

AMENDED IN ASSEMBLY SEPTEMBER 10, 2001

AMENDED IN ASSEMBLY JULY 11, 2001

AMENDED IN ASSEMBLY JUNE 19, 2001

AMENDED IN SENATE MAY 22, 2001

AMENDED IN SENATE MAY 7, 2001

SENATE BILL

No. 958

Introduced by Senator Ackerman
(Coauthor: Assembly Member Hertzberg)

February 23, 2001

An act to amend Section 6068.11 of the Business and Professions Code, and to amend Sections 2924b, 2924c, 2924d, and 2924g of, *and to add Section 2941.1 to*, the Civil Code, relating to trustees and attorneys, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 958, as amended, Ackerman. Attorneys: ~~Mortgages~~ *mortgages* and deeds of trust.

(1) Existing law, which will be repealed by its own terms on January 1, 2002, requires the State Bar of California to conduct a study, as specified, concerning the legal and professional responsibility issues that may arise as a result of the relationship between an attorney and an insurer when the attorney is retained by the insurer to represent an insured, and the attorney is subsequently retained to represent a party against another party insured by the insurer, and to submit a report of the study, with any recommendations, to the Legislature and the California Supreme Court on or before July 1, 2001.

This bill would extend that repeal date to January 1, 2003, and extend the deadline for submission of the report of the study to the Legislature and the California Supreme Court to on or before July 1, 2002.

(2) *Existing law requires a person recording a notice of default of a mortgage or deed of trust to perform specified actions.*

This bill would require that person recording the notice of default to provide a copy of the notice of sale to the Internal Revenue Service if a "Notice of Federal Tax Lien" has been recorded against the real property to which the notice of sale applies.

(3) Existing law limits specified trustee's or attorney's fees in connection with certain procedures required upon default in payment of obligations under a mortgage or deed of trust to \$240 with respect to any portion of the unpaid principal sum secured that is \$50,000 or less, plus additional incremental allowable percentages of the principal sum over that amount.

This bill would, operative January 1, 2002, increase the specified maximum amount of that fee to \$300 plus additional incremental percentages of a ~~principle~~ *principal* sum of \$50,000 or less, or \$250 plus additional incremental percentages of a ~~principle~~ *principal* sum in excess of \$50,000.

(3)

(4) Existing law limits specified trustee's or attorney's fees in connection with the enforcement of certain terms of obligation upon default in payment under a mortgage or deed of trust to \$350 with respect to any portion of the unpaid principal sum secured that is \$50,000 or less, plus additional incremental allowable percentages of the principal sum over that amount.

This bill would, operative January 1, 2002, increase the specified maximum amount of that fee to \$425 plus additional incremental percentages of a ~~principle~~ *principal* sum of \$150,000 or less, or \$360 plus additional incremental percentages of a ~~principle~~ *principal* sum in excess of \$150,000.

(4)

(5) Existing law limits specified trustee's or attorney's fees in connection with a sale of property, that may be deducted from the proceeds of the sale, to \$350.

This bill would, operative January 1, 2002, increase that fee limit to \$425. *The bill would also make clarifying changes with respect to reconveyance fees.*



(6) Existing law provides for the postponement of sales of property under the power of sale in a deed of trust or mortgage, as specified.

~~(5) This~~

This bill would, operative January 1, 2002, revise the postponement of those sales that are subject to postponement pursuant to a stay imposed under federal bankruptcy law.

~~(6)~~

(7) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 6068.11 of the Business and Professions
2 Code is amended to read:

3 6068.11. (a) The Legislature finds and declares that the
4 opinion in *State Farm Mutual Auto Insurance Company v. Federal*
5 *Insurance Company* (1999) 72 Cal. App. 4th 1422, raises issues
6 concerning the relationship between an attorney and an insurer
7 when the attorney is retained by the insurer to represent the
8 insured. These issues involve both the Rules of Professional
9 Conduct for attorneys and procedural issues affecting the conduct
10 of litigation.

