum for which a bailee or lessee

could be held liable at the end of the lease or bailment period, or upon an earlier termination, by reference to the value of the vehicle at such time, is not a contract by which the bailee or lessee will become or for no other or for a nominal consideration has the option of becoming the owner of the vehicle, for the purposes of paragraph (2) of subdivision (a) of Section 2981 or any other provision of this chapter.

*(Added by Stats. 1973, Ch. 696.)*

**2981.7.**

All contracts entered into between a buyer and a seller on or after January 1, 1983, shall provide for the calculation of the finance charge contemplated by item (A) of paragraph (1) of subdivision (j) of Section 2982 on the simple-interest basis, if the date on which the final installment is due, according to the original terms of the contract, is more than 62 months after the date of the contract.

*(Amended by Stats. 1983, Ch. 142, Sec. 3.)*

**2981.8.**

No contract shall provide for a finance charge which is determined in part by the precomputed basis and in part by the simple-interest basis except for any finance charge permitted by subdivisions (a) and (c) of Section 2982.8.

*(Amended by Stats. 1980, Ch. 1380, Sec. 20. Effective October 1, 1980.)*

**2981.9.**

Every conditional sale contract subject to this chapter shall be in writing and, if printed, shall be printed in type no smaller than 6-point, and shall contain in a single document all of the agreements of the buyer and seller with respect to the total cost and the terms of payment for the motor vehicle, including any promissory notes or any other evidences of indebtedness. The conditional sale contract or a purchase order shall be signed by the buyer or his or her authorized representative and by the seller or its authorized representative. An exact copy of the contract or purchase order shall be furnished to the buyer by the seller at the time the buyer and the seller have signed it. No motor vehicle shall be delivered pursuant to a contract subject to this chapter until the seller delivers to the buyer a fully executed copy of the conditional sale contract or purchase order and any vehicle purchase proposal and any credit statement which the seller has required or requested the buyer to sign and which he or she has signed during the contract negotiations. The seller shall not obtain the signature of the buyer to a contract when it contains blank spaces to be filled in after it has been signed.

*(Added by Stats. 1981, Ch. 1075, Sec. 13. Operative October 1, 1982, or sooner, by Sec. 25 of Ch. 1075, as amended by Stats. 1982, Ch. 129, Sec. 12.)*

**2982.**

A conditional sale contract subject to this chapter shall contain the disclosures required by Regulation Z, whether or not Regulation Z applies to the transaction. In addition, to the extent applicable, the contract shall contain the other disclosures and notices required by, and shall satisfy the requirements and limitations of, this section. The disclosures required by subdivision (a) may be itemized or subtotalized to a greater extent than as required by that subdivision and shall be made together and in the sequence set forth in that subdivision. All other disclosures and notices may appear in the contract in any location or sequence and may be combined or interspersed with other provisions of the contract.

(a) The contract shall contain the following disclosures, as applicable, which shall be labeled "itemization of the amount financed":

(1) (A) The cash price, exclusive of document processing charges, charges to electronically register or transfer the vehicle, taxes imposed on the sale, pollution control certification fees, prior credit or lease balance on property being traded in, the amount charged for a service contract, the amount charged for a theft deterrent system, the amount charged for a surface protection product, the amount charged for an optional debt cancellation agreement, and the amount charged for a contract cancellation option agreement.

(B) The charge to be retained by the seller for document processing authorized pursuant to Section 4456.5 of the Vehicle Code.

(C) The fee charged by the seller for certifying that the motor vehicle complies with applicable pollution control requirements.

(D) A charge for a theft deterrent device.

(E) A charge for a surface protection product.

(F) The total amount charged by the seller for an electric vehicle charging station, which may include only the charges for the electric vehicle charging station device, any materials and wiring, and any installation services. The total amount shall be labeled "EV Charging Station."

(G) Taxes imposed on the sale.

(H) The charge to electronically register or transfer the vehicle authorized pursuant to Section 4456.5 of the Vehicle Code.

(I) The amount charged for a service contract.

(J) The prior credit or lease balance remaining on property being traded in, as required by paragraph (6). The disclosure required by this subparagraph shall be labeled "prior credit or lease balance (see downpayment and trade-in calculation)."

(K) Any charge for an optional debt cancellation agreement.

(L) Any charge for a used vehicle contract cancellation option agreement.

(M) The total cash price, which is the sum of subparagraphs (A) to (L), inclusive.

(N) The disclosures described in subparagraphs (D), (E), and (L) are not required on contracts involving the sale of a motorcycle, as defined in Section 400 of the Vehicle Code, or on contracts involving the sale of an off-highway motor vehicle that is subject to identification under Section 38010 of the

Vehicle Code, and the amounts of those charges, if any, are not required to be reflected in the total price under subparagraph (M).

(2) Amounts paid to public officials for the following:

(A) Vehicle license fees.

(B) Registration, transfer, and titling fees.

(C) California tire fees imposed pursuant to Section 42885 of the Public Resources Code.

(3) The aggregate amount of premiums agreed, upon execution of the contract, to be paid for policies of insurance included in the contract, excluding the amount of any insurance premium included in the finance charge.

(4) The amount of the state fee for issuance of a certificate of compliance, noncompliance, exemption, or waiver pursuant to any applicable pollution control statute.

(5) A subtotal representing the sum of the amounts described in paragraphs (1) to (4), inclusive.

(6) The amount of the buyer's downpayment itemized to show the following:

(A) The agreed value of the property being traded in.

(B) The prior credit or lease balance, if any, owing on the property being traded in.

(C) The net agreed value of the property being traded in, which is the difference between the amounts disclosed in subparagraphs (A) and (B). If the prior credit or lease balance of the property being traded in exceeds the agreed value of the property, a negative number shall be stated.

(D) The amount of any portion of the downpayment to be deferred until not later than the due date of the second regularly scheduled installment under the contract and that is not subject to a finance charge.

(E) The amount of any manufacturer's rebate applied or to be applied to the downpayment.

(F) The remaining amount paid or to be paid by the buyer as a downpayment.

(G) The total downpayment. If the sum of subparagraphs (C) to (F), inclusive, is zero or more, that sum shall be stated as the total downpayment, and no amount shall be stated as the prior credit or lease balance under subparagraph (I) of paragraph (1). If the sum of subparagraphs (C) to (F), inclusive, is less than zero, then that sum, expressed as a positive number, shall be stated as the prior credit or lease balance under subparagraph (I) of paragraph (1), and zero shall be stated as the total downpayment. The disclosure required by this subparagraph shall be labeled "total downpayment" and shall contain a descriptor indicating that if the total downpayment is a negative number, a zero shall be disclosed as the total downpayment and a reference made that the remainder shall be included in the disclosure required pursuant to subparagraph (I) of paragraph (1).

(7) The amount of any administrative finance charge, labeled "prepaid finance charge."

(8) The difference between the amount described in paragraph (5) and the sum of the amounts described in paragraphs (6) and (7), labeled "amount financed."

(b) No particular terminology is required to disclose the items set forth in subdivision (a) except as expressly provided in that subdivision.

(c) If payment of all or a portion of the downpayment is to be deferred, the deferred payment shall be reflected in the payment schedule disclosed pursuant to Regulation Z.

(d) If the downpayment includes property being traded in, the contract shall contain a brief description of that property.

(e) The contract shall contain the names and addresses of all persons to whom the notice required pursuant to Section 2983.2 and permitted pursuant to Sections 2983.5 and 2984 is to be sent.

(f) (1) If the contract includes a finance charge determined on the precomputed basis, the contract shall identify the method of computing the unearned portion of the finance charge in the event of prepayment in full of the buyer's obligation and contain a statement of the amount or method of computation of any charge that may be deducted from the amount of any unearned finance charge in computing the amount that will be credited to the obligation or refunded to the buyer. The method of computing the unearned portion of the finance charge shall be sufficiently identified with a reference to the actuarial method if the computation will be under that method. The method of computing the unearned portion of the finance charge shall be sufficiently identified with a reference to the Rule of 78's, the sum of the digits, or the sum of the periodic time balances method in all other cases, and those references shall be deemed to be equivalent for disclosure purposes.

(2) If the contract includes a finance charge that is determined on the simple-interest basis but provides for a minimum finance charge in the event of prepayment in full, the contract shall contain a statement of that fact and the amount of the minimum finance charge or its method of calculation.

"Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) (g) (1) If the contract includes a finance charge that is determined on the precomputed basis and provides that the unearned portion of the finance charge to be refunded upon full prepayment of the contract is to be determined by a method other than actuarial, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is \$1 or more. Because of the way the amount of this refund will be figured, the time when you prepay could increase the ultimate cost of credit under this agreement. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(2) If the contract includes a finance charge that is determined on the precomputed basis and provides for the actuarial method for computing the

unearned portion of the finance charge upon prepayment in full, the contract shall contain a notice, in at least 10-point "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is \$1 or more. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

boldface type if the contract is printed, reading as follows:

(3) If the contract includes a finance charge that is determined on the simple-interest basis, the contract shall contain a notice, in at least 10-point "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement." boldface type if the contract is printed, reading as follows:

(h) The contract shall contain a notice in at least 8-point boldface type, acknowledged by the buyer, that reads as follows:

"If you have a complaint concerning this sale, you should try to resolve it with the seller.

