

AMENDED IN SENATE APRIL 10, 2012

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL

No. 1471

**Introduced by Senators DeSaulnier and Pavley
(Coauthors: Senators Hancock and Leno)**

February 24, 2012

An act to amend ~~Sections~~ *Section* 2932.5 and 2934 of, to amend and repeal Section 2924 of, and to add Sections 2920.5, 2923.7, and 2924.9 2924.17, and 2924.18 to, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1471, as amended, DeSaulnier. Mortgages and deeds of trust: foreclosure.

(1) Existing law prescribes foreclosure procedures, including, among other things, procedures for recording a notice of default, recording a notice of sale, and conducting a foreclosure sale.

This bill would define a mortgage servicer, and would, commencing July 1, 2013, require a mortgage servicer to establish a single point of contact when a borrower on a residential mortgage or deed of trust is 60 or more days delinquent, has had a notice of default recorded, or is seeking a loan modification or other loss mitigation, as specified. The bill would impose various obligations on the single point of contact in connection with loan modification or other loss mitigation options.

(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.

This bill would prohibit an entity from recording a notice of default or otherwise initiating foreclosure procedures unless the entity is the actual holder of the beneficial interest under the deed of trust, and would

prohibit an entity acting as agent from doing so without specific direction from the actual owner of the beneficial interest under the deed of trust. *The bill would authorize a borrower to seek an injunction of a pending trustee's sale, if a notice of sale has been recorded and the borrower reasonably believes that the mortgagee, trustee, beneficiary, or authorized agent failed to comply with specified requirements. The bill would authorize the greater of actual damages or \$10,000 in statutory damages if there is a failure to comply with specified requirements by the mortgagee, trustee, beneficiary, or authorized agent and the property is sold at a foreclosure sale. The bill would authorize the greater of treble damages or \$50,000 in statutory damages if the failure to comply is found to be intentional or reckless or resulted from willful misconduct, as specified.*

(3) Existing law authorizes the recording by the county recorder of various documents.

~~This bill would provide that a document that contains information that was not verified for accuracy by the person or persons signing, attesting, or swearing to the accuracy of the document or statement is a robo-signed document. The bill would also authorize a borrower to obtain a postponement of a foreclosure sale until a new notice of default and a corrected version of the robo-signed document are recorded, as specified.~~ *factual assertions that are not accurate, are incomplete, or are unsupported by competent, reliable evidence, or a document that has not been reviewed by its signer to substantiate the factual assertions contained in the document is a robo-signed document. The bill would provide that any entity that records a robo-signed document, or files a robo-signed document in a court relative to a foreclosure proceeding is liable for a civil penalty of \$10,000 for each robo-signed document. The bill would authorize specified governmental entities to enforce the civil penalty, and would authorize the Department of Real Estate, the Department of Corporations, and the Department of Financial Institutions to enforce the civil penalty provisions against their respective licensees.*

(4) Existing law provides that where the power to sell real property is given to a mortgagee or other encumbrancer, in an instrument intended to secure the payment of money, the power is part of the security and vests with any person who by assignment becomes entitled to payment of the money.

This bill would expand these provisions to include a power to sell real property given to a trustee or a beneficiary of a deed of trust in an instrument intended to secure the payment of money.

~~(5) Existing law authorizes any assignment of a mortgage or beneficial interest under a deed of trust to be recorded.~~

~~This bill would require any assignment of a mortgage or beneficial interest under a deed of trust to be recorded.~~

~~(6)~~

~~(5) The bill would repeal duplicate provisions of law.~~

~~(7) The bill would make a specified statement of legislative intent regarding appropriate remedies under the bill for violations of the bill's provisions.~~

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

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

1 SECTION 1. Section 2920.5 is added to the Civil Code, to
2 read:

3 2920.5. For purposes of this article, "mortgage servicer" means
4 a person or entity responsible for the day-to-day management of
5 a mortgage loan account, including collecting and crediting
6 periodic loan payments, managing any escrow account, or
7 enforcing mortgage loan terms either as the holder of the loan note
8 or on behalf of the holder of the loan note.