11 (b) The board in consultation with representatives of
12 associations representing the defense bar, the plaintiffs bar, the
13 insurance industry and the Judicial Council, shall conduct a study
14 concerning the legal and professional responsibility issues that
15 may arise as a result of the relationship between an attorney and
16 an insurer when the attorney is retained by the insurer to represent
17 an insured, and subsequently, the attorney is retained to represent
18 a party against another party insured by the insurer. The board shall
19 prepare a report that identifies and analyzes the issues and, if
20 appropriate, provides recommendations for changes to the Rules
21 of Professional Conduct and relevant statutes. The board shall
22 submit the report to the Legislature and the Supreme Court of
23 California on or before July 1, 2002.

24 (c) This section shall remain in effect only until January 1,
25 2003, and as of that date is repealed, unless a later enacted statute,
26 that is enacted before January 1, 2003, deletes or extends that date.



1 SEC. 2. *Section 2924b of the Civil Code is amended to read:*
 2 2924b. (a) Any person desiring a copy of any notice of
 3 default and of any notice of sale under any deed of trust or
 4 mortgage with power of sale upon real property or an estate for
 5 years therein, as to which deed of trust or mortgage the power of
 6 sale cannot be exercised until these notices are given for the time
 7 and in the manner provided in Section 2924 may, at any time
 8 subsequent to recordation of the deed of trust or mortgage and
 9 prior to recordation of notice of default thereunder, cause to be
 10 filed for record in the office of the recorder of any county in which
 11 any part or parcel of the real property is situated, a duly
 12 acknowledged request for a copy of the notice of default and of
 13 sale. This request shall be signed and acknowledged by the person
 14 making the request, specifying the name and address of the person
 15 to whom the notice is to be mailed, shall identify the deed of trust
 16 or mortgage by stating the names of the parties thereto, the date of
 17 recordation thereof, and the book and page where the deed of trust
 18 or mortgage is recorded or the recorder’s number, and shall be in
 19 substantially the following form:

20
 21 “In accordance with Section 2924b, Civil Code, request is hereby
 22 made that a copy of any notice of default and a copy of any notice of sale
 23 under the deed of trust (or mortgage) recorded _____, 19___, in Book
 24 _____ page _____ records of _____ County, (or filed for record with
 25 recorder’s serial number _____, _____ County) California, executed
 26 by _____ as trustor (or mortgagor) in which _____, is named as
 27 beneficiary (or mortgagee) and _____ as trustee be mailed to
 28 _____ at _____.
 29 Name Address

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

33
 34 Signature _____”

35
 36 Upon the filing for record of the request, the recorder shall index
 37 in the general index of grantors the names of the trustors (or
 38 mortgagor) recited therein and the names of persons requesting
 39 copies.



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

3 (1) Within 10 business days following recordation of the notice
4 of default, deposit or cause to be deposited in the United States
5 mail an envelope, sent by registered or certified mail with postage
6 prepaid, containing a copy of the notice with the recording date
7 shown thereon, addressed to each person whose name and address
8 are set forth in a duly recorded request therefor, directed to the
9 address designated in the request and to each trustor or mortgagor
10 at his or her last known address if different than the address
11 specified in the deed of trust or mortgage with power of sale.

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

21 (3) As used in paragraphs (1) and (2), the “last known address”
22 of each trustor or mortgagor means the last business or residence
23 address actually known by the mortgagee, beneficiary, trustee, or
24 other person authorized to record the notice of default. The
25 beneficiary shall inform the trustee of the trustor’s last address
26 actually known by the beneficiary. However, the trustee shall incur
27 no liability for failing to send any notice to the last address unless
28 the trustee has actual knowledge of it.

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

31 (1) Within one month following recordation of the notice of
32 default, deposit or cause to be deposited in the United States mail
33 an envelope, sent by registered or certified mail with postage
34 prepaid, containing a copy of the notice with the recording date
35 shown thereon, addressed to each person set forth in paragraph (2),
36 provided that the estate or interest of any person entitled to receive
37 notice under this subdivision is acquired by an instrument
38 sufficient to impart constructive notice of the estate or interest in
39 the land or portion thereof which is subject to the deed of trust or
40 mortgage being foreclosed, and provided the instrument is



1 recorded in the office of the county recorder so as to impart that
2 constructive notice prior to the recording date of the notice of
3 default and provided the instrument as so recorded sets forth a
4 mailing address which the county recorder shall use, as instructed
5 within the instrument, for the return of the instrument after
6 recording, and which address shall be the address used for the
7 purposes of mailing notices herein.