Complaints concerning unfair or deceptive practices or methods by the seller may be referred to the city attorney, the district attorney, or an investigator for the Department of Motor Vehicles, or any combination thereof.

After this contract is signed, the seller may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change, and it is an unfair or deceptive practice for the seller to make a unilateral change.

Buyer's Signature"

(i) (1) The contract shall contain an itemization of any insurance included as part of the amount financed disclosed pursuant to paragraph (3) of subdivision (a) and of any insurance included as part of the finance charge. The itemization shall identify the type of insurance coverage and the premium charged therefor, and, if the insurance expires before the date of the last scheduled installment included in the repayment schedule, the term of the insurance shall be stated.

(2) If any charge for insurance, other than for credit life or disability, is included in the contract balance and disbursement of any part thereof is to be made more than one year after the date of the conditional sale contract, any finance charge on the amount to be disbursed after one year shall be computed from the month the disbursement is to be made to the due date of the last installment under the conditional sale contract.

(j) (1) Except for contracts in which the finance charge or a portion of the finance charge is determined by the simple-interest basis and the amount financed disclosed pursuant to paragraph (8) of subdivision (a) is more than two thousand five hundred dollars (\$2,500), the dollar amount of the disclosed finance charge may not exceed the greater of:

(A) (i) One and one-half percent on so much of the unpaid balance as does not exceed two hundred twenty-five dollars (\$225),  $1\frac{1}{6}$  percent on so much of the unpaid balance in excess of two hundred twenty-five dollars (\$225) as does not exceed nine hundred dollars (\$900) and five-sixths of 1 percent on so much of the unpaid balance in excess of nine hundred dollars (\$900) as does not exceed two thousand five hundred dollars (\$2,500).

(ii) One percent of the entire unpaid balance; multiplied in either case by the number of months (computed on the basis of a full month for any fractional month period in excess of 15 days) elapsing between the date of the contract and the due date of the last installment.

(B) If the finance charge is determined by the precomputed basis, twenty-five dollars (\$25).

(C) If the finance charge or a portion thereof is determined by the simple-interest basis:

(i) Twenty-five dollars (\$25) if the unpaid balance does not exceed one thousand dollars (\$1,000).

(ii) Fifty dollars (\$50) if the unpaid balance exceeds one thousand dollars (\$1,000) but does not exceed two thousand dollars (\$2,000).

(iii) Seventy-five dollars (\$75) if the unpaid balance exceeds two thousand dollars (\$2,000).

(2) The holder of the contract shall not charge, collect, or receive a finance charge that exceeds the disclosed finance charge, except to the extent (A) caused by the holder's receipt of one or more payments under a contract that provides for determination of the finance charge or a portion thereof on the 365-day basis at a time or times other than as originally scheduled whether or not the parties enter into an agreement pursuant to Section 2982.3, (B) permitted by paragraph (2), (3), or (4) of subdivision (c) of Section 226.17 of Regulation Z, or (C) permitted by subdivisions (a) and (c) of Section 2982.8.

(3) If the finance charge or a portion thereof is determined by the simple-interest basis and the amount of the unpaid balance exceeds five thousand dollars (\$5,000), the holder of the contract may, in lieu of its right to a minimum finance charge under subparagraph (C) of paragraph (1), charge, receive, or collect on the date of the contract an administrative finance charge not to exceed seventy-five dollars (\$75), provided that the sum of the administrative finance charge and the portion of the finance charge determined by the simple-interest basis shall not exceed the maximum total finance charge permitted by subparagraph (A) of paragraph (1). Any administrative finance charge that is charged, received, or collected by a holder shall be deemed a finance charge earned on the date of the contract.

(4) If a contract provides for unequal or irregular payments, or payments on other than a monthly basis, the maximum finance charge shall be at the

effective rate provided for in paragraph (1), having due regard for the schedule of installments.

(k) The contract may provide that for each installment in default for a period of not less than 10 days the buyer shall pay a delinquency charge in an amount not to exceed in the aggregate 5 percent of the delinquent installment, which amount may be collected only once on any installment regardless of the period during which it remains in default. Payments timely received by the seller under an extension or deferral agreement may not be subject to a delinquency charge unless the charge is permitted by Section 2982.3. The contract may provide for reasonable collection costs and fees in the event of delinquency.

(l) Notwithstanding any provision of a contract to the contrary, the buyer may pay at any time before maturity the entire indebtedness evidenced by the contract without penalty. In the event of prepayment in full:

(1) If the finance charge was determined on the precomputed basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, provided, however, that the buyer shall be entitled to a refund credit in the amount of the unearned portion of the finance charge, except as provided in paragraphs (3) and (4). The amount of the unearned portion of the finance charge shall be at least as great a proportion of the finance charge, including any additional finance charge imposed pursuant to Section 2982.8 or other additional charge imposed because the contract has been extended, deferred, or refinanced, as the sum of the periodic monthly time balances payable more than 15 days after the date of prepayment bears to the sum of all the periodic monthly time balances under the schedule of installments in the contract or, if the contract has been extended, deferred, or refinanced, as so extended, deferred, or refinanced. If the amount of the refund credit is less than one dollar (\$1), no refund credit need be made by the holder. Any refund credit may be made in cash or credited to the outstanding obligations of the buyer under the contract.

(2) If the finance charge or a portion of the finance charge was determined on the simple-interest basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, including any earned finance charges that are unpaid as of that date and, if applicable, the amount provided in paragraph (3), and provided further that in cases where a finance charge is determined on the 360-day basis, the payments received under the contract shall be assumed to have been received on their respective due dates regardless of the actual dates on which the payments were received.

(3) If the minimum finance charge provided by subparagraph (B) or subparagraph (C) of paragraph (1) of subdivision (j), if either is applicable, is greater than the earned finance charge as of the date of prepayment, the holder shall be additionally entitled to the difference.

(4) This subdivision shall not impair the right of the seller or the seller's assignee to receive delinquency charges on delinquent installments and reasonable costs and fees as provided in subdivision (k) or extension or deferral agreement charges as provided in Section 2982.3.

(5) Notwithstanding any provision of a contract to the contrary, if the indebtedness created by any contract is satisfied prior to its maturity through surrender of the motor vehicle, repossession of the motor vehicle, redemption of the motor vehicle after repossession, or any judgment, the outstanding obligation of the buyer shall be determined as provided in paragraph (1) or (2). Notwithstanding, the buyer's outstanding obligation shall be computed by the holder as of the date the holder recovers the value of the motor vehicle through disposition thereof or judgment is entered or, if the holder elects to keep the motor vehicle in satisfaction of the buyer's indebtedness, as of the date the holder takes possession of the motor vehicle.

(m) Notwithstanding any other provision of this chapter to the contrary, any information required to be disclosed in a conditional sale contract under this chapter may be disclosed in any manner, method, or terminology required or permitted under Regulation Z, as in effect at the time that disclosure is made, except that permitted by paragraph (2) of subdivision (c) of Section 226.18 of Regulation Z, if all of the requirements and limitations set forth in subdivision (a) are satisfied. This chapter does not prohibit the disclosure in that contract of additional information required or permitted under Regulation Z, as in effect at the time that disclosure is made.

(n) If the seller imposes a charge for document processing or to electronically register or transfer the vehicle, the contract shall contain a disclosure that the charge is not a governmental fee.

(o) A seller shall not impose an application fee for a transaction governed by this chapter.

(p) The seller or holder may charge and collect a fee not to exceed fifteen dollars (\$15) for the return by a depository institution of a dishonored check, negotiated order of withdrawal, or share draft issued in connection with the contract if the contract so provides or if the contract contains a generalized statement that the buyer may be liable for collection costs incurred in connection with the contract.

(q) The contract shall disclose on its face, by printing the word "new" or "used" within a box outlined in red, that is not smaller than one-half inch high and one-half inch wide, whether the vehicle is sold as a new vehicle, as defined in Section 430 of the Vehicle Code, or as a used vehicle, as defined in Section 665 of the Vehicle Code.

(r) The contract shall contain a notice with a heading in at least 12-point bold type and the text in at least 10-point bold type, circumscribed by a line, immediately above the contract signature line, that reads as follows:

THERE IS NO COOLING-OFF PERIOD UNLESS YOU  
OBTAIN A CONTRACT CANCELLATION OPTION

California law does not provide for a "cooling-off" or other cancellation period for vehicle sales. Therefore, you cannot later cancel this contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign below, you may only cancel this contract with the agreement of the seller or for legal cause, such as fraud. However, California law does require a seller to offer a two-day contract

cancellation option on used vehicles with a purchase price of less than forty thousand dollars (\$40,000), subject to certain statutory conditions. This contract cancellation option requirement does not apply to the sale of a recreational vehicle, a motorcycle, or an off-highway motor vehicle subject to identification under California law. See the vehicle contract cancellation option agreement for details.

(s) This section shall become operative on July 1, 2013.

