



RP

Renee S. Yamagishi
aka Renee S. Ramos
2703 Mathews Street
Berkeley, CA 94702
ryamagishi@protonmail.com

Sui Juris, Persona Standi in Judicio.

FILED
ALAMEDA COUNTY
SEP 28 2021
CLERK OF THE SUPERIOR COURT
By *Janis P. [Signature]* Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA – HAYWARD HALL OF JUSTICE
UNLAWFUL DETAINER DEPARTMENT

BRECKENRIDGE PROPERTY
FUND 2016, LLC

Plaintiff

v.

RENEE SHIZUE RAMOS AKA
RENEE SHIZUE YAMAGISHI

Named APPELLANT

Case No.: RG-19038318

NOTICE OF DEFENDANT AND APPELLANT'S
NOTICE OF COMPLETION OF THE RECORD,
AND DEFENDANT AND APPELLANT'S
NOTICE OF COMPLETION OF THE RECORD
FOR PURPOSES OF APPEAL;

REQUEST FOR LEAVE OF COURT TO

~~PRE-FILE INSTANT ADDENDUM TO THE~~
~~"APP-103: APPELLANT'S NOTICE~~ *for purpose*

of DESIGNATING RECORD ON APPEAL,"

FOR GOOD CAUSE AND

FOR EXPEDIENCY OF THE COURT; *Defendant*

APPELLANT'S DECLARATION IN SUPPORT
OF INSTANT NOTICE AND REQUEST.

Hon. Judge Patrick McKinney, Dept. 511

(and Appellate Division of Superior Court)

To all interested parties and their attorneys, agents, partners and assigns,
and to the above-entitled court and judicial officers, PLEASE TAKE NOTICE

----- 1
DEFENDANT AND APPELLANT'S NOTICE OF COMPLETION OF THE RECORD FOR PURPOSES OF APPEAL;
REQUEST FOR LEAVE OF COURT TO PRE-FILE INSTANT ADDENDUM TO THE "APP-103: APPELLANT'S
NOTICE DESIGNATING RECORD ON APPEAL," FOR GOOD CAUSE AND FOR EXPEDIENCY OF THE COURT;
APPELLANT'S DECLARATION IN SUPPORT OF INSTANT NOTICE AND REQUEST.

1 THAT: Renee Shizue Yamagishi whose former legal name is Renee Shizue
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3 Ramos, the living woman residing in her primary residence dwelling situated in the
4
5 County of Alameda and City of Berkeley, one of the people of California, Executor
6
7 of the ESTATE OF RENEE SHIZUE YAMAGISHI (hereinafter "Appellant") did
8
9 timely file her Notice of Appeal on September 15, 2021 appealing the order granting
10
11 entry of judgement entered on August 31, 2021 in the above-entitled trial court case.
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13 This day being the tenth (10th) day after filing Appellant's Notice of Appeal she
14
15 hereby requests leave of court to file the instant Notice of Completion of the
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17 Record for purposes of Appeal, for good cause and for expediency of the panel of
18
19 judges in the Appellate Division of the Superior Court, with her request for leave
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21 for late filing of no more than 3 to 5 days, of her App-103 form "Appellant's Notice
22
23 Designating Record on Appeal" once it is confirmed the clerk has approved
24
25 docketing into the case' Register of Actions of these additional records to complete
26
27 the record for purposes of Appeal.

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29 Appellant attests that these additional records are not burdensome or overbearing to
30
31 add to the formal record at this time, and that together these addenda number only
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33 ~~four~~⁵ records of relevant exhibits not previously filed into the case but merely emailed
34
35 to the court and to plaintiff: plus, four Memorandum of Points & Authorities,
36
37 constituting completion of the record on appeal.

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40 Appellant hereby then also concurrently requests leave of court to file the instant
41
42 Notice completing the Record and for leave to late-file the "Notice Designating
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45 APPELLANT'S NOTICE OF COMPLETION OF THE RECORD FOR PURPOSES OF APPEAL; AND
REQUEST FOR LEAVE OF COURT TO PRE-FILE THE ADDENDUM TO APPELLANT'S APP-103
"APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL " FOR GOOD CAUSE AND
EXPEDIENCY OF THE COURT; APPELLANT'S DECLARATION IN SUPPORT OF INSTANT NOTICE
AND REQUEST -2

1 Record on Appeal" (APP-103) in an effort to document relevant items for expediency
2
3 of the court who shall hear the Appeal.
4

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6 DESCRIPTION AND PURPOSE OF ADDENDA SUBMITTED FOR
7
8 COMPLETION OF THE RECORD ON APPEAL
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11
12 The instant Notice and addenda of records together with Appellant's Declaration in
13
14 Support herewith, list the name and a brief description of each of the nine (9)
15
16 additional records requested for docketing into the case for purpose of Appeal:
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19 Appellant now realizes these should comprise the record on appeal in formal manner
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21 and that their inclusion completes her record in support of the Appeal brief and
22
23 further proceedings before this Appellant Panel. Therefore, the Panel should see these
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25 addenda as filed for the purpose of expediency for the court hearing Appeal and to
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27 further clarify between the parties' the related areas of Appellant's legal position.
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33 DECLARATION IN SUPPORT OF APPELLANT'S NOTICE OF
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35 COMPLETION OF THE RECORD FOR PURPOSES OF APPEAL
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38 Appellant Renee S. Yamagishi formerly known as Renee S. Ramos concurrently makes
39
40 the following Declaration of her intent and purpose of this Notice and of details of the
41
42 several Addenda which she requests be docketed into the record for purpose of appeal,
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45 APPELLANT'S NOTICE OF COMPLETION OF THE RECORD FOR PURPOSES OF APPEAL; AND
REQUEST FOR LEAVE OF COURT TO PRE-FILE THE ADDENDUM TO APPELLANT'S APP-103
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AND REQUEST

1 in service of not only her defense but also for expediency of the Appellate court panel
2 of justices hearing the Appeal. Concurrent with and as part of the instant Notice, the
3 remainder of this Notice is to be taken as Appellant's Declaration attested to as true
4 and correct; noticing all interested parties named hereinabove, the public at large and
5 the presiding court and appellate panel of the Limited Case Appellate Division of
6 Superior Court of this county.:

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14 I. Addenda of Memorandum of Points & Authorities

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18 *May the Appellant Panel be noticed that four out of nine records in this Notice of*
19 *Completion of Record request entry of only four Memoranda of Points and*
20 *Authorities, prior pled orally but never formally entered into trial court docket. These*
21 *are certain public laws which Appellant referenced either only in oral argument or*
22 *briefly in her written responsive pleadings to date, but only in an informational*
23 *manner to illustrate the context of her legal position; and for which she chose not to*
24 *formally enter into the record of the case at the time.*

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33 At one of the two hearings as part of her opposition to plaintiff's motion for summary
34 judgement, Dept. 511 trial court judge, Hon. Patrick McKinney, at one point asked if *Defendant*
35 *e* Appellant would be formally filing some or any of a set of her "voluminous" exhibits
36 referenced by the court, which she emailed to the Dept. 511 and to the opposing
37 counsel; to which Appellant answered she would not formally file them and let them
38 remain "informational only" to give context to her defense and legal position
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44 APPELLANT'S NOTICE OF COMPLETION OF THE RECORD FOR PURPOSES OF APPEAL; AND
45 REQUEST FOR LEAVE OF COURT TO PRE-FILE THE ADDENDUM TO APPELLANT'S APP-103
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1 defending the complaint; and that her foundational and over-arching opposition to the
2
3 complaint in its entirety is that the limited case classification and the unlawful detainer
4
5 court lacked subject matter jurisdiction over the controversy between the parties
6
7 because she was a California homeowner who had standing to bring a wrongful
8
9 foreclosure action in a higher court to set aside void trustee's deed and unwind a
10
11 foreclosure she asserted was void by operation of law.
12
13

14 The trial court noted at hearing that it would consider exhibits she formally docketed
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16 and which became part of the record, but it did confirm receipt by email of many
17
18 additional exhibits though it is assumed the court did not consider merely emailed
19
20 exhibits since they never formally entered the record. Counsel for the plaintiff at the
21
22 same hearing similarly confirmed that she received the same exhibits (copied to both
23
24 the court and opposing counsel the morning before one of the two hearings on
25
26 plaintiff's motion for summary judgement). None of the exhibits Appellant emailed
27
28 only but which did not enter the record were then considered by the trial court in
29
30 arriving at its conclusion of summary judgement.
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33 The accompanying 4 of 9 total addenda therefore could be taken as formalized
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35 "Memorandum of Points and Authorities" for purpose of now completing the Record
36
37 on Appeal:

- 38 i. Several California statutes primarily under CIV 2924 *et. seq.* with complete
39
40 text of relevant codes, together with definitions of legal terms contained in
41
42 those statutes from recognized legal dictionaries, and an article discussing one
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44 APPELLANT'S NOTICE OF COMPLETION OF THE RECORD FOR PURPOSES OF APPEAL; AND
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of the terms. These statutes or legal doctrines were pled orally or on the face of Appellant's pleadings but without request for judicial notice made.

2. Complete text of a County of Alameda county-wide ordinance previously referenced at oral hearing, a Temporary Eviction Ordinance enacted by lawmakers in Alameda County.

3. Two formal letters in support of homeowners residing in Alameda County written by legal staff under its Executive Director of an Alameda County non-profit organization and the "contracted-agency" formally designated by local lawmakers with public administration of the local ordinance.

4. A closely-related, timely and legally-significant Order originating from Dept. 511 trial court containing discussion of points and legal conclusions arrived at by the courtroom of the Hon. Judge Patrick McKinney, from a similar pending unlawful detainer case of another homeowner in Berkeley, known to the Appellant as an acquaintance and former neighbor, being an Order Granting Entry of Summary Judgement and for Issuance of Writ of Possession in that case issued by Dept. 511 Hon. Judge Patrick McKinney about one month ago about August 20, 2021; whereas Appellant's written order for entry of judgement is truncated and lacks any such discussion of any basis for conclusions reached by the same court who similarly ordered for entry of

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1 judgement and to issue a writ of eviction against Appellant about August 31,
2
3 2021.
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8 **II. Addenda of Appellant's Exhibits to Complete the Record on Appeal**
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10 The final five of nine Addenda comprise email exchanges, another public record
11
12 specific to her property (worthy of a Request for Judicial Notice not yet requested) and
13
14 one newly discovered rule of court relevant to the Appeal.
15

16 Appellant has pled orally and emailed some exhibits for "informational purpose only"
17
18 and did not formally enter them into the record in support thereof, that Plaintiff
19
20 Breckenridge Property Fund 2016 LLC has never proven at all it was a "bona fide
21
22 purchaser for value without notice" and exhibited some but not all of her evidence in
23
24 support of her claim it is not and never was a "bona fide purchaser without notice," by
25
26 the above-referenced "informational-only" email attachments of September 15, 2020
27
28 and/or October 7, 2020. Therefore, the following remaining Addenda comprise five
29
30 records to complete the record for purpose of Appeal on this important distinction
31
32 raised in Appellant's defense and evidence which should be deemed admissible in
33
34 support.
35

36 5. A September 12, 2019, Email exchange constituting written contract between
37
38 Appellant and the indisputable "single point of contact" and lead attorney
39
40 representing all the parties making demand for payment on that June 26, 2006,
41
42 Note and its accompanying deed-of-trust Appellant entered by signature in
43
44 favor of one Aegis Lending Corporation on that day.

- 45 o All emails between Appellant and the lead attorney are always copied
and/or forwarded to the Substitute Trustee entity responsible for
postponing trustee sale dates and/or instructing auctioneer to move
forward on calling a particular property to open bidding on it.

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6. Additional email, unanswered, from Appellant to all parties, sent September 24, 2019, one day prior to the trustee sale Appellant dismissed without prejudice an action that was pending in Superior Court. Appellant took a clear camera phone picture of the file-stamped document and emailed all parties the proof with the notice of dismissal of the action at 3:27 PM on September 24, 2019.

7. After several emails to the same lead attorney went unanswered for thirteen straight days from September 12, 2019 to September 25, 2019, being unanswered emails from both Appellant and from the loan broker and private-money lender; this September 25 2019 email exchange ensued in which attorney did finally reply to the email sent her from the loan broker to the lead attorney at 7:45 AM with its attachment being the signed completed loan approval containing more-than-ample funds constituting "proof of funds in writing" awaiting only attorneys' bank wiring instructions: but responded to this email replying "To All" at 9:20AM with a two-sentence email stating their clients would reject Appellant's tender of full payoff and "move forward with the sale" apparently citing the reason being "Ms. Yamagishi has had ample time to try to settle." *The completed dual-signed loan approval attached therewith sent at 7:45 AM 9/25/2019 to lead attorney also included.*

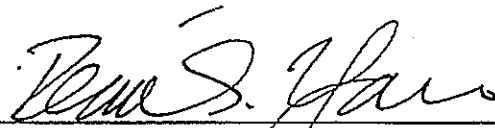
8. The operative publicly recorded Notice of Trustee Sale dated May 10, 2018, advertising Appellant's home for foreclosure auction which had been postponed several times and was thus the operative Notice of Trustee Sale for that September 25, 2019, auction which was instructed to the auctioneer to call to open bidding that day about 1:15 PM on Appellant's home. This document is the complete public record "Notice of Trustee Sale" with its required disclaimers serving as Notice to potential bidders, on the face of the same.

