

Summary of Possible Language**BORROWER NOTICES**

- 1) Requires a notice of default (NOD) to include a declaration of the following:
 - a) The borrower is not a service member, or dependent of a service member who is entitled to the benefits of the Servicemembers Civil Relief Act (SCRA);
 - b) The mortgagee, beneficiary, or authorized agent is in possession of the note and mortgage or deed of trust, and evidence of its right to foreclose including documentation of any assignments and endorsements of the mortgage note or deed of trust. This evidence must be attached to or specifically described in the declaration. If proof is not attached, then a separate declaration is required signed by an individual having personal knowledge of the facts stated within the declaration, and which states all of the following:
 - i) Facts sufficient to demonstrate the foreclosing party's right to enforce the note;
 - ii) A statement that the person is unable to obtain possession of the note, if that is the case, as well as, a description of the efforts made to obtain the note; and,
 - iii) A description of the terms of the note and any riders attached thereto, including the date of execution, parties to the note, amount of the loan, term of the loan, initial interest rate and expiration date of interest-only period, if applicable.
- 2) Provides for the following borrower notices:
 - a) At least 14 days prior to the recordation of a NOD, a mortgagee, beneficiary or authorized agent must provide a written notice containing the following:
 - i) A statement that provides the facts supporting the right of the mortgagee, beneficiary or authorized agent to foreclose;
 - ii) Notification that the borrower may receive, upon written request:
 - (1) Copy of the most recent payment history;
 - (2) Copy of the borrower's loan note, and copies of any assignments of the note and the name of the investor that holds the borrower's loan note;
 - iii) An itemized account summary that includes:
 - (1) Total amount needed to bring the account current;
 - (2) Date through which the loan obligation is paid current;

- (3) Date of last full payment;
 - (4) The current interest rate in effect for the loan;
 - (5) The date on which the interest rate may adjust or reset;
 - (6) The amount of any prepayment penalties;
 - (7) Description of any late payment fees.
 - (8) Contact information for any assigned single point of contact (SPOC);
 - (9) Statement concerning the borrower's rights if they are a servicemember;
 - (10) A statement outlining the loss mitigation efforts that have already been undertaken; and,
 - (11) The toll-free telephone number for the Office of Homeowner Protection (OHP).
- b) Within five calendar days after recordation of a NOD, the borrower shall receive written communication of the following:
- i) The borrower can still be evaluated for alternatives to foreclosure;
 - ii) Whether an application is required to be submitted in order for the borrower to be considered for a foreclosure prevention alternative;
 - iii) The process and steps by which a borrower may obtain an application for a loan modification or any foreclosure prevention alternative.

DUAL TRACK

- 3) Specifies that if a mortgagee, trustee, beneficiary, or authorized agent had already filed the NOD prior to January 1, 2013 (enactment date), and did not file a notice of rescission, then they shall include a declaration with the NOD that states the following:
- a) That 60 days prior to the recordation of the NOD, written communication was sent to the borrower that included:
 - i) The borrower can still be evaluated for alternatives to foreclosure;
 - ii) Whether an application must be submitted by the borrower in order to be considered for a foreclosure prevention alternative;
 - iii) The means and process by which a borrower may obtain an application for a loan modification or any foreclosure prevention alternative and the deadlines for any

submission.

- b) The efforts made, if any, to contact the borrower in the event no contact was made.
- 4) Provides that if a borrower has submitted an application for a loan modification within 120 days of delinquency, and before a NOD has been recorded, a NOD shall not be recorded while the loan modification application is pending. Under this scenario, the NOD may not be filed until either:
 - a) The borrower has been determined not to be eligible for a loan modification; or
 - b) The borrower does not accept an offered modification; or
 - c) The borrower accepts the modification but later breaches the modification agreement.
 - 5) Specifies, in the situation described previously, that if the loan modification is denied then the NOD may not be recorded until 30 days after the borrower is notified of the denial, or the later of 15 days after the denial of an appeal or 14 days after a post-appeal offer is declined by the borrower.
 - 6) Prohibits the recordation of a notice of sale (NOS) if a borrower has submitted a loan modification application within 60 days following the recording of a NOD, and the loan modification application is pending. The NOS may not be recorded until either of the following occur:
 - a) The borrower has been determined not to be eligible for a loan modification; or
 - b) The borrower does not accept an offered modification; or
 - c) The borrower accepts the modification but later breaches the modification agreement.
 - 7) Specifies that if the loan modification is denied then the NOS may not be recorded until 30 days after the borrower is notified in writing of the denial, or the later of 15 days after the denial of an appeal or 14 days after a post-appeal offer is declined by the borrower.
 - 8) Provides when a borrower submits an application for a loan modification less than 15 days prior to the recordation of a NOS, the NOS shall not be recorded until the borrower is evaluated for a loan modification. The NOS shall not be recorded until one of the following occur:
 - a) It has been determined the borrower is not eligible for a loan modification;
 - b) The borrower does not accept an offered modification; or

- c) The borrower accepts the modification but later breaches the modification agreement.
- 9) States that the requirement to consider a loan modification application, and to delay the recording of a NOS shall not apply if the servicer has previously denied the borrower for modification and the new application does not reflect a material change in circumstances.
- 10) Generally, prohibits the recording of a NOS under the following circumstances:
 - a) The borrower is in compliance with a trial or permanent loan modification.
 - b) A short sale or deed-in-lieu of foreclosure has been approved by all parties, and proof of funds or financing has been provided to the mortgagee, trustee, beneficiary, or authorized agent.
- 11) States that if a borrower has accepted a loan modification offer, then the servicer shall provide a copy of the fully executed loan modification agreement following the receipt of the executed copy from the borrower. If the loan modification offer was not made in writing, then the servicer shall provide a summary of its terms, as soon as, possible after approval of the modification.
- 12) Provides that if a loan modification application is denied, the borrower shall have 30 days from the denial to appeal the denial to the servicer.
- 13) If a permanent loan modification has been executed the servicer shall record a rescission of the NOD.

WRITTEN ACKNOWLEDGEMENT OF LOAN MODIFICATION DOCUMENTS

- 14) Requires that when a borrower submits a loan modification application or any document in connection with a loan modification application the mortgagee, trustee, beneficiary or authorized agent shall do the following:
 - a) Provide written acknowledgement of the receipt of the documentation within three business days of receipt. This initial acknowledgement shall include a description of the loan modification process, including deadlines and the toll-free number of the OHP.
 - b) Notify the borrower of any deficiency in the borrower's loan modification application no later than five business days after receipt.