*(Repealed (in Sec. 1) and added by Stats. 2012, Ch. 675, Sec. 2. Effective September 27, 2012. Section operative July 1, 2013, by its own provisions.)*

**2982.1.**

It shall be unlawful for any seller to induce or attempt to induce any person to enter into a contract subject to this chapter by offering a rebate, discount, commission, or other consideration, contingent upon the happening of a future event, on the condition that the buyer either sells, or gives information or assistance for the purpose of leading to a sale by the seller of, the same or related goods.

*(Added by Stats. 1968, Ch. 452.)*

**2982.2.**

(a) Prior to the execution of a conditional sale contract, the seller shall provide to a buyer, and obtain the buyer's signature on, a written disclosure that sets forth the following information:

(1) (A) A description and the price of each item sold if the contract includes a charge for the item.

(B) Subparagraph (A) applies to each item in the following categories:

(i) A service contract.

(ii) An insurance product.

(iii) A debt cancellation agreement.

(iv) A theft deterrent device.

(v) A surface protection product.

(vi) A vehicle contract cancellation option agreement.

(2) The sum of all of the charges disclosed under subdivision (a), labeled "total."

(3) The amount that would be calculated under the contract as the regular installment payment if charges for the items disclosed pursuant to subdivision (a) are not included in the contract. The amount disclosed pursuant to this subdivision shall be labeled "Installment Payment EXCLUDING Listed Items."

(4) The amount that would be calculated under the contract as the regular installment payment if charges for the items disclosed under subdivision (a) are included in the contract. The amount disclosed pursuant to this subdivision shall be labeled "Installment Payment INCLUDING Listed Items."

(b) The disclosures required under this section shall be in at least 10-point type and shall be contained in a document that is separate from the conditional sale contract and a purchase order.

(c) This section does not apply to the sale of a motorcycle as defined in Section 400 of the Vehicle Code or an off-highway vehicle subject to identification under Section 38010 of the Vehicle Code.

*(Amended by Stats. 2006, Ch. 567, Sec. 3.5. Effective January 1, 2007.)*

**2982.3.**

(a) The holder of a conditional sale contract may, upon agreement with the buyer, extend the scheduled due date or defer the scheduled payment of all or of any part of any installment or installments payable thereunder. No charge shall be made for any such extension or deferment unless the agreement for such extension or deferment is in writing and signed by the parties thereto. However, the seller or holder may, as an adjunct to or to assist in efforts to collect one or more delinquent installments on the contract, advise one or more obligors on the contract, either in writing or orally, that the due date for one or more installments under the contract shall be extended, with no charge being made for such extension other than any applicable late charge provided for in the contract.

(b) Where the contract includes a finance charge determined on the precomputed basis, the holder may charge and contract for the payment of an extension or deferral agreement charge by the buyer and collect and receive the same, but such charge may not exceed an amount equal to 1 percent per month simple interest on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment or installments, or part thereof, would have been payable in the absence of such extension or deferral to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of one dollar (\$1) for the period of extension or deferral may be made in any case where the extension or deferral agreement charge, when computed at such rate, amounts to less than one dollar (\$1).

(c) Where the contract includes a finance charge determined on the simple-interest basis, the holder may charge and contract for the payment of an extension or deferral agreement charge by the buyer and collect and receive the same, but the charge for the extension or deferral agreement may not exceed the lesser of twenty-five dollars (\$25) or 10 percent of the then outstanding principal balance of the contract. Such charge shall be in addition to any finance charges which accrue because such extended or deferred payments are received at a time other than as originally scheduled.

*(Amended by Stats. 1987, Ch. 448, Sec. 2.)*

**2982.5.**

(a) This chapter may not be deemed to affect a loan, or the security therefor, between a purchaser of a motor vehicle and a supervised financial organization, other than the seller of the motor vehicle, all or a portion of which loan is used in connection with the purchase of a motor vehicle. As used in this chapter, "supervised financial organization" means a person organized, chartered, or holding a license or authorization certificate under a law of this state or the United States to make loans and subject to supervision by an official or agency of this state or the United States.

(b) This chapter may not be deemed to prohibit the seller's assisting the buyer in obtaining a loan upon any security from any third party to be used as a part or all of the downpayment or any other payment on a conditional sale contract or purchase order; provided that the conditional sale contract sets forth on its face the amount of the loan, the finance charge, the total thereof, the number of installments scheduled to repay the loan and the amount of each installment, that the buyer may be required to pledge security for the loan, which security shall be mutually agreed to by the buyer and the lender and notice to the buyer in at least 8-point type that he or she is obligated for the installment payments on both the conditional sale contract and the loan. The seller may not provide any security or other guarantee of payment on the loan, nor shall the seller receive any commission or other remuneration for assisting the buyer to obtain the loan. If the buyer obligates himself or herself to purchase, or receives possession of, the motor vehicle prior to securing the loan, and if the buyer upon appropriate application for the loan is unable to secure the loan, on the conditions stated in the conditional sale contract, the conditional sale contract or purchase order shall be deemed rescinded and all consideration thereupon shall be returned by the respective parties without demand.

(c) The proceeds of any loan payable to the seller after the date of the contract but prior to the due date of the second payment otherwise scheduled thereunder may not be subject to a finance charge and the amount thereof shall be disclosed pursuant to subparagraph (D) of paragraph (6) of subdivision (a) of Section 2982.

(d) This chapter may not be deemed to prohibit the seller's assisting the buyer in obtaining a loan from any third party to be used to pay for the full purchase price, or any part thereof, of a motor vehicle, if each of the following provisions applies:

(1) The loan may be upon any security, but except as provided in paragraph (2), the loan may not be secured in whole or in part by a lien on real property. Any lien on real property taken in violation of this section shall be void and unenforceable.

(2) A lien on real property may be taken to secure a loan of seven thousand five hundred dollars (\$7,500) or more used to pay the full purchase price, or any part thereof, of a recreational vehicle, as defined in Section 18010 of the Health and Safety Code, which is not less than 20 feet in length.

(3) The provisions of Sections 2983.2, 2983.3, and 2984.4 shall apply to the loan, but may not authorize the lender or the lender's successor in interest to charge for any costs, fees, or expenses or to obtain any other benefit which the lender is prohibited from charging or obtaining under any regulatory law

applicable to the lender. Notwithstanding this paragraph, the provisions of Sections 2983.2 and 2983.3 may not apply to a loan made by a lender licensed under Division 9 (commencing with Section 22000) or Division 10 (commencing with Section 24000) of the Financial Code.

(4) The lender or the lender's successor in interest shall be subject to all claims and defenses which the buyer could assert against the seller, but liability may not exceed the amount of the loan.

(5) If the buyer becomes obligated to purchase, or receives possession of, the motor vehicle prior to obtaining the loan, the agreement between the buyer and the seller shall set forth on its face the amount of the loan, the finance charge, the total thereof, the number of installments scheduled to repay the loan and the amount of each installment, that the buyer may be required to pledge security for the loan, which security must be mutually agreed to by the buyer and the lender, and notice to the buyer in at least 8-point type that the buyer is obligated for the installment payments on the loan and for any payments which may be due on the agreement between the buyer and the seller. The seller may not provide any security or other guarantee of payment on the loan, and the seller may not receive any commission or other remuneration for assisting the buyer to obtain the loan. If the buyer upon proper application for the loan is unable to obtain the loan, on the condition stated in the agreement between the buyer and the seller, the agreement shall be deemed rescinded and all consideration thereupon shall be returned by the respective parties without demand.

(6) Any waiver by the buyer of the provisions of this section shall be void and unenforceable.

This subdivision does not apply to state or federally chartered banks and savings and loan associations and may not be construed to affect existing law regarding a seller's assisting a buyer to obtain a loan from a bank or savings and loan association or any loan obtained by the buyer from those lenders.

*(Amended by Stats. 2003, Ch. 37, Sec. 2. Effective January 1, 2004.)*

### **2982.7.**

(a) Any payment made by a buyer to a seller pending execution of a conditional sale contract shall be refunded to the buyer in the event the conditional sale contract is not executed.

(b) In the event of breach by the seller of a conditional sale contract or purchase order where the buyer leaves his motor vehicle with the seller as downpayment and such motor vehicle is not returned by the seller to the buyer for whatever reason, the buyer may recover from the seller either the fair market value of the motor vehicle left as a downpayment or its value as stated in the contract or purchase order, whichever is greater. The recovery shall be tendered to the buyer within five business days after the breach.

(c) The remedies of the buyer provided for in subdivision (b) are nonexclusive and cumulative and shall not preclude the buyer from pursuing any other remedy which he may have under any other provision of law.

*(Amended by Stats. 1976, Ch. 1285.)*

**2982.8.**

(a) If a buyer is obligated under the terms of the conditional sale contract to maintain insurance on the vehicle and subsequent to the execution of the contract the buyer either fails to maintain or requests the holder to procure the insurance, any amounts advanced by the holder to procure the insurance may be the subject of finance charges from the date of advance as provided in subdivision (e).

