

RESOLUTION 08-11-2008

DIGEST

Real Property: Release Upon Disclosure of Known Payments

Amends Civil Code section 2941 to allow lien release upon disclosure of amounts and dates of payments that are “known.”

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Civil Code section 2941 to allow lien release upon disclosure of amounts and dates of payments that are “known.” This resolution should be approved in principle because it would address apparent confusion in existing law.

Proponents have identified specific, compelling examples of circumstances under which a title company may not realistically be aware of payments made. These circumstances underscore a need for title companies to have the ability to release liens when the title company itself is fully satisfied that the financial obligation has in actuality been satisfied. Current law, however, does not provide title companies with this discretion. Since this resolution addresses an apparent error in existing law, it should be approved in principle.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 2941 to read as follows:

- 1 §2941
- 2 (a) Within 30 days after any mortgage has been satisfied, the mortgagee or the
- 3 assignee of the mortgagee shall execute a certificate of the discharge thereof, as provided
- 4 in Section 2939, and shall record or cause to be recorded in the office of the county
- 5 recorder in which the mortgage is recorded. The mortgagee shall then deliver, upon the
- 6 written request of the mortgagor or the mortgagor' s heirs, successors, or assignees, as the
- 7 case may be, the original note and mortgage to the person making the request.
- 8 (b) (1) Within 30 calendar days after the obligation secured by any deed of trust
- 9 has been satisfied, the beneficiary or the assignee of the beneficiary shall execute and
- 10 deliver to the trustee the original note, deed of trust, request for a full reconveyance, and
- 11 other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of
- 12 trust.
- 13 (A) The trustee shall execute the full reconveyance and shall record or cause it to
- 14 be recorded in the office of the county recorder in which the deed of trust is recorded
- 15 within 21 calendar days after receipt by the trustee of the original note, deed of trust,
- 16 request for a full reconveyance, the fee that may be charged pursuant to subdivision (e),

17 recorder's fees, and other documents as may be necessary to reconvey, or cause to be
18 reconveyed, the deed of trust.

19 (B) The trustee shall deliver a copy of the reconveyance to the beneficiary, its
20 successor in interest, or its servicing agent, if known. The reconveyance instrument shall
21 specify one of the following options for delivery of the instrument, the addresses of
22 which the recorder has no duty to validate:

23 (i) The trustor or successor in interest, and that person's last known address, as the
24 person to whom the recorder will deliver the recorded instrument pursuant to Section
25 27321 of the Government Code.

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

30 (C) Following execution and recordation of the full reconveyance, upon receipt of
31 a written request by the trustor or the trustor's heirs, successors, or assignees, the trustee
32 shall then deliver, or caused to be delivered, the original note and deed of trust to the
33 person making that request.

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

39 (2) If the trustee has failed to execute and record, or cause to be recorded, the full
40 reconveyance within 60 calendar days of satisfaction of the obligation, the beneficiary,
41 upon receipt of a written request by the trustor or trustor's heirs, successor in interest,
42 agent, or assignee, shall execute and acknowledge a document pursuant to Section 2934a
43 substituting itself or another as trustee and issue a full reconveyance.

44 (3) If a full reconveyance has not been executed and recorded pursuant to either
45 paragraph (1) or paragraph (2) within 75 calendar days of satisfaction of the obligation,
46 then a title insurance company may prepare and record a release of the obligation.
47 However, at least 10 days prior to the issuance and recording of a full release pursuant to
48 this paragraph, the title insurance company shall mail by first-class mail with postage
49 prepaid, the intention to release the obligation to the trustee, trustor, and beneficiary of
50 record, or their successor in interest of record, at the last known address.

51 (A) The release shall set forth:

52 (i) The name of the beneficiary.

53 (ii) The name of the trustor.

54 The recording reference to the deed of trust.

55 A recital that the obligation secured by the deed of trust has been paid in full.

56 The date and amount-of payment, if known.

57 (B) The release issued pursuant to this subdivision shall be entitled to
58 recordation and, when recorded, shall be deemed to be the equivalent of a reconveyance
59 of a deed of trust.

60 (4) Where an obligation secured by a deed of trust was paid in full prior to July 1,
61 1989, and no reconveyance has been issued and recorded by October 1, 1989, then a
62 release of obligation as provided for in paragraph (3) may be issued.

63 (5) Paragraphs (2) and (3) do not excuse the beneficiary or the trustee from
64 compliance with paragraph (1). Paragraph (3) does not excuse the beneficiary from
65 compliance with paragraph (2).

66 (6) In addition to any other remedy provided by law, a title insurance company
67 preparing or recording the release of the obligation shall be liable to any party for
68 damages, including attorney's fees, which any person may sustain by reason of the
69 issuance and recording of the release, pursuant to paragraphs (3) and (4).

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

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

83 (c) For the purposes of this section, the phrases "cause to be recorded" and "cause
84 it to be recorded" include, but are not limited to, sending by certified mail with the United
85 States Postal Service or by an independent courier service using its tracking service that
86 provides documentation of receipt and delivery, including the signature of the recipient,
87 the full reconveyance or certificate of discharge in a recordable form, together with
88 payment for all required fees, in an envelope addressed to the county recorder's office of
89 the county in which the deed of trust or mortgage is recorded. Within two business days
90 from the day of receipt, if received in recordable form together with all required fees, the
91 county recorder shall stamp and record the full reconveyance or certificate of discharge.
92 Compliance with this subdivision shall entitle the trustee to the benefit of the
93 presumption found in Section 641 of the Evidence Code.

