

FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

In re: )  
 )  
AYANNA SPIKES, ) Case No. 23-21965  
 )  
Debtor. )  
 )  
AYANNA SPIKES, ) Adv. Pro. 23-02111  
Plaintiff, )  
v. )  
 )  
QUALITY LOAN SERVICE )  
CORPORATION, BRECKENRIDGE )  
PROPERTY FUND 2016, LLC., )  
SHELLPOINT MORTGAGE SERVICING, )  
ISN CORPORATION, )  
Defendants. )  
 )

**MEMORANDUM ON MOTION TO DISMISS**

This Motion to Dismiss tests compliance with foreclosure post-sale finality rules mandated by new California Civil Code § 2924m – “Conditions for sale to be deemed final; Procedures in the event sale not final” – which affords prospective owner-occupants of foreclosed property of four or fewer residential units up to 45 days to match the winning bid at the sale.

Noncompliance with the notice regime blocks finality indefinitely and leaves title with the trustor. Cal. Civ. Code § 2924m(f). Moreover, § 2924m(h) preempts the 21-day relation-back rule of § 2924h(c) for Trustee Deeds Upon Sale. Cal. Civ. Code § 2924m(h).

Judge Lastreto, focusing on another § 2924m issue, observed “My, how things change.” In re Hager, 651 B.R. 873, 878 (Bankr. E.D. Cal. 2023). How right he was.

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1 Defendant Breckenridge moved on August 1, 2023, for relief  
2 from the automatic stay to pursue unlawful detainer proceedings.  
3 Hearing was set for September 12, 2023.

4 The stay relief motion papers and declarations in support  
5 made no mention of § 2924m and did not mention any notice posted  
6 on the internet as required by § 2924m(e).

7 There being no timely opposition before the hearing as  
8 required by Local Bankruptcy Rule 9014-1(f)(1), this Court  
9 accepted well-pleaded facts as true and granted the motion but  
10 declined to waive the stay of enforcement prescribed by Rule  
11 4001(a)(3) because there had been no showing of cause for waiver.

12 The self-represented Plaintiff converted her chapter 13 case  
13 to chapter 7 on September 12, 2023.

14 Plaintiff's counsel, who was not retained until December 10,  
15 2023, contacted Breckenridge's stay relief counsel to discuss the  
16 implications of § 2924m, which had become effective January 1,  
17 2021. He unsuccessfully requested reversal of the foreclosure.

18 This three-count adversary proceeding was filed December 28,  
19 2023, alleging violation of the automatic stay, requesting  
20 damages, and seeking a declaration of the extent and validity of  
21 the underlying lien.

22 When the Motion to Dismiss was made in this adversary  
23 proceeding by Breckenridge Property Fund 2016, LLC, this Court  
24 required Defendants to produce evidence that they actually had  
25 complied with the pertinent notice requirements imposed by  
26 § 2924m(e). The response includes a template cover sheet from a  
27 Quality Loan Service File Search and a printout of an XML file.  
28 (Dkts. # 28 & 44).

1                                    Jurisdiction

2            Jurisdiction is founded on 28 U.S.C. § 1334(a) and (b). This  
3 is a core proceeding a bankruptcy judge may hear and determine.  
4

5                                    Issues

6            The controlling issue is whether there was correct post-sale  
7 notice of the foreclosure in the manner and form prescribed by  
8 § 2924m(e) when the winning bidder, as here, is not a prospective  
9 owner-occupant under California Civil Code § 2924m(c)(1).

10           The declaration supporting the Trustee's Deed Upon Sale  
11 avers that all requirements were satisfied - if that declaration  
12 was not true because the notice was not made or was defective,  
13 then the sale would be void and the Trustee's Deed invalid.  
14

15                                   The Complaint

16           The Complaint contains three counts premised on the  
17 consequences of the lack of finality under § 2924m.

18           Count One seeks a determination that the recording of the  
19 Trustee's Deed Upon Sale on July 6, 2023, violated the § 362  
20 automatic stay because title still reposed in the Debtor pursuant  
21 to § 2924m(f).

22           Count Two seeks a declaration that the title conveyed by  
23 Shellpoint through Quality to Breckenridge by way of the  
24 Trustee's Deed Upon Sale is void as a matter of law.

25           Count Three seeks damages under § 362(k) on a theory of  
26 willful violation of the automatic stay.  
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## Discussion

Civil Code § 2924m is no model of draftsmanship. Unintended consequences lurk in the corners.