DENIAL NOTICE

- 15) Following the denial of a loan modification, the servicer must send a denial notice to the borrower that includes the following:

- a) Information regarding the amount of time the borrower has from the denial letter to request an appeal of the denied loan modification, unless the denial was based upon an ineligible mortgage, ineligible property, or if the offer was not accepted by the borrower;
- b) If the denial was based on investor disallowance, then the borrower shall be provided the name of the investor and the specific reason for the investor denial;
- c) If the denial was based on a net present value calculation (NPV), then the notice shall provide the monthly gross income and property value used in the calculation and inform the borrower of his or her right to request a full appraisal to be conducted of the property;
- d) The toll-free number of the OHP.
- e) If a servicer refuses the borrower's appeal of a denial, then the letter shall include a description of other available loss mitigation alternatives, including short sales and deeds in lieu of foreclosure.

PUBLIC DISCLOSURE OF MODIFICATION PROCESSES

- 16) Requires servicers to make publicly available, information on their qualification processes, all required documentation and information necessary for a complete loan modification application and key eligibility factors for all proprietary loan modifications.
- 17) Requires servicers to track outcomes and maintain records regarding characteristics of proprietary loan modifications. Additionally, requires the posting of modification "waterfalls," eligibility criteria, and modification terms on the servicers' website.

PROHIBITION OF FEES DURING LOAN MODIFICATION EVALUATION

- 18) Prohibits a servicer from charging any application, processing, or other fee related to a proprietary loan modification, as well as, any late fees while a loan modification is under consideration.

OFFICE OF HOMEOWNER PROTECTION

- 19) Establishes the OHP which will have the following responsibilities:
 - a) Responding to inquiries and complaints from individuals regarding provisions of this bill;
 - b) Attempting to seek servicer compliance with the provisions of this bill;
 - c) Maintain an internet website to receive inquiries and complaints;
 - d) Provide an annual report to the Legislature, summarizing its activities;

- 20) States the intent of the Legislature that funding for the OHP shall come from payments made to the Attorney General via the Special Deposit Fund created via the Multi-State Mortgage Settlement.

TRUSTEE SALE POSTPONEMENTS

- 21) Requires that a borrower must be provided written notice within five calendar days after a foreclosure sale date is postponed by 10 calendar days or more and that the notice shall include the new sale date and time, and location, if applicable.

SINGLE POINT OF CONTACT

- 22) Provides for a borrower that is 60 days or more delinquent, the mortgage servicer shall inform the borrower that if they wish to pursue loss mitigation, the servicer shall establish a SPOC for the borrower.
- 23) Requires that, upon written or telephonic request by the borrower requesting loss mitigation assistance and who is 60 days or more delinquent, the servicer shall provide the borrower with the contact information of the SPOC within 10 business days.
- 24) States that if a SPOC changes, the borrower shall be informed of the new contact information no later than five business days after the change.
- 25) Provides that the SPOC is responsible for the following activities:
- a) Communicating the options available to the borrower, the actions the borrower must take to be considered for those options, and the status of the mortgage servicer's evaluation of the borrower for those options;
 - b) Coordinating receipt of all documents;
 - c) Maintaining and providing accurate information about the borrower's situation and current status in the loss mitigation process;
 - d) Ensuring that a borrower, who is not eligible for the federal Making Home Affordable (MHA) program, is considered for proprietary or other investor loss mitigation options; and
 - e) Having access to individuals with the ability to stop foreclosure proceedings.
- 26) Requires the SPOC to remain assigned to the borrower's account until the mortgage servicer determines that all loss mitigation options have been exhausted, the borrower's account

becomes current, or, in the case of a borrower in bankruptcy, the borrower has exhausted all loss mitigation options for which the borrower is potentially eligible and has applied;

27) Provides that the mortgage servicer shall ensure that a SPOC refers and transfers a borrower to an appropriate supervisor upon request of the borrower;

28) Provides an operative date of July 1, 2013 for the SPOC provisions.

ACCURACY OF FORECLOSURE DOCUMENTS

29) Defines a "robosigned document" as any document that contains factual assertions that are not accurate, are incomplete, or are unsupported by competent, reliable evidence. A "robosigned document" also means any document that has not been reviewed by its signer to substantiate the factual assertions contained in the document. For purposes of this definition, multiple people may verify the document or statement so long as the document or statement specifies the portions verified by each signer.

30) Prohibits an entity from recording a NOD or otherwise initiating the foreclosure process unless it is the beneficial interest under the deed of trust. Additionally, provides that an agent shall not record an NOD or otherwise commence the foreclosure process without the specific direction of the actual holder of the beneficial interest under the deed of trust.

31) Specifies that any entity that records a "robosigned" document or files a "robosigned" document in any court relative to a foreclosure proceeding shall be liable for a civil penalty of \$10,000 per "robosigned" document.

REMEDIES AND ENFORCEMENT

32) Provides that the Department of Real Estate, Department of Corporations and Department of Financial Institutions may enforce civil penalties against their respective licensees for a violation resulting from "robosigning."

33) Allows a borrower to seek an injunction to halt a pending trustee sale if the notice of sale (NOS) has been recorded and the borrower reasonably believes that the mortgagee, trustee, beneficiary, or authorized agent failed to comply with the requirements listed in number 36 below. The injunction would remain in place until the aforementioned provisions are complied with.

34) Provides that if a trustee sale has been completed and the borrower reasonably believes the mortgagee, trust, beneficiary, or authorized agent failed to comply, the borrower may seek the greater of actual damages or \$10,000 plus attorney's fees and costs. For violations that are intentional, reckless, or resulted from willful misconduct, damages are the greater of treble actual damages or \$50,000 plus attorney's fees and costs.

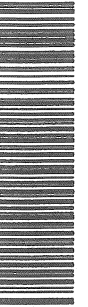
- 35) Clarifies that a borrower may not obtain relief for violations that are technical or de minimis in a nature such that it did not impact the borrower's ability to pursue alternatives to foreclosure.
- 36) Provides for the following specific sections in which non-compliance could lead to an action on the part of a borrower:
- a) Section 2923.5-Pre-NOD due diligence and contact requirements.
 - b) Section 2923.6- If a borrower has submitted a loan modification application within 120 days after delinquency and the notice has not been recorded then the servicer may not record the NOD until specific conditions have been met.
 - c) 2923.7- Requirement to appoint SPOC to eligible borrower.
 - d) Section 2924- Requirements for the proper filing of NOD.
 - e) 2924.9-Borrower notice within 5 days after filing of NOD.
 - f) 2924.10- if a borrower has submitted a loan modification application within 60 days after filing of NOD, then the servicer may not record the NOS until specific conditions have been met.
 - g) 2924.11- if borrower has submitted a loan modification application within 15 days before trustee sale, then the sale may not go forward until specific conditions have been met.
 - h) 2924.12- Requires written acknowledgement of the loan modification, as well as, associated and subsequent documents. Additionally, requires that a loan modification denial notice must include specified information.
 - i) 2924.13-Provides prohibitions on when a NOS may be filed.
 - j) 2924f-Specifies the conditions and terms of trustee sales, including notice requirements.
 - k) 2924.17-Prohibition on use of "robosigned" documents.
- 37) A violation shall not affect the validity of a sale to a bona fide purchaser and any of its encumbrances.
- 38) Provides that a signatory to the Multi-State Mortgage Settlement may use compliance with the consent judgment, while it's in effect, as an affirmative defense to any liability for violation of the provisions.