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

10 (A) The successor in interest, as of the recording date of the
11 notice of default, of the estate or interest or any portion thereof of
12 the trustor or mortgagor of the deed of trust or mortgage being
13 foreclosed.

14 (B) The beneficiary or mortgagee of any deed of trust or
15 mortgage recorded subsequent to the deed of trust or mortgage
16 being foreclosed, or recorded prior to or concurrently with the
17 deed of trust or mortgage being foreclosed but subject to a
18 recorded agreement or a recorded statement of subordination to
19 the deed of trust or mortgage being foreclosed.

20 (C) The assignee of any interest of the beneficiary or
21 mortgagee described in subparagraph (B), as of the recording date
22 of the notice of default.

23 (D) The vendee of any contract of sale, or the lessee of any
24 lease, of the estate or interest being foreclosed which is recorded
25 subsequent to the deed of trust or mortgage being foreclosed, or
26 recorded prior to or concurrently with the deed of trust or mortgage
27 being foreclosed but subject to a recorded agreement or statement
28 of subordination to the deed of trust or mortgage being foreclosed.

29 (E) The successor in interest to the vendee or lessee described
30 in subparagraph (D), as of the recording date of the notice of
31 default.

32 (F) The Office of the Controller, Sacramento, California,
33 where, as of the recording date of the notice of default, a “Notice
34 of Lien for Postponed Property Taxes” has been recorded against
35 the real property to which the notice of default applies.

36 (3) At least 20 days before the date of sale, deposit or cause to
37 be deposited in the United States mail, an envelope, sent by
38 registered or certified mail with postage prepaid, containing a copy
39 of the notice of the time and place of sale addressed to each person
40 to whom a copy of the notice of default is to be mailed as provided



1 in paragraphs (1) and (2), and addressed to the office of any state
2 taxing agency, Sacramento, California, which has recorded a
3 notice of tax lien prior to the recording date of the notice of default
4 against the real property to which the notice of default applies.

5 (4) *Provide a copy of the notice of sale to the Internal Revenue*
6 *Service, in accordance with Section 7425 of the Internal Revenue*
7 *Code and any applicable federal regulation, if a “Notice of*
8 *Federal Tax Lien under Internal Revenue laws” has been recorded*
9 *against the real property to which the notice of sale applies.*

10 (5) The mailing of notices in the manner set forth in paragraph
11 (1) shall not impose upon any licensed attorney, agent, or
12 employee of any person entitled to receive notices as herein set
13 forth any duty to communicate the notice to the entitled person
14 from the fact that the mailing address used by the county recorder
15 is the address of the attorney, agent, or employee.

16 (d) Any deed of trust or mortgage with power of sale hereafter
17 executed upon real property or an estate for years therein may
18 contain a request that a copy of any notice of default and a copy
19 of any notice of sale thereunder shall be mailed to any person or
20 party thereto at the address of the person given therein, and a copy
21 of any notice of default and of any notice of sale shall be mailed
22 to each of these at the same time and in the same manner required
23 as though a separate request therefor had been filed by each of
24 these persons as herein authorized. If any deed of trust or mortgage
25 with power of sale executed after September 19, 1939, except a
26 deed of trust or mortgage of any of the classes excepted from the
27 provisions of Section 2924, does not contain a request of the
28 trustor or mortgagor for special notice at the address of the person
29 given therein or does contain such a request but no address of the
30 person is given therein and if no request for special notice by the
31 trustor or mortgagor in substantially the form set forth in this
32 section has subsequently been recorded, a copy of the notice of
33 default shall be published once a week for at least four weeks in
34 a newspaper of general circulation in the county in which the
35 property is situated, the publication to commence within 10
36 business days after the filing of the notice of default. In lieu of
37 publication, a copy of the notice of default may be delivered
38 personally to the trustor or mortgagor within the 10 business days
39 or at any time before publication is completed, or by posting the



1 notice of default in a conspicuous place on the property and
2 mailing the notice to the last known address of the trustor.

