

4 Summary of California Law (10th), Security Transactions in Real Property

I. INTRODUCTION

- A. [§1] Types of Security Transactions.**
- B. [§2] Texts and Practice Works.**
- C. [§3] Mortgage.**
- D. Deed of Trust.**
 - 1. [§4] Origin and Validity.**
 - 2. [§5] Mortgage Compared.**
 - 3. [§6] Effect of Deed of Trust.**
 - 4. [§7] Strict Trust Compared and Distinguished.**
 - 5. [§8] Substitution of Trustee.**
 - 6. [§9] Trustee's Declaration of Nonmonetary Status.**
- E. Deed Construed as Mortgage.**
 - 1. [§10] Intention To Create Security Interest.**
 - 2. [§11] Test: Survival of Obligation.**
 - 3. [§12] Variant Forms.**
 - 4. [§13] Rights of Bona Fide Purchaser.**
- F. Equitable Mortgage.**
 - 1. [§14] Rule and Theory.**
 - 2. [§15] Equitable Mortgage Established.**
 - 3. [§16] Equitable Mortgage Not Established.**
 - 4. [§17] Effect of Equitable Mortgage.**
- G. Other Equitable Liens.**
 - 1. [§18] In General.**
 - 2. [§19] Vendor's Lien.**
 - 3. [§20] Construction Lender's Lien.**
 - 4. [§21] No Subcontractor's Lien on Loan Fund.**
 - 5. [§22] No Contractor's Lien on Loan Fund.**
- H. [§23] Reverse Mortgage.**
- I. Real Property Sales Contract.**
 - 1. [§24] In General.**
 - 2. [§25] Rights of Defaulting Purchaser.**
- J. Mechanic's Lien.**
 - 1. [§26] In General.**
 - 2. [§27] Right to Lien.**
 - 3. [§28] Amount of Lien.**
 - 4. [§29] Enforcing or Protecting Against Lien.**
 - 5. Release of Lien.**
 - (a) [§30] In General.**
 - (b) [§31] Conditional Waiver of Release.**
 - 6. (New) Revised Mechanics Lien Law.**
 - (a) In General.**
 - (1) [§31A] (New) Nature and Purpose of Revision.**

- (2) [§31B] (New) Principal Changes.
- (b) [§31C] (New) Right to Lien and Property Affected.
- (c) [§31D] (New) Amount of Lien.
- (d) [§31E] (New) Preliminary Notice.
- (e) (New) Enforcing Lien.
 - (1) [§31F] (New) Requirements of Claim.
 - (2) [§31G] (New) Action To Foreclose Lien.
- (f) [§31H] (New) Protecting Against Lien.
- (g) [§31-I] (New) Release of Lien.

K. [§32] Design Professional's Lien.

L. [§33] Conflict of Laws.

II. REQUISITES OF MORTGAGE AND DEED OF TRUST

A. [§34] What Property Can Be Mortgaged.

B. Statutory Regulation.

- 1. [§35] Institutional Lenders.
- 2. [§36] Federal Preemption.
- 3. [§37] Aspects Regulated.
- 4. [§38] Other Legislation.

C. Form, Content, and Terms.

- 1. [§39] In General.
- 2. [§40] Mortgage.
- 3. [§41] Deed of Trust.
- 4. [§42] Alternative Mortgage Transactions for Residential Loans.
- 5. [§43] Wrap-Around Mortgage.
- 6. [§44] “Dragnet” and Future Advances Clauses.

D. [§45] Construction of Note and Security Instrument.

E. [§46] Recordation.

F. [§47] Lien Is Incident of Debt.

III. PRIORITIES

A. In General.

- 1. [§48] Priority in Time.
- 2. [§49] Effect of Recordation.
- 3. [§50] Effect of Notice.

B. Subordination Agreements.

- 1. [§51] In General.
- 2. [§52] Types of Agreements.
- 3. [§53] Circuity of Liens.
- 4. [§54] Notice Requirements.
- 5. Enforcement of Executory Agreement.
 - (a) [§55] Reasonableness of Agreement.
 - (b) [§56] Waiver of Invalid Clause.
- 6. [§57] Compliance With Terms of Agreement.
- 7. [§58] Subordination by Prior Recordation.