It is at least an irony, if not an unintended consequence, that the \$ 2924m modification of finality rules winds up enabling the owner of a property in foreclosure to exploit inept execution of intricate finality procedures by way of a bankruptcy filing and potentially to rescue the property from foreclosure because implementation of the finality rules was defective.

## I

## California Foreclosure Regime for Four or Fewer Residential Units

### A. Notice Requirements

## 1. 2012 Regime

Since 2012, special notice requirements have applied to exercise of powers of sale under deeds of trust on one to four "single-family residences." Cal. Civ. Code § 2924f(b)(8)(A).

Trustees or authorized agents are required to create a telephone number to provide recorded information on applicable properties 24 hours per day, seven days per week at no cost to persons who wish such information. Cal. Civ. Code § 2924f(b)(8)(E).

The two notices prescribed beginning in 2012 are "Notice to Potential Bidders" and "Notice to Property Owner." Cal. Civ. Code § 2924f(b)(8)(A).

In addition, the 2012 regime imposed a duty to make a good faith effort to provide up-to-date information regarding sale dates and postponements at no charge by way of telephone

1 recording. Cal. Civ. Code § 2924f(b) (8) (B) .

2 The required notices do not create substantive rights or  
3 obligations for any person providing or specified in them. Cal.  
4 Civ. Code § 2924f(b) (8) (C) .

5 Finally, "Failure to comply with subparagraph (A) or (B)  
6 shall not invalidate any sale that would otherwise be valid under  
7 Section 2924f." Cal. Civ. Code § 2924f(b) (8) (C) .

8  
9 2. 2020 § 2924m Regime

10 The enactment in 2020 of § 2924m, effective only from  
11 January 1, 2021, to January 1, 2031,<sup>1</sup> created a post-sale  
12 opportunity up to 45-days for "prospective owner-occupants" of  
13 the subject property to match the highest and best bid at the  
14 auction. Cal. Civ. Code § 2924m.

15 By modifying the rules for finality of a foreclosure sale  
16 the California Legislature intended to afford an opportunity for  
17 prospective owner-occupants to have, in effect, a right of first  
18 refusal in the nature of contingent overbid rights following a  
19 trustee's sale.

20 The stated policy purpose of these contingent overbid rights  
21 is to promote owner-occupancy of residences that otherwise would  
22 become rentals. It was enacted as a ten-year interim statute  
23 effective only until January 1, 2031. Cal Civ. Code § 2924m(m) .

24 Instead of applying to real property of one to four "single-  
25 family residences," the § 2924m regime applies to one to four

26 \_\_\_\_\_  
27 <sup>1</sup>Section 2924m(m): This section shall remain in effect only  
28 until January 1, 2031, and as of that date is repealed, unless a  
later enacted statute that is enacted before January 1, 2031,  
deletes or extends that date. Cal. Civ. Code § 2924m(m) .

1 "residential units." Compare Cal. Civ. Code § 2924f(b)(8)(A),  
2 with id. § 2924m(c).

3 The title of § 2924m says it all: "Conditions for sale to be  
4 deemed final; Procedures in the event sale not final."

5 The term "deemed final" in § 2924m means the point in time  
6 when the foreclosure sale is considered completed and equitable  
7 title transfers from the mortgagor/trustor to the buyer. Thus,  
8 title in four or fewer residential units remains with the  
9 mortgagor/trustor until the sale is "deemed final" pursuant to  
10 § 2924m(c). Cal. Civ. Code § 2924m(f).

11 By modifying the rules for "deemed finality" of a  
12 foreclosure sale the California Legislature intended to afford an  
13 opportunity for prospective owner-occupants to have, in effect, a  
14 right of first refusal following a trustee's sale in the form of  
15 contingent overbid rights.

16 The sale is "deemed final" if a "prospective owner-occupant"  
17 is the "last and highest" bidder and timely performs the usual  
18 requirements under § 2924h for a sale to become final.

19 If, however, the "last and highest" bidder is not a  
20 "prospective owner-occupant," then the post-sale procedure is  
21 triggered.

22 The first step of the post-sale procedure after the  
23 trustee's sale of property, requires that within 48 hours the  
24 trustee or an authorized agent shall, for a period of not less  
25 than 45 days, post on the internet website set forth on the  
26 Notice of Sale with the file number assigned to the case, as  
27 required by § 2924f(b)(8), the following information:

- 28 (A) The date on which the trustee's sale took place.  
(B) The amount of the last and highest bid at the trustee's

1 sale.  
2 (C) An address at which the trustee can receive documents  
3 sent by United States mail and by a method of delivery  
4 providing for overnight delivery.