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

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

26 (g) “Business day,” as used in this section, has the meaning
27 specified in Section 9.

28 *SEC. 3.* Section 2924c of the Civil Code is amended to read:

29 2924c. (a) (1) Whenever all or a portion of the principal sum
30 of any obligation secured by deed of trust or mortgage on real
31 property or an estate for years therein hereafter executed has, prior
32 to the maturity date fixed in that obligation, become due or been
33 declared due by reason of default in payment of interest or of any
34 installment of principal, or by reason of failure of trustor or
35 mortgagor to pay, in accordance with the terms of that obligation
36 or of the deed of trust or mortgage, taxes, assessments, premiums
37 for insurance, or advances made by beneficiary or mortgagee in
38 accordance with the terms of that obligation or of the deed of trust
39 or mortgage, the trustor or mortgagor or his or her successor in
40 interest in the mortgaged or trust property or any part thereof, or



1 any beneficiary under a subordinate deed of trust or any other
2 person having a subordinate lien or encumbrance of record
3 thereon, at any time within the period specified in subdivision (e),
4 if the power of sale therein is to be exercised, or, otherwise at any
5 time prior to entry of the decree of foreclosure, may pay to the
6 beneficiary or the mortgagee or their successors in interest,
7 respectively, the entire amount due, at the time payment is
8 tendered, with respect to (A) all amounts of principal, interest,
9 taxes, assessments, insurance premiums, or advances actually
10 known by the beneficiary to be, and that are, in default and shown
11 in the notice of default, under the terms of the deed of trust or
12 mortgage and the obligation secured thereby, (B) all amounts in
13 default on recurring obligations not shown in the notice of default,
14 and (C) all reasonable costs and expenses, subject to subdivision
15 (c), which are actually incurred in enforcing the terms of the
16 obligation, deed of trust, or mortgage, and trustee's or attorney's
17 fees, subject to subdivision (d), other than the portion of principal
18 as would not then be due had no default occurred, and thereby cure
19 the default theretofore existing, and thereupon, all proceedings
20 theretofore had or instituted shall be dismissed or discontinued and
21 the obligation and deed of trust or mortgage shall be reinstated and
22 shall be and remain in force and effect, the same as if the
23 acceleration had not occurred. This section does not apply to bonds
24 or other evidences of indebtedness authorized or permitted to be
25 issued by the Commissioner of Corporations or made by a public
26 utility subject to the Public Utilities Code. For the purposes of this
27 subdivision, the term "recurring obligation" means all amounts of
28 principal and interest on the loan, or rents, subject to the deed of
29 trust or mortgage in default due after the notice of default is
30 recorded; all amounts of principal and interest or rents advanced
31 on senior liens or leaseholds which are advanced after the
32 recordation of the notice of default; and payments of taxes,
33 assessments, and hazard insurance advanced after recordation of
34 the notice of default. Where the beneficiary or mortgagee has
35 made no advances on defaults which would constitute recurring
36 obligations, the beneficiary or mortgagee may require the trustor
37 or mortgagor to provide reliable written evidence that the amounts
38 have been paid prior to reinstatement.

39 (2) If the trustor, mortgagor, or other person authorized to cure
40 the default pursuant to this subdivision does cure the default, the



1 beneficiary or mortgagee or the agent for the beneficiary or
2 mortgagee shall, within 21 days following the reinstatement,
3 execute and deliver to the trustee a notice of rescission which
4 rescinds the declaration of default and demand for sale and advises
5 the trustee of the date of reinstatement. The trustee shall cause the
6 notice of rescission to be recorded within 30 days of receipt of the
7 notice of rescission and of all allowable fees and costs.