(b) These amounts shall be secured as provided in the contract and permitted by Section 2984.2 if the holder notifies the buyer in writing of his or her option to repay those amounts in any one of the following ways:

(1) Full payment within 10 days from the date of giving or mailing the notice.

(2) Full amortization during the term of the insurance.

(3) If offered by the holder, full amortization after the term of the conditional sale contract, to be payable in installments which do not exceed the average payment allocable to a monthly period under the contract.

(4) If offered by the holder, a combination of the methods described in paragraphs (2) and (3), so that there is some amortization during the term of the insurance, with the remainder of the amortization being accomplished after the term of the conditional sale contract, to be payable in installments which do not exceed the average payment allocable to a monthly period under the original terms of the contract.

(5) If offered by the holder, any other amortization plan.

If the buyer neither pays in full the amounts advanced nor notifies the holder in writing of his or her choice regarding amortization options before the expiration of 10 days from the date of giving or mailing the notice by the holder, the holder may amortize the amounts advanced on a secured basis pursuant to paragraph (2) or, if offered by the holder as an option to the buyer, paragraph (3) or (4).

(c) The written notification described in subdivision (b) shall also set forth the amounts advanced by the holder and, with respect to each amortization plan the amount of the additional finance charge, the sum of the amounts advanced and the additional finance charge, the number of installments required, the amount of each installment and the date for payment of the installments.

In addition, the notice shall contain a statement in contrasting red print in at least 8-point bold type, which reads as follows:

**"WARNING—IT IS YOUR RESPONSIBILITY UNDER CALIFORNIA LAW TO  
OBTAIN LIABILITY INSURANCE OR BE SUBJECT TO PENALTIES FOR  
VIOLATING SECTION 16020 OF THE VEHICLE CODE, WHICH MAY INCLUDE  
LOSS OF LICENSE OR A FINE. THE INSURANCE ACQUIRED BY THE  
LIENHOLDER DOES NOT PROVIDE LIABILITY COVERAGE AND DOES NOT  
SATISFY YOUR RESPONSIBILITY UNDER CALIFORNIA LAW."**

(d) If subsequent to the execution of the contract the holder advances amounts for repairs to or preservation of the motor vehicle or preservation of the holder's security interest therein and such advances are occasioned by the buyer's default under the contract, such advances may be the subject of finance charges from the date of advance as provided in subdivision (e) and

shall be secured as provided in the contract and permitted by Section 2984.2.

(e) The maximum rate of finance charge which may be imposed on amounts advanced by the holder subsequent to the execution of the contract for insurance, repairs to or preservation of the motor vehicle, or preservation of the holder's security interest therein, shall not exceed the annual percentage rate disclosed pursuant to Section 2982.

*(Amended by Stats. 1988, Ch. 1092, Sec. 2.)*

**2982.9.**

In the event a buyer obligates himself to purchase, or receive possession of, a motor vehicle pursuant to a contract or purchase order, and the seller knows that the buyer intends to obtain financing from a third party without the assistance of the seller, and the buyer is unable to obtain such financing, the contract or purchase order shall be deemed rescinded and all consideration thereupon shall be returned by the respective parties without demand.

*(Added by Stats. 1976, Ch. 1285.)*

**2982.10.**

(a) In consideration of the assignment of a conditional sale contract, the seller shall not receive or accept from the assignee any payment or credit based upon any amount collected or received, or to be collected or received, under the contract as a finance charge except to the extent the payment or credit does not exceed the amount that would be calculated in accordance with Regulation Z, whether or not Regulation Z applies to the contract, as the contract's finance charge using, for the purposes of the calculation, an annual percentage rate equal to 2.5 percent for a contract having an original scheduled term of 60 monthly payments or less or 2 percent for a contract having an original scheduled term of more than 60 monthly payments.

(b) Subdivision (a) does not apply in the following circumstances:

(1) An assignment that is with full recourse or under other terms requiring the seller to bear the entire risk of financial performance of the buyer.  
(2) An assignment that is more than six months following the date of the conditional sale contract.

(3) Isolated instances resulting from bona fide errors that would otherwise constitute a violation of subdivision (a) if the seller maintains reasonable procedures to guard against any errors and promptly, upon notice of the error, remits to the assignee any consideration received in excess of that permitted by subdivision (a).

(4) The assignment of a conditional sale contract involving the sale of a motorcycle, as defined in Section 400 of the Vehicle Code.

(5) The assignment of a conditional sale contract involving the sale of an off-highway motor vehicle that is subject to identification under Section 38010 of the Vehicle Code.

*(Added by Stats. 2005, Ch. 128, Sec. 5. Effective January 1, 2006. Operative July 1, 2006, by Sec. 12 of Ch. 128.)*

**2982.11.**

(a) Prior to the execution of a conditional sale contract that includes a charge for an electric vehicle charging station, the seller shall provide the buyer with, and obtain the buyer's signature on, a written disclosure that includes a description and price of each of the following:

(1) The electric vehicle charging station device.

(2) Any materials and wiring.

(3) Any installation services included in the total charge.

(b) The disclosures required under this section shall be in at least 12-point type and shall be contained in a document that is separate from the conditional sale contract or purchase order.

(c) This section shall become operative July 1, 2013.

*(Added by Stats. 2012, Ch. 675, Sec. 3. Effective September 27, 2012. Section operative July 1, 2013, by its own provisions.)*

**2983.**

(a) Except as provided in subdivision (b), if the seller, except as the result of an accidental or bona fide error in computation, violates any provision of Section 2981.9, or of subdivision (a), (j), or (k) of Section 2982, the conditional sale contract shall not be enforceable, except by a bona fide purchaser, assignee, or pledgee for value, or until after the violation is corrected as provided in Section 2984, and, if the violation is not corrected, the buyer may recover from the seller the total amount paid, pursuant to the terms of the contract, by the buyer to the seller or his or her assignee. The amount recoverable for property traded in as all or part of the downpayment shall be equal to the agreed cash value of the property as the value appears on the conditional sale contract or the fair market value of the property as of the time the contract is made, whichever is greater.

(b) A conditional sale contract executed or entered into on or after January 1, 2012, shall not be made unenforceable solely because of a violation by the seller of paragraph (2) or (5) of subdivision (a) of Section 2982. In addition to any other remedies that may be available, the buyer is entitled to any actual damages sustained as a result of a violation of those provisions.

Nothing in this subdivision affects any legal rights, claims, or remedies otherwise available under law.

*(Amended by Stats. 2012, Ch. 162, Sec. 11. Effective January 1, 2013.)*

**2983.1.**

(a) If the seller or holder of a conditional sale contract, except as the result of an accidental or bona fide error of computation, violates any provision of

subdivision (l) of Section 2982, the buyer may recover from the person three times the amount of any finance charge paid to that person.

(b) Except as provided in subdivision (e), if a holder acquires a conditional sale contract without actual knowledge of the violation by the seller of Section 2981.9, or of subdivision (a), (j), or (k) of Section 2982, the contract shall be valid and enforceable by the holder except the buyer is excused from payment of the unpaid finance charge, unless the violation is corrected as provided in Section 2984.

(c) Except as provided in subdivision (e), if a holder acquires a conditional sale contract with knowledge of a violation of Section 2981.9, or of subdivision (a), (j), or (k) of Section 2982, the conditional sale contract shall not be enforceable except by a bona fide purchaser, assignee, or pledgee for value, or unless the violation is corrected as provided in Section 2984, and, if the violation is not corrected, the buyer may recover the amounts specified in Section 2983 from the person to whom payment was made.

(d) When a conditional sale contract is not enforceable under Section 2983 or this section, the buyer may elect to retain the motor vehicle and continue the contract in force, or may, with reasonable diligence, elect to rescind the contract and return the motor vehicle. The value of the motor vehicle returned shall be credited as restitution by the buyer without any decrease that results from the passage of time in the cash price of the motor vehicle as the price appears on the conditional sale contract.

(e) A conditional sale contract executed or entered into on or after January 1, 2012, shall not be made unenforceable, and the buyer shall not be excused from payment of any finance charge, solely because of a violation by the seller of paragraph (2) or (5) of subdivision (a) of Section 2982. In addition to any other remedies that may be available, the buyer is entitled to any actual damages sustained as a result of a violation of those provisions. Nothing in this subdivision affects any legal rights, claims, or remedies otherwise available under law.