39) Several provisions differ on their application to owner-occupied residential property versus residential property. Other provisions inadvertently apply to both residential and commercial.

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An act to amend Sections 2923.5 and 2924g of, to amend and repeal Section 2924 of, and to add Sections 2923.6, 2924.9, 2924.10, 2924.11, 2924.12, 2924.13, 2924.14, 2924.15, and 2924.16 to, the Civil Code, relating to mortgages.



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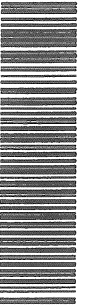
THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2923.5 of the Civil Code is amended to read:

2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized agent may not file record a notice of default pursuant to Section 2924 until 30 days after initial contact is made as required by paragraph (2) or 30 days after satisfying the due diligence requirements as described in subdivision ~~(g)~~: (h) and until the requirements of subdivision (g) have been met.

(2) A mortgagee, beneficiary, or authorized agent shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, the mortgagee, beneficiary, or authorized agent shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgagee, beneficiary, or authorized agent shall schedule the meeting to occur within 14 days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the Office of Homeowner Protection and the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. and, if applicable, a deadline for the borrower to submit an initial application for a loan modification. Any meeting may occur telephonically.

(b) A notice of default recorded pursuant to Section 2924 shall include a declaration of the following:



~~(b) A notice of default filed pursuant to Section 2924 shall include a declaration that~~

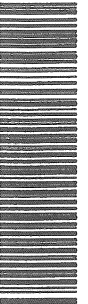
(1) That the mortgagee, beneficiary, or authorized agent has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required pursuant to subdivision ~~(h)~~: (i).

(2) That the borrower is not a servicemember or the dependent of a servicemember who is entitled to the benefits of the Servicemembers Civil Relief Act (50 U.S.C. Appen. Sec. 501 et seq.).

(3) That the mortgagee, beneficiary, or authorized agent has possession of the note and mortgage or deed of trust and evidence of its right to foreclose, including documentation of any assignments and endorsements of the mortgage note or deed of trust. This evidence must be attached to, or specifically described in, the declaration. If this proof cannot be located, the mortgagee, trustee, beneficiary, or authorized agent shall include a separate declaration signed either by an individual having personal knowledge of the facts stated within, or by an individual with authority to bind the mortgagee, trustee, beneficiary, or authorized agent, who certifies that the declaration is based upon records that were made in the regular course of business at or near the time of the events recorded, stating the following:

(A) Facts sufficient to show that the mortgagee, trustee, beneficiary, or authorized agent has the right to enforce the note.

(B) A statement that the person cannot reasonably obtain possession of the note, and a description of the reasonable efforts made to obtain the note.



(C) A description of the terms of the note and any riders attached thereto, including, at a minimum, the following:

(i) The date of execution.

(ii) The parties.

(iii) The principal amount of the loan.

(iv) The amortization period of the loan.

(v) The initial interest rate and, if applicable, the initial date and the frequency of any adjustments to the interest rate, and the index and margin used to calculate the interest rate at the time of any scheduled adjustment.

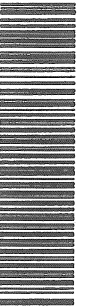
(vi) The expiration date of any interest-only period, if applicable.

(c) If a mortgagee, trustee, beneficiary, or authorized agent had already filed the notice of default prior to ~~the enactment of this section~~ January 1, 2013, and did not subsequently file a notice of rescission, then the mortgagee, trustee, beneficiary, or authorized agent shall, as part of the notice of sale ~~filed~~ recorded pursuant to Section 2924f, include a declaration that ~~either:~~ states the following:

(1) States that ~~That at least 60 days prior to the borrower was contacted to assess recording of the borrower's financial situation and to explore options for notice of sale, or as soon thereafter as possible, a written communication was sent to the borrower to avoid foreclosure.~~ that included all of the following information:

(A) The borrower can still be evaluated for alternatives to foreclosure.

(B) Whether an application must be submitted by the borrower in order to be considered for a foreclosure prevention alternative.



(C) The means and process by which a borrower may obtain an application for a loan modification or any foreclosure prevention alternative and the deadlines for any submission to be timely processed.

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

(d) A mortgagee's, beneficiary's, or authorized agent's loss mitigation personnel may participate by telephone during any contact required by this section.

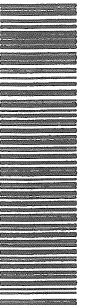
(e) For purposes of this section, a "borrower" shall include a mortgagor or trustor.

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

(g) No notice of default may be recorded unless the mortgagee, beneficiary, or authorized agent has also sent a separate written notice to the borrower that includes all of the following at least 14 days before any notice of default is recorded:

(1) A statement setting forth facts supporting the right of the mortgagee, beneficiary, or authorized agent to foreclose on the borrower's loan note.

(2) Notification that the borrower may receive, upon written request to the mortgagee, beneficiary, or authorized agent, or to any assigned single point of contact, a copy of the borrower's payment history since the borrower was last less than 60 days



past due, a copy of the borrower's loan note, copies of any assignments of the note and of the mortgage or deed of trust that would evidence a right to foreclose on the borrower's property, and, if applicable, the name of the investor that holds the borrower's loan note.

(3) An itemized plain language account summary setting forth each of the following items:

(A) The total amount needed to reinstate or bring the account current, and the amount of the principal obligation under the mortgage.

(B) The date through which the borrower's obligation is paid.

(C) The date of the last full payment.

(D) The current interest rate in effect for the loan, if the rate is effective for at least 30 days.

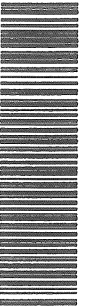
(E) The date on which the interest rate may next reset or adjust, unless the rate changes more frequently than once every 30 days.

(F) The amount of any prepayment fee to be charged, if any.

(G) A description of any late payment fees.

(H) A telephone number or electronic mail address or the contact information for any assigned single point of contact that may be used by the borrower to obtain information regarding the mortgage.

(4) A statement that if the borrower is a servicemember or a dependent of a servicemember, he or she may be entitled to certain protections under the Servicemembers Civil Relief Act (50 U.S.C. Appen. Sec. 501 et seq.) regarding the servicemember's interest rate and the risk of foreclosure, and counseling for covered



servicemembers that is available at agencies such as Military OneSource and Armed Forces Legal Assistance.