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9. One page from Section §31.98 "Equitable Defenses After Nonjudicial Foreclosure" from the Judicial Council of California's publication entitled California Judges Bench Guide 31: Landlord-Tenant Litigation Unlawful Detainer (2015 Edition). Discussion in this Section of the publication appears relevant to some of Appellant's prior pled defenses raised orally at hearing and in pleadings: but Appellant was unaware of these provisions prior to very recently after Entry of Judgement was ordered.

Dated: September 27, 2021
Executed at Berkeley, California

Respectfully submitted,



Renee Shizue Yamagishi (aka and formerly known as Renee Shizue Ramos), the living woman residing in her primary residence dwelling situated in the County of Alameda and City of Berkeley, one of the people of California, Executor of the ESTATE OF RENEE SHIZUE YAMAGISHI signed this day under penalty of perjury under the laws of the state of California.

Persona Sui Juris and Persona Standi in Judicio

APPELLANT'S NOTICE OF COMPLETION OF THE RECORD FOR PURPOSES OF APPEAL; AND REQUEST FOR LEAVE OF COURT TO PRE-FILE THE ADDENDUM TO APPELLANT'S APP-103 "APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL " FOR GOOD CAUSE AND EXPEDIENCY OF THE COURT; APPELLANT'S DECLARATION IN SUPPORT OF INSTANT NOTICE AND REQUEST

Right of Redemption: Stopping a Foreclosure or Getting Your Home Back Afterward

You definitely get a preforeclosure equitable right of redemption and, depending on the laws in your state, you might also get a post-foreclosure statutory right of redemption.

Reviewed by Amy Loftsgordon, Attorney

Updated: May 27th, 2020

Before a foreclosure sale occurs, a borrower can exercise the right of "equitable redemption" by paying off the entire balance of the mortgage debt and prevent the sale from happening. Every state provides borrowers with an equitable right of redemption.

In specific states, even after a foreclosure sale happens, the borrower can exercise a right of "statutory redemption" and buy the home back. So, depending on your state's laws, if you can come up with enough money, you might be able to get your home back even after someone else buys it at a foreclosure sale. (Learn about other homeowner rights during a foreclosure.)

“ Some states have a law that allows a foreclosed borrower to redeem the home even after someone else purchases it at the foreclosure sale. ”

Redemption Before a Foreclosure Sale: Equitable Redemption

The term "equitable" means fair, and the idea behind equitable redemption is that it is only fair that you should be able to pay off the mortgage debt to stop a lender from selling your home at a foreclosure sale. (Fully paying off the debt to stop a foreclosure is called "redeeming" the property.)

You can usually stop the foreclosure process through equitable redemption at any point before the foreclosure sale takes place. Equitable redemption is available in all states.

Another Option: Buying Your Property at the Foreclosure Sale

Although not technically equitable redemption, the laws in most states allow you to purchase your house at the foreclosure sale. If you can't raise the money to redeem your home before the sale, you can attend the auction and bid on your home (assuming you now have the funds). If you're the high bidder, you keep the house. This type of purchase usually requires cash.

Redemption After Foreclosure: Statutory Redemption

Some states have a law that allows a foreclosed borrower to redeem the home even after someone else purchases it at the foreclosure sale. Because this right comes from state statutes, it is called a "statutory right

of redemption."

If your state provides a statutory right of redemption, you'll get a limited period of time after your home sells to buy it back from the high bidder. Typically, you'll have to reimburse the buyer for the amount paid at the sale, plus interest and allowable costs, though some states require you to pay off the full amount of the mortgage debt, plus interest and certain costs. (To learn more, see *If I Lose My Home to Foreclosure, Can I Get It Back?*)

In some states, you get to continue to live in your home during the redemption period. To find out the law in your state, talk to an attorney.

Getting Help

The law surrounding redemption in a residential foreclosure can be complicated and varies from state to state. Plus, the facts of each case are unique. This article provides a brief, general introduction to the topic. For more detailed, specific information, consider contacting a foreclosure lawyer.


NEED PROFESSIONAL HELP?

Talk to an attorney

Enter Zip Code

Start

From: *Black's Law Dictionary, 4th Ed., 1891, pp. 223-224.*
See also <https://thelawdictionary.org> (for 2nd Ed.)

 BONA. Lat. *adj.* Good.

BONA FIDE PURCHASER

Citing *Black's Law Dictionary, 4th Ed., 1891, page 224*

1. A purchaser in good faith for valuable consideration and without notice. *Neal v. Holt, Tex.Civ.App., 69 S.W.2d 603, 609.*
 2. A purchaser for a valuable consideration paid or parted with in the belief that the vendor had a right to sell, and without any suspicious circumstances to put him on inquiry. *Merritt v. Railroad Co., 12 Barb., N. Y., 605.*
 3. One who acts without covin, fraud, or collusion; one who, in the commission of or connivance at no fraud, pays full price for the property, and in good faith, honestly, and in fair dealing buys and goes into possession. *Sanders v. McAfee, 42 Ga. 250.*
 4. One who at time of purchase advances a new consideration, surrenders some security, or does some other act which leaves him in a worse position if his purchase should be set aside. *Kelly v. Grainey, 113 Mont. 520, 129 P.2d 619, 626.*
 5. Title, possession, and want of notice, either actual or constructive, as the essential factors. *Taylor v. Lindenmann, 211 Iowa, 1122, 235 N.W. 310, 312.*
 6. Payment of consideration prior to notice of adverse claim as essential. *The J. Oswald Boyd, D.C.Mich., 53 F.Supp. 103, 106.*
 7. Payment of valuable consideration, good faith, absence of purpose to take unfair advantage of third persons, and absence of actual or constructive notice of outstanding rights of others as the essential elements. *Luschen v. Stanton, 192 Okl. 454, 137 P.2d 567, 570.*
 8. "Innocent purchaser for value" and "bona fide purchaser" as synonymous. *Felts v. Whitaker, Tex. Civ.App., 129 S.W.2d 682, 690.*
-

"NOTICE"

From Black's Law Dictionary, 4th Ed. 1891; pp. 1210, 1211

(Order of entries rearranged for discussion of "Constructive Notice" and its examples added by this blogger)

NOTICE. Information; the result of observation, whether by the senses or the mind; knowledge of the existence of a fact or state of affairs; the means of knowledge.

Abercrombie v. Virginia-Carolina Chemical Co., 206 Ala. 615, 91 So. 311, 312;
Knights and Ladies of Security v. Bell, 93 Old. 272, 220 P. 594, 597.

- 1) *Knowledge of facts which would naturally lead an honest and prudent person to make inquiry constitutes "notice" of everything which such inquiry pursued in good faith would disclose.* Twitchell v. Nelson, 131 Minn. 375, 155 N.W. 621, 624 ; German-American Nat. Bank of Lincoln v. Martin, 277 Ill. 629, 115 N.E. 721, 729.
- 2) In another sense, "notice" means information, an advice, or written warning, in more or less formal shape, *intended to apprise a person of some proceeding in which his interests are involved, or informing him of some fact which it is his right to know and the duty of the notifying party to communicate.*
- 3) Under the Negotiable Instrument Law "notice" of infirmity of instrument is actual knowledge or knowledge of such facts that taking note amounts to bad faith. Glendo State Bank v. Abbott, 30 Wyo. 98, 216 P. 700, 702, 34 A.L.R. 294.
- 4) Notice is either:
 - (1) statutory, e. made so by legislative enactment.
 - (2) actual, which brings the knowledge of a fact directly home to the party; or
 - (3) constructive. *Constructive notice may be subdivided into:*
 - (a) Where there exists actual notice of matter, to which equity has added constructive notice of facts, which an inquiry after such matter would have elicited; and
 - (b) where there has been a designed abstinence from inquiry for the very purpose of escaping notice. Wharton.
- 5) *Constructive notice is information or knowledge of a fact imputed by law to a person, (although he may not actually have it), because he could have discovered the fact by proper diligence, and his situation was such as to cast upon him the duty of inquiring into it.* Baltimore v. Whittington, 78 Md. 231, 27 A. 984; Acer v. Westcott, 46 N.Y. 384, 7 Am. Rep. 355.
- 6) *Constructive Notice is a presumption of law, making it impossible for one to deny the matter concerning which notice is given, while "implied notice" is a presumption of fact, relating to what one can learn by reasonable inquiry, and arises from actual notice of circumstances, and not from constructive notice.* Charles v. Roxana Petroleum Corporation, C.C.A.Okl., 282 F. 983, 988. Or as otherwise defined, implied notice may be said to exist where the fact in question lies open to the knowledge of the party, so that the exercise of reasonable observation and watchfulness would not fail to apprise him of it, although no one has told him of it in so many words. See City of Philadelphia v. Smith, Pa., 16 A. 493.

CIVIL CODE - CIV

1



DIVISION 3. OBLIGATIONS [1427 - 3273.16] (*Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.*)

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273.16] (*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 - 2944.10] (*Article 1 enacted 1872.*)

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 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.

(Repealed and added by Stats. 2018, Ch. 404, Sec. 16. (SB 818) Effective January 1, 2019.)



CIVIL CODE - CIV

DIVISION 3. OBLIGATIONS [1427 - 3273.16] (*Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.*)

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273.16] (*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 - 2944.10] (*Article 1 enacted 1872.*)

(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 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 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17 by a person licensed by the Department of Business Oversight or the 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) 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 not apply to entities described in subdivision (b) of Section 2924.18.

(Amended (as amended by Stats. 2014, Ch. 401, Sec. 7) by Stats. 2018, Ch. 404, Sec. 17. (SB 818) Effective January 1, 2019.)



CIVIL CODE - CIV

DIVISION 3. OBLIGATIONS [1427 - 3273.16] (*Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.*)

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273.16] (*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 - 2944.10] (*Article 1 enacted 1872.*)

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.

(f) This section shall be operative January 1, 2026.

(Repealed (in Sec. 3) and added by Stats. 2020, Ch. 202, Sec. 4. (SB 1079) Effective January 1, 2021. Section operative January 1, 2026, by its own provisions.)

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Deering's California Codes are current through Chapters 1-7 and 9 of the 2020 Regular Session, including all legislation effective June 28, 2020 or earlier.

Deering's California Codes Annotated > CIVIL CODE (§§ 1 – 7021) > Division 3 Obligations (Pts. 1 – 4) > Part 4 Obligations Arising from Particular Transactions (Titles 1 – 18) > Title 14 Lien (Chs. 1 – 8) > Chapter 2 Mortgage (Arts. 1 – 3) > Article 1 Mortgages in General (§§ 2920 – 2944.10)

§ 2924f. Notice of sale; Posting, publication, and recording; Contents; Place of sale; Bids prior to sale; Postponement of sale

(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 county seat of the county where 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 public notice 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 public notice 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 public notice 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. For the purposes of this section, publication of notice in a public notice district is governed by Chapter 1.1 (commencing with *Section 6080*) of *Division 7 of Title 1 of the Government Code*.

(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.

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(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,

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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).

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(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

_____ 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.

History

Added Stats 2010 ch 597 § 2 (AB 2347), effective January 1, 2011, operative January 1, 2013. Amended Stats 2011 ch 229 § 2 (SB 4), effective January 1, 2012, operative January 1, 2013; Stats 2012 ch 556 § 4 (AB 1599), effective January 1, 2013; Stats 2016 ch 703 § 3 (AB 2881), effective January 1, 2017.

Annotations

Notes

Amendments:

Amendments:

2011 Amendment:

(1) Added subd (b)(2); and (2) redesignated former subd (b)(2) to be subd (b)(3).

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2012 Amendment:

(1) Added the subd (b)(1) through (b)(7) designations; (2) amended subd (b)(2) by (a) deleting (A) after "state that"; and (b) deleting "(B)" after "situated and"; (3) deleted "Additionally," in subd (b)(4); (4) redesignated former subd (b)(2) and (b)(3) to be (b)(8) and (b)(9); (5) substituted "paragraphs (1) to (7), inclusive" for "paragraph (1) in subd (b)(8); and (6) substituted "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." for "This section shall become operative on January 1, 2013."

2016 Amendment:

(1) Substituted "county seat of the county where" for "judicial district in which" in subd (b)(1); and (2) amended subd (b)(2) by (a) substituting "public notice" for "judicial" wherever it appears in the first sentence; and (b) adding the second sentence.

Notes to Decisions

Decisions Under Current Law

1. Generally

2. Particular Cases

3. Pleadings

Decisions Under Former Law

1. Generally

Decisions Under Current Law

1. Generally

The statutory procedure (CC §§ 2924f-2924h) for sale of property under a deed of trust is not disrupted by allowing prospective bidders to maintain an action against the trustees and those who conducted the sale for deceit in holding a mock auction and secretly selling the property to the beneficiary for less than its market value. Furthermore, the fact that CC § 2924h, defines only the obligations, not the rights, of bidders, cannot be taken as taking away the rights which bidders would otherwise have to recover damages for deceit. *Block v. Tobin* (Cal. App. 1st Dist. Feb. 10, 1975), 45 Cal. App. 3d 214, 119 Cal. Rptr. 288, 1975 Cal. App. LEXIS 1678.