*(Amended by Stats. 2011, Ch. 526, Sec. 3. Effective October 7, 2011.)*

### **2983.2.**

(a) Except where the motor vehicle has been seized as described in paragraph (6) of subdivision (b) of Section 2983.3, any provision in any conditional sale contract for the sale of a motor vehicle to the contrary notwithstanding, at least 15 days' written notice of intent to dispose of a repossessed or surrendered motor vehicle shall be given to all persons liable on the contract. The notice shall be personally served or shall be sent by certified mail, return receipt requested, or first-class mail, postage prepaid, directed to the last known address of the persons liable on the contract. If those persons are married to each other, and, according to the most recent records of the seller or holder of the contract, reside at the same address, one notice addressed to both persons at that address is sufficient. Except as otherwise provided in Section 2983.8, those persons shall be liable for any deficiency after disposition of the repossessed or surrendered motor vehicle

only if the notice prescribed by this section is given within 60 days of repossession or surrender and does all of the following:

- (1) Sets forth that those persons shall have a right to redeem the motor vehicle by paying in full the indebtedness evidenced by the contract until the expiration of 15 days from the date of giving or mailing the notice and provides an itemization of the contract balance and of any delinquency, collection or repossession costs and fees and sets forth the computation or estimate of the amount of any credit for unearned finance charges or canceled insurance as of the date of the notice.
- (2) States either that there is a conditional right to reinstate the contract until the expiration of 15 days from the date of giving or mailing the notice and all the conditions precedent thereto or that there is no right of reinstatement and provides a statement of reasons therefor.
- (3) States that, upon written request, the seller or holder shall extend for an additional 10 days the redemption period or, if entitled to the conditional right of reinstatement, both the redemption and reinstatement periods. The seller or holder shall provide the proper form for applying for the extensions with the substance of the form being limited to the extension request, spaces for the requesting party to sign and date the form, and instructions that it must be personally served or sent by certified or registered mail, return receipt requested, to a person or office and address designated by the seller or holder and received before the expiration of the initial redemption and reinstatement periods.
- (4) Discloses the place at which the motor vehicle will be returned to those persons upon redemption or reinstatement.
- (5) Designates the name and address of the person or office to whom payment shall be made.
- (6) States the seller's or holder's intent to dispose of the motor vehicle upon the expiration of 15 days from the date of giving or mailing the notice, or if by mail and either the place of deposit in the mail or the place of address is outside of this state, the period shall be 20 days instead of 15 days, and further, that upon written request to extend the redemption period and any applicable reinstatement period for 10 days, the seller or holder shall without further notice extend the period accordingly.
- (7) Informs those persons that upon written request, the seller or holder will furnish a written accounting regarding the disposition of the motor vehicle as provided for in subdivision (b). The seller or holder shall advise them that this request must be personally served or sent first-class mail, postage prepaid, or certified mail, return receipt requested, to a person or office and address designated by the seller or holder.
- (8) Includes notice, in at least 10-point bold type if the notice is printed, reading as follows: "NOTICE. YOU MAY BE SUBJECT TO SUIT AND LIABILITY IF THE AMOUNT OBTAINED UPON DISPOSITION OF THE VEHICLE IS INSUFFICIENT TO PAY THE CONTRACT BALANCE AND ANY OTHER AMOUNTS DUE."
- (9) Informs those persons that upon the disposition of the motor vehicle, they will be liable for the deficiency balance plus interest at the contract rate, or at the legal rate of interest pursuant to Section 3289 if there is no contract

rate of interest, from the date of disposition of the motor vehicle to the date of entry of judgment.

The notice prescribed by this section shall not affect the discretion of the court to strike out an unconscionable interest rate in the contract for which the notice is required, nor affect the court in its determination of whether the rate is unconscionable.

(b) Unless automatically provided to the buyer within 45 days after the disposition of the motor vehicle, the seller or holder shall provide to any person liable on the contract within 45 days after their written request, if the request is made within one year after the disposition, a written accounting regarding the disposition. The accounting shall itemize:

(1) The gross proceeds of the disposition.

(2) The reasonable and necessary expenses incurred for retaking, holding, preparing for and conducting the sale and to the extent provided for in the agreement and not prohibited by law, reasonable attorney fees and legal expenses incurred by the seller or holder in retaking the motor vehicle from any person not a party to the contract.

(3) The satisfaction of indebtedness secured by any subordinate lien or encumbrance on the motor vehicle if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the seller or holder, the holder of a subordinate lien or encumbrance must seasonably furnish reasonable proof of its interest, and unless it does so, the seller or holder need not comply with its demand.

(c) In all sales which result in a surplus, the seller or holder shall furnish an accounting as provided in subdivision (b) whether or not requested by the buyer. Any surplus shall be returned to the buyer within 45 days after the sale is conducted.

(d) This section shall not apply to a loan made by a lender licensed under Division 9 (commencing with Section 22000) or Division 10 (commencing with Section 24000) of the Financial Code.

*(Amended by Stats. 1996, Ch. 313, Sec. 1. Effective January 1, 1997.)*

### **2983.3.**

(a) In the absence of default in the performance of any of the buyer's obligations under the contract, the seller or holder may not accelerate the maturity of any part or all of the amount due thereunder or repossess the motor vehicle.

(b) If after default by the buyer, the seller or holder repossesses or voluntarily accepts surrender of the motor vehicle, any person liable on the contract shall have a right to reinstate the contract and the seller or holder shall not accelerate the maturity of any part or all of the contract prior to expiration of the right to reinstate, unless the seller or holder reasonably and in good faith determines that any of the following has occurred:

(1) The buyer or any other person liable on the contract by omission or commission intentionally provided false or misleading information of material importance on his or her credit application.

- (2) The buyer, any other person liable on the contract, or any permissive user in possession of the motor vehicle, in order to avoid repossession has concealed the motor vehicle or removed it from the state.
- (3) The buyer, any other person liable on the contract, or any permissive user in possession of the motor vehicle, has committed or threatens to commit acts of destruction, or has failed to take care of the motor vehicle in a reasonable manner, so that the motor vehicle has become substantially impaired in value, or the buyer, any other person liable on the contract, or any nonoccasional permissive user in possession of the motor vehicle has failed to take care of the motor vehicle in a reasonable manner, so that the motor vehicle may become substantially impaired in value.
- (4) The buyer or any other person liable on the contract has committed, attempted to commit, or threatened to commit criminal acts of violence or bodily harm against an agent, employee, or officer of the seller or holder in connection with the seller's or holder's repossession of or attempt to repossess the motor vehicle.
- (5) The buyer has knowingly used the motor vehicle, or has knowingly permitted it to be used, in connection with the commission of a criminal offense, other than an infraction, as a consequence of which the motor vehicle has been seized by a federal, state, or local agency or authority pursuant to federal, state, or local law.
- (6) The motor vehicle has been seized by a federal, state, or local public agency or authority pursuant to (A) Section 1324 of Title 8 of the United States Code or Part 274 of Title 8 of the Code of Federal Regulations, (B) Section 881 of Title 21 of the United States Code or Part 9 of Title 28 of the Code of Federal Regulations, or (C) other federal, state, or local law, including regulations, and, pursuant to that other law, the seizing authority, as a precondition to the return of the motor vehicle to the seller or holder, prohibits the return of the motor vehicle to the buyer or other person liable on the contract or any third person claiming the motor vehicle by or through them or otherwise effects or requires the termination of the property rights in the motor vehicle of the buyer or other person liable on the contract or claimants by or through them.

(c) Exercise of the right to reinstate the contract shall be limited to once in any 12-month period and twice during the term of the contract.

(d) The provisions of this subdivision cover the method by which a contract shall be reinstated with respect to curing events of default which were a ground for repossession or occurred subsequent to repossession:

- (1) Where the default is the result of the buyer's failure to make any payment due under the contract, the buyer or any other person liable on the contract shall make the defaulted payments and pay any applicable delinquency charges.
- (2) Where the default is the result of the buyer's failure to keep and maintain the motor vehicle free from all encumbrances and liens of every kind, the buyer or any other person liable on the contract shall either satisfy all encumbrances and liens or, in the event the seller or holder satisfies the encumbrances and liens, the buyer or any other person liable on the contract

shall reimburse the seller or holder for all reasonable costs and expenses incurred therefor.

(3) Where the default is the result of the buyer's failure to keep and maintain insurance on the motor vehicle, the buyer or any other person liable on the contract shall either obtain the insurance or, in the event the seller or holder has obtained the insurance, the buyer or any other person liable on the contract shall reimburse the seller or holder for premiums paid and all reasonable costs and expenses, including, but not limited to, any finance charge in connection with the premiums permitted by Section 2982.8, incurred therefor.

(4) Where the default is the result of the buyer's failure to perform any other obligation under the contract, unless the seller or holder has made a good faith determination that the default is so substantial as to be incurable, the buyer or any other person liable on the contract shall either cure the default or, if the seller or holder has performed the obligation, reimburse the seller or holder for all reasonable costs and expenses incurred in connection therewith.

(5) Additionally, the buyer or any other person liable on the contract shall, in all cases, reimburse the seller or holder for all reasonable and necessary collection and repossession costs and fees incurred, including attorney's fees and legal expenses expended in retaking and holding the vehicle.

(e) If the seller or holder denies the right to reinstatement under subdivision (b) or paragraph (4) of subdivision (d), the seller or holder shall have the burden of proof that the denial was justified in that it was reasonable and made in good faith. If the seller or holder fails to sustain the burden of proof, the seller or holder shall not be entitled to a deficiency, but it shall not be presumed that the buyer is entitled to damages by reason of the failure of the seller or holder to sustain the burden of proof.

(f) This section shall not apply to a loan made by a lender licensed under Division 9 (commencing with Section 22000) or Division 10 (commencing with Section 24000) of the Financial Code.