5 Cal. Civ. Code § 2924m(e)(1)-(4).

6 The sale does not become "deemed final" before 15 days after  
7 the sale. If within 15 days there are no bids or notices of  
8 intent to bid from eligible bidders, the sale is deemed final on  
9 the 15th day and, if the trustee's deed on sale is recorded by  
10 the 21st day, the sale will be deemed final and perfected as of  
11 8:00 a.m. on the date of sale. Cal. Civ. Code § 2924h(c).

12 "Deemed finality" is deferred for up to 45 days if during  
13 the initial 15 days any eligible tenant buyer or prospective  
14 owner-occupant (or certain related entities) submits a bid or  
15 nonbinding written notice of intent to bid. Cal. Civ. Code  
16 § 2924m(c)(4)(B); Hager, 651 B.R. at 882.

17 As noted, title to the property remains with the mortgagor  
18 or trustor until the sale is "deemed final" as provided in  
19 § 2924m. Cal. Civ. Code § 2924m(f).

20 This procedure for finality prevails over any conflicting  
21 finality and perfection provisions in § 2924h. Cal. Civ. Code  
22 § 2924m(h).

## 23 II

24 The Plaintiff contends that the recording of the Trustee's  
25 Deed Upon Sale on July 6, 2023, following the June 15 trustee's  
26 sale offended the bankruptcy automatic stay.

27 The rationale is that without proof that the trustee made  
28 the internet posting required by § 2924m(e)(1), the sale cannot  
be "deemed final."



1 A

2 Four problems ensue when the § 2924m(e)(1) internet posting  
3 either is not made or is defective.

4 First, the trustee's declaration in support of the recording  
5 of the Trustee's Deed Upon Sale averring that all required  
6 procedures have been followed is false; conventional foreclosure  
7 law teaches that a false trustee declaration invalidates the  
8 ensuing trustee's deed.

9 Second, the recording of the Trustee's Deed Upon Sale during  
10 the pendency of a bankruptcy case violates the automatic stay and  
11 is void ab initio.

12 Third, the sale cannot be "deemed final" under § 2924m(e).

13 Fourth, without a "deemed final" sale, title remains in the  
14 trustor per § 2924m(h).

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16 B

17 The outcome of this Motion to Dismiss by the purchaser  
18 Defendant Breckenridge Property Fund 2016, LLC, depends on the  
19 answer to the question whether Quality Loan Servicing correctly  
20 complied with the statutory post-sale notice requirements of  
21 § 2924m(e)(1) that are prerequisite to a sale becoming final.

22 If the compliance with the statutory information in the  
23 website was defective, then the sale has not become final because  
24 none of four alternative contingencies have occurred, with the  
25 consequence that title remained with the Debtor.

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28 The terms of the statute provide:

1 (1) Not later than 48 hours after the trustee's sale of  
2 property under Section 2924g, the trustee or an authorized  
3 agent shall post on the internet website set forth in the  
4 notice of sale, as required by paragraph (8) of subdivision  
5 (b) of Section 2924f, the following information:

6 (A) The date on which the trustee's sale took  
7 place.

8 (B) The amount of the last and highest bid at the  
9 trustee's sale.

10 (C) An address at which the trustee can receive  
11 documents sent by United States mail and by a method of  
12 delivery providing for overnight delivery.

13 (2) [Telephone recording omitted]

14 (3) The information required to be provided under  
15 paragraphs (1) and (2) shall be made available using the  
16 file number assigned to the case that is set forth on the  
17 notice of sale as required by paragraph 8 of subdivision (b)  
18 of Section 2924f.

19 (4) The information required to be provided under under  
20 paragraphs (1) and (2) shall be made available for a period  
21 of not less than 45 days after the sale of property under  
22 Section 2924g.

23 Cal. Civ. Code § 2924m(e) (1)-(4).

24 The target audience may be inferred from the provision that  
25 the purpose of the required website posting and telephone  
26 recording is to "provide information on applicable properties to  
27 persons who wish the information." Cal. Civ. Code  
28 § 2924f(b) (8) (E).

In context, the persons most likely to wish the information  
are prospective owner-occupants and eligible bidders.

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23 The California Civil Code provisions dealing with transfers  
24 of real property are "to be liberally construed with a view to  
25 effect its objects and to promote justice." Cal. Civ. Code § 4;  
26 Blevins v. Palmer, 172 Cal. App. 2d 324, 327, 342 P.2d 356, 358  
27 (1959); Hager, 651 B.R. at 880.

