

Date: July 3, 2012

To: Mayor & City Council

**From: Patrick H. West
City Manager**

**Subject: Homeowner Bill of
Rights: Foreclosure Reform**

**Comments: In regards to
Agenda Item #22 on the July 3,
2012 Council Agenda**

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Date: July 2, 2012
To: Mayor and Members of the City Council
From: Patrick H. West, City Manager
Subject: Homeowner Bill of Rights: Foreclosure Reform

Introduction

Following the National Mortgage Settlement, Attorney General Kamala Harris sponsored a package of bills, which have become known as the Homeowner's Bill of Rights. SB 1470 and SB 1471 were introduced to reform California's foreclosure process. Both bills were highly controversial and sent to a special conference committee where numerous public hearings were held to discuss a compromise.

On May 8, 2012, the Long Beach City Council voted to have the State Legislation Committee review, deliberate and report back to the City Council its findings and recommendations concerning the Homeowner Bill of Rights. A meeting of the State Legislation Committee was held on June 11, 2012. The Committee forwarded legislative recommendations for SB 1473 and SB 1474, but did not take a position on SB 1470 and SB 1471 at the time, as the bills were still in the special conference committee, language on a compromise was unavailable, and the final disposition on a compromise was still unknown.

Conference Committee Bill: AB 278/SB 900

On Wednesday, June 27, 2012, the conference committee announced a compromise had been reached. By July 2, 2012, the Legislature approved SB 900, and sent the bill to the Governor's desk. SB 900 is the product of numerous conference committee hearings. Reforms proposed by this bill retain much of the original language in SB 1470 and SB 1471, but differ from the original legislation on several key issues. This memorandum provides a summary of the foreclosure reform compromise, and highlights a few of the changes agreed upon in the conference committee. For more information, please see the following attachments:

- Attachment 1: Proposed Conference Report No. 1 – June 27, 2012
- Attachment 2: Bill Text: SB 900 – Mortgages and Deeds of Trust, Foreclosure Reform
- Attachment 3: Senate Floor Analysis on SB 900

Bill Summary

The compromise bill reforms many of same issues addressed in SB 1470 and SB 1471, though the level of reform is tempered in SB 900. The three main issues addressed by the compromise bill are: (1) dual tracking, (2) single point of contact, and (3) "robosigning"/document verification process.

Duel Tracking. SB 900 bans the practice of duel tracking for “complete” loan modification applications. This provision would only apply to the loan modification process once a borrower has submitted all required documents within a reasonable timeframe, as specified by the mortgage servicer; and only if it is for a first lien loan modification on an owner-occupied residential property. Despite the relaxed rules, SB 900 still requires mortgage servicers to clearly affirm or deny “complete” loan modification applications. These provisions sunset January 1, 2018; after that date, a general ban on duel tracking will become operative.

Single Point of Contact. The compromise legislation recognizes the need for a “Single Point of Contact”, but also provides flexibility to mortgage servicers. SB 900 requires lenders to assemble a team of employees for a borrower to contact. “Single Point of Contact” team members must have the ability and authority to perform specified responsibilities such as access to current information in order to inform the borrower of the current status of his or her application. These provisions do not sunset. However, like the ban on duel tracking, “Single Point of Contact” requirements only apply to first lien loan modifications on owner-occupied residential properties.

“Robosigning” or the Document Verification Process. SB 900 does not contain the term “robosigning”, but the compromise does require mortgage servicers to ensure it has reviewed competent and reliable evidence to substantiate the borrower’s default and the right to foreclose before commencing the foreclosure process. Until January 1, 2018, a mortgage servicer that engages in “multiple and repeated” violations of this requirement may face fines up to \$7,500 per mortgage or dead of trust that is inaccurately processed.

Of all the provisions detailed in SB 900, the bill only provides enforcement authority for those applicable to duel tracking, “Single Point of Contact” and document verification.

SB 900 exempts small lenders or servicers that have foreclosed on 175 or fewer residential properties during the immediate preceding annual reporting period from certain requirements. These mortgage servicers are:

1. Not required to contact the borrower at least 30 days before default with information regarding loss mitigation.
2. Allowed to foreclose on a property while a loan modification is pending.
3. Not required to conform to “Single Point of Contact” requirements.
4. Not required to send loss mitigation options to a borrower within five days of a Notice of Default service.
5. Not required to respond within five days to a borrowers’ written communication.

Finally, the compromise legislation provides servicers who are signatories to the national mortgage settlement have no liability to an individual borrower if the servicer is in compliance with the term sheet of the settlement agreement as to the borrower. Those signatories are: Bank of America, Ally/GMAC, Citi, JPMorgan Chase, and Wells Fargo.

Support and Opposition

Cities did not engage in the foreclosure reform process. Even after compromise language was released, not a single city in California took a position on the bill.

As of June 28, 2012, support for SB 900 was led by SEIU and the Center for Responsible Lending. Opponents included the California Association of Realtors, Bankers Association, California Chamber of Commerce, California Financial Services Association, California Land Title Association, the Mortgage Association, the California Mortgage Bankers Association, Civil Justice Association of California, Securities Industry and Financial Markets Association, and Untied Trustees Association.

Next Steps

On July 2, 2012, the Legislature approved SB 900; the Assembly voted 53-25; and the Senate, 25-13. In response to the bill's passage, the Governor issued a favorable statement. SB 900 is headed to the Governor's desk, where he will have 12 days to sign the reforms.

Should you have any questions, please contact Tom Modica, Director of Government Affairs and Strategic Initiatives at 8-5091.

cc: Suzanne Frick, Assistant City Manager
Reginald Harrison, Deputy City Manager
Amy Bodek, Director of Development Services
Tom Modica, Director of Government Affairs and Strategic Initiatives
Jyl Marden, Assistant to the City Manager
Mike Arnold and Associates

PROPOSED CONFERENCE REPORT NO. 1 - June 27, 2012

AB 278 (Eng, Feuer, Mitchell and John A Pérez)

&

SB 900 (Leno, Evans, Corbett, DeSaulnier, Pavley, Steinberg)

SUMMARY: Makes changes to California's non-judicial foreclosure process. Specifically, the conference committee amendments

- 1) Declare that the purpose of the act is ensure that as part of the nonjudicial foreclosure process, borrowers are considered for, and have a meaningful opportunity to obtain, available loss mitigation options, if any, offered by or through the borrower's mortgage servicer, such as loan modifications or other alternatives to foreclosure. Additionally, provides that nothing in the act shall be interpreted to require a particular result of that process.
- 2) Define the following terms:
 - a) "Mortgage servicer" means a person or entity who directly services a loan, or who is responsible for interacting with the borrower, managing the loan account on a daily basis including collecting and crediting periodic loan payments, managing any escrow account, or enforcing the note and security instrument, either as the current owner of the promissory note or as the current owner's authorized agent. Clarifies that a servicer does not include a trustee.
 - b) "Foreclosure prevention alternative" means a first lien loan modification or another available loss mitigation.
 - c) "Borrower" means any natural person who is a mortgagor or trustor and who is potentially eligible for any federal, state, or proprietary foreclosure prevention alternative program offered by, or through his or her mortgage servicer. States that borrower does not include:
 - i) An individual who has surrendered the secured property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the MTBA;
 - ii) An individual who has contracted with an organization, person, or entity whose primary business is advising people who have decided to leave their homes on how to extend the foreclosure process and avoid their contractual obligations to mortgagees or beneficiaries; or
 - iii) An individual who has filed a case under Chapter 7, 11, 12, or 13 of the bankruptcy code and the bankruptcy court has not entered an order closing or dismissing the bankruptcy case.

- 3) Limit scope of application to only mortgages or deeds of trust that are secured by owner-occupied residential real property containing no more than four dwelling units. "Owner-occupied" means that the property is the principal residence of the borrower.
- 4) Limit the scope of loss mitigation requirements and activities to first lien mortgages.
- 5) Make clarifying and conforming changes to existing law requirements concerning the contact of borrowers prior to the recording of notice of default (NOD).
- 6) Require, in addition to existing requirements for contacting borrowers prior to NOD, the servicer must also send the following to the borrower in writing at least 30 days prior to recoding NOD:
 - a) A statement that if the borrower is a servicemember, or dependent of a servicemember, he or she may be entitled to certain protections under the federal Servicemembers Civil Relief Act; and
 - b) A statement that the borrower may request the following:
 - i) A copy of the borrower's promissory note or other evidence of indebtedness;
 - ii) A copy of the borrower's deed of trust or mortgage;
 - iii) A copy of any assignment, if applicable, of the borrower's mortgage or deed of trust required to demonstrate the right of the mortgage servicer to foreclosure; and
 - iv) A copy of the borrower's payment history since the borrower was last less than 60 days past due.
- 7) Establish the following processes for borrowers to request loss mitigation assistance.
 - a) If a borrower submits a complete application for a first-lien loan modification the servicer shall not record a NOD or NOS, or conduct a trustee's sale while the application is pending.
 - b) The servicer may not record the NOD or NOS until any one of the following occur:
 - i) The mortgage servicer makes a written determination that the borrower is not eligible for a first-lien loan modification, and any appeal period has expired.
 - ii) The borrower does not accept an offered first-lien loan modification within 14 days of offer.
 - iii) The borrower accepts a written first-lien loan modification, but defaults on the loan modification or otherwise breaches the borrowers obligation under the first-lien loan modification alternative.
 - c) If the borrower's application is denied they shall have at least 30 days from the date of the denial to appeal the denial and provide evidence to the servicer that the determination

- was in error.
- d) If the borrower's application are denied, then the mortgage servicer shall not record a NOD, NOS or conduct a trustee sale until the later of:
 - i) Thirty-one days after the borrower is notified in writing of the denial; or
 - ii) If the borrower appeals the denial, the later of 15 days after denial of the appeal, or 14 days after a first-lien loan modification is offered, but declined by the borrower.
 - e) Following the denial of the modification, the mortgage servicer shall send written notice to the borrower identifying the reasons for the denial, including the following:
 - i) The amount of time from the date of the denial letter in which the borrower may request an appeal of the denial and instructions on how to appeal the denial.
 - ii) The specific reason for an investor denial, if applicable.
 - iii) If the denial was a result of a net present value (NPV) calculation, the monthly gross income and property value used to calculate the NPB and a statement that the borrower may request, in writing, the inputs used to calculate the NVP.
 - iv) If applicable, a finding the borrower was previously offered a loan modification and failed to successfully make payments under the terms of the modified loans.
 - v) If applicable, a description of other foreclosure alternatives for which the borrower may be eligible.
 - f) Specifies that in order to minimize the risk of borrowers submitting multiple applications for first-lien loan modification for purpose of delay, a servicer shall not be obligated to evaluate applications from borrowers who have already been evaluated unless there has been a material change in the borrower's financial circumstances since the date of the borrower's previous application and the change is documented by the borrower.
 - g) Provides that an application is "complete" when a borrower has supplied the mortgage servicer with all the documents required by the servicer within the reasonable timeframes specified by the mortgage servicer.
- 8) Specify that certain entities that meet a specified performance metric (as described in #29) follow a process different than outlined in #7. Specifically, these entities would be prohibited from filing a NOD or NOS, or conduct a trustee sale while a borrower's application for first-lien loan modification is pending. If the application is approved, then the NOD or NOS may not be recorded and a trustee sale may not be conducted if the borrower is in compliance with the terms of a loan modification, forbearance or repayment plan, or a foreclosure prevention alternative has been approved by all parties.
- 9) Provide for a borrower that requests a foreclosure prevention alternative, the mortgage servicer shall promptly establish a single point of contact (SPOC) and provide one or more means of communication with the SPOC. Additionally, requires SPOC to responsible for the

following:

- a) Communicating the process by which a borrower may apply for an available foreclosure prevention alternative and the deadline for any required submission to be considered for the options.
 - b) Coordinating receipt of all documents associated with available foreclosure prevention alternatives and notifying the borrower of any missing documents necessary to complete the application.
 - c) Having access to current information and personnel sufficient to inform the borrower of the status of their foreclosure prevention alternative.
 - d) Ensure that a borrower is considered for all foreclosure prevention alternatives offered, by or through the mortgage servicer.
- 10) Require the SPOC to remain assigned to a borrower's account until the servicer determines that all loss mitigation options have been exhausted, or the borrower's account becomes current.
- 11) Define "SPOC" as an individual or team of personnel each of whom has the ability and authority to perform the responsibilities in a) through d) above. Provides that the servicer shall ensure that each team member is knowledgeable about the borrower's financial situation and current status in the foreclosure prevention process.
- 12) Require that until January 1, 2018 whenever a trustee sale is postponed for at least 10 business days, the borrower shall be provided written notice, at least 5 business days after postponement, regarding the new trustee sale date and time.
- 13) Clarify that no entity shall initiate the foreclosure process unless it is the holder of the beneficial interest under the mortgage or deed of trust. Additionally, no agent of the holder of the beneficial interest may commence the foreclosure process except when acting within the scope of authority designated by the holder of the beneficial interest.
- 14) Specify that unless a borrower has previously exhausted the foreclosure avoidance process, within five business days after recording NOD, a mortgage servicer shall send a written communication to the borrower that includes the following:
- a) That the borrower may be evaluated for a foreclosure prevention alternative;
 - b) Whether an application is required to be considered for a foreclosure prevention alternative;
 - c) The means and process by which a borrower may obtain an application for a foreclosure prevention alternative.
- 15) Require a servicer to provide written acknowledgment of receipt of any borrower documentation within five business days of receipt. Provides that the servicer, in its initial acknowledgment of receipt of the loan modification application shall include the following

information:

- a) A description of the loan modification process.
 - b) Any deadlines required to submit missing documentation that would effect processing of a loan modification application.
 - c) Any expiration date of documents.
 - d) Any deficiency in the borrower's loan modification application.
- 16) Prohibit the recording of a NOD if the borrower is in compliance with the terms of a written modification, forbearance, or repayment plan, or the foreclosure prevention alternative has been approved in writing by all parties.
 - 17) Provide that if a foreclosure prevention alternative is approved in writing after recordation of NOD, the servicer shall not record the NOS or conduct a trustee's sale if the borrower is in compliance with the terms of a written modification, forbearance, or repayment plan, or the foreclosure prevention alternative has been approved in writing by all parties.
 - 18) Require the mortgage servicer to provide a borrower, who accepts an offered loan modification, a copy of the fully executed loan modification agreement.
 - 19) Specify that upon the borrower executing a permanent first-lien loan modification alternative, the mortgagee, beneficiary or authorized agent shall record a rescission of a NOD or cancel a pending trustee's sale, if applicable.
 - 20) Prohibit the servicer from charging any application, processing or other fee for a modification or other foreclosure prevention alternative.
 - 21) Prohibit the servicer from collecting any late fees for periods during which a complete loan modification application is under consideration, a denial is being appealed, the borrower is making timely modification payments, or a foreclosure prevention alternative is being evaluated or exercised.
 - 22) Provide that 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 the approved loan modification or other foreclosure prevention alternative.
 - 23) Specifies that beginning January 1, 2018 that servicers may not record a NOS or conduct a trustee sale under certain circumstances. Specifically, prevents the recordation of the NOS or conducting the trustee sale until the borrower has been provided a written determination regarding the borrower's eligibility for a foreclosure prevention alternative. If the modification is denied then the servicer must send the borrower a notice identifying the reasons for the denial.
 - 24) State that beginning January 1, 2018, if a foreclosure prevention alternative is approved in writing prior the filing of a NOD the servicer may not record an NOD, or if the alternative

was approved after NOD, then the servicer may not record the NOS under the following circumstances:

- a) The borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance or repayment plan; or
 - b) A foreclosure prevention alternative has been approved in writing by all parties.
- 25) Require that documents required to initiate or complete the foreclosure process shall be accurate and complete and supported by competent and reliable evidence. Additionally, specifies prior to recording or filing foreclosure documents the mortgage servicer shall ensure it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information. Provide that for repeated and multiple violations of #23 above, an entity shall be liable for a civil penalty of \$7,500 per mortgage or deed of trust.
- 26) Provide for the following remedies and enforcement:
- a) A borrower may bring an action for injunctive relief for a material violation if the trustee's deed has not been recorded. The injunction would remain in place, and any trustee's sale enjoined, until a court determines that the violation has been corrected and remedied. 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 has been recorded, the mortgage servicer or mortgagee, trustee, beneficiary or authorized shall be liable for actual economic damages resulting from a material violation that is not corrected and remedied prior to the recordation of the trustee's deed.
 - c) If the violation was intentional or reckless, or resulted from willful misconduct by a mortgage servicer or MTBA the court may award the borrower the greater of treble damages or statutory damages of \$50,000.
 - d) Specifies that a mortgage servicer or MTBA shall not be liable for a violation that has been corrected and remedied prior to recordation of the trustee's deed.
 - e) A violation by a person licensed by the Department of Corporations (DOC), Department of Financial Institutions (DFI), or Department of Real Estate (DRE) shall be deemed to be a violation of that person's licensing law.
 - f) No violation shall effect the validity of a sale in favor of a bona fide purchaser.
- 27) State that a signatory to the national mortgage settlement that is in compliance with the relevant terms for the Settlement Term Sheet of that consent judgment with respect to the borrower who brought an action while the consent judgment is in effect shall have no liability for a violation.