*(Amended by Stats. 1987, Ch. 448, Sec. 5.)*

### **2983.35.**

(a) If a creditor has requested a cosigner as a condition of granting credit to any person for the purpose of acquisition of a motor vehicle, the creditor or holder shall give the cosigner a written notice of delinquency prior to the repossession of the motor vehicle if the motor vehicle is to be repossessed pursuant to the motor vehicle credit agreement. The written notice of delinquency shall be personally served or shall be sent by certified mail, return receipt requested, or first-class mail, postage prepaid, directed to the last known address of the cosigner. If the last known address of the buyer and the cosigner are the same, a single written notice of delinquency given to both the borrower and cosigner prior to repossession satisfies the cosigner notice requirement of this section.

(b) A creditor or holder who fails to comply with this section may not recover any costs associated with the repossession of the vehicle from the cosigner.

(c) This section applies to any motor vehicle credit agreement, notwithstanding Section 2982.5.

(d) The following definitions govern the construction of this section.

(1) "Cosigner" means a buyer who executes a motor vehicle credit agreement but does not in fact receive possession of the motor vehicle that is the subject of the agreement.

(2) "Creditor" means a seller or lender described in paragraph (4).

(3) "Holder" means any other person who is entitled to enforce the motor vehicle credit agreement.

(4) "Motor vehicle credit agreement" means any conditional sales contract as defined in Section 2981 and any contract or agreement in which a lender gives value to enable a purchaser to acquire a motor vehicle and in which the lender obtains a security interest in the motor vehicle.

*(Added by Stats. 1996, Ch. 313, Sec. 2. Effective January 1, 1997.)*

**2983.37.**

(a) After a sale of a vehicle under this chapter, a buy-here-pay-here dealer, as defined in Section 241 of the Vehicle Code, shall not do any of the following:

(1) Utilize electronic tracking technology to obtain or record the location of the vehicle, unless the buyer is expressly made aware of the existence and use of the tracking technology by the buy-here-pay-here dealer, the buyer's written consent is obtained, and either subparagraph (A) or (B), or both, apply:

(A) The electronic tracking technology is used solely to verify and maintain the operational status of the tracking technology, to reposess the vehicle, or to locate the vehicle to service the loan or keep the loan current.

(B) The electronic tracking technology is used solely for any optional service to the buyer and both of the following conditions are met:

(i) The agreement to utilize electronic tracking technology for the optional service is separate from the purchase and sale agreement, is not a condition of the purchase or sale agreement for the vehicle, and is executed after the completion of the purchase or sale agreement for the vehicle.

(ii) The buyer is permitted to cancel the optional service at any point in the future without affecting the sale of the vehicle, and is informed of his or her ability to do so.

(2) Disable the vehicle by using starter interrupt technology, unless the buy-here-pay-here dealer complies with all of the following provisions:

(A) Notifies the buyer in writing at the time of the sale that the vehicle is equipped with starter interrupt technology, which the buy-here-pay-here dealer can use to shut down the vehicle remotely.

(B) The written disclosure provided to the buyer at the time of sale informs the buyer that a warning will be provided no less than 48 hours before the use of the starter interrupt technology to shut down the vehicle remotely and

discloses the manner and method in which that warning will occur. The dealer shall offer the buyer a choice of warning methods, including warning from the device, telephone call, email, or text message, if available, provided that the warning method does not violate applicable state or federal law.

(C) In the event of an emergency, the buyer will be provided with the ability to start a dealer-disabled vehicle for no less than 24 hours after the vehicle's initial disablement.

(b) A buy-here-pay-here dealer shall not require the buyer to make payments to the seller in person. For purposes of this subdivision, "payments" does not include the downpayment. If the buyer tenders timely payment of a deferred downpayment, the dealer shall not repossess the vehicle or impose any other charge or penalty on the grounds that the payment was not made in person.

(c) A violation of this section is a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000).

*(Added by Stats. 2012, Ch. 740, Sec. 3. Effective January 1, 2013.)*

#### **2983.4.**

Reasonable attorney's fees and costs shall be awarded to the prevailing party in any action on a contract or purchase order subject to the provisions of this chapter regardless of whether the action is instituted by the seller, holder or buyer. Where the defendant alleges in his answer that he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court, for the plaintiff, the amount so tendered, and the allegation is found to be true, then the defendant is deemed to be a prevailing party within the meaning of this section.

*(Amended by Stats. 1976, Ch. 1285.)*

#### **2983.5.**

(a) An assignee of the seller's right is subject to all equities and defenses of the buyer against the seller, notwithstanding an agreement to the contrary, but the assignee's liability may not exceed the amount of the debt owing to the assignee at the time of the assignment.

(b) The assignee shall have recourse against the seller to the extent of any liability incurred by the assignee pursuant to this section regardless of whether the assignment was with or without recourse.

*(Amended by Stats. 1975, Ch. 66.)*

#### **2983.6.**

Any person who shall willfully violate any provision of this chapter shall be guilty of a misdemeanor.

*(Added by Stats. 1968, Ch. 1338.)*

**2983.7.**

No conditional sale contract shall contain any provision by which:

- (a) The buyer agrees not to assert against the seller a claim or defense arising out of the sale or agrees not to assert against an assignee such a claim or defense.
- (b) A power of attorney is given to confess judgment in this state, or an assignment of wages is given; provided, that nothing herein contained shall prohibit the giving of an assignment of wages contained in a separate instrument pursuant to Section 300 of the Labor Code.
- (c) The buyer waives any right of action against the seller or holder of the contract or other person acting on his behalf, for any illegal act committed in the collection of payments under the contract or in the repossession of the motor vehicle.
- (d) The buyer executes a power of attorney appointing the seller or holder of the contract, or other person acting on his behalf, as the buyer's agent in the collection of payments under the contract or in the repossession of the motor vehicle.
- (e) The buyer relieves the seller from liability for any legal remedies which the buyer may have against the seller under the contract or any separate instrument executed in connection therewith.
- (f) The seller or holder of the contract is given the right to commence action on a contract under the provisions of this chapter in a county other than the county in which the contract was in fact signed by the buyer, the county in which the buyer resides at the commencement of the action, the county in which the buyer resided at the time the contract was entered into, or in the county in which the motor vehicle purchased pursuant to such contract is permanently garaged.

*(Added by Stats. 1968, Ch. 1288.)*

**2983.8.**

Notwithstanding Section 2983.2 or any other provision of law, no deficiency judgment shall lie in any event in any of the following instances:

- (a) After any sale of any mobilehome for which a permit is required pursuant to Section 35780 or 35790 of the Vehicle Code for failure of the purchaser to complete his or her conditional sale contract given to the seller to secure payment of the balance of the purchase price of such mobilehome. The provisions of this subdivision shall not apply in the event there is substantial damage to the mobilehome other than wear and tear from normal usage. This subdivision shall apply only to contracts entered into on or after the effective date of the act that enacted this subdivision and before July 1, 1981.
- (b) After any sale or other disposition of a motor vehicle unless the court has determined that the sale or other disposition was in conformity with the provisions of this chapter and the relevant provisions of Division 9 (commencing with Section 9101) of the Commercial Code, including Sections 9610, 9611, 9612, 9613, 9614, 9615, and 9626. The determination may be

made upon an affidavit unless the court requires a hearing in the particular case.

*(Amended by Stats. 1999, Ch. 991, Sec. 8. Effective January 1, 2000. Operative July 1, 2001, by Sec. 75 of Ch. 991.)*

**2984.**

Any failure to comply with any provision of this chapter (commencing with Section 2981) may be corrected by the holder, provided, however, that a willful violation may not be corrected unless it is a violation appearing on the face of the contract and is corrected within 30 days of the execution of the contract or within 20 days of its sale, assignment or pledge, whichever is later, provided that the 20-day period shall commence with the initial sale, assignment or pledge of the contract, and provided that any other violation appearing on the face of the contract may be corrected only within such time periods. A correction which will increase the amount of the contract balance or the amount of any installment as such amounts appear on the conditional sale contract shall not be effective unless the buyer concurs in writing to the correction. If notified in writing by the buyer of such a failure to comply with any provision of this chapter, the correction shall be made within 10 days of notice. Where any provision of a conditional sale contract fails to comply with any provision of this chapter, the correction shall be made by mailing or delivering a corrected copy of the contract to the buyer. Any amount improperly collected by the holder from the buyer shall be credited against the indebtedness evidenced by the contract or returned to the buyer. A violation corrected as provided in this section shall not be the basis of any recovery by the buyer or affect the enforceability of the contract by the holder and shall not be deemed to be a substantive change in the agreement of the parties.

*(Amended by Stats. 1963, Ch. 838.)*

**2984.1.**

Every conditional sale contract shall contain a statement in contrasting red print in at least 8-point bold type which shall satisfy the requirements of Section 5604 of the Vehicle Code and be signed or initialed by the buyer, as follows:

THE MINIMUM PUBLIC LIABILITY INSURANCE LIMITS PROVIDED IN LAW  
MUST BE MET BY EVERY PERSON WHO PURCHASES A VEHICLE. IF YOU ARE  
UNSURE WHETHER OR NOT YOUR CURRENT INSURANCE POLICY WILL  
COVER YOUR NEWLY ACQUIRED VEHICLE IN THE EVENT OF AN ACCIDENT,  
YOU SHOULD CONTACT YOUR INSURANCE AGENT.