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

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

16
17 “IMPORTANT NOTICE [14-point boldface type if printed or
18 in capital letters if typed]
19

20 IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE
21 YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD
22 WITHOUT ANY COURT ACTION, [14-point boldface type if
23 printed or in capital letters if typed] and you may have the legal
24 right to bring your account in good standing by paying all of your
25 past due payments plus permitted costs and expenses within the
26 time permitted by law for reinstatement of your account, which is
27 normally five business days prior to the date set for the sale of your
28 property. No sale date may be set until three months from the date
29 this notice of default may be recorded (which date of recordation
30 appears on this notice).

31
32 This amount is _____ as of _____
33 (Date)
34

35 and will increase until your account becomes current.
36

37 While your property is in foreclosure, you still must pay other
38 obligations (such as insurance and taxes) required by your note and
39 deed of trust or mortgage. If you fail to make future payments on
40 the loan, pay taxes on the property, provide insurance on the



1 property, or pay other obligations as required in the note and deed
 2 of trust or mortgage, the beneficiary or mortgagee may insist that
 3 you do so in order to reinstate your account in good standing. In
 4 addition, the beneficiary or mortgagee may require as a condition
 5 to reinstatement that you provide reliable written evidence that
 6 you paid all senior liens, property taxes, and hazard insurance
 7 premiums.

8 Upon your written request, the beneficiary or mortgagee will
 9 give you a written itemization of the entire amount you must pay.
 10 You may not have to pay the entire unpaid portion of your account,
 11 even though full payment was demanded, but you must pay all
 12 amounts in default at the time payment is made. However, you and
 13 your beneficiary or mortgagee may mutually agree in writing prior
 14 to the time the notice of sale is posted (which may not be earlier
 15 than the end of the three-month period stated above) to, among
 16 other things, (1) provide additional time in which to cure the
 17 default by transfer of the property or otherwise; or (2) establish a
 18 schedule of payments in order to cure your default; or both (1) and
 19 (2).

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

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

29
 30 _____
 31 (Name of beneficiary or mortgagee)
 32
 33 _____
 34 (Mailing address)
 35
 36 _____
 37 (Telephone)
 38

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



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

4 Remember, **YOU MAY LOSE LEGAL RIGHTS IF YOU DO**
5 **NOT TAKE PROMPT ACTION.** [14-point boldface type if
6 printed or in capital letters if typed]”
7

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

10 If the obligation secured by the deed of trust or mortgage is a
11 contract or agreement described in paragraph (1) or (4) of
12 subdivision (a) of Section 1632, the notice required herein shall be
13 in Spanish if the trustor requested a Spanish language translation
14 of the contract or agreement pursuant to Section 1632. If the
15 obligation secured by the deed of trust or mortgage is contained in
16 a home improvement contract, as defined in Sections 7151.2 and
17 7159 of the Business and Professions Code, which is subject to
18 Title 2 (commencing with Section 1801), the seller shall specify
19 on the contract whether or not the contract was principally
20 negotiated in Spanish and if the contract was principally
21 negotiated in Spanish, the notice required herein shall be in
22 Spanish. No assignee of the contract or person authorized to record
23 the notice of default shall incur any obligation or liability for
24 failing to mail a notice in Spanish unless Spanish is specified in the
25 contract or the assignee or person has actual knowledge that the
26 secured obligation was principally negotiated in Spanish. Unless
27 specified in writing to the contrary, a copy of the notice required
28 by subdivision (c) of Section 2924b shall be in English.

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

33 (c) Costs and expenses which may be charged pursuant to
34 Sections 2924 to 2924i, inclusive, shall be limited to the costs
35 incurred for recording, mailing, including certified and express
36 mail charges, publishing, and posting notices required by Sections
37 2924 to 2924i, inclusive, postponement pursuant to Section 2924g
38 not to exceed fifty dollars (\$50) per postponement and a fee for a
39 trustee’s sale guarantee or, in the event of judicial foreclosure, a
40 litigation guarantee. For purposes of this subdivision, a trustee or



1 beneficiary may purchase a trustee's sale guarantee at a rate
2 meeting the standards contained in Sections 12401.1 and 12401.3
3 of the Insurance Code.