94 (d) The violation of this section shall make the violator liable to the person
95 affected by the violation for all damages which that person may sustain by reason of the
96 violation, and shall require that the violator forfeit to that person the sum of five hundred
97 dollars (\$500).

98 (e) (1) The trustee, beneficiary, or mortgagee may charge a reasonable fee to the
99 trustor or mortgagor, or the owner of the land, as the case may be, for all services
100 involved in the preparation, execution, and recordation of the full reconveyance,
101 including, but not limited to, document preparation and forwarding services rendered to
102 effect the full reconveyance, and, in addition, may collect official fees. This fee may be
103 made payable no earlier than the opening of a bona fide escrow or no more than 60 days
104 prior to the full satisfaction of the obligation secured by the deed of trust or mortgage.

105 (2) If the fee charged pursuant to this subdivision does not exceed forty-five
106 dollars (\$45), the fee is conclusively presumed to be reasonable.

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

109 (f) For purposes of this section, "original" may include an optically imaged
110 reproduction when the following requirements are met:
111 (1) The trustee receiving the request for reconveyance and executing the
112 reconveyance as provided in subdivision (b) is an affiliate or subsidiary of the beneficiary
113 or an affiliate or subsidiary of the assignee of the beneficiary, respectively.
114 (2) The optical image storage media used to store the document shall be
115 nonerasable write once, read many (WORM) optical image media that does not allow
116 changes to the stored document.
117 (3) The optical image reproduction shall be made consistent with the minimum
118 standards of quality approved by either the National Institute of Standards and
119 Technology or the Association for Information and Image Management.
120 (4) Written authentication identifying the optical image reproduction as an
121 unaltered copy of the note, deed of trust, or mortgage shall be stamped or printed on the
122 optical image reproduction.
123 (g) No fee or charge may be imposed on the trustor in connection with, or relating
124 to, any act described in this section except as expressly authorized by this section.
125 (h) The amendments to this section enacted at the 1999-2000 Regular Session
126 shall apply only to a mortgage or an obligation secured by a deed of trust that is satisfied
127 on or after January 1, 2001.
128 (i) (1) In any action filed before January 1, 2002, that is dismissed as a result of
129 the amendments to this section enacted at the 2001-02 Regular Session, the plaintiff shall
130 not be required to pay the defendant's costs.
131 (2) Any claimant, including a claimant in a class action lawsuit, whose claim is
132 dismissed or barred as a result of the amendments to this section enacted at the 2001-02
133 Regular Session, may, within 6 months of the dismissal or barring of the action or claim,
134 file or refile a claim for actual damages occurring before January 1, 2002, that were
135 proximately caused by a time lapse between loan satisfaction and the completion of the
136 beneficiary's obligations as required under paragraph (1) of subdivision (b). In any action
137 brought under this section, the defendant may be found liable for actual damages, but
138 may not be found liable for any **civil** penalty authorized by Section 2941.
139 (j) Notwithstanding any other penalties, if a beneficiary collects a fee for
140 reconveyance and thereafter has knowledge, or should have knowledge, that no
141 reconveyance has been recorded, the beneficiary shall cause to be recorded the
142 reconveyance, or in the event a release of obligation is earlier and timely recorded, the
143 beneficiary shall refund to the trustor the fee charged to perform the reconveyance.
144 Evidence of knowledge includes, but is not limited to, notice of a release of obligation
145 pursuant to paragraph (3) of subdivision (b).

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS:

Existing Law: The release of obligation was created to address the removal of the liens of paid deeds of trust from the public record in those instances in which the lender (or others) had failed

to provide reconveyance documents after the payment in full of the obligation underlying the deed of trust.

This Resolution: This resolution addresses the situation when the title insurer is unable to determine the amount paid, but the title insurer is comfortable with the fact that the debt has in fact been completely and finally paid. Some releases of obligation have been seen using the phrases “Not Given” or “Not Disclosed” as a substitute for showing the amount of the final payment. The proposed amendment would remove the issue of whether a release not specifying the amount of the final payment is in compliance with the present requirement of the statute.

The proposed amendment should gain the support of the lending community because it is easier for the title insurer to help the lender in removing the lien of the deed of trust from the public record after the underlying debt has been paid. The proposal does not add to the burdens or responsibilities of the title insurer. In fact, it helps assure compliance with the language and spirit of the statutes. The proposed amendment will also reduce the need for time (and money) consuming letters of indemnity by removing the lien from the record once and for all rather than the constant requests for indemnification. The proposed amendment tends to protect the homeowner and members of the land owning public in general, by easing the means by which the lien of a paid-off encumbrance may be removed from the public record.

The Problem: The circumstances in which the title insurer may not be able to determine the amount paid include the following:

 An independent escrow has actually handled the payoff and the insurer is comfortable that the payoff has been accomplished;

 If the payoff has been handled by a now-defunct underwritten title company whose files are now lodged with the Department of Insurance and are not readily available;

 If the archived file has been stripped of the information otherwise needed; and

 If the file has been lost or destroyed in compliance with a file reduction program.

IMPACT STATEMENT:

This resolution does not affect any other law, statute or rule.

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