- 28) Allow a court to award a prevailing borrower reasonable attorney's fees and costs in an action.
- 29) Provide that a depository institution chartered under state or federal law, a person licensed as a California Finance Lender or under the Residential Mortgage Lending Act or a licensed real estate broker, acting as a servicer, that during its immediately preceding annual reporting period, foreclosed on 175 or fewer residential properties located in California shall only have to comply with specific sections. Under this performance metric, an entity with less than 175 foreclosures in the previous year would not need to comply with the following sections:
- a) Section 2923.55: Requires, in addition to existing requirements for attempting contact with borrowers at 30 days prior to default, that a servicer send a notice to the borrower including information regarding loss mitigation and documents that can be requested.
 - b) Section 2923.6: Prohibitions on foreclosure filing while loan modification is pending. This section also established appeal process and deadlines and requires a detailed denial notice.
 - c) Section 2923.7: SPOC
 - d) Section 2924.9: Requirement that within five days of recordation of NOD, servicer must send borrower notice of their loss mitigation options.
 - e) Section 2924.10: Requirement that servicer respond within 5 days to borrower's written communication.
- 30) In relation to #31 above, entities with less than 175 foreclosures must comply with the following:
- a) Existing legal requirements under 2923.5, established via SB 1137 (Perata) of 2008, which requires due diligence on the part of servicers to contact borrowers at least 30 days prior to filing NOD.
 - b) Section 2924: Contains requirement that postponements of trustee sale of at least 10 days must be noticed to the borrower within 5 days and that an entity cannot record NOD unless it is the holder of the beneficial interest of the deed of trust.
 - c) Section 2924.17: Prohibition on the use of foreclosure documents that are unverified or not supported by competent reliable evidence.
 - d) Section 2924.18: Provides a general ban on initiating or continuing the foreclosure process when a borrower's request for loss mitigation is under consideration, or a foreclosure prevention alternative is approved in writing.
- 31) Sunset various provisions on January 1, 2018. Specifically sunsets the following provisions:
- a) Existing legal requirements under 2923.5, established via SB 1137 (Perata) of 2008, which requires due diligence on the part of servicers to contact borrowers at least 30 days

prior to filing NOD, that includes new notice provision.

- b) Section 2923.6: Prohibitions on foreclosure filing while loan modification is pending. This section also established appeal process and deadlines and requires a detailed denial notice.
 - c) Section 2924: Sunset on provision that requires notice of postponement of trustee sale.
 - d) Section 2924.9: Five day post NOD notice.
 - e) Section 2924.10: Requirement that servicers respond in writing to borrower communications.
 - f) Section 2924.11: additional ban on continuation of foreclosure process while borrower has pending modification.
 - g) Remedies provisions relating to sections that sunset.
- 32) Provides authority to DOC, DFI and DRE to promulgate regulations to carry out purposes of the act.

Proposed Conference Report No. 1
June 27, 2012

AMENDED IN ASSEMBLY APRIL 26, 2012

AMENDED IN SENATE MAY 9, 2011

AMENDED IN SENATE APRIL 6, 2011

SENATE BILL

No. 900

**Introduced by Senators Leno, Evans, Corbett, DeSaulnier, Pavley,
and Steinberg**

(Principal coauthors: Senators Calderon and Hancock)

*(Principal coauthors: Assembly Members Eng, Feuer, Mitchell, Davis,
Carter, Skinner, and John A. Pérez)*

February 18, 2011

An act to amend and add Sections 2923.5 and 2923.6 of, to amend and repeal Section 2924 of, to add Sections 2920.5, 2923.4, 2923.7, 2924.17, and 2924.20 to, to add and repeal Sections 2923.55, 2924.9, 2924.10, 2924.18, and 2924.19 of, and to add, repeal, and add Sections 2924.11, 2924.12, and 2924.15 of, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 900, as amended, Leno. Mortgages and deeds of trust: foreclosure.

(1) Existing law, until January 1, 2013, requires a mortgagee, trustee, beneficiary, or authorized agent to contact the borrower prior to filing a notice of default to explore options for the borrower to avoid foreclosure, as specified. Existing law requires a notice of default or, in certain circumstances, a notice of sale, to include a declaration stating that the mortgagee, trustee, beneficiary, or authorized agent has contacted the borrower, has tried with due diligence to contact the borrower, or that no contact was required for a specified reason.

This bill would add mortgage servicers, as defined, to these provisions and would extend the operation of these provisions indefinitely, except that it would delete the requirement with respect to a notice of sale. The bill would, until January 1, 2018, additionally require the borrower, as defined, to be provided with specified information in writing prior to recordation of a notice of default and, in certain circumstances, within 5 business days after recordation. The bill would prohibit a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent from recording a notice of default or, until January 1, 2018, recording a notice of sale or conducting a trustee's sale while a complete first lien loan modification application is pending, under specified conditions. The bill would, until January 1, 2018, establish additional procedures to be followed regarding a first lien loan modification application, the denial of an application, and a borrower's right to appeal a denial.

(2) Existing law imposes various requirements that must be satisfied prior to exercising a power of sale under a mortgage or deed of trust, including, among other things, recording a notice of default and a notice of sale.

The bill would, until January 1, 2018, require a written notice to the borrower after the postponement of a foreclosure sale in order to advise the borrower of any new sale date and time, as specified. The bill would provide that an entity shall not record a notice of default or otherwise initiate the foreclosure process unless it is the holder of the beneficial interest under the deed of trust, the original or substituted trustee, or the designated agent of the holder of the beneficial interest, as specified.

The bill would prohibit recordation of a notice of default or a notice of sale or the conduct of a trustee's sale if a foreclosure prevention alternative has been approved and certain conditions exist and would, until January 1, 2018, require recordation of a rescission of those notices upon execution of a permanent foreclosure prevention alternative. The bill would until January 1, 2018, prohibit the collection of application fees and the collection of late fees while a foreclosure prevention alternative is being considered, if certain criteria are met, and would require a subsequent mortgage servicer to honor any previously approved foreclosure prevention alternative.

The bill would authorize a borrower to seek an injunction and damages for violations of certain of the provisions described above, except as specified. The bill would authorize the greater of treble actual damages or \$50,000 in statutory damages if a violation of certain provisions is found to be intentional or reckless or resulted from willful

misconduct, as specified. The bill would authorize the awarding of attorneys' fees for prevailing borrowers, as specified. Violations of these provisions by licensees of the Department of Corporations, the Department of Financial Institutions, and the Department of Real Estate would also be violations of those respective licensing laws. Because a violation of certain of those licensing laws is a crime, the bill would impose a state-mandated local program.

The bill would provide that the requirements imposed on mortgage servicers, and mortgagees, trustees, beneficiaries, and authorized agents, described above are applicable only to mortgages or deeds of trust secured by residential real property not exceeding 4 dwelling units that is owner-occupied, as defined, and, until January 1, 2018, only to those entities who conduct more than 175 foreclosure sales per year or annual reporting period, except as specified.

The bill would require, upon request from a borrower who requests a foreclosure prevention alternative, a mortgage servicer who conducts more than 175 foreclosure sales per year or annual reporting period to establish a single point of contact and provide the borrower with one or more direct means of communication with the single point of contact. The bill would specify various responsibilities of the single point of contact. The bill would define single point of contact for these purposes.

(3) Existing law prescribes documents that may be recorded or filed in court.

This bill would require that a specified declaration, notice of default, notice of sale, deed of trust, assignment of a deed of trust, substitution of trustee, or declaration or affidavit filed in any court relative to a foreclosure proceeding or recorded by or on behalf of a mortgage servicer shall be accurate and complete and supported by competent and reliable evidence. The bill would require that before recording or filing any of those documents, a mortgage servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information. The bill would until January 1, 2018, provide that any mortgage servicer that engages in multiple and repeated violations of these requirements shall be liable for a civil penalty of up to \$7,500 per mortgage or deed of trust, in an action brought by specified state and local government entities, and would also authorize administrative enforcement against licensees of the

Department of Corporations, the Department of Financial Institutions, and the Department of Real Estate.

The bill would authorize the Department of Corporations, the Department of Financial Institutions, and the Department of Real Estate to adopt regulations applicable to persons and entities under their respective jurisdictions for purposes of the provisions described above. The bill would provide that a violation of those regulations would be enforceable only by the regulating agency.

(4) The bill would state finding and declarations of the Legislature in relation to foreclosures in the state generally, and would state the purposes of the bill.

(5) 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.

~~Existing law generally regulates mortgages and deeds of trust, including establishing procedures for foreclosure in the case of default.~~

~~This bill would express the intent of Legislature to enact legislation to amend the state's foreclosure laws to implement and make permanent the servicing standards and other provisions of the National Mortgage Settlement.~~

~~Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. *The Legislature finds and declares all of the*
- 2 *following:*
- 3 (i) *California is still reeling from the economic impacts of a*
- 4 *wave of residential property foreclosures that began in 2007. From*
- 5 *2007 to 2011 alone, there were over 900,000 completed foreclosure*
- 6 *sales. In 2011, 38 of the top 100 hardest hit ZIP Codes in the nation*
- 7 *were in California, and the current wave of foreclosures continues*
- 8 *apace. All of this foreclosure activity has adversely affected*
- 9 *property values and resulted in less money for schools, public*
- 10 *safety, and other public services. In addition, according to the*
- 11 *Urban Institute, every foreclosure imposes significant costs on*
- 12 *local governments, including an estimated nineteen thousand two*

1 hundred twenty-nine dollars (\$19,229) in local government costs.
2 And the foreclosure crisis is not over; there remain more than two
3 million “underwater” mortgages in California.

4 (b) It is essential to the economic health of this state to mitigate
5 the negative effects on the state and local economies and the
6 housing market that are the result of continued foreclosures by
7 modifying the foreclosure process to ensure that borrowers who
8 may qualify for a foreclosure alternative are considered for, and
9 have a meaningful opportunity to obtain, available loss mitigation
10 options. These changes to the state’s foreclosure process are
11 essential to ensure that the current crisis is not worsened by
12 unnecessarily adding foreclosed properties to the market when an
13 alternative to foreclosure may be available. Avoiding foreclosure,
14 where possible, will help stabilize the state’s housing market and
15 avoid the substantial, corresponding negative effects of
16 foreclosures on families, communities, and the state and local
17 economy.

18 (c) This act is necessary to provide stability to California’s
19 statewide and regional economies and housing market by
20 facilitating opportunities for borrowers to pursue loss mitigation
21 options.

22 SEC. 2. Section 2920.5 is added to the Civil Code, to read:

23 2920.5. For purposes of this article, the following definitions
24 apply:

25 (a) “Mortgage servicer” means a person or entity who directly
26 services a loan, or who is responsible for interacting with the
27 borrower, managing the loan account on a daily basis including
28 collecting and crediting periodic loan payments, managing any
29 escrow account, or enforcing the note and security instrument,
30 either as the current owner of the promissory note or as the current
31 owner’s authorized agent. “Mortgage servicer” also means a
32 subservicing agent to a master servicer by contract. “Mortgage
33 servicer” shall not include a trustee, or a trustee’s authorized
34 agent, acting under a power of sale pursuant to a deed of trust.

35 (b) “Foreclosure prevention alternative” means a first lien loan
36 modification or another available loss mitigation option.

37 (c) (1) Unless otherwise provided and for purposes of Sections
38 2923.4, 2923.5, 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11,
39 2924.18, and 2924.19, “borrower” means any natural person who
40 is a mortgagor or trustor and who is potentially eligible for any

1 federal, state, or proprietary foreclosure prevention alternative
2 program offered by, or through, his or her mortgage servicer.

3 (2) For purposes of the sections listed in paragraph (1),
4 "borrower" shall not include any of the following:

5 (A) An individual who has surrendered the secured property as
6 evidenced by either a letter confirming the surrender or delivery
7 of the keys to the property to the mortgagee, trustee, beneficiary,
8 or authorized agent.

9 (B) An individual who has contracted with an organization,
10 person, or entity whose primary business is advising people who
11 have decided to leave their homes on how to extend the foreclosure
12 process and avoid their contractual obligations to mortgagees or
13 beneficiaries.

14 (C) An individual who has filed a case under Chapter 7, 11, 12,
15 or 13 of Title 11 of the United States Code and the bankruptcy
16 court has not entered an order closing or dismissing the bankruptcy
17 case, or granting relief from a stay of foreclosure.

18 (d) "First lien" means the most senior mortgage or deed of
19 trust on the property that is the subject of the notice of default or
20 notice of sale.

21 SEC. 3. Section 2923.4 is added to the Civil Code, to read:

22 2923.4. (a) The purpose of the act that added this section is
23 to ensure that, as part of the nonjudicial foreclosure process,
24 borrowers are considered for, and have a meaningful opportunity
25 to obtain, available loss mitigation options, if any, offered by or
26 through the borrower's mortgage servicer, such as loan
27 modifications or other alternatives to foreclosure. Nothing in the
28 act that added this section, however, shall be interpreted to require
29 a particular result of that process.

30 (b) Nothing in this article obviates or supersedes the obligations
31 of the signatories to the consent judgment entered in the case
32 entitled *United States of America et al. v. Bank of America*
33 *Corporation et al.*, filed in the United States District Court for the
34 District of Columbia, case number 1:12-cv-00361 RMC.

35 SEC. 4. Section 2923.5 of the Civil Code is amended to read:

36 2923.5. (a) (1) A mortgage servicer, mortgagee, trustee,
37 beneficiary, or authorized agent may not file record a notice of
38 default pursuant to Section 2924 until both of the following:

1 (A) Either 30 days after initial contact is made as required by
2 paragraph (2) or 30 days after satisfying the due diligence
3 requirements as described in subdivision ~~(g)~~: (e).

4 (B) *The mortgage servicer complies with paragraph (1) of*
5 *subdivision (a) of Section 2924.18, if the borrower has provided*
6 *a complete application as defined in subdivision (d) of Section*
7 *2924.18.*

8 (2) ~~A mortgagee, beneficiary, or authorized agent mortgage~~
9 ~~servicer~~ shall contact the borrower in person or by telephone in
10 order to assess the borrower's financial situation and explore
11 options for the borrower to avoid foreclosure. During the initial
12 contact, the ~~mortgagee, beneficiary, or authorized agent mortgage~~
13 ~~servicer~~ shall advise the borrower that he or she has the right to
14 request a subsequent meeting and, if requested, the ~~mortgagee,~~
15 ~~beneficiary, or authorized agent mortgage servicer~~ shall schedule
16 the meeting to occur within 14 days. The assessment of the
17 borrower's financial situation and discussion of options may occur
18 during the first contact, or at the subsequent meeting scheduled
19 for that purpose. In either case, the borrower shall be provided the
20 toll-free telephone number made available by the United States
21 Department of Housing and Urban Development (HUD) to find a
22 HUD-certified housing counseling agency. Any meeting may occur
23 telephonically.

24 (b) A notice of default ~~filed~~ *recorded* pursuant to Section 2924
25 shall include a declaration that the ~~mortgagee, beneficiary, or~~
26 ~~authorized agent mortgage servicer~~ has contacted the borrower,
27 has tried with due diligence to contact the borrower as required
28 by this section, or that no contact was required *because the*
29 *individual did not meet the definition of "borrower"* pursuant to
30 subdivision ~~(h)~~ (c) of Section 2920.5.

31 (c) ~~If a mortgagee, trustee, beneficiary, or authorized agent had~~
32 ~~already filed the notice of default prior to the enactment of this~~
33 ~~section and did not subsequently file a notice of rescission, then~~
34 ~~the mortgagee, trustee, beneficiary, or authorized agent shall, as~~
35 ~~part of the notice of sale filed pursuant to Section 2924f, include~~
36 ~~a declaration that either:~~

37 (1) ~~States that the borrower was contacted to assess the~~
38 ~~borrower's financial situation and to explore options for the~~
39 ~~borrower to avoid foreclosure.~~

1 ~~(2) Lists the efforts made, if any, to contact the borrower in the~~
2 ~~event no contact was made.~~

3 ~~(d)~~

4 ~~(c) A mortgagee's, beneficiary's, or authorized agent's mortgage~~
5 ~~servicer's loss mitigation personnel may participate by telephone~~
6 ~~during any contact required by this section.~~

7 ~~(e) For purposes of this section, a "borrower" shall include a~~
8 ~~mortgagor or trustor.~~

9 ~~(f)~~

10 ~~(d) A borrower may designate, with consent given in writing,~~
11 ~~a HUD-certified housing counseling agency, attorney, or other~~
12 ~~advisor to discuss with the mortgagee, beneficiary, or authorized~~
13 ~~agent mortgage servicer, on the borrower's behalf, the borrowers~~
14 ~~borrower's financial situation and options for the borrower to~~
15 ~~avoid foreclosure. That contact made at the direction of the~~
16 ~~borrower shall satisfy the contact requirements of paragraph (2)~~
17 ~~of subdivision (a). Any loan modification or workout plan offered~~
18 ~~at the meeting by the mortgagee, beneficiary, or authorized agent~~
19 ~~mortgage servicer is subject to approval by the borrower.~~

20 ~~(g)~~

21 ~~(e) A notice of default may be filed recorded pursuant to Section~~
22 ~~2924 when a mortgagee, beneficiary, or authorized agent mortgage~~
23 ~~servicer has not contacted a borrower as required by paragraph~~
24 ~~(2) of subdivision (a) provided that the failure to contact the~~
25 ~~borrower occurred despite the due diligence of the mortgagee,~~
26 ~~beneficiary, or authorized agent mortgage servicer. For purposes~~
27 ~~of this section, "due diligence" shall require and mean all of the~~
28 ~~following:~~

29 ~~(1) A mortgagee, beneficiary, or authorized agent mortgage~~
30 ~~servicer shall first attempt to contact a borrower by sending a~~
31 ~~first-class letter that includes the toll-free telephone number made~~
32 ~~available by HUD to find a HUD-certified housing counseling~~
33 ~~agency.~~

34 ~~(2) (A) After the letter has been sent, the mortgagee,~~
35 ~~beneficiary, or authorized agent mortgage servicer shall attempt~~
36 ~~to contact the borrower by telephone at least three times at different~~
37 ~~hours and on different days. Telephone calls shall be made to the~~
38 ~~primary telephone number on file.~~

39 ~~(B) A mortgagee, beneficiary, or authorized agent mortgage~~
40 ~~servicer may attempt to contact a borrower using an automated~~

1 system to dial borrowers, provided that, if the telephone call is
2 answered, the call is connected to a live representative of the
3 mortgagee, beneficiary, or authorized agent *mortgage servicer*.