(5) A statement to the borrower outlining the loss mitigation efforts that had already been undertaken with respect to the borrower, and, if no loss mitigation efforts were offered or undertaken, a statement, if applicable, giving the reason why the borrower is ineligible for a loan modification or other loss mitigation options.

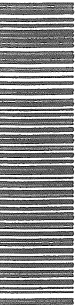
(6) The toll-free telephone number made available by the Office of Homeowner Protection.

(g)

(h) A notice of default may be filed pursuant to Section 2924 when a mortgagee, beneficiary, or authorized agent has not contacted a borrower as required by paragraph (2) of subdivision (a) provided that the requirements under subdivision (g) have been met and the failure to contact the borrower occurred despite the due diligence of the mortgagee, beneficiary, or authorized agent. For purposes of this section, "due diligence" shall require and mean all of the following:

(1) A mortgagee, beneficiary, or authorized agent shall first attempt to contact a borrower by sending a first-class letter that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling ~~agency.~~ agency, and, if applicable, a deadline for the borrower to submit an initial application for a loan modification.

(2) (A) After the letter has been sent, the mortgagee, beneficiary, or authorized agent shall attempt to contact the borrower by telephone at least three times at different



hours and on different days. Telephone calls shall be made to the primary telephone number on file.

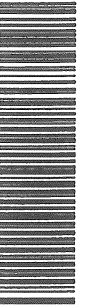
(B) A mortgagee, beneficiary, or authorized agent may attempt to contact a borrower using an automated system to dial borrowers, provided that, if the telephone call is answered, the call is connected to a live representative of the mortgagee, beneficiary, or authorized agent.

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

(3) If the borrower does not respond within two weeks after the telephone call requirements of paragraph (2) have been satisfied, the mortgagee, beneficiary, or authorized agent shall then send a certified letter, with return receipt ~~requested~~ requested that includes the toll-free telephone number made available by the Office of Homeowner Protection and HUD to find a HUD-certified housing counseling agency, and if applicable, a deadline for the borrower to submit an initial application for a loan modification.

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

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



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

(B) A list of financial documents borrowers should collect and be prepared to present to the mortgagee, beneficiary, or authorized agent when discussing options for avoiding foreclosure.

(C) A toll-free telephone number for borrowers who wish to discuss options for avoiding foreclosure with their mortgagee, beneficiary, or authorized agent.

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

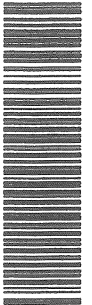
(E) The toll-free telephone number made available by the Office of Homeowner Protection.

~~(h)~~

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

(1) The borrower has surrendered the 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.

(2) The borrower 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.



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

~~(i)~~

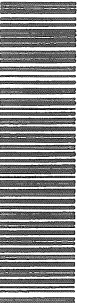
~~(j) This section shall apply only to mortgages or deeds of trust recorded from January 1, 2003, to December 31, 2007, inclusive, that are secured by owner-occupied residential real property containing no more than four dwelling units. For purposes of this subdivision, "owner-occupied" means that the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

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

SEC. 2. Section 2923.6 is added to the Civil Code, to read:

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

- (1) The loan is in payment default, or payment default is reasonably foreseeable.
- (2) Anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis.



(b) It is the intent of the Legislature that the mortgagee, beneficiary, or authorized agent offer the borrower a loan modification or workout plan if the modification or plan is consistent with its contractual or other authority.

(c) If a borrower submits an application for a loan modification within 120 days after delinquency and a notice of default has not yet been recorded, a mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default while the loan modification application is pending. A mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default until either:

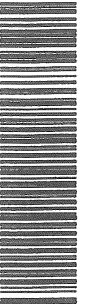
(1) The mortgagee, trustee, beneficiary, or authorized agent makes a determination that the borrower is not eligible for a loan modification.

(2) If the borrower does not accept an offered trial or permanent loan modification or other foreclosure prevention alternative, the earlier of the date of the borrower's decline of the stated offer or the borrower's deadline for accepting the offer, which may not be less than 14 days from the date the borrower was notified of the offer.

(d) If a borrower accepts an offered trial or permanent loan modification under this section, a mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default until the borrower fails to timely submit the first payment or until the borrower otherwise breaches the terms of the offer, whichever event occurs first.

(e) If the loan modification requested by a borrower under this section is denied, the mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default until the later of:

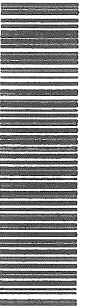
(1) Thirty days after the borrower is notified in writing of the denial.



(2) If the borrower appeals the denial, until the later of 15 days after the denial of the appeal or 14 days after the loan modification or other foreclosure prevention alternative is offered after appeal but declined by the borrower, or, if a trial or permanent loan modification is offered after appeal, until the borrower fails to timely submit the first payment or until the borrower otherwise breaches the terms of the offer, whichever event occurs first.

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

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



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

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

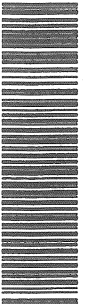
(B) A statement that a breach of the obligation for which the mortgage or transfer in trust is security has occurred.

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

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

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

(3) Except as provided in paragraph (4), after the lapse of the three months described in paragraph (2), and the requirements of Sections 2924.9, 2924.10, and 2924.11 have been met, the mortgagee, trustee, or other person authorized to take the sale shall give notice of sale, stating the time and place thereof, in the manner and for a time not less than that set forth in Section 2924f.

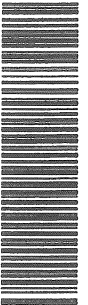


(4) Notwithstanding paragraph (3), the mortgagee, trustee, or other person authorized to take sale may ~~file~~ record a notice of sale pursuant to Section 2924f up to five days before the lapse of the three-month period described in paragraph (2), provided that the date of sale is no earlier than three months and 20 days after the filing recording of the notice of ~~default.~~ default, and the requirements of Sections 2924.9, 2924.10, and 2924.11 have been met.

(5) Except as provided in subdivisions (c) and (d) of Section 2924g, the trustee, mortgagee, or beneficiary, or any of their authorized agents shall provide written notice to the borrower within five calendar days after the postponement of a foreclosure sale and, if known to the trustee, mortgagee, beneficiary, or any of their authorized agents at the time of the notice, the new sale date and time, and, if applicable, any new location, whenever the new sale date is at least 10 calendar days after the date of postponement.

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

(c) A recital in the deed executed pursuant to the power of sale of compliance with all requirements of law regarding the mailing of copies of notices or the publication of a copy of the notice of default or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of a copy thereof shall constitute prima facie evidence of compliance with these requirements and



conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice.