9 SEC. 2. Section 2923.7 is added to the Civil Code, to read:

10 2923.7. (a) ~~If the borrower on a residential mortgage, where~~
11 ~~the property securing the mortgage or deed of trust is the primary~~
12 ~~residence of the borrower, is 60 or more days delinquent, has had~~
13 ~~a notice of default recorded against the property, or is seeking a~~
14 ~~loan modification or other loss mitigation option, a borrower is~~
15 ~~60 or more days delinquent, the mortgage servicer shall inform~~
16 ~~the borrower that if the borrower wishes to pursue a loan~~
17 ~~modification or other foreclosure prevention alternative, the~~
18 mortgage servicer shall establish a single point of contact (SPOC)
19 for the borrower.

20 (b) ~~The identity of and contact information for the SPOC shall~~
21 ~~be provided to the borrower no later than 10 business days after~~
22 ~~the 60th day of delinquency, the recordation of the notice of~~
23 ~~default, or the date the mortgage servicer receives notice that the~~

1 ~~borrower is seeking a loan modification or other loss mitigation~~
2 ~~option, whichever is sooner. Upon written or telephonic~~
3 ~~communication from a borrower who is 60 or more days delinquent~~
4 ~~and who requests loss mitigation assistance, the identity of and~~
5 ~~contact information for the SPOC shall be provided to the borrower~~
6 ~~within 10 business days. The mortgage servicer shall provide~~
7 ~~updated contact information to the borrower if the designated~~
8 ~~SPOC is changed no later than five business days after the change.~~

9 (c) The SPOC shall be responsible for all of the following:

10 (1) Communicating the options available to the borrower, the
11 actions the borrower must take to be considered for those options,
12 and the status of the mortgage servicer's evaluation of the borrower
13 for those options.

14 (2) Coordinating receipt of all documents associated with loan
15 modification or loss mitigation activities and notifying the borrower
16 of any missing documents.

17 (3) Maintaining and providing accurate information about the
18 borrower's situation and current status in the loss mitigation
19 process.

20 (4) Ensuring that a borrower, who is not eligible for a federal
21 Making Home Affordable (MHA) program, is considered for
22 proprietary or other investor loss mitigation options.

23 (5) Having access to individuals with the ability to stop
24 foreclosure proceedings when necessary to comply with the MHA
25 program or California law.

26 (d) The SPOC shall remain assigned to the borrower's account
27 until the mortgage servicer determines that all loss mitigation
28 options have been exhausted, the borrower's account becomes
29 current, or, in the case of a borrower in bankruptcy, the borrower
30 has exhausted all loss mitigation options for which the borrower
31 is potentially eligible and has applied.

32 ~~(e) The mortgage servicer shall post on its Internet Web site the~~
33 ~~average response time following a single point of contact's receipt~~
34 ~~of a borrower's inquiry regarding the foreclosure process or the~~
35 ~~status of any request for a loan modification, short sale, or other~~
36 ~~loss mitigation option.~~

37 ~~(f) The mortgage servicer shall allow the borrower to speak~~
38 ~~with a management or supervisory level employee if the borrower~~
39 ~~makes that request to an assigned single point of contact.~~

1 (e) *The mortgage servicer shall ensure that a SPOC refers and*
2 *transfers a borrower to an appropriate supervisor upon request*
3 *of the borrower.*

4 ~~(g)~~

5 (f) This section shall become operative July 1, 2013.

6 SEC. 3. Section 2924 of the Civil Code, as amended by Section
7 1 of Chapter 180 of the Statutes of 2010, is amended to read:

8 2924. (a) Every transfer of an interest in property, other than
9 in trust, made only as a security for the performance of another
10 act, is to be deemed a mortgage, except when in the case of
11 personal property it is accompanied by actual change of possession,
12 in which case it is to be deemed a pledge. Where, by a mortgage
13 created after July 27, 1917, of any estate in real property, other
14 than an estate at will or for years, less than two, or in any transfer
15 in trust made after July 27, 1917, of a like estate to secure the
16 performance of an obligation, a power of sale is conferred upon
17 the mortgagee, trustee, or any other person, to be exercised after
18 a breach of the obligation for which that mortgage or transfer is a
19 security, the power shall not be exercised except where the
20 mortgage or transfer is made pursuant to an order, judgment, or
21 decree of a court of record, or to secure the payment of bonds or
22 other evidences of indebtedness authorized or permitted to be
23 issued by the Commissioner of Corporations, or is made by a public
24 utility subject to the provisions of the Public Utilities Act, until
25 all of the following apply:

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

31 (A) A statement identifying the mortgage or deed of trust by
32 stating the name or names of the trustor or trustors and giving the
33 book and page, or instrument number, if applicable, where the
34 mortgage or deed of trust is recorded or a description of the
35 mortgaged or trust property.