4 (C) A ~~mortgagee, beneficiary, or authorized agent~~ *mortgage*
5 *servicer* satisfies the telephone contact requirements of this
6 paragraph if it determines, after attempting contact pursuant to this
7 paragraph, that the borrower's primary telephone number and
8 secondary telephone number or numbers on file, if any, have been
9 disconnected.

10 (3) If the borrower does not respond within two weeks after the
11 telephone call requirements of paragraph (2) have been satisfied,
12 the ~~mortgagee, beneficiary, or authorized agent~~ *mortgage servicer*
13 shall then send a certified letter, with return receipt requested.

14 (4) The ~~mortgagee, beneficiary, or authorized agent~~ *mortgage*
15 *servicer* shall provide a means for the borrower to contact it in a
16 timely manner, including a toll-free telephone number that will
17 provide access to a live representative during business hours.

18 (5) The ~~mortgagee, beneficiary, or authorized agent~~ *mortgage*
19 *servicer* has posted a prominent link on the homepage of its Internet
20 Web site, if any, to the following information:

21 (A) Options that may be available to borrowers who are unable
22 to afford their mortgage payments and who wish to avoid
23 foreclosure, and instructions to borrowers advising them on steps
24 to take to explore those options.

25 (B) A list of financial documents borrowers should collect and
26 be prepared to present to the ~~mortgagee, beneficiary, or authorized~~
27 ~~agent~~ *mortgage servicer* when discussing options for avoiding
28 foreclosure.

29 (C) A toll-free telephone number for borrowers who wish to
30 discuss options for avoiding foreclosure with their ~~mortgagee,~~
31 ~~beneficiary, or authorized agent~~ *mortgage servicer*.

32 (D) The toll-free telephone number made available by HUD to
33 find a HUD-certified housing counseling agency.

34 (h) ~~Subdivisions (a), (c), and (g) shall not apply if any of the~~
35 ~~following occurs:~~

36 (1) The borrower has surrendered the property as evidenced by
37 either a letter confirming the surrender or delivery of the keys to
38 the property to the mortgagee, trustee, beneficiary, or authorized
39 agent.

1 ~~(2) The borrower has contracted with an organization, person,~~
2 ~~or entity whose primary business is advising people who have~~
3 ~~decided to leave their homes on how to extend the foreclosure~~
4 ~~process and avoid their contractual obligations to mortgagees or~~
5 ~~beneficiaries.~~

6 ~~(3) A case has been filed by the borrower under Chapter 7, 11,~~
7 ~~12, or 13 of Title 11 of the United States Code and the bankruptcy~~
8 ~~court has not entered an order closing or dismissing the bankruptcy~~
9 ~~case, or granting relief from a stay of foreclosure.~~

10 ~~(i)~~

11 ~~(f) This section shall apply only to mortgages or deeds of trust~~
12 ~~recorded from January 1, 2003, to December 31, 2007, inclusive,~~
13 ~~that are secured by owner-occupied residential real property~~
14 ~~containing no more than four dwelling units. For purposes of this~~
15 ~~subdivision, "owner-occupied" means that the residence is the~~
16 ~~principal residence of the borrower as indicated to the lender~~
17 ~~described in loan documents Section 2924.15.~~

18 ~~(g) This section shall apply only to entities described in~~
19 ~~subdivision (b) of Section 2924.18.~~

20 ~~(j)~~

21 ~~(h) This section shall remain in effect only until January 1, 2013,~~
22 ~~2018, and as of that date is repealed, unless a later enacted statute,~~
23 ~~that is enacted before January 1, 2013, 2018, deletes or extends~~
24 ~~that date.~~

25 ~~SEC. 5. Section 2923.5 is added to the Civil Code, to read:~~

26 ~~2923.5. (a) (1) A mortgage servicer, mortgagee, trustee,~~
27 ~~beneficiary, or authorized agent may not record a notice of default~~
28 ~~pursuant to Section 2924 until both of the following:~~

29 ~~(A) Either 30 days after initial contact is made as required by~~
30 ~~paragraph (2) or 30 days after satisfying the due diligence~~
31 ~~requirements as described in subdivision (e).~~

32 ~~(B) The mortgage servicer complies with subdivision (a) of~~
33 ~~Section 2924.11, if the borrower has provided a complete~~
34 ~~application as defined in subdivision (f) of Section 2924.11.~~

35 ~~(2) A mortgage servicer shall contact the borrower in person~~
36 ~~or by telephone in order to assess the borrower's financial situation~~
37 ~~and explore options for the borrower to avoid foreclosure. During~~
38 ~~the initial contact, the mortgage servicer shall advise the borrower~~
39 ~~that he or she has the right to request a subsequent meeting and,~~
40 ~~if requested, the mortgage servicer shall schedule the meeting to~~

1 occur within 14 days. The assessment of the borrower's financial
2 situation and discussion of options may occur during the first
3 contact, or at the subsequent meeting scheduled for that purpose.
4 In either case, the borrower shall be provided the toll-free
5 telephone number made available by the United States Department
6 of Housing and Urban Development (HUD) to find a
7 HUD-certified housing counseling agency. Any meeting may occur
8 telephonically.

9 (b) A notice of default recorded pursuant to Section 2924 shall
10 include a declaration that the mortgage servicer has contacted
11 the borrower; has tried with due diligence to contact the borrower
12 as required by this section, or that no contact was required because
13 the individual did not meet the definition of "borrower" pursuant
14 to subdivision (c) of Section 2920.5.

15 (c) A mortgage servicer's loss mitigation personnel may
16 participate by telephone during any contact required by this
17 section.

18 (d) A borrower may designate, with consent given in writing, a
19 HUD-certified housing counseling agency, attorney, or other
20 advisor to discuss with the mortgage servicer, on the borrower's
21 behalf, the borrower's financial situation and options for the
22 borrower to avoid foreclosure. That contact made at the direction
23 of the borrower shall satisfy the contact requirements of paragraph
24 (2) of subdivision (a). Any loan modification or workout plan
25 offered at the meeting by the mortgage servicer is subject to
26 approval by the borrower.

27 (e) A notice of default may be recorded pursuant to Section
28 2924 when a mortgage servicer has not contacted a borrower as
29 required by paragraph (2) of subdivision (a) provided that the
30 failure to contact the borrower occurred despite the due diligence
31 of the mortgage servicer. For purposes of this section, "due
32 diligence" shall require and mean all of the following:

33 (1) A mortgage servicer shall first attempt to contact a borrower
34 by sending a first-class letter that includes the toll-free telephone
35 number made available by HUD to find a HUD-certified housing
36 counseling agency.

37 (2) (A) After the letter has been sent, the mortgage servicer
38 shall attempt to contact the borrower by telephone at least three
39 times at different hours and on different days. Telephone calls
40 shall be made to the primary telephone number on file.

1 (B) A mortgage servicer may attempt to contact a borrower
2 using an automated system to dial borrowers, provided that, if the
3 telephone call is answered, the call is connected to a live
4 representative of the mortgage servicer.

5 (C) A mortgage servicer satisfies the telephone contact
6 requirements of this paragraph if it determines, after attempting
7 contact pursuant to this paragraph, that the borrower's primary
8 telephone number and secondary telephone number or numbers
9 on file, if any, have been disconnected.

10 (3) If the borrower does not respond within two weeks after the
11 telephone call requirements of paragraph (2) have been satisfied,
12 the mortgage servicer shall then send a certified letter, with return
13 receipt requested.

14 (4) The mortgage servicer shall provide a means for the
15 borrower to contact it in a timely manner, including a toll-free
16 telephone number that will provide access to a live representative
17 during business hours.

18 (5) The mortgage servicer has posted a prominent link on the
19 homepage of its Internet Web site, if any, to the following
20 information:

21 (A) Options that may be available to borrowers who are unable
22 to afford their mortgage payments and who wish to avoid
23 foreclosure, and instructions to borrowers advising them on steps
24 to take to explore those options.

25 (B) A list of financial documents borrowers should collect and
26 be prepared to present to the mortgage servicer when discussing
27 options for avoiding foreclosure.

28 (C) A toll-free telephone number for borrowers who wish to
29 discuss options for avoiding foreclosure with their mortgage
30 servicer.

31 (D) The toll-free telephone number made available by HUD to
32 find a HUD-certified housing counseling agency.

33 (f) This section shall apply only to mortgages or deeds of trust
34 described in Section 2924.15.

35 (g) This section shall become operative on January 1, 2018.

36 SEC. 6. Section 2923.55 is added to the Civil Code, to read:

37 2923.55. (a) A mortgage servicer, mortgagee, trustee,
38 beneficiary, or authorized agent may not record a notice of default
39 pursuant to Section 2924 until all of the following:

1 (1) The mortgage servicer has satisfied the requirements of
2 paragraph (1) of subdivision (b).

3 (2) Either 30 days after initial contact is made as required by
4 paragraph (2) of subdivision (b) or 30 days after satisfying the
5 due diligence requirements as described in subdivision (f).

6 (3) The mortgage servicer complies with subdivision (c) of
7 Section 2923.6, if the borrower has provided a complete
8 application as defined in subdivision (h) of Section 2923.6.

9 (b) (1) As specified in subdivision (a), a mortgage servicer shall
10 send the following information in writing to the borrower:

11 (A) A statement that if the borrower is a servicemember or a
12 dependent of a servicemember, he or she may be entitled to certain
13 protections under the federal Servicemembers Civil Relief Act (50
14 U.S.C. Sec. 501 et seq.) regarding the servicemember's interest
15 rate and the risk of foreclosure, and counseling for covered
16 servicemembers that is available at agencies such as Military
17 OneSource and Armed Forces Legal Assistance.

18 (B) A statement that the borrower may request the following:

19 (i) A copy of the borrower's promissory note or other evidence
20 of indebtedness.

21 (ii) A copy of the borrower's deed of trust or mortgage.

22 (iii) A copy of any assignment, if applicable, of the borrower's
23 mortgage or deed of trust required to demonstrate the right of the
24 mortgage servicer to foreclose.

25 (iv) A copy of the borrower's payment history since the borrower
26 was last less than 60 days past due.

27 (2) A mortgage servicer shall contact the borrower in person
28 or by telephone in order to assess the borrower's financial situation
29 and explore options for the borrower to avoid foreclosure. During
30 the initial contact, the mortgage servicer shall advise the borrower
31 that he or she has the right to request a subsequent meeting and,
32 if requested, the mortgage servicer shall schedule the meeting to
33 occur within 14 days. The assessment of the borrower's financial
34 situation and discussion of options may occur during the first
35 contact, or at the subsequent meeting scheduled for that purpose.
36 In either case, the borrower shall be provided the toll-free
37 telephone number made available by the United States Department
38 of Housing and Urban Development (HUD) to find a
39 HUD-certified housing counseling agency. Any meeting may occur
40 telephonically.

1 (c) A notice of default recorded pursuant to Section 2924 shall
2 include a declaration that the mortgage servicer has contacted
3 the borrower; has tried with due diligence to contact the borrower
4 as required by this section, or that no contact was required because
5 the individual did not meet the definition of "borrower" pursuant
6 to subdivision (c) of Section 2920.5.

7 (d) A mortgage servicer's loss mitigation personnel may
8 participate by telephone during any contact required by this
9 section.

10 (e) A borrower may designate, with consent given in writing, a
11 HUD-certified housing counseling agency, attorney, or other
12 advisor to discuss with the mortgage servicer, on the borrower's
13 behalf, the borrower's financial situation and options for the
14 borrower to avoid foreclosure. That contact made at the direction
15 of the borrower shall satisfy the contact requirements of paragraph
16 (2) of subdivision (b). Any foreclosure prevention alternative
17 offered at the meeting by the mortgage servicer is subject to
18 approval by the borrower.

19 (f) A notice of default may be recorded pursuant to Section 2924
20 when a mortgage servicer has not contacted a borrower as
21 required by paragraph (2) of subdivision (b), provided that the
22 failure to contact the borrower occurred despite the due diligence
23 of the mortgage servicer. For purposes of this section, "due
24 diligence" shall require and mean all of the following:

25 (1) A mortgage servicer shall first attempt to contact a borrower
26 by sending a first-class letter that includes the toll-free telephone
27 number made available by HUD to find a HUD-certified housing
28 counseling agency.

29 (2) (A) After the letter has been sent, the mortgage servicer shall
30 attempt to contact the borrower by telephone at least three times
31 at different hours and on different days. Telephone calls shall be
32 made to the primary telephone number on file.

33 (B) A mortgage servicer may attempt to contact a borrower
34 using an automated system to dial borrowers, provided that, if the
35 telephone call is answered, the call is connected to a live
36 representative of the mortgage servicer.

37 (C) A mortgage servicer satisfies the telephone contact
38 requirements of this paragraph if it determines, after attempting
39 contact pursuant to this paragraph, that the borrower's primary

1 telephone number and secondary telephone number or numbers
2 on file, if any, have been disconnected.

3 (3) If the borrower does not respond within two weeks after the
4 telephone call requirements of paragraph (2) have been satisfied,
5 the mortgage servicer shall then send a certified letter, with return
6 receipt requested, that includes the toll-free telephone number
7 made available by HUD to find a HUD-certified housing
8 counseling agency.

9 (4) The mortgage servicer shall provide a means for the
10 borrower to contact it in a timely manner, including a toll-free
11 telephone number that will provide access to a live representative
12 during business hours.

13 (5) The mortgage servicer has posted a prominent link on the
14 homepage of its Internet Web site, if any, to the following
15 information:

16 (A) Options that may be available to borrowers who are unable
17 to afford their mortgage payments and who wish to avoid
18 foreclosure, and instructions to borrowers advising them on steps
19 to take to explore those options.

20 (B) A list of financial documents borrowers should collect and
21 be prepared to present to the mortgage servicer when discussing
22 options for avoiding foreclosure.

23 (C) A toll-free telephone number for borrowers who wish to
24 discuss options for avoiding foreclosure with their mortgage
25 servicer.

26 (D) The toll-free telephone number made available by HUD to
27 find a HUD-certified housing counseling agency.

28 (g) This section shall not apply to entities described in
29 subdivision (b) of Section 2924.18.

30 (h) This section shall apply only to mortgages or deeds of trust
31 described in Section 2924.15.

32 (i) This section shall remain in effect only until January 1,
33 2018, and as of that date is repealed, unless a later enacted statute,
34 that is enacted before January 1, 2018, deletes or extends that
35 date.

36 SEC. 7. Section 2923.6 of the Civil Code is amended to read:

37 2923.6. (a) The Legislature finds and declares that any duty
38 that mortgage servicers may have to maximize net present value
39 under their pooling and servicing agreements is owed to all parties
40 in a loan pool, or to all investors under a pooling and servicing

1 agreement, not to any particular party in the loan pool or investor
2 under a ~~pooling~~ *pooling* and servicing agreement, and that a
3 *mortgage servicer* acts in the best interests of all parties to the loan
4 pool or investors in the pooling and servicing agreement if it agrees
5 to or implements a loan modification or workout plan for which
6 both of the following apply:

7 (1) The loan is in payment default, or payment default is
8 reasonably foreseeable.

9 (2) Anticipated recovery under the loan modification or workout
10 plan exceeds the anticipated recovery through foreclosure on a net
11 present value basis.

12 (b) It is the intent of the Legislature that the ~~mortgagee,~~
13 ~~beneficiary, or authorized agent~~ *mortgage servicer* offer the
14 borrower a loan modification or workout plan if such a
15 modification or plan is consistent with its contractual or other
16 authority.

17 (c) *If a borrower submits a complete application for a first lien*
18 *loan modification offered by, or through, the borrower's mortgage*
19 *servicer, a mortgage servicer, mortgagee, trustee, beneficiary, or*
20 *authorized agent shall not record a notice of default or notice of*
21 *sale, or conduct a trustee's sale, while the complete first lien loan*
22 *modification application is pending. A mortgage servicer,*
23 *mortgagee, trustee, beneficiary, or authorized agent shall not*
24 *record a notice of default or notice of sale or conduct a trustee's*
25 *sale until any of the following occurs:*

26 (1) *The mortgage servicer makes a written determination that*
27 *the borrower is not eligible for a first lien loan modification, and*
28 *any appeal period pursuant to subdivision (d) has expired.*

29 (2) *The borrower does not accept an offered first lien loan*
30 *modification within 14 days of the offer.*

31 (3) *The borrower accepts a written first lien loan modification,*
32 *but defaults on, or otherwise breaches the borrower's obligations*
33 *under, the first lien loan modification.*

34 (d) *If the borrower's application for a first lien loan modification*
35 *is denied, the borrower shall have at least 30 days from the date*
36 *of the written denial to appeal the denial and to provide evidence*
37 *that the mortgage servicer's determination was in error.*

38 (e) *If the borrower's application for a first lien loan modification*
39 *is denied, the mortgage servicer, mortgagee, trustee, beneficiary,*
40 *or authorized agent shall not record a notice of default or, if a*

1 notice of default has already been recorded, record a notice of
2 sale or conduct a trustee's sale until the later of:

3 (1) Thirty-one days after the borrower is notified in writing of
4 the denial.

5 (2) If the borrower appeals the denial pursuant to subdivision
6 (d), the later of 15 days after the denial of the appeal or 14 days
7 after a first lien loan modification is offered after appeal but
8 declined by the borrower; or, if a first lien loan modification is
9 offered and accepted after appeal, the date on which the borrower
10 fails to timely submit the first payment or otherwise breaches the
11 terms of the offer.

12 (f) Following the denial of a first lien loan modification
13 application, the mortgage servicer shall send a written notice to
14 the borrower identifying the reasons for denial, including the
15 following:

16 (1) The amount of time from the date of the denial letter in which
17 the borrower may request an appeal of the denial of the first lien
18 loan modification and instructions regarding how to appeal the
19 denial.