The fact that homeowners whose residence was being foreclosed filed a petition in bankruptcy on the same day as the third published notice of the trustee's sale, did not require the trustee, after obtaining relief from the automatic bankruptcy stay, to begin anew the publication of notice required by CC § 2924f. The automatic bankruptcy stay did not prevent the completion of the third notice of sale published that same day, and that notice did not violate the stay. Moreover, the trustee was not required to republish the notice of sale with actual notice to the homeowners after obtaining relief from the bankruptcy stay and before proceeding with the foreclosure sale. Debtors bear the

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responsibility to remain informed about the status of their property that has been put into foreclosure prior to the commencement of their bankruptcy. If the secured creditor has fully complied with § 2924f before the debtors have filed for bankruptcy, no further notice is required as a matter of law. Tully v. World Savings & Loan Assn. (Cal. App. 2d Dist. July 21, 1997), 56 Cal. App. 4th 654, 65 Cal. Rptr. 2d 545, 1997 Cal. App. LEXIS 577.

Secured creditor was granted relief from the automatic stay pursuant to 11 U.S.C.S. § 362(d), where debtor was merely a junior lienholder with no practical ability to protect its lien, and the creditor had a substantial financial investment and was suffering continuing losses due to its inability to foreclose under CC §§ 2924b et seq. Scripps GSB I, LLC v. A Partners, LLC (In re A Partners, LLC) (Bankr. E.D. Cal. June 5, 2006), 344 B.R. 114, 2006 Bankr. LEXIS 1047.

2. Particular Cases

Borrower's wrongful foreclosure claim based on defendants' failure to comply with statutory notice requirements governing nonjudicial foreclosure sales under CC §§ 2934a(1)(4)(e) and 2924f(b)(1) was dismissed where apart from restating the words of the statutes, the borrower had not alleged facts to show that each defendant failed to send written notice of substitution of the trustee prior to sending notices of the foreclosure sale and how the notice of sale failed to meet statutory requirements. Gutierrez v. PNC Mortg. (S.D. Cal. Mar. 26, 2012), 2012 U.S. Dist. LEXIS 41890.

In a wrongful foreclosure case, the borrowers did not allege sufficient facts to overcome a presumption of procedural regularity established by a deed of sale; therefore, conclusory allegations regarding violations of statutory provisions relating to notice were rejected. Toneman v. United States Bank (C.D. Cal. Feb. 22, 2013), 2013 U.S. Dist. LEXIS 84240, dismissed, (C.D. Cal. Oct. 21, 2013), 2013 U.S. Dist. LEXIS 196516.

April 2011 Default Notice contained a statement detailing the nature of the claimant's default; further, each of the notices of sale provided to the court included both an assessor's parcel number as well as a street address for the property. She failed to satisfy her burden of establishing that debtors violated CC § 2924. In re Residential Capital, LLC (Bankr. S.D.N.Y. Dec. 22, 2014), 523 B.R. 24, 2014 Bankr. LEXIS 5114.

In a case involving plaintiffs who lost their home through a nonjudicial foreclosure sale, the trial court did not err in denying plaintiffs leave to amend their complaint to amend the counts alleging violation of Civ. Code, §§ 2924b & 2924f. Orcilla v. Big Sur, Inc. (Cal. App. 6th Dist. Feb. 11, 2016), 244 Cal. App. 4th 982, 198 Cal. Rptr. 3d 715, 2016 Cal. App. LEXIS 108, modified, (Cal. App. 6th Dist. Mar. 11, 2016), 2016 Cal. App. LEXIS 184.

Even assuming that a homeowner had standing and that her suit challenging foreclosure proceedings against her was otherwise authorized, she failed to sufficiently allege that the trustee lacked authority to initiate the foreclosure proceedings because a purchase and assumption agreement between the receiver for the original lender and a purchaser contradicted the allegations that she relied upon to support her theory that the trustee lacked authority to foreclose; the homeowner did not challenge the trial court's determination that the purchase and assumption agreement was a proper subject for judicial notice, and she failed to explain why certain language in the agreement did not cover the entity to which the original lender purportedly sold her loan. Brown v. Deutsche Bank National Trust Co. (Cal. App. 1st Dist. May 9, 2016), 247 Cal. App. 4th 275, 201 Cal. Rptr. 3d 892, 2016 Cal. App. LEXIS 375.

3. Pleadings

Plaintiffs' claim that lenders violated this section failed to state a claim because notice of trustee's sale was recorded prior to April 1, 2012, which was effective date for statute. Toneman v. United States Bank (C.D. Cal. Oct. 21, 2013), 2013 U.S. Dist. LEXIS 196516, aff'd, (9th Cir. Cal. Jan. 7, 2016), 628 Fed. Appx. 523, 2016 U.S. App. LEXIS 522.

Decisions Under Former Law

1. Generally

Where real property was sold under a deed of trust, which property was situated in the same city in which it was to be sold, and the sale was conducted under former CCP § 692(3) (see now CCP §§ 687.010, 699.070, 701.530, 701.540), only three notices in three public places in such city were required. Sargent v. Shumaker (Cal. Jan. 30, 1924), 193 Cal. 122, 223 P. 464, 1924 Cal. LEXIS 290.

In an action to set aside a sale under a trust deed, the question of whether or not the notice of sale was posted in a conspicuous place on the premises sold is for the determination of the trial court, and such determination cannot be disturbed on appeal where there is evidence to support it. Speranco v. Bryan (Cal. App. Feb. 2, 1928), 88 Cal. App. 761, 264 P. 300, 1928 Cal. App. LEXIS 280.

The statutory requirement was not complied with where notices were posted at the entrances of the courthouse, in the hall of records and at the city hall, and it was found that the courthouse and hall of records constituted but one place. Standley v. Knapp (Cal. App. Mar. 30, 1931), 113 Cal. App. 91, 298 P. 109, 1931 Cal. App. LEXIS 967.

Where the notice of sale under a deed of trust was published once a week for three successive weeks and the full period of twenty days elapsed between the first publication of the notice and the day when the sale was made as provided in such notice, there was sufficient compliance with this section. McCabe v. Willard (Cal. App. Dec. 10, 1931), 119 Cal. App. 122, 6 P.2d 258, 1931 Cal. App. LEXIS 107.

Where a notice was posted on the property in accordance with the statute, the sale was not rendered invalid by the fact that the notice on the property to be sold erroneously described such property. McCabe v. Willard (Cal. App. Dec. 10, 1931), 119 Cal. App. 122, 6 P.2d 258, 1931 Cal. App. LEXIS 107.

The requirement that a notice of sale of real property under a deed of trust shall be published once a week for the period of twenty days is complied with where said notice is published three times in a weekly newspaper, the publications being a week apart, even though but fourteen days elapsed between the first and the last publication. Hotchkiss v. Darling (Cal. App. Mar. 28, 1933), 130 Cal. App. 625, 20 P.2d 343, 1933 Cal. App. LEXIS 1053.

Recitals in a deed that the trustee caused to be posted a written notice of the time and place of the sale under a deed of trust, which notice contained a particular description of the property, in three public places in the city, in which the property was situated, and also in a conspicuous place on the property to be sold and described in the notice, and caused the same to be published once a week for a period of twenty days immediately preceding the day of sale in a newspaper of general circulation, are recitals of ultimate facts as counter-distinguished from conclusions of law. Sorensen v. Hall (Cal. Jan. 18, 1934), 219 Cal. 680, 28 P.2d 667, 1934 Cal. LEXIS 616.

Where a deed of trust made the recitals in the trustee's deed of due and proper posting conclusive evidence thereof, such recitals alone were sufficient to sustain the trial court's findings on that issue. Bechtel v. Wilson (Cal. App. Dec. 31, 1936), 18 Cal. App. 2d 331, 63 P.2d 1170, 1936 Cal. App. LEXIS 215.

The posting on the premises of a single notice of sale under a trust deed was sufficient where the property, although divided by a highway, consisted of a single holding, and was operated as a single ranch. Py v. Pleitner (Cal. App. Aug. 20, 1945), 70 Cal. App. 2d 576, 161 P.2d 393, 1945 Cal. App. LEXIS 1106.

Research References & Practice Aids

Cross References:

Mode of recording instruments affecting real property: CC §§ 1169 et seq.

Effect of recording instruments affecting real property: CC §§ 1213 et seq.

"Mortgage": CC § 2920.

Notice of default: CC §§ 2924, 2924b, 2924c.

Right to cure default: CC § 2924c.

Limitation on costs and expenses: CC § 2924c.

Bidding at sale: CC § 2924g.

Procedure for recording instruments: Gov C §§ 27320 et seq.

Jurisprudences:

Cal Jur 3d (Rev) Deeds of Trust §§ 227, 228, 230, 231, 258, 259, 261, 269.

Legal Periodicals:

Civil: Does Opportunity Knock? The California Foreclosure Prevention Act of 2009. 41 McGeorge L. Rev. 511.

What constitutes public place. 19 Cal. L. Rev. 550.

Constructive notice. 23 Cal. L. Rev. 107.

Constitutionality of California trustee's sale; notice. 61 Cal. L. Rev. 1287.

Saving the California Homeowner Bill of Rights from Federal Banking Preemption. 48 U.S.F. L. Rev. 189.

Real Estate Law Issue: Out Of The Courts. 39 Los Angeles Lawyer 14.

Treatises:

Cal. Legal Forms, (Matthew Bender) §§ 25A.10[2], 25A.210[1], 25A.214[1], 25A.230[1], 25C.18[4], 25C.140, 25C.142, 25C.230[1], 25C.233[1], 25C.234[1], 25D.121, 25D.123, 25D.124, 25D.125, 25D.203[1], 25D.204[1], 25D.206[1], 26A.235[2], 40.223[1].

Taking a closer look: Significant new California legislation relating to real property enacted in 1987. 11 CEB Real Prop L Rep No. 2 p 37.

Miller & Starr, Cal Real Estate 3d §§ 11:6, 10:143, 10:185, 10:198, 10:199, 10:202.

4 Witkin Summary (10th ed) Security Transactions in Real Property §§ 8, 148, 150, 151, 152, 155, 160.

Hierarchy Notes:

Cal Civ Code Div. 3, Pt. 4, Title 14, Ch. 2

Cal Civ Code § 2924f

Cal Civ Code Div. 3, Pt. 4, Title 14, Ch. 2, Art. 1

Deering's California Codes Annotated
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CIVIL CODE - CIV

DIVISION 3. OBLIGATIONS [1427 - 3273.16] (*Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.*)

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273.16] (*Part 4 enacted 1872.*)

TITLE 14. LIEN [2872 - 3081] (*Title 14 enacted 1872.*)

CHAPTER 1. Liens in General [2872 - 2914] (*Chapter 1 enacted 1872.*)

ARTICLE 3. Effect of Liens [2888 - 2892] (*Article 3 enacted 1872.*)

Notwithstanding an agreement to the contrary, a lien, or a contract for a lien, transfers no title to the property subject
2888. to the lien.

(Enacted 1872.)

6.120.010 - Purpose, intent and scope.

General Ordinance Code Alameda (2)

The ordinance codified in this chapter is enacted to promote the public peace, health, welfare and safety. The purposes of this chapter are to reduce the transmission of COVID-19, to promote housing stability during the COVID-19 pandemic and to prevent avoidable homelessness. This chapter is necessary to promote the public peace, health, welfare and safety because the COVID-19 pandemic has the potential for destabilizing the residential market for the reasons described in the findings made by the Board of Supervisors in enacting this chapter. This chapter is intended to enable tenants, homeowners, and mobilehome owners in the county to shelter-in-place and avoid displacement during the COVID-19 pandemic. This chapter is also intended to enable tenants, homeowners, and mobilehome owners in the county whose income, medical expenses, or child care needs have been affected by the COVID-19 pandemic to be temporarily protected from eviction for non-payment of rent or mortgage payments. This chapter is intended to reduce the risk that these events will lead to anxiety, stress and potential homelessness for the affected residents and their communities thereby serving the public peace, health, safety, and public welfare. The temporary moratorium on evictions by this chapter is created pursuant to the county's emergency authority pursuant to Government Code Section 8634 and its general police powers to protect the health, safety, and welfare of its residents, in addition to any rights and obligations under state and federal law.

(Ord. No. 2020-32, § 2, 6-23-20)

6.120.020 - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Affected resident" shall mean a tenant, homeowner or their household, that has experienced a qualifying loss.

"Homeowner" means the owner or owners of a residential unit subject to a mortgage or similar loan secured by the residential unit. Homeowner includes the owner of a mobilehome.

"Household" means all of the individuals residing in the residential unit with the tenant(s) and/or homeowner(s).

"Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and/or occupancy of any residential unit by a tenant and the agent, representative, or successor of any of the foregoing. Landlord includes a mobilehome park owner leasing spaces to a mobilehome owner.

"Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more residential units, which person has the right to mortgage or similar payments from the homeowner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.

"Local health emergency" means the state of emergency declared by the County of Alameda or its authorized officers related to COVID-19 including but not limited to declarations by the public health officer or the Board of Supervisors.

"Mobilehome" means a structure transportable in one or more sections, designed and equipped to contain not more than one dwelling unit, to be used with or without a foundation system.

"Notice of termination" means the notice informing a tenant or homeowner of the termination of their right to occupy the residential unit in accordance with applicable California law, including but not limited to a three- or 30-day notice to pay or quit.

"Person" means an individual, firm, association, partnership, joint venture, corporation or any entity, public or private in nature.

"Qualifying loss" means substantial loss in income, substantial out-of-pocket medical expenses or extraordinary child care needs, resulting in a substantial hardship or inability to make rent or mortgage payments when due, as a result of the COVID-19 pandemic, including but not limited to any COVID-19 related declaration of the county public health officer, or other local, state or federal authority.

"Resident" shall mean a tenant, homeowner or their household. This term includes but is not limited to affected residents.

"Residential unit" means a structure or mobilehome or the portion thereof that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and which person or household pays rent to a landlord or mortgage payments to a lender for the use and/or occupancy of the structure or mobilehome, or the space where a mobilehome is located, for periods of thirty (30) days or more whether or not the residential use is a conforming use permitted under the Alameda County Ordinance Code, applicable city's municipal code, or other applicable regulations.

"Tenant" means a residential tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement, or by sufferance, to use or occupancy of a residential unit.

(Ord. No. 2020-32, § 2, 6-23-20)

6.120.030 - Moratorium on evictions during local health emergency.

- A. Beginning on the effective date of this ordinance and expiring sixty (60) days after the expiration of the local health emergency but not sooner than sixty (60) days after December 31, 2020, the county hereby places a moratorium on all evictions from residential units in the unincorporated and incorporated areas of the county, subject to the exceptions stated below.
- B. No landlord or lender may evict a resident, or otherwise require a resident to vacate a residential unit, or retaliate against a resident, while this section is in effect.
- C. Violation of this chapter is an affirmative defense to any unlawful detainer action or other proceeding to recover possession of a residential unit.
- D. It shall be an absolute defense to any unlawful detainer action against a resident that the notice of termination was served or expired, or that the complaint was filed or served, on or after March 24, 2020 and on or before sixty (60) days after the expiration of the local health emergency or sixty (60) days after December 31, 2020, whichever is later, subject to the exceptions stated below. This defense may be raised at any time, including after the end of the local health emergency and after the expiration of the ordinance codified in this chapter stated in Section III of said ordinance, provided the notice or complaint at issue in the unlawful detainer action was filed or served during the period stated in this subsection.

- E. Notwithstanding any lease provision to the contrary, no late fees, fines or interest may be imposed for rent that became due during the effective period for this section.
- F. Exceptions. The landlord or lender claiming that their proposed eviction is not prohibited by this chapter shall have the burden of proving that one or more of the exceptions applies. The provisions of this section shall not apply in the following circumstances, which must be stated by in the notice of termination and the complaint as the grounds for the eviction:
 - 1. A Landlord is taking the residential unit off of the residential rental market in accordance with Government Code Section 7060, et seq. (Ellis Act) and in compliance with any applicable local ordinances.
 - 2. The residential unit must be vacated to comply with an order issued by a government agency or court.
 - 3. Continued occupancy by the resident poses an imminent threat to health or safety. For the purposes of this chapter, the basis for this exception cannot be the resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.

(Ord. No. 2020-32, § 2, 6-23-20; Ord. No. 2020-39, § 2, 7-14-20; Ord. No. 2020-41, § 2, 8-4-20)

6.120.040 - Moratorium on evictions based on nonpayment caused by COVID-19.

- A. Beginning on the effective date of the ordinance codified in this chapter and expiring sixty (60) days after the expiration of the local health emergency but not sooner than sixty (60) days after December 31, 2020, the county hereby places a moratorium on evictions from residential units in the unincorporated and incorporated areas of the county resulting from a substantial loss of income, substantial out-of-pocket medical expenses, or extraordinary child care needs, any of which are caused by COVID-19.
- B. No landlord or lender may evict an affected resident, or otherwise require an affected resident to vacate a residential unit or retaliate against an affected resident for nonpayment of rent or mortgage payments or for nonpayment of late fees, fines or interest based on nonpayment, while this chapter is in effect.
- C. Violation of this chapter is an affirmative defense to any unlawful detainer action or other proceeding to recover possession of a residential unit.
- D. It shall be an absolute defense to any unlawful detainer action against an affected resident based on a failure to timely make rent or mortgage payments that the notice of termination was served or expired, or that the complaint was filed or served, on or after March 24, 2020 and on or before sixty (60) days after the expiration of the local health emergency or sixty (60) days after December 31, 2020, whichever is later. This defense may be raised at any time, including after the end of the local health emergency and after the expiration of the ordinance codified in this chapter stated in Section III of said ordinance, provided the notice or complaint at issue in the unlawful detainer action was filed or served during the period stated in this subsection.
- E. Notwithstanding any lease provision to the contrary, no late fees, fines or interest may be imposed for rent that became due during the effective period for this section, if the rent was late due to a qualifying loss.

(Ord. No. 2020-32, § 2, 6-23-20; Ord. No. 2020-39, § 2, 7-14-20; Ord. No. 2020-41, § 2, 8-4-20)

6.120.050 - Procedures.

- A. A landlord or lender must provide a copy of this chapter and the following notice in at least 12-point font to residents when serving residents with a notice of termination:
"NOTICE: THE COUNTY OF ALAMEDA HAS ADOPTED A TEMPORARY MORATORIUM ON EVICTIONS DURING THE COVID-19 LOCAL HEALTH EMERGENCY INCLUDING EVICTIONS FOR NONPAYMENT OF RENT OR MORTGAGE PAYMENTS DUE TO COVID-19. A COPY OF THE COUNTY ORDINANCE IS ATTACHED. UPDATED INFORMATION MAY BE AVAILABLE FROM THE COUNTY'S HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT AT jennifer.pearce@acgov.org or 510670-6474."
- B. If the residential unit is located within the jurisdictional limits of a city which also has an ordinance protecting residents from evictions due to COVID-19 or during the COVID-19 emergency, the landlord or lender must also provide a copy of the city's ordinance with the notice of termination.
- C. To the extent feasible, affected residents should make a reasonable effort to notify their landlord or lender on or before the day rent or mortgage payment is due, or as soon as possible thereafter, of their potential inability to make a timely rent or mortgage payment due to a qualifying loss.

(Ord. No. 2020-32, § 2, 6-23-20)

6.120.060 - Documentation—Required only for COVID-19 based eviction protections.

- A. The provisions of this section apply only when an affected resident is seeking protection from eviction pursuant to Section 6.120.040 of this chapter due to a substantial loss in income, substantial out-of-pocket medical expenses or extraordinary child care needs, resulting in a substantial hardship or inability to make rent or mortgage payments when due, as a result of the COVID-19 pandemic, including but not limited to any COVID-19 related declaration of the county public health officer, or other local, state or federal authority. Documentation is not required when a resident is seeking protection from eviction pursuant to Section 6.120.030 of this chapter.
- B. An affected resident's qualifying loss must be documented.
- C. An affected resident shall retain such documentation until such time as any back rent owed due to the qualifying loss is repaid or forgiven.
- D. An affected resident is not required to provide such documentation to the landlord or lender in advance to qualify for the protections of this chapter. However, upon the request of a landlord or lender, an affected resident shall provide such documentation to the landlord or lender within forty-five (45) days after the request or within thirty (30) days after the county's shelter in place order is lifted, whichever is later.
- E. The following documents shall create a rebuttable presumption that the affected resident has a qualifying loss:
 1. Letter from employer or other source of income citing COVID-19 as a reason for reduced work hours, termination, or other substantial reduction in pay;
 2. Employer paycheck stubs showing a reduction in pay following the COVID-19 outbreak;

3. Bank statements showing a reduction in income following the COVID-19 outbreak;
 4. Documentation showing payment of substantial out-of-pocket medical expenses caused by COVID-19;
 5. Documentation showing the closure of a school or child care facility where a child in the affected resident's care would otherwise be present during the affected resident's working hours; or
 6. A sworn statement by the affected resident attesting to the existence of their qualifying loss, including facts sufficient to demonstrate the qualifying loss, and attesting to their inability to gather the documentation described in subsections 1—5 above.
- F. An affected resident may provide other documentation to demonstrate a substantial hardship or inability to make timely rent or mortgage payments caused by COVID-19.
- G. Any confidential medical information or other information protected by the affected resident's rights to privacy shall be held confidential by the landlord or lender and shall not be reproduced or distributed unless otherwise authorized or required by law.

(Ord. No. 2020-32, § 2, 6-23-20)

6.120.070 - Retaliation prohibited.

A landlord or lender shall not retaliate against a resident for exercising their rights under this chapter, including but not limited to shutting off any utilities or reducing services or amenities to which the residents would otherwise be entitled.

(Ord. No. 2020-32, § 2, 6-23-20)

6.120.080 - No waiver.

The protections provided by this chapter shall be available to all residents, regardless of any agreement wherein a resident waives or purports to waive their rights under this chapter.

(Ord. No. 2020-32, § 2, 6-23-20)

6.120.090 - Repayment of back rent.

- A. Nothing in this chapter relieves an affected resident of liability for unpaid rent or mortgage payments that became due during the effective periods of Sections 6.120.030(A) or (D) or 6.120.040(A) or (D) of this chapter.
- B. In any action to recover possession of a residential unit from a tenant based on nonpayment of rent, it shall be an affirmative defense that the rent became due during the effective periods of Sections 6.120.030(A) or (D) or 6.120.040(A) or (D) of this chapter. This defense may be raised at any time, including after the end of the local health emergency and after the expiration of this chapter stated in Section III of the ordinance codified in this chapter.
- C. A Landlord and tenant may mutually agree to a repayment plan for unpaid back rent that came due during the effective periods of Sections 6.120.030(A) or (D) or 6.120.040(A) or (D) of this chapter. Such

plans remain subject to the limitation on evictions based on back rent owed pursuant to subsection B, above. At a minimum, a payment plan:

1. May waive portions of the tenant's rental obligation and may grant the tenant additional time to pay beyond the minimum requirements of this chapter.
 2. Should not require the tenant's agreement to change lease terms as a condition of the payment plan.
 3. May allow partial rent payments or temporarily discounted rent, without affecting the maximum allowable base rent that the landlord may charge at the close of the payment plan period.
 4. May not declare a tenant's failure to comply with a payment plan a basis for eviction prior to the end of the repayment deferral period.
- D. If a tenant does not repay the rent that became due during the applicable effective periods of Sections 6.120.030(A) or (D) or 6.120.040(A) or (D) within twelve (12) months from the date the rent became due, a landlord may collect the back rent as any other consumer debt. Such back rent may not be collected through the unlawful detainer process.
- E. In any action to recover possession of a residential unit, it shall be an affirmative defense if the landlord or lender impeded the affected resident's effort to pay by refusing to accept payments on behalf of affected resident from a third party, or refusing to provide a W-9 form or other necessary documentation for the affected resident to receive financial assistance from a government agency, non-profit organization, or other third party. This defense may be raised at any time, including after the end of the Local Health Emergency and after the expiration of this chapter stated in Section III of the ordinance codified in this chapter.

(Ord. No. 2020-32, § 2, 6-23-20)

6.120.100 - Violation and remedies.

- A. Affirmative Defense. Each landlord or lender that seeks to recover possession of a residential unit must comply with this chapter. Non-compliance with any applicable provision of this chapter shall constitute an affirmative defense for a resident against any unlawful detainer action under California Code of Civil Procedure Section 1161, termination of tenancy in a mobilehome park under the Mobilehome Residency Law (see Civil Code Section 798.55, et seq.), petition for writ of possession, or any other action to recover possession of the residential unit or to otherwise cause residents to vacate the residential unit.
- B. Misdemeanor. Any person violating any of the provisions of this chapter is guilty of a misdemeanor. Each person is guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued or allowed in conjunction with the landlord's or lender's activities with respect to the residential unit, residents and households and is punishable accordingly. For purposes of this section, each and every day of violation includes each day on which a failure to comply with this chapter continues. No proof of knowledge, intent, or other mental state is required to establish a violation.
- C. Civil Remedies.
1. Any landlord or lender that willfully fails to comply with this chapter is subject to a fine of \$1,000.00

per violation. Each person is liable for separate violation for each and every day during any portion of which any violation of any provision of this chapter is committed, continued or allowed in conjunction with the landlord's or lender's activities with respect to the residential unit, residents, and resident households. For purposes of this section, each and every day of the violation includes each day on which a failure to comply with this chapter continues. No proof of knowledge, intent, or other mental state is required to establish a violation.