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

38 (C) A statement setting forth the nature of each breach actually
39 known to the beneficiary and of his or her election to sell or cause
40 to be sold the property to satisfy that obligation and any other

1 obligation secured by the deed of trust or mortgage that is in
2 default.

3 (D) If the default is curable pursuant to Section 2924c, the
4 statement specified in paragraph (1) of subdivision (b) of Section
5 2924c.

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

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

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

19 (5) An entity shall not record or cause a notice of default to be
20 recorded or otherwise initiate the foreclosure process unless it is
21 the ~~actual-current~~ holder of the beneficial interest under the deed
22 of trust. An agent shall not record a notice of default or otherwise
23 commence the foreclosure process without the specific direction
24 of the actual owner of the beneficial interest under the deed of
25 trust.

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 1.6c
32 (commencing with Section 1788) of Part 4.

33 (c) 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 SEC. 4. Section 2924 of the Civil Code, as amended by Section
20 2 of Chapter 180 of the Statutes of 2010, is repealed.

21 SEC. 5. Section ~~2924.9~~ 2924.17 is added to the Civil Code, to
22 read:

23 ~~2924.9.~~

24 2924.17. (a) For purposes of this section, ~~“robosigned” means~~
25 ~~any document that contains information that was not verified for~~
26 ~~accuracy by the person or persons signing, attesting, or swearing~~
27 ~~to the accuracy of the document or statement. Evidence of a failure~~
28 ~~to verify may include, but is not limited to, inaccurate information~~
29 ~~contained within the document or statement. For purposes of this~~
30 ~~definition, multiple people may verify the document or statement~~
31 ~~so long as the document or statement specifies the portions verified~~
32 ~~by each signer “robosigned document” means any document that~~
33 ~~contains factual assertions that are not accurate, are incomplete,~~
34 ~~or are unsupported by competent, reliable evidence. A “robosigned~~
35 ~~document” also means any document that has not been reviewed~~
36 ~~by its signer to substantiate the factual assertions contained in the~~
37 ~~document. For purposes of this definition, multiple people may~~
38 ~~verify the document or statement so long as the document or~~
39 ~~statement specifies the portions verified by each signer.~~

1 ~~(b) No party other than a bona fide third-party purchaser may~~
2 ~~raise any equitable defenses to any action to halt or set aside any~~
3 ~~foreclosure proceeding conducted with respect to a residential~~
4 ~~mortgage loan if a court of competent jurisdiction has found that~~
5 ~~any document pertaining to either the residential mortgage loan~~
6 ~~or the foreclosure was robo-signed.~~

7 *(b) Any entity that records a robo-signed document or files a*
8 *robo-signed document in any court relative to a foreclosure*
9 *proceeding shall be liable for a civil penalty of ten thousand dollars*
10 *(\$10,000) per robo-signed document. The civil penalty may be*
11 *enforced by any governmental entity identified in Section 17204*
12 *of the Business and Professions Code. In addition, the Department*
13 *of Real Estate, the Department of Corporations, and the*
14 *Department of Financial Institutions may enforce the civil penalties*
15 *under this section against any of their respective licensees. The*
16 *civil penalties under this section are separate from and exclusive*
17 *of any other remedies or liabilities that may apply. This section is*
18 *not intended to limit the type of actions regarding robo-signed*
19 *documents that may be filed by any governmental entity identified*
20 *in Section 17204 of the Business and Professions Code.*