**WARNING:**

YOUR PRESENT POLICY MAY NOT COVER COLLISION DAMAGE OR MAY NOT  
PROVIDE FOR FULL REPLACEMENT COSTS FOR THE VEHICLE BEING

PURCHASED. IF YOU DO NOT HAVE FULL COVERAGE, SUPPLEMENTAL COVERAGE FOR COLLISION DAMAGE MAY BE AVAILABLE TO YOU THROUGH YOUR INSURANCE AGENT OR THROUGH THE SELLING DEALER. HOWEVER, UNLESS OTHERWISE SPECIFIED, THE COVERAGE YOU OBTAIN THROUGH THE DEALER PROTECTS ONLY THE DEALER, USUALLY UP TO THE AMOUNT OF THE UNPAID BALANCE REMAINING AFTER THE VEHICLE HAS BEEN REPOSESSED AND SOLD.

FOR ADVICE ON FULL COVERAGE THAT WILL PROTECT YOU IN THE EVENT OF LOSS OR DAMAGE TO YOUR VEHICLE, YOU SHOULD CONTACT YOUR INSURANCE AGENT.

THE BUYER SHALL SIGN TO ACKNOWLEDGE THAT HE/SHE UNDERSTANDS THESE PUBLIC LIABILITY TERMS AND CONDITIONS.

s/s \_\_\_\_\_.

No person shall print for use as a sales contract form, any form which does not comply with this section.

*(Amended by Stats. 1988, Ch. 177, Sec. 1.)*

**2984.2.**

- (a) No conditional sale contract, and no agreement between a seller and a buyer made in connection with a conditional sale contract, may provide for the inclusion of title to or a lien upon any property other than the following:
  - (1) The motor vehicle which is the subject matter of the sale, including any replacement of that motor vehicle, or accessories, accessions, or replacement of those accessories or accessions, or proceeds thereof.
  - (2) The proceeds of any insurance policies covering the motor vehicle which are required by the seller or the returned premiums of any such policies if the premiums for such policies are included in the amount financed.
  - (3) The proceeds of any credit insurance policies which the buyer purchases in connection with the motor vehicle conditional sale contract or the returned premiums of any such policies if the premiums for such policies are included in the amount financed.
  - (4) The proceeds and returned price of any service contract if the cost of such contract is included in the amount financed.
- (b) Subdivision (a) shall not apply to any agreement which meets the requirements of subdivision (b) of Section 2982.5 and otherwise complies with this chapter, nor, with respect to a mobilehome sold prior to July 1, 1981, to any agreement whereby a security interest is taken in real property on which the mobilehome is installed on a foundation system pursuant to Section 18551 of the Health and Safety Code.
- (c) A provision in violation of this section shall be void.

*(Amended by Stats. 1987, Ch. 1043, Sec. 1.)*

**2984.3.**

Any acknowledgment by the buyer of delivery of a copy of a conditional sale contract or purchase order and any vehicle purchase proposal and any credit statement that the seller has required or requested the buyer to sign, and that he or she has signed, during the contract negotiations, shall be printed or written in size equal to at least 10-point boldface type and, if contained in the contract, shall appear directly above the space reserved for the buyer's signature or adjacent to any other notices required by law to be placed immediately above the signature space. The buyer's written acknowledgment, conforming to the requirements of this section, of delivery of a completely filled-in copy of the contract, and a copy of the other documents shall be a rebuttable presumption of delivery in any action or proceeding by or against a third party without knowledge to the contrary when he or she acquired his or her interest in the contract. If the third party furnishes the buyer a copy of the documents, or a notice containing the disclosures identified in subdivision (a) of Section 2982, and stating that the buyer shall notify the third party in writing within 30 days if a copy of the documents was not furnished, and that notification is not given, it shall be conclusively presumed in favor of the third party that copies of the documents were furnished as required by this chapter.

*(Amended by Stats. 1994, Ch. 146, Sec. 15. Effective January 1, 1995.)*

**2984.4.**

(a) An action on a contract or purchase order under this chapter shall be tried in the superior court in the county where the contract or purchase order was in fact signed by the buyer, where the buyer resided at the time the contract or purchase order was entered into, where the buyer resides at the commencement of the action, or where the motor vehicle purchased pursuant to the contract or purchase order is permanently garaged. In any action involving multiple claims, or causes of action, venue shall lie in those courts if there is at least one claim or cause of action arising from a contract subject to this chapter.

(b) In the superior court designated as the proper court in subdivision (a), the proper court location for trial of an action under this chapter is the location where the court tries that type of action that is nearest or most accessible to where the contract, conditional sale contract, or purchase order was in fact signed by the buyer, where the buyer resided at the time the contract, conditional sale contract, or purchase order was entered into, where the buyer resides at the commencement of the action, or where the motor vehicle purchased pursuant to the contract is permanently garaged. Otherwise, any location of the superior court designated as the proper superior court in subdivision (a) is the proper court location for the trial of the action. The court may specify by local rule the nearest or most accessible court location where the court tries that type of case.

(c) In any action subject to this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a superior court and court location described

in this section as a proper place for the trial of the action. Those facts may be stated in a verified complaint and shall not be stated on information or belief. When that affidavit is filed with the complaint, a copy shall be served with the summons. If a plaintiff fails to file the affidavit or state facts in a verified complaint required by this section, no further proceedings may occur, but the court shall, upon its own motion or upon motion of any party, dismiss the action without prejudice. The court may, on terms that are just, permit the affidavit to be filed subsequent to the filing of the complaint and a copy of the affidavit shall be served on the defendant. The time to answer or otherwise plead shall date from that service.

*(Amended by Stats. 2002, Ch. 806, Sec. 2. Effective January 1, 2003.)*

**2984.5.**

(a) A seller shall maintain the following documents for at least seven years or the length of the conditional sales contract, whichever is longer:

- (1) A copy of each buyer's conditional sales contract.
- (2) Any documents relied upon by the seller to determine a buyer's creditworthiness, including, but not limited to, any consumer credit report, as defined in Section 1785.3, or any other document containing a buyer's credit score, as defined in Section 1785.15.1.
- (3) If the conditional sales contract is sold, assigned, or otherwise transferred, a copy of the terms of that sale, assignment, or transfer.

(b) A seller that unlawfully fails to comply with a court order to produce the documents described in subdivision (a) shall be liable in an action brought by the Attorney General for a civil penalty of five thousand dollars (\$5,000) per violation. The penalties provided by this section are in addition to all rights and remedies that are otherwise available under law.

*(Added by Stats. 2003, Ch. 59, Sec. 1. Effective January 1, 2004.)*

**2984.6.**

A holder of a conditional sales contract, purchase order, or security interest, or the agent of a holder, who has received a notice pursuant to Section 7507.6 of the Business and Professions Code, shall not make a subsequent assignment to skip trace, locate, or repossess the vehicle without simultaneously, and in the same manner by which the assignment is given, advising the assignee of the assignment of the information contained in the notice. As used in this section, "assignment" has the same meaning set forth in Section 7500.1 of the Business and Professions Code.

*(Added by Stats. 2007, Ch. 192, Sec. 4. Effective September 7, 2007.)*

[http://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CIV&division=3.&title=14.&part=4.&chapter=2c.&article=](http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CIV&division=3.&title=14.&part=4.&chapter=2c.&article=)

**CIVIL CODE - CIV**

**DIVISION 3. OBLIGATIONS [1427 - 3272.9]**

*(Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.)*

**PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS  
[1738 - 3272.9]**

*(Part 4 enacted 1872.)*

**TITLE 14. LIEN [2872 - 3081]**

*(Title 14 enacted 1872.)*

**CHAPTER 2c. Real Property Sales Contracts [2985 - 2985.6]**

*(Chapter 2c added by Stats. 1961, Ch. 886.)*

**2985.**

(a) A real property sales contract is an agreement in which one party agrees to convey title to real property to another party upon the satisfaction of specified conditions set forth in the contract and that does not require conveyance of title within one year from the date of formation of the contract.

(b) For purposes of this chapter only, a real property sales contract does not include a contract for purchase of an attached residential condominium unit entered into pursuant to a conditional public report issued by the Bureau of Real Estate pursuant to Section 11018.12 of the Business and Professions Code.

*(Amended by Stats. 2013, Ch. 352, Sec. 53. Effective September 26, 2013.*

*Operative July 1, 2013, by Sec. 543 of Ch. 352.)*

**2985.1.**

A real property sales contract may not be transferred by the fee owner of the real property unless accompanied by a transfer of the real property which is the subject of the contract, and real property may not be transferred by the fee owner thereof unless accompanied by an assignment of the contract.

Nothing herein shall be deemed to prohibit the assignment or pledge of a real property sales contract, as security or for the purpose of effecting collection thereon, to the holder of a first lien on the real property which is the subject of the contract without a transfer of the real property or the transfer of a fee title in trust without the concurrent assignment of the sales contract.