2. Any landlord or lender that willfully fails to comply with this chapter may be subject to civil proceedings for displacement of residents initiated by the county or the affected residents.
3. Any person found to have willfully violated this chapter shall be subject to appropriate injunctive relief and shall be liable to the resident for damages, costs, and reasonable attorneys' fees.
4. Nothing herein shall be deemed to interfere with the right of a Landlord to file an action against a resident or non-resident third party for damage done to said residential unit. Nothing herein is intended to limit the damages recoverable by any party through a private action.

D. Cumulative Remedies. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

(Ord. No. 2020-32, § 2, 6-23-20)

ORDINANCE NO. O-2020-41

AN ORDINANCE AMENDING SECTIONS 6.120.030 AND 6.120.040 OF THE ALAMEDA COUNTY ORDINANCE CODE TO EXTEND THE TEMPORARY MORATORIUM ON RESIDENTIAL EVICTIONS IN THE COUNTY OF ALAMEDA TO EXPIRE SIXTY DAYS AFTER THE EXPIRATION OF THE LOCAL HEALTH EMERGENCY BUT NOT SOONER THAN SIXTY DAYS AFTER DECEMBER 31, 2020

SECTION I

In enacting this ordinance, the Board of Supervisors of the County of Alameda, State of California hereby reaffirms and incorporates by this reference the findings contained in Section I of Ordinance No. O-2020-32.

SECTION II

NOW, THEREFORE, the Board of Supervisors of the County of Alameda ordains as follows:

Sections 6.120.030 and 6.120.040 of Chapter 6.120 of the Alameda County Ordinance Code, respectively, are hereby amended to read as follows:

6.120.030 - Moratorium on Evictions During Local Health Emergency.

- A. Beginning on the effective date of this ordinance and expiring sixty (60) days after the expiration of the Local Health Emergency but not sooner than sixty (60) days after December 31, 2020, the County hereby places a moratorium on all evictions from Residential Units in the unincorporated and incorporated areas of the County, subject to the exceptions stated below.
- B. No Landlord or Lender may evict a Resident, or otherwise require a Resident to vacate a Residential Unit, or retaliate against a Resident, while this section is in effect.
- C. Violation of this ordinance is an affirmative defense to any unlawful detainer action or other proceeding to recover possession of a Residential Unit.
- D. It shall be an absolute defense to any unlawful detainer action against a Resident that the Notice of Termination was served or expired, or that the complaint was filed or served, on or after March 24, 2020 and on or before sixty (60) days after the expiration of the Local Health Emergency or sixty (60) days after December 31, 2020, whichever is later, subject to the exceptions stated below. This defense may be raised at any time, including after the end of the Local Health Emergency and after the expiration of this ordinance stated in Section III, provided the notice or complaint at issue in the unlawful detainer action was filed or served during the period stated in this subsection.

- E. Notwithstanding any lease provision to the contrary, no late fees, fines or interest may be imposed for rent that became due during the effective period for this section.
- F. Exceptions. The Landlord or Lender claiming that their proposed eviction is not prohibited by this ordinance shall have the burden of proving that one or more of the exceptions applies. The provisions of this section shall not apply in the following circumstances, which must be stated by in the Notice of Termination and the complaint as the grounds for the eviction:
 - 1) A Landlord is taking the Residential Unit off of the residential rental market in accordance with Government Code sections 7060, *et seq.* (Ellis Act) and in compliance with any applicable local ordinances.
 - 2) The Residential Unit must be vacated to comply with an order issued by a government agency or court.
 - 3) Continued occupancy by the Resident poses an imminent threat to health or safety. For the purposes of this ordinance, the basis for this exception cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.

6.120.040 - Moratorium on Evictions Based on Nonpayment Caused by COVID-19.

- A. Beginning on the effective date of this ordinance and expiring sixty (60) days after the expiration of the Local Health Emergency but not sooner than sixty (60) days after December 31, 2020, the County hereby places a moratorium on evictions from Residential Units in the unincorporated and incorporated areas of the County resulting from a substantial loss of income, substantial out-of-pocket medical expenses, or extraordinary child care needs, any of which are caused by COVID-19.
- B. No Landlord or Lender may evict an Affected Resident, or otherwise require an Affected Resident to vacate a Residential Unit or retaliate against an Affected Resident for nonpayment of rent or mortgage payments or for nonpayment of late fees, fines or interest based on nonpayment, while this ordinance is in effect.
- C. Violation of this ordinance is an affirmative defense to any unlawful detainer action or other proceeding to recover possession of a Residential Unit.
- D. It shall be an absolute defense to any unlawful detainer action against an Affected Resident based on a failure to timely make rent or mortgage payments that the Notice of Termination was served or expired, or that the complaint was filed or served, on or after March 24, 2020 and on or before sixty (60) days after the expiration of the Local Health Emergency or sixty (60) days after December 31, 2020, whichever is later. This defense may be raised at any time, including after the end of the Local Health Emergency and after the expiration of this ordinance stated in Section III, provided the notice or complaint at issue in the unlawful detainer action was filed or served during the period stated in this subsection.

E. Notwithstanding any lease provision to the contrary, no late fees, fines or interest may be imposed for rent that became due during the effective period for this section, if the rent was late due to a Qualifying Loss.

SECTION III

This ordinance shall be in force thirty (30) days after its passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for an against the same in the Inter-City Express, a newspaper published in the County of Alameda.

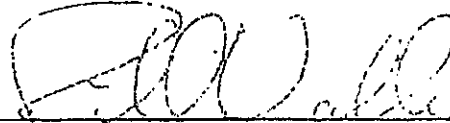
Adopted by the Board of Supervisors of the County of Alameda, State of California, on the 4th day of August, 2020, by the following called vote:

AYES: Supervisors Carson, Chan, & President Valle - 3

NOES: None

EXCUSED: Supervisor Haggerty

ABSTAINED: Supervisor Miley

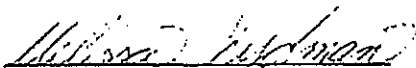


RICHARD VALLE


President of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors,

By: 
Deputy Clerk

APPROVED AS TO FORM:
DONNA R. ZIEGLER, COUNTY COUNSEL

By: 
Heather Littlejohn
Deputy County Counsel

May 27, 2021

Re: Alameda County Eviction Moratorium (Ordinance No. O-2020-41) Applies to Foreclosed Homeowners

To Whom It May Concern:

My name is Nisha Ajmani, and I am a staff attorney at Housing and Economic Rights Advocates (HERA) in Oakland, California. HERA is a California state-wide, non-profit law office, founded in 2005 focusing on housing and economic justice. Specifically, we provide free legal services directly to the public, including homeowners and tenants, to ensure that vulnerable Californians have access to their rights so that they may secure and maintain stable housing. I am writing regarding Diane Ohlsson, an Alameda County senior resident, and HERA's position that the Alameda County's Eviction Moratorium (Ordinance No. O-2020-41) applies to her as a foreclosed homeowner for the following reasons.

To begin with, Alameda County Ordinance No. O-2020-32, as amended by Ordinance No. O2020-41 (collectively the "Moratorium"), is still in effect, as it does not expire until 60 days after the expiration of the local health emergency. The local health emergency has not yet expired as of the writing of this letter. Second, the plain language of the Moratorium, in addition to the apparent intent of the Alameda County Board of Supervisors in passing the Moratorium, necessitates that the Moratorium apply to foreclosed homeowners because the definition of "Resident" includes foreclosed homeowners.¹ Third, because the remedy for homeowners is a foreclosure sale when they default on their mortgage, it is not legally possible for a homeowner to be evicted prior to a foreclosure sale.

HERA reads the plain language of the Moratorium to mean that it applies to "Residents" of Alameda County. The Moratorium states in Section 6.120.030(B) that "No Landlord or Lender may evict a Resident, or otherwise require a Resident to vacate a Residential Unit, or retaliate against a Resident, while this section is in effect."² According to Alameda County Ordinance No. O-2020-32 Section 6.120.020 (Definitions), "'Resident' shall mean a Tenant, Homeowner or their Household. This term includes but is *not limited to* Affected Residents" (emphasis added).³ According to the Definitions section, "'Affected Resident' shall mean a Tenant, Homeowner or their Household, that has experienced a Qualifying Loss [i.e., a substantial COVID-19 related

¹ See Alameda County Ordinance No. O-2020-32,

https://library.municode.com/ca/alameda_county/ordinances/code_of_ordinances?nodeId=1034089.

² Alameda County Ordinance No. O-2020-41,

https://library.municode.com/ca/alameda_county/ordinances/code_of_ordinances?nodeId=1037444.

³ Ordinance No. O-2020-32 § 6.120.020(K).

financial hardship or inability to make rent or mortgage payments when due].”⁴ The Moratorium prohibits evicting an Affected Resident for nonpayment of rent or mortgage.⁵⁶ Importantly, lenders cannot evict homeowners before a foreclosure sale for not paying their mortgage. A homeowner can only be evicted after a foreclosure sale. Therefore, any interpretation of “Affected Resident” or “Homeowner” that does not include foreclosed homeowners would be rendered meaningless because homeowners would *never* be protected from eviction under the moratorium under that interpretation. In addition, it is important to note the broad language of the definition of “Resident,” which “includes *but is not limited to* Affected Residents” (emphasis added).⁶

Furthermore, in reviewing the text of the Moratorium, the Board’s findings in Ordinance No. 2020-32, (reaffirmed and incorporated by reference in the Moratorium), in addition to numerous

7 and the other related materials, including the summary of the Moratorium on HCD’s webpage Frequently Asked Questions (FAQ) for Tenants and Homeowners,⁷ it is clear that the Moratorium is intended to apply broadly throughout the County. Indeed, Ordinance 2020-32 explicitly states that “[t]his ordinance is intended to enable tenants, *homeowners*, and mobilehome owners in the County to shelter-in-place and avoid displacement during the COVID-19 pandemic.⁸⁹ Moreover, the FAQ states, “[t]he temporary moratorium imposes a ban on evictions for renters, *homeowners*, and those living in mobile home parks throughout Alameda County beginning March 24, 2020 until 60 days after the expiration of the local health emergency or 60 days after December 31, 2020 (whichever is later)” (emphasis added).¹⁰

In addition, multiple letters from the County’s Housing and Community Development Agency (HCD) to the Board of Supervisors stress the importance of ensuring the Moratorium applies to

⁴ *Id.* at § 6.120.020(A).

⁵ Ordinance No. O-2020-41 § 6.120.040(B).⁶
Supra note 3.

⁶ Alameda County Housing & Comm. Development Dept. (HCD) homepage, “Eviction Moratorium Ordinance,” <https://www.acgov.org/cda/hcd/> (last visited May 27, 2021).

⁷ Alameda County Eviction Moratorium Frequently Asked Questions (FAQ), Aug. 11, 2020, *available at* <https://www.acgov.org/cda/hcd/documents/EvictionMoratoriumOrdinanceSummaryFAQ8.11.20.pdf>.

⁸ Ordinance No. O-2020-32 § 6.120.010 (emphasis added).

⁹ *Supra* note 8.

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all residents and demonstrate how the Moratorium aligns with the County's goal of eliminating homelessness.¹⁰ Furthermore, while the Moratorium prohibits a "Lender"¹¹ from evicting a "Resident," as explained above, the Lender cannot evict homeowners from their homes before a foreclosure sale. Most foreclosures result in the sale of the homeowner's property to a third party purchaser, not the Lender. The Moratorium's clear intent is to protect all "Residents," including homeowners at risk of foreclosure and eviction due to nonpayment of mortgage payment. Based on the broad, plain language of the Moratorium itself and the affiliated materials, it would not make sense to limit the Moratorium to only certain types of homeowners, as that would conflict not only with the plain language, but also, it would frustrate the apparent intent of the Board in passing the Moratorium and the stance of County agencies in urging its passage.

Finally, HERA would like to express our serious concerns about the detrimental health and housing impacts that evicting these residents will have on our communities. Existing research is showing that evictions during the COVID-19 pandemic are having a disproportionate impact on people of color, women, and families with children.¹² In addition, because a significant portion of homeowners are older adults and seniors, including Ms. Ohlsson, evicting them postforeclosure poses serious risks of spreading COVID-19, given that this population is at a higher risk for contracting the virus.

For the foregoing reasons, HERA respectfully requests that Ms. Ohlsson be recognized as a covered individual under the Alameda County eviction moratorium, and that any attempt to evict her be halted immediately. Thank you.

¹⁰ See e.g., Letter from Alameda County Community Development Agency (CDA), CDA_298046, June 25, 2020 ("A moratorium on residential evictions will support the overarching vision of **Thriving and Resilient Population** and the 10X goal of **Eliminating Homelessness** by ensuring all residents' basic needs are met, including facilitating access to and retention of safe and stable housing while building resiliency and self-sufficiency among vulnerable populations."), available at http://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_06_30_20/GENERAL%20ADMINISTRAT ION/Regular%20Calendar/CDA_298046.pdf.

¹¹ Defined in Ordinance No. 2020-32 at Section 6.120.020(E) as "the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more Residential Units, which person has the right to mortgage or similar payments from the Homeowner as Mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing." See https://library.municode.com/ca/alameda_county/ordinances/code_of_ordinances?nodeId=1034089.