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

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

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

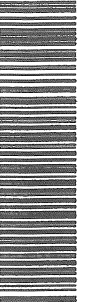
(3) Performance of the functions and procedures set forth in this article if those functions and procedures are necessary to carry out the duties described in Sections 729.040, 729.050, and 729.080 of the Code of Civil Procedure.

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

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

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

~~2924. (a) Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is to be deemed a pledge. Where, by a mortgage created after July 27, 1917, of any estate in real property, other than an estate at will or for~~



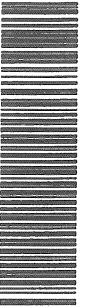
~~years, less than two, or in any transfer in trust made after July 27, 1917, of a like estate to secure the performance of an obligation, a power of sale is conferred upon the mortgagee, trustee, or any other person, to be exercised after a breach of the obligation for which that mortgage or transfer is a security, the power shall not be exercised except where the mortgage or transfer is made pursuant to an order, judgment, or decree of a court of record, or to secure the payment of bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations, or is made by a public utility subject to the provisions of the Public Utilities Act, until all of the following apply:~~

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

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

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

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



~~(D) If the default is curable pursuant to Section 2924c, the statement specified in paragraph (1) of subdivision (b) of Section 2924c:~~

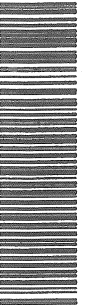
~~(2) Not less than three months shall elapse from the filing of the notice of default.~~

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

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

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

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



~~conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice.~~

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

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

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

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

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

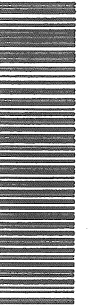
~~(f) This section shall become operative on January 1, 2011.~~

SEC. 5. Section 2924.9 is added to the Civil Code, to read:

2924.9. Within five calendar days after recording a notice of default pursuant to Section 2924, a trustee, mortgagee, beneficiary, or authorized agent shall send a written communication to the borrower that includes all of the following information:

(a) That the borrower can still be evaluated for alternatives to foreclosure.

(b) Whether an application is required to be submitted by the borrower in order to be considered for a foreclosure prevention alternative.



(c) The means and process by which a borrower may obtain an application for a loan modification or any foreclosure prevention alternative and the deadlines for any submission to be timely processed. Any statement of applicable deadlines shall include information relating to the requirements and procedures set forth in Sections 2924.10 and 2924.11.

(d) The toll-free telephone number made available by the Office of Homeowner Protection.

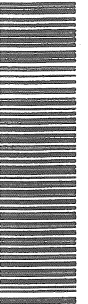
SEC. 6. Section 2924.10 is added to the Civil Code, to read:

2924.10. (a) If a borrower submits an application for a loan modification within 60 days after the recording of a notice of default, a mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of sale while the loan modification application is pending. Notwithstanding paragraphs (3) and (4) of subdivision (a) of Section 2924, a mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of sale under this section until either of the following:

(1) The mortgagee, beneficiary, or authorized agent makes a determination that the borrower is not eligible for a loan modification.

(2) If the borrower does not accept an offered loan modification or other foreclosure prevention alternative, the earlier of the date of the borrower's decline of the stated offer or the borrower's deadline for accepting the offer, which may not be less than 14 days from the date the borrower was notified of the offer.

(b) If a borrower accepts an offered trial or permanent loan modification, a mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of sale



until the borrower fails to timely submit the first payment or until the borrower otherwise breaches the terms of the offer, whichever occurs first.

(c) If the loan modification requested by a borrower under this section is denied, the mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of sale until the later of either of the following:

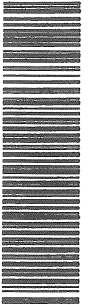
(1) Thirty days after the borrower is notified in writing of the denial.

(2) If the borrower appeals the denial, until the later of 15 days after the denial of the appeal or 14 days after the loan modification or other foreclosure prevention alternative is offered after appeal but declined by the borrower, or, if a loan modification is offered after appeal, until the borrower fails to timely submit the first trial period payment or until the borrower breaches the trial plan, whichever event occurs first.

(d) This section shall not apply if the mortgage, beneficiary or authorized agent has previously determined that the borrower is not eligible for modification of that loan pursuant to Section 2923.6, unless the borrower's application reflects a material change in the borrower's financial circumstances since the date of the borrower's previous application.

SEC. 7. Section 2924.11 is added to the Civil Code, to read:

2924.11. (a) When a borrower submits an application for a loan modification less than 15 days before a notice of sale may be recorded pursuant to Sections 2924 and 2924f, a mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of sale while the loan modification application is pending. Notwithstanding paragraphs (3) and (4) of subdivision (a) of Section 2924, a mortgagee, trustee,



beneficiary, or authorized agent shall not record a notice of sale under this section until either of the following:

(1) The mortgagee, trustee, beneficiary, or authorized agent makes a determination that the borrower is not eligible for a loan modification.

(2) The mortgagee, trustee, beneficiary, or authorized agent notifies the borrower whether it can conduct an expedited review of the loan modification application or, if not, the reasons it cannot complete the review of the loan modification application.

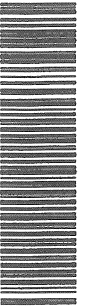
(b) If a borrower accepts an offered trial or permanent loan modification, a mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of sale until the borrower fails to timely submit the first payment or until the borrower otherwise breaches the terms of the offer, whichever occurs first.

(c) This section shall not apply if the mortgagee, beneficiary, or authorized agent has previously determined that the borrower is not eligible for modification of that loan pursuant to Section 2923.6 or 2924.10, unless the borrower's application reflects a material change in the borrower's financial circumstances since the date of the borrower's previous application.

SEC. 8. Section 2924.12 is added to the Civil Code, to read:

2924.12. (a) When a borrower submits a loan modification application or any document in connection with a loan modification application pursuant to Section 2923.6 or 2924.10, the mortgagee, trustee, beneficiary, or authorized agent shall do the following:

(1) Provide written acknowledgment of the receipt of the documentation within three business days of receipt. In its initial acknowledgment of receipt of the loan



modification application, the mortgagee, trustee, beneficiary, or authorized agent shall include the following information:

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

(B) Identification of any deadlines, including deadlines to submit missing documentation, that would affect the processing of a loan modification application.

(C) Identification of any expiration dates for submitted documents.

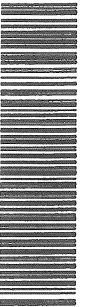
(D) The toll-free telephone number made available by the Office of Homeowner Protection.

(2) Notify the borrower of any deficiency in the borrower's loan modification application no later than five business days after receipt of the submission of documentation.

(b) If a borrower's application for a loan modification is denied, the borrower shall have 30 days from the date written denial of the application is sent to the borrower to appeal the denial.