4 (d) Trustee's or attorney's fees which may be charged pursuant
5 to subdivision (a), or until the notice of sale is deposited in the mail
6 to the trustor as provided in Section 2924b, if the sale is by power
7 of sale contained in the deed of trust or mortgage, or, otherwise at
8 any time prior to the decree of foreclosure, are hereby authorized
9 to be in a base amount that does not exceed three hundred dollars
10 (\$300) if the unpaid principal sum secured is one hundred fifty
11 thousand dollars (\$150,000) or less, or two hundred fifty dollars
12 (\$250) if the unpaid principal sum secured exceeds one hundred
13 fifty thousand dollars (\$150,000), plus one-half of 1 percent of the
14 unpaid principal sum secured exceeding fifty thousand dollars
15 (\$50,000) up to and including one hundred fifty thousand dollars
16 (\$150,000), plus one-quarter of 1 percent of any portion of the
17 unpaid principal sum secured exceeding one hundred fifty
18 thousand dollars (\$150,000) up to and including five hundred
19 thousand dollars (\$500,000), plus one-eighth of 1 percent of any
20 portion of the unpaid principal sum secured exceeding five
21 hundred thousand dollars (\$500,000). Any charge for trustee's or
22 attorney's fees authorized by this subdivision shall be conclusively
23 presumed to be lawful and valid where the charge does not exceed
24 the amounts authorized herein. For purposes of this subdivision,
25 the unpaid principal sum secured shall be determined as of the date
26 the notice of default is recorded.

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

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

39 In the event the date of sale is postponed on the date of sale set
40 forth in either an initial or any subsequent notice of sale, or is



1 postponed on the date declared for sale at an immediately
2 preceding postponement of sale, and, the postponement is for a
3 period which exceeds five business days from the date set forth in
4 the notice of sale, or declared at the time of postponement, then the
5 right of reinstatement is revived as of the date of postponement and
6 shall continue from that date until five business days prior to the
7 date of sale declared at the time of the postponement.

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

12 Pursuant to the terms of this subdivision, no beneficiary, trustee,
13 mortgagee, or their agents or successors shall be liable in any
14 manner to a trustor, mortgagor, their agents or successors or any
15 beneficiary under a subordinate deed of trust or mortgage or any
16 other person having a subordinate lien or encumbrance of record
17 thereon for the failure to allow a reinstatement of the obligation
18 secured by a deed of trust or mortgage during the period of five
19 business days prior to the sale of the security property, and no such
20 right of reinstatement during this period is created by this section.
21 Any right of reinstatement created by this section is terminated
22 five business days prior to the date of sale set forth in the initial date
23 of sale, and is revived only as prescribed herein and only as of the
24 date set forth herein.

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

27 ~~SEC. 3.~~

28 *SEC. 4.* Section 2924d of the Civil Code is amended to read:

29 2924d. (a) Commencing with the date that the notice of sale
30 is deposited in the mail, as provided in Section 2924b, and until the
31 property is sold pursuant to the power of sale contained in the
32 mortgage or deed of trust, a beneficiary, trustee, mortgagee, or his
33 or her agent or successor in interest, may demand and receive from
34 a trustor, mortgagor, or his or her agent or successor in interest, or
35 any beneficiary under a subordinate deed of trust, or any other
36 person having a subordinate lien or encumbrance of record those
37 reasonable costs and expenses, to the extent allowed by
38 subdivision (c) of Section 2924c, which are actually incurred in
39 enforcing the terms of the obligation and trustee’s or attorney’s
40 fees which are hereby authorized to be in a base amount which