C. Real Mortgage and Tax Lien.

- 1. [§59] Priority of Tax Lien Over Mortgage.
- 2. Priorities Between Tax Liens.

- (a) [§60] Statutory Parity.
 - (b) [§61] Priority of Tax Title.
 - (c) [§62] Statute of Limitations.
 - 3. Federal Tax Lien.
 - (a) [§63] In General.
 - (b) [§64] Priority.
 - (c) [§65] Uniform Federal Lien Registration Act.
 - D. Real Mortgage and Secured Interest in Personal Property.
 - 1. [§66] Growing Crops.
 - 2. Fixtures.
 - (a) [§67] Subsequent Mortgage.
 - (b) [§68] Prior Mortgage.
 - E. Real Mortgage and Mechanic's Lien.
 - 1. [§69] Basic Rule.
 - 2. [§70] Commencement of Work.
 - F. [§71] Real Mortgage and Design Professional's Lien.
 - G. Future Advances and Subsequent Liens.
 - 1. [§72] Obligatory Advances.
 - 2. [§73] Optional Advances.
 - H. Purchase Money Mortgage.
 - 1. [§74] In General.
 - 2. [§75] Priority Over Vendor's Lien.
- IV. RIGHTS AND OBLIGATIONS OF MORTGAGEE**
- A. Reimbursement for Expenditures.
 - 1. Payment of Taxes.
 - (a) [§76] In General.
 - (b) [§77] Action Against Mortgagor.
 - 2. [§78] Clearing Liens.
 - 3. [§79] Payment of Insurance Premiums.
 - 4. [§80] Impound Accounts.
 - B. [§81] Right to Condemnation Award.
 - C. Right to Insurance Proceeds.
 - 1. [§82] Standard Provisions.
 - 2. [§83] Lender Named as Loss Payee.
 - 3. [§84] Security Need Not Be Impaired.
 - D. Remedies for Impairment of Security.
 - 1. [§85] Against Mortgagor.
 - 2. [§86] Against Third Person.
 - E. Acceleration on Sale or Encumbrance.
 - 1. [§87] In General.
 - 2. "Due on Sale" Clause.
 - (a) [§88] In General.
 - (b) [§89] Validity of Clause: California Cases.
 - (c) [§90] Federal Preemption.
 - 3. [§91] "Due on Encumbrance" Clause.
 - F. Prepayment Charges.

1. [§92] Nature and Effect.
 2. [§93] Amount of Penalty.
 3. [§94] Restrictive Legislation.
- G. Right to Possession, Rents, and Profits.**
1. **In Absence of Express Agreement.**
 - (a) [§95] In General.
 - (b) [§96] Rent Skimming.
 2. **Under Rents and Profits Agreement.**
 - (a) **Former Law: Distinction Between Absolute Assignment and Pledge as Additional Security.**
 - (1) [§97] In General.
 - (2) [§98] Absolute Assignment.
 - (3) [§99] Assignment as Additional Security.
 - (b) [§100] Distinction Abolished.
 - (c) [§101] Receiver.
 3. **Mortgagee in Possession.**
 - (a) [§102] Duties of Mortgagee in Possession.
 - (b) [§103] Rights of Mortgagee in Possession.
 - (c) [§104] Possession After Statute of Limitations Runs.

V. TRANSFER OF MORTGAGE OR PROPERTY

- A. Transfer of Debt and Mortgage.**
1. [§105] Assignment of Debt.
 2. [§106] Assignment of Mortgage.
- B. Transfer of Property and Assumption of Mortgage.**
1. [§107] In General.
 2. [§108] Manner and Requisites of Assumption.
 3. **Mortgagor as Surety.**
 - (a) [§109] Release of Part of Property.
 - (b) [§110] Extension of Time to Grantee.
 - (c) [§111] Suretyship Right of Subrogation.
 4. [§112] Failure of First Grantee To Assume.