(c) Following the denial of a loan modification application submitted pursuant to Section 2923.6 or 2924.10, the mortgagee, trustee, beneficiary, or authorized agent shall send a written nonapproval notice to the borrower identifying the reasons for denial and the factual information considered, including the following information:

(1) The notice shall inform the borrower of the amount of time from the date of the denial letter he or she has to request an appeal of the denial of a loan modification,



unless the reason stated for the denial is an ineligible mortgage, an ineligible property, or if the loan modification offer was not accepted by the borrower or the request was withdrawn.

(2) If the denial was based on investor disallowance, the mortgagee, trustee, beneficiary, or authorized agent shall disclose in the written notice the name of the investor or investment trust, if applicable, and state the specific reasons for the investor denial.

(3) If the denial is the result of a net present value calculation, the mortgagee, trustee, beneficiary, or authorized agent shall provide in the written notice the monthly gross income and property value used in the calculation and inform the borrower of his or her right to request a full appraisal to be conducted of the property by an independent licensed appraiser, at borrower expense if the borrower chooses to appeal the denial.

(4) The toll-free telephone number made available by the Office of Homeowner Protection.

(d) If the mortgagee, trustee, beneficiary, or authorized agent denies a borrower's appeal, the denial letter shall include a description of other available loss mitigation, including short sales and deeds in lieu of foreclosure.

SEC. 9. Section 2924.13 is added to the Civil Code, to read:

2924.13. (a) A mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of sale under any of the following circumstances:

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



(2) A short sale or deed-in-lieu of foreclosure has been approved by all parties, including the first lien investor, the junior lienholder, and the mortgage insurer, as applicable, and proof of funds or financing has been provided to the mortgagee, trustee, beneficiary, or authorized agent.

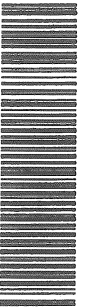
(b) When a borrower accepts an offered loan modification, the mortgagee, trustee, beneficiary, or authorized agent shall provide the borrower with a copy of the fully executed loan modification agreement following receipt of the executed copy from the borrower. If the modification was not made in writing, the mortgagee, trustee, beneficiary, or authorized agent shall provide the borrower with a written summary of its terms as soon as possible following the approval of the modification.

(c) A mortgagee, trustee, beneficiary, or authorized agent shall record a recision of a notice of default upon the borrower executing a permanent loan modification.

(d) The mortgagee, trustee, beneficiary, or authorized agent shall make publicly available information on its qualification processes, all required documentation and information necessary for a complete loan modification application, and key eligibility factors for all proprietary loan modifications.

(e) The mortgagee, trustee, beneficiary, or authorized agent shall not charge any application, processing, or other fee for a proprietary loan modification.

(f) The mortgagee, trustee, beneficiary, or authorized agent shall track outcomes and maintain records regarding characteristics, including, but not limited to, debt-to-income ratios of modified payments and the percentage change in monthly payment amounts, and performance of proprietary loan modifications. A mortgagee, trustee, beneficiary, or authorized agent shall provide a description of modification



waterfalls, eligibility criteria, and modification terms on a publicly available Internet Web site.

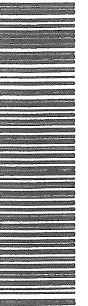
(g) The mortgagee, trustee, beneficiary, or authorized agent shall not collect any late fees for periods during which a complete loan modification is under consideration or a denial is being appealed, the borrower is making timely trial or permanent modification payments, or a short sale offer is being evaluated.

(h) Nothing in this article obviates or supersedes the obligations of the signatories to the National Mortgage Settlement.

SEC. 10. Section 2924.14 is added to the Civil Code, to read:

2924.14. (a) A borrower may seek an order in any court having jurisdiction to enjoin any 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 the requirements of Section 2923.5, 2923.6, 2924, 2924.9, 2924.10, 2924.11, 2924.12, 2924.13, or 2924f. Any injunction shall remain in place until the mortgagee, trustee, beneficiary, or authorized agent has complied with the requirements of Sections 2923.5, 2923.6, 2924, 2924.9, 2924.10, 2924.11, 2924.12, 2924.13, and 2924f. A borrower who obtains an injunction shall be awarded reasonable attorney's fees and costs.

(b) (1) Following a trustee's sale, a borrower may recover the greater of actual damages or ten thousand dollars (\$10,000) plus reasonable attorney's fees and costs in any court of competent jurisdiction, if the borrower reasonably believes that the mortgagee, trustee, beneficiary, or authorized agent failed to comply with the



requirements of Section 2923.5, 2923.6, 2924, 2924.9, 2924.10, 2924.11, 2924.12, 2924.13, or 2924f.

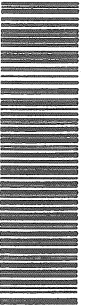
(2) A court may award a borrower the greater of treble actual damages or statutory damages of fifty thousand dollars (\$50,000), plus reasonable attorney's fees and costs, if it finds that the violation of Section 2923.5, 2923.6, 2924, 2924.9, 2924.10, 2924.11, 2924.12, 2924.13, or 2924f was intentional or reckless or resulted from willful misconduct by a mortgagee, trustee, beneficiary, or authorized agent.

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

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

(e) It shall be an affirmative defense to any liability for violation of Sections 2923.5, 2923.6, 2924.9, 2924.10, 2924.11, 2924.12, 2924.13, and 2924.15, that a signatory to a consent judgment entered in the case entitled United States of America v. Bank of America Corporation, filed in the Federal District Court for the District of Washington, D.C., case number 1:12-cv-00361 RMC, is in compliance with that consent judgment while the consent judgment is in effect.

(f) A third party encumbrancer shall not be relieved from liability resulting from violations of Section 2923.5, 2923.6, 2924, 2924.9, 2924.10, 2924.11, 2924.12, 2924.13, or 2924f committed by that third-party encumbrancer, which occurred prior to the sale of the subject property to the bona fide purchaser.



SEC. 11. Section 2924.15 is added to the Civil Code, to read:

2924.15. Unless otherwise provided, Sections 2923.6, 2923.7, 2923.9, 2924.9, 2924.10, 2924.11, 2924.12, 2924.13, 2924.15, and 2924f, shall apply to mortgages or deeds of trust that are secured by residential real property containing no more than four dwelling units.

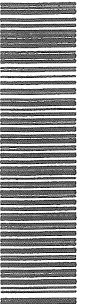
SEC. 12. Section 2924.16 is added to the Civil Code, to read:

2924.16. (a) There shall be established within state government an Office of Homeowner Protection, which shall have the responsibility for all of the following:

- (1) Responding to inquiries and complaints from individuals regarding the provisions of this article.
- (2) Attempting to seek compliance by mortgagees, trustees, beneficiaries, or authorized agents with the provisions of this article.
- (3) Maintaining an Internet Web site that is capable of receiving inquiries and complaints from individuals and that provides information to the public about publicly available resources intended to help individuals avoid foreclosure.
- (4) Providing an annual report to the Legislature, summarizing its activities during the prior year.

