

Assembly Bill No. 1110

CHAPTER 384

An act to amend Section 564 of the Code of Civil Procedure, relating to financial transactions.

[Approved by Governor August 3, 1995. Filed with Secretary of State August 4, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1110, Kaloogian. Financial transactions: receivers.

Existing law authorizes the appointment of a receiver in various actions, including in an action by a secured lender for the foreclosure of the deed of trust or mortgage, where it appears that the property is in danger of being lost, removed, or materially injured, or that the condition of the deed of trust or mortgage has not been performed, and that the property is probably insufficient to discharge the deed of trust or mortgage debt, and also including after judgment, to carry the judgment into effect.

This bill would also authorize the appointment of a receiver in an action by a secured lender for specific performance of an assignment of rents provision in a deed of trust, mortgage, or separate assignment document. In addition, the appointment may be continued after entry of a judgment for specific performance in that action, if appropriate to protect, operate, or maintain real property encumbered by the deed of trust or mortgage or to collect the rents from the real property while a pending nonjudicial foreclosure under power of sale in the deed of trust or mortgage is being completed.

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

SECTION 1. Section 564 of the Code of Civil Procedure is amended to read:

564. (a) A receiver may be appointed, in the manner provided in this chapter, by the court in which an action or proceeding is pending in any case in which the court is empowered by law to appoint a receiver.

(b) In superior court a receiver may be appointed by the court in which an action or proceeding is pending, or by a judge thereof, in the following cases:

(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or



the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

(2) In an action by a secured lender for the foreclosure of the deed of trust or mortgage and sale of the property upon which there is a lien under a deed of trust or mortgage, where it appears that the property is in danger of being lost, removed, or materially injured, or that the condition of the deed of trust or mortgage has not been performed, and that the property is probably insufficient to discharge the deed of trust or mortgage debt.

(3) After judgment, to carry the judgment into effect.

(4) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or pursuant to Title 9 (commencing with Section 680.010) (enforcement of judgments), or after sale of real property pursuant to a decree of foreclosure, during the redemption period, to collect, expend, and disburse rents as directed by the court or otherwise provided by law.

(5) In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

(6) In an action of unlawful detainer.

(7) At the request of the Public Utilities Commission pursuant to Section 855 of the Public Utilities Code.

(8) In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

(9) At the request of the Office of Statewide Health Planning and Development, or the Attorney General, pursuant to Section 436.222 of the Health and Safety Code.

(10) In an action by a secured lender for specific performance of an assignment of rents provision in a deed of trust, mortgage, or separate assignment document. In addition, that appointment may be continued after entry of a judgment for specific performance in that action, if appropriate to protect, operate, or maintain real property encumbered by the deed of trust or mortgage or to collect the rents therefrom while a pending nonjudicial foreclosure under power of sale in the deed of trust or mortgage is being completed.

(c) A receiver may be appointed, in the manner provided in this chapter, including, but not limited to, Section 566, by the superior court in an action brought by a secured lender to enforce the rights provided in Section 2929.5 of the Civil Code, to enable the secured lender to 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. 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 shall 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.

(d) Any action by a secured lender to appoint a receiver pursuant to this section shall not constitute an action within the meaning of subdivision (a) of Section 726.

(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" means (A) any "hazardous substance" as defined in subdivision (f) of Section 25281 of the Health and Safety Code as effective on January 1, 1991, or as subsequently amended, (B) any "waste" as defined in subdivision (d) of Section 13050 of the Water Code as effective on January 1, 1991, or as subsequently amended, or (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 Section 1351 of the Civil Code, 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.