VI. EXTENSION, RENEWAL, AND DISCHARGE OF MORTGAGE AND DEED OF TRUST

- A. Extension or Renewal.**
1. [§113] As Between Parties.
 2. [§114] Effect on Encumbrancers Before Renewal.
 3. [§115] Effect on Encumbrancers or Purchasers After Renewal.
- B. Discharge.**
1. [§116] In General.
 2. **Payment and Satisfaction of Record.**
 - (a) [§117] In General.
 - (b) [§118] Mortgagee's Duty.
 - (c) [§119] Release When Mortgagee Cannot Be Found or Refuses To Act.
 3. [§120] Merger.
 4. **Running of Statute of Limitations on Principal Debt.**

(a) [§121] Mortgage.

(b) [§122] Deed of Trust.

C. [§123] Revival of Discharged Mortgage.

VII. REMEDIES OF MORTGAGEE AND TRUSTEE

A. One-Action Rule.

1. [§124] In General: C.C.P. 726.

2. Where Rule Does Not Apply.

(a) [§125] Security Is Not Mortgage.

(b) [§126] Action Is Not To Recover Debt.

(c) [§127] Action Is Not Against Mortgagor.

(d) [§128] Remedy Is Not Action.

(e) [§129] Property or Mortgagor Is Outside State.

(f) [§130] Security Is Valueless.

3. [§131] Advance Waiver Is Invalid.

4. Affirmative Defense and Election of Remedy.

(a) [§132] In General.

(b) [§133] Effect of Setoff.

(c) [§134] Distinction: No Waiver of Underlying Debt.

(d) [§135] Action Against Comaker.

(e) [§136] Mixed Collateral: Real and Personal Property.

5. Dual Remedies for Deed of Trust.

(a) [§137] In General.

(b) [§138] Change of Remedies.

B. Enforcement Procedure.

1. Judicial Foreclosure.

(a) Parties.

(1) [§139] Who Should Be Joined.

(2) [§140] Who Should Not Be Joined.

(3) [§141] Failure To Join Parties.

(4) [§141A] (New) Who Can Institute Action.

(b) [§142] Pleading and Decree.

(c) [§143] Manner of Sale.

2. Nonjudicial Foreclosure.

(a) [§144] In General.

(b) Notices.

(1) Notice of Default and Election To Sell.

(aa) [§145] In General.

(bb) [§146] Statement of Breach.

(cc) [§147] Warning and Notice of Borrower's Rights.

(2) [§148] Special Notice for Unruh Act Mortgages.

(3) [§149] Notice to Junior Lienor of Uncured Default.

(4) Notice of Time and Place of Sale.

(aa) [§150] Content and Time of Notice.

(bb) [§151] Posting, Publication, and Recording.

(cc) [§152] Effect of Noncompliance.

(5) [§153] Personal Notice on Request.

- (6) [§154] Personal Notice to Others.
 - (c) Conduct of Sale.
 - (1) [§155] In General.
 - (2) Postponement.
 - (aa) [§156] In General.
 - (bb) [§157] Announcements and Notices.
 - (3) [§158] Multiple Parcels.
 - (4) [§159] Terms of Sale and Creditors' Offsets.
 - (5) [§160] Bidding and Payment.
 - (6) [§161] Costs and Fees.
 - (d) Distribution of Proceeds.
 - (1) [§162] Order of Priority.
 - (2) [§163] Conflicting Claims.
 - (e) [§164] Effect of Recitals in Trustee's Deed.
 - (f) Setting Aside Sale for Irregularity.
 - (1) [§165] Grounds.
 - (2) [§166] Tender of Payment.
 - (g) [§167] Notice of Rescission.
 - (h) [§168] Damages for Wrongful Sale.
3. [§169] Passage of Title.
 4. [§170] Possession, Rents, and Profits.
 5. Unlawful Detainer.
 - (a) [§171] In General.
 - (b) Litigation of Title Issue.
 - (1) [§172] Validity of Sale.
 - (2) [§173] Fraud in Acquisition of Title.
 - (3) [§174] Effect of Judgment.
 6. Effect of Purchase by Beneficiary.
 - (a) [§175] In General.
 - (b) [§176] Negligence Claims.
 - (c) [§177] Claims Against Third Parties.
- C. Deficiency Judgment.**
1. Foreclosure of Ordinary Mortgage.
 - (a) [§178] Right to Deficiency Judgment.
 - (b) Limitation on Amount.
 - (1) [§179] Nature and Scope of Statutes.
 - (2) [§180] Determining Fair Value.
 - (3) [§181] Sold-Out Junior Lienor.
 2. Foreclosure of Purchase Money Mortgage: C.C.P. 580b.
 - (a) Deficiency Judgment Prohibited.
 - (1) [§182] Nature and Purpose of Statute.
 - (2) [§183] Waiver of Protection.
 - (3) [§184] Distinctions.
 - (b) Scope of Statute.
 - (1) [§185] Standard Transactions.
 - (2) [§186] Variations on Standard Transaction.