(b) It is the intent of the Legislature that the office be funded through payments made available to the Attorney General via the Special Deposit Fund, which was created pursuant to the settlements approved by the United States District Court for the District of Columbia on _____.

SEC. 13. Section 2924g of the Civil Code is amended to read:

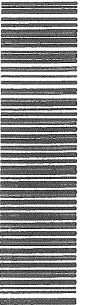


2924g. (a) All sales of property under the power of sale contained in any deed of trust or mortgage shall be held in the county where the property or some part thereof is situated, and shall be made at auction, to the highest bidder, between the hours of 9 a.m. and 5 p.m. on any business day, Monday through Friday.

The sale shall commence at the time and location specified in the notice of sale. Any postponement shall be announced at the time and location specified in the notice of sale for commencement of the sale or pursuant to paragraph (1) of subdivision (c).

If the sale of more than one parcel of real property has been scheduled for the same time and location by the same trustee, (1) any postponement of any of the sales shall be announced at the time published in the notice of sale, (2) the first sale shall commence at the time published in the notice of sale or immediately after the announcement of any postponement, and (3) each subsequent sale shall take place as soon as possible after the preceding sale has been completed.

(b) When the property consists of several known lots or parcels, they shall be sold separately unless the deed of trust or mortgage provides otherwise. When a portion of the property is claimed by a third person, who requires it to be sold separately, the portion subject to the claim may be thus sold. The trustor, if present at the sale, may also, unless the deed of trust or mortgage otherwise provides, direct the order in which property shall be sold, when the property consists of several known lots or parcels which may be sold to advantage separately, and the trustee shall follow that direction. After sufficient property has been sold to satisfy the indebtedness, no more can be sold.



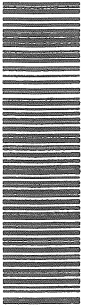
If the property under power of sale is in two or more counties, the public auction sale of all of the property under the power of sale may take place in any one of the counties where the property or a portion thereof is located.

(c) (1) There may be a postponement or postponements of the sale proceedings, including a postponement upon instruction by the beneficiary to the trustee that the sale proceedings be postponed, at any time prior to the completion of the sale for any period of time not to exceed a total of 365 days from the date set forth in the notice of sale. The trustee shall postpone the sale in accordance with any of the following:

- (A) Upon the order of any court of competent jurisdiction.
- (B) If stayed by operation of law.
- (C) By mutual agreement, whether oral or in writing, of any trustor and any beneficiary or any mortgagor and any mortgagee.
- (D) At the discretion of the trustee.

(2) In the event that the sale proceedings are postponed for a period or periods totaling more than 365 days, the scheduling of any further sale proceedings shall be preceded by giving a new notice of sale in the manner prescribed in Section 2924f. New fees incurred for the new notice of sale shall not exceed the amounts specified in Sections 2924c and 2924d, and shall not exceed reasonable costs that are necessary to comply with this paragraph.

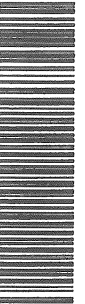
(d) The notice of each postponement and the reason therefor shall be given by public declaration by the trustee at the time and place last appointed for ~~sale~~. sale for any postponement that does not exceed nine days, otherwise, notice shall be pursuant to subdivision (a) of Section 2924. A public declaration of postponement shall also set



forth the new date, time, and place of sale and the place of sale shall be the same place as originally fixed by the trustee for the sale. No other notice of postponement need be given. However, the sale shall be conducted no sooner than on the seventh day after the earlier of (1) dismissal of the action or (2) expiration or termination of the injunction, restraining order, or stay that required postponement of the sale, whether by entry of an order by a court of competent jurisdiction, operation of law, or otherwise, unless the injunction, restraining order, or subsequent order expressly directs the conduct of the sale within that seven-day period. For purposes of this subdivision, the seven-day period shall not include the day on which the action is dismissed, or the day on which the injunction, restraining order, or stay expires or is terminated. If the sale had been scheduled to occur, but this subdivision precludes its conduct during that seven-day period, a new notice of postponement shall be given if the sale had been scheduled to occur during that seven-day period. The trustee shall maintain records of each postponement and the reason therefor.

(e) Notwithstanding the time periods established under subdivision (d), if postponement of a sale is based on a stay imposed by Title 11 of the United States Code (bankruptcy), the sale shall be conducted no sooner than the expiration of the stay imposed by that title and the seven-day provision of subdivision (d) shall not apply.

SEC. 14. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.



LEGISLATIVE COUNSEL'S DIGEST

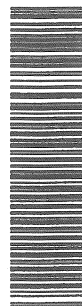
Bill No.

as introduced, _____.

General Subject: 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 to include a declaration stating that the trustee, beneficiary, or authorized agent has contacted the borrower, or has tried with due diligence to contact the borrower, or that no contact was required for a specified reason.

This bill would additionally require the borrower to be provided, if applicable, with a deadline for the borrower to submit an initial application for a loan modification. The bill would require the declaration to also state that the borrower was not a servicemember or dependent of a servicemember entitled to benefits under the federal Servicemembers Civil Relief Act, that the mortgagee, trustee, beneficiary, or authorized agent has possession of the note and mortgage, or deed of trust, and other specified



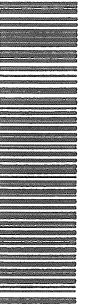
documents that evidence the right to foreclose, and has attached copies thereof to the declaration, as specified, or a separate declaration containing specified information, if the above described documents cannot be located. The bill would prescribe procedures and notices that must be sent by the mortgagee, trustee, beneficiary, or authorized agent if the notice of default was filed prior to January 1, 2013, and a notice of rescission was not subsequently recorded. The bill would prohibit recording a notice of default unless a specified written notice has been sent at least 14 days before a notice of default is recorded.

The bill would prohibit a notice of default from being recorded while a loan modification application is pending, under specified conditions, and would establish additional procedures to be followed regarding the loan modification application before a notice of default could be recorded.

(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 sale.

This bill would impose additional requirements pertaining to applications for loan modifications that must be satisfied prior to recording a notice of sale in order to exercise a power of sale. The bill would 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, time, and location when the new sale date is at least 10 calendar days after the date of postponement, as specified.

The bill would establish procedures for a loan modification application process to be used after a notice of sale has been recorded.

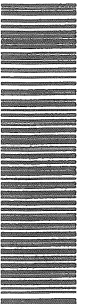


The bill would prohibit a notice of sale from being recorded under certain conditions, including, among others, if the borrower is in compliance with a loan modification plan, forbearance, or loan repayment plan, as specified, or if a short sale or deed-in-lieu of foreclosure has been approved, as specified. The bill would require mortgagees, trustees, beneficiaries, or authorized agents to track and record specified data pertaining to loan modification agreements. The bill would prohibit the collection of late fees while a loan modification or short sale is being considered, if certain criteria are met.