20 (2) If the denial was based on investor disallowance, the specific
21 reasons for the investor disallowance.

22 (3) If the denial is the result of a net present value calculation,
23 the monthly gross income and property value used to calculate the
24 net present value and a statement that the borrower may obtain
25 all of the inputs used in the net present value calculation upon
26 written request to the mortgage servicer.

27 (4) If applicable, a finding that the borrower was previously
28 offered a first lien loan modification and failed to successfully
29 make payments under the terms of the modified loan.

30 (5) If applicable, a description of other foreclosure prevention
31 alternatives for which the borrower may be eligible, and a list of
32 the steps the borrower must take in order to be considered for
33 those options. If the mortgage servicer has already approved the
34 borrower for another foreclosure prevention alternative,
35 information necessary to complete the foreclosure prevention
36 alternative.

37 (g) In order to minimize the risk of borrowers submitting
38 multiple applications for first lien loan modifications for the
39 purpose of delay, the mortgage servicer shall not be obligated to
40 evaluate applications from borrowers who have already been

1 evaluated or afforded a fair opportunity to be evaluated for a first
2 lien loan modification prior to January 1, 2013, or who have been
3 evaluated or afforded a fair opportunity to be evaluated consistent
4 with the requirements of this section, unless there has been a
5 material change in the borrower's financial circumstances since
6 the date of the borrower's previous application and that change
7 is documented by the borrower and submitted to the mortgage
8 servicer.

9 (h) For purposes of this section, an application shall be deemed
10 "complete" when a borrower has supplied the mortgage servicer
11 with all documents required by the mortgage servicer within the
12 reasonable timeframes specified by the mortgage servicer.

13 (i) Subdivisions (c) to (h), inclusive, shall not apply to entities
14 described in subdivision (b) of Section 2924.18.

15 (j) This section shall apply only to mortgages or deeds of trust
16 described in Section 2924.15.

17 (e)

18 (k) This section shall remain in effect only until January 1,
19 2013, 2018, and as of that date is repealed, unless a later enacted
20 statute, that is enacted before January 1, 2013, 2018, deletes or
21 extends that date.

22 SEC. 8. Section 2923.6 is added to the Civil Code, to read:

23 2923.6. (a) The Legislature finds and declares that any duty
24 mortgage servicers may have to maximize net present value under
25 their pooling and servicing agreements is owed to all parties in a
26 loan pool, or to all investors under a pooling and servicing
27 agreement, not to any particular party in the loan pool or investor
28 under a pooling and servicing agreement, and that a mortgage
29 servicer acts in the best interests of all parties to the loan pool or
30 investors in the pooling and servicing agreement if it agrees to or
31 implements a loan modification or workout plan for which both
32 of the following apply:

33 (1) The loan is in payment default, or payment default is
34 reasonably foreseeable.

35 (2) Anticipated recovery under the loan modification or workout
36 plan exceeds the anticipated recovery through foreclosure on a
37 net present value basis.

38 (b) It is the intent of the Legislature that the mortgage servicer
39 offer the borrower a loan modification or workout plan if such a

1 *modification or plan is consistent with its contractual or other*
2 *authority.*

3 *(c) This section shall become operative on January 1, 2018.*

4 *SEC. 9. Section 2923.7 is added to the Civil Code, to read:*

5 *2923.7. (a) Upon request from a borrower who requests a*
6 *foreclosure prevention alternative, the mortgage servicer shall*
7 *promptly establish a single point of contact and provide to the*
8 *borrower one or more direct means of communication with the*
9 *single point of contact.*

10 *(b) The single point of contact shall be responsible for doing*
11 *all of the following:*

12 *(1) Communicating the process by which a borrower may apply*
13 *for an available foreclosure prevention alternative and the deadline*
14 *for any required submissions to be considered for these options.*

15 *(2) Coordinating receipt of all documents associated with*
16 *available foreclosure prevention alternatives and notifying the*
17 *borrower of any missing documents necessary to complete the*
18 *application.*

19 *(3) Having access to current information and personnel*
20 *sufficient to timely, accurately, and adequately inform the borrower*
21 *of the current status of the foreclosure prevention alternative.*

22 *(4) Ensuring that a borrower is considered for all foreclosure*
23 *prevention alternatives offered by, or through, the mortgage*
24 *servicer, if any.*

25 *(5) Having access to individuals with the ability and authority*
26 *to stop foreclosure proceedings when necessary.*

27 *(c) The single point of contact shall remain assigned to the*
28 *borrower's account until the mortgage servicer determines that*
29 *all loss mitigation options offered by, or through, the mortgage*
30 *servicer have been exhausted or the borrower's account becomes*
31 *current.*

32 *(d) The mortgage servicer shall ensure that a single point of*
33 *contact refers and transfers a borrower to an appropriate*
34 *supervisor upon request of the borrower, if the single point of*
35 *contact has a supervisor.*

36 *(e) For purposes of this section, "single point of contact" means*
37 *an individual or team of personnel each of whom has the ability*
38 *and authority to perform the responsibilities described in*
39 *subdivisions (b) to (d), inclusive. The mortgage servicer shall*
40 *ensure that each member of the team is knowledgeable about the*

1 borrower's situation and current status in the alternatives to
2 foreclosure process.

3 (f) This section shall apply only to mortgages or deeds of trust
4 described in Section 2924.15.

5 (g) (1) This section shall not apply to a depository institution
6 chartered under state or federal law, a person licensed pursuant
7 to Division 9 (commencing with Section 22000) or Division 20
8 (commencing with Section 50000) of the Financial Code, or a
9 person licensed pursuant to Part 1 (commencing with Section
10 (10000) of Division 4 of the Business and Professions Code, that,
11 during its immediately preceding annual reporting period, as
12 established with its primary regulator, foreclosed on 175 or fewer
13 residential real properties, containing no more than four dwelling
14 units, that are located in California.

15 (2) Within three months after the close of any calendar year or
16 annual reporting period as established with its primary regulator
17 during which an entity or person described in paragraph (1)
18 exceeds the threshold of 175 specified in paragraph (1), that entity
19 shall notify its primary regulator, in a manner acceptable to its
20 primary regulator, and any mortgagor or trustor who is delinquent
21 on a residential mortgage loan serviced by that entity of the date
22 on which that entity will be subject to this section, which date shall
23 be the first day of the first month that is six months after the close
24 of the calendar year or annual reporting period during which that
25 entity exceeded the threshold.

26 SEC. 10. Section 2924 of the Civil Code, as amended by Section
27 1 of Chapter 180 of the Statutes of 2010, is amended to read:

28 2924. (a) Every transfer of an interest in property, other than
29 in trust, made only as a security for the performance of another
30 act, is to be deemed a mortgage, except when in the case of
31 personal property it is accompanied by actual change of possession,
32 in which case it is to be deemed a pledge. Where, by a mortgage
33 created after July 27, 1917, of any estate in real property, other
34 than an estate at will or for years, less than two, or in any transfer
35 in trust made after July 27, 1917, of a like estate to secure the
36 performance of an obligation, a power of sale is conferred upon
37 the mortgagee, trustee, or any other person, to be exercised after
38 a breach of the obligation for which that mortgage or transfer is a
39 security, the power shall not be exercised except where the
40 mortgage or transfer is made pursuant to an order, judgment, or

1 decree of a court of record, or to secure the payment of bonds or
2 other evidences of indebtedness authorized or permitted to be
3 issued by the Commissioner of Corporations, or is made by a public
4 utility subject to the provisions of the Public Utilities Act, until
5 all of the following apply:

6 (1) The trustee, mortgagee, or beneficiary, or any of their
7 authorized agents shall first file for record, in the office of the
8 recorder of each county wherein the mortgaged or trust property
9 or some part or parcel thereof is situated, a notice of default. That
10 notice of default shall include all of the following:

11 (A) A statement identifying the mortgage or deed of trust by
12 stating the name or names of the trustor or trustors and giving the
13 book and page, or instrument number, if applicable, where the
14 mortgage or deed of trust is recorded or a description of the
15 mortgaged or trust property.

16 (B) A statement that a breach of the obligation for which the
17 mortgage or transfer in trust is security has occurred.

18 (C) A statement setting forth the nature of each breach actually
19 known to the beneficiary and of his or her election to sell or cause
20 to be sold the property to satisfy that obligation and any other
21 obligation secured by the deed of trust or mortgage that is in
22 default.

23 (D) If the default is curable pursuant to Section 2924c, the
24 statement specified in paragraph (1) of subdivision (b) of Section
25 2924c.

26 (2) Not less than three months shall elapse from the filing of
27 the notice of default.

28 (3) Except as provided in paragraph (4), after the lapse of the
29 three months described in paragraph (2), the mortgagee, trustee,
30 or other person authorized to take the sale shall give notice of sale,
31 stating the time and place thereof, in the manner and for a time
32 not less than that set forth in Section 2924f.

33 (4) Notwithstanding paragraph (3), the mortgagee, trustee, or
34 other person authorized to take sale may ~~file~~ *record* a notice of
35 sale pursuant to Section 2924f up to five days before the lapse of
36 the three-month period described in paragraph (2), provided that
37 the date of sale is no earlier than three months and 20 days after
38 the ~~filing~~ *recording* of the notice of default.

39 (5) *Until January 1, 2018, whenever a sale is postponed for a*
40 *period of at least 10 business days pursuant to Section 2924g, a*

1 mortgagee, beneficiary, or authorized agent shall provide written
2 notice to a borrower regarding the new sale date and time, within
3 five business days following the postponement. Information
4 provided pursuant to this paragraph shall not constitute the public
5 declaration required by subdivision (d) of Section 2924g. Failure
6 to comply with this paragraph shall not invalidate any sale that
7 would otherwise be valid under Section 2924f. This paragraph
8 shall be inoperative on January 1, 2018.

9 (6) No entity shall record or cause a notice of default to be
10 recorded or otherwise initiate the foreclosure process unless it is
11 the holder of the beneficial interest under the mortgage or deed
12 of trust, the original trustee or the substituted trustee under the
13 deed of trust, or the designated agent of the holder of the beneficial
14 interest. No agent of the holder of the beneficial interest under the
15 mortgage or deed of trust, original trustee or substituted trustee
16 under the deed of trust may record a notice of default or otherwise
17 commence the foreclosure process except when acting within the
18 scope of authority designated by the holder of the beneficial
19 interest.

20 (b) In performing acts required by this article, the trustee shall
21 incur no liability for any good faith error resulting from reliance
22 on information provided in good faith by the beneficiary regarding
23 the nature and the amount of the default under the secured
24 obligation, deed of trust, or mortgage. In performing the acts
25 required by this article, a trustee shall not be subject to Title 1.6c
26 (commencing with Section 1788) of Part 4.

27 (c) A recital in the deed executed pursuant to the power of sale
28 of compliance with all requirements of law regarding the mailing
29 of copies of notices or the publication of a copy of the notice of
30 default or the personal delivery of the copy of the notice of default
31 or the posting of copies of the notice of sale or the publication of
32 a copy thereof shall constitute prima facie evidence of compliance
33 with these requirements and conclusive evidence thereof in favor
34 of bona fide purchasers and encumbrancers for value and without
35 notice.

36 (d) All of the following shall constitute privileged
37 communications pursuant to Section 47:

38 (1) The mailing, publication, and delivery of notices as required
39 by this section.

40 (2) Performance of the procedures set forth in this article.

1 (3) Performance of the functions and procedures set forth in
2 this article if those functions and procedures are necessary to carry
3 out the duties described in Sections 729.040, 729.050, and 729.080
4 of the Code of Civil Procedure.

5 (e) There is a rebuttable presumption that the beneficiary
6 actually knew of all unpaid loan payments on the obligation owed
7 to the beneficiary and secured by the deed of trust or mortgage
8 subject to the notice of default. However, the failure to include an
9 actually known default shall not invalidate the notice of sale and
10 the beneficiary shall not be precluded from asserting a claim to
11 this omitted default or defaults in a separate notice of default.

12 (f) This section shall become operative on January 1, 2011.

13 *SEC. 11. Section 2924 of the Civil Code, as amended by Section*
14 *2 of Chapter 180 of the Statutes of 2010, is repealed.*

15 ~~2924. (a) Every transfer of an interest in property, other than~~
16 ~~in trust, made only as a security for the performance of another~~
17 ~~act, is to be deemed a mortgage, except when in the case of~~
18 ~~personal property it is accompanied by actual change of possession,~~
19 ~~in which case it is to be deemed a pledge. Where, by a mortgage~~
20 ~~created after July 27, 1917, of any estate in real property, other~~
21 ~~than an estate at will or for years, less than two, or in any transfer~~
22 ~~in trust made after July 27, 1917, of a like estate to secure the~~
23 ~~performance of an obligation, a power of sale is conferred upon~~
24 ~~the mortgagee, trustee, or any other person, to be exercised after~~
25 ~~a breach of the obligation for which that mortgage or transfer is a~~
26 ~~security, the power shall not be exercised except where the~~
27 ~~mortgage or transfer is made pursuant to an order, judgment, or~~
28 ~~decree of a court of record, or to secure the payment of bonds or~~
29 ~~other evidences of indebtedness authorized or permitted to be~~
30 ~~issued by the Commissioner of Corporations, or is made by a public~~
31 ~~utility subject to the provisions of the Public Utilities Act, until~~
32 ~~all of the following apply:~~

33 ~~(1) The trustee, mortgagee, or beneficiary, or any of their~~
34 ~~authorized agents shall first file for record, in the office of the~~
35 ~~recorder of each county wherein the mortgaged or trust property~~
36 ~~or some part or parcel thereof is situated, a notice of default. That~~
37 ~~notice of default shall include all of the following:~~

38 ~~(A) A statement identifying the mortgage or deed of trust by~~
39 ~~stating the name or names of the trustor or trustors and giving the~~
40 ~~book and page, or instrument number, if applicable, where the~~

1 mortgage or deed of trust is recorded or a description of the
2 mortgaged or trust property.

3 (B) A statement that a breach of the obligation for which the
4 mortgage or transfer in trust is security has occurred.

5 (C) A statement setting forth the nature of each breach actually
6 known to the beneficiary and of his or her election to sell or cause
7 to be sold the property to satisfy that obligation and any other
8 obligation secured by the deed of trust or mortgage that is in
9 default.

10 (D) If the default is curable pursuant to Section 2924c, the
11 statement specified in paragraph (1) of subdivision (b) of Section
12 2924c.

13 (2) Not less than three months shall elapse from the filing of
14 the notice of default.

15 (3) Except as provided in paragraph (4), after the lapse of the
16 three months described in paragraph (2), the mortgagee, trustee,
17 or other person authorized to take the sale shall give notice of sale,
18 stating the time and place thereof, in the manner and for a time
19 not less than that set forth in Section 2924f.

20 (4) Notwithstanding paragraph (3), the mortgagee, trustee, or
21 other person authorized to take sale may file a notice of sale
22 pursuant to Section 2924f up to five days before the lapse of the
23 three-month period described in paragraph (2), provided that the
24 date of sale is no earlier than three months and 20 days after the
25 filing of the notice of default.

26 (b) In performing acts required by this article, the trustee shall
27 incur no liability for any good faith error resulting from reliance
28 on information provided in good faith by the beneficiary regarding
29 the nature and the amount of the default under the secured
30 obligation, deed of trust, or mortgage. In performing the acts
31 required by this article, a trustee shall not be subject to Title 1.6e
32 (commencing with Section 1788) of Part 4.

33 (e) A recital in the deed executed pursuant to the power of sale
34 of compliance with all requirements of law regarding the mailing
35 of copies of notices or the publication of a copy of the notice of
36 default or the personal delivery of the copy of the notice of default
37 or the posting of copies of the notice of sale or the publication of
38 a copy thereof shall constitute prima facie evidence of compliance
39 with these requirements and conclusive evidence thereof in favor

1 of bona fide purchasers and encumbrancers for value and without
2 notice:

3 ~~(d) All of the following shall constitute privileged~~
4 ~~communications pursuant to Section 47:~~

5 ~~(1) The mailing, publication, and delivery of notices as required~~
6 ~~by this section:~~

7 ~~(2) Performance of the procedures set forth in this article.~~

8 ~~(3) Performance of the functions and procedures set forth in~~
9 ~~this article if those functions and procedures are necessary to carry~~
10 ~~out the duties described in Sections 729.040, 729.050, and 729.080~~
11 ~~of the Code of Civil Procedure.~~

12 ~~(e) There is a rebuttable presumption that the beneficiary~~
13 ~~actually knew of all unpaid loan payments on the obligation owed~~
14 ~~to the beneficiary and secured by the deed of trust or mortgage~~
15 ~~subject to the notice of default. However, the failure to include an~~
16 ~~actually known default shall not invalidate the notice of sale and~~
17 ~~the beneficiary shall not be precluded from asserting a claim to~~
18 ~~this omitted default or defaults in a separate notice of default.~~

19 ~~(f) This section shall become operative on January 1, 2011.~~

20 *SEC. 12. Section 2924.9 is added to the Civil Code, to read:*

21 *2924.9. (a) Unless a borrower has previously exhausted the*
22 *first lien loan modification process offered by, or through, his or*
23 *her mortgage servicer described in Section 2923.6, within five*
24 *business days after recording a notice of default pursuant to*
25 *Section 2924, a mortgage servicer that offers one or more*
26 *foreclosure prevention alternatives shall send a written*
27 *communication to the borrower that includes all of the following*
28 *information:*

29 *(1) That the borrower may be evaluated for a foreclosure*
30 *prevention alternative or, if applicable, foreclosure prevention*
31 *alternatives.*

32 *(2) Whether an application is required to be submitted by the*
33 *borrower in order to be considered for a foreclosure prevention*
34 *alternative.*

35 *(3) The means and process by which a borrower may obtain an*
36 *application for a foreclosure prevention alternative.*

37 *(b) This section shall not apply to entities described in*
38 *subdivision (b) of Section 2924.18.*

39 *(c) This section shall apply only to mortgages or deeds of trust*
40 *described in Section 2924.15.*

1 (d) This section shall remain in effect only until January 1,
2 2018, and as of that date is repealed, unless a later enacted statute,
3 that is enacted before January 1, 2018, deletes or extends that
4 date.