*(Amended by Stats. 1963, Ch. 71.)*

**2985.2.**

Any person, or the assignee of such person, who sells a parcel of land under a sales contract which is not recorded and who thereafter causes an encumbrance or encumbrances not consented to in writing by the parties upon such property in an amount which, together with existing encumbrances thereon exceeds the amount then due under the contract, or under which the aggregate amount of any periodic payments exceeds the periodic payments due on the contract, excluding any pro rata amount for

insurance and taxes, shall be guilty of a public offense punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail not exceeding one year, or by both that fine and imprisonment.

*(Amended by Stats. 2011, Ch. 15, Sec. 36. Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)*

**2985.3.**

Every seller of improved or unimproved real property under a real property sales contract, or his assignee, who knowingly receives an installment payment from the buyer under a real property sales contract at a time when there is then due any payment by the seller, or his assignee, on an obligation secured by an encumbrance on the property subject to the real property sales contract, and who appropriates such payment received from the buyer to a use other than payment of the amount then due on the seller's or assignee's obligation, except to the extent the payment received from the buyer exceeds the amount due from the seller or assignee, is guilty of a public offense punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail not exceeding one year, or by both that fine and imprisonment.

*(Amended by Stats. 2011, Ch. 15, Sec. 37. Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)*

**2985.4.**

Every seller of improved or unimproved real property under a real property sales contract who receives pro rata payments for insurance and taxes shall hold these amounts in trust for the purpose designated. These amounts shall not be disbursed for any other purpose without the consent of the payor and any person or corporation holding an encumbrance on the property.

This section shall not apply to a state- or federal-supervised assignee of a seller who as agent for the seller receives and disburses payments.

*(Added by Stats. 1963, Ch. 560.)*

**2985.5.**

Every real property sales contract entered into after January 1, 1966, shall contain a statement of:

(a) The number of years required to complete payment in accordance with the terms of the contract.

(b) The basis upon which the tax estimate is made.

*(Added by Stats. 1965, Ch. 1214.)*

**2985.51.**

(a) Every real property sales contract entered into on and after January 1, 1978, where the real property that is the subject of such contract resulted from a division of real property occurring on or after January 1, 1978, shall contain or have attached thereto a statement indicating the fact that the division creating the parcel or parcels to be conveyed:

(1) Was made in compliance with the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code and local ordinances adopted pursuant thereto, and in such event the statement shall expressly refer to the location, in the records of the county recorder for the county in which the real property is located, of a previously recorded certificate of compliance or conditional certificate of compliance issued pursuant to Section 66499.35 of the Government Code with respect to the real property being sold, or the statement shall describe the real property to be conveyed as an entire lot or parcel by referencing the recorded final or parcel map creating the parcel or parcels to be conveyed and such description shall constitute a certificate of compliance as set forth in subdivision (d) of Section 66499.35 of the Government Code. Provided, however, where reference is made to a recorded parcel map and the approval of such map was conditioned upon the construction of specified offsite and onsite improvements as a precondition to the issuance of a permit or grant of approval for the development of such parcel and the construction of the improvements has not been completed as of the date of execution of the real property sales contract, then the statement shall expressly set forth all such required offsite and onsite improvements; or

(2) Was exempt from the provisions of the Subdivision Map Act and local ordinances adopted pursuant thereto, and in such event the statement shall expressly set forth the basis for such exemption; or

(3) Was the subject of a waiver of the provisions of the Subdivision Map Act and local ordinances adopted pursuant thereto, and in such event the contract shall have attached thereto a copy of the document issued by the local agency granting the waiver. Provided, however, where the granting of the waiver was conditioned upon the construction of specified offsite and onsite improvements as a precondition to the issuance of a permit or grant of approval for the development of the parcel and the construction of the improvements has not been completed as of the date of execution of the real property sales contract, then such statement shall expressly set forth all such required offsite and onsite improvements; or

(4) Was not subject to the provisions of the Subdivision Map Act and local ordinances adopted pursuant thereto, and in such event the statement shall expressly set forth the basis for the nonapplicability of the Subdivision Map Act to the division.

(b) Every real property sales contract entered into after January 1, 1978, where the real property that is the subject of such contract resulted from a division of real property occurring prior to January 1, 1978, shall:

(1) Contain or have attached thereto a signed statement by the vendor that the parcel or parcels which are the subject of the contract have been created

in compliance with, or a waiver has been granted with respect to, the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code and local ordinances adopted pursuant thereto, or any prior law regulating the division of land, or, were exempt from or not otherwise subject to any such law at the time of their creation. Provided, however, where the division creating the parcel or parcels being conveyed was by means of a parcel map, or in the event that a waiver of the provisions of the Subdivision Map Act has been granted, and the approval of the parcel map or the granting of the waiver was conditioned upon the construction of specified offsite and onsite improvements as a precondition to the issuance of a permit or grant of approval for the development of such parcel and the construction of the improvements has not been completed as of the date of execution of the real property sales contract, then such contract shall expressly set forth all such required offsite and onsite improvements.

(2) In lieu of the above, the vendor may include in the real property sales contract a description of the real property being conveyed as an entire lot or parcel by referencing the recorded final or parcel map creating the parcel or parcels being conveyed and such description shall constitute a certificate of compliance as set forth in subdivision (d) of Section 66499.35 of the Government Code. Provided, however, where reference is made to a recorded parcel map, or in the event that a waiver of the provisions of the Subdivision Map Act has been granted, and the approval of the parcel map or the granting of the waiver was conditioned upon the construction of specified offsite and onsite improvements as a precondition to the issuance of a permit or grant of approval for the development of such parcel and the construction of the improvements has not been completed as of the date of execution of the real property sales contract, then such contract shall expressly set forth all such required offsite and onsite improvements.

(3) Notwithstanding paragraphs (1) and (2), in the event that the parcel or parcels which are the subject of the real property sales contract were not created in compliance with the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code and local ordinances adopted pursuant thereto, or any other prior law regulating the division of land, and were not exempt from, or were otherwise subject to any such law at the time of their creation, the real property sales contract shall contain a statement signed by the vendor and vendee acknowledging such fact. In addition, the vendor shall attach to the real property sales contract a conditional certificate of compliance issued pursuant to Section 66499.35 of the Government Code.

(c) In the event that the parcel or parcels which are the subject of the real property sales contract are found not to have been created in compliance with, or a waiver has not been granted with respect to, the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code, or any other prior law regulating the division of land nor to be exempt from, or otherwise subject to such laws and the vendee has reasonably relied upon the statement of such compliance or exemption made by the vendor, or in the event that the vendor has failed to

provide the conditional certificate of compliance as required by paragraph (3) of subdivision (b), and the vendor knew or should have known of the fact of such noncompliance, or lack of exemption, or the failure to provide the conditional certificate of compliance, the vendee, or his successor in interest, shall be entitled to: (1) recover from the vendor or his assigns the amount of all costs incurred by the vendee or his successor in interest in complying with all conditions imposed pursuant to Section 66499.35 of the Government Code; or, (2) the real property sales contract, at the sole option of the vendee, or his successor in interest, shall be voidable and in such event the vendee or his successor in interest shall be entitled to damages from the vendor or his assigns. For purposes of this section, damages shall mean all amounts paid under the real estate sales contract with interest thereon at the rate of 9 percent per annum, and in addition thereto a civil penalty in the amount of five hundred dollars (\$500) plus attorney's fees and costs. Any action to enforce the rights of a vendee or his successor in interest shall be commenced within one year of the date of discovery of the failure to comply with the provisions of this section.

(d) Any vendor who willfully violates the provisions of subdivision (a) of this section by knowingly providing a vendee with a false statement of compliance with, exemption from, waiver of, or nonapplicability of, the provisions of the Subdivision Map Act, with respect to the real property that is the subject of the real property sales contract, shall be guilty of a misdemeanor punishable by a fine of not to exceed one thousand dollars (\$1,000), or imprisonment for not to exceed six months, or both such fine and imprisonment.

(e) For purposes of this section a real property sales contract is an agreement wherein one party agrees to convey title to unimproved real property to another party upon the satisfaction of specified conditions set forth in the contract and which does not require conveyance of title within one year from the date of formation of the contract. Unimproved real property means real property upon which no permanent structure intended for human occupancy or commercial use is located.

(f) The provisions of this section shall not apply to a real property sales contract which, by its terms, requires either a good faith downpayment and a single payment of the balance of the purchase price or a single payment of the purchase price upon completion of the contract, and the provisions of such contract do not require periodic payment of principal or interest.

*(Added by Stats. 1977, Ch. 1228.)*

#### **2985.6.**

(a) A buyer shall be entitled to prepay all or any part of the balance due on any real property sales contract with respect to the sale of land which has been subdivided into a residential lot or lots which contain a dwelling for not more than four families entered into on or after January 1, 1969; provided, however, that the seller, by an agreement in writing with the buyer, may prohibit prepayment for up to a 12-month period following the sale.

(b) Any waiver by the buyer of the provisions of this section shall be deemed contrary to public policy and shall be unenforceable and void; provided, however, that any such waiver shall in no way affect the validity of the remainder of the contract.

*(Amended by Stats. 1978, Ch. 565.)*