(3) The bill would repeal duplicate provisions of law.

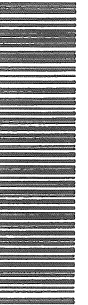
(4) The bill would authorize a borrower to seek an injunction of a pending trustee's sale if a notice of sale has been recorded and the borrower reasonably believes that the mortgagee, trustee, beneficiary, or authorized agent failed to comply with specified requirements. The bill would authorize the 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.

(5) The bill would establish the Office of Homeowner Protection, that would have responsibility, among other things, for responding to inquiries and complaints from individuals regarding foreclosures and other procedures and requirements as described above, attempting to seek compliance by mortgagees, trustees, beneficiaries, or authorized agents regarding foreclosures and other procedures and requirements as



described above, and maintaining an Internet Web site that is capable of receiving inquiries and complaints from individuals and that provides information to the public about publicly available resources intended to help individuals avoid foreclosure. The bill would express the intent of the Legislature that the office be funded by payments made available to the Attorney General via the Special Deposit Fund, created pursuant to specified federal settlement agreements.

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



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



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

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

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

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

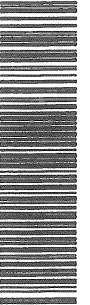
2923.7. (a) If a borrower is 60 or more days delinquent, the mortgage servicer shall inform the borrower that if the borrower wishes to pursue a loan modification or other foreclosure prevention alternative, the mortgage servicer shall establish a single point of contact (SPOC) for the borrower.

(b) Upon written or telephonic communication from a borrower who is 60 or more days delinquent and who requests loss mitigation assistance, the identity of and contact information for the SPOC shall be provided to the borrower within 10 business days. The mortgage servicer shall provide updated contact information to the borrower if the designated SPOC is changed no later than five business days after the change.

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

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

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



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

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

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

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

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

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

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

2924. (a) Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is to be deemed a pledge. Where, by a mortgage created after July 27, 1917, of any estate in real property, other than an estate at will or for years, less than two, or in any transfer in trust made after July 27, 1917, of a like estate



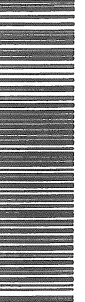
to secure the performance of an obligation, a power of sale is conferred upon the mortgagee, trustee, or any other person, to be exercised after a breach of the obligation for which that mortgage or transfer is a security, the power shall not be exercised except where the mortgage or transfer is made pursuant to an order, judgment, or decree of a court of record, or to secure the payment of bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations, or is made by a public utility subject to the provisions of the Public Utilities Act, until all of the following apply:

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

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

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

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



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

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

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

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

(5) An entity shall not record or cause a notice of default to be recorded or otherwise initiate the foreclosure process unless it is the holder of the beneficial interest under the deed of trust. An agent shall not record a notice of default or otherwise commence the foreclosure process without the specific direction of the actual owner of the beneficial interest under the deed of trust.

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



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

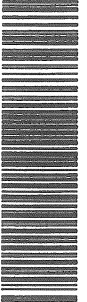
(d) All of the following shall constitute privileged communications pursuant to Section 47:

- (1) The mailing, publication, and delivery of notices as required by this section.
- (2) Performance of the procedures set forth in this article.
- (3) Performance of the functions and procedures set forth in this article if those functions and procedures are necessary to carry out the duties described in Sections 729.040, 729.050, and 729.080 of the Code of Civil Procedure.

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

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

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



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

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

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



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

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

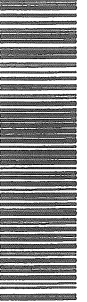
~~(D) If the default is curable pursuant to Section 2924e, the statement specified in paragraph (1) of subdivision (b) of Section 2924e.~~

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

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

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

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



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

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

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

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

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

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

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

SEC. 5. Section 2924.17 is added to the Civil Code, to read:

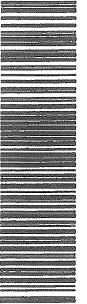


2924.17. (a) For purposes of this section, a “robosigned document” means any document that contains factual assertions that are not accurate, are incomplete, or are unsupported by competent, reliable evidence. A “robosigned document” also means any document that has not been reviewed by its signer to substantiate the factual assertions contained in the document. For purposes of this definition, multiple people may verify the document or statement so long as the document or statement specifies the portions verified by each signer.

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

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

2924.18. (a) A borrower may seek an order in any court having jurisdiction to enjoin any 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 the requirements of Section 2923.7, 2924, 2924.9, or 2932.5. Any



injunction shall remain in place until the mortgagee, trustee, beneficiary, or authorized agent has complied with the requirements of Section 2923.7, 2924, 2924.9, or 2932.5. A borrower who obtains an injunction shall be awarded reasonable attorneys' fees and costs.

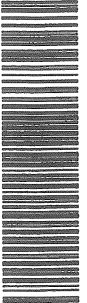
(b) (1) Following a trustee's sale, a borrower may recover the greater of actual damages or ten thousand dollars (\$10,000) plus reasonable attorney's fees and costs in any court of competent jurisdiction, if the borrower reasonably believes that the mortgagee, trustee, beneficiary, or authorized agent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

(2) A court may award a borrower the greater of treble actual damages or statutory damages of fifty thousand dollars (\$50,000), plus attorney's fees and costs, if it finds that the violation of Section 2923.7, 2924, 2924.9, or 2932.5 was intentional, reckless, or resulted from willful misconduct by a mortgagee, trustee, beneficiary, or authorized agent.

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

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

(e) It shall be an affirmative defense to any liability for violation of Sections 2920.5, 2923.5, 2923.7, 2924, and 2924.9, that a signatory to a consent judgment entered in the case entitled United States of America v. Bank of America Corporation,

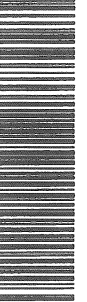


filed in the Federal District Court for the District of Washington, D.C., case number 1:12-cv-00361 RMC, is in compliance with that consent judgment while the consent judgment is in effect.

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

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

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



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LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: 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.



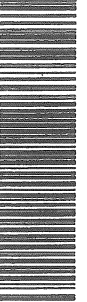
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This bill would prohibit an entity from recording a notice of default or otherwise initiating foreclosure procedures unless the entity is the holder of the beneficial interest under the deed of trust, and would prohibit an entity acting as an agent from doing so without specific direction from the actual owner of the beneficial interest under the deed of trust.

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

This bill would provide that a document that contains 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) 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.

(5) 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.

(6) The bill would repeal duplicate provisions of law.

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