5 SEC. 13. Section 2924.10 is added to the Civil Code, to read:

6 2924.10. (a) When a borrower submits a complete first lien
7 modification application or any document in connection with a
8 first lien modification application, the mortgage servicer shall
9 provide written acknowledgment of the receipt of the
10 documentation within five business days of receipt. In its initial
11 acknowledgment of receipt of the loan modification application,
12 the mortgage servicer shall include the following information:

13 (1) A description of the loan modification process, including
14 an estimate of when a decision on the loan modification will be
15 made after a complete application has been submitted by the
16 borrower and the length of time the borrower will have to consider
17 an offer of a loan modification or other foreclosure prevention
18 alternative.

19 (2) Any deadlines, including deadlines to submit missing
20 documentation, that would affect the processing of a first lien loan
21 modification application.

22 (3) Any expiration dates for submitted documents.

23 (4) Any deficiency in the borrower's first lien loan modification
24 application.

25 (b) For purposes of this section, a borrower's first lien loan
26 modification application shall be deemed to be "complete" when
27 a borrower has supplied the mortgage servicer with all documents
28 required by the mortgage servicer within the reasonable timeframes
29 specified by the mortgage servicer.

30 (c) This section shall not apply to entities described in
31 subdivision (b) of Section 2924.18.

32 (d) This section shall apply only to mortgages or deeds of trust
33 described in Section 2924.15.

34 (e) This section shall remain in effect only until January 1,
35 2018, and as of that date is repealed, unless a later enacted statute,
36 that is enacted before January 1, 2018, deletes or extends that
37 date.

38 SEC. 14. Section 2924.11 is added to the Civil Code, to read:

39 2924.11. (a) If a foreclosure prevention alternative is approved
40 in writing prior to the recordation of a notice of default, a

1 mortgage servicer, mortgagee, trustee, beneficiary, or authorized
2 agent shall not record a notice of default under either of the
3 following circumstances:

4 (1) The borrower is in compliance with the terms of a written
5 trial or permanent loan modification, forbearance, or repayment
6 plan.

7 (2) A foreclosure prevention alternative has been approved in
8 writing by all parties, including, for example, the first lien investor,
9 junior lienholder, and mortgage insurer, as applicable, and proof
10 of funds or financing has been provided to the servicer.

11 (b) If a foreclosure prevention alternative is approved in writing
12 after the recordation of a notice of default, a mortgage servicer,
13 mortgagee, trustee, beneficiary, or authorized agent shall not
14 record a notice of sale or conduct a trustee's sale under either of
15 the following circumstances:

16 (1) The borrower is in compliance with the terms of a written
17 trial or permanent loan modification, forbearance, or repayment
18 plan.

19 (2) A foreclosure prevention alternative has been approved in
20 writing by all parties, including, for example, the first lien investor,
21 junior lienholder, and mortgage insurer, as applicable, and proof
22 of funds or financing has been provided to the servicer.

23 (c) When a borrower accepts an offered first lien loan
24 modification or other foreclosure prevention alternative, the
25 mortgage servicer shall provide the borrower with a copy of the
26 fully executed loan modification agreement or agreement
27 evidencing the foreclosure prevention alternative following receipt
28 of the executed copy from the borrower.

29 (d) A mortgagee, beneficiary, or authorized agent shall record
30 a rescission of a notice of default or cancel a pending trustee's
31 sale, if applicable, upon the borrower executing a permanent
32 foreclosure prevention alternative. In the case of a short sale, the
33 rescission or cancellation of the pending trustee's sale shall occur
34 when the short sale has been approved by all parties and proof of
35 funds or financing has been provided to the mortgagee, beneficiary,
36 or authorized agent.

37 (e) The mortgage servicer shall not charge any application,
38 processing, or other fee for a first lien loan modification or other
39 foreclosure prevention alternative.

1 (f) The mortgage servicer shall not collect any late fees for
2 periods during which a complete first lien loan modification
3 application is under consideration or a denial is being appealed,
4 the borrower is making timely modification payments, or a
5 foreclosure prevention alternative is being evaluated or exercised.

6 (g) If a borrower has been approved in writing for a first lien
7 loan modification or other foreclosure prevention alternative, and
8 the servicing of that borrower's loan is transferred or sold to
9 another mortgage servicer, the subsequent mortgage servicer shall
10 continue to honor any previously approved first lien loan
11 modification or other foreclosure prevention alternative, in
12 accordance with the provisions of the act that added this section.

13 (h) This section shall apply only to mortgages or deeds of trust
14 described in Section 2924.15.

15 (i) This section shall not apply to entities described in
16 subdivision (b) of Section 2924.18.

17 (j) This section shall remain in effect only until January 1,
18 2018, and as of that date is repealed, unless a later enacted statute,
19 that is enacted before January 1, 2018, deletes or extends that
20 date.

21 SEC. 15. Section 2924.11 is added to the Civil Code, to read:

22 2924.11. (a) If a borrower submits a complete application for
23 a foreclosure prevention alternative offered by, or through, the
24 borrower's mortgage servicer; a mortgage servicer; trustee,
25 mortgagee, beneficiary, or authorized agent shall not record a
26 notice of sale or conduct a trustee's sale while the complete
27 foreclosure prevention alternative application is pending, and
28 until the borrower has been provided with a written determination
29 by the mortgage servicer regarding that borrower's eligibility for
30 the requested foreclosure prevention alternative.

31 (b) Following the denial of a first lien loan modification
32 application, the mortgage servicer shall send a written notice to
33 the borrower identifying with specificity the reasons for the denial
34 and shall include a statement that the borrower may obtain
35 additional documentation supporting the denial decision upon
36 written request to the mortgage servicer.

37 (c) If a foreclosure prevention alternative is approved in writing
38 prior to the recordation of a notice of default, a mortgage servicer,
39 mortgagee, trustee, beneficiary, or authorized agent shall not

1 record a notice of default under either of the following
2 circumstances:

3 (1) The borrower is in compliance with the terms of a written
4 trial or permanent loan modification, forbearance, or repayment
5 plan.

6 (2) A foreclosure prevention alternative has been approved in
7 writing by all parties, including, for example, the first lien investor,
8 junior lienholder, and mortgage insurer, as applicable, and proof
9 of funds or financing has been provided to the servicer.

10 (d) If a foreclosure prevention alternative is approved in writing
11 after the recordation of a notice of default, a mortgage servicer,
12 mortgagee, trustee, beneficiary, or authorized agent shall not
13 record a notice of sale or conduct a trustee's sale under either of
14 the following circumstances:

15 (1) The borrower is in compliance with the terms of a written
16 trial or permanent loan modification, forbearance, or repayment
17 plan.

18 (2) A foreclosure prevention alternative has been approved in
19 writing by all parties, including, for example, the first lien investor,
20 junior lienholder, and mortgage insurer, as applicable, and proof
21 of funds or financing has been provided to the servicer.

22 (e) This section applies only to mortgages or deeds of trust as
23 described in Section 2924.15.

24 (f) For purposes of this section, an application shall be deemed
25 "complete" when a borrower has supplied the mortgage servicer
26 with all documents required by the mortgage servicer within the
27 reasonable timeframes specified by the mortgage servicer.

28 (g) This section shall become operative on January 1, 2018.

29 SEC. 16. Section 2924.12 is added to the Civil Code, to read:

30 2924.12. (a) (1) If a trustee's deed upon sale has not been
31 recorded, a borrower may bring an action for injunctive relief to
32 enjoin a material violation of Section 2923.55, 2923.6, 2923.7,
33 2924.9, 2924.10, 2924.11, or 2924.17.

34 (2) Any injunction shall remain in place and any trustee's sale
35 shall be enjoined until the court determines that the mortgage
36 servicer, mortgagee, trustee, beneficiary, or authorized agent has
37 corrected and remedied the violation or violations giving rise to
38 the action for injunctive relief. An enjoined entity may move to
39 dissolve an injunction based on a showing that the material
40 violation has been corrected and remedied.

1 (b) After a trustee's deed upon sale has been recorded, a
2 mortgage servicer, mortgagee, trustee, beneficiary, or authorized
3 agent shall be liable to a borrower for actual economic damages
4 pursuant to Section 3281, resulting from a material violation of
5 Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or
6 2924.17 by that mortgage servicer, mortgagee, trustee, beneficiary,
7 or authorized agent where the violation was not corrected and
8 remedied prior to the recordation of the trustee's deed upon sale.
9 If the court finds that the material violation was intentional or
10 reckless, or resulted from willful misconduct by a mortgage
11 servicer, mortgagee, trustee, beneficiary, or authorized agent, the
12 court may award the borrower the greater of treble actual damages
13 or statutory damages of fifty thousand dollars (\$50,000).

14 (c) A mortgage servicer, mortgagee, trustee, beneficiary, or
15 authorized agent shall not be liable for any violation that it has
16 corrected and remedied prior to the recordation of a trustee's deed
17 upon sale, or that has been corrected and remedied by third parties
18 working on its behalf prior to the recordation of a trustee's deed
19 upon sale.

20 (d) A violation of Section 2923.55, 2923.6, 2923.7, 2924.9,
21 2924.10, 2924.11, or 2924.17 by a person licensed by the
22 Department of Corporations, Department of Financial Institutions,
23 or Department of Real Estate shall be deemed to be a violation of
24 that person's licensing law.

25 (e) No violation of this article shall affect the validity of a sale
26 in favor of a bona fide purchaser and any of its encumbrancers
27 for value without notice.

28 (f) A third-party encumbrancer shall not be relieved of liability
29 resulting from violations of Section 2923.55, 2923.6, 2923.7,
30 2924.9, 2924.10, 2924.11, or 2924.17 committed by that third-party
31 encumbrancer, that occurred prior to the sale of the subject
32 property to the bona fide purchaser.

33 (g) A signatory to a consent judgment entered in the case entitled
34 *United States of America et al. v. Bank of America Corporation*
35 *et al.*, filed in the United States District Court for the District of
36 Columbia, case number 1:12-cv-00361 RMC, that is in compliance
37 with the relevant terms of the Settlement Term Sheet of that consent
38 judgment with respect to the borrower who brought an action
39 pursuant to this section while the consent judgment is in effect

1 shall have no liability for a violation of Section 2923.55, 2923.6,
2 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17.

3 (h) The rights, remedies, and procedures provided by this section
4 are in addition to and independent of any other rights, remedies,
5 or procedures under any other law. Nothing in this section shall
6 be construed to alter, limit, or negate any other rights, remedies,
7 or procedures provided by law.

8 (i) A court may award a prevailing borrower reasonable
9 attorney's fees and costs in an action brought pursuant to this
10 section. A borrower shall be deemed to have prevailed for purposes
11 of this subdivision if the borrower obtained injunctive relief or
12 was awarded damages pursuant to this section.

13 (j) This section shall not apply to entities described in
14 subdivision (b) of Section 2924.18.

15 (k) This section shall remain in effect only until January 1,
16 2018, and as of that date is repealed, unless a later enacted statute,
17 that is enacted before January 1, 2018, deletes or extends that
18 date.

19 SEC. 17. Section 2924.12 is added to the Civil Code, to read:

20 2924.12. (a) (1) If a trustee's deed upon sale has not been
21 recorded, a borrower may bring an action for injunctive relief to
22 enjoin a material violation of Section 2923.5, 2923.7, 2924.11, or
23 2924.17.

24 (2) Any injunction shall remain in place and any trustee's sale
25 shall be enjoined until the court determines that the mortgage
26 servicer, mortgagee, trustee, beneficiary, or authorized agent has
27 corrected and remedied the violation or violations giving rise to
28 the action for injunctive relief. An enjoined entity may move to
29 dissolve an injunction based on a showing that the material
30 violation has been corrected and remedied.

31 (b) After a trustee's deed upon sale has been recorded, a
32 mortgage servicer, mortgagee, trustee, beneficiary, or authorized
33 agent shall be liable to a borrower for actual economic damages
34 pursuant to Section 3281, resulting from a material violation of
35 Section 2923.5, 2923.7, 2924.11, or 2924.17 by that mortgage
36 servicer, mortgagee, trustee, beneficiary, or authorized agent
37 where the violation was not corrected and remedied prior to the
38 recordation of the trustee's deed upon sale. If the court finds that
39 the material violation was intentional or reckless, or resulted from
40 willful misconduct by a mortgage servicer, mortgagee, trustee,

1 beneficiary, or authorized agent, the court may award the borrower
2 the greater of treble actual damages or statutory damages of fifty
3 thousand dollars (\$50,000).

4 (c) A mortgage servicer, mortgagee, trustee, beneficiary, or
5 authorized agent shall not be liable for any violation that it has
6 corrected and remedied prior to the recordation of the trustee's
7 deed upon sale, or that has been corrected and remedied by third
8 parties working on its behalf prior to the recordation of the
9 trustee's deed upon sale.

10 (d) A violation of Section 2923.5, 2923.7, 2924.11, or 2924.17
11 by a person licensed by the Department of Corporations,
12 Department of Financial Institutions, or Department of Real Estate
13 shall be deemed to be a violation of that person's licensing law.

14 (e) No violation of this article shall affect the validity of a sale
15 in favor of a bona fide purchaser and any of its encumbrancers
16 for value without notice.

17 (f) A third-party encumbrancer shall not be relieved of liability
18 resulting from violations of Section 2923.5, 2923.7, 2924.11, or
19 2924.17 committed by that third-party encumbrancer, that occurred
20 prior to the sale of the subject property to the bona fide purchaser.

21 (g) The rights, remedies, and procedures provided by this section
22 are in addition to and independent of any other rights, remedies,
23 or procedures under any other law. Nothing in this section shall
24 be construed to alter, limit, or negate any other rights, remedies,
25 or procedures provided by law.

26 (h) A court may award a prevailing borrower reasonable
27 attorney's fees and costs in an action brought pursuant to this
28 section. A borrower shall be deemed to have prevailed for purposes
29 of this subdivision if the borrower obtained injunctive relief or
30 was awarded damages pursuant to this section.

31 (i) This section shall become operative on January 1, 2018.

32 SEC. 18. Section 2924.15 is added to the Civil Code, to read:

33 2924.15. (a) Unless otherwise provided, paragraph (5) of
34 subdivision (a) of Section 2924, and Sections 2923.5, 2923.55,
35 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, and 2924.18 shall apply
36 only to first lien mortgages or deeds of trust that are secured by
37 owner-occupied residential real property containing no more than
38 four dwelling units. For these purposes, "owner-occupied" means
39 that the property is the principal residence of the borrower and is

1 security for a loan made for personal, family, or household
2 purposes.

3 (b) This section shall remain in effect only until January 1,
4 2018, and as of that date is repealed, unless a later enacted statute,
5 that is enacted before January 1, 2018, deletes or extends that
6 date.

7 SEC. 19. Section 2924.15 is added to the Civil Code, to read:

8 2924.15. (a) Unless otherwise provided, Sections 2923.5,
9 2923.7, and 2924.11 shall apply only to first lien mortgages or
10 deeds of trust that are secured by owner-occupied residential real
11 property containing no more than four dwelling units. For these
12 purposes, "owner-occupied" means that the property is the
13 principal residence of the borrower and is security for a loan made
14 for personal, family, or household purposes.

15 (b) This section shall become operative on January 1, 2018.

16 SEC. 20. Section 2924.17 is added to the Civil Code, to read:

17 2924.17. (a) A declaration recorded pursuant to Section 2923.5
18 or, until January 1, 2018, pursuant to Section 2923.55, a notice
19 of default, notice of sale, assignment of a deed of trust, or
20 substitution of trustee recorded by or on behalf of a mortgage
21 servicer in connection with a foreclosure subject to the
22 requirements of Section 2924, or a declaration or affidavit filed
23 in any court relative to a foreclosure proceeding shall be accurate
24 and complete and supported by competent and reliable evidence.

25 (b) Before recording or filing any of the documents described
26 in subdivision (a), a mortgage servicer shall ensure that it has
27 reviewed competent and reliable evidence to substantiate the
28 borrower's default and the right to foreclose, including the
29 borrower's loan status and loan information.

30 (c) Until January 1, 2018, any mortgage servicer that engages
31 in multiple and repeated uncorrected violations of subdivision (b)
32 in recording documents or filing documents in any court relative
33 to a foreclosure proceeding shall be liable for a civil penalty of
34 up to seven thousand five hundred dollars (\$7,500) per mortgage
35 or deed of trust in an action brought by a government entity
36 identified in Section 17204 of the Business and Professions Code,
37 or in an administrative proceeding brought by the Department of
38 Corporations, the Department of Real Estate, or the Department
39 of Financial Institutions against a respective licensee, in addition

1 to any other remedies available to these entities. This subdivision
2 shall be inoperative on January 1, 2018.

3 SEC. 21. Section 2924.18 is added to the Civil Code, to read:

4 2924.18. (a) (1) If a borrower submits a complete application
5 for a first lien loan modification offered by, or through, the
6 borrower's mortgage servicer, a mortgage servicer, trustee,
7 mortgagee, beneficiary, or authorized agent shall not record a
8 notice of default, notice of sale, or conduct a trustee's sale while
9 the complete first lien loan modification application is pending,
10 and until the borrower has been provided with a written
11 determination by the mortgage servicer regarding that borrower's
12 eligibility for the requested loan modification.

