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**SB-306 Mortgages and deeds of trust: trustee substitutions.** (2019-2020)

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**Senate Bill No. 306**

**CHAPTER 474**

An act to amend Section 2934a of the Civil Code, relating to mortgages.

[ Approved by Governor October 02, 2019. Filed with Secretary of State October 02, 2019. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 306, Morrell. Mortgages and deeds of trust: trustee substitutions.

Existing law regulates the terms and conditions of mortgages and deeds of trust. Existing law authorizes a beneficiary of a deed of trust to substitute a new trustee for the existing trustee in accordance with certain statutory requirements, and that substitution is not effective in certain cases unless it is signed by the respective parties under penalty of perjury. Under existing law, a trustee named in a recorded substitution of trustee is deemed to be authorized to act in this capacity under the mortgage or deed of trust for all purposes from the date the substitution is executed by the mortgagee, beneficiaries, or by their authorized agents.

Existing law provides specified methods by which a trustee may resign, including as provided in the trust instrument or, in the case of a revocable trust, with the consent of the person holding the power to revoke the trust.

This bill would authorize a trustee to resign or refuse to accept appointment as trustee at that trustee's own election without the consent of the beneficiary or by their authorized agents, under a trust deed upon real property or an estate for years. The bill would require the trustee to give prompt written notice of resignation or refusal to accept appointment to the beneficiary or their authorized agents by mailing, as specified, an envelope containing a notice of resignation of trustee by recording the notice of resignation in each county in which the substitution of trustee under which the trustee was appointed is recorded, and by attaching to the recorded notice an affidavit stating that notice has been mailed to all beneficiaries and their authorized agents, as specified. The bill would make the resignation or refusal to accept appointment of that trustee effective upon the recording of the notice of resignation in each county in which the substitution of trustee under which the trustee was appointed is recorded. The bill would also require the trustee and any successor in interest to that trustee to retain and preserve every writing relating to the trust deed or estate for years under which the trustee was appointed for at least 5 years after a notice of resignation is mailed and recorded. The bill would specify that the resignation of the trustee does not affect the validity of the mortgage or deed of trust, except that no action required to be performed by the trustee under those provisions or under the mortgage or deed of trust may be taken until a substituted trustee is appointed. The bill would make related conforming and nonsubstantive changes to those provisions.

By expanding the crime of perjury, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

### **SECTION 1.** Section 2934a of the Civil Code is amended to read:

**2934a.** (a) (1) The trustee under a trust deed upon real property or an estate for years given to secure an obligation to pay money and conferring no other duties upon the trustee than those which are incidental to the exercise of the power of sale therein conferred, may be substituted by the recording in the county in which the property is located of a substitution executed and acknowledged by either of the following:

(A) All of the beneficiaries under the trust deed, or their successors in interest, and the substitution shall be effective notwithstanding any contrary provision in any trust deed executed on or after January 1, 1968.

(B) The holders of more than 50 percent of the record beneficial interest of a series of notes secured by the same real property or of undivided interests in a note secured by real property equivalent to a series transaction, exclusive of any notes or interests of a licensed real estate broker that is the issuer or servicer of the notes or interests or of any affiliate of that licensed real estate broker.

(2) A substitution executed pursuant to subparagraph (B) of paragraph (1) is not effective unless all the parties signing the substitution sign, under penalty of perjury, a separate written document stating the following:

(A) The substitution has been signed pursuant to subparagraph (B) of paragraph (1).

(B) None of the undersigned is a licensed real estate broker or an affiliate of the broker that is the issuer or servicer of the obligation secured by the deed of trust.

(C) The undersigned together hold more than 50 percent of the record beneficial interest of a series of notes secured by the same real property or of undivided interests in a note secured by real property equivalent to a series transaction.

(D) Notice of the substitution was sent by certified mail, postage prepaid, with return receipt requested to each holder of an interest in the obligation secured by the deed of trust who has not joined in the execution of the substitution or the separate document.

The separate document shall be attached to the substitution and recorded in the office of the county recorder of each county in which the real property described in the deed of trust is located. Once the document is recorded, it shall constitute conclusive evidence of compliance with the requirements of this paragraph in favor of substituted trustees acting pursuant to this section, subsequent assignees of the obligation secured by the deed of trust and subsequent bona fide purchasers or encumbrancers for value of the real property described therein.

(3) For purposes of this section, "affiliate of the licensed real estate broker" includes any person as defined in Section 25013 of the Corporations Code that is controlled by, or is under common control with, or who controls, a licensed real estate broker. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of management and policies.