- (3) [§187] Transactions in Nature of Deficiency Judgment.
 - (4) [§188] Contract of Sale.
 - (5) [§189] What Are Not Purchase Money Mortgages.
 - (6) [§190] Third-Party Lenders.
 - (7) [§191] Construction Loan on Owned Land.
 - (c) Action by Sold-Out Junior Lienor.
 - (1) [§192] In General.
 - (2) [§193] Exception for Subordinated Junior Lien.
 - (d) Action on Guaranty.
 - (1) [§194] True Guaranty.
 - (2) [§195] Purported Guaranty.
 - (e) [§196] Action on Indorsement.
 - (f) Action for Impairment of Security.
 - (1) [§197] In General.
 - (2) [§198] Bad Faith Waste.
- 3. Nonjudicial Sale: C.C.P. 580d.
 - (a) Deficiency Prohibited.
 - (1) [§199] In General.
 - (2) [§200] Where Additional Security Is Given.
 - (3) [§201] Where Part of Note Unsecured.
 - (b) Action Against Guarantor.
 - (1) [§202] In General.
 - (2) [§203] Where Purported Guarantor Is Principal.
 - (3) [§204] Waiver of Defenses.
 - (c) [§205] Action by Sold-Out Junior Lienor.
 - (d) [§206] Defense of Action To Enjoin Sale.
- 4. [§207] Constitutionality of Restrictions.
- 5. [§207A] (New) Nonjudicial Sale: C.C.P. 580e (Short Sale).

D. Environmentally Impaired Property.

- 1. [§208] Nature and Scope of Legislation.
- 2. [§209] Inspection of Property.
- 3. [§210] Waiver of Lien.
- 4. [§211] Breach of Environmental Provision.

VIII. SPECIAL RIGHTS OF MORTGAGOR AND SUBORDINATE LIENORS

A. [§212] In General.

B. [§213] Equity of Redemption.

C. Accountings and Notices by Mortgagee.

- 1. [§214] In General.
- 2. [§215] Erroneous Payoff Statement.

D. Reinstatement of Loan After Default.

- 1. [§216] In General.
- 2. [§217] Time Limits.
- 3. [§218] Costs and Attorneys' Fees.
- 4. [§219] Payment or Tender.

E. Equitable Relief Against Forfeiture.

- 1. [§220] In General.

2. [§221] Effect of Minor Defaults.

F. Protection Against Unfair Home Equity Purchase.

1. [§222] Nature and Purpose of Legislation.

2. [§223] Definitions.

3. [§224] Rights of Seller and Obligations of Purchaser.

4. [§225] Purchaser's Representative.

5. [§226] Penalties and Seller's Remedies.

G. Mortgage Foreclosure Consultants.

1. [§227] Nature and Purpose of Legislation.

2. [§228] Foreclosure Consultant.

3. [§229] Rights of Owner and Obligations of Consultant.

4. [§230] Consultant's Representative.

5. [§231] Penalties and Owner's Remedies.

H. Statutory Right of Redemption.

1. [§232] Former Law.

2. [§233] Scope and Manner of Exercise.

3. [§234] Pro Tanto Redemption.

4. [§235] Foreclosure Decree Denying Redemption.

I. [§236] Waiver or Sale of Right of Redemption.

J. (New) Mortgage Loan Modification.

1. [§237] (New) California Statutes.

2. [§238] (New) Effect of Federal Statutes.