¹² See, e.g., Health Affairs, "Eviction & Health: A Vicious Cycle Exacerbated by a Pandemic," Apr. 2021 ("Although Black and Hispanic communities have long been disproportionately affected by eviction and the adverse health outcomes associated with it, the COVID-19 pandemic has acutely exacerbated racial disparities in both eviction and health. Black and Hispanic people have died of COVID-19 at higher rates than their White counterparts, and these same groups have experienced significantly more rent-related financial stress and continue to face disproportionately high eviction rates during the pandemic."), available at <https://www.healthaffairs.org/doi/10.1377/hpb20210315.747908/full/health-affairs-brief-housing-health-equityhimmelstein.pdf>.

Respectfully,

/s/ Nisha Ajmani

Nisha Ajmani
Staff Attorney

HERA

housing and
economic
rights advocates

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August 5, 2021

Honorable Board of Supervisors
Administration Building
1221 Oak St., Suite 536
Oakland, CA 94612

Re: Alameda County Eviction Moratorium (Ordinance No. O-2020-41) Applies to
Foreclosed Homeowners

Dear Board Members:

I am writing on behalf of Housing and Economic Rights Advocates (HERA) to express our concerns pertaining to a trend we have been informed of regarding foreclosed homeowners and their families being evicted, despite the applicability of Alameda County Ordinance No. O-2020-32, as amended by Ordinance No. O-2020-41 (collectively the "Moratorium"), which is in effect until 60 days after the expiration of the local health emergency.

HERA is a California state-wide, non-profit law office, founded in 2005 focusing on housing and economic justice. We provide free legal services directly to the public to ensure that vulnerable Californians receive access to housing and financial justice. A substantial portion of our clientele consists of Alameda County residents. Our work includes promoting affordable and fair housing access for homeowners and tenants, fighting abusive mortgage servicing and predatory lending of all kinds, providing advocacy to tenants to prevent eviction, and assisting our clients to achieve their housing and financial goals.

It has come to HERA's attention that Alameda County Superior Court Judge Patrick McKinney has repeatedly ruled against defendants in post-foreclosure eviction actions while the Moratorium has been in effect. It appears he holds that if the home has been sold to a third party post-foreclosure, and the third party seeks to evict the foreclosed homeowner, none of the definitions in the Moratorium apply to foreclosed homeowners or to the new owner. This indicates that Judge McKinney concludes that the Moratorium does not apply to most, if not all, foreclosed homeowners.

HERA respectfully disagrees with Judge McKinney's interpretation of the Moratorium for the following reasons. First, the definition of "Resident" includes foreclosed homeowners.¹ Second, because the remedy for homeowners is a foreclosure when they default on their mortgage, it is not legally possible for a homeowner to be evicted prior to a foreclosure sale. Third, Judge McKinney's interpretation and application of the Moratorium would render the inclusion of

¹ See Alameda County Ordinance No. O-2020-32,
https://library.municode.com/ca/alameda_county/ordinances/code_of_ordinances?nodeId=1034089

protections for “homeowners” meaningless, and appear to conflict with the apparent intent of the Board of Supervisors (“Board”), the Housing and Community Development Agency (“HCD”), and the broad nature of the Moratorium in ensuring that *all* Alameda County *residents* are protected by the Moratorium, so long as one of the few exceptions does not apply. Finally, HERA is concerned about the impact these evictions are having on our community at large, particularly as it relates to housing insecurity and health disparities among seniors and residents of color.

HERA reads the plain language of the Moratorium to mean that it applies to “Residents” of Alameda County. The Moratorium states in Section 6.120.030(B) that “No Landlord or Lender may evict a Resident, or otherwise require a Resident to vacate a Residential Unit, or retaliate against a Resident, while this section is in effect.”² According to Alameda County Ordinance No. O-2020-32 Section 6.120.020 (Definitions), “‘Resident’ shall mean a Tenant, Homeowner or their Household. This term includes but is *not limited to* Affected Residents” (emphasis added).³ According to the Definitions section, “‘Affected Resident’ shall mean a Tenant, Homeowner or their Household, that has experienced a Qualifying Loss [i.e., a substantial COVID-19 related financial hardship or inability to make rent or mortgage payments when due].”⁴ The Moratorium prohibits evicting an Affected Resident for nonpayment of rent or mortgage.⁵ Importantly, banks cannot evict homeowners before a foreclosure sale for not paying their mortgage. Therefore, if one were to follow Judge McKinney’s interpretation of “Affected Resident,” that definition would be rendered meaningless because homeowners would never be protected from eviction under the moratorium. In addition, it is important to note the broad language of the definition of “Resident,” which “includes but is not limited to Affected Residents.”⁶

Furthermore, as stated above, because a foreclosure action is the legal remedy when a homeowner defaults on their mortgage, it is not possible for a homeowner to be evicted *before* a foreclosure sale—only *after* the sale if the person remains in the home. It is our understanding that Judge McKinney holds that the Moratorium does not apply to foreclosed homeowners in post-foreclosure evictions because they are no longer “Homeowners” or “Affected Residents,” according to those definitions.⁷ However, if one were to follow Judge McKinney’s apparent interpretation of the Moratorium, homeowners would *never* be protected by the Moratorium, which would conflict with the plain language of the Moratorium and the apparent intent of the Board in passing the Moratorium.

In reviewing the text of the Moratorium, the Board’s findings in Ordinance No. 2020-32, (reaffirmed and incorporated by reference in the Moratorium), in addition to numerous other related materials, including the summary of the Moratorium on HCD’s webpage⁸ and the

² Alameda County Ordinance No. O-2020-41,

https://library.municode.com/ca/alameda_county/ordinances/code_of_ordinances?nodeId=1037444.

³ Ordinance No. O-2020-32 § 6.120.020(K).

⁴ *Id.* at § 6.120.020(A).

⁵ Ordinance No. O-2020-41 § 6.120.040(B).

⁶ *Supra* note 3.

⁷ *See* Ordinance No. O-2020-32 §§ 6.120.020(A), (B).

⁸ Alameda County Housing & Comm. Development Dept. (HCD) homepage, “Eviction Moratorium Ordinance,” <https://www.aegov.org/eda/hcd/> (last visited Aug. 4, 2021).

Frequently Asked Questions (FAQ) for Tenants and Homeowners,⁹ it is clear that the Moratorium is intended to apply broadly throughout the County. Indeed, Ordinance 2020-32 explicitly states that “[t]his ordinance is intended to enable tenants, *homeowners*, and mobilehome owners in the County to shelter-in-place and avoid displacement during the COVID-19 pandemic.”¹⁰

Moreover, the FAQ states, “[t]he temporary moratorium imposes a ban on evictions for renters, *homeowners*, and those living in mobile home parks throughout Alameda County beginning March 24, 2020 until 60 days after the expiration of the local health emergency or 60 days after December 31, 2020 (whichever is later)” (emphasis added).¹¹ In addition, multiple letters from the County’s Housing and Community Development Agency (HCD) to the Board stress the importance of ensuring the Moratorium applies to *all* residents and demonstrate how the Moratorium aligns with the County’s goal of eliminating homelessness.¹² While the Moratorium prohibits a “Lender”¹³ from evicting a “Resident,” as explained above, the Lender cannot evict homeowners from their homes before a foreclosure sale. Most foreclosures result in the sale of the homeowner’s property to a third party purchaser, not the Lender. The Moratorium’s clear intent is to protect all “Residents,” including homeowners at risk of foreclosure and eviction due to nonpayment of mortgage payment. Based on the broad, plain language of the Moratorium itself and the affiliated materials, it would not make sense to limit the Moratorium to only certain types of homeowners, as that would conflict not only with the plain language, but also, it would frustrate the apparent intent of the Board in passing the Moratorium and the stance of County agencies in urging its passage.

Finally, HERA would like to express our serious concerns about the detrimental health and housing impacts that evicting these residents will have on our communities. As the Board may know, existing research is showing that evictions during the COVID-19 pandemic are having a disproportionate impact on people of color, women, and families with children.¹⁴ In addition,

⁹ Alameda County Eviction Moratorium Frequently Asked Questions (FAQ), Aug. 11, 2020, *available at* <https://www.acgov.org/cda/hcd/documents/EvictionMoratoriumOrdinanceSummaryFAQ8.11.20.pdf>.

¹⁰ Ordinance No. O-2020-32 § 6.120.010 (emphasis added).

¹¹ *Supra* note 9.

¹² *See e.g.*, Letter from Alameda County Community Development Agency (CDA), CDA_298046, June 25, 2020 (“A moratorium on residential evictions will support the overarching vision of **Thriving and Resilient Population** and the 10X goal of **Eliminating Homelessness** by ensuring all residents’ basic needs are met, including facilitating access to and retention of safe and stable housing while building resiliency and self-sufficiency among vulnerable populations.”), *available at* http://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_06_30_20/GENERAL%20ADMINISTRAT ION/Regular%20Calendar/CDA_298046.pdf.

¹³ Defined in Ordinance No. 2020-32 at Section 6.120.020(E) as “the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more Residential Units, which person has the right to mortgage or similar payments from the Homeowner as Mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.” *See* https://library.municode.com/ca/alameda_county/ordinances/code_of_ordinances?nodeId=1034089.

¹⁴ *See, e.g.*, Health Affairs, “Eviction & Health: A Vicious Cycle Exacerbated by a Pandemic,” Apr. 2021 (“Although Black and Hispanic communities have long been disproportionately affected by eviction and the adverse health outcomes associated with it, the COVID-19 pandemic has acutely exacerbated racial disparities in both eviction and health. Black and Hispanic people have died of COVID-19 at higher rates than their White counterparts, and these same groups have experienced significantly more rent-related financial stress and continue to

because a significant portion of homeowners are older adults and seniors, evicting them post-foreclosure poses serious risks of spreading COVID-19, given that this population is at a higher risk for contracting the virus, made worse by the increased transmissibility of the Delta variant.

For the foregoing reasons, HERA respectfully requests that the Board clarify that the Moratorium applies to foreclosed homeowners. Specifically, the Board can clarify that the term "Landlord" includes new owners (as "successors") and that the term "Resident" includes foreclosed homeowners.

Respectfully,



Nisha Ajmani, Staff Attorney
Housing & Economic Rights Advocates

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Pamela C. Jackson, Inc
Attn: Jackson, Pamela C
409 Boyd Street
Vacaville, CA 95688

Diane Ohlsson
1204 Stannage Avenue
Berkeley, CA 94706

**Superior Court of California, County of Alameda
Hayward Hall of Justice**

<p>Breckenridge Property Fund 2018, LLC Plaintiff/Petitioner(s)</p> <p>vs.</p>	<p>No. <u>RG19043284</u></p> <p>Order</p> <p>Motion Re: Entry of Judgment Granted</p>
<p>Ohlsson Defendant/Respondent(s) (Abbreviated Title)</p>	

The Motion Re: Entry of Judgment filed for Breckenridge Property Fund 2016, LLC was set for hearing on 07/14/2021 at 01:30 PM in Department 511 before the Honorable Patrick R. McKinney. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

IT IS ORDERED that the Plaintiff's Application to Enter Judgment is granted.

This action alleges unlawful detainer following the purchase of the property located at 1204 Stannage Avenue in Berkeley (the "Property") by Plaintiff in October 2019 after a foreclosure by Defendant's former lender. Plaintiff served Defendant with a three-day notice to quit on November 5, 2019, and filed this lawsuit on November 14, 2019.

On March 24, 2020, the Alameda County Board of Supervisors enacted a countywide eviction moratorium ordinance, which is subject to limited exceptions. The relevant provision of the ordinance states, "No Landlord or Lender may evict a Resident, or otherwise require a Resident to vacate a Residential Unit, or retaliate against a Resident, while this section is in effect." (Alameda County Ordinance Code § 6.120.030(B).)

The ordinance defines "Landlord" as an "owner, lessor, or sublessor who receives or is entitled to receive rent for the use/and or occupancy of any Residential Unit by a Tenant, and the agent, representative or successor of any of the foregoing." "'Lender' means the mortgagee of a purchase money or similar mortgage . . . which person has the right to mortgage or similar payments from the Homeowner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing." "'Resident' shall mean a Tenant, Homeowner or their Household." "'Residential Unit' means a structure . . . or the portion thereof that is used as a home, residence, or sleeping place by [a person or household] . . . and which person or household pays rent to a Landlord or mortgage payments to a Lender for the use and/or occupancy . . ." "'Homeowner' means the owner or owners of a Residential Unit subject to a mortgage or similar loan secured by the residential unit [sic]." "'Tenant'

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means a residential tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement, or by sufferance, to use or occupancy of a Residential Unit." (Ordinance Code §6.12.020, Definitions.) The Board of Supervisors amended the ordinance on June 30, 2020, extending the moratorium until 60 days after the end of the local health emergency, or 60 days after December 31, 2020, whichever is later.

On September 16, 2020, the court granted Plaintiff's summary judgment motion but stayed entry of judgment. On April 6, 2021, Plaintiff applied for entry of judgment and issuance of a writ of possession. Plaintiff argued that the eviction moratorium does not apply to this action because it does not involve a Landlord and Tenant, and Defendant does not otherwise meet the definition of a party protected by the ordinance.