13 (2) If a foreclosure prevention alternative has been approved
14 in writing prior to the recordation of a notice of default, a
15 mortgage servicer, mortgagee, trustee, beneficiary, or authorized
16 agent shall not record a notice of default under either of the
17 following circumstances:

18 (A) The borrower is in compliance with the terms of a written
19 trial or permanent loan modification, forbearance, or repayment
20 plan.

21 (B) A foreclosure prevention alternative has been approved in
22 writing by all parties, including, for example, the first lien investor,
23 junior lienholder, and mortgage insurer, as applicable, and proof
24 of funds or financing has been provided to the servicer.

25 (3) If a foreclosure prevention alternative is approved in writing
26 after the recordation of a notice of default, a mortgage servicer,
27 mortgagee, trustee, beneficiary, or authorized agent shall not
28 record a notice of sale or conduct a trustee's sale under either of
29 the following circumstances:

30 (A) The borrower is in compliance with the terms of a written
31 trial or permanent loan modification, forbearance, or repayment
32 plan.

33 (B) A foreclosure prevention alternative has been approved in
34 writing by all parties, including, for example, the first lien investor,
35 junior lienholder, and mortgage insurer, as applicable, and proof
36 of funds or financing has been provided to the servicer.

37 (b) This section shall apply only to a depository institution
38 chartered under state or federal law, a person licensed pursuant
39 to Division 9 (commencing with Section 22000) or Division 20
40 (commencing with Section 50000) of the Financial Code, or a

1 person licensed pursuant to Part 1 (commencing with Section
2 10000) of Division 4 of the Business and Professions Code, that,
3 during its immediately preceding annual reporting period, as
4 established with its primary regulator, foreclosed on 175 or fewer
5 residential real properties, containing no more than four dwelling
6 units, that are located in California.

7 (c) Within three months after the close of any calendar year or
8 annual reporting period as established with its primary regulator
9 during which an entity or person described in subdivision (b)
10 exceeds the threshold of 175 specified in subdivision (b), that entity
11 shall notify its primary regulator, in a manner acceptable to its
12 primary regulator, and any mortgagor or trustor who is delinquent
13 on a residential mortgage loan serviced by that entity of the date
14 on which that entity will be subject to Sections 2923.55, 2923.6,
15 2923.7, 2924.9, 2924.10, 2924.11, and 2924.12, which date shall
16 be the first day of the first month that is six months after the close
17 of the calendar year or annual reporting period during which that
18 entity exceeded the threshold.

19 (d) For purposes of this section, an application shall be deemed
20 "complete" when a borrower has supplied the mortgage servicer
21 with all documents required by the mortgage servicer within the
22 reasonable timeframes specified by the mortgage servicer.

23 (e) If a borrower has been approved in writing for a first lien
24 loan modification or other foreclosure prevention alternative, and
25 the servicing of the borrower's loan is transferred or sold to
26 another mortgage servicer, the subsequent mortgage servicer shall
27 continue to honor any previously approved first lien loan
28 modification or other foreclosure prevention alternative, in
29 accordance with the provisions of the act that added this section.

30 (f) This section shall apply only to mortgages or deeds of trust
31 described in Section 2924.15.

32 (g) This section shall remain in effect only until January 1,
33 2018, and as of that date is repealed, unless a later enacted statute,
34 that is enacted before January 1, 2018, deletes or extends that
35 date.

36 SEC. 22. Section 2924.19 is added to the Civil Code, to read:

37 2924.19. (a) (1) If a trustee's deed upon sale has not been
38 recorded, a borrower may bring an action for injunctive relief to
39 enjoin a material violation of Section 2923.5, 2924.17, or 2924.18.

1 (2) Any injunction shall remain in place and any trustee's sale
2 shall be enjoined until the court determines that the mortgage
3 servicer, mortgagee, beneficiary, or authorized agent has corrected
4 and remedied the violation or violations giving rise to the action
5 for injunctive relief. An enjoined entity may move to dissolve an
6 injunction based on a showing that the material violation has been
7 corrected and remedied.

8 (b) After a trustee's deed upon sale has been recorded, a
9 mortgage servicer, mortgagee, beneficiary, or authorized agent
10 shall be liable to a borrower for actual economic damages
11 pursuant to Section 3281, resulting from a material violation of
12 Section 2923.5, 2924.17, or 2924.18 by that mortgage servicer,
13 mortgagee, beneficiary, or authorized agent where the violation
14 was not corrected and remedied prior to the recordation of the
15 trustee's deed upon sale. If the court finds that the material
16 violation was intentional or reckless, or resulted from willful
17 misconduct by a mortgage servicer, mortgagee, beneficiary, or
18 authorized agent, the court may award the borrower the greater
19 of treble actual damages or statutory damages of fifty thousand
20 dollars (\$50,000).

21 (c) A mortgage servicer, mortgagee, beneficiary, or authorized
22 agent shall not be liable for any violation that it has corrected and
23 remedied prior to the recordation of the trustee's deed upon sale,
24 or that has been corrected and remedied by third parties working
25 on its behalf prior to the recordation of the trustee's deed upon
26 sale.

27 (d) A violation of Section 2923.5, 2924.17, or 2917.18 by a
28 person licensed by the Department of Corporations, the
29 Department of Financial Institutions, or the Department of Real
30 Estate shall be deemed to be a violation of that person's licensing
31 law.

32 (e) No violation of this article shall affect the validity of a sale
33 in favor of a bona fide purchaser and any of its encumbrancers
34 for value without notice.

35 (f) A third-party encumbrancer shall not be relieved of liability
36 resulting from violations of Section 2923.5, 2924.17 or 2924.18,
37 committed by that third-party encumbrancer, that occurred prior
38 to the sale of the subject property to the bona fide purchaser.

39 (g) The rights, remedies, and procedures provided by this section
40 are in addition to and independent of any other rights, remedies,

1 or procedures under any other law. Nothing in this section shall
2 be construed to alter, limit, or negate any other rights, remedies,
3 or procedures provided by law.

4 (h) A court may award a prevailing borrower reasonable
5 attorney's fees and costs in an action brought pursuant to this
6 section. A borrower shall be deemed to have prevailed for purposes
7 of this subdivision if the borrower obtained injunctive relief or
8 damages pursuant to this section.

9 (i) This section shall apply only to entities described in
10 subdivision (b) of Section 2924.18.

11 (j) This section shall remain in effect only until January 1,
12 2018, and as of that date is repealed, unless a later enacted statute,
13 that is enacted before January 1, 2018, deletes or extends that
14 date.

15 SEC. 23. Section 2924.20 is added to the Civil Code, to read:

16 2924.20. Consistent with their general regulatory authority,
17 and notwithstanding subdivisions (b) and (c) of Section 2924.18,
18 the Department of Corporations, the Department of Financial
19 Institutions, and the Department of Real Estate may adopt
20 regulations applicable to any entity or person under their
21 respective jurisdictions that are necessary to carry out the purposes
22 of the act that added this section. A violation of the regulations
23 adopted pursuant to this section shall only be enforceable by the
24 regulatory agency.

25 SEC. 24. The provisions of this act are severable. If any
26 provision of this act or its application is held invalid, that invalidity
27 shall not affect other provisions or applications that can be given
28 effect without the invalid provision or application.

29 SEC. 25. No reimbursement is required by this act pursuant
30 to Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.

38 SECTION 1. ~~It is the intent of the Legislature to enact~~
39 ~~legislation to amend the state's foreclosure laws to implement and~~

1 ~~make permanent the servicing standards and other provisions of~~
2 ~~the National Mortgage Settlement.~~

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5 CORRECTIONS: _____

6 Digest—Page 4.

7 _____

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BILL ANALYSIS

Attachment 3

SENATE RULES COMMITTEE	SB 900
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520	Fax: (916)
327-4478	

CONFERENCE REPORT NO. 1

Bill No: SB 900
 Author: Leno (D), et al.
 Amended: 6/27/12
 Vote: 21

CONFERENCE COMMITTEE : 4-1, 6/27/12
 AYES: Senator Evans, Senator Calderon, Assemblymember
 Feuer, Assemblymember Eng
 NOES: Assemblymember Wagner
 NO VOTE RECORDED: Senator Blakeslee

SUBJECT : Mortgages and deeds of trust: foreclosure

SOURCE : Author

DIGEST : This bill makes changes to California's non-judicial foreclosure process to provide stability to California's statewide and regional economies and housing market by facilitating opportunities for borrowers to pursue loss mitigation options.

Conference Committee Amendments delete the prior version of the bill, which stated the intent of Legislature to enact legislation to amend the state's foreclosure laws to implement and make permanent the servicing standards and other provisions of the National Mortgage Settlement.

ANALYSIS : On April 6, 2012, a federal judge signed-off on the \$25 billion foreclosure settlement, first announced in

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February 2012, between banks (Citi, Wells Fargo, Bank of

America, Chase and Ally), federal agencies, and the state attorneys general from 49 states and the District of Columbia. The investigation began in October 2010 as media stories highlighted widespread allegations regarding the use of "robo-signed" documents used in foreclosure proceedings around the country. The attorneys general formed working groups to investigate the widespread allegations, however, further investigation led to a larger discussion with the five largest mortgage loan servicers regarding various facets of the foreclosure and loan modification process. While conducting their investigation the attorneys general identified deceptive practices regarding loan modifications, foreclosures occurring due to the servicer's failure to properly process paperwork, and the use of incomplete paperwork to process foreclosures in both judicial and non-judicial foreclosure cases.

The complaint filed by the attorneys general, provided a detailed list of allegations concerning several key areas related to foreclosure and servicing practices. The specific allegations include:

1. Unfair, deceptive, and unlawful servicing process;
2. Unfair, deceptive, and unlawful loan modification and loss mitigation processes;
3. Wrongful conduct related to foreclosures;
4. Unfair and deceptive origination practices; and
5. Violations of the Servicemembers Civil Relief Act.

In resolving the aforementioned claims, the settlement provides for relief for borrowers in the form of modifications, mortgage loan servicing reforms, increased compliance monitoring and enforcement.

The settlement requires a total of \$17 billion to be allocated to facilitate loan modifications to borrowers with the intent and ability to stay in their homes. Of the \$17 billion, 60% must be allocated to principal reduction modifications. Additionally, banks must offer refinance

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programs through the use of \$3 billion to assist borrowers with negative equity whom otherwise would be unable to refinance. Additional settlement monies are dedicated to borrowers who were wrongfully foreclosed on after January 1, 2008 (approximately \$1.5 billion in relief), and another \$2.5 billion to the states for foreclosure relief and housing programs.

The settlement also requires major changes in loan servicing required of the five banks party to the

settlement. These changes include:

1. Information in foreclosure affidavits must be personally reviewed and based on competent evidence.
2. Holders of loans and their legal standing to foreclose must be documented and disclosed to borrowers.
3. Borrowers must be sent a pre-foreclosure notice that will include a summary of loss mitigation options offered, an account summary, description of facts supporting lender's right to foreclose, and a notice that the borrower may request a copy of the loan note and the identity of the investor holding the loan.
4. Borrowers must be thoroughly evaluated for all available loss mitigation options before foreclosure referral, and banks must act on loss mitigation applications before referring loans to foreclosure; i.e. "dual tracking" will be restricted.
5. Denials of loss mitigation relief must be automatically reviewed, with a right to appeal for borrowers.
6. Banks must implement procedures to ensure accuracy of accounts and default fees, including regular audits, detailed monthly billing statements and enhanced billing dispute rights for borrowers.
7. Banks are required to adopt procedures to oversee foreclosure firms, trustees and other agents.
8. Banks will have specific loss mitigation obligations, including customer outreach and communications, time

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lines to respond to loss mitigation applications, and e-portals for borrowers to keep informed of loan modification status.

9. Banks are required to designate an employee as a continuing single point of contact to assist borrowers seeking loss mitigation assistance.
10. Military personnel who are covered by the Servicemembers Civil Relief Act will have enhanced protections.
11. Banks must maintain adequate trained staff to handle the demand for loss mitigation relief.
12. Application and qualification information for proprietary loan modifications must be publicly available.
13. Servicers are required to expedite and facilitate short

sales of distressed properties.

14. Restrictions are imposed on default fees, late fees, third-party fees, and force-placed insurance.

For a detailed look at the complaint and resulting settlement, a full list of documents can be found at <http://www.nationalmortgagesettlement.com/>.

This bill makes changes to California's non-judicial foreclosure process. Specifically, the Conference Committee amendments:

1. Declare that the purpose of the act is ensure that as part of the non-judicial foreclosure process, borrowers are considered for, and have a meaningful opportunity to obtain, available loss mitigation options, if any, offered by or through the borrower's mortgage servicer, such as loan modifications or other alternatives to foreclosure. Additionally, provides that nothing in the act shall be interpreted to require a particular result of that process.
2. Define the following terms:

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- A. "Mortgage servicer" means a person or entity who directly services a loan, or who is responsible for interacting with the borrower, managing the loan account on a daily basis including collecting and crediting periodic loan payments, managing any escrow account, or enforcing the note and security instrument, either as the current owner of the promissory note or as the current owner's authorized agent. Clarifies that a servicer does not include a trustee.
- B. "Foreclosure prevention alternative" means a first lien loan modification or another available loss mitigation.
- C. "Borrower" means any natural person who is a mortgagor or trustor and who is potentially eligible for any federal, state, or proprietary foreclosure prevention alternative program offered by, or through his or her mortgage servicer. States that borrower does not include:
 - (1) An individual who has surrendered the secured property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the mortgagee, trustee, beneficiary or authorized agent (MTBA);

- (2) An individual who has contracted with an organization, person, or entity whose primary business is advising people who have decided to leave their homes on how to extend the foreclosure process and avoid their contractual obligations to mortgagees or beneficiaries; or
- (3) An individual who has filed a case under Chapter 7, 11, 12, or 13 of the bankruptcy code and the bankruptcy court has not entered an order closing or dismissing the bankruptcy case.
- D. "First lien" means the most senior mortgage or deed of trust on the property that is the subject of the notice of default (NOD) or notice of sale (NOS).

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3. Limit scope of application to only mortgages or deeds of trust that are secured by owner-occupied residential real property containing no more than four dwelling units. "Owner-occupied" means that the property is the principal residence of the borrower and is security for a loan made for personal, family, or household purposes.
4. Limit the scope of loss mitigation requirements and activities to first lien mortgages.
5. Make clarifying and conforming changes to existing law requirements concerning contact to borrowers prior to the recording of NOD.
6. Require, until January 1, 2018, in addition to existing requirements for contacting borrowers prior to NOD, the servicer must also send the following to the borrower in writing at least 30 days prior to recording NOD:
- A. A statement that if the borrower is a servicemember, or dependent of a servicemember, he or she may be entitled to certain protections under the federal Servicemembers Civil Relief Act; and
- B. A statement that the borrower may request the following:
- (1) A copy of the borrower's promissory note or other evidence of indebtedness;
- (2) A copy of the borrower's deed of trust or mortgage;
- (3) A copy of any assignment, if applicable, of the borrower's mortgage or deed of trust required to demonstrate the right of the mortgage servicer to foreclose; and

- (4) A copy of the borrower's payment history since the borrower was last less than 60 days past due.
7. Establish, until January 1, 2018, the following processes for borrowers to request loss mitigation

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assistance.

- A. If a borrower submits a complete application for a first-lien loan modification the servicer shall not record a NOD or NOS, or conduct a trustee's sale while the application is pending.
- B. The servicer may not record the NOD or NOS until any one of the following occur:
 - (1) The mortgage servicer makes a written determination that the borrower is not eligible for a first-lien loan modification, and any appeal period has expired;
 - (2) The borrower does not accept an offered first-lien loan modification within 14 days of offer; or
 - (3) The borrower accepts a written first-lien loan modification, but defaults on the loan modification or otherwise breaches the borrower's obligation under the first-lien loan modification alternative.
- C. If the borrower's application is denied they shall have at least 30 days from the date of the denial to appeal the denial and provide evidence to the servicer that the determination was in error.
- D. If the borrower's application is denied, then the mortgage servicer shall not record a NOD, NOS or conduct a trustee sale until the later of:
 - (1) Thirty-one days after the borrower is notified in writing of the denial; or
 - (2) If the borrower appeals the denial, the later of 15 days after denial of the appeal, or 14 days after a first-lien loan modification is offered, but declined by the borrower.
- E. Following the denial of the modification, the mortgage servicer shall send written notice to the

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borrower identifying the reasons for the denial, including the following:

- (1) The amount of time from the date of the denial letter in which the borrower may request an appeal of the denial and instructions on how to appeal the denial;
- (2) The specific reason for an investor denial, if applicable;
- (3) If the denial was a result of a net present value (NPV) calculation, the monthly gross income and property value used to calculate the NPV and a statement that the borrower may request, in writing, the inputs used to calculate the NPV;
- (4) If applicable, a finding the borrower was previously offered a loan modification and failed to successfully make payments under the terms of the modified loans; and
- (5) If applicable, a description of other foreclosure alternatives for which the borrower may be eligible;

F. Specifies that in order to minimize the risk of borrowers submitting multiple applications for first-lien loan modifications for purpose of delay, a servicer shall not be obligated to evaluate applications from borrowers who have already been evaluated unless there has been a material change in the borrower's financial circumstances since the date of the borrower's previous application and the change is documented by the borrower.

G. Provides that an application is "complete" when a borrower has supplied the mortgage servicer with all the documents required by the servicer within the reasonable timeframes specified by the mortgage servicer.

8. Specify, until January 1, 2018, certain entities that meet a specified performance metric (as described in

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#29) follow a process different than outlined in #7. Prohibit these entities from filing a NOD or NOS, or conducting a trustee sale while a borrower's application for first-lien loan modification is pending. If the application is approved, then the NOD or NOS may not be recorded and a trustee sale may not be conducted if the borrower is in compliance with the terms of a loan modification, forbearance or repayment plan, or a foreclosure prevention alternative has been approved by all parties.