1 does not exceed four hundred twenty-five dollars (\$425) if the
2 unpaid principal sum secured is one hundred fifty thousand dollars
3 (\$150,000) or less, or three hundred sixty dollars (\$360) if the
4 unpaid principal sum secured exceeds one hundred fifty thousand
5 dollars (\$150,000), plus 1 percent of any portion of the unpaid
6 principal sum secured exceeding fifty thousand dollars (\$50,000)
7 up to and including one hundred fifty thousand dollars (\$150,000),
8 plus one-half of 1 percent of any portion of the unpaid principal
9 sum secured exceeding one hundred fifty thousand dollars
10 (\$150,000) up to and including five hundred thousand dollars
11 (\$500,000), plus one-quarter of 1 percent of any portion of the
12 unpaid principal sum secured exceeding five hundred thousand
13 dollars (\$500,000). For purposes of this subdivision, the unpaid
14 principal sum secured shall be determined as of the date the notice
15 of default is recorded. Any charge for trustee's or attorney's fees
16 authorized by this subdivision shall be conclusively presumed to
17 be lawful and valid where that charge does not exceed the amounts
18 authorized herein. Any charge for trustee's or attorney's fees made
19 pursuant to this subdivision shall be in lieu of and not in addition
20 to those charges authorized by subdivision (d) of Section 2924c.

21 (b) Upon the sale of property pursuant to a power of sale, a
22 trustee, or his or her agent or successor in interest, may demand and
23 receive from a beneficiary, or his or her agent or successor in
24 interest, or may deduct from the proceeds of the sale, those
25 reasonable costs and expenses, to the extent allowed by
26 subdivision (c) of Section 2924c, which are actually incurred in
27 enforcing the terms of the obligation and trustee's or attorney's
28 fees which are hereby authorized to be in an amount which does
29 not exceed four hundred twenty-five dollars (\$425) or one percent
30 of the unpaid principal sum secured, whichever is greater. For
31 purposes of this subdivision, the unpaid principal sum secured
32 shall be determined as of the date the notice of default is recorded.
33 Any charge for trustee's or attorney's fees authorized by this
34 subdivision shall be conclusively presumed to be lawful and valid
35 where that charge does not exceed the amount authorized herein.
36 Any charges for trustee's or attorney's fees made pursuant to this
37 subdivision shall be in lieu of and not in addition to those charges
38 authorized by subdivision (a) of this section and subdivision (d) of
39 Section 2924c.



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

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

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

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

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

26 ~~SEC. 4.~~

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

28 2924g. (a) All sales of property under the power of sale
29 contained in any deed of trust or mortgage shall be held in the
30 county where the property or some part thereof is situated, and
31 shall be made at auction, to the highest bidder, between the hours
32 of 9 a.m. and 5 p.m. on any business day, Monday through Friday.

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

37 If the sale of more than one parcel of real property has been
38 scheduled for the same time and location by the same trustee, (1)
39 any postponement of any of the sales shall be announced at the
40 time published in the notice of sale, (2) the first sale shall



1 commence at the time published in the notice of sale or
2 immediately after the announcement of any postponement, and (3)
3 each subsequent sale shall take place as soon as possible after the
4 preceding sale has been completed.

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

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

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

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

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



1 bankruptcy has been filed shall not be a postponement for purposes
2 of determining the maximum number of postponements permitted
3 pursuant to this subdivision.

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

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

32 ~~SEC. 5.—Sections 2 to 4~~

33 *SEC. 6. Section 2941.1 is added to the Civil Code, to read:*

34 *2941.1. Notwithstanding any other provision of law, if no*
35 *payoff demand statement is issued pursuant to Section 2943,*
36 *nothing in Section 2941 shall be construed to prohibit the charging*
37 *of a reconveyance fee.*

38 *SEC. 7. Sections 3 to 6 , inclusive, of this act shall become*
39 *operative on January 1, 2002.*

40 ~~SEC. 6.~~



1 *SEC. 8.* This act is an urgency statute necessary for the
2 immediate preservation of the public peace, health, or safety
3 within the meaning of Article IV of the Constitution and shall go
4 into immediate effect. The facts constituting the necessity are:

5 In order to extend a deadline to permit thorough study of issues
6 concerning certain relationships between attorneys, insurers, and
7 insureds, and to clarify ambiguities in the foreclosure law and to
8 make other related changes in that law, it is necessary that this act
9 take effect immediately.

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