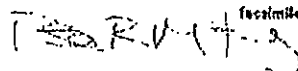
After a series of continuances necessitated by Defendant's filing of a Notice of Removal, the application came on for hearing on July 14, 2021, Hon. Patrick R. McKinney, II, presiding. Plaintiff appeared by and through counsel, Pamela C. Jackson. Defendant Ohlsson appeared in propria persona. The court heard argument and took Plaintiff's application under submission.

After consideration of the record and the parties' arguments, the court agrees with Plaintiff that the County Board of Supervisors did not include former borrowers among the parties protected by the ordinance. As a bona fide purchaser for value, Plaintiff is neither a "Landlord" nor a "Lender" under subsection (B) of section 6.120.030. While the ordinance applies to a lender attempting to foreclose against a homeowner during the moratorium period, the foreclosure here occurred before the moratorium, and does not apply to an action by a subsequent purchaser against Defendant.

For these reasons, the court grants Plaintiff's application and finds that Plaintiff is entitled to recover possession of the Property located at 1204 Stannage Avenue, Berkeley, Alameda County. The judgment of possession shall apply to all occupants, and a writ of possession shall issue immediately.

The court will sign Plaintiff's proposed judgment.

Dated: 07/20/2021

 facsimile

Judge Patrick R. McKinney



5

Renee <ryamagishi@gmail.com>

Yamagishi v. Nationstar et al.

5 messages

Hamilton, Amanda H. <AHHamilton@reedsmith.com>
To: Renee Yamagishi <ryamagishi@gmail.com>

Thu, Sep 12, 2019 at 2:42 PM

Yamagishi v. Nationstar et al.
Alameda County Case No. RG19015807

CONTRACT FOR FULL PAYOFF ACCEPTANCE

Dear Ms. Yamagishi,

I am in receipt of your emails over the last few weeks, and will respond here regarding your demand for a meeting and your allegations that you do not approve of the format of the line items we sent you.

I believe you demanded payment information so that you could make a determination on the value of the payoff such that this case would be settled and resolved without need for litigation. On behalf of Nationstar, I sent you the information requested. There is no requirement for the client to re-prepare the statement so that it matches a preferred formatting. The format we sent you reflects the way the account is serviced and how the payoff and statuses are calculated.

Please recall that the Court has ordered you to "furnish security for the benefit of Defendants in the amount of \$100,000" by September 13th or this case will be stayed. If you post bond by tomorrow, we will have our case management conference on 9/25/19. However, I wanted to make sure that we could respond to your allegations and demands before then.

As to your demand to meet in person with Fay Janati in Texas, and me, we are formally refusing that request, if it was not made clear in prior phone calls and emails. We have requested settlement demands from you for over a year via telephone and email in addition to attending 3 settlement conferences. Our client on behalf of the trustee stands ready willing and able to receive payment of the full amount of the payoff minus the \$5,000 in full settlement we previously offered. We are not negotiating the interest rate retroactively or entertaining any dispute of line items. We are not pushing back the sale date.

Further, it should be noted that we have attempted numerous times in good faith to discuss this matter. At the most recent MSC, the commissioner said your offer of \$3,000,000 was a non-starter, and you were ordered to come to the settlement conference with a good faith offer by Judge McGuinness. After the MSC, we had discussed your willingness to payoff the entire loan, but when we asked for proof of funds to pay, you were not able to show evidence you had attempted to secure the funding. You have also claimed you wished to sell the property, demanding time to sell the property without ever putting the house on the market, and contradicting your claims in your court filings that you wish to retain your family home. I understand it's possible to change your mind, but your actions have prevented and delayed resolution.

As to the line items issue, we have provided a computer-generated line item of your account. It identifies all interest applied, all fees and charges applied and, reflects all payments received, if applicable. Nationstar has satisfied its obligation. If BANA provided a list of past due payments for reinstatement in a format you prefer, that does not create any obligation for Nationstar to create such a document or use a format that you prefer. In addition, you allege errors in your comparison of different

types of documents but we have reviewed and do not see any error. Our reference to the fact that the unpaid balance does not change is because you have not made payments to reduce that balance. A payoff statement does not contain a list of line items. Similarly it does not contain the calculation of the interest rate. The line items are in the document we provided to you; the interest rate calculation is in the letters sent to you by Nationstar each time the interest is scheduled to change under the terms of the loan.

Lastly, any of the abbreviations can easily be searched online. For instance, we found this definition of "corp adv disb" via typing the term into google. If there are any other terms you do not understand, please feel free to ask.

Corporate Advance Corp Adv Expense Advance;
Corporate Recoverable
Advances
Disbursement for servicing-related expenses (not escrow expenses)
paid with servicer funds rather than escrow funds, to be
recovered from borrower. May include foreclosure expenses,
attorney fees, bankruptcy fees, force placed insurance, and so
forth.

Sincerely,

Amanda

Amanda Hamilton | Staff Attorney
ReedSmith LLP | 101 Second Street, Suite 1800 | San Francisco, CA 94105
Direct: 415.659.4791 | Office: 415.543.8700 | Fax: 415.391.8269 | ahhamilton@reedsmith.com

This E-mail, along with any attachments, is considered confidential and may well be legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

Disclaimer Version RS.US.201.407.01

Renee Yamagishi <ryamagishi@gmail.com>
To: Renee Yamagishi <aizuwarrior@protonmail.com>

Thu, Sep 12, 2019 at 3:35 PM

[Quoted text hidden]

Renee Yamagishi <ryamagishi@gmail.com>
To: cholleran@unitedlawcenter.com

Thu, Sep 12, 2019 at 4:16 PM

Steve Foondos, thanks Chris:

The current "full payoff" claimed by Nationstar - ABSENT ANY COMPLETE LINE ITEM ACCOUNTING is \$685,000.00 approximately to date. This includes charging me for "legal fees, late fees, property expenses, Corp Adv. Disb." and other strange fees I don't

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22789452

FOR COURT USE ONLY

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ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO:
 NAME: Renee Shirue Yamagishi
 FIRM NAME:
 STREET ADDRESS: 2703 Mathews St
 CITY: Berkeley CA 94702 STATE: CA ZIP CODE: 94702
 TELEPHONE NO.: FAX NO.:
 E-MAIL ADDRESS: RYAMAGISHI@comcast.net
 ATTORNEY FOR (Name): Plaintiff in Pro Per

FILED
 ALAMEDA COUNTY
 SEP 24 2019
 CLERK OF THE SUPERIOR COURT
 By [Signature] Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
 STREET ADDRESS: 1225 Fallon St
 MAILING ADDRESS:
 CITY AND ZIP CODE: Oakland CA 94612
 BRANCH NAME: Renee C. Davidson

Plaintiff/Petitioner: YAMAGISHI, Renee Shirue
 Defendant/Respondent: NATIONSTAR Mortgage LLC et al

REQUEST FOR DISMISSAL

CASE NUMBER:
RG-19015807

A conformed copy will not be returned by the clerk unless a method of return is provided with the document.

This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

1. TO THE CLERK: Please dismiss this action as follows:
- a. (1) With prejudice (2) Without prejudice
 - b. (1) Complaint (2) Petition
 - (3) Cross-complaint filed by (name): on (date):
 - (4) Cross-complaint filed by (name): on (date):
 - (5) Entire action of all parties and all causes of action
 - (6) Other (specify):*

2. (Complete in all cases except family law cases.)

The court did did not waive court fees and costs for a party in this case. (This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed.)

Date: Sept. 24, 2019
Renee Shirue Yamagishi

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

[Signature]
 (SIGNATURE)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:
 (TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

[Signature]
 (SIGNATURE)

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross Complainant

(To be completed by clerk)

- 4. Dismissal entered as requested on SEP: 24 2019
- 5. Dismissal entered on (date): as to only (name):
- 6. Dismissal not entered as requested for the following reasons (specify):

- 7. a. Attorney or party without attorney notified on (date):
- b. Attorney or party without attorney not notified. Filing party failed to provide
 copy to be conformed means to return conformed copy

Date: SEP 24 2019 Clerk, by [Signature] Deputy Page 1 of 2

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Re: Todd_Modica_loan_approval

From: Tom Modica <tommodica22@gmail.com>

To: Aizuwarrior <Aizuwarrior@protonmail.com>

Date: Wednesday, September 25th, 2019 at 6:21 AM

Good morning Rene, let's keep moving forward today and get everything resolved. Thanks, Tom

On Wed, Sep 25, 2019 at 9:18 AM Renee Yamagishi <Aizuwarrior@protonmail.com> wrote:

Hi 730 am or so I'll call you but lawyers won't be in.

Yesterday at 3 pm I filed voluntary dismissal of my case without prejudice which us a big favor to all parties especially the court. All these judges want to see the servicers paid and for these cases to settle. The lawyers are in coordination w the court on this one. Theyll cancel sale. Just posturing with the "delay" ballad. And to make me sweat

Fyi last Friday at 4 pm all my opposition got my email that a couple of private lenders were poised to issue LOIs and to expect it by yesterday.

So you're right on time!

Renee

Sent from ProtonMail mobile

----- Original Message -----

On Sep 24, 2019, 6:33 PM, Tom Modica <tommodica22@gmail.com> wrote:

Hi rene, let's jump on it first thing in the morning. It takes all involved in getting this resolved.
Thanks, Tom

On Tue, Sep 24, 2019 at 9:29 PM Renee Yamagishi <Aizuwarrior@protonmail.com> wrote:

Thank you very much.... looking forward. Please let me know how best to proceed with Reed Smith lawyers and their Nationstar manager-client. Fyi the foreclosure trustee is Aztectrustee.com and they take direction from Nationstar attorney as to cancelling or postponing tomorrow sale date.

As note-maker and plaintiff , the "settlement dollar amount" is fixed at \$690,000.00. Whether it closes and funds on September 30 or October 20 or whenever. Theresa listened and knows this

RE: 2703 Mathews St Berkeley, CA 94702

①
①

From: ahhamilton@reedsmith.com <AHHamilton@reedsmith.com>

To: Tom Modica <tommodica22@gmail.com>
amarth@logs.com <amarth@logs.com>
aconnolly@logs.com <aconnolly@logs.com>
emalone@logs.com <emalone@logs.com>
Aizuwarrior <Aizuwarrior@protonmail.com>
Theresa Harris <Tharris@netcotitle.com>

Date: Wednesday, September 25th, 2019 at 9:20 AM ←

↓
Dear all,

Our client let us know they are moving forward with the sale. Ms. Yamagishi has had ample time to try to settle.

willful rejection of lender in full.

Sincerely,

Amanda

Amanda Hamilton | Staff Attorney ← *Single Point of Contact Lead Attorney*
ReedSmith LLP | 101 Second Street, Suite 1800 | San Francisco, CA 94105
Direct: 415.659.4791 | Office: 415.543.8700 | Fax: 415.391.8269 | ahhamilton@reedsmith.com

From: Tom Modica <tommodica22@gmail.com>
Date: Wednesday, Sep 25, 2019, 7:46 AM
To: Hamilton, Amanda H. <AHHamilton@reedsmith.com>, Colman, Abraham J. <AColman@ReedSmith.com>, Kassabian, Raffi <RKassabian@ReedSmith.com>, amarth@logs.com <amarth@logs.com>, aconnolly@logs.com <aconnolly@logs.com>, emalone@logs.com <emalone@logs.com>, dept22@alameda.courts.ca.gov <dept22@alameda.courts.ca.gov>, Renee Yamagishi <Aizuwarrior@protonmail.com>, Theresa Harris <Tharris@netcotitle.com>
Subject: 2703 Mathews St Berkeley, CA 94702

EXTERNAL E-MAIL

Hi Amanda, we are in the process of closing a loan for Rene Yamagishi at 2703 Mathews St Berkeley, CA 94702. She is currently in foreclosure.

We should have closing documents signed in the next few days and fund asap.

I have attached the loan approval along with the title and escrow company Theresa Harris, Netco title who we need the payoff sent to.

Please confirm receipt?