9. Provide for a borrower who requests a foreclosure prevention alternative, the mortgage servicer shall promptly establish a single point of contact (SPOC) and provide one or more means of communication with the SPOC. Additionally, require SPOC to be responsible for the following:
 - A. Communicating the process by which a borrower may apply for an available foreclosure prevention alternative and the deadline for any required submission to be considered for the options;
 - B. Coordinating receipt of all documents associated with available foreclosure prevention alternatives and notifying the borrower of any missing documents necessary to complete the application;
 - C. Having access to current information and personnel sufficient to inform the borrower of the status of their foreclosure prevention alternative; and
 - D. Ensure that a borrower is considered for all foreclosure prevention alternatives offered, by or through the mortgage servicer.
10. Require the SPOC to remain assigned to a borrower's account until the servicer determines that all loss mitigation options have been exhausted, or the borrower's account becomes current.
11. Define "SPOC" as an individual or team of personnel each of whom has the ability and authority to perform the responsibilities in #A through #D above. Provides that

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the servicer shall ensure that each team member is knowledgeable about the borrower's financial situation and current status in the foreclosure prevention process.

12. Require that, until January 1, 2018, whenever a trustee sale is postponed for at least 10 business days, the borrower shall be provided written notice, at least five business days after postponement, regarding the new

trustee sale date and time.

13. Clarify that no entity shall initiate the foreclosure process unless it is the holder of the beneficial interest under the mortgage or deed of trust. Additionally, no agent of the holder of the beneficial interest may commence the foreclosure process except when acting within the scope of authority designated by the holder of the beneficial interest.
14. Specify, until January 1, 2018, that unless a borrower has previously exhausted the foreclosure avoidance process, within five business days after recording NOD, a mortgage servicer shall send a written communication to the borrower that includes the following:
 - A. That the borrower may be evaluated for a foreclosure prevention alternative;
 - B. Whether an application is required to be considered for a foreclosure prevention alternative; and
 - C. The means and process by which a borrower may obtain an application for a foreclosure prevention alternative.
15. Require, until January 1, 2018, a servicer to provide written acknowledgment of receipt of any borrower documentation within five business days of receipt. Provides that the servicer, in its initial acknowledgment of receipt of the loan modification application shall include the following information:
 - A. A description of the loan modification process;

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- B. Any deadlines required to submit missing documentation that would affect processing of a loan modification application;
 - C. Any expiration date of documents; and
 - D. Any deficiency in the borrower's loan modification application.
16. Prohibit the recording of a NOD if the borrower is in compliance with the terms of a written modification, forbearance, or repayment plan, or the foreclosure prevention alternative has been approved in writing by all parties.
17. Provide that if a foreclosure prevention alternative is approved in writing after recordation of NOD, the

servicer shall not record the NOS or conduct a trustee's sale if the borrower is in compliance with the terms of a written modification, forbearance, or repayment plan, or the foreclosure prevention alternative has been approved in writing by all parties.

18. Require, until January 1, 2018, the mortgage servicer to provide a borrower, who accepts an offered loan modification, a copy of the fully executed loan modification agreement.
19. Specify, until January 1, 2018, that upon the borrower executing a permanent first-lien loan modification alternative, the mortgagee, beneficiary or authorized agent shall record a rescission of a NOD or cancel a pending trustee's sale, if applicable.
20. Prohibit, until January 1, 2018, the servicer from charging any application, processing or other fee for a modification or other foreclosure prevention alternative.
21. Prohibit, until January 1, 2018, the servicer from collecting any late fees for periods during which a complete loan modification application is under consideration, a denial is being appealed, the borrower

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is making timely modification payments, or a foreclosure

22. Provide, until January 1, 2018, that 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 the approved loan modification or other foreclosure prevention alternative.
23. Specify, beginning January 1, 2018, that servicers may not record a NOS or conduct a trustee sale under certain circumstances. Specifically, prevents the recordation of the NOS or conducting the trustee sale until the borrower has been provided a written determination regarding the borrower's eligibility for a foreclosure prevention alternative. If the modification is denied then the servicer must send the borrower a notice identifying the reasons for the denial.
24. State that beginning January 1, 2018, if a foreclosure prevention alternative is approved in writing prior the filing of a NOD the servicer may not record an NOD, or if the alternative was approved after NOD, then the servicer may not record the NOS under the following

circumstances:

- A. The borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance or repayment plan; or
 - B. A foreclosure prevention alternative has been approved in writing by all parties.
25. Require that documents required to initiate or complete the foreclosure process shall be accurate and complete and supported by competent and reliable evidence. Additionally, specifies prior to recording or filing foreclosure documents the mortgage servicer shall ensure it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan

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information. Provide, until January 1, 2018, that for repeated and multiple violations, an entity shall be liable for a civil penalty up to \$7,500 per mortgage or deed of trust.

26. Provide for the following remedies and enforcement:

- A. A borrower may bring an action for injunctive relief for a material violation if the trustee's deed has not been recorded. The injunction would remain in place, and any trustee's sale enjoined, until a court determines that the violation has been corrected and remedied. 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 has been recorded, the mortgage servicer or mortgagee, trustee, beneficiary or authorized shall be liable for actual economic damages resulting from a material violation that is not corrected and remedied prior to the recordation of the trustee's deed;
- C. If the violation was intentional or reckless, or resulted from willful misconduct by a mortgage servicer or MTBA the court may award the borrower the greater of treble damages or statutory damages of \$50,000;
- D. Specifies that a mortgage servicer or MTBA shall not be liable for a violation that has been corrected and remedied prior to recordation of the trustee's deed;
- E. A violation by a person licensed by the Department of Corporations (DOC), Department of Financial

Institutions (DFI), or Department of Real Estate (DRE) shall be deemed to be a violation of that person's licensing law; and

- F. No violation shall affect the validity of a sale in favor of a bona fide purchaser.

27.State that a signatory to the national mortgage

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settlement that is in compliance with the relevant terms for the Settlement Term Sheet of that consent judgment with respect to the borrower who brought an action while the consent judgment is in effect shall have no liability for a violation.

- 28.Allow a court to award a prevailing borrower reasonable attorney's fees and costs in an action.
- 29.Provide, until January 1, 2018, that a depository institution chartered under state or federal law, a person licensed as a California Finance Lender or under the Residential Mortgage Lending Act or a licensed real estate broker, acting as a servicer, that during its immediately preceding annual reporting period, foreclosed on 175 or fewer residential properties located in California shall only have to comply with specific sections. Under this performance metric, an entity with fewer than 175 foreclosures in the previous year would not need to comply with the following sections:
- A. Section 2923.55 - Requires, in addition to existing requirements for attempting contact with borrowers at 30 days prior to default, that a servicer send a notice to the borrower including information regarding loss mitigation and documents that can be requested.
- B. Section 2923.6 - Prohibitions on foreclosure filing while loan modification is pending. This section also established appeal process and deadlines and requires a detailed denial notice.
- C. Section 2923.7 - SPOC.
- D. Section 2924.9 - Requirement that within five days of recordation of NOD, servicer must send borrower notice of their loss mitigation options.
- E. Section 2924.10 - Requirement that servicer respond within 5 days to borrower's written communication.

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30. Requires, in relation to #29 above, entities with fewer than 175 foreclosures must comply with the following:

- A. Existing legal requirements under 2923.5, established via SB 1137 (Perata, 2008), which requires due diligence on the part of servicers to contact borrowers at least 30 days prior to filing NOD.
- B. Section 2924 - Contains requirement that postponements of trustee sale of at least 10 days must be noticed to the borrower within five days and that an entity cannot record NOD unless it is the holder of the beneficial interest of the deed of trust.
- C. Section 2924.17 - Prohibition on the use of foreclosure documents that are unverified or not supported by competent reliable evidence.
- D. Section 2924.18 - Provides a general ban on initiating or continuing the foreclosure process when a borrower's request for loss mitigation is under consideration, or a foreclosure prevention alternative is approved in writing.

31. Sunset various provisions on January 1, 2018. Specifically sunsets the following provisions:

- A. Existing legal requirements under 2923.5, established via SB 1137 (Perata, 2008), which requires due diligence on the part of servicers to contact borrowers at least 30 days prior to filing NOD, that includes new notice provision.
- B. Section 2923.6 - Prohibitions on foreclosure filing while loan modification is pending. This section also established appeal process and deadlines and requires a detailed denial notice.
- C. Section 2924 - Sunset on provision that requires notice of postponement of trustee sale.
- D. Section 2924.9 - Five day post NOD notice.

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- E. Section 2924.10 - Requirement that servicers respond in writing to borrower communications.
- F. Section 2924.11 - Additional ban on continuation of foreclosure process while borrower has pending modification.
- G. Remedies provisions relating to sections described above that sunset.

32. Provides authority to DOC, DFI and DRE to promulgate regulations to carry out purposes of the act.

Background

NOTE: The following background information has been provided by the Conference Committee to highlight the need for the bill.

Foreclosures blight neighborhoods, put financial pressure on families and drive down local real estate values, and consumers, made more cautious by a crippled housing market, spend less freely, curbing the economy's growth. Distressed borrowers are certainly among the hardest hit. But as communities across the country know all too well, families that lose their homes are not the only victims of foreclosures. Even homeowners who have never missed a payment on their loans have suffered as "spillover" costs extend throughout the neighborhood and the larger community. By some estimates the foreclosure crisis will strip neighboring homeowners of \$1.9 trillion in equity as foreclosures drain value from homes located near foreclosed properties by 2012. As a result of depressed home values, nearly one out of every four borrowers are "underwater," owing more than the home is worth. Meanwhile, state and local governments continue to be hit hard by declining tax revenues coupled with increased demand for social services. In fact, the Urban Institute estimates that a single foreclosure costs \$79,443 after aggregating the costs borne by financial institutions, investors, the homeowner, their neighbors, and local governments. However, even this number may understate the true costs, since it does not reflect the impact of the foreclosure epidemic on the

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nation's economy or the disparate impact on lower-income and minority communities.

When a borrower is in danger of defaulting, a commonsense approach under a traditional mortgage would be for the lender and borrower to mutually agree to modify the terms of the loan, or for the bank to agree to allow the borrower to sell the home in a "short sale" for an amount that

equals or approximates the outstanding balance on the loan to save the lender the time and costs of foreclosure. Moreover, in a declining real estate market, the amount obtained by the lender in a foreclosure sale may be less than the amount owed on the loan.

Despite the apparent mutual interest of loan holders and borrowers, many distressed homeowners report obstacles when trying to obtain a loan modification or short-sale approval. (See e.g. "Loan Modifications Elude Local Homeowners," Sacramento Bee, January 17, 2011.) Part of the answer may be that the mortgage industry has become more complex. Rarely does a modern mortgage involve only two players, a lender and a borrower, with a common interest in avoiding default and the capacity to communicate directly. Instead, the modern mortgage industry typically involves at least four players: (1) the original lender (or originator); (2) a loan servicer (who may or may not be affiliated with the originator) who collects from the borrower and remits to the mortgage holder; (3) an investor who has purchased an interest in the mortgage (or more likely an interest in the stream of income from a pool of mortgages); and (4) a borrower. Under this more complex arrangement, it is the servicer - not the loan originator or the investor holding an interest in the mortgage - who collects payments and has the power to either bring a foreclosure or approve a loan modification or a short sale if the borrower fails to make timely payments.

In some cases, difficulty obtaining investor approval is cited as the primary obstacle. Critics contend, however, that servicers' financial incentives are the true explanation. In a review of subprime securitization pooling and servicing agreements from 2006, UC Davis Law Professor John Patrick Hunt found that 60% of loans

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reviewed authorized modification, while 32% were silent on modification. He found that only 8% expressly barred modification. The aggregate principle of the secured pools he reviewed accounted for \$323 billion, equaling 75% of subprime securitizations in 2006.

Some analysts and leading economists have cited a failure by banks to provide long term and sustainable loan modifications as a single reason that the foreclosure crisis continues to drag on. Another obstacle to loan modifications arises if borrowers have second liens, like home equity loans, on their properties. These liens are often held by lenders who are also servicers on the first mortgage. They, too, have little interest in seeing any modification because it would harm the value of their holdings and reduce their income from fees. ("A Mortgage Nightmare's Happy Ending," New York Times, December 25,

2010)

The potential for a loan modification to provide a positive change for borrowers, communities and even financial markets is indisputable. TransUnion found that borrowers who received loan modifications have a better record of repaying auto and credit-card debt than trouble borrowers who receive no assistance (Home Loan Modifications Cut Credit Risk, TransUnion Says, Bloomberg News, June 21, 2012).

Difficulties in Achieving an Equitable Foreclosure and Loan Modification Process Predate the Multi-State Settlement

The nationwide mortgage settlement is not the beginning of this story. Borrower frustration with the loan modification process and their ability to communicate with their loan servicer dates back to 2006-07 as newspapers, magazines, blogs, and television news broadcasts have all detailed borrower difficulties concerning the loan modification and foreclosure process. In 2010 the problems became highlighted due to reviews of the various federal foreclosure relief programs.

A report released by the Congressional Oversight Panel in December 2010 reviewing these programs, found:

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Although Treasury oversees servicers and encourages compliance, there is little real accountability for servicers that fail to adhere to program standards, lose borrower submitted paperwork, unnecessarily delay the process, or otherwise don't make modifications...The Panel has previously noted that servicers need to face 'meaningful monetary penalties' for noncompliance with servicer participation agreements and denial of modification for an unexplained reason, a breach of their contractual obligations under HAMP servicer participation agreements. However, Treasury has seemed reluctant to do more than vaguely threaten the potential for clawbacks of HAMP payments.

Then, in April 2011, Federal regulators (Office of Comptroller of Currency, Office of Thrift Supervision, and Federal Reserve System) issued enforcement orders against Ally Bank/GMAC, Aurora Bank, Bank of America, Citibank, EverBank, HSBC, JPMChase, MetLife, OneWest, PNC, Sovereign Bank, SunTrust, US Bank, and Wells Fargo. These orders were based on a review conducted by the regulators of the foreclosure policies and practices of these servicers. In their report, "Interagency Review of Foreclosure Policies and Practices", April 2011, the federal regulators found:

The reviews found critical weaknesses in servicers'

foreclosure governance processes, foreclosure document preparation processes, and oversight and monitoring of third-party vendors, including foreclosure attorneys. While it is important to note that findings varied across institutions, the weaknesses at each servicer, individually or collectively, resulted in unsafe and unsound practices and violations of applicable federal and state law and requirements. The results elevated the agencies' concern that widespread risks may be presented to consumers, communities, various market participants, and the overall mortgage market. The servicers included in this review represent more than two-thirds of the servicing market. Thus, the agencies consider problems cited within this report to have widespread consequences for the national housing market and borrowers.

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Foreclosure governance processes of the servicers were underdeveloped and insufficient to manage and control operational, compliance, legal, and reputational risk associated with an increasing volume of foreclosures. Weaknesses included:

- 1) inadequate policies, procedures, and independent control infrastructure covering all aspects of the foreclosure process;
- 2) inadequate monitoring and controls to oversee foreclosure activities conducted on behalf of servicers by external law firms or other third-party vendors;
- 3) lack of sufficient audit trails to show how information set out in the affidavits (amount of indebtedness, fees, penalties, etc.) was linked to the servicers' internal records at the time the affidavits were executed;
- 4) inadequate quality control and audit reviews to ensure compliance with legal requirements, policies and procedures, as well as the maintenance of sound operating environments; and
- 5) inadequate identification of financial, reputational, and legal risks, and absence of internal communication about those risks among boards of directors and senior management.

And,

Weaknesses in foreclosure processes and controls present

the risk of foreclosing with inaccurate documentation, or foreclosing when another intervening circumstance should intercede. Even if a foreclosure action can be completed properly, deficiencies can result (and have resulted) in violations of state foreclosure laws designed to protect consumers. Such weaknesses may also result in inaccurate fees and charges assessed against the borrower or property, which may make it more difficult for borrowers to bring their loans current. In addition, borrowers can

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find their loss-mitigation options curtailed because of dual-track processes that result in foreclosures even when a borrower has been approved for a loan modification. The risks presented by weaknesses in foreclosure processes are more acute when those processes are aimed at speed and quantity instead of quality and accuracy.

The consent order resulting from the investigations required the creation of an independent foreclosure review process. This process was created in order to allow borrowers who are denied foreclosure mitigation to appeal that decision to a third party for a review. A year after these enforcement orders, only 3% of eligible borrowers have requested a review of their loan file, and no servicer that was party to the enforcement order has faced a penalty for actions uncovered during the investigation, nor have any borrowers received compensation for wrongful acts ("Just 3% of Eligible Borrowers Apply for Foreclosure Review", Wall Street Journal, April 3, 2012).

The arrival of the multi-state settlement must be viewed in context. As demonstrated in this analysis, the issues and concerns raised by the settlement are not new, and appear to have not yet been resolved. At a national level, it seems that these combined efforts demonstrate that borrowers with a legitimate chance to stay in their home have fallen through the cracks. The issues may even be more pronounced in California as foreclosures are processed via a non-judicial foreclosure process. California's foreclosure process relies on all parties carrying out the foreclosure to meet their statutory deadlines without independent oversight. This process also assumes that a borrower facing foreclosure is aware of their rights, and has the ability and knowledge to challenge their foreclosure in the proper venue. Under normal circumstances, this process works and can via its certainty benefit the overall housing and lending markets. However, in the extraordinary circumstances currently facing California, it is a system that places an overwhelming amount of authority and judgment in the hands of servicers, many of whom have admitted to being overwhelmed with the volume of foreclosure activity since 2007.

