RESOLUTION 10-07-2013

DIGEST

Real Property: Conduct of Trust Deed Foreclosure Sale

Amends Civil Code section 2924g to place a one year deadline on completing noticed foreclosure sales in Common Interest Developments.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Civil Code section 2924g to place a one year deadline on completing noticed foreclosure sales in Common Interest Developments. This resolution should be approved in principle because it decreases the financial burden placed on homeowners in Common Interest Developments when other owners default on their loan and stop paying dues.

Homeowners in Common Interest Developments pay dues for the maintenance of the Development. Those dues "run with the land." When homeowners in the development go into foreclosure, and has a Trustee's Sale noticed, those homeowners have little incentive to continue paying their dues. This means the remaining homeowners must increase their dues to cover the development's expenses. Therefore, when a lender notices a Trustee's Sale, but then refuses to go through with the Sale (which may happen to assist in improving the assets on the lender's books, or to increase market prices by limiting the number of houses for sale), the innocent homeowners are unfairly saddled with increased dues until the Trustee's Sale occurs.

This resolution requires that if a lender chooses to foreclose on a home in a Common Interest Development, and notices the Trustee's Sale on that home, the lender must complete the Trustee's Sale within one year, absent good cause. This protects innocent home owners in the Development while also providing exceptions where there is a good faith reason, or legal prohibition, against enforcing the one-year deadline. Further, it does not unfairly place the financial obligations for the home on a "non-owner," because the lender has control over whether or not it proceeds with a noticed Trustee's Sale. If that Trustee's Sale happens within one year of being noticed, then the new owner assumes the financial obligation. If the lender improperly delays the Trustee's Sale, thereby delaying a new owner from assuming the financial obligation, then the lender must bear that obligation.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 2924g to read as follows:

§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.

<u>(3) Notwithstanding section (c)(2) of Section 2924g, no beneficiary of a trust deed on property located in Common Interest Developments subject to Civil Code § 1350 et seq. may instruct a trustee to postpone a foreclosure sale for a period or periods totaling more than 365 days from the first noticed sale date unless: (a) such postponement was in good faith and not intended to deprive the Association of dues and assessments due from the defaulting property owner; or (b) proceeding with a foreclosure sale would violate any other provision of state or federal law. A beneficiary who causes the postponement of a foreclosure sale in violation of this</u>

section shall be liable to the Association for all dues and assessments, including special assessments, that became due more than 365 days after the first noticed sale date.

(d) The notice of each postponement and the reason therefore 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 therefore.

(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.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Under existing law, in the event that sales 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. If a financial institution or other beneficiary directs a trustee to postpone sales proceedings beyond a 365 day period, an Association is unreasonably and inequitably denied the payment of dues and special assessments and this causes the Association to make up for the “short fall” in revenue caused by assessing other Association members, including: senior citizens, retired citizens, single parent households, and citizens living on a fixed income. These groups are least equipped to equitably bear the increased financial injury and burden of payment caused by extended postponement of foreclosure sale proceedings beyond a 365 day period in the Common Interest Development context.

This Solution: This resolution would add (c)(3) to Section 2924g which would prohibit a beneficiary acting on behalf of a trustee from postponing sale proceedings located in Common Interest Developments subject to Civil Code § 1350 et seq. for a period or periods totaling more than 365 days. Adding proposed (c)(3) to Section 2924g would make a beneficiary acting on behalf of a trustee liable to the Association for all dues and assessments, including special assessments that are owed to the Association after a period or period of sale postponement totaling more than 365 days.

LEGISLATIVE HISTORY
Not known

IMPACT STATEMENT
Although this resolution does not directly affect any other law, statute or rule; issues of federal pre-emption and/or supremacy may arise, which are dealt with by the following statement: "except as required by superseding federal and/or state statute."

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