*Thanks,
Tom Modica
Hard Money Financial
800-865-3414
305-986-0456 Cell
305-675-6455 FAX
tommodica22@gmail.com
NMLS 253308*

External Signed

* * *

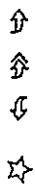
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Disclaimer Version RS.US.201.407.01

[9] 2703 Mathews St Berkeley, CA 94702



From: TM Tom Modica <tommodica22@gmail.com>



To: A ahhamilton@reedsmith.com <ahhamilton@reedsmith.com>

A acolman@reedsmith.com <acolman@reedsmith.com>

R rkassabian@reedsmith.com <rkassabian@reedsmith.com>

A amarth@logs.com <amarth@logs.com>

A aconnolly@logs.com <aconnolly@logs.com>

E emalone@logs.com <emalone@logs.com>

D dept22@alameda.courts.ca.gov <dept22@alameda.courts.ca.gov>

A Aizuwarrior <Aizuwarrior@protonmail.com>

TH Theresa Harris <Tharhis@netcotite.com>

[Hide details](#)

Conditional Loan Quote

Borrowers:

Potential Borrower
File #25845

Quote Date:

9/24/19

Loan Purpose:

Investment

Subject Property:

1st Trust Deed 2703 Mathews St
Berkeley, CA 94702

Loan Dates:

Quote Expiration Date

9/25/19

Funding/Closing Deadline

10/2/19

SELECT & INITIAL LOAN PROGRAM BELOW:

2-Year Term & Loan Amount	\$850,000
<u>Amortized Payment</u>	
Fixed Interest Rate	10.99%
Lender Fee (% of Loan Amount)	2.00%
Amortization Period	40
Amortization Payment	\$7,883.73

ESP
Borrower Initials

Other Loan Terms:

Prepayment Penalty (Fee):

first 6 months

Fees & Escrow Disbursements:

See Below

Late Fee

10.00%

Grace Period

10 days

Default Rate

Note Rate + 6%

Junior Financing

Permitted

Lender Conditions/Approvals:

Digital photos (Appraisal JPEG's):

Front yard, Rear yard, All Interior rooms, kitchen and bathrooms

Loan Application (Each Borrower)

Credit Report

New Appraisal: Desk Review

Minimum "AS IS" Appraised Value:

Preliminary Title Report

Verification of current zoning and General Plan

Signed borrower authorization

Purchase contract and all addendums

Rental agreement (if rented)

Prepared/Obtained By:

Broker	Required
Broker	CLEARED
Broker	CLEARED
Broker	Required
	\$1,300,000
Broker	Required
Lender	Required
Broker	Required
Broker	N/A
Broker	Required

Required Documents (Closing):

State Disclosures (Form 882)

Executed Loan Quote

Escrow Instructions

Promissory Note

Affidavit Regarding Loan Purpose

Agreement to Arrange Credit

Authorization to Provide Information

Prepared/Obtained By:

Broker	Required
Broker	Required
Lender	Required
Lender	Required
Lender	Required
Lender	Required
Escrow	Required

Borrower Initials: *ESP*

Conditional Loan Quote

Borrowers:

Potential Borrower
File #25845

Quote Date:

9/24/19

Copy of Driver's License (each Borrower)
Deed of Trust
Insurance Certificate

Escrow	Required
Escrow	Required
Escrow	Required

Escrow Disbursements:

Broker Points/Fees:
Lender Fee (Underwriting)
Lender Fee (Loan Docs)
Lender Fee (Processing)
Lender Fee (Funding Fee)
Lender Fee (Wire)
Credit Report (Lender)
Property Inspection (Lender)
Escrow/Title

2.00%
\$975.00
\$655.00
\$890.00
\$585.00
\$45.00
\$35.00
\$395.00
Borrower Pay

Acceptance By Borrower:

By: 

Print Name: Renee S. Yamagishi

Date: 9/24/19

Acceptance By Broker:

Print Name: Tom Medicus

By: Tom Medicus

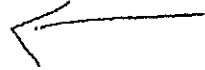
Date: 9/24/19

Re: 2703 Mathews St Berkeley, CA 94702

From: Aizuwarrior <Aizuwarrior@protonmail.com>

To: ahhamilton@reedsmith.com <AHHamilton@reedsmith.com>

Date: Wednesday, September 25th, 2019 at 1:16 PM



Texted to me 1 he ago: Renee! This is Simone from 7 On Your Side. You can contact my producer, Randall, at randall.yip@abc.com. His office number is 415-954-7524.

Randall Yip has the story. He was on phone to Nationstar corporate telling me THEY dont want to go to sale and want full payoff from hard money in 7 days.

So you best check with them. Because you will have trouble

My name is sole.name on title. Full payoff in cashiers check or wire transfer posted BY ME OR FROM ESCROW ON MY LOAN

Sent from ProtonMail mobile

----- Original Message -----

On Sep 25, 2019, 9:20 AM, Hamilton, Amanda H. <AHHamilton@reedsmith.com> wrote:


Dear all,

Our client let us know they are moving forward with the sale. Ms. Yamagishi has had ample time to try to settle.

Sincerely,

Amanda

Amanda Hamilton | Staff Attorney
ReedSmith LLP | 101 Second Street, Suite 1800| San Francisco, CA 94105
Direct: 415.659.4791 | Office: 415.543.8700 | Fax: 415.391.8269 | ahhamilton@reedsmith.com

*Tender
Refused*


From: Tom Modica <tommodica22@gmail.com>

Date: Wednesday, Sep 25, 2019, 7:46 AM

To: Hamilton, Amanda H. <AHHamilton@reedsmith.com>, Colman, Abraham J.

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19
Recording Requested by
Title 365
Aztec Foreclosure Corporation
3636 N. Central Ave., Suite #400
Phoenix, AZ 85012
Return To address above

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2018093361 05/10/2018 09:56 AM
OFFICIAL RECORDS OF ALAMEDA COUNTY
STEVE MANNING
RECORDING FEE: 102.00



2 PGS

AZTEC
INC

Trustee Sale No. 14-001158 CXE
730-1710790-70
APN 054 -1740-029

Space above this line for recorder's use only

NOTICE OF TRUSTEE'S SALE

ATTENTION RECORDER: THE FOLLOWING REFERENCE TO AN ATTACHED SUMMARY IS APPLICABLE TO THE NOTICE PROVIDED TO THE TRUSTOR ONLY - PURSUANT TO CIVIL CODE SECTION 2923.3(a)

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

注：本文件包含一个信息摘要
참고사항: 본 첨부 문서에 정보 요약서가 있습니다

NOTA: SE ADJUNTA UN RESUMEN DE LA INFORMACIÓN DE ESTE DOCUMENTO
TALA: MAYROONG BUOD NG IMPORMASYON SA DOKUMENTONG ITO NA NAKALAKIP
LƯU Ý: KÈM THEO ĐÂY LÀ BẢN TRÌNH BÀY TÓM LƯỢC VỀ THÔNG TIN TRONG TÀI LIỆU NÀY

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 06/26/06. 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 PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

→ On 06/05/18 at 12:30 pm, Aztec Foreclosure Corporation as the duly appointed Trustee under and pursuant to the power of sale contained in that certain Deed of Trust executed by Renee Shizue Ramos, a single woman as to an undivided 99% interest, and Avelino Ramos, an unmarried man who acquired title as surviving joint tenant as to an undivided 1% interest as tenants in common, as Trustor(s), in favor of Mortgage Electronic Registration Systems, Inc., solely as Nominee for Aegis Lending Corporation, a Delaware Corporation, as Beneficiary, Recorded on 07/03/06 in Instrument No. 2006253815 of official records in the Office of the county recorder of ALAMEDA County, California; WILL SELL AT PUBLIC AUCTION TO THE HIGHEST BIDDER FOR CASH (payable at time of sale in lawful money of the United States, by cash, a cashier's check drawn by 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), At the Fallon Street entrance to the County Courthouse, 1225 Fallon Street, Oakland, CA 94612, all right, title and interest conveyed to and now held by it under said Deed of Trust in the property situated in said County, California described as:
2703 MATHEWS STREET, BERKELEY, CA 94702

The property heretofore described is being sold "as is".

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein. Said sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by said Deed of Trust, with interest thereon, as provided in said note(s), advances, if any, under the terms of the Deed of Trust, estimated fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust, to-wit: \$655,229.54 (Estimated)

Accrued interest and additional advances, if any, will increase this figure prior to sale.

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Notice of Trustee's Sale
T.S. #: 14-001158 CXE
ORDER #: 730-1710790-70

The undersigned caused said Notice of Default and Election to Sell to be recorded in the county where the real property is located and more than three months have elapsed since such recordation.

DATE: 5-8-18

AZTEC FORECLOSURE CORPORATION



Elaine Malone
Assistant Secretary / Assistant Vice President
Aztec Foreclosure Corporation
3636 N. Central Ave., Suite #400
Phoenix, AZ 85012
Phone: (877) 257-0717 or (602) 638-5700
Fax: (602) 638-5748
www.aztetrustee.com

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 or visit the Internet Web site, using the file number assigned to this case 14-001158. 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.

<p>www.homesearch.com 800-758-8052</p>	<p>Or</p>	<p>Aztec Foreclosure Corporation (877) 257-0717 www.aztetrustee.com</p>
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AVISO DE VENTA (Notice of Sale)
RESUMEN DE LA INFORMACIÓN CLAVE (Summary of Key Information)

El aviso de venta adjunto se envió a Renee Shizue Ramos, a single woman as to an undivided 99% interest, and Avelino Ramos, an unmarried man who acquired title as surviving joint tenant as to an undivided 1% interest as tenants in common,

(Fideicomitente) (Trustor)

en relación con 2703 MATHEWS STREET, BERKELEY, CA 94702

(Descripción de la propiedad que garantiza la hipoteca o escritura de fideicomiso en mora)

(Description of property that secures the mortgage or deed of trust in default)

USTED HA INCUMPLIDO LOS TÉRMINOS DE UNA DEED OF TRUST

(Escritura de fideicomiso o hipoteca)

(Deed of trust or mortgage)

DE FECHA 06/26/06. SI NO TOMA MEDIDAS PARA PROTEGER SU PROPIEDAD, PODRÁ

SER VENDIDO EN UNA SUBASTA PÚBLICA.

SI USTED NECESITA QUE LE EXPLIQUEN LA NATURALEZA DEL PROCEDIMIENTO EN SU CONTRA, DEBE CONSULTAR A UN ABOGADO.

El importe total adeudado correspondiente al aviso de venta es \$689,554.79.

(Total amount due in the notice of sale)

La subasta de la propiedad se ha programado para el día 07/17/19 at 12:30 pm At the Fallon Street entrance to the County Courthouse, 1225 Fallon Street, Oakland, CA 94612.

(Fecha y hora de la subasta)

(Lugar de la subasta)

(Date and time of sale)

(Location of sale)

No obstante, conforme al Artículo 2924g del Código Civil de California, la fecha de la subasta que figura en el aviso adjunto podrá ser postergada una o más veces por el acreedor hipotecario, el beneficiario, el fideicomisario o un tribunal. La ley exige que, como cortesía para quienes no hayan asistido a la subasta, la información sobre las postergaciones solicitadas por el fideicomisario se ponga a disposición suya y del público en general. Si desea saber si la subasta de su propiedad se ha postergado, y, en tal caso, la nueva fecha propuesta para la subasta de esta propiedad, puede llamar al teléfono o visitar el sitio web:

www.aztectrustee.com

(877) 257-0717

OR

www.homesearch.com

800-758-8052

(Número de teléfono para obtener información sobre la subasta del fideicomisario)

(Telephone number for information regarding the trustee's sale)

(Dirección del sitio web para obtener información sobre la subasta de la propiedad)

(Número de teléfono para obtener información sobre la subasta del fideicomisario)

(Telephone number for information regarding the trustee's sale)

(Dirección del sitio web para obtener información sobre la subasta de la propiedad)

(Internet website address for information regarding the sale of this property)

usando el número de registro asignado a este caso 14-001158.

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of Unlawful Detainer Judge's Benchguide, JCC, 2015.

under the general rule that foreclosure terminates the rights under a junior lease. 52 CA4th at 1326. Leases senior to the mortgage are unaffected by a foreclosure sale if the tenant is not in default. See *R-Ranch Markets #2, Inc. v Old Stone Bank* (1993) 16 CA4th 1323, 1327, 21 CR2d 21.

4. [§31.98] Equitable Defense After Nonjudicial Foreclosure

A trustor may challenge the right to possession under CCP §§1161a and 1161b (but not the ownership of the property) by asserting fraud or defects in the foreclosure process. For example, fraud may exist when there was a forbearance agreement in place when the sale took place. The defendant, however, may need to "do equity" by first tendering the full amount due up to the time of trial. *MCA, Inc. v Universal Diversified Enters. Corp.* (1972) 27 CA3d 170, 176-177, 103 CR 522; *Crummer v Whitehead* (1964) 230 CA2d 264, 268, 40 CR 826; see *Green v Superior Court* (1974) 10 C3d 616, 632-633, 111 CR 704; *Cheney v Trauzettel* (1937) 9 C2d 158, 160, 69 P2d 832. The availability of an equitable defense assumes that the plaintiff is not a bona fide purchaser for value. *Napue v Gor-Mey West, Inc.* (1985) 175 CA3d 608, 619-620, 220 CR 799.

The elements of an equitable cause of action to set aside a foreclosure sale are: (1) the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale (usually but not always the trustor or mortgagor) was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering. *Lona v Citibank, NA* (2011) 202 CA4th 89, 104, 134 CR3d 622.

S. [§31.99] Access to Unlawful Detainer Filings; Notice to Defendants

Public access to the court file, index, register of actions, or other court records in unlawful detainer cases filed as limited civil cases is not allowed until 60 days after the complaint is filed, except under an ex parte court order issued on a showing of good cause. CCP §1161.2(a), (c). Access to the court file is allowed to the parties and their attorneys, and to:

- Any person who provides the clerk with the names of at least one plaintiff and one defendant, and the address of the subject premises, including the apartment or unit number;
- A resident of the premises who provides the clerk with the name of one of the parties or the case number and shows proof of residence;

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