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Consumer Financial Protection Bureau (CFPB) Mortgage
Servicing Standards

Earlier this year, CFPB announced that they would be developing national servicing standards later this year, with a draft of the standards available in the summer of 2012. Specific language of the proposal available, but CFPB did release a summary of the issues they are considering. These issues include:

1. Servicers would be required clear monthly mortgage statements.
2. Borrowers should receive a warning before interest rate adjustments.
3. Borrowers should be aware of options to avoid force-placed insurance.
4. Servicers would be required to contact borrowers prior to foreclosure to discuss loss mitigation options.
5. Payments should be immediately credited.
6. Servicer records should be up-to-date and accessible.
7. Servicers would be required to correct errors quickly.
8. Servicers should be required to maintain foreclosure prevention teams.

It is unclear how the final version of these concepts will look. As with any rule proposed by a federal regulatory body, the final version can often differ from the initial press release. However, if the final rules indeed reflect the initial summary, will these rules interfere or otherwise upset California's efforts to provide transparent rules for the loan modification process. In specific to the servicing and loan modification processes contemplated by this bill, the CFPB proposal appears to build on California's existing pre-default contact requirements contained in Civil Code Section 2923.5. The CFPB proposal would require servicers to provide delinquent borrowers with written information, no later than 45 days after

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delinquency about options to avoid foreclosure and how to access a housing counselor. This information would also include an explanation of the foreclosure process and possible foreclosure timelines.

In short, it does not appear that the rules prevent or otherwise frustrate current efforts, and instead appear to complement, or indeed, even build upon California's existing pre-foreclosure contact requirements.

In so far as the preemptive effect of CFPB rules, the creation of the CFPB included language in the Dodd-Frank Wall Street Reform Act that specifically provided the foundation for the interaction between CFPB and state laws.

Section 1041 of the Dodd-Frank Act provides that in its administration of the federal laws transferred to it, the CFPB may not preempt state laws that are more protective than a federal consumer law counterpart. Specifically, Section 1041 states that a state's law may only be preempted if it is inconsistent with a federal consumer protection law-but an inconsistency does not include providing greater consumer protection.

SPOC

The mortgage settlement requires that the servicers party to the settlement establish a SPOC for "each potentially eligible first lien mortgage borrower so that the borrower has access to an employee of the servicer to obtain information throughout the loss mitigation, loan modification and foreclosure processes (Exhibit A, page 21 of the settlement term sheet documents)."

The issues preceding the need for inclusion of a SPOC in the loan modification process have been well documented. Borrowers have reported via media outlets and in other forums regarding frustration in seeking loss mitigation have resulted in numerous phone calls with different people, each one not aware of the efforts of the other. Additionally, borrowers have reported submitting paperwork to one contact at a servicer to only get passed on to another contact who then requests the same information for submission. In the worst cases, paperwork is lost, or the foreclosure process continues while the borrower believes

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they are being genuinely evaluated for a loan modification.

As mentioned previously, in April 2011, Federal regulators (Office of Comptroller of Currency, Office of Thrift Supervision, and Federal Reserve System) issued enforcement orders against several national banks concerning

foreclosure and loss mitigation practices. Among these new requirements demanded by federal regulators was the establishment of a SPOC. The federal regulatory enforcement orders require, in specific reference to SPOC, that:

1. A SPOC is established for each borrower to remain with them throughout the lost mitigation process.
2. Written communications with the borrower identify such SPOC along with one or more direct means of communication with the contact.
3. SPOC has access to current information and personnel (in-house or third-party) sufficient to timely, accurately, and adequately inform the borrower of the current status of the Loss Mitigation, loan modification, and foreclosure activities.
4. Measures to ensure that staff are trained specifically in handling mortgage delinquencies, Loss Mitigation, and loan modifications.
5. Procedures and controls to ensure that a final decision regarding a borrower's loan modification request (whether on a trial or permanent basis) is made and communicated to the borrower in writing, including the reason(s) why the borrower did not qualify for the modification.

Following these enforcement guidelines, the United States Treasury Department issued additional guidance under the Making Home Affordable (MHA) modification program (Supplemental Directive 11-04, issued May 11, 2011 and effective on September 1, 2011). The directive provided, "Each servicer subject to this Supplemental Directive must establish and implement a process through which borrowers

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who are potentially eligible for HAMP, the Home Affordable Unemployment Program (UP) or Home Affordable Foreclosure Alternatives (HAFA) are assigned a relationship manager to serve as the borrower's single point of contact through the entire delinquency or imminent default resolution process."

Does the assignment of a SPOC work to encourage greater efficiency and outcomes in the foreclosure process? According to Alan Jones, senior Vice President of Wells Fargo Home Mortgage, while speaking on a panel at a Mortgage Bankers Association servicing conference in 2011, "the single-point of contact does work. It has helped to avoid foreclosures when the borrower has one person to call while filling out their documentation" ("Wells Fargo Finalizing Electronic Mortgage Modification Revamp", Housingwire, February 25, 2011).

_____ The SPOC requirements of the Conference Committee amendments track consistently the requirements outlined in the mortgage settlement term sheet, and those requirements provided for in the previously mentioned consent orders. However, one major difference, is that the amendments provide added flexibility for servicers that wish to use individuals or teams of personnel to meet the SPOC requirement.

Validity of Foreclosure Documents

The Conference Committee amendments require that the official documents used in the foreclosure process must be accurate and complete and supported by competent reliable evidence. Concerns regarding the validity of foreclosure documents arose from national media attention to an issue known as "robosigning."

Robosigning was first discovered in 2009 by Palm Beach, Florida Attorney Tom Ice after he deposed a bank employee who admitted to signing hundreds of foreclosure documents in a day without looking at them.

Often these problems appeared to be limited to judicial foreclosure states where a foreclosure requires various court filings. However, media reports demonstrated that the issue was not limited to judicial foreclosure states.

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A January 20, 2011 article in American Banker ("New Point of Foreclosure Contention: Default Notice") provided the following:

At issue is the notice of default, the first letter that a mortgage lender or servicer sends to a homeowner who has fallen behind on payments. The notice typically starts the formal foreclosure process in nonjudicial states such as California, Arizona and Nevada.

Every notice of default has a signature on it. But just like the infamously rubber-stamped affidavits in the robo-signing cases, default notices, in at least some instances, have been signed by employees who did not verify the information in them, court papers show. In several lawsuits filed in nonjudicial states, borrower attorneys are arguing that this is grounds to stop a foreclosure.

"Whoever signs the NOD needs to have knowledge that there is in fact a default," said Christopher Peterson, an associate dean and law professor at the University of Utah.

The suits also argue that the default notices are invalid

because the employees who signed them worked for companies that did not have standing to foreclose.

In a lawsuit against Wells Fargo & Co. in Nevada, an employee for a title company who signed default notices admitted in a deposition this month that he did not review any documents or know who had the right to foreclose.

"They are starting foreclosures on behalf of companies with no authority to foreclose," said Robert Hager, an attorney with the Reno, Nev., law firm Hager & Hearne, representing the borrower in the case. "The policy of these companies is to just have a signer execute a notice of default starting foreclosure without any documentation to determine whether they are starting an illegal foreclosure."

The Nevada nonjudicial foreclosure statute requires that

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the company signing a notice of default have the authority to foreclose, Hager said.

In a deposition on Jan. 4, Stanley Silva, a title officer at Ticor Title of Nevada Inc., said he "technically signed" default notices for clients, which were often acting as agents of other parties, which in turn worked for others.

"The person at the bottom of the chain, by executing the document, has taken an action on behalf of all of them through their various agency agreements," Silva said. In one case, for example, he said he had signed "on behalf of Ticor Title of Nevada, who is agent for LPS Title, who is agent for National Default Servicing."

"Who is agent for Fidelity National?" Hager asked. "Apparently, yes," Silva replied.

"Which is a servicer for Wilshire?"

"Apparently."

Silva said under oath that he never reviewed any documents or knew what company was the holder of the original note at the time he signed the notice of default. He said he signed about 200 default notices over a four-year period.

When asked by Hager if he signed notices of default "without verifying the accuracy of the information," Silva replied: "Correct."

?

Walter Hackett, a lawyer with Inland Counties Legal Services, in San Bernardino, Calif., and a former banker with Bank of America Corp. and Union Bank, has filed several cases contesting notices of default, on the grounds that the employees signing such notices were working for companies that are not the note holders - or even their appointed agents.

"A huge percentage of notices of default and notices of trustee sales are legally questionable and probably

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void," Hackett said. "Nobody with the authority to trigger the nonjudicial foreclosure process is triggering it - only third parties who claim they have the right to do so are triggering it."

After a notice of default is sent to the borrower and filed at the county recorder's office, a notice of sale is typically published in the local newspaper and the sale of the property often takes place without the borrower even knowing the home has been sold to another party.

O. Max Gardner 3rd, a consumer bankruptcy attorney at Gardner & Gardner PLLC in Shelby, N.C., said the default notice is "the key legal document that is sent to the borrower" before a notice of sale.

The United States Department of Housing and Urban Development, Office of Inspector General (OIG) conducted a review of the servicing practices of the five servicers party to the national mortgage settlement. These reviews were conducted due to reported allegations made in Fall 2010 that servicers were engaged in widespread foreclosure practices that involved the use of unverified foreclosure documents. The five servicers were examined based on their status as Federal Housing Administration (FHA) direct endorsement lenders that can originate, sponsor and service FHA-insured loans. Among the findings included in one of the reports (Bank of America Corporation Foreclosure and Claims Process Review. HUD, Office of Inspector General, March 12, 2012) were the following

Bank of American did not establish effective control over its foreclosure process.

Bank of America did not establish a control environment that ensured that's its notaries met their responsibilities under State laws that required them to witness affiants' signatures on documents they notarized." The sample of documents reviewed by OIG "included documents with notary stamps from Texas and California. California law requires a notary to verify the signature of signers.

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Bank of America's claim files for the 118 sample loans did not consistently contain relevant pre-foreclosure information that supported the legal basis for foreclosure.

Bank of America conveyed a property located in Modesto, CA, to HUD with incorrect legal description. California is a two-deed State, requiring a trustee deed and grant deed. The grant deed conveying the property title to HUD used a legal description for a property on another street. Because the legal description was incorrect, Bank of America did not give HUD good and marketable title to the property.

Similar HUD OIG reports exist for Wells, Citi, Chase, and Ally Financial.

Scope of Proposed Conference Committee Amendments

In response to concerns raised by industry stakeholders, the proposed Conference Committee amendments are limited in scope in several ways. First, the dual track and SPOC provisions apply only to first lien loan modifications. This restriction is consistent with the national mortgage settlement. Second, the dual track and SPOC provisions apply only to mortgages or deeds of trust that are secured by owner-occupied residential real property containing no more than four dwelling units. The amendments specify that "owner-occupied" means that the property is the principal residence of the borrower and is security for a loan made for personal, family, or household purposes. This restriction to owner-occupied residences is on the whole already contained in existing law, Civil Code Section 2923.5, which was added by SB 1137 (Perata, Corbett, Machado, Chapter 69, Statutes of 2008). Finally, the amendments define "borrower" by specifying that a borrower is an individual who is potentially eligible for any federal, state, or proprietary foreclosure prevention alternative program offered by, or through, the mortgage servicer.

Summary of Dual Track Prohibitions

The Conference Committee amendments provide for a

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simplified ban on dual tracking borrowers, in response to concerns raised by stakeholders. Significantly, the dual track protections are triggered only when a borrower submits a "complete" application, which is defined as meaning that a borrower has supplied the mortgage servicer with all required documents within the reasonable timeframes specified by the servicer. It is important to note that these timeframes are only reasonable if they permit the borrower sufficient time to complete the application before the filing of the NOD or the NOS or the trustee's sale and therefore it would be inherently unreasonable for a mortgage servicer to file a NOD or NOS or conduct a trustee's sale prior to the expiration of the timeframes. Under the amendments, a mortgage servicer must give a borrower a clear answer on an application before the servicer may proceed with foreclosure. In addition, if a borrower's application has been approved and the borrower is in compliance with the loan modification, forbearance, or repayment plan, the mortgage servicer may not proceed with a NOD or NOS, or conduct a trustee's sale. The same is true if the foreclosure prevention alternative is approved by all parties and proof of funds or financing has been provided to the servicer. The amendments would also provide that if a borrower has been approved in writing for a foreclosure prevention alternative and the servicing of the borrower's loan is transferred or sold to another mortgage servicer, the subsequent mortgage servicer must continue to honor any previously approved alternative. This provision is similar to one contained in the nationwide mortgage settlement. The amendments also contain several procedural elements of this dual track ban which sunset on January 1, 2018. After that date, a general ban on dual tracking will become operative.

The amendments contain a number of safeguards, including that servicers are not required to offer foreclosure prevention alternatives if they do not participate in such programs. In addition, the amendments would provide that their purpose is to ensure that, as part of the non-judicial process, borrowers have a meaningful opportunity to obtain available loss mitigation options, but nothing in the amendments is intended to require a particular result.

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Summary of SPOC Provisions

The Conference Committee amendments build upon existing best practices by requiring mortgage servicers to maintain a SPOC for borrowers and allow flexibility by permitting a

team to be used. In response to concerns raised by industry stakeholders, SPOC are limited to borrowers who are "potentially eligible" for a federal, state, or proprietary foreclosure prevention alternative program offered by, or through, the mortgage servicer. In addition, the SPOC could include multiple individuals, each of whom has the ability and the authority to perform specified responsibilities such as having access to current information in order to inform the borrower of the current status of his or her application. These provisions do not sunset.

Summary of Document Verification Provisions

The Conference Committee amendments do not use the term "robosigning." Instead, the amendments would require a mortgage servicer, before recording or filing a declaration pursuant to Civil Code Sections 2923.5 or 2923.55, a NOD, NOS, assignment of a deed of trust, or substitution of a trustee in connection with a foreclosure to ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose. Until January 1, 2018, an entity that engages in "multiple and repeated" violations of this requirement may be subject to a civil penalty of up to \$7,500 per mortgage or deed of trust in an action brought by a public prosecutor or in an administrative proceeding brought by DOC, DFI, or DRE against one of its licensees. In response to industry stakeholder concerns, this provision was limited by restricting imposition of the civil penalty only to multiple and repeated violations, lowering the civil penalty amount and providing that the actual penalty could be "up to" that amount, and restricting the penalty to every loan rather than every document.

In addition, the Conference Committee amendments would require a declaration pursuant to Civil Code Sections 2923.5 or 2923.55, a NOD, NOS, assignment of a deed of

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trust, or substitution of a trustee recorded in connection with a foreclosure to be accurate and complete and supported by competent and reliable evidence. This requirement would not be subject to the civil penalty provisions described above.

Under existing law, pursuant to Civil Code Section 2924(b), trustees do not have liability for any good faith error when relying on information provided by the beneficiary regarding the nature and amount of a default. Similarly, the Conference Committee amendments are not intended to impose liability on an entity that records documents at the direction of a trustee, substitute trustee, or beneficiary who is acting within the scope of authority designated by

is carrying out its recording duties in good faith in the normal course of their activity.

Explanation of Threshold Provision

The Conference Committee amendments would create a threshold so that a mortgage servicer that foreclosed on 175 or fewer single-family residential real properties during the immediately preceding annual reporting period would be subject to the dual track ban and document verification provisions but would be excused from the procedural elements of dual track and the requirements to provide a single point of contact. This threshold provision would sunset January 1, 2018 and these entities would then be subject to the general dual track ban described above.

Summary of Enforcement Provisions

In response to concerns expressed, the Conference Committee amendments would provide for a narrow and targeted enforcement mechanism. Because the amendments provide for individual protections, the bill necessarily allows individual enforcement. However, to protect against any potential frivolous claims or efforts to merely delay legitimate foreclosure proceedings, the amendments would provide for enforceability only for certain key provisions related to the prohibitions against dual tracking, SPOC, and false or incomplete documents. Moreover, no legal

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action whatsoever could be brought unless the violation is material.

Importantly, no action for money damages would be allowed until the date the trustee's deed is recorded after a foreclosure sale. At all times until then, the only legal remedy a homeowner may seek is an action to enjoin a substantial violation of the specified sections, along with any trustee's sale. Any such injunction is to be dissolved if the moving party shows that the violation has been redressed. No special pre-litigation procedures or particular allegations are required by the amendments, whether or not the sale is pending. Conversely, the servicer or other covered entity may avoid legal action by curing the violation any time prior to recordation of a trustee's deed. This right to cure is not unprecedented in comparable circumstances where the parties are known to each other and have an established relationship of ongoing communication. Equivalent provisions may be found in Civil Code Section 910 et seq. and Labor Code Section 2698 et seq. If it is necessary to order injunctive relief, a party who obtains an injunction is among those who is recognized as a prevailing party for the purposes of attorney's fees and costs. As with the vindication of other

important statutory rights, an award of attorney's fees and costs is to be decided by the court (See, e.g., Code of Civil Procedure Section 1021.5; Government Code Section 12965; Civil Code Section 52.1). If an action for damages is necessary, the amendments are further limited by providing that the measure of damages in an ordinary case would be actual economic damages sustained. There are no statutory damages in this instance. There is also a provision for treble damages or a statutory minimum when a violation is committed intentionally, recklessly or willfully. The amendments expressly provide that no violation, regardless of substance, shall affect the validity of a sale in favor of a bona fide purchaser and its encumbrancers, as specified.

Finally, the amendments provide that servicers who are signatories to the national mortgage settlement agreement have no liability to an individual borrower if the servicer is in compliance with the term sheet of the settlement agreement as to the borrower.

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FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: Yes

SUPPORT : (Verified 6/28/12)

California State Council of the Service Employees
International Union
Center for Responsible Lending

OPPOSITION : (Verified 6/28/12)

California Association of Realtors
California Bankers Association
California Chamber of Commerce
California Financial Services Association
California Land Title Association
California Mortgage Association
California Mortgage Bankers Association
Civil Justice Association of California
Securities Industry and Financial Markets Association
United Trustees Association

JJA:m 6/28/12 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

CONTINUED