28 The California legislature provided a statement of its  
intent in enacting the 2924m regime in 2020:

1 (a) For purposes of this section, it is the intent of  
2 the Legislature to do all of the following:

3 (1) Allow for prospective owner-occupants and eligible  
4 bidders to have the first opportunity to purchase properties  
5 that have been acquired through the foreclosure process by  
6 an entity that annually forecloses on 175 or more  
7 residential real properties in California.

8 (2) Promote owner occupancy by enacting legislation  
9 consistent with the provisions of the federal First Look  
10 program that provides owner occupants and affordable housing  
11 providers an opportunity for their offers to be considered  
12 on foreclosed properties prior to other offers.

13 (3) Ensure that the requirements of this section are  
14 consistent with the original stated goals of the federal  
15 First Look program, which were to expand home ownership  
16 opportunities, strengthen neighborhoods and communities,  
17 while also providing that sellers are required to respond to  
18 offers received during the first look period before  
19 accepting or considering investor offers to purchase single-  
20 family homes.

21 Cal. Civ. Code § 2924p.

22 It is apparent that the internet posting is intended to be  
23 available to the general public and to persons who are interested  
24 in becoming owner-occupants, rather than real estate foreclosure  
25 portfolio investors who would not be owner-occupants.

26 It follows that the § 2924m(e) internet announcement needs  
27 to be in plain English and needs to be set forth in substantially  
28 the same format as stated in the statute.

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21 This Court required the Defendants to produce a copy of the  
22 notice that had been posted on the internet to demonstrate actual  
23 compliance with § 2924m(e). As noted, the response from the  
24 Defendant purchaser Breckenridge Property Fund 2016, LLC includes  
25 a template cover sheet from a Quality Loan Service File Search  
26 and a printout of an XML file. (Dkts. # 28 & 44).

27 A review of the template and XML file does not demonstrate  
28 strict compliance with § 2924m(e).

1        If the purpose of the legislature was to reach out to  
2 prospective owner-occupants, the information and its format does  
3 not seem to be in the nature of reaching out.

4        There is no statement that there is a telephone number with  
5 recorded information on applicable properties available 24 hours  
6 per day, seven days per week at no cost to persons who wish such  
7 information and what that number is. Cal. Civ. Code  
8 § 2924f(b) (8) (B) .

9        The language "the amount of the last and highest bid at the  
10 trustee's sale was \$ \_\_\_\_\_" does not appear. Cal. Civ. Code  
11 § 2924m(e) (1) (B) .

12        There is not a statement of "an address at which the trustee  
13 can receive documents sent by United States mail and by a method  
14 of delivery providing for overnight delivery." Cal. Civ. Code  
15 § 2924m(e) (1) (C) .

16        The intent of the Legislature was to invite and encourage  
17 prospective owner-occupants to participate in the post-auction  
18 process when the highest and best bidder is not a prospective  
19 owner-occupant.

20        It has not been demonstrated that Quality Loan Servicing  
21 Corp., as foreclosing trustee, has embraced the concept. There is  
22 nothing inviting about having to decipher XML files or  
23 interpolating information to be able to discern compliance with  
24 statutorily-mandated language. The internet template ignores the  
25 line item format prescribed by the Legislature.

26        In view of the gravity of the trouble that results from  
27 defective foreclosure procedure, one would expect trustees to  
28 make and to preserve copies of the internet postings for all

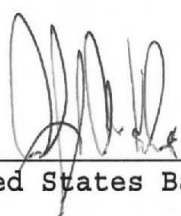
1 sales that require the § 2924m(e) notice. If there is, as here, a  
2 challenge to the validity of a sale and a Trustee's Deed Upon  
3 Sale, it is important for the trustee to be able to prove  
4 compliance with § 2924m(e).

5 In this Motion to Dismiss, the Defendant purchaser  
6 Breckenridge Property Fund 2016, LLC, has not carried its burden  
7 to demonstrate that the foreclosing trustee actually complied  
8 with § 2924m(e). Perhaps more focused evidence will be presented  
9 at trial to demonstrate compliance.

10 This Court is mindful that the Plaintiff as trustor is a  
11 person disqualified from status as a prospective owner-occupant.  
12 Nevertheless, without proof of compliance with § 2924m(e) so as  
13 to enable the sale to be "final," the Plaintiff as trustor  
14 retains title to the property and is entitled to complain. Cal.  
15 Civ. Code 2924m(f).

16 Accordingly, the Motion to Dismiss this adversary proceeding  
17 is DENIED.

18 **Dated: August 05, 2024**

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22 United States Bankruptcy Judge  
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