21 *SEC. 6. Section 2924.18 is added to the Civil Code, to read:*

22 *2924.18. (a) A borrower may seek an order in any court having*
23 *jurisdiction to enjoin any pending trustee's sale, if a notice of sale*
24 *has been recorded, and the borrower reasonably believes that the*
25 *mortgagee, trustee, beneficiary, or authorized agent failed to*
26 *comply with the requirements of Section 2923.7, 2924, 2924.9, or*
27 *2932.5. Any injunction shall remain in place until the mortgagee,*
28 *trustee, beneficiary, or authorized agent has complied with the*
29 *requirements of Section 2923.7, 2924, 2924.9, or 2932.5. A*
30 *borrower who obtains an injunction shall be awarded reasonable*
31 *attorney's fees and costs.*

32 *(b) (1) Following a trustee's sale, a borrower may recover the*
33 *greater of actual damages or ten thousand dollars (\$10,000) plus*
34 *reasonable attorney's fees and costs in any court of competent*
35 *jurisdiction, if the borrower reasonably believes that the*
36 *mortgagee, trustee, beneficiary, or authorized agent failed to*
37 *comply with the requirements of Section 2923.7, 2924, 2924.9, or*
38 *2932.5.*

39 *(2) A court may award a borrower the greater of treble actual*
40 *damages or statutory damages of fifty thousand dollars (\$50,000),*

1 *plus attorney's fees and costs, if it finds that the violation of Section*
2 *2923.7, 2924, 2924.9, or 2932.5 was intentional, reckless, or*
3 *resulted from willful misconduct by a mortgagee, trustee,*
4 *beneficiary, or authorized agent.*

5 *(c) A violation of this article shall not affect the validity of a*
6 *sale in favor of a bona fide purchaser and any of its encumbrancers*
7 *for value without notice.*

8 *(d) Notwithstanding subdivisions (a) and (b), a borrower may*
9 *not obtain relief under this section for any violation that was*
10 *technical or de minimis in nature that did not impact the*
11 *borrower's ability to pursue an alternative to foreclosure as*
12 *provided by this article.*

13 *(e) It shall be an affirmative defense to any liability for violation*
14 *of Sections 2920.5, 2923.5, 2923.7, 2924, and 2924.9, that a*
15 *signatory to a consent judgment entered in the case entitled United*
16 *States of America v. Bank of America Corporation, filed in the*
17 *Federal District Court for the District of Washington, D.C., case*
18 *number 1:12-cv-00361 RMC, is in compliance with that consent*
19 *judgment while the consent judgment is in effect.*

20 *(f) A third-party encumbrancer shall not be relieved from*
21 *liability resulting from violations of Section 2923.7, 2924, 2924.17,*
22 *or 2932.5 committed by that third-party encumbrancer, that*
23 *occurred prior to the sale of the subject property to the bona fide*
24 *purchaser.*

25 ~~SEC. 6.~~

26 ~~SEC. 7. Section 2932.5 of the Civil Code is amended to read:~~

27 ~~2932.5. Where a power to sell real property is given to a~~
28 ~~mortgagee, trustee, beneficiary of a deed of trust, or other~~
29 ~~encumbrancer, in an instrument intended to secure the payment~~
30 ~~of money, the power is part of the security and vests in any person~~
31 ~~who by assignment becomes entitled to payment of the money~~
32 ~~secured by the instrument. The power of sale may be exercised by~~
33 ~~the assignee only if the assignment is duly acknowledged and~~
34 ~~recorded.~~

35 ~~SEC. 7. Section 2934 of the Civil Code is amended to read:~~

36 ~~2934. Any assignment of a mortgage and any assignment of~~
37 ~~the beneficial interest under a deed of trust shall be recorded, and~~
38 ~~from the time the same is filed for record operates as constructive~~
39 ~~notice of the contents thereof to all persons; and any instrument~~
40 ~~by which any mortgage or deed of trust of, lien upon or interest in~~

1 real property, (or by which any mortgage of, lien upon or interest
2 in personal property a document evidencing or creating which is
3 required or permitted by law to be recorded), is subordinated or
4 waived as to priority may be recorded, and from the time the same
5 is filed for record operates as constructive notice of the contents
6 thereof, to all persons.

7 SEC. 8. It is the intent of the Legislature that there be
8 appropriate remedies under this act for violations of the act's
9 provisions.