(4) The substitution shall contain the date of recordation of the trust deed, the name of the trustor, the book and page or instrument number where the trust deed is recorded, and the name of the new trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority, and title granted and delegated to the trustee named in the deed of trust. A substitution may be accomplished, with respect to multiple deeds of trust that are recorded in the same county in which the substitution is being recorded and that all have the same trustee and beneficiary or beneficiaries, by recording a single document, complying with the requirements of this section, substituting trustees for all those deeds of trust.

(b) If the substitution is executed, but not recorded, prior to or concurrently with the recording of the notice of default, the beneficiary or beneficiaries or their authorized agents shall mail notice of the substitution before or concurrently with the recording thereof, in the manner provided in Section 2924b, to all persons to whom a copy of the notice of default would be required to be mailed by Section 2924b. An affidavit shall be attached to the substitution that notice has been given to those persons, as required by this subdivision.

(c) If the substitution is effected after a notice of default has been recorded but prior to the recording of the notice of sale, the beneficiary or beneficiaries or their authorized agents shall mail a copy of the substitution, before, or concurrently with, the recording thereof, as provided in Section 2924b, to the trustee then of record and to all persons to whom a copy of the notice of default would be required to be mailed by Section 2924b. An affidavit shall be attached to the substitution that notice has been given to those persons, as required by this subdivision.

(d) (1) A trustee named in a recorded substitution of trustee shall be deemed to be authorized to act as the trustee under the mortgage or deed of trust for all purposes from the date the substitution is executed by the mortgagee, beneficiaries, or by their authorized agents. A trustee under a recorded substitution is not required to accept the substitution, and may either resign or refuse to accept appointment as trustee pursuant to this subdivision.

(2) (A) A trustee named in a recorded substitution of trustee may resign or refuse to accept appointment as trustee at that trustee's own election without the consent of the beneficiary or beneficiaries or their authorized agents. The trustee shall give prompt written notice of that resignation or refusal to accept appointment as trustee to the beneficiary or beneficiaries or their authorized agents by doing both of the following:

(i) Depositing or causing to be deposited in the United States mail an envelope containing a notice of resignation of trustee, sent by registered or certified mail with postage prepaid, to all beneficiaries or their authorized agents at the address shown on the last-recorded substitution of trustee for that real property or estate for years in that county.

(ii) Recording the notice of resignation of trustee, mailed in the manner described in clause (i), in each county in which the substitution of trustee under which the trustee was appointed is recorded. An affidavit stating that notice has been mailed to all beneficiaries and their authorized agents in the manner provided in clause (i) shall be attached to the recorded notice of resignation of trustee.

(B) The resignation of the trustee or refusal to accept appointment as trustee pursuant to this subdivision shall become effective upon the recording of the notice of resignation of trustee in each county in which the substitution of trustee under which the trustee was appointed is recorded.

(C) The resignation of the trustee or refusal to accept appointment as trustee pursuant to this subdivision does not affect the validity of the mortgage or deed of trust, except that no action required to be performed by the trustee under this chapter or under the mortgage or deed of trust may be taken until a substituted trustee is appointed pursuant to this section. If a trustee is not designated in the deed of trust, or upon the resignation, incapacity, disability, absence or death of the trustee, or the election of the beneficiary or beneficiaries to replace the trustee, the beneficiary or beneficiaries or their authorized agents shall appoint a trustee or a successor trustee.

(D) A notice of resignation of trustee mailed and recorded pursuant to this paragraph shall set forth the intention of the trustee to resign or refuse appointment as trustee and the recording date and instrument number of the recorded substitution of trustee under which the trustee was appointed.

(E) A notice of resignation of trustee mailed and recorded pursuant to this paragraph shall contain an address at which the trustee and any successor in interest will be available for service of process for at least five years after the date that the notice of resignation is recorded.

(F) For at least five years after a notice of resignation of trustee is mailed and recorded pursuant to this paragraph, the trustee and any successor in interest to that trustee shall retain and preserve every writing, as that term is defined in Section 250 of the Evidence Code, relating to the trust deed or estate for years under which the trustee was appointed.

(3) For purposes of this section, paragraph (2) sets forth the exclusive procedure for a trustee to either resign or refuse to accept appointment as trustee.

(4) Once recorded, the substitution shall constitute conclusive evidence of the authority of the substituted trustee or their authorized agents to act pursuant to this section, unless prompt written notice of resignation of trustee has been given in accordance with the procedures set forth in paragraph (2).

(e) Notwithstanding any provision of this section or any provision in any deed of trust, unless a new notice of sale containing the name, street address, and telephone number of the substituted trustee is given pursuant to Section 2924f after execution of the substitution, any sale conducted by the substituted trustee shall be void.

**SEC. 2.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.